

## 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

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### I INTRODUCTION

Cases involving families where there are allegations of domestic violence constitute a significant part of family court caseloads in Australia.<sup>1</sup> Research undertaken by the Australian Institute of Family Studies showed that allegations of spousal violence occurred in over 51 per cent of litigated cases, with the figure rising to over 70 per cent of cases not judicially determined.<sup>2</sup> These are complex and difficult cases often filled with allegations and counter-allegations.<sup>3</sup> A critical piece of evidence often obtained in these cases is a family assessment report (a 'family report'), which is prepared by a family consultant, usually a social worker or psychologist. A recent evaluation showed that family reports are increasingly being obtained in cases involving allegations of domestic violence or abuse, with a rise from one-third in the pre-reform cases reviewed to just over half post-reform.<sup>4</sup> This suggests that family report writers have a critical role to

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1 By which we refer to both the Federal Circuit Court and Family Court of Australia.

2 Lawrie Moloney et al, *Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-reform Exploratory Study* (Research Report No 15, Australian Institute of Family Studies, May 2007) 67. See also Adiva Sifris and Anna Parker, 'Family Violence and Family Law: Where to Now?' (2014) 4 *Family Law Review* 3, 5.

3 The Family Court of Australia reports that the percentage of cases that went to final judicial determination in which a 'Notice of Child Abuse, Family Violence or Risk of Family Violence' was filed increased from 10.2 per cent in 2010–11 to 16 per cent in 2014–15: Family Court of Australia, 'Annual Report: 2014–15' (Commonwealth Government, 2015) 67.

4 Rae Kaspiew et al, *Responding to Family Violence: A Survey of Family Law Practices and Experiences* (Australian Institute of Family Studies, 2015) 73–4. The family violence reforms were introduced to the *Family Law Act 1975* (Cth) by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth). The intention of the reforms was to improve approaches across the family law

play in how the family law system deals with allegations of domestic violence in parenting cases. However, Australian research in this area is currently limited. In this article, we report findings from a focus group study that formed part of an Australian pilot research project exploring family report writer practice in contexts of domestic violence.

Unfortunately for children and the victims of domestic violence, parental separation does not inevitably mean an end to the violence. Rather, domestic violence frequently continues post-separation and can increase in intensity. At its most extreme this may have lethal consequences for victims and/or their children, but other detrimental effects on children include ‘aggression and self-harming behaviours, substance abuse, bed wetting and withdrawn behaviours’.<sup>5</sup> It is against the backdrop of relationship dissolution and a heightened risk of experiencing domestic violence that families enter into family law proceedings.

Australian family law emphasises the importance of protecting the best interests of children post-separation.<sup>6</sup> In the context of regulating the making of post-separation arrangements about children, section 60CC(2A) of the *Family Law Act 1975* (Cth) (*Family Law Act*) now prioritises protecting children from both physical and psychological harm, but section 60CC continues also to emphasise the importance of maintaining a relationship where possible with each of the parents. Research into the ongoing reform processes in family law has demonstrated that tensions are created by these dual aims and has shown that safety is not always prioritised over ongoing contact with both parents in terms of case outcomes.<sup>7</sup> When the government introduced the 2011 family violence amendments, it conceded that the reports received about earlier reforms ‘indicate that the [*Family Law Act*] fails to adequately protect children and other family

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system to handling concerns about family violence, child abuse and child safety in parenting matters. Pre-reform matters include matters initiated after 1 July 2009 and finalised by 1 July 2010. Post-reform matters include those initiated after 1 July 2012 and finalised by 30 November 2014.

- 5 Stephanie Holt, ‘Domestic Abuse and Child Contact: Positioning Children in the Decision-Making Process’ (2011) 17 *Child Care in Practice* 327, 336. See also Lesley Laing, ‘Domestic Violence in the Context of Child Abuse and Neglect’ (Topic Paper, Australian Domestic & Family Violence Clearinghouse, 2003) 2; Lorraine Radford and Marianne Hester, *Mothering through Domestic Violence* (Jessica Kingsley Publishers, 2006) 92–3. See also Carolyn Harris Johnson, *Come with Daddy: Child Murder-Suicide after Family Breakdown* (University of Western Australia Press, 2005). Separation is a dangerous time with almost a quarter of all intimate partner homicides in Australia being committed between separated or former partners: see Jenny Mouzos and Catherine Rushforth, ‘Family Homicide in Australia’ (Trends and Issues in Crime and Criminal Justice Paper No 255, Australian Institute of Criminology, June 2003) 2.
- 6 See *Family Law Act 1975* (Cth) pt VII; see especially *Family Law Act 1975* (Cth) ss 60B, 60CC, 60CC(2), 60CC(2A), 60CG, 60H.
- 7 After a major set of amendments to the *Family Law Act*’s children’s provisions in the mid-1990s by the *Family Law Reform Act 1995* (Cth), some researchers considered that the new regime had created a ‘pro-contact’ culture in family law: see Helen Rhoades, Regina Graycar and Margaret Harrison, ‘The Family Law Reform Act 1995: Can Changing Legislation Change Legal Culture, Legal Practice and Community Expectations?’ (Interim Report, University of Sydney and Family Court of Australia, April 1999); Helen Rhoades, Regina Graycar and Margaret Harrison, ‘The Family Law Reform Act 1995: The First Three Years’ (Research Report, University of Sydney and Family Court of Australia, December 2000); Amanda Shea Hart and Dale Bagshaw, ‘The Idealised Post-Separation Family in Australian Family Law: A Dangerous Paradigm in Cases of Domestic Violence’ (2008) 14 *Journal of Family Studies* 291.

members from family violence'.<sup>8</sup> For many years it has not been unusual for the parent with whom a child does not primarily live (usually fathers) to be granted some level of contact with the child, on the basis that this serves the child's best interests, even where that parent is a perpetrator of domestic violence.<sup>9</sup> Our research indicates that, despite the intentions of the reforms to prioritise the safety of children, this situation has not changed since the introduction of the reform amendments.

In Australia, and in other Western jurisdictions including the United Kingdom and United States, family reports are prepared in many parenting cases, particularly those involving complex social issues such as domestic violence. The reports are influential evidence prepared by an expert witness who is independent of the parties. In a system that protects the best interests of children post-separation, and ensures the protection of children from both physical and psychological harm, family report writers ought to be expected to possess significant knowledge of, and have substantial insight into, the complexities of domestic violence, its impact on families and particularly on children. However, as will be demonstrated below, both the research findings reported in this article and prior studies suggest significant gaps in the required levels of knowledge and insight in the current system.

Generally, judicial officers are not domestic violence experts and they can only make decisions on the basis of the evidence before them.<sup>10</sup> Given that domestic violence happens in the privacy of intimate relationships and victims have likely experienced barriers to disclosure as a result of perpetrators' coercively controlling tactics, sparse evidence may be available to prove allegations of abuse. The evidence is also often poorly pleaded or presented.<sup>11</sup> This means that adequate evidence of domestic violence is sometimes lacking in court proceedings. A deficit of evidence together with uneven and often limited knowledge about the nature and impact of domestic violence, and a system that encourages ongoing contact between children and their parents, may explain why

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8 Explanatory Memorandum, Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (Cth) 1.

9 Zoe Rathus, 'Social Science or "Lego-Science"? Presumptions, Politics, Parenting and the New Family Law' (2010) 10 *QUT Law & Justice Journal* 164, 190. See also, Rae Kaspiew et al, 'Evaluation of the 2006 Family Law Reforms' (Report, Australian Institute of Family Studies, December 2009); Dale Bagshaw et al, 'The Effect of Family Violence on Post-Separation Parenting Arrangements: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006' (2011) 86 *Family Matters* 49; Richard Chisholm, 'Family Courts Violence Review' (Report, Attorney General's Department (Cth), 27 November 2009); Stephanie Holt, Helen Buckley and Sadbh Whelan, 'The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature' (2008) 32 *Child Abuse & Neglect* 797; Patricia Eastal and Dimian Grey, 'Risk of Harm to Children from Exposure to Family Violence: Looking at How It Is Understood and Considered by the Judiciary' (2013) 27 *Australian Journal of Family Law* 59.

10 Deborah Epstein, 'Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System' (1999) 11(3) *Yale Journal of Law and Feminism* 3, 27. See also Marjory D Fields, 'Getting Beyond "What Did She Do to Provoke Him?": Comments by a Retired Judge on the Special Issue on Child Custody and Domestic Violence' (2008) 14 *Violence Against Women* 93.

11 Kaspiew et al, 'Evaluation of the 2006 Family Law Reforms', above n 9, 251–2.

discourses based on normative misconceptions of domestic violence (discussed in Part II below) are easily evoked.<sup>12</sup>

This article reports on data gathered through focus groups which sought the perspectives of professionals working in the family law system. It included both people who provided legal advice and those who provided social support to parties in family law proceedings where there is a history or presence of domestic violence. The aim of the focus groups was to better understand current approaches and gain insights into how current practice in family report writing might be improved. This research is important because studies specifically focused on the practice of Australian family report writing are sparse or outdated. This study is the first in Australia and worldwide to provide in-depth qualitative exploration of expert assessor practice from the perspective of those advising and supporting victims at the ‘coalface’ of family law practice.<sup>13</sup> By giving legal practitioners and social support service providers the opportunity to express their viewpoints through open discussion we were able to tap into a body of extensive knowledge that has yet to be explored.

The article begins with a discussion of the extant literature. The methodology of our study is then explained and findings presented. We conclude with a call for further research.

## II LITERATURE REVIEW

### A Domestic Violence, Children and Parenting

In this article the focus is on domestic violence as a coercively controlling pattern of ongoing intentional domineering tactics employed mainly by adult men against their female (ex)intimate partners with the intent of governing their victim’s thoughts, beliefs or conduct and/or to punish them for resisting his regulation.<sup>14</sup> These tactics may include but are not limited to

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12 Amanda Shea Hart, ‘Child Safety in Australian Family Law: Responsibilities and Challenges for Social Science Experts in Domestic Violence Cases’ (2011) 46 *Australian Psychologist* 31, 32–3. See also Kaspiew et al, ‘Evaluation of the 2006 Family Law Reforms’, above n 9, 245–6.

13 Research in the United States and United Kingdom on ‘expert’ evaluations in family law proceedings have included surveys and interviews of evaluators, undertaking content analyses of their reports and/or interviews with victims. The scholarly literature on this research is cited extensively in Samantha Jeffries, ‘In the Best Interests of the Abuser: Coercive Control, Child Custody Proceedings and the “Expert” Assessments that Guide Judicial Determinations’ (2016) 5(1) *Laws* 8 <<http://www.mdpi.com/2075-471X/5/1/14>>; Rachael Field et al, ‘Family Reports and Family Violence in Australian Family Law Proceedings: What Do We Know?’ (2016) 25 *Journal of Judicial Administration* 212.

