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# Children at court: every interaction counts

## Needs Assessment Report

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**Centre for Innovative Justice**

A project for McAuley  
Community Services for  
Women by the Centre for  
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A project for:

**McAuley Community  
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# Executive Summary

This report presents findings from a Needs Assessment that was undertaken as part of an evaluation of the *Court Support 4 Kids* program (CS4K). The CS4K program was first developed by McAuley Community Services for Women (McAuley) and is a court support service for women attending court in relation to family violence intervention orders (FVIOs) that currently operates at Sunshine, Geelong and Ringwood Magistrates' Courts. The service aims to support women who are attending court for FVIOs and who are accompanied by children. The program does so by providing a worker to engage with children onsite while their mother is at court.

Of course, the needs of women attending court while accompanied by children may seem self-evident to those working with women and children in the family violence context. However, the needs of women who attend court accompanied by children, as well as the needs of the children themselves, are largely unacknowledged in court processes. There is also an absence of literature that clearly identifies the needs of women and children in this context. Recognising a gap in the research, the CIJ therefore set out to identify the needs of women who are accompanied by children while at court applying for FVIOs, as well as the needs of these children themselves.

The CS4K Needs Assessment focused on three overarching research questions:

- What are the needs of women who attend court for FVIOs while accompanied by children?
- What are the needs of children who accompany their mothers at court while attending for FVIOs?
- What impact does the presence of children have on the legal process when children accompany their mothers to court?

The findings in relation to these research questions are discussed in this report. They also form the basis for the CS4K evaluation framework, as set out in the CS4K Evaluation Report.<sup>1</sup>

## Method

The CIJ conducted an exploratory literature review as well as seeking out the views of women victim-survivors, service providers and court staff from Sunshine, Ringwood and Geelong courts in order to find answers to the three key research questions. Semi-structured interviews and focus groups were carried out to gather in-depth information from key stakeholders.

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<sup>1</sup> This Needs Assessment report is the first of two reports that were produced by CIJ as part of the broader CS4K evaluation project. The findings of the specific evaluation are presented separately in the CS4K Evaluation Report, October 2018.

## Summary of findings

- Most women would prefer not to bring their children to court when attending for an FVIO but in many cases, and for a variety of reasons including the nature of family violence, many women have no alternative.
- There is a need for dedicated children's spaces at court. Courts are not child-friendly spaces and inadequate facilities exist at court to help keep children safe and occupied.
- Women who attend court seeking an FVIO while accompanied by their children also need additional support in order to focus on proceedings and complete the process.
- Children need distraction and entertainment while at court, both to keep them from getting bored and interrupting the process, as well as to reduce and minimise their exposure to trauma.
- Children's experiences – as distinct from those of their parents – need to be acknowledged in the FVIO court process.
- Courts need to establish safe spaces to meet basic needs of children and women who are fearing for their safety, such as ensuring that there are change tables, clean toilets, basic food and water available. There is also a need for safe, quiet spaces where women can receive legal advice and other support away from their children.
- Court stakeholders and Magistrates should be supported to understand the reasons behind why women bring their children to court, and for courts to facilitate flexible arrangements to accommodate children in the court process where possible.

# Part One: Background

*There is an urgent need to address the issue of children coming to court in intervention order matters, both to shield them from any further exposure to harm through hearing about family violence and to ensure that women are able to get the best outcomes from their applications.<sup>2</sup>*

This report presents findings from a Needs Assessment that was undertaken as part of an evaluation of the *Court Support 4 Kids* program (CS4K), a court support service for women attending court in relation to family violence intervention orders (FVIOs) that operates at Sunshine, Geelong and Ringwood Magistrates' Courts. The service aims to support women who are attending court for FVIOs and who are accompanied by children. It does so by providing a worker to engage with children onsite while their mother is at court. This is so that the mother is better able to focus on the court process and so that her children are not further traumatised by the experience of being at court. The program is operated separately in each relevant location by three local specialist family violence women's services:

- McAuley Community Services for Women (McAuley) at Sunshine;
- Bethany Community Support (Bethany) at Geelong; and
- Eastern Domestic Violence Service (EDVOS) at Ringwood respectively.

Given the dearth of available research on the subject - as well as limitations on the information that could be contributed by community providers who are resourced to deliver services rather than gather data - the CIJ conducted a Needs Assessment as part of the CS4K evaluation project to identify the needs of women and children when women are attending court for FVIOs accompanied by their children. Findings from the Needs Assessment are presented in this report, and were subsequently applied to the specific CS4K Evaluation. The findings relating to the CS4K Evaluation are presented separately in the CS4K Evaluation Report (October 2018). McAuley engaged the Centre for Innovative Justice ('the CIJ') at RMIT University to undertake the Needs Assessment and Evaluation in the first half of 2018.

## The issue

The issue at the heart of both the Needs Assessment and Evaluation was the simple reality that – for a variety of reasons – many women who attend court as the Affected Family Member (AFM) in an FVIO application bring their children with them. This reality sits in tension with the fact that courts are widely acknowledged as ill equipped to accommodate children and babies; as well as the fact that the very legislation designed to offer protection to victims of family violence actually provides a restriction, with certain exceptions<sup>3</sup> on the presence of children<sup>4</sup> during FVIO proceedings.

This restriction is intended to protect children from further exposure to the details of the violence to which their parent (and they) may have been exposed; as well as to prevent them from becoming embroiled in the adversarial dynamic which is inevitable at court.

These are obviously commendable objectives. As a system, however, little has been done to facilitate or support ways in which these objectives can be met.

2 Amanda George and Bridget Harris, 'Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria' (Centre for Rural and Regional Justice, Deakin University, 2014) 8.

3 Exceptions apply if the child is the respondent or if the court orders otherwise, having first taken into account the 'desirability of protecting children from unnecessary exposure to the court system' and the 'harm that could occur to the child and family relationships if the child is present while the court is conducting the proceeding': s 150(3). Family Violence Protection Act (2008).

4 A 'child' is defined by this Act as someone under the age of 18.



Rather, and as the Royal Commission into Family Violence (RCFV) has acknowledged, children have largely remained ‘silent’ victims of family violence,<sup>5</sup> with court procedures and facilities premised on the assumption that decisions which can have significant and enduring impacts on children will be made in their absence. This is despite the dynamics of family violence, as well as the realities of court processes, which make this impossible in some cases. This means that decisions are made about children with them present at court, yet invisible and unacknowledged by the court’s infrastructure and operation.

Recognising this to an extent, the RCFV recommended that Magistrates’ Court of Victoria headquarter courts ‘provide adequate facilities for children and ensure that courts are ‘child-friendly.’<sup>6</sup> The implementation of this recommendation – something which will take significant time and resources – will go some way to addressing safety and trauma issues for women and children who live close to and can attend ‘headquarter courts’ but will not address these problems for parents and children who do not. What’s more, they may make little difference to the capacity of AFMs to focus entirely on their legal needs while there.

This Needs Assessment report highlights the issues affecting women, children and the court process overall when women attend court for FVIOs accompanied by their children. It then identifies the key needs of these women and children while they are at court. To establish how to support women and children attending court in this context effectively, it examines recent literature concerning the needs of women and children attending court for family violence proceedings and then draws on the perspectives of CS4K clients, CS4K staff and other stakeholders to support the findings in the literature.

## About this report

The remainder of this report is set out in four further parts. Part Two explains the project purpose and methodology. Part Three details the findings from the literature review, with Part Four discussing the findings from interviews and focus groups about the needs of women and children attending court for FVIOs. Part Five provides a brief discussion and conclusions bringing themes from the literature and qualitative research together. Interview Tools are included at the end of this report.

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<sup>5</sup> Victoria, Royal Commission into Family Violence, (2016) Report and Recommendations, Vol II, 129

<sup>6</sup> Ibid, Summary, 149.

# Part Two: Purpose and Methodology

In 2016, the CIJ was approached by McAuley Community Services for Women (McAuley) concerning the possibility of evaluating its CS4K program. At that point the program had been in operation at Sunshine Magistrates' Court since 2015 and had recently commenced operation at Geelong Magistrates' Court, delivered through Bethany. McAuley sought an evaluation of the program to determine whether it was meeting a genuine need in the court environment or whether its resources might be better directed in another way. This evaluation was eventually conducted in 2018 after an initial planning period.

During planning for the CS4K evaluation it became clear that, as providers focussed on service delivery, some data gathering instruments and program foundations needed to be further developed by the participating agencies. It also became evident that very limited literature exists on the subject, making careful review of wider family violence literature important.

Further evident was the reality that, while the needs of women attending court for FVIOs who are accompanied by children may seem self-evident to those working with women and children in family violence court contexts, the needs of these women – as well as the needs of the children themselves – are largely unacknowledged in court processes. Indeed, the presence of children accompanying their mothers at court and the impact that their presence has on the overall process is rarely touched on in the literature as a factor that could affect women's experience at court when attending for FVIOs.

Accordingly, and to produce as useful a piece of work as possible, the CIJ recognised that it was important first to examine the needs that the CS4K program was attempting to meet, and then to identify the extent to which the program was meeting those needs.

The aims of the broader CS4K project therefore became:

- i) to conduct a Needs Assessment in relation to the issues affecting women attending court for FVIOs while accompanied by their children; and
- ii) to collect evidence about, and to evaluate the effectiveness of, the CS4K program in meeting these needs.

This report presents the findings from (i) the Needs Assessment, with the CS4K Evaluation findings presented in a separate report.

The Needs Assessment focused on three overarching research questions:

- What are the needs of women who attend court for FVIOs while accompanied by children?
- What are the needs of children who accompany their mothers at court while attending for FVIOs?
- What impact does the presence of children have on the legal process when children are accompanying their mothers at court?

Findings in relation to these research questions and – to a lesser extent – some emerging issues not directly related to these questions are discussed in the following sections.

# Data Collection

## Literature review

An exploratory review of the relevant literature was conducted to provide contextual information and to identify key needs for women and children at court when they are an AFM on a FVIO application. It also sought to answer questions about why some women bring their children with them to court; as well as to consider the implications of children and young people being present during FVIO proceedings – for women who have been victims; for the children and young people themselves; and for the legal system. The issue of children and young people appearing in court as respondents to FVIO applications presents a distinct range of issues, and was not examined here. It should be noted, however, that the CIJ is conducting another project on this topic and its knowledge of the evidence base on that subject informed this work as well.

## Interviews with CS4K staff

Four face-to-face semi-structured interviews were conducted separately with CS4K children's workers (3) from each service, and a CS4K volunteer (1). The interviews in relation to the Needs Assessment focused on staff perspectives as to women's and children's needs when attending court for FVIOs and the impact of children's presence on the court process overall. (See Appendix 1: Interview Guidelines).

## Interviews with court stakeholders: court staff, legal practitioners and support services

Focus groups were conducted at all three locations with:

- court staff (3);
- legal practitioners and social workers from Victoria Legal Aid and Community Legal Centres providing duty lawyer services to the relevant courts (17); and
- Court Network<sup>7</sup> volunteers (4).

A total of 24 court staff, legal or community service practitioners were interviewed as part of the Needs Assessment, focusing on stakeholder perspectives as to why women bring children to court; women's and children's needs when attending court for FVIOs; and the issues that the presence of children at court raises for the process overall. (See Appendix 1: Interview Guidelines)

## Interviews with clients

One-to-one interviews were sought with women who were current clients of McAuley, Bethany and EDVOS. The focus of the interviews in terms of the Needs Assessment was to identify some of the reasons why women bring children to court with them when attending for an FVIO; to discuss their experience when attending court for an FVIO; and to highlight their needs and those of their children while at court. The only eligibility criterion for participants was that the client had attended court with children in relation to an FVIO. There was no requirement for the woman to have accessed the CS4K service.

For the purposes of recruitment, case managers from each service raised the topic of the CS4K evaluation in the course of their ongoing work with clients who they knew had attended court for an FVIO, explained the purpose of the evaluation and assessed their interest in an interview. Ten women (10) expressed interest, with eight interviews eventually taking place. Two of these women were clients who had children but who did not take them to court, and who nonetheless expressed interest in participating in an interview. Given the objective of the Needs Assessment, these interviews were subsequently deemed relevant to the broader purpose of the project and proceeded. (See Appendix 1: Interview Guidelines)

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<sup>7</sup> Court Network is a court support program serviced by volunteers that operates in some Victorian courts to provide support, information and referral to people attending court and to advocate for the needs of court users. For the past two years, Court Network has been building a dedicated program to develop its capability to respond to family violence. The program's development is guided by Court Network's family violence vision to: provide effective support to people affected by family violence and complement the integrated service response available to maximise women's and children's safety, and connect victims and perpetrators with appropriate referral pathways. While Court Network helps women attending court for family violence matters, it does not look after children.

