



Police and Duty Lawyer Perceptions of Domestic Violence Protection Order Proceedings Involving Parents: Towards Greater System Accountability and Family-Centred Decision-Making

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Abstract

Purpose Domestic violence (DV) is a problem of global significance and remains a gendered issue that disproportionately affects women and children. Prevalence studies on women's experiences of DV suggest that around 50% of victims identify as mothers. The effects of DV on mothers and children are well documented, raising implications for their protection. Civil protection orders are a legal tool used to reduce and prevent experiences of DV. Research on protection order effectiveness is mixed with research suggesting that the ongoing relationship between a respondent and aggrieved parent around child contact presents ongoing opportunities for re-victimization. This study contributes to the scant literature on the implications of protection orders on parental responsibilities.

Method The study draws on surveys with duty lawyers and focus groups with police officers. A thematic analysis was used to examine perceptions and experiences of 'no contact' protection orders and respondent parent non-compliance where mutual children are involved.

Results Findings suggest that ambiguous 'no contact' conditions and a lack of clarity around their implications for child contact play a key role in respondent parent non-compliance, ranging from uninformed non-compliance to the strategic use of children as a form of coercive control in non-compliance.

Conclusion Findings raise implications for specialist legal advice and support for parents affected by DV to sit alongside protection order court proceedings. Findings highlight the need for greater system accountability to ensure court-issued protection orders take a family-centred approach that align with parental responsibilities and ensure child and adult victims' safety and wellbeing.

Keywords Children · Civil protection orders · Domestic violence · Family law · Intimate partner violence · Parenting · System accountability

Introduction

Violence against women is a problem of international significance. Nearly one-third of women have experienced physical or sexual violence from an intimate partner globally (World Health Organization [WHO], 2013). For Australian women, domestic violence (DV) perpetrated by an intimate (ex) partner is the main contributor to ill health, and on average one woman is killed by a male (ex)partner every nine days (Ayre et al., 2016; Australian Institute of Health and Welfare [AIHW], 2019). Although men also report experiences of DV victimization, it remains a gendered issue with the majority of victims identifying as female and around half reporting having children in their care (Australian Bureau of Statistics [ABS], 2017, AIHW, 2019, Fogarty et al., 2019). As a result, there

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are detrimental and far-reaching effects of parental DV on children's short and long-term safety, wellbeing and development (Gartland et al., 2014; Lourenco et al., 2013).

Civil DV protection orders (hereafter referred to as domestic violence orders [DVOs]) are designed to increase victim mothers (hereafter aggrieved mothers) and children's safety and hold alleged perpetrator fathers (hereafter respondent fathers) accountable. DVOs can create distance between the aggrieved and the respondent by placing conditions on future relations, including stipulating no contact. In the Australian context, DVOs fall under state and territory legislation and our study jurisdiction is Queensland (*Domestic and Family Violence Protection Act 2012*, hereafter referred to as The Act, Qld). Mutual children can be named on a DVO to prevent their exposure to or experiences of DV. However, DVOs are not designed to terminate contact between respondent parents and relevant children unless a condition explicitly prohibiting contact with a relevant child/ren is included (s62). Parenting orders or Family Law Orders (FLO) on the other hand sit under the federal *Family Law Act* (1975). These orders pertain to the custodial relations between separated parents and their mutual children based on principles of shared parental responsibility. FLOs can override state based DVOs if there is an inconsistency in conditions relating to permitted contact and interactions.

Although not all parents who engage with the DVO court process will also have a FLO, the consideration of the role of children is important because mutual children keep many aggrieved and respondent parents connected post separation (Dowling et al., 2018; Logan & Walker, 2009; Reeves, 2020; Thiara & Humphreys, 2017). Between 93 and 97% of fathers in nationally representative parent samples (Kaspiew et al., 2015) and 80% of fathers in a DV specific study sample (Humphreys et al., 2019) reported ongoing contact with children post separation from the aggrieved parent, potentially exposing the aggrieved and children to more violence (Hays et al., 2021). Despite this continued contact, and research acknowledging how contradictions between DVOs and FLOs create issues for aggrieved parents, particularly mothers (Douglas, 2018), there is a paucity of research on how DVO court proceedings deal with the complexities around child contact, custody and parental responsibilities. While some international jurisdictions, such as the US and Canada, have made progress towards integrating DV and family law matters (cf. Birnbaum et al., 2017), these remain addressed in separate court proceedings in the Australian context.