14 Radford and Hester, above n 5; Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007) 12–13; National Council to Reduce Violence against Women and Their Children, ‘Time for Action: The National Council’s Plan for Australia to Reduce Violence Against Women and Their Children, 2009–2021’ (Background Paper, Department of Social Services, March 2009) 13.

emotional/psychological, verbal, social, economic, psychological, spiritual, physical and sexual abuse.<sup>15</sup>

It has been recognised that children living with post-separation coercive control may be especially distressed.<sup>16</sup> This is unsurprising because post-separation child contact can replace the intimate relationship as the avenue for perpetrators to intimidate and control their former intimate partners.<sup>17</sup> As a result, children can ‘bear the brunt’ of ongoing post-separation domestic violence. Many will be directly abused (psychologically, verbally, physically and sexually) by perpetrators during contact visits and/or will continue to witness the ongoing perpetration of post-separation violence. Handing over children to perpetrators for contact is particularly risky with many victims reporting being abused either physically or verbally when dropping their children off for contact.<sup>18</sup> The re-partnering of perpetrators is of further concern as many go on to perpetrate violence and abuse against their new partner, again exposing the children to violence and abuse.<sup>19</sup>

Further, as is the case prior to separation, perpetrators habitually use and engage children in their extended post-separation campaign of control and intimidation against the victim.<sup>20</sup> The physical and sexual abuse of children is noted to be a particularly insidious way that perpetrators continue to incite fear in victims.<sup>21</sup> Other examples of the use and engagement of children in the perpetration of violence include:

- requiring them to monitor and report on the victim’s whereabouts, movements, behaviour, and relationships;
- involving children in discussions around harming and sometimes even killing the victim;
- denigrating the victim, undermining her parenting and attempting to fracture the child’s relationship with her;
- abducting the children or threatening to do so;

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15 Liesl Mitchell, ‘Domestic Violence in Australia – An Overview of the Issues’ (Department of Parliamentary Services, 2011) 2–3. This definition is consistent with the current definition of family violence in the *Family Law Act* s 4AB.

16 Ravi Thiara and Christine Harrison, ‘Safe Not Sorry: Supporting the Campaign for Safer Child Contact: Key Issues Raised by Research on Child Contact and Domestic Violence’ (Report, Women’s Aid, 2016) 6; Christine Harrison, ‘Implacably Hostile or Appropriately Protective?: Women Managing Child Contact in the Context of Domestic Violence’ (2008) 14 *Violence Against Women* 381, 385.

17 Radford and Hester, above n 5, 91–5; see, eg, Stark, above n 14, 251.

18 Radford and Hester, above n 5, 95–6; Thiara and Harrison, above n 16, 6; Holt, ‘Domestic Abuse and Child Contact’, above n 5, 336. See also Miranda Kaye, Julie Stubbs and Julia Tolmie, ‘Domestic Violence, Separation and Parenting: Negotiating Safety Using Legal Processes’ (2003) 15 *Current Issues in Criminal Justice* 73, 89–90.

19 Sharon Woffordt, Delbert Elliott Mihalic and Scott Menard, ‘Continuities in Marital Violence’ (1994) 9 *Journal of Family Violence* 195, 215–16.

20 Similar findings were described in Kathryn Rendell, Zoe Rathus and Angela Lynch, *An Unacceptable Risk: A Report on Child Contact Arrangements where there is Violence in the Family* (Women’s Legal Service, 2000) ch 3.

21 Radford and Hester, above n 5, 95–8; Thiara and Harrison, above n 16, 17–18; Lundy Bancroft, Jay G Silverman and Daniel Ritchie, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (Sage, 2<sup>nd</sup> ed, 2012) 107–22.

- returning the children dirty, unfed or emotionally distraught;
- having the children transmit messages, including threats, to the victim;
- withholding child support;
- using litigation or threats of litigation over child contact to further intimidate and harass the victim; and
- deliberately endangering the children, neglecting them and making groundless reports of maternal child abuse.<sup>22</sup>

The very nature of perpetrators' abusive behaviour calls into question their capacity to parent. Research also highlights further issues about the parental capabilities of perpetrators, particularly in the context of post-separation contact (where perpetrators are afforded longer periods alone with their children).<sup>23</sup> In contrast to non-abusive men, perpetrator fathers are often:

- poor role models (that is, they model violent, abusive and patriarchal norms to their children);
- overly rigid, authoritarian and coercive in their parenting style;
- lacking in empathy and respect for their children;
- neglectful and/or irresponsible in their parenting;
- verbally abusive and manipulative; and
- possessive with a propensity to perceive their children as their property.

Perpetrators of violence also have an inflated sense of entitlement which can result in parent/child role reversal.

Victims face particular parenting challenges also.<sup>24</sup> They may be:

- preoccupied and continue to be fearful of their abuser;
- physically and emotionally exhausted;
- economically strained (due to previous and ongoing financial abuse);
- 'lacking in parental confidence';
- anxious, depressed, or paranoid (with logical reason);

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22 Radford and Hester, above n 5, 91–8; Stark, above n 14, 251; Thiara and Harrison, above n 16, 15–18; Bancroft, Silverman and Ritchie, above n 21, 131–42.

23 Joan S Meier, 'Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions' (2003) 11 *Journal of Gender, Social Policy & the Law* 657; Radford and Hester, above n 5; Ellen Pence et al, 'Mind the Gap: Accounting for Domestic Abuse in Child Custody Evaluations' (Report, The Battered Women's Justice Project, June 2012) 21; Gillinder Bedi and Chris Goddard, 'Intimate Partner Violence: What are the Impacts on Children?' (2007) 42 *Australian Psychologist* 66; Bancroft, Silverman and Ritchie, above n 21; Stark, above n 14; Jennifer L Hardesty, Megan L Haselschwerdt and Michael P Johnson, 'Domestic Violence and Child Custody' in Kathryn Kuehne and Leslie Drozd (eds), *Parenting Plan Evaluations: Applied Research for the Family Court* (Oxford University Press, 2012) 442; Peter G Jaffe, David A Wolfe and Susan Kaye Wilson, *Children of Battered Women* (Sage, 1990); Einat Peled, 'Parenting by Men Who Abuse Women: Issues and Dilemmas' (2000) 30 *British Journal of Social Work* 25; Stephanie Holt, 'Focusing on Fathering in the Context of Domestic Abuse: Children's and Fathers' Perspectives' in Nicky Stanley and Cathy Humphreys (eds), *Domestic Violence and Protecting Children: New Thinking and Approaches* (Jessica Kingsley Publishers, 2015) 166.

24 Pence et al, above n 23, 22.

- substance abusing (as a form of self-medication); and/or
- affected by post-traumatic stress.<sup>25</sup>

All these factors have the potential to impair parenting and detrimentally impact the parent/child relationship.<sup>26</sup> This is concerning because studies show that a positive relationship with the non-abusive parent can reduce the negative effects of domestic violence on children.<sup>27</sup> Further, it is important to be aware that the challenges created by the dynamic of domestic violence, and the adverse consequences of domestic violence on the victim's parenting, usually dissipate once she is safe.<sup>28</sup>

An honest recognition of the impact of domestic violence on a perpetrator's capacity to parent poses an inevitable challenge to the propriety of promoting the maintenance of the child's relationship with the perpetrator. In a family law culture which favours shared parenting and the maintenance of parent-child relationships post-separation, this has resulted in the development of a number of discursive strategies to downplay or remove the relevance of coercive control to considerations of children's best interests.<sup>29</sup> For example, research conducted on judicial decision-making in family law matters shows that perpetrator/child relationships can be maintained by invalidating (that is, minimising, dismissing or completely negating) consideration of the perpetration of coercive control through discourses grounded in normative misconceptions of gender and domestic violence.<sup>30</sup> The following themes about how domestic violence is dealt with in family law systems have been distilled from Australian and international research and, as will be demonstrated below, these are reflected in the research findings presented in this article.<sup>31</sup>

1. *Constructing domestic violence as inconsequential* – Here, the impact of living with domestic violence is ignored, not considered or misunderstood. Domestic violence is presented as extraneous to

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25 Ibid.

26 Daniel G Saunders, 'Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors, and Safety Concerns' (Applied Research Paper, National Online Resource Centre on Violence against Women, 2007). See also Hardesty, Haselschwerdt and Johnson, above n 23.

27 See Jeffries, above n 13, 4–5; Peter G Jaffe, Nancy K D Lemon and Samantha E Poisson, *Child Custody & Domestic Violence: A Call for Safety and Accountability* (Sage, 2003) 28–9. See also Bancroft, Silverman and Ritchie, above n 21; Hardesty, Haselschwerdt and Johnson, above n 23; Thiara and Harrison, above n 16, 18.

28 Hardesty, Haselschwerdt and Johnson, above n 23, 20.

29 See, eg, Radford and Hester, above n 5, ch 7; Holt, 'Domestic Abuse and Child Contact', above n 5; Meier, above n 23; Saunders, above n 26; Rathus, above n 9; Thiara and Harrison, above n 16, 19–20; Rita Smith and Pamela Coukos, 'Fairness and Accuracy in Evaluations of Domestic Violence and Child Abuse in Custody Determinations' (1997) 36(4) *Judges' Journal* 38; Jaffe, Lemon and Poisson, above n 27; Amanda Shea Hart, *Children Exposed to Domestic Violence: Whose 'Best Interests' in the Family Court?* (PhD Thesis, University of South Australia, 2006); Daniel G Saunders, Kathleen C Faller and Richard M Tolman, 'Child Custody Evaluators' Beliefs about Domestic Abuse Allegations: Their Relationship to Evaluator Demographics, Background, Domestic Violence Knowledge and Custody-Visitation Recommendations' (Report, Department of Justice (US), June 2012).

30 See, eg, Hart and Bagshaw, above n 7; Hart, 'Child Safety in Australian Family Law', above n 12; Hart, *Children Exposed to Domestic Violence*, above n 29.

31 See the literature cited in Jeffries, above n 13, and Field et al, above n 13.

parenting. The possible future risks perpetrators pose to the welfare of the children are frequently ignored, with attention instead given to the negative impacts on children of not having contact with their father.