A total of eight women were interviewed as part of the project, six of whom had attended court in relation to a FVIO matter while accompanied by their children. Due to the sensitive nature of family violence, and the need to consider the women and children's safety, minimal identifying data was obtained. Nonetheless, of the eight participants, one identified as Indigenous; and all had English as a first language. Of the six women who were accompanied by their children at court, most (5) had either one or two children with them, while one woman had three children with her at court. Further, of the six women interviewed who attended court with their children, almost all (5) had attended court with their children more than once. Of the six women interviewed who attended court with their children, all had accessed the CS4K service.

In total, the eight women who participated in the interviews had 14 children in need of childcare between them at the time that they attended court for FVIOs. Ten of these children attended court with their mothers for at least one court visit (four children were looked after by family elsewhere). The children's ages at the time of their first visit to court when accompanying their mothers ranged from three months old to 14 years old. While most children (6) were aged 5 and under at the time of their first visit to court, Table 1 below shows that older school age children (4) also accompanied their mothers to court.

**Table 1: Children accompanying mothers to court when attending for family violence orders**

Client	Number of children in need of care	Ages of children at commencement of proceedings	Children attended court with mother	Attended with children more than once
1	1	3 months	Yes	Yes
2	2	5 yrs and 7 yrs	No	n/a
3	1	2 ¾ yrs	Yes	Unknown
4	1	3 months	Yes	Yes
5	2	7 yrs and 9 yrs	Yes	Yes
6	3	3, 11 and 14 yrs	Yes	Yes
7	2	4 yrs and 5 yrs	No	N/a
8	2	1 yr and 5 yrs	Yes	No

## Data Analysis

At the completion of interviews and focus groups, an initial analysis of all data from interviews and focus groups was carried out by a process of inductive coding, whereby a 'rigorous reading and coding of the transcripts allowed major themes to emerge',<sup>8</sup> and similarities and differences between and within groups could be compared. The emerging themes were then compared with the findings of the literature review, seeking to identify key needs of women and children in this context.

### Limitations

Like all projects, this project came with certain limitations. Given the ethical considerations involved in recruiting victims of family violence appropriately, as well as the other demands with which women living with or surviving family violence are struggling, the number of women willing or able to participate in an interview for the project was fairly limited as is often the case in qualitative research with victims. Nonetheless, the feedback provided by the women participants was insightful, in-depth, contextualised information about what it is like for women attending for FVIOs at court while accompanied by their children.

Another limitation on the work – but a reflection, conversely, of its value – was the severe lack of literature revealed regarding the numbers of children who attend court with their mothers; the reasons why they do; the impact of doing so; or their needs while they are there. This gap in the literature suggested to the CIJ that this is an issue worthy of much more in-depth examination in the future.

### Ethical considerations

As noted above, significant ethical considerations are involved in any research with victims of interpersonal violence. When recruiting victims of interpersonal violence for qualitative research, therefore, the CIJ is always certain to ensure that participants are already connected with a support service. This is so that the service can determine whether these women are at risk, or are otherwise too vulnerable to participate in the research. It is also so that participants can be provided with appropriate support and de-briefing by a case manager or other practitioner with whom they have an existing relationship immediately following an interview.

These ethical considerations also mean that women must not be contacted in ways which may alert their partner/former partner to their participation in the research or their connection with the service. This automatically limits the number of women who are able to be contacted. Women should also be interviewed at a site which is convenient to them, so as to minimise the impact of the interview on their time. For this reason, the CIJ researcher attended the respective service provider locations, or conducted interviews over the phone, to ensure that women were not further inconvenienced.

Ethical considerations in relation to practitioner participants related primarily to the imposition on already busy schedules and the fact that, by virtue of being recruited through their workplaces their employers would be aware of their participation in the research. All employers were highly supportive of the research, however, and there were no discernable negative consequences for practitioners' participation.

The next section discusses the findings from the literature review which the CIJ conducted to support the Needs Assessment. This is presented as distinct from the findings of the qualitative research to reflect the extent to which the limited existing literature was then mirrored by the findings from participant feedback.

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8 Elliott, S. J., & Gillie, J. (1998). Moving experiences: a qualitative analysis of health and migration. *Health & Place*, 4(4), 327-339.

# Part Three: Literature Review

To date no research appears to have been dedicated to the *specific* subject of women attending court for FVIOs while accompanied by children. A careful review, however, reveals references to women attending court with children and young people scattered throughout the broader family violence literature. This literature review therefore collates these disparate mentions of the issue to identify emerging themes. It then examines what the existing family violence literature tells us about *why* some women bring their children with them to court. Finally, it discusses the implications of children and young people being present during FVIO proceedings: for women who have been victims of family violence; for the children and young people themselves; and for the legal system.

## Children and young people at court during FVIO proceedings: visibility in the literature

As mentioned above, the issue of children and young people accompanying their mothers to court for FVIO proceedings has not been the direct focus of any identifiable research. A brief section devoted to this issue in *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria*, a 2014 report by Amanda George and Bridget Harris prepared for Deakin University, appears to be the most in-depth consideration of the issue of children and young people being present at court during FVIO proceedings. In this section, George and Harris draw on the observation work which they conducted at regional and rural Magistrates' Courts in Victoria and state that:

- None of the courts visited by the researchers had a dedicated area for children.<sup>9</sup>
- At courts where there were no separate waiting areas for women and children, they had no choice but to share the space with the perpetrator. 'At court, children may be seeing the respondent parent for the first time since a family violence incident, so the court waiting area becomes an informal 'contact' space.'<sup>10</sup> This situation causes stress for the mother, and raises obvious safety issues.
- Children sometimes created distractions during court proceedings which were unlikely to help these proceedings: 'On one occasion, the researchers witnessed a small child playing noisy games on a computer throughout his parents' hearing'.<sup>11</sup>
- Women often did not realise how long they would have to wait at court and, as a result, were not prepared to meet the children's needs during the day. It was difficult for women to find food and drinks for children when at court: 'Some courts have no vending machines, and those that do sometimes only offer drinks. As workers explained, women who do not realise that they are required to stay at court for many hours do not bring enough food for their children, and some have no money to purchase food'.<sup>12</sup>

George and Harris go on to discuss themes that explain why women brought their children with them to court, which are discussed in the section below. For the purposes of this initial point, however, the significance of George and Harris' research is that it establishes that, in regional and rural Victoria, women seeking FVIOs regularly have their children at court with them, and that this situation poses a number of difficulties.

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<sup>9</sup> George and Harris, above n 2, 87.

<sup>10</sup> *Ibid*, 88.

<sup>11</sup> *Ibid*, 87.

<sup>12</sup> *Ibid*, 88.

There are few other examples of in-depth consideration of the issue of children attending court with their mothers in the context of FVIOs in the relevant literature. However, the review did identify brief references, examples of which are listed below. These are described in some detail, as these references may assist our collective understanding of the issue in the context of the lack of information generally available about this topic:

- In its final report, the RCFV noted that some Magistrates' Courts did not 'have adequate child-care facilities, which can expose children attending court with their parent or family members to fear and trauma.'<sup>13</sup>
- As quoted in the RCFV's final report, Melanie Heenan, Executive Director of Court Network at the time, described the situation of women waiting for their FVIO applications to be heard at the Melbourne Magistrates' Court as follows: 'Women are required to assemble on level 6 where the court room and legal services are located. There are people everywhere; the waiting area is completely insufficient for the number of people attending court. Women sit on the floor nursing their babies and toddlers'.<sup>14</sup>
- In a further discussion, the RCFV stated: 'As a community we should not tolerate situations where emotionally stressed and fearful victims, who are often accompanied by young children, have to spend lengthy periods in court waiting areas in the vicinity of perpetrators and, sometimes, perpetrators' supporters.'<sup>15</sup>
- The RCFV further noted in relation to the long periods of time for which AFMs in FVIO applications are often required to wait at court: 'Where women are informed, often by police, that they need to be at court at 9.30am on a Monday morning (or other nominated day), women assume this to mean that they have an appointment for 9.30am. They do not know that in all likelihood they will be at court for most of the day. So, many women come without nappies for their babies or toddlers, without lunch, without having made arrangements for school pick up of older children. As their day in court drags on, and on, women become even more anxious about being at court as the demands of their role as mother begin to press in on them.'<sup>16</sup>
- Beyond this, a 2013 study by Lesley Laing that examined women's experiences of applying for orders<sup>17</sup> in New South Wales included an extract of an interview with a woman who described waiting for an entire day at court with her three month old baby.<sup>18</sup>
- Also published in 2013, Lucinda Jordan and Lydia Phillips' study of women's experiences of applying for FVIOs, included a number of references to children being at court with their mothers. A woman who participated in the research talked about her fear of having to wait at court in close proximity to the perpetrator. 'There's a corridor where he would wait, right near the female toilets and he used to scare the hell out of me. Sometimes I had my son with me. It was terrifying knowing I've got my son there and he's there somewhere.'<sup>19</sup>
- Jordan and Phillips went on to summarise comments women had made that reflected the difficulties of having children at court with them: 'Some women who found seats down a corridor described not wanting to leave their seat for fear that the perpetrator would approach them. With four or five hour waiting periods, children in tow and limited car parking, this caused great anxiety for women. The lack of drink facilities in the court building and lack of facilities for children such as a safe play area were also a concern for many given the extended waiting periods.'<sup>20</sup>

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13 Victoria, Royal Commission into Family Violence, above n 5, Vol III, 149.

14 Ibid, 130.

15 Ibid, 170.

16 Ibid, Vol VII, 131.

17 Under New South Wales law, victims of family violence can seek an 'Apprehended Violence Order,' which is similar to a Family Violence Intervention Order under Victorian law.

18 Lesley Laing, 'It's Like This Maze That You Have to Make Your Way Through: Women's Experiences of Seeking a Domestic Violence Protection Order in NSW' (Faculty of Education and Social Work, University of Sydney, 2013) 45.

19 Lucinda Jordan and Lydia Phillips, 'Women's Experience of Surviving Family Violence and Accessing the Magistrates' Court in Geelong, Victoria: Phase 1 of the Family Violence and the Victorian Regional Magistrates' Courts Research Project' (Centre for Rural and Regional Justice, Deakin University, 2013) 22.

20 Ibid.

- A further reference to children being at court was made by Jordan and Phillips in the context of a discussion of the importance women placed on receiving support at court: ‘There was a general consensus among the women interviewed that court support significantly eases the stress and confusion experienced by applicants. Women identified information about the court process, practical assistance (like a Salvation Army worker taking a tired child for a walk) and information or referral from a family violence court support worker as having a significant positive effect.’<sup>21</sup>
- In 2005 Rosemary Hunter conducted a study which involved observations of intervention order proceedings<sup>22</sup> in various Magistrates’ Court locations around Victoria. When discussing her findings she made a brief reference to having observed that a ‘significant’ number of women brought their children to court with them. She stated that they tended to be either older/adult children or very young children.<sup>23</sup>
- Hunter also observed that about two thirds of women attended court without a support person.<sup>24</sup> It is therefore likely that some women will have their children at court with them, and will not have another adult there to help.

The picture that emerges from the references that are scattered through family violence literature is that women do bring children with them to court, and that this happens regularly enough to cause concern to commentators and sector stakeholders. The next section of this report will examine what the literature reveals about *why* children are attending court with their mothers.

## Why are children and young people at court?

Currently available data does not provide accurate indications of the extent to which Victorian children and young people experience family violence.<sup>25</sup> However, a recent study carried out on the relationship between family violence support services and child protection organisations found that 70,951 children were reported for family violence concerns in NSW, Victoria and WA in 2010-11 and 2013-14.<sup>26</sup>

Additionally, the Australian Bureau of Statistics’ Personal Safety Survey 2016 revealed that, of the women who had children in their care when experiencing violence by a partner, 65 per cent reported that the children had seen or heard the violence.<sup>27</sup> These statistics suggest that children and young people are often present in the home when their mothers experience family violence.<sup>28</sup> Victoria Police data also indicates that children are present at about 35 per cent of reported family violence incidents.<sup>29</sup> Further, it is well recognised that pregnancy and early parenthood are times when women are at increased risk of experiencing family violence.<sup>30</sup> It is therefore logical to conclude that many women who seek FVIOs will have children in their care. This simple conclusion is, of course, the very basic starting point for growing understanding of the impacts of family violence on children more generally - including that they do not need to be present or have experienced family violence directly to be harmed by it.

Research also suggests that women’s concern for their children’s safety (rather than just their own) is often the motivating factor that prompts them to seek help from the legal system. In their study of women’s experiences in seeking FVIOs, Jordan and Phillips reported that, ‘[o]verwhelmingly the key concern of the women interviewed ... was the impact of the violence on their children.’<sup>31</sup>

21 Ibid.

22 Court orders termed ‘intervention orders’ were available to victims of family violence prior to the introduction of Family Violence Intervention Orders, and were governed by the now repealed Crimes (Family Violence Act) (1987) Vic.

23 Rosemary Hunter, *Women’s Experience in Court: The Implementation of Feminist Law Reforms in Civil Proceedings Concerning Domestic Violence* (Ph D Thesis, Stanford University, 2005) 74. Ibid, 97.

