

**Failure of the Australian Family Court system to protect children exposed
to family violence**

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Executive Summary

The inability of the Australian Family Court system to appropriately safeguard children who have seen domestic abuse is severely assessed in this report. The report has provided a brief background on the topic. It has further identified gaps in the laws, policies and practices. Many gaps were identified which include problems in Family Law Act 1975 and Family Dispute Resolution policies. The gaps further encompass inadequate risk assessment practices as well as insufficient coordination between the family Court system and child protection agencies. The implication for these gaps has been discussed in the report. Based on these few recommendations have been outlined. The first recommendation is to improve risk assessment processes through thorough frameworks. The second recommendation is to strengthen the legal system by changing the Family Law Act of 1975 to put children's safety first. The final suggestion is to enhance contact between child protection organizations and the family Court system. These suggestions can assist in addressing the shortcomings of Australia's family Court system.

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1.0 Introduction

The Family Court system in Australia has a pivotal role in the identification and provision of appropriate responses to family violence. However, they are failing to conduct their duties in a proper manner. In this report, the failure of the Australian family Court system to protect children exposed to family violence will be critically evaluated. The report will commence by furnishing a background on the topic. Based on critical research, the report will identify gaps in the current policies and practices. Besides, the implication of the gaps will be discussed. On the basis of identified gaps, a few suitable recommendations will be made. Lastly, some significant inferences from the discussion will be summarized.

2.0 Background

The Family Court system in Australia has the responsibility of safeguarding children exposed to family violence. Their inability to perform their responsibility is a serious problem that needs addressing. Any sort of abuse, aggression or domineering behaviour that takes place in a familial environment is referred to as family violence. Along with financial control and social isolation, it also involves physical, emotional, psychological as well as sexual abuse. A child can be exposed to violence either by being a direct target or by witnessing the violence inflicted on another family member like the mother (AIHW, 2022). Family violence is frighteningly common in Australia. It has a serious negative impact on children's well-being (Walker, 2020).

Statistics demonstrate the alarming scope of the issue. A survey estimated that one in six women, as well as one in nine men, experienced physical/sexual violence or both prior to turning 16 (AIHW, 2022). As per Figure 1, sexual abuse by a family member is highest for girls aged between 10 to 14 years. In 2018, the rate of sexual assault for females aged

between 10 to 14 years was 197.8 per 100,000 children (AIHW, 2022). As per Figure 1, the sexual assault rate per 100,000 children for boys aged between 0 to 14 years is below 50 (AIHW, 2022).

Family violence has extensive and severe effects on children. The adverse consequences it has on children's physical and mental health, educational success, as well as general development, have been underlined in several research studies. Children who experience familial violence are more likely to experience mental as well as behavioural issues like PTSD and anxiety (Humphreys *et al.*, 2020). They further show poor academic performance and cognitive delay. Their relationships, self-esteem and well-being are negatively impacted by these negative events hampering their future.

In Australia, the family Court system is designed to offer a framework for settling disagreements about parenting plans and child safety. It has drawn criticism for failing to adequately safeguard the best interests of children (Wyeth, 2021). Several systemic flaws have been identified in the family Court system. It includes poor risk assessment practices, a lack of knowledge of the dynamics of family violence and restricted access to necessary support services (APH, 2023). The rate of sexual abuse is escalating and the Court is failing to provide clear judgments. As per a story, a woman fought for 6 long years to protect her son from his abusive father (Independent Australia, 2021). However, the Court failed to provide correct judgment as the Court vouched for shared custody.

3.0 Key findings: Gaps in the policies and practices

There are several laws, policies and practices that govern the Family Court system. It is governed by the Family Law Act of 1975. The Act places a strong emphasis on the necessity of taking the child's best interests into account while determining parenting plans

(Legislation.Gov.AU, 2019). However, research indicates that claims of domestic violence are not regularly and successfully taken into account during judicial procedures (Australian Law Reform Commission, 2019). It is because the Court consistently underscores that shared custody is essential, regardless of the situation. Children's safety is jeopardized by this practice gap. This, in turn, also feeds the cycle of violence. The Family Dispute Resolution (FDR) assists separating parents in determining custody of a child utilizing mutual agreement (FCFCOA, 2022). However, the policies of FDR do not sufficiently address the intricacies of family violence from a policy standpoint. Mandatory mediation or other forms of Alternative Dispute Resolution may put children at risk of domestic violence. This policy has to be changed because it ignores the power disparities and security issues that arise in these situations.

The practices used by the family Court system, notably the dearth of adequate risk assessment procedures, are another crucial problem. According to research, risk assessments frequently do not have a thorough grasp of the dynamics of family violence (Webb *et al.*, 2021). This leads to insufficient child protection measures. Children are exposed to continuing damage when dangers are not identified and addressed. Additionally, there is a critical need for better communication between child protection organizations and the family Court system. Delays in Court processes as well as insufficient communication and coordination between different agencies can delay timely interventions for victimized families. Children are in increased danger due to this lack of coordination. This also reduces the effectiveness of preventative efforts.

