

Family violence and high conflict: What's the difference and does it really matter?

Child Aware 2017

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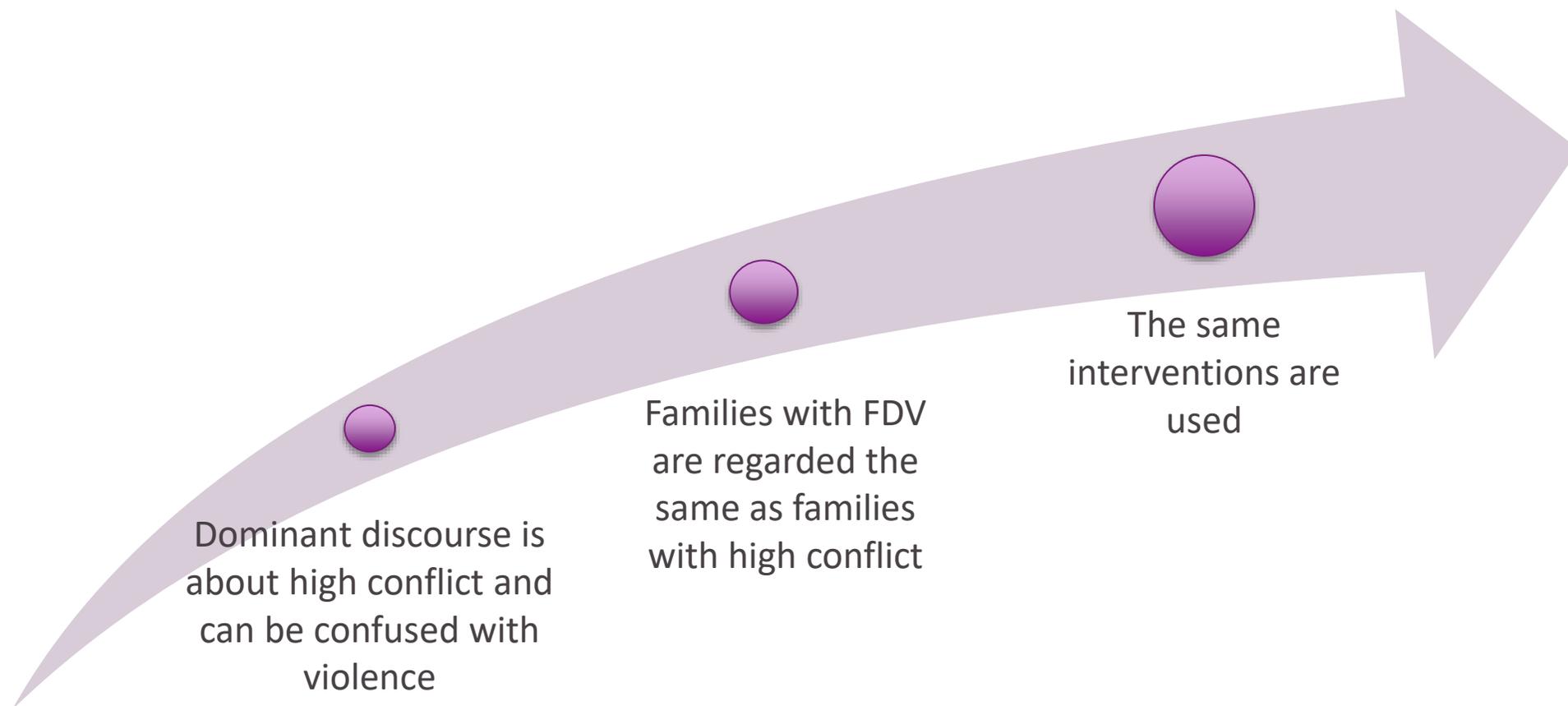
With thanks Michael Sheehan RAWA



Family Law Legal System

- Why does it matter what happens in the family law legal system about family violence?
- Legal/ judicial decisions both reflect and set community standards.
- The family law legal system is a primary way that women seek protection for their children post separation. Their decisions have long time impacts on women and children's safety in Australia.

