

Submission to
The Joint Select Committee on
Australia's Family Law System

Victims of Crime Assistance League Inc NSW
January 2020

Introduction

Victims of Crime Assistance League (VOCAL) Inc. NSW is an incorporated Charity organisation that supports men, women and children who are victim-survivors of any crime type across the state of NSW. For the past 30 years we have been providing information, guidance and support to individuals and families who have been impacted by crime. We also act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from NSW Department of Communities and Justice (Victims Services) to provide a free service to victims of crime in the Hunter region. Support is wide-ranging in scope, and is individualised to the specific needs of each client. This can include trauma-informed case work, advocacy, Victim Support Scheme applications, court preparation and court support.

VOCAL welcomes the opportunity to provide feedback on Australia's Family Law system, in particularly the systems responses to family violence. VOCAL offers a unique perspective into this issue, as we support both male and female victims of family violence through State and Federal legal processes. The support we offer ranges from assistance and advocacy with apprehended domestic violence orders (ADVOS), personal violence orders (PVOs), reporting breaches, witness support in criminal court hearings, child protection reports and support and assistance through Family Court matter.

Female victims of family violence present to our service with significantly different concerns to that of male victims of family violence, specifically around the severity of violence and child safety concerns. While not minimising the impact on any victim, we focus on the vast majority, who are women and children. In this submission, we will refer to women and children as victims of family violence, and men as the perpetrator of family violence.

Terms of Reference:

a. Information Sharing

Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and the state and territory child protection system, and family and domestic violence jurisdictions, including:

- ***The process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and***
- ***The visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;***

Key Issues

- **Risk Management**
- **Gaps in jurisdiction responses to family violence reports**

Domestic violence is now widely recognised as a serious social problem, but society has been slow to comprehend it as a child protection issue.¹ Social Media campaigns, high profile advocacy organisations and mainstream media reports on domestic violence homicides have all contributed to a significant increase in education and awareness in society about domestic violence. As a nation, Australia collectively tells women and children they have a right to be safe, to live free from physical, sexual and psychological violence. Domestic violence victims are encouraged to speak out, to report abuse, and seek help if they recognise they are in an abusive relationship.

In reality, there are substantial gaps between policy and practice with regards to various State Court (child protection, AVOs and criminal matters) and Federal Courts (Family Court and Federal Circuit Court) responses to domestic and family violence, and there are complex challenges a victim will face with when trying to keep her and her children safe from ongoing violence. These include how different systems manage risk, conduct risk assessments and apply the risk indicators as an outcome in Family Law orders. Trauma, as a general rule, is poorly conceptualised, ineffectively evaluated and managed.

The purpose and processes of State courts and Federal Courts are vastly different, and many victims of family violence find themselves with matters in both of these jurisdictions that ultimately contradict each other. In order to improve intersectionality and information sharing, it is essential that policy makers are aware of the gaps in policy and the impact it has on children.

State verses Federal responses to family violence

Police and child protection authorities' direct our clients not to send a child into the care of an abusive parent if they fear there is a risk to the child's physical and psychological safety. In many of our cases caseworkers from the former NSW Family and Communities Services (now NSW Department of Communities and Justice) have instructed our clients if they are unable to protect their child from ongoing domestic violence the child may be removed from their care. Protective parents therefore limit contact with the abusive parent, which satisfies the level of risk from State authorities. This information is often not documented on case files.

However, when the matter enters the federal jurisdiction, research shows that women experience a contradiction in the expectations placed on them by the family law system (which requires them to support the child's relationship with the other parent) and the child protection system (which required them to protect the child from the other parent).² The women's actions are scrutinised by family court professionals as to why she has limited contact between the children and abusive father, with the family

¹ Hart, A. 2001. Child Safety in Australian Family Law: Responsibilities and challenges for social science experts in Domestic Violence cases. *Australian Psychologist*, 46(1). 31-40.

² Australia's National Research Organisation for Women's Safety to Reduce Violence and Women and their Children. 2016. *Domestic and family violence and parenting: mixed methods insights into impact and support need: State of knowledge Paper*. ANROWS Issue 01. 2016.

court frowning on attitudes that are ‘incompatible with the primary consideration of the child having a meaningful relationship with both parents’³. Common sense, protective actions taken by mothers to shield themselves and their children from the perpetrator...are frequently constructed as unreasonable, unfriendly and potentially alienating, as are associated claims by mothers that their children are at future risk of domestically violent fathers⁴.

