

Royal Commission into Family Violence submission.

I write as a member of the Ballarat Family Relationship Centre's Family Dispute Resolution team, managed by Centacare Ballarat. As Family Dispute Resolution Practitioners, registered through the Attorney General's Department, we are charged with providing Family Dispute Resolution, or mediation, to families who require assistance with co-parenting or caring for children post-separation. In our work we are required to discuss with clients any experiences of family violence, and look at whether mediation is something that will be safe and appropriate for all parties. We respectfully request that the Commissioners look into some of the difficulties faced in this area for families who have experienced family violence, and for practitioners who are working with them.

Most families who wish to make arrangements for their children will at some point approach a service like ours to initiate Family Dispute Resolution (FDR). The service will generally discuss the case with the initiator, then write to or contact the second party to invite them to attend and discuss the possibility of FDR. If the person initiating the service is a perpetrator of family violence, the invitation received by their victim may feel threatening or be experienced as harassment. This is partly because we are required to let the second party know, in our initial contact, that there are potential consequences of not responding to the invitation, namely a "Section 60i Certificate", potentially stating that they did not attend. This certificate opens up the option of Family Court processes if the client wishes to use it. While every effort is made to soften the legalistic language we use, we do have to work within the Family Law Act, and if requested must issue this certificate if the second party chooses not to respond to our invitation. There is an exception in the Law that allows for victims of family violence to avoid doing mediation, however anecdotal reports suggest to us that many clients are discouraged by solicitors from applying for exemptions due to the cost and complexity of doing so.

If we do have a response from a victim of family violence, we are able to discuss the case with them and potentially issue the Section 60i certificate stating that the case is inappropriate for mediation. This certificate is something we must issue if we feel that either party cannot negotiate freely, especially in cases of family violence. However issuing this certificate comes with its own complexities. For example, if we assess a perpetrator and decide the case is inappropriate, we are faced with the dilemma of whether or not to invite the second party at all. On the one hand we don't want to harass or traumatise them, but on the other hand without ever meeting or inviting the victim we are hesitant to issue a certificate that they know nothing about. Perpetrators will often express extreme anger if an inappropriate certificate is issued, and will blame the victim for telling us about the alleged violence, and therefore (in the perpetrators eyes) causing the certificate to be issued. This is usually the case when there is a history of control or coercion, and the perpetrator had hoped to continue to control the other person through the mediation process.

Some victims of violence express that they really want their chance to speak up for their children, to feel empowered by FDR. In some case we may refuse to do FDR even if they want to, given that the law says we can't do it if inappropriate. But we hesitate to take away a victim's self-agency by deciding they cannot negotiate freely, when they insist they want to. We feel as

though we are given conflicting messages from various sources, some saying that victims are the best judges of their own safety, others saying that being stuck in the cycle of violence and trauma makes clear decision making difficult. This is often made more complex by the existence of Intervention Orders (IVO) against one or both parties. These IVO's often include the children, stating that the perpetrator cannot go near or contact the children. However there are almost always exceptions to the IVO included, usually stating that the respondent may "do anything that is permitted by a ... written agreement about child arrangements" and that the respondent may communicate about child arrangements, including participating in mediation. So basically a perpetrator who has been banned from going anywhere near or communicating with their former partner or children, can in fact spend time with the children and communicate with the former partner, as long as they have agreed to this in writing. So we often end up with these perpetrators and victims wanting to mediate a safe form of time with, for their children, despite knowing that the victim is clearly traumatised and often frightened still, and may not be in the position to make protective decisions. We would ask whether IVOs which prohibit child contact should in fact include the exceptions that allow parents to negotiate child contact themselves. There is often additional pressure from the legal system, from financial difficulties, from extended family and others for victims to negotiate, rather than litigate. There is also a real lack of knowledge about the impact of family violence on children, with many victims insisting that the perpetrator is a good parent, even though they have been violent. Despite the law recognising that witnessing family violence is a form of violence in itself, many victims will insist that their children are safe with the perpetrator, now that that the parent's relationship is over.

In summary, the issues that we would ask the Commissioners to look into are the Family Law Act Regulations regarding Family Dispute Resolution, and Section 60i certificates; the experiences (positive and negative) of victims of family violence who have negotiated through family dispute resolution; the intersection between State Magistrate issued IVOs and Federal Government Family Law regulations and expectations; and the community's understanding of and awareness of the impact of family violence, particularly on children as witnesses of the violence.

Sincerely,

Jessy Edmonston

Family Dispute Resolution Practitioner

Centacare Ballarat - Family Relationship Centre