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Australian National Internship Program

**The intervention of child protection services in cases where children are living with
domestic and family violence**

Tatiana Zhdanova

Master Candidate of Public Policy in Social Policy

Crawford School of Public Policy | The Australian National University

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Foreword

Children and families are entering the child protection system with increasingly complex family circumstances, in many cases involving domestic and family violence. Victims/survivors of violence and abuse often do not receive the support they need to maintain or re-establish their caring roles while building lives that are free from violence. In particular, Aboriginal and Torres Strait Islander families, families who include parents and/or children with disability, and families from culturally and linguistically diverse backgrounds face specific challenges and need better support.

Child protection and family law systems often do not work in a synchronised manner. In prioritising the safety and well-being of children, child protection systems may neglect the needs of a victim/survivor. The family law system, in turn, may not have sufficient resources targeted at children and young people.

Together with other organisations working to prevent and respond to violence against women, Australian Women Against Violence Alliance recognises the intersection of domestic and family violence, child protection and family law as an important focus for reform. Our recent recommendations in this area can be found in our [joint submission](#) (with the National Aboriginal and Torres Strait Islander Women’s Alliance and Harmony Alliance – Migrant and Refugee Women for Change) in response to the Australian Law Reform Commission’s Review of the Family Law System Issues Paper.

This internship report adds to the evidence base by illustrating some of the specific ways in which child protection and family law systems impact on women and children who have been subjected to domestic and family violence. We thank Tatiana Zhdanova for conducting the research, and the respondents who contributed their time and expertise.

Dr Merrindahl Andrew

Program Manager

Australian Women Against Violence Alliance

www.awava.org.au

Executive Summary

Children's exposure to domestic and family violence (D&FV) can result in a number of negative outcomes for children, including post-traumatic stress disorder, depression, poor school performance, and higher rates of aggressive behaviour (Goddard & Bedi 2010). According to the 2016 Personal Safety Survey, in at least half of all instances of violence where children were in their care, carers reported that children had seen or heard it (AIHW 2018b). In the case of children's exposure to D&FV, one of the main concerns is to identify when and whether it is appropriate for the state to intervene and the appropriate role of child protection services (ALRC 2010). Advocacy organisations have noted that victims/survivors of domestic and family violence often do not receive the support they need from child protection, family law and criminal justice systems to maintain or re-establish their caring roles while building lives that are safe from violence (AWAVA 2017; DVNSW 2016). This research paper tries to identify system gaps and problems by developing a more concrete understanding of the common patterns and outcomes for children and their parents in cases when family violence is alleged, and children are witnesses to D&FV.

The complex nature of domestic and family violence and need for child protection is intertwined with the impact of trauma, low socioeconomic background, substance abuse, and previous history of interaction with child protection services. Aboriginal and Torres Strait Islander clients, women from culturally and linguistically diverse backgrounds and people with intellectual disabilities are overrepresented in the child protection system. A lack of resources contributes to a lack of capacity, where child protection and community legal assistance services have to prioritise the deployment of limited resources, at a cost to child safety. This leads to a number of vulnerable clients being unrepresented in the courts and not receiving adequate support from child protection services.

Experts note that evidence of a child witnessing D&FV tends to be given little weight by courts in determining the outcomes for the child. Both child protection and family law systems respond more strongly to physical abuse towards children and protective parents, while little consideration is given to emotional or psychological harm that might be done to a child. Family law and child protection systems operate under different legislative frameworks, and these often promote conflicting values. At times, family law systems prioritise children having relationships with both parents over the imperative of child safety. The principle of child removal as a last resort gives child protection services a basis for non-involvement on the grounds of avoiding placement of children in out-of-home care. Approaches to child protection are often rigid and based on standardised procedures that do not allow the system to adjust for clients' needs. These and other matters are discussed in the paper. Recommendations are developed for closing the system gaps.

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Together with the author, Australian Women Against Violence Alliance would also like to acknowledge the valuable contribution of the following experts:

- Hayley Grainger, Principal Solicitor, North Queensland Women's Legal Services (NQWLS);
- Rachel Neil, Principal solicitor, and Bronwen Gray, Domestic Violence Unit Social worker, Women's Legal Services Queensland (WLSQ);
- Tameka Brown, Solicitor, Djinda Services, Women's Law Centre of Western Australia (WLCWA);
- Zita Adut Deng Ngor, CEO, Women's Legal Services South Australia (WLSSA);
- Matt Fawkner, Principal Legal Officer, Katherine Women's Information & Legal Service Inc. (KWILS), Northern Territory; and
- a respondent from Central West Women's Domestic Violence Court Advocacy Service (Central West WDVCS), New South Wales.

Introduction

Children's exposure to domestic and family violence can result in a number of negative outcomes for children, including post-traumatic stress disorder, depression, poor school performance, and higher rates of aggressive behaviour (Goddard & Bedi 2010). According to the 2016 Personal Safety Survey, in at least half of all instances of violence where children were in their care, carers reported that children had seen or heard it (AIHW 2018b). In the case of children's exposure to D&FV, one of the main concerns is to identify when and whether it is appropriate for the state to intervene and the appropriate role of child protection services (ALRC 2010). Advocacy organisations have noted that victims/survivors of domestic and family violence often do not receive the support they need from child protection, family law and criminal justice systems to maintain or re-establish their caring roles while building lives that are safe from violence (AWAVA 2017; DVNSW 2016).