The onus is on the victim/mother to protect the child and at no stage during this intervention period is the perpetrators behaviour is addressed by either police, child protection or the family court. In reality, many clients have had family consultants and report writers call their allegations of family violence “vexatious” and “alienating”. It creates unimaginable stress, anxiety and trauma for family violence victims when they receive inconsistent advice.

Police Responses: AVOs and children

There is a misconception within the wider community that AVO’s are easy to obtain, and that women only seek AVOS to give them advantage in Family Court. In our extensive experience with clients seeking police assistance, unless there is clear evidence of a physical assault, it is extremely difficult for a domestic violence victim to get assistance from police, let alone protection from State courts.

Wangmann (cited Birdsey and Snowball, 2013⁵) has argued that while ADVOs have the potential to be a progressive mechanism and to incorporate a broader understanding of Intimate Personal Violence, they are still being used in a narrow context and focus on discreet incidents of violence rather than a pattern of abuse. VOCAL’s anecdotal evidence shows that local police are unable to take action on many reports of domestic violence that are not physical violence, or that did not immediately occur. Wangmann’s report acknowledges that without the physical evidence of victimisation police may be less willing, or able, to charge an offender. We know that domestic violence consists of a pattern of behaviour and the NSW Police publicly announces that domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse.⁶ The growing research on coercive control indicates that in the absence of any physical assault, there is a pattern of on-going, intentional domineering tactics employed by (usually) male perpetrator with the intent of governing their female’s victims’ thoughts, beliefs or conduct and/or to punish them for resisting their regulation⁷.

³ House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. *A better family law system to support and protect those affected by family violence*. Commonwealth of Australia.

⁴ Jeffries, S; Field, R; Menith, H; Rathus, Z. 2016. *Good Evidence, Safe Outcomes in Parenting Matters Involving Domestic Violence? Understanding Family Report Writing Practice from the Perspective of Professionals Working in the Family Law System*. UNSWLawJl 50; (2016) 39(4) UNSW Law Journal 1355. <http://classic.austlii.edu.au/au/journals/UNSWLawJl/2016/50.htm>

⁵ Birdsey, E. & Snowball, L. 2013. *Reporting Violence to Police: A survey of victims attending domestic violence services*. NSW Bureau of Crime Statistics and Research. Issue Paper no. 91. October 2013.

⁶ NSW Police Website. 2019. *What is Domestic Violence?*

⁷ Jeffries, S. 2016. *In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the “Expert” Assessments that guide Judicial Determinations*. Cool of Criminology and Criminal Justice, Griffith Institute of Criminology.

Coercive control is directly linked to abusive behaviours such as stalking or intimidation which is a criminal offence under the NSW Crimes (Domestic and Personal Violence) Act 2007⁸ and research indicates that it appears that one function of pursuit-oriented behaviours, of which stalking is a particularly virulent form, is to regulate attachment and proximity seeking via coercive control strategies⁹. Yet holding perpetrators accountable through civil and criminal legal system proves very difficult for many victims.

NSW Department of Communities and Justice recommend “gathering evidence of the abuse is important...Having a record of the abuse will also help in any legal action in the future, especially if you share children or property.”¹⁰ In practice, however, many of our clients have been turned away from police stations when attempting to provide evidence of repeated and unwanted, stalking and intimidation, despite having contemporaneous records and previous police event numbers. Often police advice “it’s a family law issue” and are reluctant to take any further action other than to suggest ‘talk to a solicitor’. Yet in the Family Law system victims are often questioned as to why there is no evidence in the form of police reports.

Example:

A recent case involves repeated intimidation, harassment and verbal abuse where the father regularly turns up to the victims home uninvited (despite Family Court Final Orders specifying change over times and location). Initially police advised the victim to keep documentation of dates and times the offender attended her home, and advised her to call police when he did. Over 12 months her contemporaneous notes and numerous police event numbers are still “not enough” and police repeatedly advise her to “take it back to family court”. The woman contacted 2 private Family Law firms and Legal Aid for urgent advice, and each family law professional questioned why police have not taken out an ADVO for her protection.

This is one example of many that illustrate how victims receive contradicting messages about domestic violence as a crime, and how different jurisdictions cause additional stress, anxiety and frustration for family violence survivors when they are seeking protection from ongoing abuse. As a collective, we must do better to support and protect victims of family violence.

