

THE AUSTRALIAN CHILDHOOD FONDATION SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO A BETTER FAMILY LAW SYSTEM TO SUPPORT AND PROTECT THOSE AFFECTED BY FAMILY VIOLENCE

The Australian Childhood Foundation commends the Parliament of Australia for holding an inquiry into a better family law system to support and protect those affected by family violence. Thank you for the opportunity to make a submission to the Inquiry.

Acknowledgement of Country

The Australian Childhood Foundation acknowledges the traditional owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander elders past, present and future; and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

About the Australian Childhood Foundation

The Australian Childhood Foundation (ACF) is a national not for profit organisation that works specifically to prevent the abuse, neglect and exploitation of children and young people and reduce the trauma it causes to children, families and the community. It is at the forefront nationally of how neuroscience is being translated into practical applications in the areas of specialist therapeutic intervention for children who have experienced domestic and family violence traumatised children and their families, therapeutic foster care and residential care programs, and professional education initiatives.

ACF has a strong reputation for the delivery of effective, innovative and flexible trauma-informed therapeutic services for traumatised children and young people who present with a complex matrix of needs and challenging behaviours stemming from histories of multiple forms of abuse and neglect. ACF is a provider of evaluated counselling and out of home care programs for children and young people who have been traumatised through experiences of abuse and neglect, in addition to those who engage in problem sexual behaviours. ACF has a substantial history in working in collaboration and partnership with carers, families, professional, schools, support networks and communities to achieve positive outcomes for children and young people in Victoria, Tasmania, South Australia, ACT, Northern Territory and Western Australia.

All therapeutic programs delivered by the Foundation have been built on up to date, evidence based frameworks including the neurobiology of trauma, attachment and relational theories, offender theories, child development and system theories. A synthesis of this literature informs the basis of the assessment and intervention model for the services of the Australian Childhood Foundation.

At any one time, there are more than 800 children and young people and their carers or families engaged in therapeutic intervention with the Foundation.

ACF has extensive experience in the development and delivery of trauma-informed, or therapeutic models, of family violence, foster care, kinship care, family group home and rostered residential care. ACF has formed partnerships with 27 other non-government organisations to support direct trauma based therapeutic care programs for children and young people, including Oz Child (VIC), Uniting Care Gippsland (VIC), Gippsland East Gippsland Aboriginal Co-operative (VIC), Junction

Support Services (VIC), Wesley (VIC), Barnados (ACT), Salvation Army (VIC), Anglicare (SA, NT and VIC), Relationships Australia (NT), Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NT). ACF currently has partnerships with Indigenous agencies in Victoria, Northern Territory and Western Australia to deliver therapeutic out of home care programs to Aboriginal children, young people and families.

ACF is a Registered Training Organisation and provides national professional education and workforce development programs focused on children and family violence, abuse and trauma to carers and professionals. It reaches more than 8000 professionals and 1000 carers each year nationally.

ACF runs a range of workforce development programs for a number of state and territory government departments in Australia including Education Departments in South Australia, where it has run the SMART (Strategies for Managing Abuse Related Trauma) Program for the last 9 years across SA, in the Northern Territory where is replicated the SMART Program across schools in the NT, and has a contract with the Tasmanian Department of Education to implement a similar initiative statewide addressing the issues of engagement and disconnection in secondary school. ACF has run workforce development programs for child protection staff and managers in Tasmania, the Northern Territory and the Australian Capital Territory. ACF has also run statewide workforce development program for foster care and residential carers in Victoria, ACT,

ACF also conducts research into childhood assault and trauma in partnership with Monash and Deakin Universities. It has provided policy and program consultancy for a number of state government departments about trauma informed practice for children, families and carers. It has partnerships with KPMG and Deloitte Access Economics to support their evaluations of services involving children and young people. It has international research partnerships with University of North Carolina and UCLA.

About this submission

This submission will examine issues relating to items:

How the capacity of all family law professionals—including judges, lawyers, registrars, family dispute resolution practitioners and family report writers—can be strengthened in relation to matters concerning family violence.

