

Executive Summary

This report presents the results of interviews with 40 women who were negotiating and facilitating child residence and contact arrangements with an ex partner who had abused them. These results are supplemented by findings from interviews with 22 individuals and representatives of bodies who were professionally involved in the process of facilitating the development or implementation of child contact arrangements. The professionals included lawyers, counsellors, refuge workers, domestic violence court assistant scheme workers and supervised contact centre workers.

Experiences of Violence (Chapter Two)

All of the women who were interviewed had been subjected to psychological or emotional abuse whilst they were in a spousal relationship with their former partner. In addition the overwhelming majority (85%) also had experienced one or more forms of physical and/or sexual abuse. A number of the women who had been subjected to severe physical abuse nonetheless commented that the psychological abuse was as hard to handle, and often harder, than the physical abuse.

Our study adds to a growing body of literature that has found that spousal abuse and child abuse are inter-related phenomena. Women in our study reported that almost two-thirds of the children had witnessed physical violence against their mothers. A number of the women expressed concerns about the effects on their children of witnessing abuse. This included the children becoming fearful, confused or protective towards their mothers, or picking up violent behaviours themselves. Almost one third (32.5%) of the children had been the targets of physical violence themselves (indications are that this figure would be much higher if psychological abuse was also counted). Some women reported that abuse had been deliberately directed towards themselves or the children in order to control the other party, or that they had been abused whilst pregnant or holding, feeding, or changing the children.

Women had left their former partners on more than one occasion in three-quarters of the 42 violent relationships discussed in the interviews.

For most women leaving the relationship had not meant an end to the violence. All but one of the women (97.5%) had experienced violence or abuse after separation and she had gone to great lengths to have no contact with the father of her child after separating from him. Many women described an increase in violence immediately post-separation, although some women said that it had later declined or, in a small number of instances had ceased as time had passed.

Where violence had declined or ceased post separation this was typically because opportunities for the violence had been reduced by minimising contact between the two parties. Clearly, as discussed below,

contact or contact negotiations may facilitate the continuation of violence where they allow an abusive party to have access to their former partner.

Using the Legal System to Address Violence (Chapter Three)

Most women (70.9%) found it very difficult to disclose domestic violence to lawyers, counsellors or other professionals, at least initially. However, most professionals assumed that women can and do disclose their experiences of domestic violence. This is despite the fact that, when asked, all but one of the professionals recognised factors that might present obstacles to women's disclosure. This finding has implications for future training and for the conduct of professional practice. It also suggests the danger of professionals relying on self-disclosure as a means of screening cases for apparent risk factors.

Some women reportedly feel constrained in disclosing domestic violence and in seeking help by fears that the Department of Community Services (DOCS) might intervene with respect to the children, with the possibility that the children may be taken into care. Several professionals reported that it was a key concern among their clients, especially Aboriginal clients. Several women had been reported to DOCS by their former partners, apparently as part of a pattern of abuse. This suggests the need for community education and professional training about child protection policies with particular attention to the concerns of Aboriginal women. Given the legacy of the Stolen Generations it is hardly surprising that some Aboriginal women fear the legal system.

Of the women who commented on the issue, the majority (81.6%) had an Apprehended Domestic Violence Order (ADVO) at some point in time.

Contrary to suggestions that ADVOs are too easy to obtain, the overwhelming majority of the women (82.6%) had difficulties in obtaining an ADVO. More than half of these women reported having been to court on many occasions (typically five or six times). For women juggling the demands of parenthood and work this was an onerous burden. Other difficulties included failures of process, fears of the perpetrator when attending court, difficult or unhelpful attitudes on the part of the magistrate in the local court hearing the complaint and cross applications being made in order to harass or undermine the women concerned.

More than two-thirds of the women (69.5%) commented that the ADVO had been ineffective or not entirely effective. Some women thought that it was completely useless, a few commented that it had aggravated their situation, while others thought it had at least a limited positive effect. However, some women clearly saw their ADVO as having positive effects in spite of it being ineffective in preventing the violence.