Child Protection: Sexual violence in the context of family violence

In this section we will talk specifically to cases where parents have separated due to domestic violence, and the child has disclosed to the protective parent one or more instances of abuse (physical and/or sexual) while in the care of the offending parent.

In our experience working with father-child incest cases of young children, the child has made disclosures to the mother, and this is consistent with findings of the Royal Commission into Institutional Sexual Abuse that which ‘indicates that children, particularly young children, who disclose often tell their parents,

⁸ NSW Crimes (Domestic and Personal Violence) Act 2007 – SECT 13.

⁹ Mechanic, M; Weaver, T; Resick, P; 2010. *Intimate partner violence and stalking behaviour: exploration of patterns and correlates in a sample of acutely battered women* Violence Vict. 2000 Spring; 15(1): 55-72

¹⁰NSW Government Communities and Justice. 2019. *How to leave a violent relationship safely*. <https://www.facs.nsw.gov.au/domestic-violence/stay-safe/leaving-safely>

especially their mothers.¹¹ Instinctively, the mother contacts police for assistance. If police assess the matters as not requiring statutory intervention the protective parent and child are referred to the Child Wellbeing Unit, where professionals recommended not to send the child to the care of the perpetrator if they have ongoing safety concerns.

If a child is interviewed by child protection for matters of sexual violence the primary focus is disclosure and evidence for a criminal conviction. The threshold for criminal convictions is high and many children are unable to articulate details of the abuse that warrant a clear disclosure. The complexities of grooming exacerbate the challenges for a child to speak against the perpetrating family member and it is not surprising that many children find it difficult to articulate details of abuse, especially to strangers. Research suggests the more closely victims are related to the perpetrator, the less likely they are to disclose child sexual abuse... In particular, children who are victims of familial abuse appear to delay disclosure longer than those experiencing abuse outside of the family.¹² It is a common occurrence that when cases are unsubstantiated by child protection authorities, there can also be allegations by professionals that the protective parent coached or trained the child to make up reports of abuse.

Even in cases where harm to a child has been substantiated by child protection, the Family Court has disregarded evidence and made orders to place the child in permanent care of the abusive parent. Inconsistency of information, processes and professional beliefs ultimately put children at risk of harm and is out of line with safe practices.

Family Court

Key Issues:

- **Limited understanding of the dynamics and impact of family violence**
- **Inadequate responses to allegations of child sexual abuse**
- **Prioritising co-parenting and shared parental responsibility**

The process of assessing family violence and risk under the Family Law Act 1975 needs review and change. The suspension of evidentiary requirements of the Evidence Act 1995 (Cth) in child related proceedings should be reconsidered. This is problematic in an adversarial system as prescribed checks and balances that regulate evidence are removed giving litigators the flexibility to bend fact legally. This can lead to a *laissez faire* approach to the management of truth. The judicial approach of accepting evidence that blame parents for coaching children with no evidence, minimise domestic and family violence and labelling parents with mental health issues as a risk without testing the issues against a risk profile can minimise confidence in the legal process

¹¹ Attorney General's Department. 2017. Royal Commission into Institutional Responses to Child Sexual Abuse. Final Report: Volume 4, identifying and disclosing child sexual abuse. Commonwealth of Australia.

¹² Attorney General's Department. 2017. Royal Commission into Institutional Responses to Child Sexual Abuse. Final Report: Volume 4, identifying and disclosing child sexual abuse. Commonwealth of Australia.

A study in 2015 found that in more than 83 per cent of matters involving allegations of family violence or child abuse, parental responsibility is shared between parents for the care of that child.¹³ The Family court system puts children in significant physical and psychological danger when legal professionals ignore, minimise and deflect child abuse reports and place the child in the care of the perpetrator. Our experience repeatedly shows that many disclosures and reports of family violence are minimised, disregarded and ignored by Family Court professionals (solicitors, family consultants, report writers, single expert witnesses and Judges). Studies show that while abusive men have a tendency to minimise or deny allegations made against them, courts are more likely to view women's accusations of violence as exaggerated, false or insufficient¹⁴.

The visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;

In 2011, the definition of family violence in the Family Law Act was expanded to incorporate notions of coercion and control, with S4AB of the Family Law Act 1975 stating family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful.¹⁵ "Some legal professionals such as judges, lawyers and evaluators/report writers have been shown to have limited understanding of post separation domestic and family violence and the complex power dynamics involved¹⁶. The following remarks are by Judges in presiding over family violence and child custody cases, which have been witnessed by our staff in courtrooms:

"That AVO doesn't have any relevance in this Court, I don't need to consider it at all." (FCC Judge)

"You're not too scared of him if you are prepared to be in this courtroom with him today". (FC Judge)

"Why is the child having victims of crime counselling? She is not a victim of crime" (FCC Judge)

"I note that he has an extensive criminal record for violence but that doesn't mean he's not a good father". (FC Judge)

"If it was that bad you would have told the police" (Family consultant)

Sexual abuse allegations

Further challenges occur for the victim when the 'unsubstantiated' claim of sexual abuse is raised in Family Court, where in our experience they are translated into "vexatious reports" by the mother or "paranoid and delusional thinking" and "alienation". This continues to be of real concern and victims of domestic violence are often punished for reporting suspected or alleged sexual abuse of their children by having

¹³ House of Representatives Standing Committee on Social Policy and Legal Affairs. 2017. *A better family law system to support and protect those affected by family violence*. Commonwealth of Australia.

¹⁴ Jeffries, S. 2016. *In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the "Expert" Assessments that guide Judicial Determinations*. Cool of Criminology and Criminal Justice, Griffith Institute of Criminology.

¹⁵ Family Law Act 1975

¹⁶ Australia's National Research Organisation for Women's Safety to Reduce Violence and Women and their Children. 2016. *Domestic and family violence and parenting: mixed methods insights into impact and support need: State of knowledge Paper*. ANROWS Issue 01. 2016.

their children removed from their care. Many of our clients are advised by family law solicitors not to raise their concerns of sexual violence as they will likely lose custody of their children.

In the 2016 Parliamentary Inquiry into domestic violence and gender inequality, Dr Rikard-Bell stated “Sexual abuse allegations are almost all forensically investigated first...after the conclusion of the forensic investigation by police and Community Services, in cooperation by the Joint Investigation Response Team (JIRT) and some parents still refuse to accept the findings’.¹⁷ In reality, the majority of child sexual abuse cases receive no such ‘forensic investigation’. Cases reported to police routinely fail to be investigated because of the inability of the child to give cogent evidence and withstand the rigorous testing of the criminal legal system. The test is whether sufficient evidence exists to successfully prosecute, not whether it happened.

In one case, children disclosed sexual abuse behaviours from the father. Child protection substantiated finding of abuse but did not specifically state in their report the father was the perpetrator. A Family Report ‘expert’ who interviewed the mother diagnosed her as having ‘pathological belief system’. In contrast, the mother’s psychiatrist refuted the diagnosis, however his report and testimony were not permitted in the final hearing. The mother lost custody of her children, who were sent to live with the perpetrator father with the Judgement reading *“it is not safe to assume that if the children remain living with the mother that her obsession with abuse would abate nor that she would feel less of an overwhelming concern about keeping the children safe”*.¹⁸

Minimising family violence and prioritising co-parenting.

Despite recent changes to Family Law legislation that expand the descriptions of domestic and family violence, ensuring that children have the benefit of both their parents having meaning involvement in their lives is noted to still take precedent over protecting children from physical or psychological harm from being subjected to or exposed to, abuse, neglected or family violence¹⁹. Laing (2010) reports that Australian legal systems have failed to understand the dynamic of domestic and family violence and respond adequately to protect women and children from abuse. She argues that the family law courts frequently uphold men’s rights to co-parent, despite abuse...²⁰ This ingrained belief is forcing many vulnerable children to spend time/live with perpetrators who have, and continue to, expose them to physical, sexual and psychological abuse.

Coercive controlling perpetrators exert a need for control and it is now well established that litigation is primarily used by perpetrators as an extension of power and control. It provides an avenue through which they can continue to intimidate and incite fear in their victims. Violence, intimidation, fear, blackmail, manipulation, financial abuse and coercive control do not stop once Family Court orders are in place. The practical elements of having to co- parenting with an abusive ex-partner created complex challenges for

¹⁷ Rikard-Bell. C. (2016): *Inquiry into domestic violence and gender inequality*. Submission 71.

