



# Who's failing whom? From policy to criminality:

Never Stand Still

**The potential consequences of Indigenous children's exposure to family violence and its impact on Indigenous families and communities**

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# Incidence of Violence

“Very few Aboriginal families ... are not struggling with the debilitating effects of trauma, despair and damage resulting from their experiences with violence”

Dodson, M. (2003). *Violence Dysfunction Aboriginality*. Paper presented at the National Press Club, Canberra, June 11, 2003.



# BARRIERS TO REPORTING VIOLENCE...

## HER FAMILY

Comments such as:

'You'll just have to put up with it.'  
'You can't split the family.'  
'You made your bed, now you'll have to lie in it.'  
'What did you go to the coppers for – it's your own fault.'  
'Everyone's really pissed off at you – and they're hassling us too.'

## KIDS

Comments such as:

'I hate you – it's all your fault. You're sending daddy to jail, we can't go home because of you.'  
'I'm not changing schools.'

## HIS FAMILY

Comments such as:

'You're making it hard for all of us, cops hanging around.'  
'He wouldn't hit ya, if ya didn't deserve it.'  
'You know we'll fight you for the kids.'

## PERPETRATOR

'I'm sorry, it was an accident, it won't happen again.'

'You can't leave me I'll kill myself.'  
'You leave, your not taking my kids.'  
'Where you think you gonna go, I'll find you, I'll kill you.'

## COMMUNITY

Comments such as:

'You're splitting up the family – what about the kids – they need their dad.'  
'You'll send him to jail – you'll kill him, you know what happens in there.'  
'You're dividing the community.'  
'It's all that worker's fault, she's making her do it.'

## ELDER'S

'This isn't culture, this violence isn't ok.'

## POLICE

Comments such as:

'If your not going to do anything about it, we will. We will apply for an intervention order.'  
'You're wasting our time'  
'He told us you hit him back, we better charge you too.'  
'You got outstanding warrants, we'll be locking you both up.'  
'Is that what really happened, you were drunk ...'

## REFUGE WORKER

'You can do something you know, you can leave, or get an AVO, I can help you.'  
'You know if you stay here your 10yr old son can't.'

## SILENT SUPPORTERS

There are many in our community, men and women, who want to help, who can see the violence isn't her fault. But they are scared to speak. They stay silent.

## COURTS

Long waiting times, foreign scary places, judgemental judges.

## CHILD PROTECTION

Comments such as:

'You have to leave him, or we will take the kids.'  
'Your violence is hurting the kids.'  
'You need to do a family violence course, a parenting course, prove to us you don't drink alcohol in front of the kids.'  
'We will be watching you.'

## DISABILITIES

Sorry we can't help you. We don't have the funds or the skills to work with you. You should try some other service.



# Child Protection Policies & Family Violence

- Increasing trend of children of domestic/family violence survivors being placed in the care of the State.
- The pretext for the removal is that the mother has ‘failed to protect her children’ or has ‘participated in domestic/family violence’.
- Disturbing tendency for child protection workers to see domestic/family violence as relationship conflict, a symptom of problematic parenting or as an anger management issue.
- Whilst being given little or no practical support by Child Protection to assist in keeping themselves and their children safe, case plans commonly contain demands that mothers must:
  - Tell CP if they move and be open to case workers coming to their homes;
  - Attend parenting courses and counselling;
  - Obtain d/fv protection orders and/or family law orders for residence;
  - Be available for routine or random drug and alcohol testing; and
  - Find appropriate housing.
- Exact numbers of how many women/children are effected by this approach are unknown.
- Exact numbers of Indigenous children removed on this basis is also unknown but is presumed to be high given the rate of family violence and other risk factors.



# ‘Failure to Protect’: From Policy to Law

- Introduction of ‘failure to protect’ laws:
  - Holding adults who fail to take action where:
    - They know or believe that a child that they have custody or care of or live in the same household with, is suffering sexual abuse or abuse that may result in serious injury or death
    - a child they were living in the same household as dies due to child abuse and the adult was aware of the abuse and its seriousness
  - The duty to protect presumes the defendant has the capacity to act positively to protect the victim, and will take ‘reasonable steps’ to do so, but this has implications for defendants who are also subjected to violence.
  - Defining ‘reasonable’ steps is problematic. In Canada for example, the standard has been set:

“Marked departure from the conduct of a reasonably prudent parent in circumstances where it was objectively foreseeable that the omission would lead to a risk of danger to the child’s life or a risk of permanent endangerment to his health” *R v J.F. [2008] Canada Supreme Court.*
  - Whilst in the US the expectation is,

“The mother is to step outside, of protecting herself and lay her life down for the child if she has too, or at a minimum call authorities” Sentencing of Arlena Lindley, Criminal Court, Texas



# Unintended Consequences...

- While the law applies equally to both mothers and fathers, defendants charged with failure to protect are almost always female, which cannot be explained solely by the fact that more women have custody of their children.
- That a range of factors contributing to domestic/family violence will make Indigenous women particularly vulnerable to both the failure to protect policy and also any criminal laws that may be instituted.
- Increased criminalisation of Indigenous women for being victims of violence.
- Children being separated from their mothers and placed in care or in the abuser's care.



# The Work Ahead ...

- Working collaboratively with those who know the problem best to ensure the interests of both mothers and children experiencing domestic/family violence are served;
- Utilising the existing evidence base particularly internationally to inform practice and process, including safety nets to protect vulnerable victims;
- Reflective practice – if we know it doesn't work, or that it creates further problems, we need to be committed to finding better ways to do business;
- Continual dialogue (with all interested parties) for improved outcomes.