Screening for family violence in family mediation

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Background

There have been multiple significant amendments to the *Family Law Act 1975* (Cth), but two of the three most recent major legislative changes, the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) and the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), have, at their core, aspirations aimed at privileging the wellbeing of children, reinforcement of the legitimate place of both parents in the lives of children and the protection of children and former partners from family violence (Moloney, Weston, & Hayes, 2013). A further aspect of these reforms, provided as part of the 2006 family law reforms, required separating parents in dispute to attempt family dispute resolution (FDR) by registered FDR practitioners (family mediators) before proceeding to court. These changes resulted in a 25% decrease in court filings in parenting matters (Kaspiew, R., Moloney, L., Dunstan, J., & De Maio, J., 2015).

Cases involving family violence were specifically exempt from the requirement to attend FDR prior to court, although in reality the majority of separating parents were encouraged to attempt FDR first. This development was supported by the concurrent introduction, between 2006 and 2008, of an extensive network of community sector Family Relationship Centres offering free FDR services. If upon assessment or during the FDR process an FDR practitioner found that a case was unsuitable due to family violence (or other contra indicator) a certificate could be issued allowing the case to proceed to court (s 60I *Family Law Act 1975* (Cth)).

In the past decade, there has been a series of reports and reviews from academics and practitioners about the various amendments to the *Family Law Act 1975* (Cth), including the Chisholm review (Chisholm, 2009); the Family Law Council review (Family Law Council, 2009); the Australian Institute of Family Studies (AIFS) evaluation (Kaspiew et al., 2009) and the Bagshaw research (Bagshaw et al., 2010). Much of the attention of these reviews has
been focused on family violence and many of the recommendations were followed by the 2011 series of amendments (Alexander, 2015).

In June 2012 the Family Law Act was reformed with the passage of the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)). While the background to this second shift is largely beyond the scope of the present paper, it is important to note that the intention of the amendment was to respond to some of the perceived unintended consequences of the 2006 amendments—in particular, the apparent privileging of shared parenting over the safety of children and parents (McIntosh, 2009).

The main elements of the 2012 family violence reforms involved introducing wider definitions of “family violence” and “abuse” and clarifying that, in determining the best interests of the child, greater weight is to be given to the protection of the child from harm where this conflicts with the benefit to the child of having a meaningful relationship with each parent after separation (Kaspiew, Carson, Qu et al., 2015). The Act also identified the witnessing of family violence by a child and the serious neglect of a child as “abuse”. The amendments broadened the definition of family violence to include “violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the family member), or causes the family member to be fearful” (s 4AB(1)). The previous reference to a subjective test that a person needs to “reasonably fear for ...” was removed and a list of examples of acts considered to constitute family violence was provided in the amended definition (s 4AB(2)). In addition to more traditional examples of family violence such as physical and sexual assault, stalking, damage to property and harm to an animal, the list makes specific reference to acts that relate to verbal, emotional, psychological and economic abuse. These include:

(d) repeated derogatory taunts; … (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; … (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; … (i) preventing the family member from making or keeping connections with his or her family, friends or culture; … (j) unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty. (Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) s 4AB(2))

The amendments brought into clear focus the importance and relevance of verbal and emotional abuse as well as socially and financially controlling behaviour and the exposing of children to these broader concepts of family violence.

In 2012, an evaluation of the 2012 family violence amendments was commissioned and funded by the Australian Government’s Attorney-General’s Department (AGD). AIFS has now released three project reports, which together, comprise their evaluation of the amendments. The Synthesis Report (Kaspiew, Carson, Dunstan, Qu et al., 2015) sets out the overall findings of the evaluation of the 2012 amendments. The report relating to the Court Outcomes Project provides empirical data on the extent to which changes reflecting the aims of the 2012 family violence amendments are evident in court-based matters. Two samples of court files from the four participating family law courts were analysed for this study—one sample that passed through the system prior to the 2012 amendments and one post the reforms. These data provide insight into the extent to which family violence and child abuse concerns were raised in court proceedings before and after the 2012 reforms, and the extent to which any changes were evident in patterns in court orders (Kaspiew, Carson, Qu et al., 2015).