According to the Australian Law Reform Commission (ALRC 2010, pp. 894-895), 'the interlocking nature of family violence, child abuse and child neglect and the emotional harm to children of violence against a person who is caring for them' makes it difficult to disentangle exposure to D&FV from emotional and psychological harm that is made to a child. The report notes that children's exposure to family violence is often included in the category of emotional abuse and, consequently, 'notifications of exposure to family violence are not necessarily separately captured' (ALRC 2010, p.895). Further, the data collection is limited by 'different state and practices for recording notifications of child abuse' (ibid).

Methods of research

At the first stage of the research, a literature review was conducted to explore existing research and data on the issue and to consider legislation on child protection. On the basis of the literature review and consultation with Australian Women Against Violence Alliance (AWAVA), research questions were developed, and the questionnaire was designed. Expert interviews were chosen as the main method of research, given the lack of data available on prevalence of children's exposure to D&FV, as well as the absence of national data on the reasons for children's placement in out-of-home care (ALRC 2010; AIHW 2018a). The expert interviews have limitations as an evidence base but the concerns they raise are reinforced by the literature.

The expert interviews were carried out with solicitors and legal officers of Women's Legal Services across Australia – a national network of community legal centres specialising in women's legal issues, comprising 12 legal services across Australia (WLSA 2018) – and Central West Women's Domestic Violence Court Advocacy Service in NSW. Six phone interviews were conducted with experts from these services in Western Australia, Northern Territory, South Australia, Queensland, and New South Wales. The questions were divided into survey questions,

comprising data questions, and interview questions. Interviews were audio-recorded and transcribed. The results should be interpreted in light of the fact that interviews were not able to be conducted in all Australian jurisdictions. However, the issues raised are likely to be relevant across all regions.

This research paper tries to identify system gaps and problems by developing more concrete understanding of the common patterns and outcomes for children and their parents in cases when family violence is alleged, and children are witnesses to D&FV. The proposed research aims to explore the extent to which child protection (CP) services are intervening in cases where children are living with domestic and family violence, in particular the extent to which children are being removed from the care of parents who are victims/survivors of domestic and family violence, the reasons given for the interventions/removal, and the common patterns of parenting arrangements and types of protection orders made in regard to these children. Based on expert interviews and case study analysis, policy recommendations are provided. The summary of recommendations can be viewed in Appendix B.

The common patterns and outcomes for children exposed to D&FV

Due to the interlocking nature of family violence children exposed to D&FV are ‘at increased risk of developing health and behavioural problems’ (ALRC 2010, p. 894). The respondent from Central West Women’s Domestic Violence Court Advocacy Service (Central West WDVCS) raises concerns regarding the impact on children in case of D&FV exposure. She highlights that children:

‘adapt their behaviour subtly to ensure they do not aggravate the perpetrator. This may take the form of disciplining siblings themselves to not raise the attention of the perpetrator or becoming withdrawn and not attending events in order to be home to protect their mum’.

These adaptations can reinforce the misconception that children are not affected by the violence, resulting in this impact on children being neglected.

Tameka Brown, solicitor at WLCWA, explains that all of the children witness family violence either directly or indirectly:

‘They may actually see their parent being assaulted or they see the parent afterwards with injuries bleeding and bruising. They may witness property damage or see the mess afterwards. This all counts as witnessing family and domestic violence. We see matters where the children try to intervene to protect their parent and are shoved out of the way. Other times they may be specifically assaulted. This does not happen quite as much but is still not uncommon’.

In domestic violence and family law proceedings, when children are witnesses of D&FV, but are not the direct victims, they most likely are not included on domestic violence orders (DVOs), which are envisaged as the mechanism to protect a person from family violence. Even though the legislation is clear that exposure to domestic violence needs to be taken into account (Richards 2011), this practice has not developed in courts. Tameka Brown highlights, 'It is common for there to be violence restraining orders or Family Court ordered injunctions in place regarding protection of the parent, but not so regularly the child'.

The experts agree that children's exposure to D&FV is not taken seriously enough in the child protection and family law systems. A child's witnessing of family violence is given little weighting in determining what is in the best interest of a child. In both Family Law and Child protection jurisdictions, not much consideration is given to psychological or emotional harm that could be done to children, and even direct verbal or psychological abuse towards children by a perpetrator often does not affect custody arrangements. Similarly, outcomes of mediation processes reflect what is encouraged by the law, which is a preference for substantial or shared care arrangements with the other party. As Rachel Neil, principal solicitor at WLSQ, highlights, 'you are not going to have grounds to insist on supervised time or no time because of that indirect witnessing of the domestic violence'.

