

Centralising Children's Needs in Dispute Resolution in Family Violence Cases

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Family separation is a unique and dynamic process for each family. Family violence is a serious problem affecting societies across the world. It is a common driver for family dissolution. Children exposed to family violence face a distinctive predicament in their own adjustment, recovery and future relationships with their parents. Family dispute resolution is an increasing early intervention approach for separated families in conflict over parenting. Family dispute resolution practitioners are the gatekeepers for facilitating or preventing exploration of information about the complex relational dynamics, including risk and protective factors in each individual case. To avoid gambling with the child's future, it is crucial to centralise the needs of each individual child. An intervention approach to potentially enhance outcomes for the child, and therefore longer term outcomes for community and society, is child inclusive practice. However, this is not without complexity and challenges in cases of family violence.

■ **Keywords:** Family violence, child inclusive, dispute resolution

Introduction

Relationships are our natural habitat (Cozolino, p. 179, 2010)

Life is comprised of uniqueness, challenges, unpredictability, stressors and may include trauma (Perry, 2009). Interpersonal neuroscience shows that human beings have evolved as an intensely social species. Relational stress can negatively impact on people's health, behaviour, development and social functioning (Anda et al., 2006). One of the most stressful experiences for adults and children is family dissolution. Rates of family dissolution are significant in contemporary Western societies where there is a lot of diversity and change (Bagshaw, 2007). The process of family breakdown is unique and dynamic for all families. During stressful times, coping capacity is enhanced through experiencing healthy, supportive and responsive relationships and timely interventions that recognise one's needs (Perry, 2009).

Children's adjustment to family breakdown has been widely researched. Many children from separated families experience confusion, distress and feel marginalised, and parents are not fully aware of their children's needs. Understanding has evolved that there is multifaceted interaction of various factors that influence children's post-separation adjustment (Kelly & Emery, 2003). Research consistently shows that children's adjustment is compromised by increased stress from a range of factors including: the uncertainty, and loss and grief in children's family relationships,

and in their general lives; compromised parenting capacity of stressed parents including reduced awareness of, and responsiveness to, their children's needs (Bagshaw, Quinn & Schmidt 2006); and parents' failure to provide information to and consult with their children about their future parenting arrangements (Cashmore & Parkinson, 2008).

Numerous studies highlight that inter-parental conflict is a major factor that creates various problems for the child including: heightened emotional instability, academic problems and behavioural and psychological disorders (Kelly, 2000). There is strong consensus from numerous research studies that significant relational stress can adversely affect the child's brain cell proliferation and neural plasticity and the capacity to regulate stress (Perry, 2006; Cozolino, 2010). While inter-parental conflict is a concerning issue post separation, it is important to recognise that for children who have been exposed to family violence, their adjustment to family breakdown is even more complex, and potentially significantly more damaging.

A common driving force for family breakdown is family violence (Sheehan & Smyth, 2000). There are substantial numbers of parenting disputes involving family violence before the Australian Family Courts (Moloney et al., 2007). Violence often escalates post-separation (Buel, 1999), and

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this significantly heightens stress for the child and adult victims. Each individual child has complex connections to their parents and to their experience of violence within the family (Featherstone & Trinder, 1997). Children's exposure to the adverse experience of witnessing family violence usually remains undisclosed and unrecognised for a long time (Anda, Felitti, Bremner et al., 2006). This is particularly concerning post-separation as children exposed to family violence face a real predicament that must be recognised and understood in order to protect them from heightened risks to their safety, well-being, and development (Jaffe et al., 2003). For children who do not have appropriate support, and for those who are not protected from further exposure to violence, they are more likely to have prolonged activation of the stress response system. This can have long-term adverse effects on their overall development and well-being (Perry, 2009; Cozolino, 2010).

To protect the child, it is crucial to provide effective child inclusive early interventions. This includes family dispute resolution to identify and address the complex relational dynamics, any special needs of the child, and the potential risks and moderating factors (Humphreys, 2006; Batmanghelidjh, 2006).

Impact of childhood exposure to family violence

There is no greater hell than to be a prisoner of fear (Cozolino quoting Ben Johnson, 2010, p. 258).

