

“No way to live”

Women’s experiences of negotiating the family law system in the context of domestic violence



“No way to live” explores women’s experiences of the family law system following their separation from a relationship in which they experienced domestic violence. The research highlights the inadequacies of the current system in protecting women and children from abuse and makes recommendations for legislative and other reforms.

KEY POINTS

- Violence against women and children is interconnected. The research participants reported co-occurrence of woman and child abuse before and after separation.
- The women experienced a complex system and a lack of coordination between the state legal and child protection systems and the federal Family Courts.
- The women encountered a climate of disbelief in their interactions with the family law, domestic violence and child protection systems. Common beliefs were that women fabricate allegations of child abuse and domestic violence, and that women attempt to stop contact by alienating children from their fathers.
- Also prevalent were the attitudes that children need relationships with their fathers even in a context of abuse and violence and that shared care or at least some contact with fathers is inevitable, no matter what violence or abuse has occurred prior to separation.
- As a result of these attitudes, women reported that they received the strong message not to raise allegations of abuse or violence in the family law system.
- The women reported a lack of understanding from professionals about the dynamics of domestic violence and child abuse, of their interconnection and their effects on women and children. As a result, the perpetrators’ ongoing use of domestic violence tactics often went unrecognised as did the impact of the trauma on women.
- The consequence of inadequate responses by state-level agencies is that children’s safety can become the responsibility of the Family Courts rather than the child protection system. In this way, child protection moves into the realm of private law where children’s safety depends on their mothers’ resources, both financial and emotional.
- The consequences of this uncoordinated system and lack of understanding of domestic violence included the silencing of women and children, the exposure of women and children to ongoing abuse and perpetrators not being held accountable.
- The current legislation is clear in its aim to protect children from child abuse, neglect and exposure to domestic violence. As the findings from this research show, in many cases it is failing to protect.

THE AIMS

This research explored the experiences of 22 women as they navigated the family law system following their separation from a relationship in which they had experienced domestic violence.

The impact of domestic violence on children

Over the past 20 years, a substantial body of research has shown that exposure to domestic violence is associated with a range of emotional, behavioural and developmental problems in children and young people (e.g. Margolin, 2005; McFarlane, et al., 2003; Wolfe, et al., 2003). An analysis of many studies found that exposure to domestic violence was associated with similar levels of harm to that of children who experience direct physical child abuse (Sternberg, et al., 2006).

The extent of the exposure of children and young people to domestic violence in the context of parental separation highlights the importance of the ways in which the family law system identifies and responds to domestic violence in deciding parenting arrangements.

The legislative context

The research was conducted during the second half of 2008, following major legislative change with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

A major evaluative study of the 2006 changes was undertaken by the Australian Institute of Family Studies (Kaspiew, et al., 2009) and two other inquiries into the management of cases involving family violence have recently reported to government (Chisholm, 2009; Family Law Council, 2009). This research adds to the body of studies, giving insight into the effects of current legislation, policy and practice through the perspectives of women themselves.

METHODOLOGY

In-depth semi-structured interviews were conducted with 22 women who were recruited via domestic violence services in Sydney and a regional area of NSW.

The women were aged between 24 and 54 and had 51 children between them aged from one year through to young adults. The women had been separated for periods ranging from six months to eight years, with an average of 2.75 years. Five of the women came from culturally and linguistically diverse backgrounds as did seven of their ex-partners.

Eighteen of the women had taken out Apprehended Domestic Violence Orders (ADVOs) against their ex-partners. The women were at various stages of the family law process and their parenting arrangements also varied, as did the women's desired arrangements.

Acknowledgments

The research was conducted by Lesley Laing and Lynda Andrews (University of Sydney) in collaboration with St George Domestic Violence Counselling Service (South Eastern Sydney Illawarra Area Health Service), Green Valley and Liverpool Domestic Violence Service (Sydney South West Health), The Benevolent Society's Centre for Women's Health, Staying Home, Leaving Violence (Eastern Sydney) and the Port Stephens Family Support Service.

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THE FINDINGS

Violence against women and children is interconnected

All the women had experienced domestic violence both during their relationship and since separation. The forms of abuse most frequently reported were emotional/psychological, financial, controlling behaviours, “using the system” to exert control and physical violence.