The current study adds to the existing body of research on parenting in the context of DV (cf. Fogarty et al., 2019; Meyer & Stambe, 2020; Thiara & Humphreys, 2017) by exploring (a) duty lawyer perceptions of the implications of 'no contact' DVOs between parents on subsequent (shared) parenting arrangement and parents' understanding

of such implications along with (b) police perceptions of 'no contact' DVOs and related compliance where children are involved and the implications this raises for DVO proceedings involving parents. Duty lawyers are well placed to contribute to the understanding of parents' support needs in the context of DVO proceedings due to their independent role from the court process itself (Reeves, 2020). Police perceptions add further insight due to the increasing role of police in DVO applications, which have shifted from being primarily victim-initiated to predominantly police-initiated in Australia today (Crime Statistics Agency [CSA], 2021; Queensland Courts, 2021). Combining these two sources of data provides insights into current DVO proceedings involving parents and the implications they raise for future practice in jurisdictions where DV and family law matters continue to be addressed in siloed court proceedings.

Background

Effectiveness of DVOs and the Role of Relationship Context A substantial body of research has examined the effectiveness of DVOs, particularly in relation to re-victimization. Recent meta-analyses and systematic reviews have suggested that civil protection orders are modestly effective in this regard (Cordier et al., 2021; Dowling et al., 2018; Taylor et al., 2015). A synthesis of the literature suggests that DVOs can be 'helpful' for certain people in particular circumstances. For example, Dowling and colleagues (Dowling et al., 2018) posit that protection orders are more effective when victims can fully separate from the perpetrator in terms of financial and housing independence and can achieve cessation of any ongoing connections or relationships. The physical, mental and emotional distance created from the perpetrator creates an effective 'no contact' situation because it disrupts regular contact. Accordingly, less contact with the perpetrator facilitates some protection for victims who wish to and can sever ties and create a space where recovery can commence.

Where children are involved, complete separation is often impossible. Research suggests that DVOs may be less effective in preventing re-victimization due to ongoing opportunities for repeat contact and thus victimization where shared parental responsibilities are involved (Douglas, 2018; Logan & Walker, 2009; Reeves, 2020). Here, it is important to acknowledge the multitude of barriers to leaving an abusive partner to start with, including risk of financial insecurity and homelessness, fear for children's safety during shared care arrangements post separation and the fact that separation constitutes the most dangerous point in time for many women experiencing DV (cf. Douglas, 2018; Meyer, 2011; Slabbert, 2017). Further, not all victims wish to separate from an abusive partner and not all victims,

including those wishing to separate, necessarily wish to have ‘no contact’ conditions included in a relevant DVO (cf. Goodmark, 2009; Gruber, 2020). However, for the purpose of this paper we focus on legal practitioner and police perceptions of the nature and implications of ‘no contact’ DVOs that are in line with an aggrieved parent’s wishes to have no ongoing contact with the respondent.

A recent Australian study by Douglas (2018) explored the experiences and perceptions of 65 victims in navigating DVOs over two and a half years. Participants noted ambivalence towards the ‘helpfulness’ of DVOs, specifically in relation to the presence of mutual children, which made a cessation of contact with the respondent impossible for many and consequently created ongoing opportunities for repeat abuse (pp.224–225). These experiences align with wider Australian research evidence, which suggest that most fathers maintain contact with children post separation (Thiara & Humphreys, 2017), including those who have been subject to contested family law matters (Kaspiew et al., 2015). Here, it is noteworthy that contested family law matters determined by a judge frequently involve high level disputes, family complexities and allegations of DV and/ or child abuse (Australian Law Reform Commission [ALRC], 2019; Kaspiew et al., 2015).

Jurisdiction Specific Civil Protection Order Legislation The research discussed in this paper was conducted in Queensland, Australia, and the following outline of the DVO process is jurisdiction specific (Australian House of Representatives Standing Committee on Social Policy and Legal Affairs, 2021; for elaboration see Taylor et al., 2015). *The Act (Qld)* aims to protect adults and children from experiences of DV. While focused on adult use and experiences of DV, the enactment of the legislation necessarily requires the consideration of children, given the substantial number of victims identifying as mothers of dependent children (ABS, 2017; AIHW, 2019).

In the study jurisdiction, DVOs are enforced under guidelines and penalties set out in *The Act (Qld)*, and across Australian jurisdictions, a breach or contravention of DVO conditions constitutes a criminal offence (Parliament of Victoria, 2021). DVOs contain a set of standard conditions, which may be supplemented by additional conditions, specific to parties’ needs. Standard conditions prescribe that the respondent be of good behavior and not commit DV towards the aggrieved or any named person (adult or child) or expose a named child to domestic violence (s56). Children can be included as a named person on a DVO at the applicant’s request (s53) or if the Magistrate deems that it is necessary or desirable to protect the child/ren from violence (s54). Conditions specifying the respondent parent to be of good behavior towards and around named children under s53 are utilized more commonly than conditions explicitly prohibiting contact between

a respondent parent and named children under s62. However, clarity around what constitutes behavior in violation of a DVO must include education around non-physical forms of DFV, such as coercively controlling behaviors. While being of good behavior or not committing physical DV may seem obvious, non-physical types of DV can often be subtle and may involve coercion around child contact, financial abuse in form of withholding child support payments and breaches of no contact orders under the disguise of wishing to make child contact in the context of shared parenting (Dragiewicz et al., 2020; Laing, 2017; Meyer, 2017).