The experts emphasise that removal of children does not tend to happen on the grounds of children exposure to D&FV alone. It depends on other factors, such as mental health and substance abuse issues. Due to the notion that removal of children from families should be the last resort, child protection services do not intervene until the case is considered to be high-risk. Most likely exposure to domestic violence by a child would be low on the list of priorities considered by child protection services. The threshold for child protection proceeding requires direct abuse to the children or exposure to D&FV of a significant physical nature. Thus, the situation of D&FV would need to escalate to this extent for the risk to be considered sufficient to attract the attention of child protection services. As Zita Ngor, CEO at WLSWA, highlights, 'allegations around financial, psychological, emotional, or social abuse often wouldn't get any response from the system', unless the violence is of significant physical nature:

'And to give you an example, there was a client whose partner basically severely assaulted her to the extent that she ended up being hospitalised for several weeks and lost a spleen as the result of the beating that she received at the hands of her ex-partner. The children were present during that particular incident. And obviously because she was hospitalised, the department became involved and the children then entered into the care system. But there had been, prior to this incident, there has been a lot of incidents of domestic violence that had occurred'.

The experts emphasise that in the cases of children's exposure to D&FV, the involvement of child protection services is limited to an initial investigation of domestic violence, observation of the situation, and verbal directions given to the mother about getting DVOs. Brownen Gray, social worker at WLSQ, points out that the victims of D&FV are struggling to comply with these requirements, being unable to access legal aid or receive any support from child protection services in attempting to comply:

'So, they've sent them on this mission to get done these things, but they don't actually provide any support to assist with that process, they don't help them to apply for legal aid. And the reality is most of the time in relation to legal aid, if mum's got kids in her care, she is not getting legal aid because it's not considered a substantial dispute. So, they can't actually move forward with the things that child safety [child protection services] are telling them to do'.

At the same time, victims/survivors are sometimes placed in a difficult position where complying with child protection services can jeopardise safety. As the respondent from Central West WDVCS highlights:

'Mums often report feeling torn between having to do what FACS [Family and Community Services] tells them but also knowing that may put them further at risk. [For example], FACS might tell her [that] she is not to allow the children to speak with the POI [person of interest], however, he might call, and she feels that it is safer for her to hand the phone over [to the children], otherwise he will show up'.

Experts explained that child protection services sometimes direct a victim of D&FV to the family law system rather than providing support themselves, on the basis that this will be less likely to result in child removal. That is, the department presents their intervention as a risk for the mother to lose her children, presenting this risk, at the same time, as a reason for clients to comply with child protection's requirements. This approach is discriminatory in terms of clients' background. Respondents to this research noted that child protection services are more inclined to intervene in the cases of Aboriginal and Torres Strait Islander families, and more inclined to place children in out-of-home if there is previous history of children removal in the family. Hayley Grainger, principal solicitor at NQWLS, further emphasises the significance of clients' background:

'I think we still, the child protection system is particularly unfriendly to Indigenous women and also those with mental health issues and substance abuse issues. I guess they are disproportionately represented in the child protection system. But also, it seems to me, that child safety are much more willing to remove children as the first step, in sort of the most vulnerable, like women that are the most vulnerable are actually need the most support and

help. Child safety are more inclined to remove first, and then look at supports after, whereas if she is high socioeconomic or not of an Indigenous background, child safety are more willing to work with the woman by keeping the child in her care and providing support’.

With the Family Law Court’s preference for substantial or shared care arrangements, to get the sole custody over her children and put an intervention order in place, the victim/survivor of D&FV needs to prove that D&FV allegations are valid and not being used for strategic purposes. As Zita Ngor states:

‘Some of the consideration as a legal practitioner that you need to take into account is whether there is any independent corroborating evidence of the domestic and family violence, so doctors, police, to some extent psychologists as well. So, this kind of evidence are really useful, and in particular, if there is been successful prosecutions. It’s not enough that police had been called out on numerous occasions, police have had numerous attendance at the place. They really are looking for successful convictions in order to say “yes”, that these are claims of domestic and family violence’.

As child protection services at times receive notifications about D&FV, conduct investigations, and direct the victim/survivor D&FV to obtain an intervention order, their opinion can represent, as Rachel Neil puts it, ‘an independent view point that can be put before the court to assist in the decision making’. Matt Fawkner, principal legal officer at KWILS, elaborates that potentially child protection services can substantially influence the outcome for domestic violence:

‘Under Domestic and Family Violence Act (NT), welfare [child protection services] officer has the power to apply for domestic violence orders protecting children. And they don’t usually use that power, generally they leave it up to mom or other family members to apply for it. <...> We’d love to see them do more of that. Because by doing that they do have an influence on where the children can end up. See, for instance, there could be domestic violence order in place prohibiting the father from being in a house, protecting the children and the mother. And by that DVO being in place could be the difference between the children remaining in mum’s care or being removed into out-of-home care. So, it is, the influence is about what supports can be put in place, so the family, the kids can remain with a parent, if not both parents’.