“Because our life was like living in a concentration camp, that’s how I described it once... so you wouldn’t have the bruises but it would be that psychological stuff and [it affects] the children as well.”

Changeovers were a common time for this post separation violence, continuing children’s exposure to violence.

“...I was severely assaulted, I was beaten unconscious... part of it happened in the flat while I was picking up the kids and then it sort of moved outside ... So my younger [child] saw him beating me and he was in the stairwell and he kept hiding his head and – and I was beaten so I fell to the ground... and he has told his counsellor that I wouldn’t wake up – that he kept telling me ‘mummy wake up’... [child was 4 and a half years old]...”

In common with the findings of previous research, the study found that all the children were exposed to domestic violence against their mothers and twenty one of the women described examples of direct child abuse: twelve women described emotional abuse of children; eight described physical abuse;

six described sexual abuse or inappropriate sexual behaviours; three described incidents of neglect; and nine reported children being exposed to dangerous situations, such as drug use.

It was clear that the abuse of women and their children was intertwined – children were exposed to violence against their mothers; mothers were exposed to violence against their children; and many forms of abuse were directed simultaneously to both women and children.

A complex and uncoordinated system

In order to try to protect themselves and their children, the women found that they had to navigate a service system that was fragmented and uncoordinated, marked by delays and barriers to accessing accurate information. They provided many examples of lack of coordination between the state civil protection order system (ADVOs) and the Family Courts.

“...before I had Family Court orders and we had the cops involved and they didn’t want to get involved because I didn’t have Family Court orders. When I did have Family Court orders, the cops said they didn’t want to get involved because I had Family Court orders.”

One of the major systemic gaps that the women encountered was the reluctance or inability of the statutory child protection service to become or remain involved when the context of parental separation became known.

“... once DoCS know it’s in the Family Law Court, they back off ... And they keep saying “Well you’ve just got to go through the Family Court and try and protect your children that way”.

Common beliefs that shaped responses to mothers' efforts to achieve safety

Layered over this systemic complexity and lack of coordination was a range of beliefs held by professionals (including Family Court judges and magistrates, mediators, legal practitioners, contact services staff and child protection caseworkers) about women, about allegations of abuse and family law and about the appropriate form of post-separation parenting. These beliefs shaped the lens through which women's efforts to protect themselves and their children were viewed.

The most common beliefs that women encountered in their contacts with the many professionals they dealt with were that:

- children need a relationship with their fathers (even in a context of abuse and violence)
- women fabricate allegations of child abuse and domestic violence
- mothers attempt to stop contact, including by alienating children from fathers
- women should not raise allegations of violence and abuse in the family law system because they risk being seen as uncooperative by the court
- the courts will inevitably order shared care or at least some contact, no matter what violence or abuse has occurred prior to separation.

“Everything is twisted and misconstrued as ‘You are being combative. You are being a high conflict parent. You are alienating the children from the father’. And anything that you do to try and advocate for your children is somehow twisted into being high conflict and parental alienation. So you are basically silenced. And the children are silenced.”

Lack of understanding about domestic violence dynamics and consequences

The potency of these beliefs about women and allegations of abuse and violence in the context of family law was enhanced by the lack of understanding displayed by many professionals about the dynamics of domestic violence and child abuse, of their interconnection and of their effects on women and children.

The women were dismayed that many professionals that they encountered had very limited understanding of the tactics employed by their abusers and of the abusers' ability to manipulate and deceive them. This was particularly striking in the women's experiences with contact services. Women also found that there was limited understanding of forms of abuse other than physical violence.

A very strong theme in the women's accounts was the failure to take into account the extent to which the traumatic impacts of the abuse undermined their ability to participate constructively in the various court and court-related processes.

“In the Family Court I have to show respect to the other parent because he's the parent of my children so I'm going to have to look at him. I haven't looked at him for 18 months, and I don't know if I'm just going to slip back into the old me and just agree with everything he says for survival tactics because it's all too much.”

Consequences for women and children

Women under pressure to agree to unsafe arrangements

Women reported experiencing pressure to consent to arrangements that they did not consider safe for themselves and their children. This pressure came from their own legal representatives, those of their ex-partners and Independent Children's Lawyers.