Many women were dissatisfied with police responses to breaches of the orders. Of the 31 women who had ADVOs, 21 (67.7%) had reported breaches to the police and in 13 (61.9%) of those cases charges had been

laid. These figures may appear to suggest that orders were enforced effectively. However, most of the women interviewed recounted repeated breaches of the orders that were not acted on by the police. Some women said that their former partner's behaviour had changed as a consequence of being charged with the breach of an order.

Some women expressed dissatisfaction because of the difficulty of proving that a breach had occurred and/or because they perceived that sentences for breaches were inadequate.

Several women raised jurisdictional issues that apparently limited the effectiveness of their orders. For instance, police reportedly had failed to act on reported breaches in respect of several ADVOs because they said that the ADVO was unclear when read in conjunction with the terms of a Family Court order.

Interviews suggest great variability in the police response to domestic violence. Of the 19 women who commented specifically on their dealings with the police, 3 had found them consistently helpful, 9 consistently unhelpful, and 7 had found that police responses varied depending on what station or officer they were dealing with. Women who'd had difficult experiences with police reported: feeling that the police did not take them seriously unless and until a serious physical assault had occurred, having to practically harass the police to get help, police failing to charge for breaches of ADVOs, the police identifying more with the violent ex partner than the women complainant and the women feeling judged by the police for being in the situation to begin with. Interviews with professionals substantiated these accounts.

Only 2 of the women we interviewed had sought a family court injunction under section 114 of the *Family Law Act 1975* in response to their ex-partner's violence.

Almost half of the women (47.5%) we interviewed had used a refuge at some point in time. This is unsurprising given that refuges and women's support services were referral points for this study. The overwhelming majority of women (89.47%) were extremely positive about the support and guidance they had received from a refuge.

Negotiating Child Contact and Residence (Chapter Four)

Preliminary Issues

Many of the women that we interviewed supported the value of contact with the non-resident parent in principle: 15 (40.5%) thought that contact was a positive thing, 10 (27.0%) were opposed to contact for their own children and 12 (32.4%) felt ambivalent about it. Those who opposed contact, or were ambivalent about it, were typically concerned about the children's safety and well being.

Processes for the Resolution of Residence and Contact Disputes

Negotiations concerning the residence, contact and parenting of children are typically not a singular event but may be ongoing. Where parties cannot reach amicable agreements there may be repeated recourse to the family law process as their needs and circumstances and those of their children change.

Thirty-five women commented on their experiences with lawyers. Of these 17 (48.6%) had a positive experience, nine (25.7%) had a uniformly bad experience, and nine (25.7%) had positive experiences of some lawyers and negative experiences of others. Some women felt that their lawyers did not listen to them, made concessions in negotiations that were not in accord with their wishes, or pressured them to make agreements. Professionals typically agreed that the quality of lawyers was variable and recognised that some women felt pressured by lawyers.

Lack of legal aid funding constituted a major problem for some women. Only one-third of our sample had full grants of legal aid. Professionals agreed that the lack of legal aid, and/or caps on legal aid, had negative consequences for the court and clients, including: women dropping actions, women conceding to unworkable contact arrangements that put them at further risk, agreements by default, and a failure to vary orders despite good grounds for doing so. The problems raised by both women clients and professionals concerning the inadequacy of legal aid find support in the research literature.¹

Private forms of negotiation may reflect a lack of access to the formal legal system and/or fear of the possible repercussions of seeking external assistance rather than a positive choice by the parties. Interviews suggest that Aboriginal parties are especially fearful that the legal system will not work in their interests or that they may have their children taken away. Private agreements may also arise when court orders prove to be unworkable.

Many women experienced Family Court counselling as a negative experience. Some felt unsafe and others were intimidated by their ex partner. Only a minority reported that they had had separate sessions for counselling. Among concerns raised by women were: the perception that they were being pressured to reach an agreement, that counsellors had a starting position that contact was necessarily in the children's best interests, or that they held other assumptions that prevented them from responding to the specific facts or an alternative view of the children's best interests.