The key issue here is that naming children on a DVO does not automatically preclude contact between the respondent parent and a named child, even though judicial officers are required to consider the necessity, feasibility and safety of respondent parent-child contact when issuing a DVO involving children (s57). Where children reside with the aggrieved parent and no longer with the respondent, the respondent parent relies on the aggrieved parent to facilitate child contact (e.g. via phone, online or in person), especially if named children are too young to initiate contact or visitation with the respondent parent themselves. As discussed earlier, research has identified ongoing contact between adult parties as a critical element hindering the effectiveness of protection orders in preventing subsequent abuse (Douglas, 2018; Logan & Walker, 2009; Reeves, 2020). As a result, ‘no contact’ DVOs are often used where couples have or intend to separate and the aggrieved wishes to have no ongoing contact with the respondent.

However, ‘no contact’ conditions can be subject to exceptions, which include contact being permitted if the aggrieved agrees to variations of the ‘no contact’ conditions in writing or when ongoing contact between adult parties and named children has been determined under an existing FLO (S9.6.2, bench book, p. 75). This suggests an assumption that the aggrieved parent can safely negotiate child contact with the abusive parent, is pursuing a FLO determining parental contact and parenting arrangement or already has such an order in place. This is at odds with Australian and international research evidence in three ways. Firstly, Australian research suggests that only 3% of separating parents use family law proceedings to negotiate or determine parenting arrangements (AIHW, 2019). Secondly, it also contradicts recent national and international policy reforms aiming to remove the burden on victims to determine the nature and extent of permissible contact between parties and thereby, minimize opportunities for respondents to coerce the victim into varying order conditions or withdrawing order applications altogether (cf. Gauthier-Chung, 2017; Meyer & Reeves, 2021). Thirdly, it undermines aggrieved mother’s experiences of criminal justice personnel taking ‘pro-contact’ approaches that minimize or dismiss the impact of past and potential ongoing violence (Hays et al., 2021).

Parenting Through DV and the Role of Systems Several researchers have explored the role of parenthood in the use and experiences of DV (Meyer & Stambe, 2020; Fogarty et al., 2019; Stover, 2013). For mothers, violence can impact how they enact their parenting, protect their children, and identify as a mother (Fogarty et al., 2019; Maher et al., 2021). Children can act as catalysts for many victims to seek help or leave a perpetrator (Meyer, 2011; Meyer & Stambe, 2020; Rasool, 2016). Abusive fathers on the other hand may instrumentalize children as an ongoing tool of abuse and entrapment within the abusive relationship and often well beyond parental separation (Dragiewicz et al., 2020; Katz et al., 2020; Laing, 2017; Meyer & Stambe, 2020; Thiara & Humphreys, 2017). Some studies suggest that fatherhood can be leveraged as a motivator for change among men using violence (Meyer, 2017; Stover, 2013). A key concern is how to design interventions that support children and mother's safety and hold fathers accountable while providing support for those who wish to have a safe and meaningful relationship with their children (Gatfield et al., 2021; Meyer, 2017; Stover, 2013).

Designing adequate and 'helpful' interventions for parents affected by DV requires examination of the systems and processes that parents navigate to be safe and/or be with their children. Research on contravention of family law parenting orders highlights that these orders focus on parental contact often without sufficient attention to DV. Australian qualitative research with 47 separated parents who had accessed the family law system revealed that 50% of the participating parents had safety concerns for themselves and their children related to ongoing contact with the other parent (Carson et al., 2018). Safety concerns were also cited as the reason parenting orders were deemed unworkable in a UK study of enforcement applications in 2012 (Trinder et al., 2013). Furthermore, US-based research has described custody evaluators as unable to distinguish between context-specific violence and controlling behaviour (Hans et al., 2014). Internationally, evidence has repeatedly shown that respondent fathers receive child visitation and custody rights despite continued use of DV (Feresin et al., 2018; Fleury-Steiner et al., 2016; Haselschwerdt et al., 2011; Kaspiew et al., 2022). Here, recent Canadian research reveals that integrating family law and DV court matters may generate better outcomes for families in terms of navigating contact child contact arrangements and ensuring respondent parents' compliance with court orders (Birnbaum et al., 2017).

