

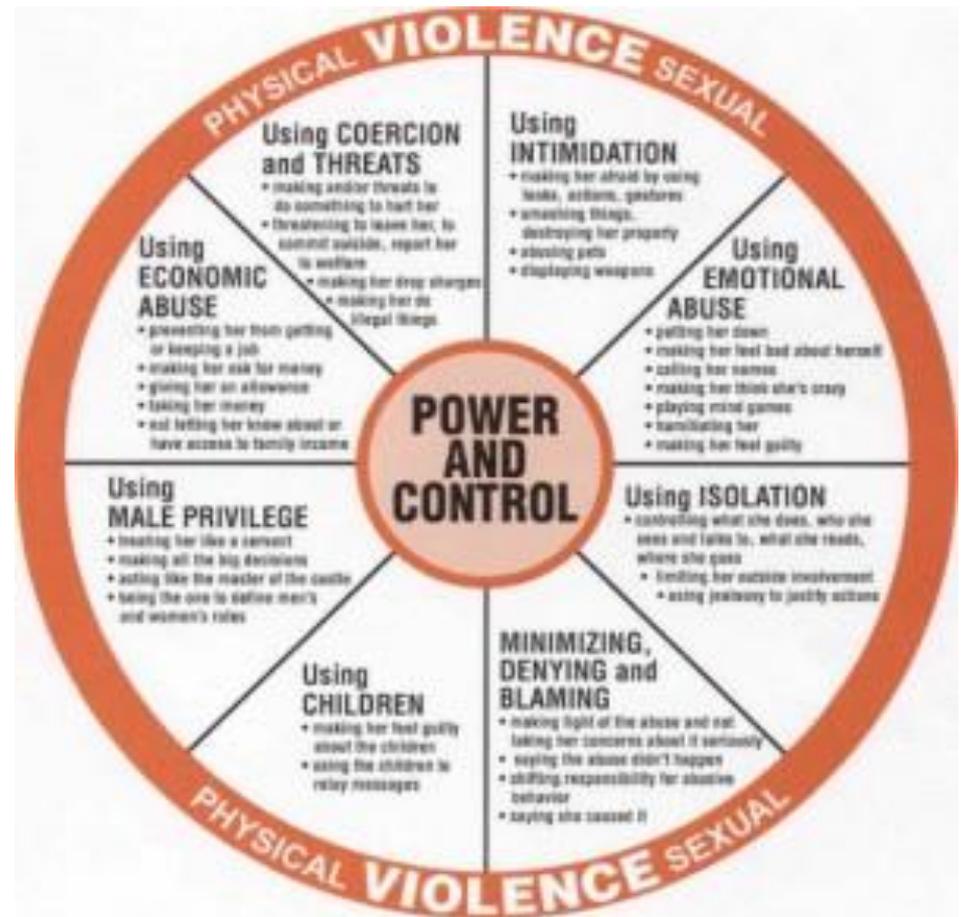
# Hearing Children's Voices Safely in Mediation: Coordinated Family Dispute Resolution

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# Family violence

- ▶ Coercive control.
- ▶ 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).



# Family violence in Family Dispute Resolution (FDR) contexts

The 2012 AIFS Survey of Recently Separated Parents found that a majority of the parents surveyed reported “either physical hurt or emotional abuse both before/during and since separation” (p 42).

A majority of those parents reported that their child “had witnessed physical violence or emotional abuse”, with a little under one-half reporting children witnessing family violence since post-separation (p 43).

[http://www.ag.gov.au/Publications/Documents/SurveyOfRecentlySeparatedParents2012/SRSP\\_Report.pdf](http://www.ag.gov.au/Publications/Documents/SurveyOfRecentlySeparatedParents2012/SRSP_Report.pdf)

# Family violence in Family Dispute Resolution contexts

- ▶ Significant numbers of FDR matters involve a history of family violence.
- ▶ Although exemptions are possible if there is a history of family violence, many parties still want to participate in an FDR process.
- ▶ A safe model of FDR is needed so that the potentially serious consequences of family violence (including lethality) can be managed and children's voices can be heard safely.

# The Coordinated FDR Model

- ▶ Women's Legal Service (WLS) Brisbane was commissioned by the Australian Attorney-General's Department in 2009 to develop a safe practice approach to family mediation in matters where there is past or current family violence.
- ▶ The CFDR model was piloted in 5 locations around Australia.
- ▶ The model was evaluated by AIFS.