Further, free legal representation is essential both in navigating the Family Law system successfully and averting a removal of children by protection services. The court system is complicated, emotional, and intimidating for many clients, which inevitably affects their ability to represent themselves. The hearings in court are time constrained, and require the use of technical language, knowledge of legal processes, the ability to speak up, and prepare correct and concise

documentation. Community legal centres are under-funded and are often unable to meet the need for legal representation (AWAVA 2018, pp. 8, 12). Due to various restrictions it can also be difficult for women facing domestic and family violence to obtain legal representation through Legal Aid (AWAVA 2018, pp. 6-7). The lack of legal representation may result in negative outcomes through, for example, clients misunderstanding the importance of court attendance or document preparation, and through impacts on their emotional state. Hayley Grainger describes the challenges in the court as follows:

‘If a woman is trying to navigate the family law system without legal representation, it is a major disadvantage for anyone really, but particularly for women who are victims of domestic and family violence. The system is complicated, it is obviously emotional, when you’ve got the dynamic of DV [domestic violence] as well, it is often very fearful. And you either end up in the situation where one party might be lawyered up, and so has the benefit of, you know, the legal knowledge and representation and can absolutely slam the non-represented party in, you know, every area basically. On the flip side though as well, if you end up with both parties unrepresented or self-representing, you then have got the dynamic of the perpetrator, you know, obviously, for example, cross-examining [the] woman during the proceeding’.

The value of free legal representation is illustrated by the case study provided by Matt Fawcner, which can be found in the Appendix A.

In addition to that, both child protection and family law systems are personality driven. Whether it is the personality of a child protection worker, judicial officer, or legal aid lawyer, it may determine the amount of support a client gets, and the final outcome for the client. As Zita Ngor highlights:

‘So, it is always a delicate balancing act in terms of how far you push the issue of domestic and family violence. It can actually harm your client, if you push too hard with the wrong judicial officer. <...> And sometimes the other party may get more time with the child than they otherwise would have, if the same matter was put before another judicial officer’.

The findings of this research project suggest that outcomes for the children exposed to D&FV would vary depending on the supports available for the victim/survivor. Based on the expert interviews, one of the most common outcomes for the children exposed to D&FV would be shared custody arrangements as reflected in the Family Law. The respondents report that the court may decide to leave child/ren in the victim/survivor’s (usually mother’s) care if the victim/survivor has legal representation and there is enough independent corroborating evidence, such as successful prosecutions and/or hospital admissions, to prove the perpetrator may be a threat for the children.

The interviews further suggest that in case of ongoing D&FV the victim/survivor is often not able to protect the child/ren without assistance from child protection services, which leads to child/ren being placed with the perpetrator's family or in out-of-home care. The last outcome is particularly true for Aboriginal and Torres Strait Islander women or in cases where women may have mental health and/or drug abuse problems.

Gaps in the intersection of Family Law and Child Protection and recommendations to address them.

The complex nature of domestic violence and need for child protection is intertwined with the impacts of trauma, low socioeconomic background, substance abuse, and previous history of interaction with child protection services. In the child protection system, Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, and people with intellectual disabilities are the most disadvantaged (ALRC 2010, AIHW 2018a). As Zita Ngor describes it, 'So, really the whole child protection system is built on policing the poor and the marginalised within our community'.

Gap 1. Lack of capacity of legal assistance and support services in the area of child protection and domestic violence.

On numerous occasions our respondents pointed out that for various reasons, clients were not receiving the assistance they needed from child protection and legal assistance services. Given that child protection services are often unable to address the needs of victims/survivors and their dependents, many D&FV and child protection matters are transferred to the Family Law Court, which, as it was initially designed, was not meant to deal with those issues. According to the ALRC's major report, the family courts do not have any 'investigatory arm to provide them with independent investigations in cases where child abuse is raised as an issue' (ALRC 2010, p.911)¹. In the absence of assistance from child protection services, this can result in protection orders being made in a situation where evidence presented to the family court is lacking, which can lead to unfavourable outcomes for children.

Additionally, experts emphasise that the number of clients who have access to legal aid is narrowing. When most legal assistance services are unable to provide representation at trial, victims of D&FV have to navigate the court system themselves. Community legal centres are often able to assist only at pre-trial stages in preparing all the documents before the court. However, legal advice and information cannot replace legal representation. Again, the barriers in accessing

¹ The Magellan case management was designed to deal with allegation of physical and child sexual abuse <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/child-abuse-allegations/>

legal aid is defined by the lack of funding that determines the allocation of resources in the first place. As Rachel Neil highlights, even if legal aid is granted, it can be cut without adequate regard to the family situation.

‘To get the full representation in court, that substantial dispute has to exist. But if you get legal aid at the beginning of proceedings, that may, it’s tenuous, it may be lost at certain stages throughout. So, let’s say a family report comes in that is not supportive of the woman who’s got legal aid. Legal aid might actually cut legal aid, because they don’t think she’s got a good chance of winning. We’ve also seen cases where there is a positive family report that says, “She’s doing everything right”, says, “she should get what she wants”. We’ve seen legal aid cut in those situations because they say, “Well, we’ve got an independent children’s lawyer here, the family report says it’s all good”. But then it gets to the final hearing and because she doesn’t have someone to speak up for her, it’s just completely crumbled. And that’s counter-intuitive to me; I don’t understand it but, you know, legal aid, they’ve got funding issues as well, and they make their policy decisions based on that, I guess so’.

Recommendation 1. Increase the funding to community services working with D&FV and build the capacity of child protection services to appropriately address these matters.