Australian research has repeatedly identified mothers affected by DV as caught between federal level FLOs and state level protection orders (Douglas, 2018; Laing, 2017; Meyer, 2011). Recent reforms to state level DV protection legislations have aimed to address some of these challenges. In the study jurisdiction, a magistrate can change a FLO or certain conditions to eliminate inconsistencies between

orders (9.6.3 bench book) and DVOs often include exceptions to 'no contact' conditions to allow child contact stipulated under a current FLO. While this does not necessarily address the potential risk of children's ongoing experiences of DV, it reduces the risk of inconsistencies between FLOs and DVOs, which can undermine the validity of a DVO noted in past research (Taylor et al., 2015 p. 5). However, different recent research conducted in the same jurisdiction as the present study reveals that issues regarding inconsistency between FLOs and DVOs continue to exist. Douglas (2018) for example found that research participants with mutual children reported ongoing experiences of inconsistencies between their DVO and FLO and a reluctance among police to identify and respond to breaches of DVOs where a FLO was in place. These observations are not limited to the Australian context, with research examining 143 protection order hearings in the Family Court in a US county (Fleury-Steiner et al., 2016) identifying wording of protection orders as vague and confusing and recommending that the court process engages proactively with legal advocacy for aggrieved parents, particular in terms of legal representation, as the lack of condition specificity created challenges and safety issues for aggrieved mothers and their children.

Parents' experiences of DVO effectiveness are partly contingent on the DVO proceedings, including aspects where duty lawyers (legal practitioners providing free legal advice) and police are key actors. In Australia, the majority of DVO applications are initiated by police (CSA, 2021; Queensland Courts, 2021). An increasingly proactive approach to policing DV in Australian jurisdictions has led to an increase in DVOs being granted along with breaches of such orders being policed and prosecuted (cf. CSA, 2021; Queensland Courts, 2021). As a result, much of Australia's law enforcement activity is dedicated to the policing of DV, making criminal justice personnel, such as police and duty lawyers, key actors in DV protection order proceedings. Despite their key role, there is a lack of research on police and duty lawyers' perceptions of DVO court proceedings (for exception see Kaspiew et al., 2022). We address this gap by exploring police and duty lawyers perceptions of the circumstances and process related issues that separated parents encounter in DVO court proceedings to examine the role of children in DVO non-compliance. The findings contribute to the literature by further highlighting the importance of courts' proactively addressing the tension between parental responsibility and keeping women and their children safe.

Methodology

Data presented here formed part of a wider project examining the role of procedural justice in DVO proceedings (see Meyer & Williamson, 2020) and police and court responses to DV

under recent policy reforms (see Meyer & Reeves, 2020). For this paper, we draw on duty lawyer survey data and police focus group data, collected in 2018, as part of the larger study.

Duty Lawyer Survey An anonymous 70-item online survey was circulated to Queensland Legal Aid duty lawyers acting in DVO matters. The survey was distributed via Queensland Legal Aid's organizational mailing list. The survey was designed to capture the perspectives of legal practitioners who provide free brief legal advice to victims and respondents subject to DVO proceedings on the day of their court mention around the role of procedural justice in DVO proceedings along with their perceptions of the implications of 'no contact' DVOs between parents where dependent children are named on such orders. Duty lawyer services related to DVO matters are not available in all Magistrate's Courts across the study jurisdiction. At the time of data collection, only one of the two court sites included in the study had duty lawyers providing legal advice to aggrieved and respondents in civil DVO proceedings.

A total of 105 duty lawyers completed the survey. The majority (79.2%) identified as female, 19.5% identified as male and 1.3% identified as non-binary. Participating duty lawyers ranged in age from 23 to 71 with a mean age of 40 years. Additionally, 2.5% of participating duty lawyers identified as Aboriginal. The remaining 97.5% identified as non-Indigenous. Participants had on average 10.2 years of legal practice experience, ranging from 1 to 30 years. Just over one third held a postgraduate qualification, while 64% reported an undergraduate degree as their highest level of education. All accredited DV duty lawyers had received Qld Legal Aid in-house DV specific training.

For the purpose of this paper, we solely draw on survey items identifying duty lawyer perceptions of parents' understanding of 'no contact' DVOs involving children, implications of such orders on child contact and the role of information provision to parents involved in DVO proceedings. These measures were developed specifically for this study to capture participants' level of agreement with the following statements: (a) 'no contact' DVOs automatically preclude the respondent from having contact with children residing with the aggrieved unless a FLO is in place, (b) a respondent is required to seek a FLO that permits child contact unless the aggrieved agrees to the respondent having contact with mutual children without seeking a FLO and (c) 'no contact' DVOs frequently lead to respondents having no contact with dependent children for extended periods of time. Measures identifying duty lawyer perceptions of whether parents understand the implications of 'no contact' conditions include (d) respondent parents understand the implication of a 'no contact' order on child contact, (e) aggrieved parents understand their responsibilities around

facilitating child contact and (f) magistrates provide sufficient information to the aggrieved and respondent parent in court to ensure both parties understand the implications of a 'no contact' DVO on parental responsibilities and child contact. All responses were measured on a 5-point Likert scale, ranging from strongly disagree (1) to strongly agree (5). In addition, duty lawyers were asked who, in their view, was primarily responsible to provide relevant information and ensure parents' understanding of 'no contact' DVOs and their implications on parent child contact. Answer options included magistrates, police, aggrieved and respondent court support workers, and duty lawyers.