The Experiences of Separated Parents Study (ESPS) (Kaspiew, Carson, Dunstan, De Maio, Moore et al., 2015) provided an important and rare insight into the lived experience of separating individuals transiting through the family law system. The results found that family violence is a common experience among separated parents, with a majority of participating parents in both cohorts (pre- and post-reform groups) reporting either physical or emotional abuse. Mothers reported experiencing emotional and physical abuse in greater proportions than fathers, both in the before/during separation time period and, with a small but statistically significant decrease, in the post-separation time period. The 2014 cohort’s reports showed the most commonly reported form of emotional abuse was insults with the intent to shame, belittle or humiliate (Kaspiew, Carson, Dunstan, De Maio, Moore et al., 2015). The findings indicate similar profiles in the nature and frequency of family violence and safety concerns in the two samples.

However, the Court Outcomes Project court files study data showed an increase in allegations of family violence and indicated that allegations of family violence and child abuse were raised more frequently in court-based
The ESPS showed that there were statistically significant increases in the proportions of parents who reported being asked about family violence and safety concerns when using a formal pathway, such as FDR/mediation, lawyers and the courts, with increases of approximately 10 percentage points in the latter two groups. However, close to 30% of all parents in the 2014 cohort reported having never been asked about either of these issues in each formal pathway, indicating that the implementation of consistent screening approaches has some way to go (Kaspiew, Carson, Dunstan, De Maio, Moore et al., 2015). Although more parents reported being asked about violence and safety concerns, substantial numbers of parents indicated that they had not been asked about this by any of the primary services (29% of formal services and 46% of informal pathways) (Kaspiew, Carson, Dunstan, De Maio, Moore et al., 2015). This was highest for those seeking assistance from lawyers (46%) and lowest for those attending FDR (31%).

Similarly, for those who experienced emotional abuse 53% were not asked about emotional abuse by their lawyers or the court, whereas 31% and 23% were not asked by FDR and FRC services respectively. Similar percentages of clients reported not being asked about safety concerns. These results are clearly of concern and suggest that many family law professionals are not undertaking the crucial task of simply enquiring about family violence and safety issues when engaging with their clients. This is not a question of what assessment tool is best or most appropriate—it is a question of initiating any enquiry about family violence. This issue will be returned to below.

A further complication revealed by the ESPS study is that a substantial minority of clients who experienced family violence did not disclose this to their family law professionals. In the 2014 sample, 38% of those with family violence or safety concerns chose not to disclose. When asked why, the majority reported that they did not have concerns about the violence at the time they engaged with the professional. Others did not disclose because the violence was not physical and/or did not affect the focus child or they felt the violence was not serious enough to warrant disclosure. A small but concerning subgroup (5%) reported they did not disclose because they were concerned about the consequences of disclosure, including the possibility of escalating the situation.

These non-disclosing clients were asked what might have assisted them to disclose their family violence experience. A substantial proportion reported that simply being asked would have led to disclosure. An even larger group reported that had they been asked in a different manner, they might have been better able or more willing to disclose. Some suggested more thorough questioning; others indicated a more nuanced approach would have helped—perhaps one that was less direct. A number of clients suggested a screening questionnaire would have elicited disclosure. Still others reported that disclosure was inhibited by the presence of the other parent during the interview. Collectively, these responses reveal the complexity facing family law practitioners who are assessing and assisting family violence affected clients.

**Implications for screening and risk assessment of family violence**

This series of studies has highlighted some fundamental concerns facing the family law sector as it grapples with the complexities of dealing with family violence among the myriad of other issues that come with family breakdown. There are a disturbing number of family violence affected clients who reported not being asked about family violence when seeking the assistance of family law professionals. Equally troubling, a significant minority also reported not disclosing family violence even when asked (Kaspiew, Carson, Dunstan, De Maio, Moore et al., 2015).