24 Ibid, 97.

25 Victoria, Royal Commission into Family Violence, above n 5 Vol II, 103.

26 Cathy Humphreys and Lucy Healey, L. (2017). ‘PATHways and Research into Collaborative Inter-Agency practice: Collaborative work across the child protection and specialist domestic and family violence interface: Final report.’ (ANROWS Horizons 03/2017). Sydney, NSW: ANROWS.

27 Australian Bureau of Statistics. (2017). Personal safety, Australia, 2016. Canberra, ACT: Retrieved from: [www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0](http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0)

28 The ABS has estimated that for 31.3 per cent of women who had experienced violence by a current partner since the age of 15, and for 47.6 per cent of women who had experienced violence by a previous partner since the age of 15, violence was seen or heard by their children: Australian Bureau of Statistics, ‘Personal Safety, Australia, 2012’ (Catalogue No 4906.0, Australian Bureau of Statistics, December 2013) Table 28.

29 Crime Statistics Agency, *An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14* (January 2016), Table 10: Number of family incidents where a child/children were present—Victoria Police, July 2009 to June 2014, 35: cited in Victoria, Royal Commission into Family Violence, above n 5, 103.

30 For an overview of the research see Victoria, Royal Commission into Family Violence, above n 5, Vol I, 20.

31 Jordan and Phillips, above n 19, 34.

One woman stated:

FF *She's talked about suicide, she's got an eating disorder, and that's not normal for an eight year old. It's not normal for an eight year old to be waking up in the middle of the night because she's had a dream where I'm lying in a pool of blood in front of her sister's cot and my ex-partner is standing over me. That's not something I want my eight year old to be telling me.*<sup>32</sup>

## Many women do not want to bring their children to court

Consistent with women's awareness of the harmful effects of family violence on their children, research indicates that many women do not want to expose their children to the process of applying for a FVIO at court. In Carolyn Neilson and Bonnie Renou's study of the experience of regional Victorian women seeking FVIOs, none of the women interviewed brought their children to court with them. Participants reported that they had chosen not to bring their children because of the long waiting times; the fact that the court premises were not suitable for children; and due to a desire to protect children from the potential trauma they might experience at court. One woman commented, '[t]here's no way I'd bring my kids here [to court].'<sup>33</sup>

Similarly, the majority of women in George and Harris's study expressed a preference for not having their children at court with them.<sup>34</sup> However, George and Harris also noted that some women do not wish to be separated from their children, and that this is particularly likely to be the case where there has been intergenerational or other trauma involving separation from children.<sup>35</sup>

Certainly, separation anxiety is a recognised consequence of exposure to family violence for children and young people.<sup>36</sup>

FF *... a 13-month-old girl [...] was being held by her mother when the woman was hit by her boyfriend. For the next 3 weeks, that child had such intense separation anxiety that the mother could not even go to the bathroom by herself.*<sup>37</sup>

Where children and young people are experiencing severe separation anxiety, it may not be possible for their mothers to leave them in childcare or with friends or relatives for an entire day without causing them significant distress. Equally, it would not be surprising for mothers to experience separation anxiety themselves in that they worry that their children may not be safe at school or in the care of others. Further, older or adolescent children may feel protective of their mother and reluctant to separate from her, particularly at a time of crisis.

Meanwhile, in cases where women have very young children who are still breastfeeding, it may simply not be possible for them to be separated from them for the length of time they are required to spend at court waiting.

## No alternative

While there is evidence suggesting that many women would prefer not to have their children with them at court, beyond the issues identified above, the research also indicates that many women do not have another viable option but to bring them. As a support worker interviewed for George and Harris' study noted, '[s]ometimes women have no alternative.'<sup>38</sup>

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32 Ibid, 34.

33 Carolyn Neilson and Bonnie Renou, 'Will Somebody Listen to Me? Insight, Actions and Hope for Women Experiencing Family Violence in Regional Victoria (Loddon Campaspe Community Legal Centre, 2015) 72.

34 George and Harris, above n 2, 87.

35 Ibid.

36 GoodTherapy.Org, 'Emotional Outcomes for Child Witnesses to Domestic Violence' [www.goodtherapy.org/blog/emotional-outcomes-for-child-witnesses-to-domestic-violence-1011134](http://www.goodtherapy.org/blog/emotional-outcomes-for-child-witnesses-to-domestic-violence-1011134)

37 Timothy Kirn, 'Use guidelines to screen for domestic violence: children who witness domestic violence may suffer symptoms of PTSD and intense separation anxiety' (2007) 41(3) *Pediatric News*, 31.

38 George and Harris, above n 2, 176.

George and Harris reported that the factors that limit women's options include:

- the limited numbers of occasional childcare places in regional and rural Victoria;
- many women cannot afford the cost of occasional care;
- most occasional childcare centres require that the child stay for a minimum number of hours;
- unless a child is familiar with the childcare centre, placing them into care can be stressful for both mother and child, which compounds the anxiety associated with the court visit;
- women who have left the family home and relocated may not have anyone they or their children know or trust to look after them, and so accessing informal childcare may not be an option;
- informal childcare becomes a greater problem the more frequently that women have to go to court, as women may exhaust their informal support networks.<sup>39</sup>

Many of these obstacles would similarly affect women in metropolitan areas. What's more, though not acknowledged in the literature as directly relating to children's attendance at court, the social and cultural isolation that many women experience as a result of family violence may be highly relevant to this discussion. Certainly, it is well-recognised that perpetrators of family violence often seek to sever victims' connections to family and friends as a tactic of coercion and control.<sup>40</sup>

This behaviour can be overt, such as direct prohibitions on social contact; more subtle efforts, such as making the victim feel guilty about socialising; or constantly checking up on her whereabouts when she is with other people.<sup>41</sup> Women who have experienced this have spoken about the impact that isolation had on their ability to cope and seek help.<sup>42</sup> For example, a recent ANROWS study reported:

**FF** *The women's stories showed that it was not unusual for informal networks to dissolve when they were experiencing domestic and family violence, leaving them more isolated within and outside the relationship. Women who had reconciled with their partner numerous times and had experienced domestic and family violence for an extensive amount of time often had no support networks left. The control, manipulation, and fear perpetrated by their partner eroded networks over time and created extreme social isolation.*<sup>43</sup>

Women from culturally and linguistically diverse backgrounds who experience family violence are particularly likely to face social isolation, due to a range of factors that apply in addition to the abusive behaviour of partners. Women who have migrated may be without the support of the family and friends they had in their country of origin. Other women may be living in proximity to family, but the family and community may fail to offer support should a woman choose to end the relationship with a violent man.

As commentators have noted, this situation can also be true for women who do not come from culturally and linguistically diverse backgrounds.<sup>44</sup> However, those who do may not have connections outside their particular community, and so the resulting isolation can be more severe.<sup>45</sup> Further, strong cultural norms regarding protecting the standing of the family and community may function to inhibit women from seeking help outside their community.<sup>46</sup> In addition, women from marginalised communities may experience discrimination from mainstream services or the wider community, further limiting their ability to seek and receive support.<sup>47</sup>

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39 Ibid, 87-88.

40 Dawn Berry The Domestic Violence Sourcebook (NTC Contemporary, 1998) 32.

41 Domestic Violence Resource Centre Victoria, 'For Survivors: The Signs of Abuse' <[www.dvrcv.org.au/help-advice/are-you-happy](http://www.dvrcv.org.au/help-advice/are-you-happy)>

42 Sarah Wendt, Donna Chung, Alison Elder, Antonia Hendrick, and Angela Hartwig *Seeking help for domestic and family violence: Exploring regional, rural, and remote women's coping experiences: Final report* (ANROWS Horizons, June 2017) 35.

43 Ibid, 21.

44 Cecilia Menjivar and Olivia Salcido 'Immigrant Women and Domestic Violence: Common Experiences in Different Countries' (2002) 16(6) *Gender and Society* 898, 904.

45 Ibid.

46 Family Law Council, Commonwealth of Australia, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds* (2012) 39-40.

47 Ibid 39.

Social isolation is a central part of the experience of family violence for many women. It is therefore reasonable to expect that isolation will be an issue affecting the cohort of women who attend court as AFMs in FVIO applications. Without a support network of family or friends, women may not have anyone in their lives with whom they could realistically leave their children.

Further, given that the majority of applications for FVIOs are police applications<sup>48</sup> and that often these applications are made in the context of a crisis incident which is then listed at court within a very short space of time, the likelihood that women have had an opportunity to arrange care for their children diminishes even further. What's more, where the police are the applicant in an FVIO, women may have simply called the police in the hope that the violence would stop, or the police may have been called by another party such as a neighbour. This means that, in the 21st century legal context, many women who attend court in the context of an FVIO hearing are not even there by their own choice. Rather, they are propelled into a chain of events over which they feel little control.

## What are the implications? Implications for women

A FVIO proceeding, whether applied for by the police or by the woman herself, is recognised as being a primary point of entry into legal and social service systems for victims of family violence.<sup>49</sup> A positive experience at this point can mean that a woman gains the confidence to continue to reach out for support, and to pursue legal avenues to protect her safety and that of her children. Conversely, a negative experience may mean that she is dissuaded from taking further steps towards support.

Laing has noted that, 'when women take the step to seek legal protection, the initial response is crucial. This is the point at which they assess whether they should take the risk of reporting the violence and asking for help.'<sup>50</sup> However, 'contact with the legal system, often for the first time, can be overwhelming and frightening' for women who have experienced family violence.<sup>51</sup> In their study, Jordan and Phillips found that 'women consistently described the FVIO application process as confusing and the court process as a source of great anxiety.'<sup>52</sup> As explored below, the literature indicates that having their children at court can make the experience even more stressful for women.

### Waiting for long periods with children and young people in spaces that do not accommodate them

The available literature makes clear that commentators view court premises as unsuitable spaces for women and their children. Those voicing these concerns saw the issues with court premises as significantly heightened because of the long waiting times that are involved. Having to keep a child occupied in a crowded waiting room, with no access to a play area, is particularly problematic in the context where a woman may have to spend the entire day in these circumstances. Another factor that was evident from the literature was that, where the FVIO proceeding was a woman's first experience of court, she was likely to be unaware that she would have to wait a long time, and therefore may not come well-equipped. Accordingly, she may run out of food and drink or other items, such as nappies for the children.

Clearly, having to care for children while waiting for long periods of time in a space that does not cater for them – without access to food, drink and other necessities, and where the children may be in close proximity to the perpetrator – increases the stressfulness of the court experience for women. This in itself is cause for concern, given the impact on the woman's wellbeing and therefore on her parenting capacity.

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48 Victoria, Royal Commission into Family Violence, above n 5, 191.

49 Victoria, Royal Commission into Family Violence, above n 5, Vol II, 246.

50 Laing, above n 18, 37.

51 Ibid, 12.

52 Jordan and Phillips, above n 19, 4.

Further, if the court experience becomes too overwhelming or unmanageable, a woman may not continue to pursue the application. In cases where the woman brings the application herself, there is already a high rate of attrition between the initial application and the final order.<sup>53</sup> Existing research does not give a clear picture of the reasons for this attrition rate. However, commentators have speculated that a significant factor is that the process becomes too overwhelming for some women and they are unable to persist.<sup>54</sup>

This contention is supported by the stories of the women interviewed for Neilson and Renou's study. The women in this study tended to report that they were ultimately glad that they had persisted with their applications, as they and their children had ultimately benefited from this process. However, they also stated that it had been very hard. Some women commented that they could understand why it is simply too much for some women who do not continue with their applications.<sup>55</sup>

Of course, the majority of FVIOs are police applications. In these cases, the fact that a woman may disengage with the process will not necessarily mean that an order is not made. However, even in these circumstances it is concerning if a woman ceases to engage. Common to both police applications and applications initiated by a victim of family violence is a high rate of women not attending court.<sup>56</sup> As noted by the RCFV:

■ ■ *While affected family members may not be attending court in police-led matters, as they believe that the police can represent them properly and have maintained good communication with them, their absence nonetheless raises concerns about the effectiveness of the court process, its impact on women's safety and procedural justice ...*<sup>57</sup>

The RCFV concluded that 'some women may be too frightened to come to a court that cannot provide safe, separate entrances, exits and waiting areas for victims of family violence.'<sup>58</sup>

Even in the case of police applications, a woman not attending court can have a detrimental effect on the legal outcome. If the AFM is not present at court, police may simply seek a limited order that prohibits the respondent from committing further family violence.

More extensive clauses, such as those preventing contact, or excluding the respondent from the AFM's home, are not always included, although exclusion clauses are becoming more common. The resulting order may therefore be less effective in keeping the AFM safe.<sup>59</sup>

This means that having to wait for long periods of time in inadequate court premises, the stressfulness of which is heightened if they have children with them, can impact on a woman's ability to engage with the FVIO process. As noted earlier, the RCFV made a recommendation directed at improving court infrastructure to make the court experience safer and less traumatic for victims. As noted above, an aspect of this recommendation is that the Victorian Government ensure that all Magistrates' Court of Victoria headquarter courts 'provide adequate facilities for children and ensure that courts are 'child-friendly.'<sup>60</sup> Given the other issues identified in this report, however, the implementation of this recommendation will only go so far.