Respondents reported that there were problems in staffing in the child safety domain, noting that child protection services are overworked and understaffed. As Rachel Neil comments on the reasons why child protection services do not assist in more cases, ‘They’re really strapped for people, they have really young practitioners, who, perhaps, are overwhelmed. The change-over; the turnover in case workers for families is really high as well’. Further research is required on the career experiences, motivations and characteristics of child protection officers, and what is required in terms of staffing in order to meet the needs of child safety.

Recommendation 2. Consult and take steps to ensure committed and professional child protection officers are recruited and retained in the child protection sector.

Experts point out that the lack of training may be another problem that lead to negative outcomes for the client. Respondents indicated that many officers in child protection are new graduates, who may not fully appreciate Aboriginal and Torres Strait Islander family practices. Matt Fawcner points out that in his jurisdiction, child protection officers often find it hard to communicate complex findings and recommendations to parents. To illustrate fully the seriousness of the issue, he provides an example of safety plan written by a child protection officer:

‘This safety plan is a document that’s given to the mother. Now, if she can’t understand that and other people can’t understand that, what’s the good of it? If it wasn’t for me to be there, you know, her kids could have been removed, if she fails to obey the safety plan, which she doesn’t understand because of the use of English by the welfare worker in documenting it in the first place’.

Hayley Grainger emphasises that there is lack of training among advocates to perform trauma-informed practice. She considers it to be a significant factor in determining outcomes for the victim of D&FV and child’s safety, ‘or else you run the risks of a lawyer not necessarily advocating what’s in the best interests of the children or for their clients, because they don’t understand, you know, maybe she doesn’t present all that well because she is traumatised’. The case study delivered by Bronwen Gray illustrates the lack of knowledge of some lawyers about the dynamics of domestic and family violence, as experienced by the victim/survivor, and further highlights the difficulties in accessing legal aid. This case study is accessible in Appendix A.

Matt Fawkner points out that communication with clients is of particular importance and will determine outcome for the family. He elaborates on the challenges of communicating complex legal ideas and concepts in English to a client for whom English may not be their primary language:

‘So, we get around that by using whiteboards, we use pictograms, we use all [sorts] of visual aids in order to get our instructions and we [are] quite successful at getting instructions that way. We use interpreters, that’s a difficulty because which language are they available, but does the interpreter understand the legal concept that we are trying to interpret and the language that’s used by the interpreter, are they putting their own spin on it? We don’t know’.

Recommendation 3. Strengthen trauma-informed practices and communication strategies in training of professionals in child protection domain.

The lack of assistance and representation is not only due to the funding constraints but is often embedded in the legislation. For example, the Family Law Act 1975 is generally invoked when there is a dispute between parents (ALRC 2010, p.903). However, practitioners note that the victims/survivors of D&FV who need to obtain a DVO to protect their children are often not eligible for free legal representation, because there is no dispute, as they have children in their care. The Family Law Court decisions on substantial or shared care are embedded in the current legislation. Zita Ngor highlights that the legislation does not take into account the complexity of the D&FV and CP matters that are before the court, relying on the assumption that a vast majority

of people are able to resolve their issues, often dismissing the fact that it does not necessarily apply to the cases of domestic violence.

Recommendation 4. Ensure that sound procedures to assess child safety risks are universally used by child protection services.

Gap 2. Lack of consistency in approach to determining what is the risk and what are the appropriate responses to risk between jurisdictions.

Experts point out to the lack of consistency in approach around determining what is the risk and what are the appropriate responses to risk between the family law system and the child protection system. The same scenario is viewed differently depending on legislation and practices developed in the jurisdiction in question. Zita Ngor emphasises that the course of action encouraged by one system may lead to adverse outcomes in another:

‘The family law system kind of requires, in situations of domestic and family violence, those seen to be victims and caregivers to protect the children from further harm by essentially cutting off all forms of contact, not engaging with that individual, and if necessary not engaging with that individual’s family, extended family. But if you did that in the family law setting, you would be accused of undermining that child relationships with the other party and with the other party’s family. And that would be one of the considerations of the family law court with them taking into account in terms of whether the child should still continue leaving with you, your ability to facilitate relationship’.

The respondent from Central West WDVCS highlights that the lack of alignment between the two systems creates a conflict for the child protection worker and may result in a loss of trust in the child protection system by the mother:

‘The Family Law system is very slow and drawn out, where the child protection system can be extremely responsive and reactive. They need to be better aligned. This can also undermine the relationship between the FACS worker and the mum. FACS workers have to build rapport but are then also asked to report about mum’s behaviour. We can’t be strengths based during Case Management, then be critical during court proceedings, and expect this to not impact the relationship or the mother’s view of the child protection system’.

Recommendation 5. Adopt a consistent approach in responding to D&FV concerns with the main priority being the best interests and safety of the child.

Gap 3. Absence of prevention and early intervention mechanisms in addressing D&FV cases.

According to AIHW report (2018a), children in out-of-home care are at high risk of sexual abuse. Zita Ngor stresses that many of the clients WLSSA work with are experiencing the impacts of the child protection system, in that they have not been taught or had a model of responsible parenting behaviour.