¹⁸ Family Court of Australia: Judgement. 2019 Shaw & Harvey

¹⁹ . Jeffries, S. 2016. *In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the “Expert” Assessments that guide Judicial Determinations*. Cool of Criminology and Criminal Justice, Griffith Institute of Criminology.

²⁰ Australia’s National Research Organisation for Women’s Safety to Reduce Violence and Women and their Children. 2016. *Domestic and family violence and parenting: mixed methods insights into impact and support need: State of knowledge Paper*. ANROWS Issue 01. 2016.

victim of family violence, as coercive control, intimidation and other types of abusive behaviours continue regardless of court orders. Safe and effective co-parenting with an abusive person who denies allegations of violence is virtually impossible. Cooperative parenting actions are not present within the context of violent relationships. The perpetrators manipulation or disregard for court orders leave women and children disempowered, in danger and exposed to ongoing domestic terrorism.

Recommendations:

Risk Assessments

A thorough risk assessments for parties entering the family court system must be completed by family violence professionals. Court appointed experts must have up to date training and qualifications to respond to specific types of issues. It insufficient to assume that because a professional has previously been employed by the court to write reports, that the professional will properly respond to updated legislation, newer research and with a trauma informed lens. There are many cases where reports and beliefs by court appointed practitioners are in conflict with the accepted practices in the sector.

Responses to allegations of child sexual abuse:

Consideration of an improved Magellan process and incorporating Single expert Witnesses who has 'specialised knowledge' in child sex assault. In the UK practice 12J is a more in depth process to establishing fact and risk and this can be considered. If report writers and the court wish to establish fact that the mothers have coached the children then the burden of proof should be at the Briginshaw standard²¹ and be supported by fact, not supposition. Independent Children's Lawyers (ICLS's) also play an important role in placing evidence before the court. It is essential they do not dismiss evidence of abuse, have training in trauma and but let the judges decide on the facts.

Psychological counselling

We find that the courts often refuse psychological assistance for children, and exclude from evidence reports from the child's treating practitioners. This is in conflict with the NSW Victims Support Scheme counselling system, and the knowledge that early access to strategies can assist a young person to lead more productive lives. The court must adopt consistent and trauma informed practices that permits openness and consistently, especially for children.

Prioritising co-parenting and shared parental responsibility:

The courts order a co-parenting relationship that is totally inappropriate and unworkable in domestic violence cases. We advocate for better management of the Best Interest principles and the concept of a meaningful relationship in family violence matters.

²¹ *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336

b. The appropriateness of family court powers to ensure parties in family law processing's provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders.

Key issues:

- **Minimising family violence**
- **Financial cost of contraventions**

Truthful and complete evidence: Evidence of domestic and family violence in family law courts.

It is challenging for victims of family violence to provide truthful and complete evidence when some family law professionals advise victims not to raise allegations of domestic abuse or child abuse. In many of our cases, solicitors have amended affidavits to minimise the abuse. This prevents victims from telling the court the full extent of the abuse, and the ongoing impact with regards to parenting, they experience. Female survivors involved in a study by Laing²² (2006) reported that they received the strong message from many sources, many from their own lawyer, not to raise allegations of violence. Such information given to victims of violence is inconsistent with the Family Court's statement that family violence and child abuse have a prominent place in the Family Law Act 1975²³

Noncompliance and contraventions

In our experience, most victims do not have the financial capacity, legal knowledge or emotional strength to take a perpetrator back to court for continually breaching consent or final court orders. Family Court professionals must understand that family violence does not cease once orders are in place. In fact, our experience is that the manipulation of orders continues, as a perpetrator attempts to regain power and control and often is a way of punishing the victim. Many of our clients seek assistance and guidance on non-compliance issues, and legal advice on contraventions vary. Issues around non-compliance for our clients include, but are not limited to, the following behaviours:

- phone calls with children (ordered minimum twice a week) are used to denigrate and abuse the victims;
- Custody change over times and locations are ignored, or altered, last minute without warning or consent;
- Withholding the child
- Cost orders are not paid
- Exposing the child to alcohol and drug use
- Exposing the child to pornography

²² Laing, L. (2006). Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System.) Sage Publishing. Violence Against Women 2017, Vol 23 (11).