2. *Reconstituting the domestic violence as something other than coercive control* – This approach seeks to reduce the perception of the seriousness of domestic violence by casting it as mutual, not that serious, or reframing it as ‘just parental conflict’. Domestic violence is also often posited as a sporadic ‘episode’ or as an act from the past which is no longer relevant. As such responsibility is foisted on victims to ‘get over it’ and ‘move on.’
3. *Invoking normative gendered misconceptions* – Here, women who are victims of domestic violence are seen as lacking credibility. They are considered to be hysterical, manipulative, dishonest, prone to overstatement, unreasonable, unfriendly or alienating parents. Assumptions are made that their allegations of abuse are false or exaggerated. In contrast, men who are perpetrators of violence are seen as credible, operating in good faith and genuinely wanting a relationship with their children. Incorrect assumptions are made that the perpetration of domestic violence is limited to the victim and that the perpetrator can otherwise be a good parent. The result of these gendered misconceptions is that the family law system is dismissive of victims of domestic violence and holds them to higher standards than perpetrators.
4. *Adherence to misconceptions about the victims and perpetrators* – It is commonly misconceived that perpetrators simply have ‘anger management issues’ or ‘lack impulse control’, and that victims provoke perpetrators.
5. *Selectively silencing or misconstruing children’s voices* – Children are often considered to be unreliable witnesses when it comes to making statements about violence and abuse. Children who express aversion toward the perpetrator and/or the idea of contact with him are disbelieved because they are seen as being either unhealthily enmeshed with the victim or as having taken on her irrational fears. Instead of being considered protective parents, victims are often seen as alienating the children from the perpetrator. Counter to this, when children express positivity toward the perpetrator and the idea of contact with him, they are immediately believed, and the reasons why a child might act in this way (for example, out of fear or to protect the victim) are not considered or taken into account.
6. *Invoking a hierarchy of evidence credibility* – The expert family report is often accepted as the ultimate authority. The opinions of family report writers are privileged in the system over other evidence, including the evidence of non-abusive parents, children, children’s regular therapists, child protection officers and the police.

When a court orders ongoing contact between a child and an abusive parent the victim parent and the child are not extended an opportunity to heal. Rather, they are required to continue to live with the trauma of domestic violence. Further, in situations where an order is made which provides a perpetrator with unsupervised contact with the children for longer periods than was ever likely to have occurred prior to separation, the child is placed in grave risk of harm because the perpetrator is free from any protective maternal influence. On contact, a child is forced into a situation where they have to cope alone with an abusive perpetrator.<sup>32</sup>

It is important to highlight that there is no research evidence to support benefits to children from having regular contact with perpetrators of domestic violence.<sup>33</sup> Rather studies show that contact with a violent parent is generally a negative experience for children because, as observed by Radford and Hester, '[e]verything that happens to children living in families where there is domestic violence also happens after separation, and sometimes the incidents are worse'.<sup>34</sup> Therefore an evidence-based approach to post-separation arrangements for children in matters where there is domestic violence should provide an exception to the post-separation emphasis on maintaining parent-child relationships. Instead of promoting contact through the use of discourses grounded in normative misconceptions of gender and domestic violence, experts and decision-makers in the system need to ensure that the intention of the legislation is upheld – which is to prioritise the protection of children from harm.<sup>35</sup>

## B Expert Assessors in Family Law

Australian expert assessments in post-separation parenting matters are prepared by family consultants, who are usually qualified social workers or psychologists.<sup>36</sup> Family reports are intended to provide independent expert evidence about family dynamics and guidance to decision-makers as to how the child's best interests might be served post-separation.<sup>37</sup>

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32 Radford and Hester, above n 5, 97.

33 Ibid 86.

34 Ibid 95.

35 See, eg, *Family Law Act* ss 60CC(2), (2A).

36 The functions of 'family consultants' are set out in *Family Law Act* s 11A:

The functions of family consultants are to provide services in relation to proceedings under this Act, including:

- (a) assisting and advising people involved in the proceedings; and
- (b) assisting and advising courts, and giving evidence, in relation to the proceedings; and
- (c) helping people involved in the proceedings to resolve disputes that are the subject of the proceedings; and
- (d) reporting to the court under sections 55A and 62G; and
- (e) advising the court about appropriate family counsellors, family dispute resolution practitioners and courses, programs and services to which the court can refer the parties to the proceedings.

See also *Family Law Act* ss 11A–G, 38BA, 38N, 65L, 69ZS.

37 Eastaale and Grey, above n 9, 72; Lawrie et al, 'Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-Reform Exploratory Study' (Research Report No 15, Australian Institute of Family Studies, May 2007) 91; Judy Cashmore and Patrick Parkinson, 'Children's

Family reports are often the only social science evidence available in parenting matters, and therefore, if they are to work to protect children from domestic violence, they need to provide the best evidence possible to enable decisions that are in the child's best interests. Cases in which a family report is obtained are amongst the most complex and the impact of these reports on post-separation parenting arrangements in and out of court is significant. Family reports are not only crucial evidence in parenting matters before a court, they are also important to pre-trial negotiations and family dispute resolution processes, as they are acknowledged to be a 'very powerful settlement tool'.<sup>38</sup> Of particular significance to victims is their influence on Legal Aid decisions. An unfavourable family report can mean that a grant of legal aid will not be made to continue to trial.<sup>39</sup> This can clearly have a huge impact on victims who may then be obliged to self-represent against their abuser.

There are a number of different avenues for the appointment of a family report writer. When looking at the issue of the quality and efficacy of family reports, as here in the context of matters involving domestic violence, it is important to be clear about the professional framework in which a family report is being written. Some family report writers are employees of the family courts, some are employed at Legal Aid offices,<sup>40</sup> and others operate from private practice. Those in private practice are appointed under regulation 7 of the *Family Law Regulations 1984* (Cth) by the Chief Executive Officer of the Family Court or the Federal Circuit Court. It is the family report writers who are employees of the court whose report writing is most clearly guided by a range of formal standards, professional tools and training materials.<sup>41</sup> The Australian Assessment Standards of Practice for Family Assessments and Reporting<sup>42</sup> provide guidance to family report writers but are also a statement to others in the family system about what can be expected from a family report. Family report writers not employed by the courts may be, and should be, informed by these standards and guidelines but it is a matter for each professional.<sup>43</sup> The court can only be

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Participation in Family Law Disputes: The Views of Children, Parents, Lawyers and Counsellors' (2009) 82 *Family Matters* 15, 16.

38 Kaspiew et al, 'Evaluation of the 2006 Family Law Reforms', above n 9, 317.

39 Australian Women Against Violence Alliance, 'Access to Justice for Women and Children Living with or at Risk of Violence' (Policy Brief, 2016) <<http://awava.org.au/2016/08/22/research/7424>>.

40 This is the situation in Queensland where the current research was undertaken. It also occurs in South Australia.

41 These documents include professional guidelines and tools created by the Child Dispute Services at the family courts to be used by their family report writers: *Family Violence Screening; Professional Directions: Family Reports; Support Persons; Family Violence Safety Issues; Notification of Risk of Abuse*. They have been generously provided to the research team by the Acting Principal, Child Dispute Services, Ms Jane Reynolds. The documents are on file with the authors. For a more comprehensive discussion about the formal framework, see Field et al, above n 13.

42 Pam Hemphill and David Hugall, 'Australian Assessment Standards of Practice for Family Assessments and Reporting' (Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia, February 2015). The Standards are the official guidelines informing the writing of family reports.

43 The professional bodies – the Australian Association of Social Workers and the Australian Psychological Society – may also play a role in maintaining and regulating the competence of their members and the currency of their knowledge.

responsible for the standard of family reports written by its own employees. This means that inconsistencies in the nature and standards of family reports are possible in the current system. The discussions during the focus groups were general in nature and did not involve distinguishing between reports done by family consultants employed at the courts and those who became family report writers through other avenues.

Only limited research has been conducted in Australia and overseas looking at the efficacy of family reports in matters where there is domestic violence. Extant studies affirm the research discussed above regarding how domestic violence is dealt with more generally in the family law system, suggesting that expert court assessors often promote contact through invalidating or diminishing the relevance of consideration of domestic violence.<sup>44</sup> The international research suggests that reasons for this approach may stem from a lack of understanding and training about the nature, dynamics and impact of coercive control.<sup>45</sup> Poor assessment practices are also considered a factor, such as assessments being made under tight time constraints or the range of information sources being too narrow (for example, failing to consult with extended family, teachers, psychologists, child protection workers, police and so on).<sup>46</sup> Questions of training and assessment practice have yet to be explored in Australia.

Research on family report writers and their treatment of domestic violence in Australia is limited to two dedicated studies and two notations in larger research projects.<sup>47</sup> Two of these studies occurred prior to some significant changes in the legislation relating to domestic violence in 2012. Before mid-2012 the dual intentions of the *Family Law Act* were to encourage ongoing relationships with both parents and to protect children from abuse. Concerns that the *Family Law Act* and family law system were not responding adequately to domestic violence led to the introduction of family violence amendments which came into force on

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44 See Pence et al, above n 23; Hart, 'Child Safety in Australian Family Law', above n 12; Hart, *Children Exposed to Domestic Violence*, above n 29; Saunders, Faller and Tolman, 'Child Custody Evaluators' Beliefs', above n 29; Moloney et al, above n 2; Kaspiew et al, *Responding to Family Violence*, above n 4; Maddy Coy et al, 'Picking Up the Pieces: Domestic Violence and Child Contact' (Research Report, Rights of Women and CWASU, 2012); Michael S Davis et al, 'Custody Evaluations when there are Allegations of Domestic Violence: Practices, Beliefs, and Recommendations of Professional Evaluators' (Final Report, Department of Justice (US), 29 November 2010); Megan L Haselschwerdt, Jennifer L Hardesty and Jason D Hans, 'Custody Evaluators' Beliefs about Domestic Violence Allegations during Divorce: Feminist and Family Violence Perspectives' (2011) 26 *Journal of Interpersonal Violence* 1694; Daniel G Saunders, Richard M Tolman and Kathleen C Faller, 'Factors Associated with Child Custody Evaluators' Recommendations in Cases of Intimate Partner Violence' (2013) 27 *Journal of Family Psychology* 473; Pam Hemphill, 'On the Crest of a Wave: The Australian Family Violence Reforms One Year Later' (Paper presented at the Association of Family and Conciliation Courts 50<sup>th</sup> Annual Conference, Los Angeles, 1 June 2013); Jason D Hans et al, 'The Effects of Domestic Violence Allegations on Custody Evaluators' Recommendations' (2014) 28 *Journal of Family Psychology* 957. For a comprehensive review of the current international and national research literature, see Jeffries, above n 13, and Field et al, above n 13.

45 See the literature cited in Jeffries, above n 13, and Field et al, above n 13.

46 Saunders, Faller and Tolman, 'Child Custody Evaluators' Beliefs' above n 29, 109–11; Haselschwerdt, Hardesty and Hans, above n 44.

47 Hart, 'Child Safety in Australian Family Law', above n 12; Moloney et al, above n 2; Kaspiew et al, *Responding to Violence*, above n 4; Hemphill, above n 44.

7 June 2012.<sup>48</sup> As we noted above, the *Family Law Act* now prioritises the protection of children ‘from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence’ over and above any ‘benefit to the child of having a meaningful relationship with both parents’.<sup>49</sup> On the basis of these amendments it could be expected that changes in family report writing practice would be seen after 2012, with greater awareness about domestic violence and less emphasis on the promotion of contact in matters involving domestic violence.