Family Court counsellors differed in their accounts of the policies or practices adopted in cases involving domestic violence. Confirming the picture that emerged from the interviews with the women, separate

¹ Though evidence suggests that legal aid funding may have improved somewhat since the interviews were conducted.

counselling was not uniformly supported by counsellors and not always practiced. In addition, screening for domestic violence prior to counselling was not universal and there seemed to be strong reliance on victims of domestic violence to self-identify.

A small number of women had attempted mediation, mostly unsuccessfully. Despite a general belief that domestic violence matters are not mediated due to concerns about power imbalances, Family Court counsellors agreed that some cases were mediated either because they slipped through the screening process or because they were judged by mediators to be suitable. Women's experiences of mediation were similar to their experiences with counselling.

Most women were critical of the process involved in Family Court hearings and many found it to be intimidating and disempowering. Many thought that insufficient attention was paid to the specific facts of their case and to the history of violence in their relationship.

Six women experienced the legal process as a form of abuse because ex partners had made repeated applications or used proceedings as a means of having some contact with them. It was suggested by three women that there needed to be greater continuity in the professionals who handled cases to improve case outcomes. This would also help to ensure that vexatious applications were recognised as such. Some of the women were concerned that repeated applications could be made and that no limits were placed on this process.

Women were commonly fearful during negotiations concerning contact. Almost half feared being in the same room as their former partner. Women described being stalked, obstructed, assaulted, and verbally abused before or after counselling or court proceedings and being tailgated on the way home.

Many women had been involved in matters in two or more courts. This was frustrating and confusing for some. Where there were child abuse allegations some women had also had proceedings in Children's Courts.

In cases involving child abuse allegations concerns raised included the perceived failures by DOCS to take action, the Family Court reportedly not giving due weight to evidence offered by DOCS officers, and the complexities of having matters in two or more different courts. A streamlined system for dealing with such cases, together with better coordination between DOCS and the Family Court, is long overdue in NSW and such schemes should be adopted in all States and Territories. Pilot programs currently exist in Melbourne (Magellan) and Western Australia (Columbus).

Outcomes

Among the women interviewed the most common means of arriving at the current arrangements for residence and contact was consent orders

(n=18: 43.9%), followed by court adjudicated orders (n=15; 36.6%). Eight women (19.5%) had reached outcomes through private negotiations.

At the time of interview 33 women had residence of all of the children who were the subject of the negotiations, and two had residence of some of the children and contact in relation to the others. The fathers were contact parents in all of the cases where the mother had residence, although in a small number of instances this had broken down because the children were refusing to go on contact. At the time of interview only four women said that the contact was supervised (although in one of the cases where contact was meant to be supervised by a centre the children were refusing to go on contact, and in the two cases where it was to be supervised by relatives of the contact parent the supervision had, in fact, broken down). Five women were non-resident parents and in all cases this was contrary to their wishes. Three had consent orders, one had a private agreement and one had a court adjudicated outcome.

The high level of unsupervised contact arrangements in our study is disturbing given that the father of the children had a past record of violent behaviour in all instances towards the mother of the children (more often than not witnessed by the children), and in a significant number of instances towards the children themselves.

Of the 13 sets of children who had been the targets of physical violence by their father, six had unsupervised contact, fathers had residence in four cases, contact was supervised in two cases and phone contact only in one case.

Professional respondents were divided over whether contact should go ahead when the contact parent had been abusive towards the child/ren. Similar numbers recommended no contact or that contact should depend on the specific circumstances. Two professionals recommended that supervised contact should occur.

In 25 cases children had witnessed violence against their mother. Of those cases, the father had unsupervised contact in 17 cases, residence in four cases, and supervised contact in three cases. In the remaining case, the father was having phone contact only with the children.

Most professional respondents seemed to assume that violence against a mother was clearly separable from any consideration of the well being of the child. Few respondents raised questions about children's exposure to violence directed against their mother or the effects of witnessing such violence.