²³ Family Law Act 1975

This is not a system that holds people to account for non-compliance or contravening orders. The cost and lengthy time process of contraventions is extensive, and many victims who are subjected to repeat contraventions reluctantly chose not to take it back into the court system. With mandatory Family Dispute Resolution being required, Client feedback includes *“it forces more contact with the abuser”*, *“it’s too costly”*, *“they [the Judge] won’t see it as serious”*. One solicitor recently advised our client against a lodging a contravention when he withheld the child against court orders, saying *“it’s not going to make him change his behaviour”*.

Recommendations:

An inquisitorial approach to contraventions could be considered. This could mean quicker resolution of issues in a less confrontational manner.

Better responses by Police when orders are in place rather than referring the issue back to Family Court. Children should not be physically forced into situations they regard as unsafe, especially when there ongoing drug and alcohol abuse, an ADVO or convictions of domestic and family violence. At present there are circumstances where children are physically restrained and put in the back of police wagons to go back to an abusive parent.

c. Beyond the proposed merger of the family court and the federal circuit court and other reform that may be needed to the family law and the current structure of the family court and federal circuit court

Key Issue:

- **Linking policy and practice**
- **Accountability**

We strongly advocate for a national information sharing platform specific to family violence and child protection concerns that will be accessed before any family court orders are made. We believe it is imperative that judicial officers have information specific to family violence matters from State-based agencies, similar to Women NSW: Safer Pathways Safety Action Meetings, before they make orders relating to the safety and care of children in families experiencing domestic violence. As previously stated, victims of family violence are (at times) limited to what information they can present to the court relating to family violence. Based on the Domestic Violence Safety Assessment Tool, Safety Action Meetings are where agencies including police, NSW Health, child protection, community services, Department of Education, Family Advocacy Support Service and specific NGO services share relevant information to address the serious threats to the safety of family violence victims and their children. Legislation allows service providers to share information about victims and perpetrators to facilitate victims’ access to support services and to prevent and reduce serious threats²⁴. We believe it is in the best interest of the children for Family Court Judicial officers to have an overview of State based protection plans and processes on family violence.

²⁴ NSW Department of Communities and Justice: Women NSW: Safer Pathways website.

Recommendations:

Consideration needs to be given to the creation of State based domestic and family violence family law courts so that women and children receive support and protection while navigating through the custody system. Behaviour change programs and counselling can be made available for the offending parent, and while in the criminal justice system this is not made mandatory for convicted domestic violence perpetrators, it may be something to be considered if the perpetrator is seeking shared care of the child and there are family violence orders in place. This must be more intensive than the current 'parenting after separation' course.

f. the impact of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings.

Key Issue: The health impact of co-parenting with an abuser

Many professionals outside of the domestic and family violence sector fail to understand the constant psychological strain, trauma and financial pressure co-parenting with an abusive ex-partner puts on a victim. The courts order a co-parenting relationship that is totally inappropriate and unworkable in domestic violence cases. Co-parenting requires both parents to be cooperative, attuned to the needs of the children, and to be able to show respect and to compromise. Abusive people are not rational, considerate or logical people. Add to the mix a high conflict personality, and/or narcissistic personality traits, and the survivor's ability to successfully co-parent with an abuser becomes impossible.

Violence, intimidation, fear, blackmail, manipulation, financial abuse and coercive control do not stop once Family Court orders are in place. The practical elements of day to day parenting creates complex challenges for victims of family violence and Laing (2010) reports that Australian legal systems have failed to understand the dynamic of DFV and respond adequately to protect women and children from abuse. She argues that the family law courts frequently uphold men's rights to co-parent, despite abuse..."²⁵

Effective co-parenting with an abusive person is impossible, yet is expected in many of the cases we work with. As the abusive parent feels more insecure, they manipulate or disregard court orders in an attempt to ascertain power and control. This leaves women and children open to secondary victimisation, ongoing trauma, feeling disempowered, in danger, frustrated, exhausted and exposed to ongoing domestic terrorism. Clients report to us significant issues with co-parenting in the following areas:

- The abusive parent not consenting to medical treatment for children, despite medical evidence;
- The abusive parent not consenting to enrolment in after school activities, despite child's wishes;
- Financial abuse is continued through the manipulation of child support, with the refusal to pay for school supplies (books, computers, and uniforms), school camps, and extracurricular activities;

²⁵ Australia's National Research Organisation for Women's Safety to Reduce Violence and Women and their Children. 2016. *Domestic and family violence and parenting: mixed methods insights into impact and support need: State of knowledge Paper*. ANROWS Issue 01. 2016.