The first Australian study, undertaken as part of a larger project examining allegations of domestic violence in family law proceedings, found that views were rarely expressed in family reports about specific allegations of domestic violence. Analyses of evidentiary material about domestic violence in family reports in 300 file cases between 2002 and 2003 revealed that ‘of all allegations raised, no more than 10% in any group were fully or partially corroborated by a Family Report, and no more than 2% were fully or partially discredited’.<sup>50</sup>

Hart’s qualitative analyses of 20 family court judgments between 1991 and 2001 explored the role of family reports in judicial constructions of children’s best interests in cases where domestic violence was alleged.<sup>51</sup> She found that family report writers, and in turn judges, demonstrated limited or no understanding of domestic violence and its impacts. The context of violence within the family tended to be minimised in the family reports referred to in the judgments. Children’s exposure to violence, its impacts and potential future risk posed to victims and their children were not key considerations. Further, domestic violence was frequently reconstituted or reframed as mutual parental ‘conflict’, and it was this, rather than exposure to what were often extreme acts of domestic violence, that was judged as impacting adversely on the children. Even in the few cases where domestic violence was acknowledged as an issue, the negative effects to children were ‘commonly ignored, minimised or de-contextualised from the violence’.<sup>52</sup>

Hart found that victims of violence tended to be positioned within normative gendered frameworks which negated their credibility. Thus, victims were referred to as ‘hostile and/or irresponsible in their parenting’, and they were situated within a strong discourse of parental alienation – berated for interfering, destabilising and sabotaging relationships between perpetrators and their children.<sup>53</sup> There was little to no recognition that behaviours that might appear ‘hostile’ could in fact be symptomatic of victimisation and/or result from a victim’s fears for their safety and that of their children. Hart observed that certain behaviours were identified as ‘alienating’ when they were really maternal

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48 The family violence reforms were introduced to the *Family Law Act* as amended by *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth).

49 *Family Law Act* ss 60CC(2), (2A).

50 Moloney et al, above n 2, 91.

51 Hart, ‘Child Safety in Australian Family Law’, above n 12, 33, 37.

52 Jeffries, above n 13, 8.

53 Hart, ‘Child Safety in Australian Family Law’, above n 12, 35.

protective actions.<sup>54</sup> She also found that parenting orders that resulted from an inadequate assessment of violence allegations potentially re-exposed victims to domestic violence. Rather than prioritising child safety, the family report assessments referred to in the judgments tended to construe the child's best interests in terms of the maintenance of the relationship with the perpetrator.<sup>55</sup>

Hart's study is unique as it was the first in Australia to systematically focus on the role of family reports in family law proceedings. However, given the small sample size, the fact that assessment of these reports was based on secondary judicial reference to them and that the research is now somewhat dated (ie, pre-2012 amendments), we need to be careful before drawing definitive conclusions. Her findings are nonetheless supported by more rigorous international explorations of this issue, as well as more recent Australian studies.<sup>56</sup>

Hemphill's Australian research, which specifically focused on family reports and domestic violence, consisted of a survey of 58 family report writers and an analysis of 200 family reports, one set on either side of the 2012 amendments referred to above.<sup>57</sup> Providing further support to the idea that domestic violence is being reframed as something other than coercive control, results suggested that family report writers had difficulty differentiating coercive control from other types of violence, such as mutual or situational violence.<sup>58</sup> While results from the survey component of this research suggested family consultants had become more knowledgeable about domestic violence after the 2012 reforms, analyses of assessment documents revealed a disjuncture between reported understandings, assessments and recommendations; suggesting very little had in fact changed.<sup>59</sup>

Again, as part of a larger evaluation of the family law system after the 2012 family violence reforms, another study showed family reports were more likely to be ordered in cases involving domestic violence post-reforms (33 per cent compared with 53 per cent) and there was an increase in 'explicit discussion of risk assessment' (22 per cent compared with 31 per cent) by family report writers.<sup>60</sup> A survey of judicial officers and lawyers conducted as part of the broader evaluation also confirmed this. Many agreed that there had been a shift in the practice of report writers in terms of the content included. However when they were asked whether report writers had provided recommendations that addressed the implications of information about family violence, child abuse and child safety concerns since the family violence reforms, responses indicated 'some unevenness in practice in this regard': 34 per cent 'reported that this was sometimes their experience', '16% reported that this was rarely or never the case' and around 40 per cent agreed that family reports 'almost always or often provided such recommendations'.<sup>61</sup>

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54 Ibid 35–7.

55 Jeffries, above n 13, 8.

56 Ibid; Field et al, above n 13.

57 See Hemphill, above n 44.

58 Saunders, Faller and Tolman, 'Child Custody Evaluators' Beliefs', above n 29, 25–6.

59 See further discussion below.

60 Rae Kaspiew et al, 'Court Outcomes Project' (Australian Institute of Family Studies, October 2015) 43–66; see especially ch 4.

61 Kaspiew et al, *Responding to Family Violence*, above n 4, 43 [4.4.2].

The available research points to the importance of exploring Australian family report writing practice, particularly in matters involving domestic violence. In the next Part we explain the methodology of our focus group study which sought the perspective of professionals providing legal and social support to victims, to better understand current approaches and gain insights into how current practice might be improved.

### III METHODOLOGY

As noted above, research focused specifically on the practice of Australian family report writing is limited and out-of-date having been conducted prior to the 2012 family violence reforms. This study is the first in Australia and worldwide to provide in-depth qualitative exploration of expert assessor practice from the perspective of professionals who directly support and advise victims of domestic violence in parenting matters.<sup>62</sup> Our research gives legal practitioners and social support service providers a voice that has not been a part of the literature to date.

Focus groups are utilised to obtain detailed information and insight into particular topics.<sup>63</sup> They provide a conversational outlet for research participants with the focus group researcher/moderator encouraging discussion between participants by posing particular topics constructed around the aims of the research.<sup>64</sup> The methodological standard is that focus groups should involve six to eight people who have come from similar backgrounds or who have similar experiences or concerns. They are brought together by the researcher/moderator in a setting where participants feel comfortable enough to engage in a dynamic discussion for around one to two hours. Focus groups encourage a range of responses, which provide in-depth understanding of participants' opinions and perceptions. By allowing group discussion, focus groups can help researchers capture the shared experiences of participants, accessing elements that other methods (such as in-depth interviews) may not be able to reach. Focus groups put control of the interaction into participant hands with the collective interaction between them substituting for their exchange with the researcher. This gives prominence to the participants' viewpoints. In addition, focus groups are

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62 Research in the United States and United Kingdom on expert evaluations in family law proceedings have included surveys and interviews of evaluators, undertaking content analyses of their reports and/or interviews with victims. This research is cited extensively in Jeffries, above n 13; Field et al, above n 13.

63 The efficacy of the focus group methodology is well established in sociological methodology texts: see, eg, Bruce L Berg, *Qualitative Research Methods for the Social Sciences* (Pearson, 5<sup>th</sup> ed, 2004); Michael Quinn Patton, 'Qualitative Research' in Brian S Everitt and David C Howell (eds), *Encyclopedia of Statistics in Behavioral Science* (Wiley, 2005) vol 3, 1633; David Silverman, *Doing Qualitative Research: A Practical Handbook* (Sage, 3<sup>rd</sup> ed, 2010); Richard A Krueger and Mary Anne Casey, *Focus Groups: A Practical Guide for Applied Research* (Sage, 5<sup>th</sup> ed, 2015).

64 Pranee Liamputtong, *Focus Group Methodology: Principles and Practice* (Sage, 2011) 3–5; Richard A Krueger, *Focus Groups: A Practical Guide for Applied Research* (Sage, 2<sup>nd</sup> ed, 1994).

beneficial in assessing needs, developing ideas, improving existing processes, and generating information for further research.<sup>65</sup>

In this study, 13 focus groups involving a total of 56 participants were facilitated. Twelve focus groups took place in South East Queensland and one focus group took place in a regional town in North Queensland. Each focus group comprised of only one category of professional (eg, legal practitioners participated only in a group with other legal practitioners. The initial plan was to recruit legal practitioners from different occupational areas, staff from social service organisations who provide support to victims of domestic violence and psychologists/social workers in private practice. Unexpectedly, however, our recruitment materials solicited an overwhelming response, particularly from legal practitioners. It was decided that everyone who wanted to participate should be given the opportunity to do so. Details with regard to the number of focus groups and individual participants by occupational group are reported in the table below.

Occupational Group	Focus Groups (n)	Participants (n)
Legal practitioners	10	44
<i>Lawyers in private practice*</i>	8	23
<i>Legal Aid lawyers**</i>	1	12
<i>Women's Legal Service (WLS)</i>	1	9
Social service providers	2	10
Psychologists/therapists in private practice	1	2
<b>Total</b>	<b>13</b>	<b>56</b>

\* Included a number of independent children's lawyers and barristers

\*\* Included a number of independent children's lawyers

We made every effort to adhere to the methodological standards proscribed for focus groups. Although mean focus group numbers were favourable (n=5) these ranged from between 2 and 12 people. An individual interview was also undertaken with one lawyer who wanted to participate but was unable to attend a group. We found that people would either fail to arrive for their assigned focus group or additional people would arrive on the day wanting to participate. The focus groups, which ran from 2 to 2.5 hours, elicited robust and informative discussion between participants. Two researchers/facilitators present at each focus group encouraged and guided discussion utilising the following four broad topic areas and very quickly reached a point of research saturation with similar responses to these topic areas consistently emerging. The four topic areas were:

1. observations about family report writers' understanding, knowledge and training in the field of domestic violence;
2. the family report assessment process including observations regarding approaches and impacts on victims;

65 Liamputtong, above n 64; Krueger, above n 64.

3. reports and recommendations including observations about how domestic violence is addressed and how recommendations impact on final parent arrangements; and
4. observations with regard to changes in family report writer practice post-2012 and suggestions for improving future practice.

All focus group discussions were recorded and later transcribed. The verbatim de-identified transcripts were then analysed using a thematic analysis technique, drawing the themes from the extant literature. This commonly used qualitative data analysis technique required us to establish criteria for recognising patterns within the transcripts. We searched for repetitions, metaphors and analogies, similarities and differences, and theory-related material. To aid our analysis, we used a computer-assisted qualitative data analysis program NVivo. This program works on a code-and-retrieve theme basis, which is particularly useful when dealing with a large number of transcripts. Once we imported transcripts into NVivo, the key phase of qualitative data analysis was employed – coding. This was done by using the criteria outlined above, which allowed us to identify a priori themes (as identified in the literature review above) as well as emergent themes. These are discussed in the next Part.