Together, the Synthesis Report and the ESPS identified a number of issues continuing to face family law professionals working within the context of family violence. Firstly, the decision as to whether family violence affected clients are suitable for FDR is complex and ill defined, a situation that is made all the more problematic by a lack of confidence in the assessment processes themselves. One of the better known assessment tools in Australia is the Family Law Detection of Overall Risk Screen (DOORS) (McIntosh & Ralfs, 2012), which has been developed specifically for professionals working in family law and has
been validated against an Australian sample (McIntosh, Wells, & Lee, 2016). However, in a large survey of family law professions, as part of the AIFS evaluation of the 2012 amendments, Kaspiew and colleagues found “only a minority of professionals reporting that they use the DOORs tool, and a range of concerns raised about the extent to which it represents a workable approach in day-to-day practice” (Kaspiew, Carson, Coulson, Dunstan, & Moore, 2015, p.188). Secondly, this situation is exacerbated by the relatively high number of cases that reported not being asked about family violence and/or choosing not to disclose (Kaspiew, Carson, Coulson, Dunstan, & Moore, 2015).

Each of these areas of concern requires attention. However, it is worth noting that these findings are by no means unique to the Australian family law system. Recent overseas research has identified remarkably similar patterns. Although screening for family violence is normal practice in most family law jurisdictions, detection rates vary. For instance, Ballard, Beck, Holtzworth-Munroe, Applegate, and D’Onofrio (2011) found that, despite pre-mediation preparation, mediators did not report the presence of family violence in more than half the cases in which the parties themselves reported violence. Another study found that, although approximately 60% of divorcing couples attending mediation reported physical violence on a screening measure, only 7% of these couples were screened out of mediation (Beck, Walsh, Mechanic, Figueredo, & Chen, 2011). Thus, research suggests that screening for family violence among mediation clients has not been very effective, and there is a lack of clarity about how family violence patterns should influence decisions about mediation. There exists significant disagreement as to the best screening practices for mediation, let alone for the wider family law system (Bingham, Beldin, & Dendinger, 2014; Holtzworth-Munroe, Beck, & Applegate, 2010). There is also widespread evidence that victims of family violence often choose not to disclose, both within the family law context (Bingham et al., 2014) and more broadly within the health system (Spangaro, Zwi, & Poulos 2011).

**Facilitating disclosure of violence**

This paper will now consider what evidence and practice impacts the disclosure and screening for family violence. Studies that have directly interviewed victims to explore what may assist disclosure have produced some consistent results. A clear and unsurprising finding was that disclosure is difficult for those who have experienced abuse. The psychological impact of abuse can lead a victim to lose a sense of self and of reality, which, in turn, inhibits responses to screening questions (Bingham et al., 2014; Bailey & Bickerdike, 2005). Bingham and colleagues (2014) undertook a qualitative study of women who had recently left abusive relationships; asking them what they felt would inhibit or enhance disclosure during screening. Barriers to disclosure included: a general lack of awareness by victims of the seriousness of the violence they had experienced in the past or were experiencing at the time of assessment; a fear of repercussions from the abuser if the violence was disclosed; a concern that the screening process would itself re-traumatise the victim; and a fear of being judged (Bingham et al., 2014). When victims were asked what might assist disclosure, they emphasised the need to be questioned directly, despite the potential risk of re-traumatisation. However, a qualifying and somewhat contrary view was voiced—namely that the assessor needed to respond to the needs of the presenting client and tailor the interview to avoid re-traumatising vulnerable clients. A vulnerable client might need indirect questioning to assist disclosure and avoid re-traumatising. In addition, victims stressed the importance of building rapport and trust with the assessing professional to enable them to feel confident to disclose. When commenting on the screening tool offered, some victims supported the presence of repeated questions about violence but suggested that a screening tool that was too long could be experienced as intimidating. It has been argued elsewhere that a lengthy family violence assessment can be time consuming and a burden on clients (Pokman et al., 2014).
Mediating in the shadow of family violence