- The abusive parent questioning children on their protective parent’s work, friends, interests, financial position;
- Manipulation of consent orders relating to time and locations of change over;
- The abusive parent using children to relay messages.

Recommendations:

Family Law Judges to view and consider material from State based child protection agencies and child services (including psychologists and education) that report on the psychological wellbeing of the child, before making any orders of significant time spent with a perpetrator of family violence.

Better management of the Best Interest principles and the concept of a meaningful relationship must not place the child or young person at further risk.

h. any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts and family dispute resolution practitioners.

Key Issues:

- **Lack of professional accountability**
- **Mandatory training for family court professionals**

Lack of accountability:

The Family Court system holds culturally embedded beliefs around family violence that continue to place victims and children at risk, for the benefit of co-parenting. Such beliefs may include ‘women provoke their partners; women can leave violent relationships at any time; and the violence is often a one off attack rather than an incident reflective of ongoing systematic pattern of control and abuse.’²⁶For example, it is our experience that court responses to perpetrators who suffer from formally diagnosed PTSD from their employment (eg police or service personal) are treated with significantly more leniency compared to victims who suffer formally diagnosed PTSD from exposure to trauma and violence.

There has been significant public scrutiny of the Family Court and its effectiveness as a credible institution, and to improve functioning and credibility we believe there needs to be an independent accountability body where issues of professional capability and ethical practice can be raised and investigated.

If a litigant wishes to lodge a complaint of professional misconduct about a family consultant, report writer or expert witness, the current avenues are limited, frivolous and the complaint remains within the family court system. Rarely are complaints taken seriously and impartially with appropriate remedies. Family consultants (either social workers or psychologists) are exempt from accountability under their relevant registering body. The Australian Association of Social Workers are ‘generally prohibited by ... the Family

²⁶ Reeves, E. (2019). Family violence, protection orders and systems abuse views of legal practitioners. Current Issues in Criminal Justice, DOI: 10.1080/10345329.2019.1665816

Law Act 1975 from receiving and responding to complaints about social workers that relate to proceedings of the Family Court of Australia and Federal Circuit Court...[and] that it would be the AAWA's preference that its Ethics Complaint Management Process could apply equally to all its members, including member social workers who undertake work for the Family Court of Australia and Federal Circuit Court. However, the AASW is legally required to work within the bounds of the Family Law Act 1975.²⁷ We acknowledge the process for complaints about unethical practices of family consultants, however for our clients who have submitted written complaints the responses rarely result in a satisfactory outcomes.

VOCAL has long voiced a need for a change to S121 of the Family Law Act 1975 to allow victims of family violence to access support in challenging unethical interview practices. We strongly advocate for people to be allowed a support person in on their interview, or to have the interviews recorded for professional accountability. In State based matters, both victims and offenders have the option having a support person with them when they are interviewed. It is interesting that litigants can have a support person present for family dispute resolution intake, solicitors meetings and family court hearings, but not for interviews with family consultants and/or expert witnesses. Our recommendation is that to encourage accurate reporting, transparency and ethical practice standards, a litigant is allowed a support person to be present in these interviews, if they choose.

Professional training:

As previously stated, It insufficient to assume that because a professional has previously been employed by the court to write reports, that the professional will properly respond to updated legislation, newer research, understanding of the complexities of family violence and remain impartial. There are many cases where reports and beliefs by court appointed practitioners are in conflict with the accepted practices in the sector. If the Family Court is going to rely on expert witnesses, then to ensure their qualifications are specific to the nature of the case, such as family violence or child sexual abuse. VOCAL also recommends increased training for family court professionals in the areas;

- Trauma informed practice, including child responses to trauma and abuse
- Characteristics of systems abuse.

²⁷ Australian Association of Social Workers. (nd). *Complaints relating to Social Workers and the Family Court of Australian & Federal Circuit Court of Australia*. <https://www.aasw.asn.au/document/item/3863>

Conclusion

In this submission, we have highlighted some ongoing and significant issues that victims of family violence face when they seek ongoing protection from the State and Federal Courts. We hope that consideration is given to the systemic gaps that are failing to protect children of family violence. Thank you for allowing VOCAL the opportunity to contribute to this inquiry.

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