Police Focus Groups Focus groups are a common tool in social science research where the aim is to unpack areas of interest in greater depth through the interactive discussion of content among participants (Morgan & Hoffman, 2018). For this study, focus groups combined different officer roles to ensure insight from DV specialist and frontline policing. Focus groups were held after other study components with court users had been completed to further unpack emerging findings. Five focus groups were conducted with a total of 19 participants across two Magistrate's Court sites (Site A and Site B) in Southeast Queensland. All focus groups were facilitated by the lead researcher, with the assistance of a junior researcher. The average length was 68 min, ranging from 62 to 78 min. In Site A participants included police prosecutors (PP) (n=3), general duty officers (GD) (n=3) and operational officers affiliated with a DV specialist unit (DVU)(n=6). In Site B junior general duties officers (JGD) (n=5) and senior general duties officers (SGD)(n=5) participated. Junior and senior general duty officers were allocated to separate focus groups to avoid organizational hierarchies silencing the voices of junior officers. While the districts vary somewhat in population demographics, they process similar numbers of DVO applications annually (Queensland Courts, 2021).

Focus group participants were invited to opt into the research via their regional police districts. Participants received a participant information sheet and provided written informed consent at the time of the focus group. Focus group discussions were guided by the following semi-structured topic areas: factors informing police decision making to apply for a DVO and factors associated with DVO non-compliance. Each topic was underpinned by further prompts, including characteristics specific to the police interaction, the respondent and/ or aggrieved and the wider policies underpinning the policing of DV in the study jurisdictions. All focus groups were audio-recorded and professionally transcribed. The data was coded and analysed by the authors using a thematic approach (Braun & Clarke, 2006) to identify key themes related to respondent non-compliance with a DVO. Thematic analysis provides a way to examine different

and similar perspectives of participants and to generate unanticipated insights (Braun & Clarke). The authors both followed the stages prescribed by Braun and Clarke including immersion in the data, identifying initial codes, collating these codes into themes and then defining the themes. The authors read and re-read transcripts to get a deep understanding of the transcripts. Then transcripts were coded on data related to children, compliance and the DVOs process. Early codes included, “using DVO as a FLO” and “court responsibility to explain conditions” and “factors effecting compliance”. These codes were then combined into initial themes that reflected the emerging key themes that were in the data. The authors then compared, contrasted, and combined initial themes to generate the themes presented in this paper. Finally, the authors cross-referenced identified themes by going back to the data to ensure the themes reflected what was said in focus groups. The study received ethical clearance from CQUniversity (clearance number H1702-017) and research approval from Queensland Police Service.

Findings

Duty Lawyer Survey Findings The first part of the findings presented here provides a snapshot of duty lawyer perceptions of the implications of DVOs on parental responsibilities and child contact. Of the 105 duty lawyers who completed the survey, 45.7% agreed or strongly agreed that a ‘no contact’ DVO automatically precludes the respondent parent from having ongoing contact with any children named on the DVO unless a FLO determines right to contact otherwise. Further, 53.1% agreed or strongly agreed that unless the aggrieved parent agrees to contact between the respondent parent and named children in writing, a ‘no contact’ DVO requires the respondent parent to seek a FLO that determines their right to have contact with any children named on the DVO. As a result, 46.9% of duty lawyers either agreed or strongly agreed that ‘no contact’ DVOs frequently lead to respondent parents having no contact with relevant children for an extended period.

When asked about their perceptions of aggrieved and respondent parents’ understanding of the implications of ‘no contact’ DVOs on parental responsibilities, 53.0% of duty lawyers disagreed or strongly disagreed that respondent parents understand the implications of a ‘no contact’ DVO on subsequent contact with their children. Further, 45% of duty lawyers disagreed or strongly disagreed that aggrieved parents understand the implications of a ‘no contact’ DVO on parental responsibilities. While this indicates that duty lawyers believe that aggrieved parents have a slightly better understanding of the implications of a ‘no contact’ DVO on shared parenting arrangements than the respondent parent, they identified a lack of relevant

information provided to both parties during relevant DVO proceedings. Over half of all duty lawyers either disagreed or strongly disagreed that magistrates provide sufficient information to aggrieved parents (51.9%) and respondent parents (52.6%) to ensure either party understands the nature and consequences of ‘no contact’ conditions between parents on child contact. When asked whose responsibility it is to ensure a clearer understanding among aggrieved and respondent parents, magistrates overseeing DVO matters were identified as the main practitioner group responsible, followed by duty lawyers, aggrieved and respondent court support workers, and the police.