Several women thought that their cases had been influenced by a notion of standard orders. Professionals also agreed that there was a practice of arriving at standard orders (such as every second weekend and half of the school holidays) and that even when domestic violence was present cases rarely departed from this standard. If the outcomes of matters in which domestic violence has occurred do not differ from those where

there is no history of domestic violence then this raises a question about the extent to which domestic violence is being given due consideration in contact decision-making.

Many of the women interviewed, and some professionals, felt that the family law system privileges contact between children and both their parents above other considerations in decision-making concerning child contact.

There was evidence to suggest that consent orders and private agreements should not necessarily be assumed to be truly consensual. Both the women and many of the professionals recognised personal, financial and systemic factors that placed pressure on women to enter agreements concerning contact.

At least nineteen women (47.5%) considered that the arrangements in place for residence and contact in their cases either compromised their own personal safety or weren't in the best interests of the children. Of these women, four had private agreements (constituting 50% of private agreements), nine had consent orders (50% of consent orders), and six had court adjudicated orders (40% of court adjudicated orders).

Women's concerns about contact were typically expressed with reference to the best interests of the child and several questioned whether the family law system did in fact protect children's best interests. Several professionals raised similar concerns. It was suggested that there should be more resources for services for children and that children's wishes should be accorded more respect.

Experiences of Contact (Chapter Five)

Changeover and issues of safety

The women we interviewed had experienced a high level of violence during changeover and contact. Of the 35 women who were resident parents a large majority (85.7%) described violence associated with the exercise of contact. Only six (17.1%) indicated that they had experienced no violence at contact changeover. Nonetheless four of these women still describe intimidating or frightening behaviour during contact changeover. The violence encompassed a wide range of abusive behaviours and was sometimes directed at people who were supporting the women during contact changeover. Obviously the nature of changeover is such that any abuse of their mothers will often be witnessed by the children. A number of the women also described incidents in which the children were roughly handled during changeover.

Many of the women had tried several different strategies and venues for contact changeover in an endeavour to find arrangements that worked for them and their children. Almost half (18: 45%) had at some time had contact changeover taking place at their residence or the residence of the

contact parent, often at risk to themselves. Other commonly used changeover points were a supervised contact centre, women's resource centre, a police station or McDonalds.

The safest venues for changeover to take place for the women in our study appear to have been contact centres and schools (where older children were dropped off by one parent before school and picked up by the other parent after school). This is because they allowed for changeover with no contact between the parents, and thus offered the potential to keep women physically safe and spare children the trauma of witnessing further violence or adult conflict. However, these venues were not completely safe and not without other problems. For example, some women were ambushed on the way to or from a contact centre.

In contrast to the women's experiences, professionals typically assumed that public changeovers for contact, such as police stations and McDonalds, or the use of third parties to facilitate contact changeovers, were effective safeguards for women.

While there was support from women and many of the professionals for Contact Centres, some shortcomings were noted including: the distances the women had to travel to use the centres; a high turnover of staff such that some children dealt with a succession of strangers at changeovers; and the short periods of time that supervised changeover was made available in any particular case because of the high level of demand for these services in the community.

Only one of the women who used a third party to effect the changeover experienced this as an unqualified success. Other women reported problems such as the difficulty of finding a neutral third party who was willing to undertake the inconvenience of their role, and who was willing to put up with the abuse or harassment that sometimes came from the contact parent.

Some women commented that they had agreed to arrangements that they felt were unsafe because it was what the other party wanted and they were attempting to appease him or could not persuade him to do anything else. Other women said that such arrangements had been court ordered.

Children's experiences of contact

It is probably not possible to make hard and fast rules about the value to children of contact with a violent parent. Indeed, given that our research did not measure the relationship between contact and children's well being other than to ask mothers about children's behaviour at home after contact, we are unable to make specific findings on this. Nonetheless, the mothers' concerns about the children's well being during and after contact lead us to suggest that, in cases of domestic violence, it should not be presumed that contact is in the best interests of the child.

An overwhelming majority (71.4%) of the women who were resident parents expressed concerns about the treatment of the children during contact visits, and two of the contact parents expressed similar concerns in respect of residence. They described parenting practices that they considered were inappropriate, neglectful, or dangerous to the children's health and well-being. Some of the women described behaviours that seemed intended to annoy or upset the mother, and others described neglect that apparently arose because the contact parent was using contact to see the mother rather than the children.