Why we decided to do this



FDV is often a significant issue

- The majority of separation and divorce cases in the Family Court are referred to as "high-conflict" when domestic violence is a significant issue (Johnston, 1994).
- 50% of family law court cases involve allegations of violence. (Aifs 2015)



Differentiation Required

- A clear distinction needs to be made between 'high conflict and 'FDV' in terms of assessment, intervention strategies, research and policy.
- Concern that 'FDV' is increasingly euphemised as 'conflict'.
- Puts women and children at risk. *(Jaffe, Lemon, &Poisson, 2003).*





Double Standards

- FDV is clearly recognised as a breach of human rights, aspects of it are criminal behaviour and the *National Plan to reduce Violence Against Women and Children* has bi-lateral government support;
- **but FDV is often minimized within the context of parenting.**
- The impact of this is pervasive in nature and has both direct and indirect effects on the safety and well-being of women and children.

Professionals struggle to differentiate conflict from violence

- Perpetrators and professionals minimise violence as 'conflict'.
- 'High Conflict' and 'FDV' are often confused or used interchangeably despite critical differences between them.



FDV is minimised



- FDV is often minimised as being an isolated, uncharacteristic incident caused by the distress of a separation, rather than as a **risk marker** for severe or even lethal violence in the context of a pattern of historical abuse.
- Violence towards the mother can be assessed as **separate** from issues of risk/ safety of the children.
- FDV is **highly relevant** to the determination of parenting orders.



AIFS Research

- Kaspiew and others noted:
- *“There is a lack of understanding among family law system professionals of the nature of family violence and the implications it has for making parenting orders.”* (2006)
- 1/3 of family law professionals do not ask about violence (Aifs 2015)

Family and domestic violence (coercive controlling)

- Power and control tactics;
- Gendered experience;
- Selective, uninvited, repetitive oppression of one person by another person;
- It can be one incident when that incident is used in an ongoing way to threaten, coerce and control the other person;
- It is *instrumental*; where a person coerces and controls to gain benefits and resources within a relationship (Johnson 2006; Kimmel 2002; Stark 2010).



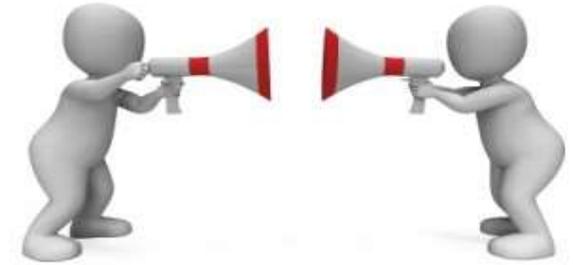
FDV is dependant on:

- The intention of the perpetrator – to overcome resistance, to exercise power and control and to kill if necessary (ultimate act of control);
- The effect on the victim – fear, intimidation and control etcetera;
- The repetitive nature of the behaviour.



High Conflict (situational)

- Ongoing disagreement over parenting:
 - mutual distrust and blaming
 - high hostility
 - verbal abuse
 - physical altercations on occasions
 - refusal to submit to one another's rules, requests or demands
- Power is more balanced and neither is particularly afraid or are similarly fearful of each other;
- Intractable legal disputes initiated by both parties.



• Janet Johnston

Unsubstantiated allegations

- Is “conflict” violence that is unsubstantiated?

Regarding FDV as conflict because allegations/ instances of violence are “*unsubstantiated*” can deny the difficulty for victims to “prove” violence and abuse to the satisfaction of authorities; and

Does not recognise how systems continuously fail and ignore victim’s concerns.

Has the history of coercive control been considered?





The difficulty of proof:

- Failure of the police to charge and take out protection orders.
- Violence occurs *behind closed doors often* without third party verification.
- The failure of child protection systems to properly investigate or be resourced to do so;
- Lack of understanding by professionals of FDV dynamics and impact on victim; miss coercive and controlling behaviours;
- Perpetrators deliberately interfere in any evidence gathering; blame the victim and 'play' the system.
- Failure to understand the relationship between violence against women and violence against children;
- Lack of legal aid;
- Fragmented and disjointed system;
- Community services under-resourced and over-stretched.

Carefully consider underlying dynamics

- Arguably, unsubstantiated allegations can be the cases most likely to be litigated because of the lack of clear evidence one way or the other.
- These cases can therefore seem conflictual without a careful consideration of underlying dynamics.



What this means:



Problem with typologies

- Judges and lawyers discourse of domestic violence reflects the perpetrators accounts of violence as common couple violence. Victims experiences are denied, minimised or a best referred to as a few 'true' or 'real cases of domestic violence.