## IV FINDINGS

### A Understanding, Knowledge and Training

In every focus group, participants noted that family report writers had tertiary qualifications and training within their particular disciplinary area, that is, social work, psychology and sometimes psychiatry. However, understandings of domestic violence were described as varied. Participants stated that only a minority of family report writers appeared to have adequate knowledge about domestic violence:

I think some have got more of an understanding than others ... each family report writer is different about how much they may appreciate certain elements or what they define as domestic violence and to what levels. (Legal practitioner)

Legal practitioners stated that when representing victims, care was needed to ensure the appointment of a report writer with domestic violence expertise. Conversely, if representing perpetrators, they would avoid those with understandings of domestic violence. Both these points are expressed in the following:

There's some I wouldn't go to if I was concerned about the issue of domestic violence, whether it was to knock it on the head as not an issue or whether it was to make sure that it was dealt with and all the information came forward appropriately. (Legal practitioner)

When I worked in private practice we would look for report writers who don't do that level of investigation, who don't report on the violence because that was in our client's [the perpetrator's] interest. (Legal practitioner)

Practitioners expressed concern that it was becoming more difficult to find report writers with domestic violence expertise. Increased caseloads in family

law matters alongside only a small number of expert report writers in the available pool meant waiting lists were growing exponentially:

The problem we're having is that the report writers we choose can't do any reports until next year. I've got to adjourn matters coming up because I can't get them [victim clients] into the family report writer and I just don't want to compromise. (Legal practitioner)

It is hard to get report writers. I said to an Independent Children's Lawyer after it was all finalised, how did you choose so and so? They knew what I was alluding to. They said to me they just didn't have a choice. I said did you try so and so? Yeah, yeah couldn't get them. (Legal practitioner)

In addition to the limited availability of 'preferred' family report writers, participants raised the issue of victim's self-representation or representation by a less experienced lawyer. To achieve equitable access to justice, family report writer expertise in domestic violence should be uniform, and victim/s access to suitably informed assessments should not be stymied by waiting lists or reliant on the variable insider knowledge or networks of lawyers. These concerns were raised by participants in one focus group discussion as follows:

That's really problematic where the victim is self-represented and maybe the private practitioner is presenting a panel of three [report writers] and saying you pick one, and they've got no idea about their history or their qualifications or what kind of issues they tend to address in their family reports. There are well known reputational issues around whose [sic] good in domestic violence. It shouldn't be like that. This goes back to that whole access to justice issue. (Legal practitioners)

The relative lack of domestic violence expertise on the part of many report writers led participants to conclude that systematic training in this area must be lacking. Knowledgeable family report writers were thought to be self-taught, taking the initiative to pursue information and participate in courses at their own instigation. As noted by one legal practitioner: 'Often they will self-educate. They read a lot – the good ones. They go to training.'

## ***1 Invalidating Domestic Violence***

The general lack of understanding, and by extension the absence of adequate training, was evidenced for participants by the way in which the majority of family report writers managed to invalidate coercively controlling violence. Often in the face of overwhelming evidence to the contrary (for example, criminal convictions), focus group discussions revealed that abuse was often minimised, dismissed or completely negated. For example, as stated by one legal practitioner: 'when they write reports they sometimes just leave out the most atrocious violence that has been committed ... they don't want to recognise it'.

### ***(a) The Inconsequentiality of Domestic Violence***

Focus group discussions around the invalidation of domestic violence invariably led to explanations about how this occurred. First, domestic violence seemed inconsequential with participants reporting family report writers ignoring, not recognising or misunderstanding the impact of domestic violence on women or children. As stated by one legal practitioner: 'I don't think the focus is there to any great extent ... there's probably not the depth of

understanding that there should be about the impact on the parents, the impact on the child, what that means in terms of the child's future'.

It seems that rather than being suggestive of abuse, indicators of trauma were either not recognised or misunderstood to the point where the parenting capacity of victims, not that of perpetrators, was called into question:

A lot of the reports are really cognitively dissonant, because they observe all these behaviours [in the victim mother] but then minimise [the domestic violence] so all these experiences she's describing are not really domestic violence. So I don't believe that domestic violence has a weight. However, I observed this woman presenting with all the behaviours of a traumatised woman. (Social service provider)

I think they're making assumptions around parenting abilities or styles of mums, based on the child [being] out of control, she can't look after the child, rather than having an understanding that this child's behaviour is quite possibly a result of domestic violence. (Legal practitioner)

Participants indicated that even when domestic violence was acknowledged, consideration of this with regard to abusive men's capacity to parent was infrequent. In contrast, the potentially adverse impact of victimisation on mothers' parenting capacity was often a focus, without acknowledgement of the probability of this dissipating once the victim and her children were safe. Legal practitioners in one focus group stated that linking trauma with maternal parenting capacity was 'dangerous ground' because it could result in a dim view being taken of the victim and a change of the child's residence to be with the perpetrator. Such an approach was rationalised on the grounds that trauma impedes victim mothers' parenting capacity, their ability to co-parent, and because fear of the father could transfer to the children straining the perpetrator/child relationship:

There have certainly been cases where there's been violence to the extent that a woman has now got some sort of mental health issue. [The perpetrators] make all these accusations about the woman and her parenting skills. Eventually they turn her into the self-fulfilling prophecy and she becomes what it is they've been saying. Then you are left with a perpetrator going, 'See, I told you what she was like'. I have one like that at the moment where the domestic violence has caused her to turn to alcohol. So in order to protect the child [at the report writer's recommendation] they are now living with the father. There was definitely a lack of insight – the domestic violence was just brushed off and the only issue that was really considered properly was the alcohol use. (Legal practitioners)

The inconsequentiality of domestic violence was also manifest in observations that family report writers tended to ignore or downplay the possible future risks posed to children. A legal practitioner expressed concern over the prioritisation of the negative impacts of severing the father/child relationships over the risks posed by contact with a perpetrator as follows:

I just don't think enough time is spent thinking about the pattern [of domestic violence]. The likelihood that these children will repeat what they have observed. They are all over the research about the long term harm to children of not having a relationship with one parent but they don't quote with anywhere near as much rigor [sic] the research about the likelihood of children who have been brought up in that environment becoming like their [perpetrator parent] or of the ongoing emotional scars and an inability to develop their own positive adult relationships in the future. (Legal practitioner)

While a lack of training might partially explain the invalidation of domestic violence through what presented during discussions as discourses of inconsequentiality, it was also reported that judicial expectations that perpetrator/child relationships be maintained put report writers under pressure to somehow ‘make contact happen’.

[Report writers] don’t listen to domestic violence. They keep prioritising the need for children to have relationships with fathers. You get the same subset of people who know that is what the court wants. They write the reports for what the courts wants. (Legal practitioner)

We need to make sure that the judicial approach is giving [report writers] the freedom to feel that they can make their assessment without the pressure to make contact happen at all costs. (Legal practitioner)

Constructing domestic violence as inconsequential by negating its impact on victims, failing to question the parental capacity of perpetrators, and ignoring the ongoing risks posed to victims and their children enables perpetrator/child relationships to be maintained. In this context, protecting these relationships requires a reframing of a victim’s trauma so that it is the victim who is the risk to the children and to the perpetrator’s relationship with the child.

*(b) Reconstituting Domestic Violence as Something Other than Coercive Control*

The second way that the focus groups reported that domestic violence is invalidated and perpetrator/child relationships are maintained is via the reframing of coercive control as something else. Focus group participants reported that domestic violence was repeatedly transformed into something that was not too serious, episodic, ‘only parental conflict’ and/or an act from the past that victims needed to ‘get over’. The following quotes illustrate these points:

The father certainly admitted that on one occasion he had strangled her, kicked her numerous times, but his evidence was that it only happened once. The family report writer had a similar attitude of, it’s only once. The mother’s evidence was that this sort of stuff happened all the time. It really troubled me watching the dismissive way that everyone in the case was treating what I would consider a really serious incident. If someone did that to me, I would struggle to get over that. I would struggle to forgive that person. I would then struggle [to be told], it only happened once, what’s the problem? The report writer in that case minimised it in a terrible way. (Legal practitioner)

You get some reports that really just miss any allegations of domestic violence and in some cases, I think, have minimised the issues of domestic violence as parental conflict regarding unresolved parenting issues, which I find pretty disturbing. (Legal practitioner)

Historical domestic violence is often underestimated as well, it’s like well, look, that was five years ago. Let’s just sort of funnel it along now but if you’ve been a victim of some severe ongoing abuse, you don’t just draw a curtain over it. (Legal practitioner)

*(c) Invoking Normative Gendered Misconceptions*

Third, domestic violence was invalidated through the adoption of normative gender misconceptions that called into question the credibility of women. The focus groups reported that mothers who seek to protect their children from the risks of contact with a perpetrator are portrayed as dishonest, manipulative,

unreasonable, unfriendly or alienating parents. This construction supports the maintenance of father/child relationships and provides an avenue for dismissing mothers' evidence of domestic violence. The dishonest and manipulative characterisation of women was frequently highlighted in focus group discussions of report writers' views that women make false allegations of domestic violence and seek protection orders as a ruse to paint fathers in a bad light. Examples of this from the focus groups include:

The woman escaped as a result of a quite severe incident of domestic violence. At that time she was brought back because the father had filed a recovery application and was successful. The first report writer, the client went through her history of violence with this man, the evidence was quite clear but in the report it inferred she was playing the victim very well. I mean she wasn't playing any victim. The evidence was there. (Legal practitioner)

There have been cases where we've heard them say things like, well the women have utilised refuge, it is almost downplaying refuge. Like what's your real purpose of going to refuge? Did you really need to go, was it necessary? The sense is that the women are manipulating the system by using refuge and naming it domestic violence. (Social service provider)

Additionally, focus groups reported that women are expected to nurture and maintain father/child relationships and to do otherwise results in them being labelled as an unfriendly or alienating parent. Many of these issues are portrayed in the following conversations recorded in two separate focus groups with legal practitioners; in one of these the gendered double standard was also highlighted, namely a man's anger is reasonable under the circumstances while a woman's is not:

One of my clients, she was angry because no one had ever believed her. That report writer took such a set against her. Her anger made the family report writer make judgements to say the kids should live with dad, she's alienating. It's a classic. I think anger is the worst. Women are not allowed to be angry. No, it's not becoming. Are men allowed to be angry? Yep, because they're not seeing their kids, absolutely, because they're justified in feeling angry about being denied access to their children but she's not justified in being angry because of the violence. She is overreacting or she's alienating. Her role is to be a good mother which means fostering a good relationship [with the father]. (Legal practitioners)

[Mother victims] say look, he's violent, I don't want the children to see him or I don't want the children to have contact with him other than in a supervised contact centre. There will be a real problem – that the mother is just trying to keep the children away from the father. Yeah they get slogged as the alienating parent. So if the mother is being protective, that will be labelled difficult. More often than not, that's not encouraging the relationship. It is putting barriers up. So just the fact that they say well there was domestic violence and dad is still carrying on the same way, that tends not to be a tick [for the family report writers].<sup>66</sup> (Legal practitioners)

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66 These attitudes towards the protective stance of some mothers were clearly identified in research which followed the commencement of the *Family Law Reform Act 1995* (Cth): see Helen Rhoades, 'The "No Contact" Mother: Reconstructions of Motherhood in the Era of the "New Father"' (2002) 16 *International Journal of Law, Policy and the Family* 71; Zoe Rathus, 'Of "Hoods" and "Ships" and Citizens: The Contradictions Confronting Mothers in the New Post-Separation Family' (2010) 19 *Griffith Law Review* 438.