## Participating in the legal process

Of course, the quality of information on an FVIO application form can affect the success of the process, and can impact on the extent to which the order includes terms that are favourable to the AFM.<sup>61</sup> Completing the application form can be difficult and, while at some courts Registrars are available to assist, women may be too overwhelmed to provide clear information during this process'.<sup>62</sup>

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53 Hunter, above n 23, 100.

54 Ibid.

55 Neilson and Renou, above n 31, 17.

56 Victoria, Royal Commission into Family Violence, above n 5, Vol II, 191.

57 Ibid.

58 Ibid.

59 Ibid.

60 Ibid, Summary, 65.

61 Ibid, Vol III, 121 – 122.

62 Ibid.

In Neilson and Renou's study, women reported that they had trouble concentrating on the application process, and that crucial information conveyed to them at this time did not 'sink in' due to their distressed state.<sup>63</sup> For those women who are able to access legal advice at court, similar barriers apply: women may be too overwhelmed and distraught to provide clear instructions to lawyers. As a consequence, the full picture of the family violence and the extent of the risk that a woman is facing may not be conveyed to the court.

Women may also struggle to understand what happens during a hearing, due to a combination of stress and the difficulties people without legal training generally encounter when experiencing a legal process. As a family violence support worker told the RCFV:

... a lot of the information is going over the applicant's head because they are in a state of trauma. If they are coming on a Monday, quite often the incident has happened from Friday onwards. Things are really fresh. They're coming to a system that most people haven't had experience with. We talk a very different language. The setting is pretty unfamiliar to most people. We are also bringing them in a state of trauma. So, what they are actually required to do is understand our system, understand our language, to make decisions [that will] affect the rest of their lives and their children's lives, and make those decisions pretty quickly with a very short engagement with legal services, with myself, with the whole court experience ... We are asking people to be lawyers, to understand legal language and also understand how it is, what actually happens when you breach, when there's breaches, what constitutes a breach, what police should be listening to, how to report breaches.<sup>64</sup>

Understandably in these circumstances, women already struggle to give comprehensive and clear information to Registrars and lawyers, and also struggle to understand the legal outcome in their cases. Having children in their care during these times will inevitably create a further level of distraction and worry for women, making it even harder for them to engage. Further, the presence of their children may make women reluctant to disclose the extent of the family violence they have experienced. As already indicated in this literature review, many women are acutely aware of the detrimental effects of family violence and its consequences on their children, and actively seek to shield their children from these consequences. Women may not want to recount details that may distress their children, even though it is crucial to the effective conduct and outcome of the legal matter that this information is conveyed.

## Implications for children and young people

Due to the absence of research looking specifically at the issue of children attending court in the context of FVIO proceedings we do not know what this experience is like for children and young people. However, in 2010 a study was undertaken in which Victorian children and young people who had been in the out of home care system were asked about their experiences of the Children's Court of Victoria. All the children and young people interviewed reported that they found going to court 'scary'.

Some feared that they were going to be punished for something they had done, and potentially sent to prison.<sup>65</sup> Research with US children and young people has revealed a similar theme. The experience of children and young people attending children's courts in California was described as follows:

Far too often, this experience frightens the children and makes them think that they are coming to court to be punished for some imagined misbehaviour. This happened to one eight-year-old child who came to court, saw the words 'Criminal Courts' spelled out on the side of the building, and asked a social worker: 'Am I a criminal?'<sup>66</sup>

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63 Neilson and Renou, above n 31 72.

64 Victoria, Royal Commission into Family Violence, above n 5, Vol III, 137.

65 CREATE Foundation 'Children and Young People in Care: Consultation for the Victorian Law Reform Commission' (March 2010) 5.

66 Paul Boland, 'The Los Angeles County Children's Court: A model facility for child abuse and neglect proceedings' (1991) *Pepperdine Law Review* 247, 248.

US research has established that children experience conventional courts as frightening and bewildering places, and that attending conventionally designed courts can compound the trauma that children have already suffered in their lives.<sup>67</sup> This recognition has driven innovations such as the construction of the purpose-built Edmund D. Edleman Children's Court in Los Angeles designed to be 'dignified, yet friendly and sensitive ... where abused and neglected children feel welcome and comfortable, and where a court appearance does not become yet another traumatic, unpleasant experience for a child.'<sup>68</sup> Notably, the Children's Court of Victoria has also made recent attempts to make its facilities far more child friendly and welcoming. In the absence of purpose-built facilities, it seems likely that the children attending Magistrates' Courts in the context of FVIOs will find being at court a frightening experience.

Further, while the devastating effects of family violence on children and young people have been well documented,<sup>69 70</sup> children who have experienced family violence may be re-traumatised by being present during conversations and court proceedings where the violence is described. Some children may not have previously been aware of the full extent of the violence, and may learn about this for the first time while in an unsupportive environment. Indeed, the aim of 150 of the *Family Violence Protection Act 2008 (Vic)* – which provides a restriction on the presence of children during FVIO proceedings – is to protect children from exposure to the court system. This is in recognition of the potential for children to be traumatised by involvement in the court process and the potential harm to them and their family relationships from being drawn into conflict between their parents.<sup>71</sup>

Certainly, an oft-quoted passage by Judith Herman argues that '... if one set out intentionally to design a system for provoking symptoms of post-traumatic stress disorder, it might look very much like a court of law.'<sup>72</sup> Though this was written in the context of adult victims of violence, arguably it is equally or even more applicable to child victims.

That said, it is clear that simply prohibiting children from attending does not address this problem, in circumstances where women have no other option but to bring their children. What's more, it is worth interrogating the literature further to determine whether the response to these concerns should simply be to keep children away from court as much as possible, or whether greater awareness of and attention to children's needs can mean that attendance at court can actually be a positive experience for some.

To this end, it is worth noting that a less frequently acknowledged observation by Judith Herman is that participating in the justice system also has the potential to provide mental health and other benefits to victims of crime/interpersonal violence. In fact, Herman argues that – even though legal processes can be highly stressful and may fail to be victim-centred – engaging with them may nonetheless deliver outcomes to victims that mean they are safer. Further, some may find the process empowering, and some may experience public acknowledgement and have other justice needs met.<sup>73</sup>

Herman ultimately concludes that involvement in the legal system in itself is not inherently damaging to victims' mental health. Rather, she suggests that it is the *quality* of the encounter with the legal system that determines whether the experience is harmful or beneficial for victims.<sup>74</sup>

Meanwhile a small, yet growing, body of research does look at young people's experiences of court in the context of child protection proceedings. Some of these studies sought to measure the emotional impact for children attending court, finding no evidence of high distress following the court experience and indicating a keen desire by children and young people to be able to attend hearings if they so choose.<sup>75 76</sup>

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67 Ibid.

68 Ibid, 250.

69 Victoria, Royal Commission into Family Violence, above n 5, Vol II, 106.

70 Australia's National Research Organisation for Women's Safety (ANROWS). (2018). Research summary: The impacts of domestic and family violence on children (2nd ed.; ANROWS Insights 11/2018). Sydney, NSW: ANROWS.

71 Victoria, Parliamentary Debates, Legislative Assembly, 24 June 2008, 2647 (Rob Hulls, Attorney-General); Explanatory Memorandum Family Violence Protection Bill 2008 (Vic) 51.

72 Judith Herman *Trauma and Recovery: The Aftermath of Violence* (Basic Books, 1992).

73 Judith Herman, 'The Mental Health of Crime Victims: Impact of Legal Intervention' (2003) 16 (2) *Journal of Traumatic Stress* 159, 160.

74 Ibid, 162.

75 Vicky Weisz, Twila Wingrove, Sarah Beal and April Faith-Slaker, 'Children's participation in foster care hearings' (2011) 35 (4) *Child Abuse and Neglect* 267.

76 Stephanie Block, Howard Oran, Diane Oran, Nikki Baumrind and Gail Goodman, 'Abused and neglected children in court: Knowledge and attitudes' (2010) 34(9) *Child Abuse & Neglect* 659.

Other commentators have concluded that children and young people subject to child protection interventions want to have more involvement in decision making that affects them, but that this reflected a desire for the opportunity to be heard, rather than to determine outcomes. As one put it, this desire included the chance to 'have a say' rather than 'their own way',<sup>77</sup> while others explain that:

FF ... children express desire to participate and to have a voice in decisions; they are disappointed when they do not feel listened to.<sup>78</sup>

This means that research is starting to acknowledge the importance of asking children and young people directly about the impact of family violence on their lives.<sup>79</sup> Yet it also indicates that this is not a common experience for many. While family violence has been an ongoing experience in their lives, studies indicate that children affected by family violence feel frequently excluded from decisions which affect them,<sup>80</sup> in turn leaving them with a sense of powerlessness.<sup>81</sup>

This contrasts with what studies suggest is children's keen awareness that family violence is about power and control.<sup>82 83</sup> To this end, other studies indicate that children also benefit from seeing that their experience has been named by an authority and that consequences have been experienced by those who have made them feel scared and powerless.<sup>84</sup> While the family law system has long included children's perspectives to a limited degree, this emerging evidence suggests that it may be time to increase opportunities for children to be heard and acknowledged in other jurisdictions whose decisions directly affect them.

## Implications for the legal system

The data shows that the number of FVIO applications before the courts are continuing to rise.<sup>85</sup> Courts are struggling to meet this demand. Drawing on her observations of FVIO proceedings, Rosemary Hunter estimated that the court spent an average of three minutes on each matter, not including contested hearings.<sup>86</sup> Hunter's study was conducted in 2005, and the system is under considerably more pressure now. With such a short amount of time allowed for each matter, it is difficult to see how the court can pay adequate consideration to the matters before it. This is an obvious concern for the safety of AFMs. It also raises issues in terms of work stress for judicial officers, other court personnel and other professionals who work in the courts. The presence of children in court rooms may compound these pressures, as children can cause distractions and delay, thus absorbing precious court time that cannot be spared.

Meanwhile, where AFMs are unable to provide detailed instructions, or to absorb the legal or other advice they are given, this can impact on the quality of the orders sought and made. It can also increase the court's workload down the track, as variations or revocations may be sought in relation to orders which AFMs later realise do not suit their needs. This can include both orders reached in contested hearings, as well as orders made by consent where an AFM may be in a rush to get the order in place and her children out of court.

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77 Judy Cashmore, 'Promoting the participation of children and young people in care' (2002) 26 Child Abuse & Neglect 837, 845.

78 Monica Miller and Brian Bornstein Stress, Trauma and Wellbeing in the Legal System (Oxford University Press, 2013).

79 For a useful overview see: Katie Lamb Seen and Heard: Embedding the Voices of Children and Young People who have Experienced Family Violence in Programs for Fathers (PhD Thesis, The University of Melbourne, 2017) 22.

80 Jude Irwin, Fran Waugh, and Michelle Bonner, 'The inclusion of children and young people in research on domestic violence' (2006) 1(1) Communities, Children and Families Australia 17, 22.

81 Caroline McGee, Childhood Experiences of Domestic Violence (Jessica Kingsley, 2000) 66.

82 Mullender, A., Hague, G., Imam, F. I., Kelly, L., Malos, E., & Regan, L. Children's perspectives on domestic violence (Sage Publications, 2002).

83 Fergus Hogan and Máire O'Reilly Listening to children: Children's stories of domestic violence (Office of the Minister for Children Department of Health and Children, Dublin 2007) 81.

84 Lamb, above n 76.

85 Victoria, Royal Commission into Family Violence, above n 5, Vol VII, 41.

86 Hunter, above n 23, 95.

Whether from the perspective of women AFMs, their children or the various stakeholders involved in FVIO applications at court, the literature reveals that the presence of children at court during the FVIO process is far from an ideal situation. However it is also clear that, for many reasons, some of which are due to the very nature of family violence, women often have no option but to bring their children with them to court. In the absence of services geared to support women accompanied by children at court, the presence of children not only has negative implications for the wellbeing of women AFMs and the children involved, it can also be to the detriment of the legal process as a whole. This is also potentially an unwitting factor contributing to some women AFMs choosing not to continue with the FVIO process.

The next section discusses findings from the qualitative interviews with stakeholders – including women AFMs – from Sunshine, Geelong and Ringwood Magistrates' Courts.

## Part Four: Stakeholder Perspectives on Women and Children's Needs at Court

Semi-structured interviews and focus groups with stakeholders, including with women with children who have attended court for FVIOs, revealed several common themes in terms of the issues affecting women, children and the court process when children are present for FVIO proceedings. Findings from the interviews are presented below, and strikingly mirror the themes identified in the literature review above. Unusually for research of this nature, stakeholders touched on *all* of the issues uncovered in the literature, as well as identifying numerous additional issues that affect them by virtue of having to attend court for FVIOs.