Erez and King, 2000



Problem with typologies

- Emphasis on physical forms of violence
- Doesn't consider the effects of high relationship control apart from physical violence.
- Women who do not experience physical violence are not identified as victims even if they experience high levels of control (Wangmann, 2013)



Coercive control without violence



- “It is common for batterers to be highly physically frightening and psychologically cruel with few instances of actual physical assault; in fact, clinical experience teaches us that they are the majority of abusers.”
- Women victims of coercive control “consistently nominate emotional forms of abuse as the most damaging (and controlling)” (Schneider, 200)

(Bancroft 1998)

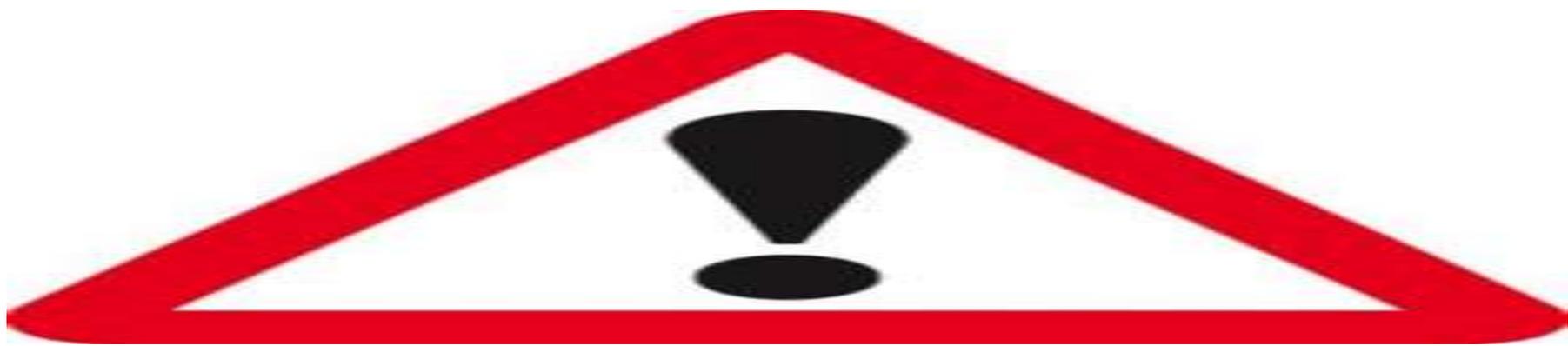
What can we do in practice?

Assessment and understanding context is crucial



Don't risk the wrong assessment

- Assume all violence is **coercive and controlling** until proven otherwise.
- Practitioners and advocates may only get **one chance** to intervene... misjudging FDV for conflict may make the difference between life and death of a victim and/ or their children. Until we are able to create sensitive and reliable tools, **err on the side of caution.**





FDV	High Conflict (no FDV)
Safety for mother and child is priority	Encourage parents to focus on BIC
Support and empower mother	Parallel parenting if consistent with BIC
No time with, suspended or supervised, specialised risk assessment	Neutral hand-over
Sole PR and 'living with' orders to the mother	Sole PR in some circumstances or shared with assistance negotiating.
Accountability for perpetrator – monitoring of court orders and/or father and perpetrator programs.	Anger management, PPP parenting or other therapeutic assistance for parents – if necessary.





Conclusion:

- Be **vigilant** in family law assessments and take a **default position** of coercive controlling violence.
- Whilst there has been research around differentiating different types of violence this can lead to **complacency and over-confidence** by professionals.
- Implement better responses to families where there is FDV/ abuse that **prioritise safety**, perpetrator accountability, respond to power and control dynamics, treats violence towards the mother as a **risk marker for children** and understands that separation does not end the violence and it can be ongoing.
- **Conduct research** into 'high conflict' excluding FDV to better understand these cases.
- **STOP** using the term 'high conflict' as a catch all, inclusive of FDV in research, policy and practice.
- Introduce a system of **accreditation** for family consultants and **specialised training** on FDV for all family law professionals.

Resources

- Amazing resources about family violence – however they are only good as the assessment and can be ignored if issues are identified as “conflict” not “violence”.
- QLS best practice guidelines for legal practitioners
- http://www.qls.com.au/for_the_profession/advocacy/domestic_and_family_violence_best_practice_guidelines
- QLD benchbook on DV
- http://www.courts.qld.gov.au/data/assets/pdf_file/0020/435026/dv-bench-book.pdf
- National DV and DV Benchbook
- <http://dfvbenchbook.aija.org.au/contents>