*(d) Selectively Silencing and Misconstruing Children's Voices*

Finally, focus groups reported that the invalidation of domestic violence by family report writers occurred through what has been previously described as the selective silencing or misconstruing of children's voices. Participants stated that report writers frequently de-contextualised children's responses to perpetrators in ways that supported rather than challenged ongoing father/child contact. Thus, when children were averse toward seeing their father or made direct disclosures about his abusive behaviours this was often discounted or sometimes reframed by report writers as evidence of problematic mothering (for example, the child taking on the irrational fears of the mother) rather than paternal domestic violence perpetration:

When a child is making disclosures, there's the very, very, very high risk that there'll be allegations that the child has been coached [by the mother] or that the disclosures will be looked at without the context of ... [domestic violence] and why they have levels of fear or why they might be having nightmares or why they're frightened of their father. (Legal practitioner)

Even when report writers acknowledged the perpetration of domestic violence and children's fear of perpetrator fathers this did not necessarily impact on their final recommendations. One legal practitioner illustrated this confusing disjuncture, which also renders children's voices silent and supports perpetrator/child relationships:

The report writer self-recorded [the children and mother] were clearly intimidated by [the father] and the children seemed to be afraid of [the father]. [The mother] was asserting a long history of domestic violence and it didn't seem to matter. The recommendation just went ahead that the children should remain with [the father]. (Legal practitioner)

In contrast, as the focus group participants noted, when the family report writer observed children during face-to-face assessments looking happy with their perpetrator fathers and/or expressing that they would like to see them, this was embraced without question; again, promoting and legitimising father/child contact:

I had one recently where we've got children who are saying to mum I don't want to go see dad. They've witnessed all this domestic violence. They've gone to the [family report interview] with him and the observations are having safe happy times, and the report writer's gone, what's the problem? The problem is when he's upset and he's alcohol affected he could snap. So yes, he can be a fun happy great dad. So [the family report writer's] just gone, well I didn't see any signs of them cowering. He was looking for the physical signs that in that environment they would not have anything to do with their father. Because he didn't see that [in a controlled environment] where the children felt safe. It was just so trite really. It just doesn't look at the dynamics of what the risk is going forward. (Legal practitioner)

Children still love their parents, still love their father but they want to be safe and [the family report writer interview is] a safe environment, then they're seeking that. There's a whole range of complex reasons why children can be crawling over their fathers at that time but it doesn't mean that there isn't domestic violence, but it's seen to be, oh, obviously there isn't because they are. (Legal practitioner)

## B The Family Report Assessment Process

Participants were unanimous that aside from the minority of family report writers who went ‘above and beyond the call of duty’, the majority lacked efficacy in their assessment process. First, issues were highlighted in relation to the face-to-face assessments conducted with families. Second, concern was expressed about the limited range of information sources report writers utilise to make their assessments.

### 1 Face-To-Face Assessment Process

Participants expressed that this aspect of the assessment process in South East Queensland typically occurred over the course of one day or less in offices either onsite at the court or offsite. It was noted that assessments undertaken with families at the court in Brisbane tended to be more time restrictive (taking place over a few hours) than those contracted offsite with private practitioners (usually half to a full day). Typically, the procedure was noted to involve interviews of between 30 minutes and a few hours with the mother, father and sometimes (although this appeared to be the exception rather than the rule) other family members. Depending on age, children might also be interviewed alongside report writer observations of parent/child interactions.

The consensus was that the face-to-face assessment process was inadequate. Participants questioned how in such an artificial and sterile environment (that is, a family report writer’s office) with so little time spent with families, report writers were able to make thorough assessments, particularly in cases where domestic violence was an issue. Whether traumatised children and/or victims were actually capable of opening up to complete strangers under time constraints in an unfamiliar and potentially intimidating environment was a particular concern:

I don’t know how it can be. Seeing someone for one day, for a period of time, how they can make that assessment in an artificial environment for the children and the mum. (Social service provider)

You are called into a foreign environment which is extremely sterile and you know ahead of time that you will be seeing the [perpetrator] because generally they want you to all go together with the children. Then the mothers like lambs to the slaughter, are sent into a room with their children [and] observed. These women don’t feel comfortable. Every move they make with their child is being judged by the family report writer. They’ve never met them before. They don’t know the family history. They don’t know the children or what issues the kids have got. From an hour a report is written about their lives.<sup>67</sup> (Psychologist/therapist in private practice)

Focus group participants discussed the duality of victim/perpetrator presentation at interview. First, they described perpetrators as highly manipulative and presenting as very calm, rational and charming. Consequently, concern was expressed that it may be difficult to accurately assess abusive men:

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67 The difficulties victims of domestic violence have in presenting well during the period they are being assessed in relation to post-separation parenting arrangements has been noted. See, eg, Peter G Jaffe et al, ‘Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans (2008) 46 *Family Court Review* 500.

Men are not entirely dysfunctional most of the time. They're only there for an hour or so and they're on their best behaviour. It's a matter of when they're upset, angry or under pressure that's when they snap. They're not going to do that in the assessment. The report writer sees them having a good time and goes what's all the fuss about? (Legal practitioner)

Second, in contrast to perpetrator presentation, participants noted that victim mothers often exhibited nervousness, angst, fear and agitation during interviews not only because they are living with domestic violence but also because the process itself creates an environment in which mothers felt uncomfortable, anxious and fearful:

How can a woman go into a room and feel comfortable enough to talk to a complete stranger about her domestic violence history when the man who has hurt her is sitting waiting for his turn to go in. So she's about as vulnerable as she can get and I would say that the vast majority of women I've worked with talk about the fear of the court report writing process. (Psychologist/therapist in private practice)

In addition, it seems that the way victim mothers present during assessments invariably raised doubts with regard to their mental stability and their parenting capacity:

She's super anxious and she's just out of her tree and over it all. And you get the hyper vigilance and then [report writers] think they're weird. They're the one with the problem. And she's reliving all that [domestic violence] there and then, oh well, look at her. She's got mental health issues. (Legal practitioners)

Often you will find that children of victims who know their father's capable of quite controlling or demanding behaviours, they are very compliant when their father's around. So when you're in a family report assessment and the father is calm and has them under control – he looks like a great parent. Then the kids are seen with the mother who's overly anxious and freaking out and she's not got them under control that day. She looks like she's got parenting capacity issues. (Legal practitioner)

Creating an environment in which traumatised children can feel safe enough to open up can take time and high degree of therapeutic expertise. It is difficult to create such a climate within the time-poor milieu of the family report writing assessment process. This concern alongside discussion about face-to-face assessments re-traumatising children was most poignantly expressed during the focus group with psychologists and therapists in private practice:

It is probably more traumatising for the children than the woman. The woman has some capacity. She has language. Kids can't articulate what that experience is. It's not like I went to [the family report assessment] today and it's over. The little girl I was telling you about, I think she was about 7, she wet her pants every day after the assessment for months. You can't tell me that's acceptable. Our society says to children don't talk to strangers and then we wheel little Johnny up to the family report writer, it's alright mate, I know you've never met him, I know he looks a bit scary but you're going to go into this room with this complete stranger and he's going to ask you questions, you just tell him the truth, it's all good. So we drop them into a room with a complete stranger and they ask them some of the most intimate, frightening, scary questions that the kids have ever heard and then they finish with them and send them on their way. Seriously? There's this thing we've got in therapy – it's called rapport building and you have to spend a lot of time doing that. Have you ever gone up to a complete stranger and then told them about anything that's really deeply disturbing about yourself ever? No. They have rights. Kids have rights. But they're not given any rights. Putting children in a room with

a father who is extremely violent and then asking them to play at a table with him, what is that? What is that? Sit down, play a game with your dad while I sit here and take notes about your connection and your behaviour. Seriously? I think it's abuse of children. (Psychologist/therapist in private practice)

## 2 *Additional Information Sources*

In addition to expressed concerns over the face-to-face assessment environment, we were also told that report writers in South East Queensland rarely consulted with extended family members, teachers, the children's or victim's psychologists/therapists, child protection workers, police, general practitioners and others involved in the children's lives. Reasons for this included a lack of funding, time restraints and what was described as deliberate avoidance of these potentially rich sources of information on the grounds of 'bias':

I have never been contacted by a family report writer. I've never been asked ever. We see [the victim mother and children] over this really extended period of time but our material is tainted which I find really unbelievable. I've had court report writers suggest that I can't be unbiased. So my information is irrelevant. I just go – you've got to be kidding me. I'm working with a woman and I'm working with the children. How can that not be relevant? To seriously imagine that we sit with our clients and we believe every single thing they tell us and we don't question anything, that is really disrespectful. (Psychologist/therapist in private practice)

Legal practitioners in South East Queensland explained that family report writers are not expected to gather additional evidence unless they are authorised and/or directed to by a judge. Rather, the usual way this type of information finds its way to them is via the subpoenaed documents. However, report writers do not consistently read this material. A lack of funding and thus time means that only some reportedly read through this material on their own initiative. As one practitioner noted:

Some of the report writers go into the subpoena office at the court and sit there and read them and others won't. Because again, resource issues. That takes a lot of time and the professional payment for these reports, I would suggest doesn't really factor in the time it would genuinely take for someone to go and sit and read three boxes of records for that family. (Legal practitioner)

This often means that the provision of the subpoena document information is dependent on the appointment of an independent children's lawyer ('ICL'). Participants explained that ICLs would often provide summaries of the documents to report writers but where no ICL was appointed, this task rested with the parties' lawyers. In other words, the provision of this crucial information to report writers is largely dependent on the diligence of the lawyers involved in the case. This variability raises concerns regarding access to justice, especially for self-represented litigants:

Subpoena documents, this is a many and varied process, when I receive them [as an ICL] they can be in boxes, piles high. So that can take hours to read. So my process is do a summary and I give that to the report writer and let them know that if they want to actually see the source material they're welcome to and we can get it to them. Because what I've found is if someone has four boxes of documents, there's a strong chance that they probably won't read them. If there's no ICL, there's every chance that the parties themselves don't have the capacity to get copies of those documents. They can look at them in the court, but they can't get them. Let's say the report's going on over here, there's every chance that those

subpoena documents are not making their way to the report writer. (Legal practitioner)

However, according to the participants, it seems that even when provided with detailed summary reports of the subpoena documents this does not necessarily mean that report writers actually read them.