Introduction

Knowledge development that is based on contemporary international research is vital for all professionals working in the domestic and family violence domain. The failure of the courts and related institutions to keep up with research and other knowledge can have a serious detrimental impact on efforts to combat domestic and family violence. Domestic and family violence education for judges, lawyers, registrars, family dispute resolution practitioners and family report writers must be mandatory, and challenge commonly-held myths about domestic and family violence victims and perpetrators.

An educational program should contain the following components:

1. Information concerning the impact of domestic and family violence on victims;
2. The importance of recognising domestic and family abuse as harm to children;
3. Professional understanding of the power and control dynamics of domestic and family abuse;

4. The dynamics of domestic and family violence;
5. The overlap of domestic violence and child abuse;
6. Domestic and family violence and fathering;
7. Cultural competence;
8. Self-care of judges, lawyers, registrars, family dispute resolution practitioners and family report writers and recognition of traumatic effects of exposure to cases of domestic and family violence; and
9. The way in which the statutory system interact with families where there is domestic and family abuse

Domestic and family violence is a significant social problem in Australia and internationally (Philips & Vandenbroek (2014). Domestic and family violence can cause long lasting psychological and/or physical damage to victims and their children (Fantuzzo & Fusco, 2007). Domestic and family violence can have a serious impact on the way a person thinks and interacts with the world around them. The chronic exposure to domestic violence—and the stress fear resulting from this exposure—can cause not only immediate physical injury, but also mental shifts that occur as the mind attempts to process trauma.

This violence can also have wider systemic impacts including those on the justice, health and social services systems. It can escalate over time and, at its worst, end in homicide (Campbell, 2005).

Children, Domestic and Family Violence

Domestic and family violence poses a serious threat to children's emotional, psychological, and physical well-being, particularly if the violence is chronic. There is substantial evidence that most children living with domestic and family violence experience trauma. Exposure to domestic and family violence has been named as a form of child abuse. The national and international evidence is clear that children suffer a range of emotional, behavioural and developmental problems and that:

- They do not need to 'see' violence to suffer the negative effects;
- Children are affected by the presence of domestic and family violence in their family, regardless of the nature of the violence;
- Children who have been exposed to domestic and family violence often learn destructive lessons about the use of violence and power in relationships; and
- As with children and young people who sufferer direct abused, for children who are exposed to domestic and family violence, the impacts affect all aspects of their lives (Kimball & Keene, 2016)

Stein and Kendell regard witnessing domestic violence as a major contributor to unrecognised chronic PTSD. There is also 30% to 50% overlap between domestic violence and child abuse, the latter being perhaps the most common source of traumatic experience for children and of childhood PTSD (Kaiser Permanente, 2005).

Understanding the unique and complex dynamics that domestic and family violence creates for children and young people is an essential element of assessing what is in the best interest of the child. This knowledge is not static it is growing and changing.

The 'Good Father' Myth

The current focus in policy and law deems that in most circumstances after a child's parents separate, her or his best interests lie in having an ongoing relationship with both. It is as if, as Eriksson and Hester suggest, 'any involvement by fathers with their children constitutes good-enough fathering' (2001: 791).

We must end the ongoing assumption that men who are abusive towards women can still be 'good' fathers. This belief is enduring and flies in the face of the available evidence.

There is substantial literature to show the importance of non-abusive fathers in the lives of their children (Day & Lamb, 2004; Lamb, 1997, 2004; Marsiglio, Amato, Day, & Lamb, 2000). Research demonstrates that fathers are important to the psychosocial development of children and young people (Amato, 1991; Beaty, 1995; Hilton & Desrochers, 2002; Mandara & Murray, 2000) and their absence has differing impact on specific areas of child development such as gender-role development (Mandara, Murray, & Joyner, 2005).

These findings regarding the importance of father involvement is much more complicated in homes where exposure to domestic and family violence has been consistently linked to negative developmental and psychological outcomes for children and youth (Wolfe, Crooks, Lee, McIntyre-Smith, & Jaffe, 2003); and exposure to violence has significant implications for children's beliefs about family roles and men's positions as dominant to women (Bermann & Brescoll, 2000).