These flaws and problems have significant negative effects on children. The safety of children is at stake due to the inefficiencies of the family Court system. Their capacity to heal from the trauma they have experienced is hampered by the family Court system's inadequate

response to these threats. It is essential to enact reforms in the laws, policies and practices controlling the family Court system to solve these concerns.

4.0 Implications for the policy

Several solutions can be put in place to close the inadequacies in the Australian family Court system.

Strengthening risk assessment procedures: There is a need to develop thorough risk assessment frameworks with established techniques (Schlifer Clinic, 2021). This can aid to detect and evaluate the amount of danger to children in situations involving family violence.

Enhancing legal framework: Amending the Family Law Act 1975 to specifically acknowledge the effects of family violence on children. The Act needs to place a higher priority on ensuring the safety and welfare of the children. It needs to be ensured that claims of family violence are regularly and carefully taken into account in Court processes.

Strengthening collaboration: Improving collaboration as well as communication between child protection agencies and the family Court system (Forsslund *et al.*, 2022). This will enable prompt interventions, support services and appropriate referrals for families affected by family violence.

Reviewing policies of FDR: Reviewing policies and making necessary changes in a way that can help children and ensure their safety. In separation discussion, a thorough investigation needs to be made about the parents and the environment they can provide to the children.

5.0 Recommendations

Recommendations	Description	Impact	Evidence
Strengthening risk assessment procedures	Implementing thorough risk assessment frameworks.	This will guarantee correct categorization and assessment of the degree of risk to children.	A study shows that thorough risk assessment can enhance the safety outcomes for kids who have been exposed to domestic violence (Youngson <i>et al.</i> , 2021).
Enhancing legal framework	Amending the Family Law Act 1975.	This will guarantee that claims of domestic violence are routinely and completely taken into account throughout judicial proceedings.	A study emphasizes the need for legal changes to prioritize the safety of children in situations involving family violence (Australian Law Reform Commission, 2019).
Improving collaboration	Improving collaboration between the family Court system and child protection agencies.	The timely intervention will be guaranteed.	A study highlights the importance of timely intervention in cases of domestic violence (Forslund <i>et al.</i> , 2022).

Table 1: Recommendations

(Source: Author)

6.0 Conclusion

The report has provided a scathing assessment of how the Australian Family Court system fails to protect children who have witnessed domestic abuse. It has given a succinct background of the subject. Further laws, policies, and practices have been studied to identify gaps. Family Law Act of 1975 and FDR policies have a few problems that are problematic. The practices of the Court like risk assessment procedures have some gaps. The implications for these gaps have been conferred. The report has offered a few suggestions offered in light of these gaps.

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8.0 Appendices

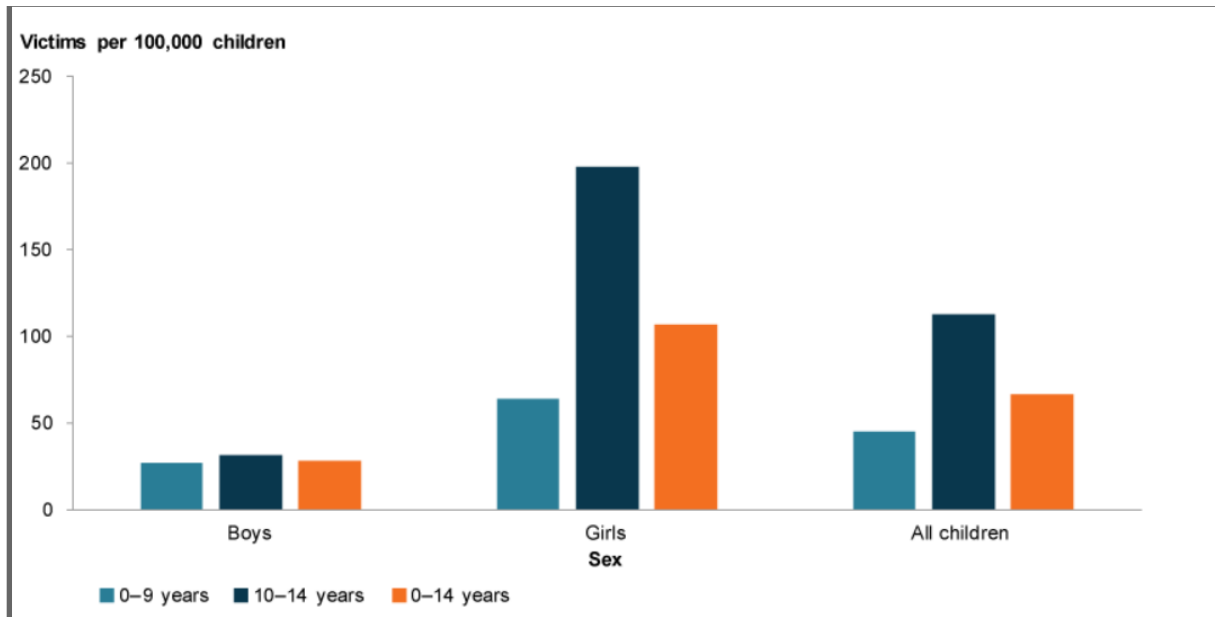


Figure 1: Sexual assault rate in children per 100,000 in 2018

(Source: AIHW, 2022)

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