### Children are a regular feature at family violence proceedings

Comments from court staff, CS4K staff, Victoria Legal Aid (VLA) and Community Legal Centres (CLC) participants, and Court Network volunteers at Sunshine, Ringwood and Geelong Magistrates' Courts reveal that children are a regular feature at FVIO proceedings at these courts. Almost every court stakeholder interviewed agreed that, every sitting day, children are at court with their mothers – and sometimes with their fathers – in relation to family violence matters. While all participants acknowledged that the numbers of children at court with their mothers vary from day to day – with some relatively quiet days – they also reported that, on busy days, it can be standing room only in the safe spaces available at the three courts.

☐☐ *[We see children] every day: Monday, Tuesday, Wednesday, are more common. But there are a lot of women with children, it varies day to day but there are often children at court. [court support]*

... *[Y]ou might have a day when there's no children, you might have a day where there are lots and lots of children. [...] and obviously children just wanna get the hell outta there because it's not a fun space, so when they're there you notice them. [legal practitioner]*

Based on participant observations, children appear to range in age from babies to pre-school age, with an increase in older children during school holidays. Even so, participants remarked that school-age children do accompany their mothers for various reasons during the school term. Many also made comments indicating that the situation in terms of children attending court with their mothers for family violence proceedings was similar to other courts they had worked at around Victoria.

☐☐ *... it's hard to put a sort of figure on it, but I would say that the majority of the time there's at least a couple of kids hanging around here at court, generally the younger generation, you don't often get any sort of many over 13 or so unless ... school holidays yeah, that's always a big time, but generally it's like you know the younger range of kids ... [court staff]*

*Generally a little tiny one and then a little walking one, yeah? [legal practitioner]*

Court staff from both Sunshine and Ringwood reflected that women do not only attend with children for court listings, but also for appointments with court staff on non-application days in order to commence or complete FVIO applications. This means that, while only certain days may be dedicated to FVIO court listings, women also come to court for other reasons related to their family violence applications, often bringing their children with them.

FF *As much as we try to say ... court should be the very last place kids should be for lots of reasons ... lots of people walk off the street with their kids in tow; they front up to the counter and just unload all this information, with little kids right next to them, looking up with their big wide eyes ... [court staff]*

*... it's not just for actual court listings, so we will have up to 10-12 appointments on any given day ... for FVIOs, so when they're first commencing that process ... not only sitting there with their handwritten forms for an appointment but with the online applications, and a lot of the times, they'll bring children in with them, ... so this brings it to 5 days a week that with appointments they might bring children. [court staff]*

## Court is no place for children

The unanimous view held by all participants – including women participants who brought their children to court with them while applying for FVIOs – was that court is no place for children or young people. All women interviewees who had attended court for FVIOs commented that, quite apart from their own difficulties in terms of having their children with them for court proceedings, court itself is an extremely unpleasant place for children:

FF *I was worried about [my child's] safety not just from [the dad] but even people we don't know – I've seen people yelling, I hated taking [my child] there. ... Would've been nice if [my child] could be right away from it – it'd be better if it was just people like me and [my child] there. But court is not a nice place for anyone, let alone a child ... [client]*

CS4K staff and practitioners associated with all three courts made similar observations. Comments about the court environment reflected the tense, intimidating atmosphere of courts created by virtue of the many different people who are at court for all kinds of reasons, including police 'with guns'; security staff and security checks; and occasionally angry individuals. A strong, consistent theme across all participants was that courts are not at all child-friendly, with many participants expressing the view that it is inevitable that the court atmosphere would have a negative impact on children who are at court.

FF *Because it doesn't matter who you are, or how old you are, ... walking into a court is horrible ... [social worker]*

*I've observed really small children becoming quite distressed I think as a result of the, you know, the environment. [legal practitioner]*

*... it's kind of an unfair burden to put on both parents because they can't control what other parents are doing as well, so, you know, or the fact that there are police there ... with guns, and security, and people screaming, ... [legal practitioner]*

*Courts are not geared to deal with children being there, ... I sometimes feel intimidated and I've done this for 30 years. It's just that aggressive feeling out in the main foyer. You don't want your kids there. [court staff]*

Court staff, practitioners, Court Networkers and CS4K workers also recounted situations – not necessarily related to family violence matters – where they had been intimidated or fearful for their own or others' safety.

**FF** *I saw a man marched out by police today, and it was quite frightening even for me. For a child already traumatised, scenes like that must be awful – and they happen every day there. [children's worker]*

*... oh we've had capsicum spray and everything go off, we've had brawls where it was awful, it was locked down basically, and we had a woman she was only 16 or 17 ... and she had her eight month old baby with her, so we had to keep her in a legal aid office until the spray had gone down enough to then be able to take her outside; we had the baby all covered up so they weren't breathing in these fumes [court staff]*

In addition to the unpleasant atmosphere of court, professional participants also pointed out the physical deficiencies of the court spaces, in terms of design and lay out, making them unsafe for children:

**FF** *The physical facilities and spaces themselves would not meet child safety standards. There's a women's only waiting area, but things like the stairs, ballustrades do not meet safety standards. Then there's the venetian blinds, which are dangerous for little kids but you can't open them. [children's worker]*

*... the court environment is not very safe for children, particularly the staircase, and there's a lot of other people in the court environment who are not particularly good for children to [be exposed to] [legal practitioner]*

If court staff or legal practitioners have the chance to speak with women before they come to court, they will usually try to encourage women not to bring their children.

**FF** *... I always talk to them if I can the night before to remind them to do anything they can to make arrangements [for their children], but if it's just not possible ... Another problem is they may have deliberately left the child at home saying it's easier, and suddenly they need to go home and feed. ... [social worker]*

## Children come to court for many reasons: practical, emotional and safety factors

As noted above, staff and legal practitioners acknowledged that, if given the opportunity, they will do all they can to discourage women from bringing their children to court. However, they also recognised that, for many reasons and especially in family violence situations, children are a reality of court proceedings. Court stakeholders regarded it as inevitable that some children will always need to be with their mothers attending court for family violence matters.

**FF** *... the courts themselves are just not appropriate places for children to be and sometimes I feel like mums are really in a hard spot because they don't have any options [legal practitioner]*

The following themes emerging from interviews and focus groups suggest that there are often very practical reasons, as well as compounding family violence-related issues, as to why this is so.

## Women's experience: no alternatives

Of the women interviewees who brought their children to court with them (6), all reported that, while they would prefer not to bring their children to court, they had no other option. Reasons provided for there being no alternative included one or a combination of the following:

- children were very young and/or breastfeeding: women who had very young babies were unable to leave them with anyone else for long periods of time either because they had not been separated from their children before or because they were still breastfeeding.

☐☐ *Basically I went to court for the first time when I had my three month old, ... so, she was very little so you know I didn't want to be separated from her so I took her to court with me. [client]*

*[It] was very stressful because I didn't want to take [my child] to court, it's not really the place for her, but she had never been in care before ... We'd had changes with visitation and I was also worried about changes in care, she already had separation anxiety, so I didn't want to try to make her adjust to that too. ... [client]*

- no support networks: some women noted that, due to their experience, they were cut off from family and friends and had no support.

☐☐ *There were no options [for the children] to be anywhere else. I have no family ... Now we have no other options, we're cut off from family and friends. [client]*

*She was two when it started, it was the worst time to bring her to court, she was running around a lot like a mad woman. But I had no other options. I was on a daycare waiting list. ... No friends or family support. ... it's just me and [my child] ... You get used to isolating yourself. [client]*

- no occasional or other childcare available

☐☐ *Oh I coulda called my mum but she lives over 2 hours away ... I just didn't want to put that on anyone, rather just get it over and done with by myself. [client]*

*Well I took them because my little one is only one, and both my parents work, ... It's too hard for mum to take the time off. I didn't want to take them but I had no option. [client]*

- not possible to find alternative care for children with high needs

☐☐ *Because I have to be at court by 9.30 and because [my child] has ADHD, to settle [my child] at school takes 30 minutes, so if I took [my child] to school I wouldn't be able to get to court until after 10am, so I couldn't do that. [client]*

- pupil free days at school

☐☐ *... another time was a student free day so I had to take my 9 year old as well. There were no other options for my kids to be at school that day. [client]*

- concern that court would not be completed in time for school or childcare pick-up

☐☐ *Occasional care shuts at 2pm, and I couldn't risk being out and I wasn't there [to pick child up]. [client]*

## Safety concerns

Safety concerns were also identified as an issue by some women participants. Indeed, for one woman who had been in a refuge at the time of her FVIO application, ensuring the safety of her children was the prime motivating factor behind her bringing her children to court. At the time of her initial application, this woman had no choice but to bring her children with her to court, as she was unable to leave them in the crisis accommodation. Yet even on subsequent court dates, when the children were in school and they were more settled, she chose to bring them just to ensure that she knew they were safe on those days.

FF *First time, they were out of school because we were hiding ... But even the last court session, the kids had school but I chose to bring them just in case. I very rarely leave home because of safety concerns, the school is very aware of our case. [client]*

Some legal practitioners, court staff and court support volunteers echoed these women's comments, noting that safety concerns are an important factor for many women bringing their children to court. This is particularly so for women in refuge accommodation, or where women are in hiding.

FF *... women who are in refuge, you know they've got safety concerns, and the refuge won't look after the children. [legal practitioner]*

*[...] the women think the respondent will go and take the children so they don't want them to go to school cos he knows they're at school and they know that he knows she'll be at court, so they've brought them ... to protect them. [court support]*

*Generally women won't send children to school until the IVO is in place; they're scared that the respondent may pick them up. [court staff]*

## Stakeholder perspectives: practical reasons and family violence factors

Over their many years of experience working with women accompanied by children while seeking FVIOs, CS4K staff, legal practitioners, court staff and Court Network volunteers had all observed similar reasons as to why children attend court with their mothers. As two legal practitioners noted, childcare can be difficult for any mother to arrange at a moment's notice, let alone for women in family violence situations:

FF *... then there's you know, school holidays, really similar reasons to kind of why women with children bring them in other aspects of your life, like to work ... We're all the same, we all could be any of these people ... [legal practitioner]*

*[F]or women who are bringing their kids there, I don't think that's their first choice ... with court you don't get any choice of day, it's not like you can say when the matter's being listed, can you list it on the day I've got childcare? [legal practitioner]*

The difficulties of trying to arrange childcare at a moment's notice are exacerbated by the nature of family violence and the fact that women are often required to be at court the following day, or very soon after they report an incident to police:

FF *With police ones you could have an incident that occurred last night and they're telling her to face up to court 9.30 the next morning and there's just no time, no time to organise anyone, or there's no family support so they can't you know, just ... ring up mum and say hey can you look after the kids ...? [court staff]*

Additional reasons noted by practitioners and service providers include the myriad reasons why children – and especially very young children – have to accompany their mothers on any other given day, as well as compounding factors specific to family violence situations:

- child illness;
- very young children who are breastfeeding: ‘you see very young bubs, so realistically they couldn’t be with anyone else’ [legal practitioner];
- mother’s desire not to be separated from their baby: ‘I’ve had clients where ... the baby is being looked after by Court Network staff and the mum is really distressed being away from the baby for a long period of time.’ [legal practitioner];
- lack of accessible and/or affordable childcare; and
- a reluctance, especially among the CALD community, to discuss family violence with friends or family and therefore reveal why they are asking for help to care for children.

### **Long days: uncertainty and misunderstanding about the length of time for court process**

An additional and important observation noted by all court stakeholders is that women often arrive at court with their children first thing in the morning, without any understanding or information about how long the FVIO process could take.

FF *... because it says 9.30 and if they ask how long it is going to take, they’ll probably say 5-10 minutes, because that’s how long it is in court, I don’t think anyone gets called up in the morning expecting to be there 3 or 4 hours ... [legal practitioner]*

*... they are told to be here at 9.30 so they’re thinking it will be heard at 9.30, without realising there’s so many ... who are all told to come at 9.30 [legal practitioner]*

*... people are getting letters to say their court case is on at 9.30 so you would think ... if I bring my child, I’ll only have to look after my child for this period of time, but they’re there all day ... no one gives you that information, unless someone else has been lucky enough to see legal aid or something beforehand ... [legal practitioner]*

In some cases, when women are uncertain about how long the day might take, participants have also observed that women prefer to take their children out of school, rather than risk not being out of court on time to pick them up.

FF *... some of them I know have even not sent their kids to school, knowing that they are going to be here potentially longer than the school, so it’s easier for them to have kids here and have the day off school rather than having to organise for someone to pick them up, because then they have to tell them why they’re not able to be there themselves. [court staff]*

*... and I think they never really know what time they’re going to be out, and there’s no one else to pick them up at quarter past 3 ... What’re you going to do? Especially when they’re coming from country areas. [legal practitioner]*

Women can become very distressed when they do not have their children with them and need to be somewhere at a certain time to pick them up. The following conversation which occurred between legal practitioners and social workers during the research describes the distress that women experience, noting that this stress could impact on their desire to follow through with the process:

FF *I’ve had a lot of mums get quite stressed close to kinder or school pick up time.’ [legal practitioner]*

*... and if they’ve been there the whole day and they have to leave then’ [legal practitioner]*

*and that’s when they’re like, you know what? I might just go, and not follow through. The application doesn’t get struck out; you can still appear on their behalf ... but it does deter them from coming back. [legal practitioner]*

Other reasons cited by court staff, practitioners or support workers, though less commonly, included: when older children are being relied on as interpreters by their mothers; being relied on as child minders for younger siblings; or, less commonly for mothers, being brought in to be used as witnesses to proceedings or to be involved in the proceedings in some way.