### **3 *An Exception to the Rule?***

A number of the problems highlighted by the focus group participants in South East Queensland with regard to report writer practice were not raised to the same extent in the North Queensland focus group. Here, report writers seemed to spend more time undertaking assessments. For example, home visits, which were thought never to occur in South East Queensland, were not uncommon and the entire approach was generally described in ways suggestive of a higher degree of efficacy. However, concerns were still expressed that this situation was starting to change due to funding issues. Nevertheless, this points to variability in the family report writing depending on the location; again raising questions with regard to the uniformity of access to justice for victims of domestic violence.

## **C Family Report Recommendations**

According to focus group participants, the practice of invalidating domestic violence, discussed above, invariably led to family report assessments and recommendations that failed to address the risks posed to mothers and their children by the perpetrators use of coercive control. While the consequences of extreme acts of physical violence might be acknowledged in a limited fashion, other less overt tactics of coercive control (such as emotional or financial abuse) were generally overlooked unless the report was compiled by one of the small minority of family report writers with actual expertise:

We find we can get very different [report] outcomes with the physical violence because it's so much more evident. They respond to that because that's very clear. It's the coercive control. The emotional, psychological, the financial, the cultural; I don't think they're seeing that. Some recommendations are fair. It just depends on the level of domestic violence. When we see extreme physical violence they are taking that into account and there's more caution around safety. (Social service providers)

Taking 'more caution around safety' in cases of serious physical violence resulted in what could be described as piecemeal attempts to reduce risk by limiting the possibility of direct contact between perpetrators and victims. Thus recommendations included more control around changeovers (such as the use of contact centres) to prevent victim/perpetrator contact, communication books to discuss parenting issues in lieu of direct verbal communication and not providing perpetrators with victims' addresses.

These approaches could be viewed as a step in the right direction because domestic violence is not construed as being altogether inconsequential to post-separation parenting arrangements. However, while attempting to restrict the possibility of children being exposed to further perpetrator abuse, these recommendations do not take into account the numerous other dangers posed to children by perpetrators of violence discussed above. Further, and as noted by the

focus group participants, perpetrators can still find ways to abuse victims at changeovers even in more controlled settings; and the written word in the communications book can be used as an outlet for abuse just as readily as verbal communication:

The domestic violence can still occur with the contact centres, like in the car park. A lot of parties hide somewhere and then follow the car as it leaves [the contact centre or other more secure change over location], follow it home and try to run it off the road. I've had quite a few of those types of things. (Legal practitioners)

I had one recently where the Dad actually wrote in [the communication book] well, I had to tell the daughter – who was three at the time – that you were a bitch. He actually wrote it in capital letters – and it's all your fault that I had to tell her you were a bitch but I told her you were [a] bitch – mum is a bitch. (Legal practitioner)

In cases where extreme physical violence was not perceptible, invalidation via a tendency to construct coercive control as inconsequential is evidenced in what focus group participants perceived to be frequent recommendations in family reports for equal shared parental responsibility.<sup>68</sup>

A report writer has done reports for me recently. In some of them I've had really quite extreme domestic violence, criminal charges, jail time and there's still a recommendation for equal shared parental responsibility. I've got to the point now where I'm writing letters saying, can you just explain to me how this is going to possibly work? (Legal practitioner)

Domestic violence might be flagged and then the first recommendation is equal shared parental responsibility. It shows a lack of understanding of domestic violence and how he can continue to make her life hell; it allows him into that family's home in a constant way. (Legal practitioner)

Requiring victims and perpetrators to make joint decisions about important long-term issues in the lives of their children (such as schooling) presents domestic violence as extraneous to parenting, invalidates the ongoing impacts of victimisation (for example, fear) and extenuates future risk by providing perpetrators with another avenue for abuse. Joint parental responsibility and domestic violence are incongruous. It is plausible therefore that the habitual propensity to make recommendations of shared parental responsibility stems not only from discourses of inconsequentiality, but also from the previously reported tendency of family report writers to reconstitute coercive control as something else, that is, something that is not that serious, mutual, only parental conflict, sporadic and historical.

Focus group participants expressed that it was not uncommon for report writers to recommend that perpetrators and victims attend parenting programs and post-separation couples counselling together:

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68 The results of the Australian Institute of Family Studies evaluation of the 2012 family violence amendments show that equal shared parental responsibility is the most common order overall, whether cases were judicially determined, settled after proceedings had been commenced or involved consent orders filed without litigation. Prior to the family violence reforms 86.2 per cent of cases had orders for equal shared parental responsibility, falling to 85.1 per cent after the reforms. But there was a more observable trend in respect of orders that had been judicially determined. In these cases, judges only ordered equal shared parental responsibility in post-reform cases in 39.8 per cent of cases as compared to 50.6 per cent pre-reform: Kaspiew et al, 'Court Outcomes Project', above n 60, 57.

The last report that I saw, the idea was that they needed couples counselling because they are not able to parent together. Couples counselling for a victim and a perpetrator! (Social service providers)

Recommendations for perpetrators to attend anger management courses were also reputed to be common when domestic violence allegations were noted in family reports. In this instance, participants pointed to family report writers' misconceptions about perpetrators of domestic violence:

Anger management – it's a joke – it's an absolute joke. [The family report writer recommends] sending them off and they have to go and they tick the box, you attended six appointments. You're cured. Seriously? (Psychologist/therapist in private practice)

[The report writers] prescribed anger management for him. That really indicates they have no actual understanding. It's not a problem of anger management. (Social service providers)

Coercively controlling violence is 'not a problem of anger management' because perpetrators are not deficient in self-control. Rather, they engage in a deliberate process of intimidation and control aimed at bending the victim to their will. Indeed, perpetrators of domestic violence are very able to be perfectly calm, straightforward, reasonable and charming when it suits them.

As a result of these attitudes the focus groups reported that recommendations for substantial unsupervised time between perpetrators and their children were common. While domestic violence was minimised, the need to promote the perpetrator/child relationship through recommending significant time was noted as present in many assessments. Despite the risks, family report recommendations for long-term supervised or no contact between abusers and their children were the exception, not the rule, and guidance, apart from that discussed above (anger management counselling and communication books), was lacking with regard to supporting families where violence was an issue. We were told over and over again that time spent with each parent (ideally equal) and relationships were being prioritised over safety:

That is the presumption I'm getting from the report writers that we have to get to this equal time arrangement; that's what we're all aiming for. You think why are we aiming for that when there's severe domestic violence? (Legal practitioner)

I believe the child's right to safety needs to override the right to know both parents or have a meaningful relationship with those parents. The safety of children really is often just overlooked. (Social service provider)

Of great concern is the fact that mothers and children were likely to be placed in a situation of ongoing risk as a result of family report assessments and recommendations because according to every focus group participant, these had a significantly determinant role in final parenting arrangements. We were told that:

1. Family reports were an extremely persuasive settlement tool used by lawyers and judicial officers to exert pressure on victims to agree to out of court settlements:

Lawyers and judges put too much weight on what the report writers say – we expect clients to settle on the basis of someone who's seen them for a couple of hours. (Legal Practitioner)

2. Legal Aid funding could be withdrawn from victims on the basis of an unfavourable report:

There's a huge amount of settling that goes on and a huge amount of pressure to settle [on the basis of the family report]; financial pressure but also judicial pressure; Legal Aid pressure; and lawyers. I think lawyers are often scared of losing. (Legal practitioner)

3. Some judicial officers viewed the family report as the ultimate authority and rarely made orders in opposition to the recommendations made:

It depends on your judge. Most of them would be very guided by the family report. There's two or three you think well it doesn't matter what's in the family report, the judge will make up his own mind but the others are quite lazy, they look at the report, they'll read it and they'll say yes well I've read the recommendations, I think you should step outside and see if you can sort it out. (Legal practitioner)

We say to ourselves this judge will take the easy way and follow the family report. There are some judges that will do that and if you've got a report in your favour, short of anything catastrophic happening, you're fairly comfortable that that will be the outcome. It is trial by family report in some cases. (Legal practitioners)

## **D The Need for Change**

### ***1 Change in Family Report Writing Practice Post-2012***

Focus group participants shared their opinions about practice after the 2012 domestic violence reforms. While a minority of knowledgeable family report writers continued to produce reports of a considered and high standard, the practices of those who failed to properly consider the impact and significance of domestic violence prior to the legislative amendments were said to have remained relatively unchanged. Thus, there was no discernible shift in the majority of report writers other than a subtle change in the report wording. Described as a ceremonial ticking of the legislative box, it was observed that domestic violence was more frequently noted to be a 'consideration' but what followed was no actual consideration of it whatsoever. Each of these points is expressed in the following:

I think the wording [in the family reports] has changed. I don't know the effect has been different. So they're ticking a box. I think they still gloss over it and I don't think they have a particularly good understanding of the latest amendments. (Legal practitioner)

I couldn't say to you that I've seen any shift as a result of the 2012 amendments. To me it comes back to whether the family report writers you are working with are alive to these issues. (Legal practitioner)

Thus, in the view of the focus group participants, the maintenance of perpetrator/child relationships was still being prioritised over safety by most family report writers:

It clearly says that they need to protect the child from physical or psychological harm, from being subjected to or exposed to abuse, neglect, or family violence. It's supposed to be given greater weight than the benefit to the child of having a meaningful relationship but they look for the meaningful relationship, and then they pay lip service to the domestic violence. (Legal practitioner)

## 2 *Suggestions for Change*

Focus group participants were asked if they could provide suggestions for ways in which family report writer practice could be improved. In line with previously expressed concerns, recommendations included:

- increasing the pool of family report writers with understanding/knowledge of domestic violence and in particular, coercive control;
- the provision of family report writer support, supervision and increased accountability;
- making the assessment process more consistent and thorough;
- creating a less sterile/intimidating assessment environment; and
- the need for systemic change in the family law system.