Definitions of domestic and family violence can be quite variable. However, based on empirical research, violence within the family is increasingly understood as a complex concept that refers to a wide range of behaviours and various patterns of violence (Jaffe et al., 2008). For the purpose of this article, family violence refers to the definition specified under the *Family Law Legislative Amendment (Family Violence and Other Measures) Act 2011*, that was recently introduced to Australia. The definition of family violence was broadened to include violent, threatening or other behaviour that is coercive, controlling, or fear provoking to a family member (S4AB). This Section of the Act also recognised that a child is exposed to family violence by seeing or hearing the violence or experiencing the effects of family violence. Also, the legislative amendments, under Section 4(1) of the Act, broadened the definition of child abuse to include serious psychological harm to the child from exposure to family violence. This is very important legislative progress, as research shows misuse of power and control by one partner over the other is experienced by the child as an abusive relationship (Bagshaw & Chung, 2000).

Children exposed to family violence need to manage and make sense of a range of complex issues including the behaviour of the violent parent, their own and other family members' safety, their own responses to the perpetrator's behaviours, and their ongoing fear (Mullender et al., 2002).

Children from violent families are powerless, may have devastated lives, and often fail to seek help and admit their needs as they feel scared, or shamed by their experiences (Batmanghelidjh, 2006). Childhood exposure to family violence disrupts the normal tasks of childhood (Castelino, 2009). Children's special needs and safety issues may have been overlooked, and they may continue to experience elevated stress and fear (Mullender, Hague, Imman et al., 2002). In addition, consistent research findings show the high rates of co-occurrence of family violence and direct forms of child abuse (Edleson, 2002).

Research on the effects on children from exposure to family violence is expanding, as is the research about the complexity and variability of this violence. Findings reveal that the short and long-term problems that may develop are similar to problems for children who have been directly abused (Wolfe et al., 2003). A range of short and long-term adverse effects on children include serious physical, psychological, cognitive, behavioural, developmental, emotional and relational problems (Eisikovits & Winstok, 2002; Wolfe et al., 2003). This affects their life satisfaction, self esteem and future relationships.

Research shows a range of variables that influence the severity of impact on children from exposure to violence. More negative and extensive adverse effects are created when trauma is experienced earlier in life, is more severe, and more prolonged (Cozolino, 2010). Serious damage occurs when the trauma emanates from the caregivers, and the child is deprived of healing interactions and has no safety zone (Cozolino, 2010).

Multiple areas of the brain that respond to threat are affected by traumatic events and the neurochemical systems become altered post trauma. Where children are not protected from exposure to abnormal, severe or repetitive patterns of stress during critical phases of brain development, there can be serious long-term impairment to their neurobehavioural functioning (Anda et al., 2006). This includes impairments in attention, reactivity, sleep, fine motor control and other emotional, cognitive and motor functions (Perry, 2000; Cozolino, 2010). Children's physical health is also adversely affected as heightened stress creates physiological changes that increase cardiovascular activity, and reduced digestion, growth and immune responses.

Children exposed to prolonged or severe trauma can develop Post Traumatic Stress Disorder (PTSD). Exposure to family violence is one of the two variables most closely associated with the children's development of PTSD (Adams, 2006). These children tend to have decreased positive adaptation, less coping capacity, and have increased vulnerability to future trauma, such as inadequate self protection, and impaired judgement (Cozolino, 2010). While the measurable criteria for PTSD are not applicable for infants and young children, neuroscience research has provided clear symptoms for identification of young children who have been traumatised. The infant or young child may become dissociative as a biological and psychological way of detaching

from the trauma (Perry et al., 1995). This dissociative response can contribute to deficits in affect regulation and executive functioning of the brain, and attachment problems. This can manifest in a range of psychological disorders related to the complex adaptations to early childhood trauma (van de Kolk, Pelcovitz, Roth et al., 1996).

Each child has individual needs for timely care, protection and assistance in coping with the trauma (Jouriles et al., 2002). However, mother victims of family violence are less able to attune and respond to their children's needs because of their own heightened stress responses. Infants and young children are especially vulnerable when they experience sub-optimal bonding and when they are exposed to trauma. For children raised in these households, they experience unrelieved distress, loss of hope, and live the experience of being totally powerless to alleviate their frightening situation (Batmanghelidjh, 2006). Stressors that are perceived as inescapable have greater sustained negative impact on the brain and can create long-term problems in the child's overall functioning (Cozolino, 2010).