Police Focus Group Findings The second part of the findings presented here explores police perceptions of ‘no contact’ DVOs where dependent children are involved and the implications this raises for DVO proceedings involving parents. While several contributing factors were identified for respondent populations more broadly (e.g. problematic substance use, mental health problems, an accumulation of complex needs – see Meyer & Stambe, 2021), police stated that a substantial number of DVOs between (ex)partners involve dependent children, which aligns with wider research evidence identifying that around half of all women in Australia experiencing DV have children in their care at the time of such experiences (ABS, 2017). In this context, mutual children were identified as the leading factor contributing to non-compliance. Findings presented hereafter focus on the role of children in DVO proceedings and the implications for more family-centred police and court responses to DV where children are involved. Findings are structured under three overarching themes which emerged from the data analysis, including the importance of determining risk as part of the DVO proceedings as it relates to child contact, the challenges of policing ambiguous DVO conditions and the role of family-centred DVO proceedings.

Determining Risk as Part of DVO Proceedings as it Relates to Child Contact Participants in this study discussed how mutual children frequently impact respondent parent compliance with ‘no contact’ DVOs. With three-quarters of DVO respondents in the study jurisdiction being male (Queensland Courts, 2021), focus group discussions centred on fathers as the primary respondent parent. Participants noted that respondent fathers would initiate child contact and therefore breach an order. ‘No contact’ conditions were frequently described as creating tension around child contact and impacting father respondent compliance:

But then you’ll also find an issue that hinders compliance is the children. Because a lot of the time aggrieved will say, “No, you’re not seeing the kids,” and then you see these people who are intelligent peo-

ple, they're breaching the order because all they want to do is see their kids. (A1, Site B, JGD)

Particularly where children are too young to have their own means of communication channels (e.g., mobile phones, social media), the respondent parent relies on the aggrieved parent to communicate with the children. At the same time, the aggrieved parent relies on the 'no contact' DVO to minimize exposure to the abusive (ex)partner and the risk of repeat victimization. Participants discussed the importance of explaining to respondent fathers how conditions, especially 'no contact' conditions, impact their parent-child relations in the absence of a FLO or written permission to vary 'no contact' conditions. Participants argued that a 'no contact' DVO should not automatically preclude the respondent parent from having contact with relevant children. However, they noted the importance of distinguishing between respondent fathers who are "good dads" who want to continue contact with their kids, and those "horrendous dads" who use contact with children to contact and coerce or intimidate the aggrieved parent:

And these respondents, some of them are good dads. There's no doubt about it. But some of them are horrendous dads. Some of them are actually good fathers. And we have to think, and we actually go, "Hold on a minute. If I was a mum..." I'm a mum myself. So, if I was a mum in court and someone said to me I couldn't see my kid because of these conditions, there's no contact, and I couldn't see my kid for the next five years, and I didn't have the finances to then go through family law, I'd go stir crazy and I'd breach the order too, as a mum. (A3, Site B, JGD)

In contrast, participants highlighted the need to identify those respondent parents who are not safe to have ongoing contact with the aggrieved parent as well as named children based on past and ongoing abusive behavior. These respondent parents were seen as posing a significant risk of utilizing mutual children as an ongoing tool of power and control. One police prosecutor described the use of conditions designed to minimize the risk of repeat victimization of adult and child victims through 'no contact' conditions as a "double-edged sword" (A2, Site B, PP) that may mitigate or exacerbate the risk of ongoing abuse and coercion:

You see initial police orders taken out preventing contact with children for all the right reasons that we know the effect of DV has on children. Conversely, that starts fanning the fire for him going - He may not give a crap about her apart from his desire to maintain power and control over her, and not having access to the kids just doubles that. And so what we see is, "If I can't win through the DV space, I'll win through the family courts with this litigation." (A2, Site A, PP)

The difficulty in determining risk was evident in some of the police discussions. While participants described the need to differentiate between abusive men with a capacity to be better fathers and fathers who strategically use children and child contact as an ongoing form of abuse, the data reveals an ongoing risk that in particular forms of coercive control may not be adequately identified:

A1: There's a guy who's been charged multiple times with breaching his order, because he's texting the aggrieved. But the texts he's sending are, "Can you please send me a picture of my daughter? Can you please send me a picture of my daughter?" And he's just doing that over and over again. And -.

A3: And that's not in the nature of the DVO. That's not what DVOs are for.

A1: And we're punishing these dads who are trying to be dads, but they're not committing domestic violence. Even though there's that contact condition in place, it's not domestic violence to ask for a picture of your daughter. (Site B, JGD)

The above example illustrates that risk to the aggrieved parent and children may remain invisible where DVO breaches involve non-physical forms of abuse, such as harassment, unless a DV-informed risk assessment tool is used. This highlights the need for risk assessment, which captures patterns of behaviour and related impact beyond behaviour displayed in the individual incident or physical harm caused.