‘And so often we find, particularly where they’ve already had a history of interactions with child protection, they probably were never ever given the appropriate or had appropriate modelling of what responsible, if you want to call it responsible, parenting is. <...> To then expect that they will model appropriate, what we deemed to be appropriate parenting behaviour, or just even appropriate social behaviour, I think, it’s a bit rich coming from us, to be truly honest. When there have not been any appropriate mechanisms put in place to ensure that when they leave the Ministers’ care that they are at the best place to be functioning and responsible members of our community’.

Bronwen Gray illustrates the need for authorities’ expectations about parenting to be responsive to people’s cultural backgrounds and personal histories of trauma when they come from a migrant or refugee background:

‘And then they come to our culture and we are saying: ‘No smacking, no, you know, no this, no that’, but when we haven’t actually provided them with other options for how to parent, particularly children who have might displayed really challenging behaviours because of the traumas that they’ve experience through the process of having to deal with the war zone or something. So, I find that when we’ve come across where it has been listed, you know, that mum, you know, have been physically disciplining kids, that resulted sometimes in the child safety notification. And maybe of a heavy-handed approach where mum’s actually a protective parent and thinking that she’s doing the right thing to stop a certain [behaviour], you know, a child from running out of the house, for example. And then how can we better work with mum to develop those skills rather than telling mum that she is the bad mum and that children are going to be taken off her’.

Experts highlight that family violence may have significant effects on the victim/survivor and her parental capacity. Tameka Brown stresses that a significant number of clients have mental health issues as a result of D&FV.

Recommendation 6. There needs to be prevention measures in place, such as education and psychological support for parents. Particular focus should be placed on preventing the need for children to be in out-of-home care and developing strategies to prevent sexual abuse of children in out-of-home care.

Gap 4. No recognition of the power imbalance and clients abuse by the system.

Another issue is a power imbalance, where systems tend to dominate outcomes for children and families, exercising their power, using clients' ignorance of the system, language barriers, or intellectual disabilities. Tameka Brown says: 'Quite often we will see orders made by consent where the parents do not realise they consented to the making of the protection order'. Rachel Neil describes the care arrangements of the mediation process as influenced by the system, which are often inappropriate for children's day to day lives. Matt Fawkner highlights that there is often no acknowledgement by the child protection services about the language barriers, differences in Aboriginal and Torres Strait Islander cultures, and difficulties in language used in interaction with clients. He further argues that the personality of the worker may determine the journey through child protection system for the client:

'Then here it's very much personality driven, so if you see the family that will be pushing back against welfare, depending on the personality within the welfare office, that family could be targeted, which we've seen there over the years, where it's basically, you know, system abuse and harassment by welfare, where things could be easily de-escalated and the family supported through proper supports'.

Recommendation 7. Promote partnership in relationships between child protection services and parents in addressing D&FV and child safety matters.

Gap 5. Lack of flexibility of the system.

The practices used in child protection systems can be inflexible, short-sighted, and discriminatory. Zita Ngor illustrates the inflexibility and failure of the system to recognise the changes made by parents to address child protection concerns.

'The way the legislation has been developed is that it is heavily in favour of the department. So, they don't have to prove that any of the notifications or allegation that they make against the parents/guardian are true. The onus is actually, with the new legislation we have in South Australia, really on the parent/guardians to disprove the allegation. And so, what we find is that sometimes you've got clients who've done everything: they've done the DV counselling, they've done parenting courses, they've got the intervention order, they've reported the other side to, you know, police when there have been breaches, they've not had any contact with the other side, like they've really jumped all the necessary hurdles. However, the department can use the past as a weapon to go into the future indefinitely. And the way their reports are written and prepared for the court don't really take into account any changes in the current situations'.

Experts emphasise that a mistake can be made at any step and then it will have consequences throughout the whole process, affecting the outcomes for the family. As Tameka Brown notes, the information provided by police significantly influences the actions of the department, which can be an issue as the police do not always correctly record the details of the incident. As the respondent from Central West WDVCS describes it:

‘When police are involved, mum’s biggest concern is often for the children. However, this is often written off as ‘Family Law’, and the police don’t consider themselves to be a part of this process. Mum will minimise or not mention how she is feeling and what is happening to her because her priority is the children. If they are witnessing the violence instead of being assaulted, she may end up with an unsatisfactory response as she has not been able to provide police the information they need to take out an ADVO’.

Child protection services use standardised procedures and often do not recognise clients’ needs. Hayley Grainger highlights that more supportive approach can deliver positive outcomes for the clients:

‘I think there needs to be a bit of a cultural shift and I know once again what the law says and how it operates can be two different things. And I know that removing a child is supposed to be, you know, the last resort, if none of the other options available to keep the child safe, but I feel from I guess what I see that often, you know, with a bit of investment of time, services, and support the child could be supported or the family could be supported have the child stay at home safely’.

Recommendation 8. Adopt flexible and supportive approach in meeting needs of the families and children in resolving D&FV matters and holding perpetrators to account.

Gap 6. No mechanisms in place to hold the perpetrator accountable.