More than half of the women who were resident parents (54.3%) said that their children were disturbed or unsettled after contact.

Of the women who commented on whether their children wanted contact with the contact parent (n=29), 62% said that at least one of their children wanted to have contact with the contact parent. Conversely, 11 (38%) said that their children did not want to have the contact they were required to have. Some older children who did not want to have contact appear to have had their wishes respected but others did not. Thus some children were required to face their father and tell him they did not want to have contact, or were put under considerable emotional pressure to go on contact. Some mothers talked about feeling complicit in traumatising their children by continually forcing or persuading them to go on contact when they did not wish to or when they feared the contact parent.

Almost half of the women who were resident parents (n=15, 42.8%) had had contact supervised at some point in an attempt to make contact safer for their children. Most had used informal supervision (n=12) and all had experienced problems with informal arrangements, including the breakdown of supervision because it was burdensome for the supervising party or due to ongoing harassment of the supervising party by the contact parent. Contact supervised by a relative of the contact parent seemed particularly problematic. Some women reported being verbally abused by the supervising party, and were concerned about the quality of the supervision.

Almost one-third of resident parents (n=11, 31.4%) said that they would like to have contact supervised through a centre but in nine cases there wasn't a contact centre in their area. Only 3 of the women with supervised contact had obtained formal supervision through a contact centre. In one instance this occurred at considerable personal expense and inconvenience to the resident parent. In two cases it had broken down, or was in the process of breaking down, because the children resisted having contact.

Professional respondents expressed mixed views about contact centres, particularly in cases involving violence. Concerns were expressed about the limited availability of such centres and their restricted hours, the level of supervision they were able to offer, the level of staff training for violence, whether the services they offered were linguistically and culturally appropriate, the effect on children of supervised contact at such

places, the appropriateness of contact at all in cases involving violence and the fear that the availability of such centres would mean that contact was ordered where it was inappropriate.

Breaches of contact arrangements

Almost half of the women (n=17, 48.6%) we interviewed who were resident parents described the threatened or actual abduction or non-return of children by the contact parent.

Almost half of the women (n=17, 48.6%) we interviewed who were resident parents had the experience of the contact parent failing to exercise contact. Women described this as having had negative consequences, including being unable to plan ahead, not having much needed time off from the children and the pain or disappointment experienced by the children.

The overwhelming majority of resident parents also experienced other breaches of the contact arrangements. In fact only 3 of the resident parents (8.6%) said that the contact parent always stuck to the letter of their arrangements. The most common complaint (48.6%) was that the contact parent did not collect or return the children at the appointed time. Other women described breaches of specific conditions designed to protect either them or the children, such as the contact parent being under the influence of drugs or alcohol when exercising contact, contrary to an order or agreement.

Despite breaches and other problems, many of the mothers went to extraordinary lengths to facilitate contact, including providing financial and material resources to make contact possible and enduring personal risks. However, some of the mothers we interviewed said that they had gradually become disillusioned with the value of contact for their children in circumstances where the contact parent was either neglectful or abusive.

Women typically reported that they complied with contact arrangements all of the time, or with limited exceptions. Some women had withheld contact in the short term while in refuges or awaiting court orders or the finalisation of agreements. Where women said that they had denied contact when there was an order or agreement in place, this usually related to the well being of the children. Examples given included: when the child was sick, when there were fears for the child's safety, when the child was distressed about having to go on contact or had made allegations of sexual assault against the contact parent or their associates.

Despite the numerous breaches that had occurred, most resident parents had not sought to enforce the terms of contact orders by bringing contravention applications. They talked of the prohibitive cost of going to court, the hopelessness of getting more court orders with no one to enforce them and fear of the other parent.

At least nine of the women were or had been at one point contact parents in relation to some or all of the children. Most of these women were prevented by the resident parent from exercising contact even when orders were in place and most had decided not to try and enforce the orders.