Parental separation does not necessarily mean an end to violence, and for many women in abusive relationships, the separation phase is the time of greatest risk of partner violence and homicide (Beck, Walsh, Ballard et al., 2010; Campbell, 2005). The findings from the ESPS (Kaspiew, Carson, Dunstan, De Maio, Moore et al., 2015) described above, support the need for further improvement in the identification of family violence. Within the family mediation services, there have been ongoing concerns about whether clients with a history of family violence are able to negotiate on an equal footing, and a perceived threat of violence by the abusive partner may not be evident in the mediation process but may produce unfair agreements and endanger victims (Beck, Walsh, & Weston, 2006; Holtzworth-Munroe et al., 2010; Pokman et al., 2014). Research suggests that family violence is not always recognised by mediation practitioners (Johnson, Saccuzzo, & Koen, 2005; Kaspiew et al., 2009) and that even when it is recognised, appropriate actions aimed at creating or preserving safety are not always taken. Analysis of communications within court-based dispute resolution has found a disturbing pattern of marginalisation of allegations of harm by practitioners during mediation (Trinder, Firth, & Jenks, 2010).

Practitioners and commentators continue to express concern about the high percentage of families presenting with disclosed problems of family violence (Bagshaw et al., 2010; Moloney et al., 2013). For instance, 90% of couples attending divorce mediation reported partner violence in one study and only about 7% of cases were actually screened out of mediation (Beck, Walsh, Mechanic, & Taylor et al., 2010). It is not practical or desirable for all family violence cases to be screened out of FDR. The high prevalence of family violence would leave very few cases to be dealt with in mediation and place an unsustainable burden on court resources. One of the original proposed advantages of family mediation was that the process can yield better agreements for parents in dispute than a legal approach and one that is more equitable in terms of cost and timing (Beck & Sales, 2001). Given this high prevalence of family violence in the separating population, a more practical approach is to detect and discriminate between forms of family violence to determine which presentations can be safely and effectively referred to family mediation. Of course, this in turn requires a corresponding understanding of what forms of family violence render a case inappropriate for family mediation, and from the mediation perspective, what processes need to be implemented to ensure a family violence affected case can be safely and effectively dealt with in mediation.

Mediators need to use an assessment process that will discriminate between those family violence affected clients who cannot participate for reasons of safety or capacity (Bailey & Bickerdike, 2005) and those who can participate within a suitably modified process. Mediators also need to exercise considerable judgement when deciding how to accommodate a family violence affected client into the mediation process. Modifications within their repertoire include shuttle and video mediation, the inclusion of a support person for victims, lawyer-assisted processes, a co-mediation gender-balanced team, tight process controls, frequent separate sessions and many subtle and not so subtle adaptions to the process (Bailey & Bickerdike, 2005). In order to decide whether to provide mediation and then, if so, what type of service, mediators need to assess and understand the nature, extent and impact of family violence. Put simply, cases presenting to family mediation need to have their family violence status detected, the profile and history of any violence understood and the appropriate service or response designed and delivered to match their needs. This will lead to the screening out of cases deemed unsuitable because of the nature of the family violence experience.
Approaches to screening in mediation

A key factor in effective detection of partner violence histories among mediation clients is the availability of valid and reliable screening measures of the full range of family violence behaviours and patterns. This section will briefly consider international screening tools, before focusing on some of the Australian measures. The Revised Conflict Tactics Scale (CTS2) is one of the most widely validated measures, and assesses the extent to which specific acts of violence have been enacted by both of the partners (Straus, Hamby, Boney-McCoy, & Sugarman, 1996). To date, it has not been widely used in family mediation contexts. Subscales measure psychological aggression, physical assault, injury, negotiation and sexual coercion; however, the scale has been criticised for insufficient sensitivity to circumstances and context (Moloney et al., 2007). For instance, the psychological abuse scale does not adequately measure more subtle controlling behaviours and the consequences that may come with a coercive control pattern, such as those that engender fear and intimidation. These aspects are important when assessing appropriateness for couple interventions such as family mediation (Holtzworth-Munroe et al., 2010). As a result, it is common for researchers to modify the CTS2 to meet the needs of particular studies (Kimmel, 2002), or supplement the scale with additional measures of aspects of violence and the contexts in which they occur (Pokman et al., 2014).