Experts claim that the child protection system does not usually identify the perpetrator as distinct from the victim/survivor. Tameka Brown describes this situation as follows:

‘The most common situation is where there has been DV between the parents or the mother and her partner. The victim gets a restraining order against the perpetrator, but the perpetrator continues to breach the order. Despite the victim reporting the breaches and do all things she possible can to enforce the order and protect herself and the children, the Department of Communities will often still take the children in to care on the grounds they are being exposed to DV etc. If the Department had given more support in this situation and did more to hold the perpetrator to account this would not need to happen’.

Zita Ngor highlights that there is a mismatch between the expectations from a victim/survivor of domestic violence and the perpetrator or from his family. ‘That’s what we often find frustrating is that there is, yeah, a lack, even despite the national focus on accountability on the perpetrators, that doesn’t really seem to filter down to the ground’. For the full case study please refer to Appendix A.

Recommendation 9. There is a need for cultural change, especially directed at preventing child protection services from reinforcing the unjust barriers, marginalisation and control exercised against mothers who are victims/survivors of domestic and family violence (particularly Aboriginal and Torres Strait Islander mothers).

Glossary

Domestic violence order (DVO): A family violence order (including an interim order) is generally made under a prescribed law of a state or territory to protect a person from family violence. Family violence orders are also called Protection Orders (QLD), Apprehended Domestic Violence Order (NSW), Intervention Orders (VIC & SA), Violence Restraining Orders (WA), Family Violence Order (TAS), Domestic Violence Order (ACT & NT). The definition is adopted from Family Court of Australia website (2018).

Further terminology is adopted from Australian Institute of Health and Welfare website (2018) <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/glossary>:

Child protection, child safety, welfare: The departments in each state and territory that are responsible for child protection matters.

interim and temporary order: An order covering the provision of a limited period of supervision and/or placement of a child. Parental responsibility under this order may reside with the parents or with the department responsible for child protection.

Investigation: The process where the relevant department obtains more detailed information about a child who is the subject of a notification received between 1 July and 30 June of the relevant financial year. Departmental staff assess the harm or degree of harm to the child, as well as their protective needs. An investigation includes sighting or interviewing the child where it is practical to do so.

Notification: Contact made to an authorised department by persons or other bodies alleging child abuse or neglect, child maltreatment, or harm to a child.

Substantiation of notification: Child protection notifications made to relevant authorities between 1 July and 30 June of the relevant financial year, which were investigated, and the investigation was finalised by 31 August, and where it was concluded that there was reasonable cause to believe that the child had been, was being, or was likely to be, abused, neglected or otherwise harmed. Substantiation does not necessarily require sufficient evidence for a successful prosecution and does not imply that treatment or case management was provided. Substantiations may also include cases where there is no suitable caregiver, such as children who have been abandoned, or whose parents are deceased.

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Appendix A. Case studies.

Zita Ngor, 'Mother-to-blame' phenomenon.

And then, if I can just raise one case study, which I think could be really useful in terms of what sometimes the actual impact of the child protection system on a victim is. So, I'll give you a scenario, this scenario is one of those cases, you know, that always stay with you and make you question the effectiveness of the approach that you undertake in working with clients. And this case is one of those that kind of provoke that moment for me as a legal practitioner. So, it was in this scenario: a young Aboriginal woman, domestic violence, and quite serious domestic violence, so the department, the child protection did intervene, because it had the concerns regarding not only the children's welfare, but her potential welfare.

By the time I came on board, she'd already been on the 12 months order. They've removed the two older children, placed these two older children with his mother, but they've left the baby with her. But they've left the baby with her, which I found really interesting, because you would think the baby is the most vulnerable, but two other children were like primary school and kindergarten age, but this was like a quite young baby, but they've left the baby with her. But this was on the condition that she'd stay with her in a DV shelter. She had to be back at the DV shelter by 7:30pm each night. The department reserved the right to do a random call to the shelter to make sure that she was there. If she wanted to stay with family, she had to get the permission from the shelter and from the department before she could stay with family. And keep in mind this is the woman that wasn't being charged with any criminal offences, this is just child protection being involved in her matter. By the time I'd become involved she's been doing this for good 8-9 months. They got up to the stage where, you know, the old children were spending overnight with her.

And so, one of the things that she told me was she'd been hearing through the community grapevine that he'd been seeing the children at his mom's house. And so, at this time the department, he had had outstanding warrants, he'd evaded the police arrest for like good 10 or 11 months, and they'd kept saying to her, "If you'd see him, you need to report him to the police. If you don't, we'd consider that you, you know, breaching our agreement with you and we can then take all the children from you". So, when she reported at first, they denied it. Eventually, they've said "Yes, we've spoken to the foster carer, paternal grandmother. She said, "Yes, he is coming around her place, but he is only coming when the children are not there, and he is only helping her with mowing the lawns". So, this is an individual, I think, he had like 8 arrest warrants, who's out, you know, he's been wanted by the police. They've said to my client that any contact with him would mean that she'd lose the children. But when it came to the paternal grandmother, their response actually said to me was, "Do you really expect us to tell this mother to report her son to the police" and I, like, "Hang on! There is an intervention order listing the children to protect persons from him. And, secondly, he was the condition, like, he was the main reason you removed the children from our client. And so, how can you then say it's actually okay now for him to be going around to the carer's home? And even though the carer has said the children are not there, we don't know! Because up until now she hasn't disclosed that to you and it only because the pressure from us that you finally got the truth".