## Challenges with having children present: for women

Accepting that many children do have to come to court with their mothers for FVIOs, all participants raised very similar issues with the difficulties that arise when children are present: for service providers, for the courts, for women and for children themselves.

### Women's experience: stress, anxiety, shame and worry

Whether they took their children with them to court or not, all women participants described the stress they felt attending court. For those who took their children with them, women described how having their children with them impacted on their ability to focus and concentrate on the legal process. Attending court was a frightening or overwhelming experience for these women, and all felt having children with them would have added – or in fact did add – to their stress.

FF *I was trying to self-represent, with my [child] there. First time [baby] was three months, and then for the proper hearing 5 months. ... It was very hard to focus, I was worried about bub as well as the process. ... I think I went into court sort of blind. [client]*

*[Court experience was] absolutely terrifying ... a lot had happened and then to have to go into a courtroom ... I was at court all day, it was long and boring, with two kids with ADHD, it was a nightmare. [client]*

*It was hard to focus on what you're there for, and you did get people glaring at you because you got your kid there. [client]*

*I had people to look after them at the time. The older was autistic ... my ex was on ice, so it added to my anxiety. If I ... had to take them, that would've been so hard. [client]*

*Oh I was very anxious when I first went ... even when you just go to the shops you're nervous because you don't know how they're going to act, whether they're just going to cry the whole time or whether they're going to be fine, you just don't know. [client]*

Others spoke of the inability to speak freely about family violence when children are around, in order to protect them.

FF *I know to get through the day, and to get [to court], how emotionally affected I am, and so with my kids I'm trying to protect and go there, and then you're trying to be brave and then also have to talk about horrendous things, I can't imagine it. [client]*

One woman found it especially difficult when trying to talk with her legal practitioner.

FF *None of us could sleep the night before. Older ones especially, they couldn't sleep, worried dad might be there. Next time, next day, we're all tired and grumpy, mainly my son, he wouldn't let me talk to lawyers, he'd stand in the doorway right there, I had to cut each conversation short, he was blocking the doorway, and it affected what I could say and what the lawyer could say. [client]*

This woman's experience was reflected in the experience of a Court Network volunteer, who had observed older children trying to put pressure on their mums to halt the FVIO and to intervene in the process:

FF *... you can get older children who will plead ... with mum to not have this order, to not go into court, to not do this to dad, purely because they just don't understand what's going on, so the older they are and the more they actually understand what's going on, they can put pressure on ... [court support]*

Another woman who was able to have her children looked after elsewhere, rather than having to take them to court, was able to describe how having children with her could have made her court experience even more difficult.

☞ *If I'd had to take them, I don't think I would've been able to get through it. [It's] hard for me to take them to the shopping centre, let alone court because of your state of mind. ... I remember when I had to get interim orders, you had to tell stories about when he's breached it ... if my kids would've been there, I wouldn't have been able to talk about it. And my kids really feel clingy when I'm upset and stuff. If I'd taken them they probably would have had emotional outbursts and stuff. [client]*

In addition to the stress of being unable to focus on legal proceedings or meetings because of their focus being on their children or because their children were becoming stressed, women participants also felt that court staff and Magistrates looked at the women differently by virtue of them bringing their children with them. This caused them to feel shame or a feeling of being judged, and contributed to their perception that they were treated negatively because they had their children with them.

☞ *People behind the desk treat you like a criminal too, they don't even know why you're there, they look at you even worse when they see that she's with me. [client]*

*[CS4K worker] had to leave yesterday and so my son had to come in for part of it. The judge was NOT impressed, he did not like having him there at all – 'I don't want children in here'. Really snappy, not happy I had a child there at all, made the whole process a lot harder and more stressful. I was hoping it would be over but it wasn't. [client]*

*I've been to court ages ago, without kids, and it wasn't like this time with security – they just looked at me different with the kids. ... I don't think court staff were too happy about me having my kids with me – I mean not the court staff but the security at the front ... you've got to empty all this and all that, and take this out and check what's in there ... I think they thought 'what are you doing in here anyway, why did you bring them here?' [client]*

## **Court stakeholder perspective: stressful for mum, hard to focus, difficult to tell her story**

Reflecting the women participants' comments above, court stakeholders had very similar comments in terms of how having children with them impacts on the experience for women attending court for FVIOs. All court stakeholders directly or indirectly referenced the stress that mothers feel when attending court for FVIOs, especially with their children in tow, and many described how this stress is exacerbated as the day progresses, with the mother's stress feeding off the children, and vice versa.

☞ *... I've seen lots of kids lose it, and lots of parents lose it, because parents are in there so stressed out, and nothing's worse than being so stressed out and having to manage a child ... it's so challenging. [legal practitioner]*

*Generally the first few hours you know they can kind of contain them and entertain them with things, but after that it's yeah ... bedlam. [court staff]*

Additionally, in situations where women are unaware of how long the process will take, court support volunteers and CS4K staff reported that women sometimes arrive unprepared for the day, thinking that they will only be there for a short time.

☞ *...and if mum thinks she's only going to be there an hour, we've had women that haven't bought nappies, they haven't bought babyfood, they're worried that if they go across to the shops they're going to miss their matter being heard or they're too scared to go outside the court building because he's there ... [court support]*

Practitioners and court staff expressed the view that the stress women feel as their children become bored or distressed, especially when unprepared for a long day, has a detrimental impact on the women's ability to focus on the process. Many practitioners explained how some women are focused on keeping their children from becoming disruptive, while CS4K staff also described difficulties when the women are unable to contain their children. All observed that, especially as the day progresses, the children – or getting the children out of there – become the women's main focus, with mothers and children increasingly distracted.

FF *For women, it's hard to concentrate on the legal issues if their kids are there, especially in a non-child friendly space like court. They are a significant distraction when women are already stressed about court. Then when kids are going into court, if they're being noisy, then women can't pay attention to proceedings, which is another distraction and stress having children there. Then they're talking about something very traumatic in front of a four year old, in front of police, so they might not fully disclose everything in front of child. [children's worker]*

*... their main concern is trying to keep the child quiet, ... often it's standing room only [in the safe space], so... it's really distressing for them just trying to look after the child to make sure that they're not getting in people's way, let alone the fact that potentially only a day or two days ago, they've had an incident where the police have been called and now they've had to come here, so they're distressed, nervous about what's going to happen, maybe they don't want the order anymore, but then you've got the kids that, you know, that's their main focus. [court staff]*

*Then if they've got kids on that day that they're coming in to give evidence in court, to get an interim ... you know the kid could be cracking it at that stage, and then you know they're worried about that, but they're trying to give evidence to try and keep themselves safe so you know it's hard. [court staff]*

As children become increasingly irritable, bored, tired or distressed, mothers who are trying to apply for FVIOs become unable to concentrate on giving evidence, or on the process. Some practitioners observed that women may even try to hurry the process, and get it over with quickly, despite not achieving optimum outcomes for themselves and/or their children's safety. Thus the process can become rushed, as lawyers, court staff and police try to move through the application quickly.

FF *...having children with them just makes everything a bit rushed – maybe the women won't get the quality of interaction with police or lawyers that they need [children's worker]*

*The problems are the women are distracted because they are worried or stressed about the kids or their behaviour or not sleeping or whatever it is, so they're not really able to concentrate ... and often it means they're in a hurry to get out of there, that's their main focus... [legal practitioner]*

To a lesser extent, some court stakeholders had observed other difficulties that women experienced as a result of having children with them. Legal practitioners pointed out that sometimes a woman might have a support person or service provider with her, who ideally would go into court with the woman for moral support. However, having children in attendance can mean that the support person has to stay outside with the child, while the mother goes into court alone. Equally, practitioners noted that women themselves will choose not to go in to court, electing to stay outside with her children instead – which ultimately means that she is less aware about what has occurred in the court room.

## **Safety concerns: being near the perpetrator with children**

Another factor raised by women participants, as well as court stakeholders, was women's concern for their children's safety, when they know or believe the perpetrator to be nearby at court. For example, in one court, focus group participants discussed the difficulties women with children at court experience when they have to go back and forth to top up the parking meter, and described how difficult it is for mothers having to take their child or children outside with them, while feeling extremely anxious about potentially seeing the perpetrator: stress which is then compounded by having to go back through security.

FF *'and that's a stress, having to take the kid out, unpacking and re-packing' (legal practitioner).*

Indeed, stakeholders report that children often do see their fathers at court and, given the complex nature of family violence, the child will often want to approach the father, which raises tensions for the mother and concerns for the children's safety:

FF *... if you've got the other party at court there's also this pressure that they're having access to their children by default essentially which creates a tension between two parents and the children have no ability to process that so they're just gonna go run to dad ... so I think the safety in that respect is a huge problem ... [legal practitioner]*

*And then there's the old chestnut ... like the kids would see dad, and they'd say 'oh, there's dad' and run off, and then there's just that very awkward situation of the kid just running back and forth between the parents. [court staff]*

*Like if they'd seen my partner there, I was worried about that, and if they'd spotted him there, there would've you know been like 'Dad! Dad! Why is he here and why can't we see him?' so I was stressed about seeing him, but the separate room meant he didn't see him or anything. [client]*

Court staff also described instances where a father uses the child to try to come into the protected person space, which causes additional tension for everyone involved and additional stress for the woman seeking the order.

FF *I had one only the other day where I noticed that the male respondent was holding the child, and I thought, I think you're coming in here, and sure enough he had, he'd come into the protected person space with the child, so then I told him he had to leave, and he started walking out with the child, so I just told police so that they could then manage that. [court staff]*

Showing the complexity of family violence court matters, some court stakeholders described having had clients whose only option for childcare was in fact to have the partner or ex-partner take care of the child while she attends court for the FVIO. One woman participant's experience reflects the lived experience of these comments:

FF *The last [court experience] was one of the hardest. He actually watched our child that day, he took [daughter]. He's so annoyed. They withdrew my charges but not his – so he keeps threatening me – so I'll probably re-do it if she's at daycare on the court day. [client]*

### **'Too damn hard': what if it means she never comes back?**

While women participants observed that having children with them at court made the process more stressful, the women interviewees nonetheless persisted with their applications. All other stakeholders interviewed had also been involved in numerous cases where women have persisted despite the added stress and difficulties of having their children with them.

Yet all noted that, for many, it could all just be too hard. With the added stress and concerns that women have for their children, it could be tempting to just to give up and walk out.

FF *It's those ones that, you know 'oh well that woman that never came back for the order' but it seemed quite urgent at the time - Well, what if it was just way too hard, and way too hard with the kids? ... Depending on how their mental health is, that may be the only thing they're focused on and it's ... then disregarding their safety because of the fact that it's just too damn hard. [court staff]*

Certainly the women who received CS4K support for their children said that they do not know what they would have done without the assistance.

FF *[Without CS4K support] I would have had to either just walk out of the court room right there or just let her cry in there, I wouldn't have had any other option. [client]*

*If [CS4K] wasn't there, I would have completely lost it and I actually did walk out a couple of times. [client]*

## Challenges with having children present: for children

The most frequently mentioned issue in terms of challenges for children cited by stakeholders concerned exposing children to further trauma by virtue of them overhearing conversations about family violence. Women participants, court staff and legal and social workers expressed strong reluctance to talk about family violence in front of children.

☐☐ *With the kids it's just exposing them to the whole process, cos they know what's going on to a certain extent ... which is really bad. [legal practitioner]*

*And then there's the risk if they're a little bit older, I mean do they have the comprehension? And how much are they picking up? [social worker]*

*A lot of the police ones are like that too where they've attended an incident the last day or so and it's only focusing on that incident, so it could've been he smashed his dinner plate on the floor for some reason ... but then she walks into your room and discloses ten years of family violence behind that, so police need that extra information and she can't be sitting there talking to police while kids are there talking about strangulation and things like that. [court staff]*

*I'm saying well what impression are we giving children if, in order for them to be protected from conflict, they have to be in the middle of conflict? I mean, who is protecting them? This is the exact moment in time when they're supposed to have that protection, and here we are actually allowing them to be exposed to it. [legal practitioner]*

### Safety concerns for children take priority over other needs

As discussed above, stakeholders observed that women's concerns for their children's safety increased their stress levels when they have their children at court. Legal practitioners from all courts noted that women's concerns for their children's safety could also mean that safety concerns take precedence over children's other, more practical needs, such as the need to go and get lunch or have a break outside at lunch time.