"I had already made up my mind that I didn't want the sleepovers because I really didn't think it was safe for the children but [my lawyer] convinced me that if I wouldn't do it, the judge would probably even now give me a slap on the wrist and give [ex] more than I would be willing to give, so he really strongly recommended me to do this otherwise it would all blow up in my face. So I did agree. I didn't feel like I had a choice."

Silenced about violence and abuse

The women received strong messages from various sources that if they alleged violence and abuse they would be seen as "unfriendly" parents or as undermining the father-child relationship. As a consequence, they did not feel that they were able to put the full story of violence and abuse before the court.

"I was told by my doctor – don't go into that because if you mention domestic violence in court, you're stuffed..."

"Probably half or even the majority of things that have happened with us

won't get written down on paper. I mean, this Court won't know about the ongoing abuse and harassment of things like that – they won't have a clue about those."

Inadequate risk assessment

Poor understanding of the dynamics of domestic violence among key professionals in the court system meant that often women's and children's safety were not assessed and safety plans for contact were not developed.

The emotional toll on children

The women reported the impact on their children of past and ongoing abuse. They felt the abuse had also damaged their own relationships with their children. For example, in addition to coping with the children's distress at spending time with their fathers, they had to force their children to have this contact to avoid breaching court orders.

"... my youngest, she doesn't want to go to him and so she cries, she screams 'no, no, no', she's grabbing onto my neck as he's grabbing and she's kicking him because she doesn't want to go ... And so I worry about the impact that that's having on them... I find it's very distressing some of the things they come home and say "My daddy said he's going to run over you"

Children denied counselling

Despite the children's high levels of distress, obtaining professional assistance for them was not possible in most cases. Sometimes this was a decision made by the Family Courts; others were advised by their lawyers that seeking counselling could jeopardise their legal position by appearing

to 'collect evidence'; still others encountered agency policies that precluded their children from receiving counselling while they were going through the family law system.

The emotional toll on women

The women felt that they were on a lonely, largely unsupported journey. They expressed feelings of helplessness, fear, loss, despair, injustice and anger about their experiences of negotiating the legal and service systems. The women continued to feel controlled by their ex-partners through use of the issue of the care of their children and as a consequence, they felt trapped. Overriding all other emotional responses was fear for the wellbeing and safety of their children.

“And now I’m away I’m free and I’m so scared for my children because I don’t want them being hurt the way I was you know, I don’t want ... I’m strong and I got through it but I just hope my kids will get strong as well cause they will never get away from it.”

Mothering under adverse conditions

The women were mothering under extremely stressful conditions. Many were coping with financial pressures, ongoing harassment, the emotional impact of their experiences of abuse and loss of their home. Some were travelling for many hours with small children to contact services. Notwithstanding these difficulties, the women showed determination to support and assist the children to cope with the trauma they had experienced and the ongoing unsatisfactory relationships with their fathers.

Inadequate response in one part of the system flows on to the Family Court

The Family Courts rely on evidence from interventions in other parts of the domestic violence and child protection systems. If the response of other agencies (such as police, contact services and child protection services) was inadequate, as was frequently the case, the women did not have evidence of the violence and the Family Courts had to make difficult decisions with incomplete information.

Perpetrators are not held accountable

A source of the women’s sense of injustice was their observation that their ex-partners were rarely held accountable, either for their violence and abuse, or for accepting their responsibilities as parents. This contrasted with the scrutiny that they experienced as mothers.

“But every time we used to get into the Court and they would start to say the father has rights ... I understand but where do the kids’ rights come into this? They’re scared, they don’t know him... And they’re saying to me but he has to have time with the children. And I’m saying ‘but he’s knocked me to the ground with a baby in my arms – why does he – and he’s been charged, he’s been found guilty of assault – he’s been breaches of AVOs’...”

What helped and what needs to change

Helpful responses

Domestic violence services and workers were found to be extremely helpful because they provided the women with validation, practical support and information. Schools also provided support to women and children. Lawyers and

mediators who were prepared to listen to the women and take their concerns seriously and intervene to prevent the abuse of power by the perpetrator were highly valued by the women.

Recognition of the interconnectedness of abuse of women and children

The experiences recounted by the women illustrate the difficulties and artificiality of drawing boundaries between domestic violence and child abuse. Women see their safety and wellbeing and that of their children as intertwined. This presents a challenge to a legal system that assumes that the interests of women and children in this context can be disaggregated.