But it's kind of, there is a mismatch between their expectations of what is required from a victim of domestic violence, when that's been identified as the reason for the involvement of the department and then, what's required... I mean, this guy, basically, well, he was on the run and fair enough, but there really was no requirements from him or then from his family to be accountable for his violence, which led to the involvement of the department, which I just find outstanding, like amazing! And to think that they can impose those conditions on somebody who hasn't actually been charged with any criminal offences, like... This is, this was impacting on this woman's ability to be able to do things that many of us take for granted. If you want to do late night shopping, she has to get like permission because she, otherwise she has to be back at the

shelter at 7:30. And so yeah, that's what we often find frustrating is that there is, yeah, a lack, even despite the national focus on accountability on the perpetrators, that doesn't really seemed to filter down to the ground'.

Bronwen Gray. Lack of assistance.

'She is meant to be back in parenting court, like in the Federal Circuit court in early May. She hasn't had any help, she hasn't put her affidavit in; she hasn't done anything, she was granted legal aid. And we are talking, you know, super-high risk domestic violence in the past with baby present, where, you know, really serious violence, you know, sexual assaults were occurring. He went to prison for six months or so for the violence, he's got out, put in an initiating application wanting time and obviously that's had a massive impact on her healing process and it's really triggered her. So she's been finding it very difficult to write her story down, we get her in and we find out that she was granted legal aid, but when she went to the first mention, the legal aid lawyer only met with her on the day of the first mention, spent five minutes talking to her, and as they were about to go to the court, our client was feeling very unconfident about what was about to happen, she didn't understand the process, she felt very rushed and she was highly traumatised and so the lawyer said, "I am getting the feeling that you don't want me to represent you" and then through that conversation basically said, "It's okay if you don't. That's fine, you can get somebody else". And how she read that was, "Oh, they'll give me another person at legal aid". What happened was she got a letter a week later and her funding has been cut.

And that's what has happened. So, she is now without a legal aid lawyer in a position where, you know, we should, the system should be assisting her as much as possible to keep this little boy safe. But that's kind of, you know, in terms of free legal support, I guess, that's where our service is finding it, we're starting to feel the pinch, because as legal aid gets more and more difficult to access, we are finding more and more clients who really, we think, meet the criteria for free legal aid, who are doing everything they can through either the DV process or through the parenting process to protect themselves and their children, but are not able to actually access that free legal support, that they maybe would have been able to do that a little while ago. And so, we're then in a position where we are trying to help them with the paperwork as much as we can, but we can't represent every single woman who's deserving representation. And so, where do they go after that? There are not that many options for them if they are on Centrelink; that's for sure'.

Matt Fawcner. Value of legal representation.

'So, if particular child was removed under a temporary protection order, and as soon as we find out that the temporary protection order was going to be heard in court, a referral is made to mum, by mum to here, and when she is down in court, and we see if we can argue against it. So, you know, you've got like, you know, at best you might have half an hour to go through the material, you know. Like before you are going to court, so we're in the court and we see X, Y, Z, about why the child should be removed. The order was made, and the child was removed. So, we lost that one. But the following day, you know, we've been talking to the department, and after court arrangements were made with department for the 9-month-old to come back, to come to mom at 8 o'clock in the morning and remain in her care until 4 o'clock in the afternoon. Mom was living at the crisis centre, [the child] ...spent all day there, it all went well. Next day - went well. And so, we lost the battle in court, but it ended up that at the end of the first week the child was having overnight visits with mom. And then at the end of 14 days the child was returned back to mom's care. All the concerns have been addressed, and there was a safety plan in place, which we've negotiated with welfare and everyone's happy. So, you know, children are removed but that doesn't mean that we can't get them back under some kind of, you know, negotiated agreement where welfare are reality-tested after their concerns'.

Appendix B. Summary of the recommendations

Based on the expert interviews gaps on the intersection of family law and child protection were identified and recommendations were provided. The summary of recommendations is below:

1. Increase the funding to community services working with D&FV and build the capacity of child protection services to appropriately address these matters.
2. Consult and take steps to ensure committed and professional child protection officers are recruited and retained in the child protection sector.
3. Strengthen trauma-informed practices and communication strategies in training of professionals in child protection domain.
4. Ensure that sound procedures to assess child safety risks are universally used by child protection services.
5. Adopt a consistent approach in responding to D&FV concerns with the main priority being the best interests and safety of the child.
6. There needs to be prevention measures in place, such as education and psychological support for parents. Particular focus should be placed on preventing the need for children to be in out-of-home care and developing strategies to prevent sexual abuse of children in out-of-home care.
7. Promote partnership in relationships between child protection services and parents in addressing D&FV and child safety matters.
8. Adopt flexible and supportive approach in meeting needs of the families and children in resolving D&FV matters and holding perpetrators to account.
9. There is a need for cultural change, especially directed at preventing child protection services from reinforcing the unjust barriers, marginalisation and control exercised against mothers who are victims/survivors of domestic and family violence (particularly Aboriginal and Torres Strait Islander mothers).