☐☐ *[...] and then it's also the safety about having to actually bring the kid in close proximity to the perpetrator, because as far as I know, [the court] doesn't have an escort service to the car or anything ... the decision over whether to get food or not to get food, or to get fresh air, is really a decision about safety versus the wellbeing of the children. [legal practitioner]*

*When we have to go to court and the child has to come, ... we get there early so we avoid any contact with the perpetrator, she doesn't leave for air or lunch or anything, and again when we're leaving, we quickly leave before he does or we wait for him to be gone, I do a bit of a scout, um, so yeah in terms of how to make that a safe experience with a child, it can be quite stressful. [legal practitioner]*

# Challenges for the court and the legal process: quality of advice and outcomes compromised

## Insufficient space for women and children in waiting areas

A very practical aspect of having children attend court with their mothers highlighted by all court stakeholders, is that there is quite simply not enough space to accommodate everyone safely, particularly on busy days with big court lists. Many court stakeholders described seeing very young children lying around on the floors; babies being changed on the floor of the safe spaces; with the lawyers themselves recalling times when they had provided legal advice while sitting on the floor:

FF *... there's often people standing cos there's nowhere to sit, for such a long period of the day ... often I'll sit on the floor as a lawyer to get instructions [legal practitioner]*

*Sometimes there's just not enough physical room for them. We have a big list, and by the time just every adult takes just one seat there's no room for kids or prams or ... [legal practitioner]*

*yeah some of them are just lying around on the floors, it's a long day. [legal practitioner]*

*That's when they start running around the corridors and up and down the stairs and... they're just in amongst everyone's feet [social worker]*

Even where rooms in courts have been re-purposed for safe spaces, or where rooms allow for videolinks so that women don't have to attend court, the rooms are often unable to accommodate women and their children comfortably:

FF *We've got our video link facilities, so if we've got a woman who doesn't want to go into the court room, she can actually be video linked into our main court ... and we've had a couple where they've had children with them ... but it was really difficult in that confined office ... for the video for the feed to pick up. [court staff]*

This limited space affects the ability of lawyers in the safe spaces to provide confidential and private legal advice:

FF *... because there's such a large proportion of children that come with the women, it becomes a very noisy space, and there isn't a lot of room and privacy and I think that makes it really hard to have difficult conversations. [legal practitioner]*

Almost all lawyers, social workers and court staff at each court described how, when children were present, they attempted to reduce the risk of exposing children to trauma by trying to find ways around talking about the details of the family violence. Some talked about the difficulties in trying to receive full instructions and give quality legal advice while in public spaces surrounded by other women and children; others shared stories of having to spell out words in the presence of very young children, or to talk in code.

FF *[The kids] shouldn't be [listening], but then you've got this problem where mum is like I'm not leaving my child outside, and you're in a catch 22 with instructions ... and you have to talk in code [legal practitioner],*

*Yeah and you're not clear, you're not comfortable [legal practitioner]*

*and you don't explain things as much. [legal practitioner]*

*For bigger kids, but who can't spell yet, I actually spell out words for the mum, I don't say it, or we decide on a code that we use when we talk about dad, like we call dad Sally or something like that, but that's only if there's time. [legal practitioner]*

*Epecially when there's ... family law proceedings going on at the same time, I don't want to be saying anything negative about dad and you're trying to be as child focused as you can but ... if a child is actually in an interview, the advice a woman is getting - or a man's getting if they have their child with them - is sub-par. [legal practitioner]*

Ultimately, whether lawyers had to talk in code or find other ways to receive instructions, all practitioners and court staff stated that having children attend court made the situation more stressful for women and children. This subsequently made it more difficult for lawyers in particular to provide quality legal advice:

FF *I find that it would personally take me longer to make sure that my client is fully informed of her rights ... it's just a bit more difficult for her to be able to have some sort of space to absorb all of those options ... you certainly have to factor that in. [legal practitioner]*

*... you have to be mindful of those things, and mindful of mum perhaps being distracted, or having other motivations about resolving things if they're just wanting to get out of there, and then being mindful of the children ... and how you're talking about ... what's occurred and the advice you're giving. [legal practitioner]*

*It is quite challenging. It's very hard to get instructions from someone who has their children with them in fact it's actually kind of impossible ... which means the challenge for her is she's not getting very good legal advice at all, because you're getting a little bit ... flustered. [legal practitioner]*

Further, women, court staff and legal practitioners all cited the lack of dedicated children's spaces, as opposed to generic safe spaces, for children to play and be kept away from the discussions about family violence as a real concern.

FF *... the protected person room has been redone so that it's a little bit better than it was, but it's still not enough to keep any kind of kids engaged for very long or, there's no real separate place for them to really play on the floor or and those sorts of things [court staff]*

Indeed, due to concerns about children being exposed to family violence while at court for family violence proceedings, one legal practitioner even recalled taking the initiative with the court coordinator to set up a 'kid's corner' at another court.

FF *We have actually done some things ourselves, so about two years ago myself and the court coordinator set up a kids' corner, so that had toys, colouring books, and magazines for the adults ... I did it because I very strongly felt that children were being exposed to family violence within the court building and I thought there ought to be a distraction from what they were experiencing. [legal practitioner]*

## Difficulties with having children in the courtroom

While there were divergent experiences between practitioners servicing different courts as to whether or not Magistrates allowed children in court, stories emerged from all three courts that indicate that – for a variety of reasons, including the legislative presumption - many Magistrates request that children not be in court while hearing applications for FVIOs.

Some practitioners expressed the view that Magistrates were very negative about allowing children in court:

FF *I think Magistrates will often take a very dim view of children in the court room, regardless of whether they are related to the proceedings or not, and regardless of whether they have the capacity to understand the proceedings or not. I think that creates an added level of complexity. [legal practitioner]*

While some court staff and practitioners recounted situations where Magistrates had been very understanding when children had been in court, others felt that some Magistrates' attitudes towards women with children in the courtroom can make mothers feel ashamed and uncomfortable.

**FF** *You get told off by a lot of Magistrates if you have your children in court, and ... there's an incredible amount of shame that's put on mums to say, why did you bring them here? They cannot be here! But of course where else are they going to go? [legal practitioner]*

*It's really horrible, some of the ways that the Magistrates conduct themselves when there are children in the room and it's the nonverbal as well as the verbal that's often hard to pick up on, but it just makes an experience really horrible, like we had this experience where a woman was breastfeeding in court, and the way that the Magistrate regarded her was just totally inappropriate ... . [legal practitioner]*

To this end, all court stakeholders recounted different stories about trying to entertain children during court proceedings, in order to help distract children as well as to assist with the overall process. Despite court staff and Court Network volunteers not being allowed to look after children, the realities of women attending court with children while applying for FVIOs mean that staff and volunteers are often very conflicted. As one lawyer said, 'I think we've kind of all really done ad hoc things to entertain children'.

**FF** *In the Court Network training, we are specifically told we are not babysitters but [in the past] ... I've pushed a kid around and around the foyer in a pram I don't know how many times [court support]*

*I've done really whacky stuff you know, taking off your lanyard or your necklace ... there are so many rules in court, you're not allowed to leave the bar table, so you're just trying to...give them stuff, ... and then of course that often backfires cos a younger child will then start throwing that stuff! [legal practitioner]*

*I have taken a child out of court where the child was...crying and upset, while a mum was about to give evidence, ... I was waiting for another matter and the Magistrate was clearly getting frustrated, so I went up to the mum and said who I was and what my role at the court was, and said would it be alright if I took baby ... and she ... said OK, and then when I get back in after mum had taken baby, the Magistrate made some comment about, "well we'll excuse Ms M for being late to the bar given she had babysitting responsibilities". [legal practitioner]*

*Sometimes if they're sitting out in the foyer it will just be a little bit of a ... community ... effort, even in the protected person's room you might just find that it's other people who are helping [legal practitioner]*

*Well I have been put in a position where I've had to nurse babies and... recently there was an afternoon case and the Magistrate wouldn't allow [two older children], and I said well I can't really look after them, but if you sit them in court, ...that was OK I could get them some food and some whatever, some food and books and some colouring things for the little, but the little asked me can I take her to the toilet and I said no I can't... ... this isn't really our job but you don't want to see them in the court hearing with what the mum's going to say to the Magistrate, which is what the Magistrate is worried about, that the children will hear a whole lot of horrible stuff. [court support]*

## What are the needs of children while at court with mothers applying for FVIOs?

While considering some of the challenges for women, children and the court process when children attend court as discussed above, participants also identified some key needs of children that – if met – could improve the court experience for all involved.

### **Make children feel acknowledged; that someone is there just for them**

CS4K staff, as well as one legal practitioner and a Court Network volunteer (from separate courts), all pointed out that children need to be made to feel at ease when they are at court; and that it is important to focus on them as individuals to help them relax and feel safe. This in turn would help women and service providers get on with the process:

FF *The kids need someone who is there for them, because the intervention process is really focused on the parents, so having someone that's focused on them and their needs for the day and what they actually need and want to be safe on the day, I actually think would be so beneficial. ... and leave everyone else to do what they need to do, and are required to do, on that day. [court support]*

*I think that they need to feel at ease, so it's important to try to establish a rapport with them, engage with them, make eye contact with them and put them at ease as to their presence in the room ... [legal practitioner]*

*It needs to be as positive experience as possible within the circumstances. Children need to feel they really matter. I see lots of children more than once, so I try really hard to remember their names or ask about things I remember from last time. Kids need to know they're not forgotten, that their own experience is separate from their parents. [children's worker]*

*No one asks how the children are. But kids need to have a sense that they can either ask what's going on or have the involvement of someone they can ask so they're not worried about what can happen. [children's worker]*

### **Children need to be distracted to minimise exposure to trauma and minimise impact on process**

Women participants, court staff and Court Network volunteers pointed out that there needs to be age appropriate toys and other things made available at court, so that children can be entertained as well as to distract them from the process.

FF *It would be better to have better things to play with, not new, just clean. [client]*

*It would be good to have entertainment too, and someone to mind kids while you are in court – not all day, not babysitting, but the experience is stressful enough as it is, without the boredom... luckily there was a room – so the 4 year old was OK because there were toys, but my 11 and 14 year old, there was nothing for them...There's nothing for the mid-age. [client]*

## Children need dedicated spaces

As referred to above, a need that was identified as a priority by almost all court staff, all legal and social workers, court support volunteers and some women participants was the need for dedicated children's spaces at the courts:

FF *I think they need an actual safe space ... not just a table somewhere, I mean I'm not suggesting a full daycare kind of arrangement, but more [an area of the court] which is dedicated to children where there is a you know network person or another service provider who is perhaps qualified to work with children where you know it's monitored who can come in and out of that space. I think we're really failing them ... at the moment [legal practitioner]*

Almost all court stakeholders expressed the view that dedicated children's spaces – even in courts that have already installed safe spaces – would greatly reduce the challenges posed by having children at court when women are attending for FVIOs.

FF *If they could nearly have like a drop-off [service] something, that the kids could go to, ... not a childcare program, but a program, ... a big play room or ... it takes a lot of stress off the mum, the kids you know are safe and happy ... [client]*

*...if it was properly purpose-built we would have a little bit of an area where kids could be, you know like that area in the doctors where they have that little corner and they might have a little climbing thing and books, and if they make a bit of noise it's like, oh well, don't sit next to the kids area if you're not happy, but we just don't have that. [court staff]*

*Oh it needs like a separate creche, childcare, it can be like the family court ... or at least just some kind of space that's kind of kid friendly, even if it's still the parent looking after the kid, just a space that actually set up for kids [legal practitioner]*

*Mum might feel more at ease if there's safe ... visible childcare actually on site, so then she can see little one run back and forth and you know, the little one is able to run back and forth to the interview room, a nice private interview room, that sort of thing might be something that would help the children. [Legal practitioner]*

One lawyer gave the example of the Neighbourhood Justice Centre, where there is a dedicated room with a glass panel that parents could see through to their children, who were in the play area. Elsewhere, the lack of available purpose-built, comfortable spaces for women and children in family violence matters continues to be a problem, even where safe spaces have improved the overall court experience.

FF *Space for kids in court is quite limited, but I don't know how to improve that because court is not designed for kids; we've repurposed a room but women's comments are 'we need a room with a glass wall, so we can see the kids but are not distracted' [children's worker]*

Even in courts where the CS4K program operates, storage for toys and other items is extremely limited.

FF *...sometimes it would be really beneficial for them to have an actual room and space to utilise that's theirs and that they could set up to be really kid friendly and have everything there. [court support]*

Accepting the realities of courts and available resources, one legal practitioner agreed that, while installing a dedicated creche is not possible or desirable at court, a dedicated children's area would be ideal. In the absence of such an area, then this lawyer felt that the CS4K program is the 'next best thing'.