Centralising children's needs in family dispute resolution

Separated families in dispute face myriad of complex issues. In a number of countries, including Australia, ongoing concern about children's post-separation adjustment has supported an increasing emphasis on the importance of family mediation as a voluntary or mandated alternative to litigation over parenting disputes (Martin & Douglas, 2007). Also, across many Western countries including Australia, there has been growth in multidisciplinary Collaborative Practice as a holistic alternative dispute resolution model (Tesler & Thompson, 2007). Both family mediation and Collaborative Practice utilise child inclusive practice. This has been influenced by empirical and clinical evidence that shows how child inclusive practice centralises the needs of the child by enhancing parents' understanding of their children's experiences, needs and views, and how this leads to more informed and durable agreements that can also influence improved family relationships (McIntosh et al., 2008).

Child inclusive practice can occur at any stage of the dispute resolution process. It involves both parents giving informed consent for the process to include an individual child assessment, and for both parents to listen to constructive feedback and to fully participate in the dispute resolution. This aim is to develop understanding of: the child's experience and understanding of the family separation including any exposure to conflict or violence; the child's coping capacity and adjustment; family relationship dynamics; and the child's development, support network, and perspectives and wishes. The child is made aware that any views or needs that are identified during this session will be constructively conveyed to both parents to help the parents develop better awareness of the child's needs, but that the child does not have the burden of decision-making

as that is the role of their parents (Shea Hart, 2009). It is common practice in Australia for a Child Consultant to be engaged to conduct the child assessment, and to provide feedback to the parents in the presence of the mediator or the Collaborative Practice team. The Child Consultant may also be engaged in further dispute resolution sessions.

While child inclusive practice has been successfully applied in mediation and Collaborative Practice to centralise the child's needs in cases that include serious and entrenched conflict (McIntosh, Wells, Smyth et al., 2008), it has not been widely utilised in cases involving family violence. It is important that family dispute resolution further evolves to implement child inclusive practice in cases of family violence. Children exposed to family violence have already been subjugated by their life experiences (Smith & Taylor, 2003). To facilitate appropriate decisions in regard to post-separation parenting arrangements, and to identify required interventions for the child, the parents must be fully and accurately informed about the child's needs (Batmanghelidjh, 2006).

Practice development

Family dispute resolution and child inclusive practice are evolving and there is no single model that should be exclusively relied upon. While child inclusive practice has been researched, there is a significant gap in research of this practice in cases of family violence. Family dispute resolution provides an important opportunity for effective early intervention to centralise the needs of the child in cases of family violence. All family dispute resolution practitioners are the gatekeepers who screen for violence, make decisions about the appropriateness of proceeding with alternative dispute resolution, and either facilitate or prevent relevant exploration of issues to centralise children's needs. Child inclusive practice is relevant for all organisations providing family dispute resolution in cases of violence and /or abuse, including Family Courts, Family Relationship Centres and other non-government organisations, and for private practice family mediators and Collaborative Practitioners.

To develop practice that centralises the needs of the child, rather than relying on practice that achieves parenting arrangements that are gambling with vulnerable children's futures, it is important for family dispute resolution practitioners to consider the reasoning that supports the development and utilisation of child inclusive practice. This includes preventing matters from proceeding to the Family Courts by reaching appropriate parenting agreements. Despite the recent significant legislative change to the Australian *Family Law Act 1975* (Cth), to prioritise children's safety (*Family Law Legislative Amendment (Family Violence and Other Measures) Act 2011*), prior research has raised concerns about how the Family Law system demonstrates gaps in knowledge, practices and procedures in regard to parenting disputes involving family violence (Bagshaw et al., 2011; Shea Hart, 2011). This suggests that legislative change alone is insufficient, and that other developments

within the system are needed to facilitate parenting decisions that are in the best interests of the children who have been exposed to family violence.

Other rationale for utilising child inclusive practice includes research findings that show: children's coping capacity is enhanced when their views are respected (Grotberg, 1997); child victims of domestic violence want to be included in discussing their future family relationships (Mullender et al., 2002); when these children are not heard they feel powerless and more distressed (McGee, 2000); children's fear of disclosure about violence in the family can be overcome by appropriately discussing their experiences (Hester, 2006); and children who are required to spend time with their violent parent can become the direct victims of the violence (Harne, 2004), and such exposure can exacerbate children's problems (Brown, 2002). Also, where the impact of violence on the individual child is constructively conveyed to both parents, the adult victim can become less submissive and motivated to support the needs of the child, and in some cases the perpetrator of violence may seek individual intervention, including addressing the violent behaviours (Flynn, 2005). Child inclusive practice is supported by the social justice principle of the child having the right to be heard (United Nations, 1989), and by the National Framework for Protecting Australia's Children 2009–2020 (Commonwealth of Australia, 2009).