Beck and colleagues developed the Relationship Behaviour Rating Scale (RBRS) to measure more differentiated aspects of coercive and intimidating partner abuse among couples participating in divorce mediation (Beck et al., 2009). The measure comprised 41 items with six validated subscales: psychological abuse, coercive control, physical abuse, threatened and escalated physical violence, sexual assault, intimidation and coercion. It was used to assess violence profiles in a large epidemiological study of divorcing couples attending mediation. Nearly all couples reported some form of coercive control and psychological abuse, and males were found more likely to perpetrate severely coercive patterns of partner violence. The RBRS was revised and further validated, confirming better discrimination of types of controlling abuse compared with the CTS2 (Beck, Menke, & Figueredo, 2013).

A small number of other instruments have been recently developed to screen for abusive behaviour in mediation settings, but have a number of limitations. The Domestic Violence Evaluation (DOVE) is a 19 item, interview-based instrument that assesses risk in mediation settings, but it has been criticised as excessively long and lacking detailed behaviourally specific questions (Beck et al., 2013; Pokman et al., 2014). Holtzworth-Munroe et al. (2010) developed another screening tool for mediation settings, the Mediator’s Assessment of Safety Issues and Concerns (MASIC), which contained seven subscales and was found to be easy and quick to administer. However, while MASIC asks participants about their partner’s behaviour, it doesn’t measure abusive behaviour by participants themselves against their partner.

Two recent Australian initiatives were the AVERT Family Violence: Collaborative Responses in the Family Law System (Attorney-General’s Department, 2010) and the DOORS Detection of Overall Risk Screen (McIntosh and Ralfs, 2012), which attempted to improve practices in relation to screening and responding to risks and harm factors in the family law system context. Both instruments are well constructed (see DOORS validation in McIntosh et al., 2016) and have received extensive promotion within the Australian family law sector; however, the Responding to Family Violence Study (Kaspiew, Carson, Coulson et al., 2015) found that, although there were some positive comments, 51% of the lawyers and 69% of the non-legal professionals participating in the study reported that they rarely or never used the DOORS tool. As mentioned above, qualitative data reported mixed views on the DOORS approach to screening and assessment and its workability in everyday practice. Some participants emphasised the utility of the client interview process and the significance of professional skill, knowledge and experience in identifying risks and harm factors in this context (Kaspiew, Carson, Coulson et al., 2015).

Effective screening should include strategies that enable victims to feel safe enough to disclose abuse experiences so the mediator may make appropriate decisions regarding the process of mediation and whether mediation should proceed (Bingham et al., 2014). Research indicates that when family violence victims are asked directly about abuse, are provided safety from the abuser and institutional control and are asked these questions by a person that they trust, they are much more likely to choose to disclose their abuse during screening (Spangaro et al., 2011; Bailey & Bickerdike, 2005). Accordingly, mediators may prefer to use interviews because of the opportunity they provide for rapport-building with clients (Holtzworth-Munroe et al., 2010). However, as
discussed above, some research has shown that when relying on semi-structured interviews, mediators miss a significant amount of family violence that is identified on standardised, behaviourally specific questionnaires (Ballard et al., 2011).

Beck and others (2011) found that when mediators used semi-structured interviews, about a third of the couples they identified as not having family violence reported on a questionnaire as having experienced threatening or escalating violence or sexual intimidation, coercion or assault. A study of a law school clinic found that although the director and mediators were confident they were detecting family violence through review of court files and interviews, among other methods, they missed about 50% of cases detected by a questionnaire (Holtzworth-Munroe et al., 2010).

** Lessons from a recent study **

In order to address some of these issues, the authors undertook a research project to examine the prevalence, types and severity of partner violence among separated individuals (n = 121) attending a number of family mediation services (Cleck, Schofield, Axelsen, & Bickerdike, 2016). The study examined the reliability and validity of both the widely used and validated Conflict Tactics Scales (CTS2) and three newly developed scales that measured additional aspects of interpersonal violence—Intimidation, Controlling and Jealous Behaviour, and Financial Control. Clients attending mediation were assessed along these dimensions at pre-mediation, post-mediation and six-month follow-up. The study also examined the prevalence and inter-correlations of various forms of partner abuse and included financial abuse as another form of non-physical controlling violence that involves preventing a partner from knowing about or having access to family income and controlling the victim’s ability to become self-sufficient (Hall et al., 2012). It was hoped that these findings may inform the development of more targeted screening processes as well as guide decisions about how to manage family violence affected cases within the family court, family lawyers and family mediation contexts.