The Challenges of Policing 'No Contact' Conditions Where Children are Involved Police perceptions illustrate that many separated parents do not have a FLO in place to determine their parenting arrangements. Participants noted that 'no contact' DVOs often function as a proxy child-custody tool in the absence of a FLO, arguing that this was partly the result of family law proceedings being costly and inaccessible to many parents. Ongoing engagement between respondent fathers and aggrieved mothers combined with a lack of formal parenting arrangements were described as key drivers for repeat DVO breaches. This perception was shared by junior general duty police at Site B and DV specialist police at Site A:

Because the biggest thing for us is, we deal with a lot of DV and a lot of DV breaches over custody of kids, and then fighting over these kids and they're using a DVO as a Family Law Court order. (A3, Site B, JGD)

It all relates to the kids. Most of these issues have child custody issues at the core of it, and most of the breaching comes about [when] they're trying to communicate in relation to the kids. One partner is holding the kids off the other, isn't going to mediation, they're not com-

plying with the parenting plan, and that's where most of those breaches, from my view, come about. (A4, Site A, DVU)

The purpose of a DVO, especially the 'no contact' provision, is supposed to sever ties between the respondent and the aggrieved, and prevent ongoing abuse (Taylor et al., 2015). However, findings presented here further reiterate that the challenges of completely separating and ceasing contact was complicated by the presence of mutual children. In line with the duty lawyer findings presented earlier on, police participants felt that 'no contact' DVOs between parents can effectively stop the respondent parent from having contact with relevant children even though a DVO is not designed to function as a child custody-mechanism.

Participants further shared views around the challenges arising from 'no contact' DVOs with exclusion conditions that permit the aggrieved to vary the 'no contact' condition in writing to facilitate child contact. As discussed earlier in this article, researchers and advocates have repeatedly raised that victims should not have to negotiate contact arrangements with an abusive (ex)partner. Such variation criteria offer an opportunity for respondent parents to coerce the aggrieved parent into agreeing to contact arrangements that diminish her own and her children's safety. Some participants were therefore opposed to magistrates including such variation conditions in 'no contact' orders altogether.

Towards Family-Centred DVO Proceedings Beyond discussing the challenges associated with policing and enforcing 'no contact' DVOs involving children, participants also identified areas for improvement across policing and court processes which they thought could help overcome some of the challenges identified above and ensure better support and protection for families affected by DV. A primary concern of participants here was inadequate information provision to parents involved in DVO proceedings. As one participant noted, the DVO is "not a tool to solve parents' custody and property issues" but, "no one else seems to explain that to them either" (A4, Site A, DVU).

Participants believed that non-compliance arising from child-contact concerns could be avoided with more explicit engagement and information provision around these issues in the magistrates court. Across the focus groups, participants asserted that magistrates provide limited, if any, explanation of the implications of 'no contact' conditions between parents on child contact. Indeed, participants described magistrates as reluctant to explain these issues let alone vary or suspend a FLO. As summarized by one senior general duties officer, the perceived reluctance among some magistrates to consider varying or suspending an existing FLO may partly

be the result of the broader tension between state level DV protection legislations and federal level family law. Here participants acknowledged that the power of FLOs overriding state level DVOs makes this a contentious space that magistrates may try to avoid. However, participants equally felt that leaving parental arrangement decisions to family law proceedings may not meet the needs of parents affected by DV either. They described family law proceedings as lacking DV and trauma informed responses:

The courts are allowed to draft interim family law court orders or vary family law court orders if it's in their jurisdiction. They're afraid to, because at the end of the day, the Federal Court's just going to go, "Fuck off.". Yeah, and the other thing is we all, including our Magistrates, assume that the Family Law Courts are going to be better informed and make much more DV and trauma and risk-informed decision-making process. That's not necessarily so. Quite often that's definitely not so. (A2, Site A, PP)

In the absence of state level magistrates courts bridging the gap between 'no contact' DVO conditions and parental responsibilities of aggrieved and respondent parents, focus group findings suggest that more could be done around educating and providing information to aggrieved and respondent parents on the implications of 'no contact' DVOs on shared parenting. However, participants who were critical of court processes and practices related to 'no contact' DVOs and their implications on parents and children equally acknowledged that current DVO proceedings do not equip magistrates with sufficient time to unpack all implications of DVO conditions on everyday parenting, including parental responsibilities. Participants therefore felt that the integration of free legal advice for parents related to parenting arrangements under relevant DVO conditions should form part of DVO proceedings, as envisioned by one of the junior general duty officers:

[T]here isn't one person that's designated that is there to explain that process to them. They're told, and really is the channel for them to go and seek their own independent legal advice [...] if there was someone that was from Family Law Court, like a representative, who sat in on DV hearings, or DVO hearings, and then took it with the respondent afterwards, like, "Hey man, do you want to come lodge a thing with me?" and then they lodge in Family Law Court to start that rolling...I think leaving it up in the air, though, it's like, there's nothing concrete for anyone. (A1, Site B, JGD)