A study by Hamby, Finkelhor, Turner and Ormrod, (2010) showed that 33% of young people exposed to domestic and family violence also reported child abuse in the last year. Seventy six percent of child abuse is perpetrated by a biological parent with 43% of those cases at the hands of biological fathers (Sedlak et al, 2010).

Aboriginal and Torres Strait Islander Peoples

A significant factor in promoting access to justice for Aboriginal and Torres Islander people is a family law system that is culturally competent, particularly in its understanding of indigenous families, child-rearing practices and kinship and the central place that cultural identity and affiliation plays in the life of Indigenous people.

Professional education is an important means of ensuring that family law professionals are properly equipped to deal with the diverse range of people and issues that are encountered in the family court on a day to day basis. In considering the needs of Aboriginal and Torres Islander families the completion of such cultural training serves to promote confidence in the family law system within the Indigenous community.

Training

In 1999 an Australian Law Reform Commission (ALRC) (No. 89) report *Managing justice: A review of the federal civil justice system* has previously highlighted the importance of education and training for professionals in the justice system. The review stated:

“education, training, and accountability play a critical role in shaping ‘legal culture’ – and thus in determining how well the system operates in practice ... while it is of the utmost importance to get the structures right, achieving systemic reform and maintaining high standards of performance rely on the development of a healthy professional culture – one that values lifelong learning and takes ethical concerns seriously” (section 2.3) (ALRC, 1999).

The joint Australian and New South Wales Law Reform Commissions' report *Family violence – A national legal response* (ALRC & NSWLRC, 2010) provides a comprehensive review of family violence laws and legal frameworks in Australia with the aim of improving safety for women and their children. Included in the key recommendations is the need for education and professional development for magistrates and other professionals coming into contact with the family court and criminal legal systems.

Studies have shown that increased training and education on domestic and family violence and family laws related topics is associated with decisions and recommendations that are more focused on keeping victims safe and together (Haselschwerdt et al., 2011; Saunders et al., 2011; Saunders et al., 2013). Research also indicates that having a social relationship with someone who has been victimised, even at the “acquaintance” level (e.g., a neighbour or co-worker) is associated with an increase in both beliefs and decisions supportive of survivors' and children's well-being and safety (Saunders et al., 2011; Saunders et al., 2013; Knoche, Sicafuse, & Summers, 2016).

It is critical for judges, lawyers, registrars, family dispute resolution practitioners and family report writers and other decision-makers to have a solid understanding of the dynamics of domestic and family violence, how violence affects survivors and children, and the risks of post-separation violence. Some studies have found that decision makers who report having substantial knowledge and education regarding domestic violence are particularly inclined to make decisions focused on protecting survivor and child safety (see Morrill et al., 2005; Saunders et al., 2011; 2013).

The *Enhancing Judicial Skills in Domestic Violence Cases* (EJS), a specific multi-day, interactive training for judicial officers in the United States has yielded promising results. Results from a survey administered after each day of the training indicated that the majority of over 400 participants intended to use what they had learned at the training in a variety of ways (e.g., to better address the needs of the children and families they serve, to conduct valid and reliable risk assessments, and to share information with colleagues; Jaffe, 2010). Findings from follow-up surveys completed by over 100 judicial officers six months following EJS revealed that most of these participants were able to describe specific practice changes they had made as a result of the training.

Conclusion

Making decisions in domestic and family violence matters is complex, often confusing and at times highly confronting. The decisions that are made can have profound effects on the well-being and safety of those involved. At times, these decisions can have fatal consequences.

Children are never merely observers or bystanders in circumstances where one of the parents is violent towards the other. They are always harmed. To what degree and in what ways is the task of the court to understand and respond appropriately to. It is the duty of those making decisions on behalf of this most vulnerable group to be as informed as they possibly can. It is also incumbent on those who appoint and/or manage these Judges, lawyers, registrars, family dispute resolution practitioners and family report writers to ensure that such education is mandated and based on contemporary knowledge in this evolving field.

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