The results of Cleak et al. (2016) confirmed that the CTS2 subscales of negotiation, psychological aggression and physical assault were highly reliable in a family mediation sample; and, more importantly, new scales measuring intimidation, controlling and jealous behaviour and financial control were found to have very good reliability and validity for abuse by partner, and moderate reliability and validity for self-reported abuse by the participant. Most clients disclosed a history of at least one type of violence by partner: 95% reported psychological aggression and 35% physical assault. Rates for violence against partner were 76% for psychological aggression and 17% physical assault. For the newly validated scales, 72% of partners were reported to demonstrate controlling and jealous behaviour, and 50% financial control. These data add to the limited empirical research that explores how financial abuse is interconnected with the other dimensions of family violence.

These three new scales measuring controlling behaviour by partner hold promise as screening measures in the family mediation context and may well have wider applications for couple interventions. The Intimidation scale contains six items that assessed the current and recent climate of fear, intimidation and domination by partner (“I feel dominated/intimidated by my former partner”, “I am currently afraid of my former partner”). The Controlling and Jealous Behaviour scale consists of seven items that assess the level of obsessive controlling behaviour such as monitoring and checking of activities, repeated false accusations of infidelity and limiting access to friends. The four-item Financial Control scale identifies whether one party restricted and controlled access to money. The utility of all these scales is enhanced by their brevity and by their robust internal reliability, and, as a result, may be able to meet the objective of providing an effective and discriminating yet “workable approach in day-to-day practice” for family law professionals.

For those assessed as family violence affected but appropriate for family mediation, the type and nature of family violence needs to inform practice decisions. Client scores on these measures directly address the issue of suitability for mediation because the variables measured are indicative of a victim’s consequent emotional and psychological state (“I am afraid and dominated”) and the suitability of their former partner (controlling, punitive and intimidating) to participate in a facilitative process. The measures also inform potential process modifications. Even shuttle mediation, in which clients do not meet, may not be sufficient to overcome current concerns of fear and intimidation, whereas past experiences of controlling money and restricting access to friends, without concurrent concerns about intimidation, may allow for mediation with a support person within mediation and legal support outside mediation. These relatively brief assessment tools provide
the mediator with a family violence profile to inform practice model decisions to enable family violence affected clients to safely and effectively participate (Bailey & Bickerdike, 2005).

A way forward

Clearly, screening and risk assessment processes must be designed to be user friendly and suited to the skills and expertise of the practitioner and the circumstances of the client. To this end, they must balance the need to be comprehensive and consistent, with the need to be sufficiently brief to enable the various types of practitioners in the family law and relationships services sector to incorporate them into their work. The process needs to be tailored to the purpose of the family law intervention and expertise of the practitioner (legal advice, family dispute resolution, family counselling, specialist family violence services) and responsive to the needs and circumstances of the presenting client. The screening and risk assessment process must also be designed to maximise the likelihood of disclosure. Research has shown that eliciting disclosure is more than simply asking the right questions (although, clearly, asking is a necessary first step that is too often absent). Clients may require persistent and direct questioning that is first accompanied by an explanation as to why the questions are important. Others may require a level of trust and rapport to be built with the practitioner before they are willing to disclose. Still others would prefer to complete a separate written questionnaire prior to interview and, when interviewed, reassurance that the process is safe and their partner is not present. Some may be fearful of disclosing or reluctant due to feelings of shame. Assessment will be further complicated by the psychological state of those who have been abused, who are likely to be traumatised and their emotional and cognitive functioning compromised. These complexities and, at times, contradictory requirements suggest that a standardised instrument is not necessarily suitable across all family law services.