### *(a) Increasing the Pool of Family Report Writers with Understanding and Knowledge of Domestic Violence*<sup>69</sup>

Focus group participants expressed the urgent need to increase the number of report writers with expertise in domestic violence. The view was that having a degree in social work or psychology does not automatically make you a domestic violence ‘expert’. Rather, family report writers need comprehensive and ongoing training specifically on domestic violence conducted by experts in the field. It was suggested, for example, that report writers be trained by those who work within the domestic violence sector including social workers or psychologists who run programs and provide support to perpetrators, adult victims and their children. The idea of a national accredited qualification in domestic violence for family report writers was also put forward. According to participants, properly trained report writers should have an understanding of coercive control. In particular they need to understand its emotional aspects, its impact, and the ongoing risks. They also need a sophisticated knowledge of how perpetrators and victims (both adult and child) present at interview:

Training and education I think has got to be number one. Have them trained, and in an accredited program. Not just a two-hour information session. They need to have something at the end of that to show and demonstrate their understanding. (Social service provider)

I think you need to look at their fundamental qualifications. You can be a social worker of 30 years’ experience or a psychologist of 30 years but that doesn’t mean you are a domestic violence expert. Family report writers actually need to take the time to learn about domestic violence. (Legal practitioner)

### *(b) The Provision of Support, Supervision and Increased Accountability*

Alongside training, it was suggested that practice could be improved via the provision of support, supervision and increased accountability. It was expressed

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69 In the last few years the family courts have provided significant training and resourcing to the family report writers who are their employees but this does not extend to those employed by other agencies or in private practice. In the data collected from our focus groups, it is not possible to distinguish between comments made about family report writers employed at the courts and others. In any further research, it will important to endeavour to make this distinction.

that report writers might become desensitised to stories of domestic violence. Therapeutic supervision via the provision of an avenue to debrief with other psychologists or social workers was suggested as beneficial. Further, the special protections provided to report writers in the legislation were questioned on the grounds that greater accountability for assessments could increase efficacy:<sup>70</sup>

It feels like they can write anything they want about anybody they want and there is no comeback. (Psychologist/therapist in private practice)

*(c) Making the Assessment Process More Thorough*

Given the overwhelming concern expressed about the time-poor assessment environment, failure to read subpoenaed documents and/or utilise information beyond that obtained during interviews, focus group participants offered the view that family report writers needed to conduct more comprehensive assessments. It was suggested that additional time is needed with families, that report writers should be utilising a broader range of information and that the use of risk assessment and/or guidelines should be mandatory.

First, it was recommended that the initial assessment process should include multiple meetings and extend over a series of days, weeks or months. In addition to building a rapport with victims and their children, this approach may well, as argued in the quotation below, increase the likelihood of perpetrators showing their 'true colours':

So perhaps it could be done as more of a longitudinal activity; that they're not constructed by just one snapshot. It needs to develop and it might mean multiple meetings on other occasions. I would really like to see more than a very short time with each party. Because I really don't know how they can find anything out about a party in a couple of hours. Especially when somebody comes along and they're so stressed about going to the family report assessment. If you're a perpetrator that's really good because you don't have the opportunity to push their buttons, for the strain to show; after a few hours they start to crack. (Legal practitioner)

Additionally, participants indicated that family report writers' involvement in court proceedings should be extended beyond the initial assessment phase to include a series of re-assessments undertaken between interim and final orders. The aim would be to monitor the impact of contact arrangements on victims and their children. In other words, report writers should come back as a matter of course to follow-up and reassess how things are going. This might include attending contact changeovers and observing parent/child interactions during visitation, as well as assessing victim and perpetrator progress. The longevity of the family court process allows for this possibility.

Second, the provision of more initial assessment time would ensure family report writers had the opportunity to actually read through the subpoenaed information and provide the opportunity to gather additional material including for example from children's teachers, therapists, extended family members, child safety departments and police. The latter could require the provision of more

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70 *Family Law Act* s 11D provides for the immunity of family consultants in the following terms: 'A family consultant has, in performing his or her functions as a family consultant, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge'.

extensive fact-finding powers to family report writers. As participants explained, at present family report writers' capacity to gather information can be limited by judicial directives and the documents ICLs and/or party lawyers have decided to subpoena. It was suggested that report writer powers could be extended by either providing them with processes which allow them access to information or documents which they consider they require;<sup>71</sup> or establishing a clearly defined collegial role with ICLs who do have the power to subpoena. In this case, an ICL would therefore need to be appointed in all cases where allegations of domestic violence are made. These two points are noted in the following:

Even if the [*Family Law Act*] gave report writers inherent powers to go and inspect; you didn't need to seek leave from the court. There's probably a few other powers you could give them like more investigative [powers, and the power to] issue their own subpoenas. So allowing the family report writer to go in and dig a bit deeper, gather info, off their own bat. (Legal practitioner)

I think that it should be a collegiate partnership between an ICL and the report writer. That they work together and get the evidence and that it's required for the court to be able to make a proper determination as to what parenting orders are going to protect these children. (Legal practitioner)

Third, it was suggested that the assessment process could be made more comprehensive if adherence to the best practice principles and engagement in risk assessment were made mandatory for all family report writers, whether they are employed by a family court, under regulation 7 of the *Family Law Regulations 1984* (Cth), through a Legal Aid office, or privately. In the following, domestic violence service providers express their confusion with regard to whether or not risk assessment is actually taking place:

I don't see risk assessment happening, even though they are meant to do risk assessment. I've talked to our clients to see what they did around risk assessment, there wasn't an actual risk assessment. So what do they do in terms of assessing risk? I don't get the sense that the risk assessment process is streamlined and that there is a specific tool. (Social service provider)

#### (d) *Creating a Less Sterile and Intimidating Assessment Environment*

Participants also expressed that family report writing assessment practice could be improved through the provision of a less sterile and less intimidating assessment environment. For some this meant report writers being able to take the time to build a rapport with families. Others suggested that assessments should be moved out of the office environment and into family homes or other more relaxed environments.<sup>72</sup> However, given the intrusive nature of home visits this proposal would need to be considered carefully on a case-by-case basis as it could be particularly threatening to some. We were told, for example, that Indigenous families might find this approach particularly challenging.

71 Perhaps this could be in the nature of a subpoena issued by a non-party.

72 Although the risks of home visits need to be acknowledged and accounted for in the systems which might be established: see, eg, Sharon C Lyter and Ann A Abbott, 'Home Visits in a Violent World' (2007) 26 *The Clinical Supervisor* 17.

(e) *The Need for Systemic Change in the Family Law System*

Finally, the perceived problem of family report writers prioritising perpetrator/child relationships over safety was argued to be a systemic problem within the family law system. As noted by one legal practitioner: ‘It isn’t just the report writers getting it wrong, it’s the lawyers, and the judge is giving the same view: that it is all about equal shared parental responsibility, moving towards equal time, everyone is getting it wrong’. Thus, participants spoke of the need for institutional change within family law system with safety taking precedence.

## V CONCLUSIONS

Despite what is known about domestic violence, the negative impacts on children of living with it, the questionable parenting capacities of abusers, and family law legislation directing that the best interests of children are dependent on protecting them from harm, research suggests that the family courts are still prioritising parent-child relationships over safety. The result is that perpetrators of domestic violence continue to achieve significant and substantial unsupervised time with their children. This is a potentially dangerous situation and can be traced to a strong pro-relationship narrative within the family courts. Coercive control poses significant challenges to this narrative and as a result, a particular set of discursive strategies are employed to invalidate domestic violence (that is, minimise, dismiss or completely negate consideration of it), remove it from considerations of children’s best interests and ensure perpetrators achieve continued contact with their children. Judicial officers are not generally domestic violence experts and rely on the expert evidence adduced before them. A crucial piece of evidence used by the judiciary to determine a child’s best interests in cases of domestic violence are the assessments compiled and recommendations made by family report writers.

Through the use of a focus group method the research presented in this paper explored the practices of family report writers from the perspective of those providing legal and social support to victims of domestic violence in South East Queensland. Our findings, which are supported not only by an extensive international literature but also the extant Australian research, suggest that family report writers tend to invalidate coercive control via discourses not dissimilar to those within the court. Priority is given to maintaining the perpetrator’s relationship with their children and as a result, family report writers frequently minimise, dismiss or completely ignore domestic violence.<sup>73</sup>

First, this is achieved by re-constructing domestic violence as inconsequential by:

- ignoring, not recognising or misunderstanding the impact of living with domestic violence on victims and their children;

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73 See Jeffries, above n 13; Field et al, above n 13, for a comprehensive discussion of the international and national research on family report writing practice.

- presenting domestic violence as extraneous to perpetrators' parenting;
- recognising the impact of coercive control on maternal parenting but only in terms of the risk victims pose to children; and
- ignoring or downplaying the possible future risk posed by perpetrators to victims and their children.

Second, coercive control is reconstituted as something else. That is, it is 'not that serious', episodic, 'only parental conflict', and/or an act from the past that victims needed to 'get over'. Third, domestic violence is invalidated by family report writers through the adoption of normative gender misconceptions that demand maternal support of the perpetrator/child relationship and call into question women's credibility by labelling them dishonest and manipulative. Fourth, the dismissal of domestic violence is achieved through the selective silencing and misconstruing of children's voices.

The invalidation of domestic violence was thought to result from a lack of family report writer training and thus expertise, alongside judicial pressure to maintain children's relationships with both parents even where one is a perpetrator of violence, and assessment processes that lacked efficacy. The result, were assessments and recommendations that failed to elucidate the potential harm posed by perpetrators to victims and their children. This included, for example, frequent recommendations for shared parental responsibility and for children to spend significant unsupervised time with the perpetrator. This placed victim mothers and their children in a situation of ongoing risk because family reports were argued to have a significant determinant impact on final parenting arrangements.

According to the focus group participants, little has changed in family report writing practice since the 2012 family violence amendments, which now require the prioritisation of child safety over relationships. However, it was hoped that practice could be improved in the future via:

- family report writer training (to increase knowledge and understanding of coercive control);
- the provision of support, supervision and increased family report writer accountability;
- making the family report assessment process more thorough (through provision of additional time, utilising a broader range of information, and mandatory risk assessments and/or guidelines);
- creating a less sterile/intimidating assessment environment; and
- moving to a pro-safety narrative in the family law system.

The research presented in this article was a Queensland-based pilot project. While the views expressed in the focus groups could be locale-specific, this research provides an important contribution to the understanding of family report writing practice, specifically in cases concerning domestic violence. The stories from the focus groups demonstrate the importance of understanding the complexity of such cases and the implications of family assessment reports. Accordingly, the perceptions and experiences from focus groups participants

provide a better insight into current challenges and issues surrounding family report writing process.

Future research needs to be undertaken in each of Australia's states and territories with comparative analyses across regional and non-regional jurisdictions to determine if, as suggested here, family report writer efficacy differs within and between jurisdictional locales. While, as noted above, the opinions expressed in our focus groups are mirrored in the prior research literature, definitive conclusions with regard to family report writer practice cannot be drawn from the opinions of particular stakeholder groups. Given the relative dearth of Australian research in this area, results from this study should nonetheless be viewed as an important starting point from which a conversation can be had and further research undertaken. It is crucial that future studies include direct investigation of family report writer practice as well as exploration of both adult and child victims' experiences of the process. Further, in the data collected from our focus groups, it was not possible to distinguish between comments made about family report writers employed at the courts versus elsewhere. Prospective studies should distinguish between the family reports undertaken by employees of the family courts versus those working for other agencies such as Legal Aid or in private practice.

Finally, it is important to highlight and commend the expertise and efficacy of the minority of family report writers described to us during the course of this research who go 'above and beyond' what they are funded to do to ensure thoroughness in assessment practice in cases of domestic violence. Access to quality family reports should not rest on luck, financial resources, legal representation, locale or the good will of family report writers. It should be uniform across the system to ensure that the best interests of children are always served.