FF *You'll never ever get a stage where you get a court that has a dedicated creche area because of liability, and also because of parents thinking 'oh that's ok, I won't get mum to look after the kids because there's a creche at court;' ... so the next best thing is having a separate area, and the next best thing after that is having this sort of [CS4K] service, where depending on the ages, they can give that, even if it's just short term, an interview with mum might be 15 minutes, could just be 5 minutes, like I don't want kids to hear when they talk about what the dad's done to the 15yo daughter who's at school at the moment, you know things like that. [legal practitioner]*

Such a space could be available to children of respondents as well.

## Provide basic needs such as food and water in safe places

In addition to a dedicated children's space, it was observed that providing some very simple and practical items that would help women – especially those who are in crisis situations – could help to ease the stress of the day. Ensuring that food machines; water points; and basic hygiene supplies such as soap and toilet paper in the toilets are all available, would make the day much easier, more pleasant and, in some instances, safer.

**FF** *Food's an issue, because the machine often doesn't work [court support]*

*... and the water thing's often empty [court support]*

*That's a continuing problem, and there's no cups, if there's water there's no cups. [court support]*

One woman who was in refuge at the time of attending court for her application, had no money to buy food on the day. She had her three children with her for the process, and was determined to get the FVIO in order to feel safe, yet the process itself was difficult due to the practical reality of living in refuge and having had to flee her home without any supplies.

**FF** *If there was somewhere where you could get something to eat, even just a bowl of noodles, nothing fancy or expensive. I was in a refuge situation, left with nothing but clothes on back, no money, it's expensive and unsafe to leave court for food. Mums would just stop eating for their kids, if there's no food, but kids need to eat ... [client]*

## Keeping them safe: safe spaces with toilets, change rooms, protected exits

Finally, some basic adaptations to safe spaces would make them more practical as well as safer for women and children. For example, some court stakeholders expressed their concerns at women having to leave a safe space in order to go to the toilet or change a child's nappy. One court support volunteer described an episode when a woman who had left the safe room to go to the change room to change her baby ended up stuck in there, because the respondent was stalking the space outside and it was unsafe for her to leave. Similar stories were mentioned in the literature review, above.

One woman interviewee also observed that her one need for the day would have been for the toilets to be cleaner, which mirrored some legal practitioner and Court Network comments that the toilets were often disgustingly dirty, with no soap or toilet paper.

Spaces where women could appear in court via videolink without having to leave the safe room were also identified as being important changes that help to improve the experience of women with children at court. Yet even with the additions of rooms for videolinks and safe spaces, court stakeholders identified that additional space – for example for lawyers to be able to have interviews with women without children in attendance – is needed.

## Prioritising women with children

Some courts have introduced initiatives to help facilitate the court process when women have children with them. For example, Ringwood Court is trying to prioritise women who have children at court with them on the court lists. While this has been welcomed by the lawyers there who have seen it in operation, some other practitioners were yet to experience the priority system and were not aware of how the priority system worked.

☞ *when women turn up with young children, they will ask the police to deal with those clients first in recognition of their childcare needs ... and the police agreed to try and prioritise women in those situations, however there's still going to be those other factors that ... may still delay the process for her. [legal practitioner]*

*... you might go up to the court staff and say these 3 matters are ready but this matter should get priority because of these factors but ... it's up to the court staff, the clerk, how they actually run the magistrates past that point. [legal practitioner]*

Attempting to prioritise women with children is something that many court stakeholders talked about, even at courts where no informal system has yet been introduced. CS4K staff, legal practitioners and police reportedly all try to help push certain matters along where possible, but the realities of the legal process do not always allow for a priority system.

☞ *... and if a woman has brought her children you always try to prioritise that case, ... often Court Network might come up to me, or they'll alert me to the fact that someone's got their child with them, they're trying to get their child in and out, but ... it's a very slow system, you know, and it's kind of, some cases just take all day to resolve, if they even come to a resolution. [legal practitioner]*

In all three courts that were sites in the research for this Needs Assessment, legal practitioners and court support workers indicated that they were not entirely clear as to how any priority system currently works, or would work it if were introduced.

☞ *That astounds me that these young women with children in particular are not prioritised ... do you understand the priority system? [court support]*

## Allowing children to be distracted in the courtroom

In terms of the courtroom itself, there were differences in stakeholders' observations as to whether children come into court, with some saying children do not usually come into court, and others describing experiences of being in court with upset or noisy children, or with children needing to be distracted during a court hearing. Similarly, there were varied reports from court stakeholders as to whether or not Magistrates would allow children to enter a courtroom with some sort of distraction.

☞ *I once had a matter [at a different job at a different court] and there was no childcare arrangements... and no worker felt comfortable supervising the child without the mother there, and watching, um so we asked the court for permission if the kid could be in court wearing headphones and watching an ipad in court, proactively, so that the kid could not hear or be exposed to anything, ... and that was received really well by the court. [legal practitioner]*

Irrespective of how often children are going into the courtroom with their mothers for FVIOs, some legal practitioners remarked that children certainly should be allowed in court if they are suitably distracted:

☞ *I think when the child has no other option but to be in court, then they should be permitted to be in court if they are suitably distracted. [legal practitioner]*

This fits with the CS4K program priority expressed by all the CS4K children's workers interviewed that, if possible, they would all prefer to sit with a child while distracted in court, as opposed to separating that child from their mother.

## Education of the bench and other stakeholders around children's presence at court

Ultimately, as one court staff member put it, it would be best not to need women to appear at court at all, but to be able to do the entire process via videolink. Until that time, though, children's presence at court is likely to continue. Therefore, one participant remarked that some education of the judiciary, as well as other players in the court process, around the factors contributing to children's presence at court in FVIOs is needed.

**FF** *...it would be nice if there was some education of the judiciary as well ...*

*some mutual understanding around when there are children in the court room so that we are all on the same page ... [so that] everybody has an understanding that if there's a child, why there's a child there, and if there aren't facilities available for children, perhaps Magistrates could be aware of that; it just creates a calmer environment for everybody. [legal practitioner]*

As evident from the above discussion, the themes that emerged from the interviews and focus groups corresponded strongly with the findings from the literature review. The combined findings are discussed briefly in the next section.

# Part Five: Discussion and Conclusion

Both the literature and perspectives from stakeholders highlight some key needs of women and children when attending court for FVIOs. These include:

- the need for children’s experiences, as separate from those of their parents, to be specifically acknowledged at court;
- the need for children to be distracted and entertained, to reduce trauma for children and to reduce stress for mothers;
- the need for dedicated children’s spaces at court;
- the need for safe, quiet spaces where women can receive legal advice and other support away from their children;
- the need for safe spaces to meet basic needs of children and women who are fearing for their safety, such as ensuring there are change tables, clean toilets, basic food and water available at all times;
- the need for court stakeholders and Magistrates to understand the reasons behind why women bring their children to court; to demonstrate this understanding to distressed AFMs; and to facilitate flexible arrangements to accommodate children where possible.

In addition to the CS4K program, discussed in the separate CS4K Evaluation Report, all three courts which were the sites of the research for this Needs Assessment – Sunshine, Ringwood and Geelong – have made some attempts to address the challenges presented by having children at court with women attending for FVIOs. One significant improvement has been that each court has created a safe space for women attending court for FVIO matters.

These are of varying sizes, however, with insufficient space for children, and do not cater for the many basic practical and safety needs of children and women – such as the need for change tables or changing spaces, and having some basic food and clean water available – which means that women often have to leave the safe room. Further, none of the courts have dedicated children’s play spaces, a need that was highlighted by all participants and stakeholders as the single most urgent priority for dealing with the challenges women face when attending court accompanied by their children in this context.

Despite the many stories that lawyers, court staff and Court Network volunteers relayed about having to step in to look after or distract children in the course of their duties, court staff and Court Network volunteers stated that they were specifically not allowed to look after children. Legal practitioners also remarked that, irrespective of whether or not this was allowed as part of their job, staff and service providers at court were usually too focused on and busy with their own matters to notice or to help look after children. Accordingly, it is clear from the literature, as well as from participant feedback across the overall project, that the CS4K program is the *only* service currently operating which is specifically dedicated to looking after the needs of women attending court for FVIOs while accompanied by children, and to looking after the needs of the children themselves.

Thus the combined findings of the literature review and qualitative research reveal a compelling and genuine need for services of some description which address the experiences of women who bring their children to court while attending for FVIOs, as well as the experiences of children themselves. The CS4K Evaluation Report (October 2018) separately examines the extent to which the CS4K program specifically meets these needs, as identified in this Needs Assessment report.

## Conclusion

When read together, clear and consistent themes emerge from the literature and stakeholder perspectives, both in relation to the factors contributing to, and issues arising from, women attending court for FVIOs with their children. Both the literature and stakeholder perspectives establish that children and young people being at court during FVIO proceedings is not a desirable situation. However, as the combined data indicate, many women do not have a viable option other than to bring them. Thus, a pressing need exists to find ways to address this issue: to support and meet the needs of women and their children who come to court.

In the absence of mechanisms to do this, women who come to court with children in their care will continue to find the already daunting experience of engaging with the legal process even more difficult. As a consequence, they may cease to pursue their FVIO proceedings, and cease to engage with the legal and social service systems. Women will also continue to find it more difficult to present the information necessary to ensure that they receive the best possible legal outcomes.

Further, children and young people who may already be significantly traumatised by family violence may have this trauma compounded through the experience of attending court, which children and young people tend to find a frightening environment. They may also be further traumatised by being exposed to discussions about the violence that has occurred in their family.

Conversely, where they attend but are treated as an imposition or an inconvenience to all present, this can compound this trauma further and their sense of invisibility. This is despite the RCFV's recognition of children as silent victims of family violence and its accompanying recommendations to ensure that children are incorporated as parties on FVIOs – acknowledging them and their experiences as distinct from, though intertwined with, those of their mothers.

Of particular interest in the context of the CIJ's broader work is that this invisibility stands in stark contrast to the significant visibility of children identified by the system as using family violence themselves. Yet as previous research and the CIJ's own research demonstrates, many of these children have been victims of family violence, but attract the label of perpetrator and the companion consequences of the legal system with devastating results.

Finally, the presence of children and young people at court clearly has the potential to increase the stress levels of those working in the court environment, and to drain court time that cannot be spared. If FVIO applications cannot be pursued, or inadequate instructions are obtained which results in poor legal outcomes, this means that the failure of the legal system to meet the very basic needs of women attending court with their children comes at a cost to the wider legal system down the track. It also means that the limitations of an adult focused court system and infrastructure may be preventing women and children from accessing the protection which it professes to offer – hardly the purpose for which it was designed.

# Appendix 1: Interview Guides

## Court Support for Kids - Needs Assessment and Evaluation Project

### Interview Guide – Group 1: Women who have been supported by specialist women’s family violence services

#### Indicative questions

1. I understand that you went to court for an intervention order. Can you please tell me about your experience of going to court?
2. What were you looking for from the court?
  - What were your aims and expectations?
3. To what extent did you achieve your aims?
  - I.e. did the court process deliver what you wanted?
4. I understand that you had your kids with you when you went to court. Why did you have your kids with you when you went?
  - How many kids?
  - What were their ages?
  - Were there any other options for the kids to be elsewhere?
  - If the kids are school age, why weren't they at school?
5. How long were you at court with the kids?
6. Was there a place to wait or a quiet place to take them?
7. What effect (if any) did having your kids with you have on what happened for you at court?
  - Worried about them? Their safety – risk from the perpetrator?
  - Overhearing conversations about the violence
  - Were you distracted – less able to concentrate on the legal process?
8. Do you remember the kinds of services and people you interacted with while you were at court? How did these services respond to the kids being present?
9. What would have made the experience of going to court better/easier for you?

## Interview Guide – Group 2: CS4K staff

### Indicative questions

1. When women attend court for intervention order proceedings, what challenges arise when women have their children with them?
  - For the women?
  - For the children?
  - For court staff/the general operation of the legal process?
2. In your experience, why do women bring their children to court with them? What support mechanisms do they have?
3. In your experience, do women bring their children into the courtroom?
4. What are the ages of the children you see at court? If they are school aged, do you learn why they are not at school?
5. What are the needs of children presenting in this context?
6. What are your aims when working with women and their children at court?
7. What are the challenges of doing this work?
8. In your opinion, what are the benefits of the work you do with women and their children at court?
  - For the women?
  - For the children?
  - For court staff/ the general operation of the legal process?

## Interview Guide – Group 3: Court staff and other professionals

### Indicative questions

1. How often does your service work with women who have come to court for intervention order proceedings and brought their children with them?
2. In your experience, why do women bring their children to court with them?
3. When women attend court for intervention order proceedings, what challenges arise when women have their children with them?
  - For the women?
  - For the children?
  - For the court/the operation of the legal process?
4. In your experience, what are the needs of children presenting in this context?
5. What are your observations of the CS4K program?
6. How often do you see it operating? How is the service received?
7. Are there other services that address this need, including indirectly?
8. To what extent does the CS4K program improve the experience of attending court for intervention order proceedings?
  - For the women?
  - For the children?
  - For court staff/the general operation of the process?

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