COMMUNICATION SESSIONS

LEGAL ADVICE

### Phase 1: Intake Process 1

- CFDR Coordinator Assessment
- Specialist Risk Assessment
- Case Management Decision

### Phase 2: Preparation for FDR & Intake Process2

- 2 Legal Advice Sessions
- 3 Communication Sessions
- Preparation Workshop
- 2nd Intake Assessment

EXPLANATION

CLARIFICATION

EXPLORATION

NEGOTIATION

AGREEMENTS

Phase 3:  
CFDR  
Mediation

### Phase 4: Post CFDR Follow Up

- At 1-3 months AND
- At 9-10 months

Concludes unless parties are re referred back into CFDR

RISK ASSESSMENT

CASE MANAGEMENT

# AIFS Evaluation

- ▶ Evaluation findings affirmed the efficacy of the design elements of CFDR:
- ▶ Adequate risk assessment for the parties' safety and well-being is critical in family violence contexts.
- ▶ Parties whose capacity to engage in the process is diminished to the point that inappropriate and unsafe outcomes may result, do not belong in family mediation.
- ▶ Preparation for the parties' participation in FDR is key.
- ▶ Parties should receive legal advice and counselling, be coached in how the mediation process works and what their role is in it, and they should receive instruction on how to negotiate effectively in mediation (for example, communication strategies, how to identify their key needs and interests and how to prioritise them, option generation and how to identify their bottom line).
- ▶ Vulnerable parties have more chance of making their voice heard in mediation in the context of lawyer-assisted models, as long as those lawyers are trained in dispute resolution theory and practice.

# Summary of strategies learned from CFDR

- ▶ Risk assessment - by specialist experts.
- ▶ Preparation - counselling and coaching.
- ▶ Legally assisted approaches.
- ▶ Interdisciplinary collaboration - professional conversations.
- ▶ Case management.
- ▶ Ethics: FDRPs must claim the right to elevate safety and party self-determination.
- ▶ Use of narratives to retain engagement.
- ▶ Use of problem solving models for process and role clarity.
- ▶ Focus on short term arrangements to demonstrate the possibility of successful arrangements.
- ▶ More time and resource intensive: strategic use of legal and therapeutic support, more private sessions.

# AIFS Evaluation

- ▶ However, the evaluation also found that, notwithstanding the positive aspects of the model's practice, and its intentional design for safety and the empowerment of parties, 'some parents experience considerable emotional difficulty, even trauma, in mediation' (Kaspiew et al., 2012, p. 138).

# Graham and Watson: Principles of Trauma Informed Practice Should Also Inform CFDR in Future

## **SAFETY**

Ensure physical and emotional safety

## **TRUSTWORTHINESS**

Through task clarity, consistency and interpersonal boundaries

## **CHOICE**

Maximise client choice and control

## **COLLABORATION**

Maximise collaboration and sharing of power

## **EMPOWERMENT**

Prioritise empowerment and skill building

# CFDR was not funded for a roll-out

- ▶ Although the AIFS evaluation of the CFDR pilot acknowledged that CFDR was cutting edge practice, a funded roll-out of the model has not occurred.
- ▶ This decision was predominantly made because of the resource intensive nature of the model.
- ▶ Lack of political engagement and appetite to pursue it.
- ▶ This level of resource investment is required however to create a model that elevates safety.
- ▶ If CFDR is not available - how can FDRP's truly practice with a focus on elevating safety?

# A CFDRplus Model is Needed

- ▶ The CFDR model represents a safe and effective approach to family mediation for matters where there is a history of domestic violence.
- ▶ The design elements of CFDR have been affirmed by a rigorous independent evaluation.
- ▶ With trauma informed practice added into the design, CFDR would be an even more efficacious model.
- ▶ A CFDR model is important to the future safe practice of dispute resolution in the family law system.
- ▶ The missing component is the child's voice.

# Incorporating the child's voice safely

- ▶ “Child-Centred Approach” (ie not child-inclusive or child-focussed)
- ▶ Specific child-risk assessment at intake.
- ▶ Appointment of a ‘child advocate’ - a suitably trained, neutral Child DV counsellor.
- ▶ A Child Impact Statement to inform the mediation process if/when a proposed parenting plan is agreed on.
- ▶ This would involve:
  - ▶ Analysis of the nature of family violence and child abuse in the family.
  - ▶ Analysis of the proposed parenting plan.
  - ▶ Analysis of the known impacts of family violence and child abuse on children.
  - ▶ Analysis of any protective factors in the proposed parenting plan.

# Incorporating the child's voice safely

- ▶ Suggested protective factors:
- ▶ Safe supervision (long term) of the children during contact (not by a relative or friend of the violent parent).
- ▶ An acknowledgement by both parents that family violence has occurred.
- ▶ Effective participation in counselling for both parents to address not only family violence but also any problems of homelessness, mental health issues, drug and alcohol, parenting difficulties.
- ▶ No reported or alleged history of child abuse.
- ▶ Any evidence of a positive relationship between the child and either or both parents.
- ▶ Strategies to minimize contact between the parents at handover and other times.

# Family Law System Policy Failure

- ▶ The Australian government's failure to capitalise on the proven efficacy of CFDR is a family law service provision policy failure.
- ▶ Not having CFDR in the family law system jeopardises the safety and value of family dispute resolution practice in family violence contexts.
- ▶ Safe FDR is an important family governance and justice issue because the future lives of families are ultimately at stake.
- ▶ This sort of policy should not be left to the vagaries of political whim.
- ▶ CFDR should be the subject of serious government investment.