Inherent complexities and challenges

To effectively facilitate child inclusive practice in cases where family violence is an issue there are many inherent challenges that need to be addressed. These include policy, practice, philosophies, knowledge, cultural issues and individual client needs.

The families often have multiple and complex needs and changing relational dynamics. The parents may present with cumulative impacts from the compounding stress and lack of supports that affect their functioning as individuals and as parents (Bromfield, Sutherland, & Parker, 2012). Challenges include assessing the suitability for using child inclusive practice based on the parents' cognitive capacity and emotional readiness to commit to this process. Complex dynamics must be understood and managed including: power imbalance; the potency and pattern of violence and behaviour of the primary perpetrator (Jaffe et al., 2008); the context in which violence occurs; the short and long term consequences for the adult and the child; and the partner dynamics (Kelly & Johnson, 2008). Also, risk is a core feature that is not static (Frederick, 2008). Risk assessments need to be ongoing and address the changing factors and to identify that the threat of violence to the child is not current, including that there is minimal risk of perpetrator retaliation against the child.

Children exposed to family violence are often the silent victims who are reluctant to disclose their lived experiences (Shea Hart, 2003). For children who have been traumatised, there are additional challenges in how to encourage them

to attend and to fully participate in their individual session. Appropriate engagement, exploration of and empathic responses to any sensitive or distressing issues for the child, and working at the pace of the child with integration of appropriate therapeutic steps are crucial in successful completion and outcomes of the session. Specialised knowledge and skills are required to identify and manage signs of trauma, and to accurately elicit open, truthful and non-scripted information, and to accurately interpret and evaluate information from the child, particularly if the child's functioning has been adversely affected by trauma.

These cases are resource intensive. Organisational support and resources are needed to provide a safety system for the child and adult participants and professionals involved, and to provide timely, responsive interventions. Resources are also needed to provide a child friendly environment to conduct the child assessment. As engaging and accurately assessing the individual child can be challenging, a suitably qualified and experienced Child Consultant who specialises in working with children of various ages and stages of development from domestic violence families is often required.

Because of the inherent complexities in these cases, to prevent inappropriate decision-making, that could create heightened risks and potentially enduring problematic life circumstances for the child, the dispute resolution practitioner needs specialised knowledge and skills. This is required to competently assess for suitability and to manage these challenging cases. The dispute resolution practitioners need well developed skills in: managing power imbalances and sensitive issues; to motivate the parents to follow up with adult or child referrals to address identified needs; and to discuss information from the child assessment that does not provoke the violent parent to hold the child accountable for expressing his or her own views. Case management of the complex and multiple needs requires high level organisational support for service implementation, cross sector collaboration, and for sustainability.

Conclusions

Awareness of the substantial interface between family breakdown, family violence and child abuse is still emerging (Brown, 2006). Because of the high rates of family violence in separated families, the heightened risks post-separation, and the expanding neuroscience research-based knowledge about the potential serious short and long-term adverse impacts on the children involved, society needs to focus more on provision of child inclusive practice as an early intervention to centralise vulnerable children's needs. For children whose individual predicaments are not accurately identified and addressed, they may be subjected to repeat exposure to violence, and or abuse, that can exacerbate and devastate their lives.

Child inclusive practice brings both challenges and opportunities. It has the potential to help identify and minimise risks, enhance the recovery of children who have been exposed to family violence, and to resolve family

disputes in the best interests of the child. Where appropriate parenting decisions are reached, this prevents matters having to proceed to the Family Courts where the family relationship dynamics may be misunderstood and inappropriate determinations may result (Parkinson, 2012).

To overcome the complex challenges in family violence cases, and to provide effective practice in this specialised intervention, culturally appropriate models of practice need to be developed in ways that respect the cultural norms, interdependence and place of the child in society. Adequate resources need to be provided and organisational support and development of cross sector collaboration are essential. To provide effective practice, practitioners need to stay up to date with contemporary knowledge in this field. Also to develop evidence-based child inclusive practice in family violence cases, specific research needs to be conducted.

To facilitate wider implementation and sustainability of this significant early intervention, there needs to be greater recognition at all levels in human service delivery, including policy makers and politicians, about the benefits for children, families, and communities from provision of child inclusive practice in cases of family violence. By centralising the needs and best interests of vulnerable children through effective child inclusive practice, this has positive implications for the future well-being of societies. Early intervention is crucial in the prevention of intergenerational transmission of domestic violence (Bunston, 2008), and what children experience affects how they mature and function as adults in society (Perry, 2000).

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