Coordinated and complementary systems to protect children

This research again emphasises the inadequacy of the statutory child protection agency “leaving it to the Family Court” to protect children, given the Family Courts’ inability to investigate allegations of child abuse and the time that will have elapsed between the incidents leading to the allegations and any assessment of the family. The consequence of inadequate responses by state-level agencies is that children’s safety can become the responsibility of the Family Courts rather than the child protection system. In this way, child protection moves into the realm of private law where children’s safety depends on their mothers’ resources, both financial and emotional. It also shifts the focus from child protection to a ‘parenting dispute’.

Shifting the climate of disbelief

The difficulties which the women encountered in seeking to protect their children cannot be accounted for solely by the systemic problems that have been identified. The women also found that their motives were under question. It was commonly assumed that they were motivated by bitterness towards ex-partners rather than by a desire to protect their children.

The result of this climate of disbelief is that women may not disclose the full extent of the

violence or their disclosures are minimised or disregarded. Subsequent decisions about parenting arrangements are made on the basis of incomplete information, thorough risk assessments are not undertaken and ultimately, children may be placed at increased risk.

Increasing understanding about domestic violence dynamics and consequences

Apart from some notable exceptions, the women encountered professionals in a range of agencies who failed to demonstrate adequate understandings of both the complexities of domestic violence and its harmful effects on the development and wellbeing of children and young people. There was limited understanding of the forms that post separation domestic violence can take – such as financial abuse, abuse through litigation, and exerting control through shared parenting requirements; of the impact of trauma on women and children and on the mother-child relationship; of the impact of trauma on how a woman may present in legal contexts; and of what is required to rebuild a relationship between a child and someone who has abused the trust inherent in the parent-child relationship.

A policy that is failing to protect

The current legislation is clear in its aim to protect children from child abuse, neglect and exposure to family (domestic) violence. As the findings from this research show, in many cases it is failing.

However, the failure to adequately protect children cannot be laid at the door of the Family Courts alone: decision making was hampered by limited information arising from interventions by police and child protection services prior to the Courts’ involvement. Scepticism about women’s allegations of violence and abuse, poor or non-existent risk assessment, lack of specialist knowledge about trauma and the interventions associated with recovery and an emphasis on fathering regardless of its quality marked the interventions (or failures to intervene) of many agencies whose mandate is to protect women and children from violence and abuse.

RECOMMENDATIONS

Recommendation 1: National coordination

The *National Framework for Protecting Australia's Children* and the *National Plan to Reduce Violence against Women and their Children* should work together to keep women and children safe. To this end, the National Plans should reflect:

- the Family Law Council recommendations regarding improving collaboration across state/territory child protection agencies and the Family Courts
- the findings of the evaluations of the Magellan and Columbus Programs
- the findings of the Australian Law Reform Commission's Family Violence Inquiry.

Recommendation 2: Legislative reform

The amendments recommended in the *Family Courts Violence Review* by Professor Richard Chisholm regarding the "friendly parent" provision, the provision for the making of costs orders where there are knowingly false allegations, and the provision directing family advisers on what information to provide, should be adopted.

In addition, the Family Law Council's recommendation that the definition of family violence in the legislation be amended to include a broader range of threatening and controlling behaviours and to encompass the concept of coercive control, should be adopted.

Recommendation 3: Training for family law professionals

All professionals and services which play a role in the family law system need comprehensive, ongoing training in understanding and responding to domestic violence. This should include training about: the interconnectedness of the abuse of women and children; conducting risk assessments and developing safety plans; the effects of trauma on women and children; the conditions that promote recovery from trauma; the dynamics of sexual and domestic violence perpetration; the risks and forms that post-separation violence can take; and the assessment of claims of change in the perpetrators of abuse.

Recommendation 4: Improved responses from state-level agencies

State-level child protection agencies should not defer investigations because the Family Courts are or may be involved in a case.

Police must employ proactive policies of investigation, evidence-gathering and ongoing protection of women and their children.

State-level agencies, including child protection, police and health, should undertake careful documentation and risk assessment when women report instances of domestic violence.

Recommendation 5: Community-wide education

The lack of understanding of the dynamics of domestic violence and the common beliefs held about women lying about abuse are not unique to the services and professionals which comprise the family law system. There is an urgent need for investment in a long-term, national education campaign targeting professionals, schools, workplaces and the general public.