Finally, screening and risk assessment processes must be able to discriminate between various types of family violence in order to inform service processes and outcomes. In FDR a practitioner must decide whether a family violence affected family is suitable for FDR or whether to provide a certificate that allows them to proceed to court. A decision whether to proceed to FDR must necessarily include complex judgements of the impact of the family violence on their capacity and safety to participate in the FDR process and the capability of the FDR process to adapt to accommodate any consequences of the family violence experience (shuttle mediation, gender balanced co-mediation team, support person for the victim, and safe environment). Similarly, family lawyers must also decide whether to refer clients to FDR, to other specialist family violence services and/or directly to court. These decisions can only be made if the assessment is sufficiently discriminating and the practitioner has the knowledge and skills to use the resulting information to make appropriate judgements.

Conclusion

Family violence is a common presentation within family law services. The majority of clients attending FDR are affected by family violence. It is the normative experience, not the exception; therefore, professionals working with separating couples and their families need to be looking for evidence of the absence of family violence, and to be suspicious and sceptical if they find none. Indeed, such a finding needs to be re-examined on a continuing basis throughout service provision as family violence can occur as a consequence of the experience of separation.

Family law clients must be screened and, it follows, that clients entering the family law system must all be assessed for a history of family violence. The prevalence of clients reporting that they were not asked about family violence is of concern. In addition to instructing
family law service providers to always assess for family violence, it might be interesting to consider what barriers might be inhibiting them from doing so. Some have argued that the tools are too burdensome and difficult to fit into day-to-day practice, or unsuitable to the client presentations they encounter. The assessment tools and processes must be tailored to fit the skills of the assessor and the type of service being provided. Some family law service providers are questioning whether a lengthy social science based, proceduralised approach is suitable for legal advisers (Kaspiew, Carson, Coulson et al., 2015). A one size fits all screening approach, while appealing for policy-makers, might not result in the desired outcome, namely that the maximum number of clients possible are provided with a safe and effective family law service tailored to their needs.

Disclosure is important but the findings of the ESPS suggest that simply asking about family violence may not elicit disclosure, with one third of family violence affected clients choosing not to disclose. Previous Australian research has produced similar findings (Keys Young, 1996; Bailey & Bickerdike, 2005). Non-disclosure clearly limits the service providers’ ability to recommend safe and effective pathways for a client. While it is arguable that clients have a right to choose whether to disclose family violence, the barriers to disclosure require careful examination. Assessment processes must be designed in such a way as to promote safe and voluntary disclosure in contexts that facilitate appropriate supports and responses. Evidence suggests (Spangaro et al., 2011; Bailey & Bickerdike, 2005) that a number of factors will assist clients to disclose, including:

- an explanation of why disclosure is important;
- the development of a trusting relationship with the assessor;
- a thorough and sometimes repetitive approach to questioning that includes enquiry into all types of abuse and coercion;
- a process that is not burdensome in length;
- a safe environment without the presence of the abuser;
- a process that is sensitive to the emotional and psychological impact of abuse on the abused; and
- enough information that allows for tailored responses based on the outcomes of the assessment.

It might also assist some to complete an additional written questionnaire. These requirements suggest that the assessor needs to possess significant engagement skills and the process needs to be adapted to respond to the circumstances of the clients and nature of the service sought.

Mediation screening processes must be exacting. Mediators need to apply an assessment process that discriminates between those family violence affected clients who cannot safely participate in FDR and those who can. The screening tools and processes must be capable of assessing safety and capacity to determine whether a victim is able to participate effectively and safely and what mediation process modifications must be implemented. To do this they must articulate a family violence profile that, in addition to physical and psychological abuse, examines issues of trauma, jealousy and control, emotional abuse, financial abuse and intimidation (Cleak et al., 2016). The assessment process should also determine whether the other abusing party can appropriately participate in mediation and what processes need to be enacted to ensure this occurs (Bailey & Bickerdike, 2005).

Future research and commentary must explore the success of screening processes to discriminate family violence profiles, and whether the mediation process modifications purported to respond to these profiles are indeed providing family violence affected clients with a safe and effective mediation process and outcome.

References

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