Participants felt that free legal advice available on the day of DVO mention days would be useful. Such free advice should be similar to schemes providing free legal advice

around the court process along with the nature of orders more broadly but with a specific focus on addressing parenting matters affected by DVOs. It was seen as an opportunity to provide clearer directions to parents involved in DVO proceedings, which may reduce the extent of DVO breaches relating to child contact without adding additional time pressures on magistrates in the court room. Further, participants shared an overall perception that taking a more family-centred approach to DVOs would be beneficial in ensuring DVO conditions do not interfere with parental responsibilities where it is deemed safe for the respondent parent to have ongoing contact with relevant children. Equally, it would ensure mechanisms to determine temporary changes to parent child contact where such contact is deemed unsafe during DVO proceedings. Participants in both research sites discussed opportunities for magistrates to incorporate at least interim parenting orders to ensure aggrieved and respondent parents are not left with DVO conditions that do not prevent parent child contact per se but logistically leave no avenue for the respondent parent to initiate such contact:

Yeah. I think in the DVOs that are written and read out loud, the ones that don't involve violent offences and strangulation and all that sort of stuff, that a fairly straightforward parental order would be really good... Even if it's something simple like every second weekend or whatever, something until they can work it out later down the track. Or even just phone calls. "You can call on these nights, these times. This is the phone number. There you go." (A2, Site B, JGD).

So again, moving those early decisions further down the pipeline towards into the Mag's Court where more DV informed consideration of the children is put in place, and with a real strategy of how that's going to look as we go, six, 12, 18 months down the track. I think that's where we're going to stop seeing the Family Law Court being used to traumatise and re-traumatise the victims. And equally, fathers who should have access for the right reasons, or as rewards for their change of behavior, we're going to get more sustainable risk management in the community. At the moment, I think we do it very poorly across-the-board. (A2, Site A, PP)

The above quotes further reflect a potential underestimation of risk associated with non-physical forms of DV and highlight the need DV-informed risk assessment at the police and court level to ensure DVOs address risk posed to adult and child victims while providing clear guidance on co-parenting in the context of a DVO, including directions for supervised or unsupervised respondent-parent child contact.

Discussion

DVOs have become a common tool utilized to mitigate the risk of future DV against adult and child victims (Douglas, 2018; Goodmark, 2009; Meyer & Reeves, 2021). Both, the number of DVOs issued and the number of reported breaches has increased since substantial DV reforms were implemented across Australian jurisdictions (cf. Queensland Courts, 2021; CSA, 2021). The high non-compliance rates with DVOs documented in recent years raise questions around their effectiveness in protecting victims from further harm. One particular factor identified as diminishing the effectiveness of DVOs in preventing subsequent abuse is ongoing contact between an aggrieved and respondent (Douglas, 2018; Reeves, 2020). While some couples affected by DV manage to separate and sever ties and contact completely, those who are parents to mutual children frequently find themselves navigating ongoing contact related to children, thus offering opportunities for ongoing abuse (DeKeseredy et al., 2017; Humphreys et al., 2019; Meyer & Stambe, 2020). As a result, police participants in our study identified mutual children as one of the key factors contributing to DVO non-compliance.

Findings presented in this article reveal that while magistrates courts frequently issue DVOs containing 'no contact' conditions between parties, the presence of mutual children complicates such conditions. Participants shared a strong view that respondent fathers frequently breach 'no contact' conditions related to the aggrieved parent to initiate contact with relevant children. Findings align with broader research evidence here and suggest that while some respondent fathers may contact the aggrieved parent for the sole purpose of speaking to or seeing mutual children without engaging in abusive behaviors (cf. Meyer, 2017), others use the presence of children as an ongoing avenue of contact with and abuse of the aggrieved parent (DeKeseredy et al., 2017; Dragiewicz et al., 2020; Katz et al., 2020; Meyer & Stambe, 2020). While findings further suggest that police may at times struggle to identify certain behaviours and breaches as coercively controlling behaviours, they highlight the need for greater consideration of the implications of 'no contact' conditions on parental responsibilities when magistrates issue such orders. Given the large proportion of police-initiated DVOs, findings presented here highlight the need for DFV-informed risks and needs assessments of parents involved in DVOs at the policing and court level. Such risk assessments would assist police in identifying patterns of behaviour, including non-physical forms of DFV, and their impact on adult and child victims, to support the identification of immediate and ongoing protective needs. At the court level, such risk assessment should determine whether a

respondent parent should (at least temporarily) be prohibited from having ongoing contact with relevant children, whether supervised contact may be required or whether contact is deemed to be safe and can be facilitated via extended family/ third parties without requiring direct contact between the aggrieved and respondent parent to occur.

Our findings suggest that magistrate courts are reluctant to specifically determine the nature of respondent parent-child contact. Instead, 'no contact' conditions are issued between the respondent and aggrieved parent, with exclusion conditions permitting contact where an existing or future FLO determines child contact or where the aggrieved parent agrees to contact related to children in writing. 'No contact' DVOs between parents in the study jurisdiction are underpinned by an assumption that parents involved in DVO matters either have or will seek a FLO to regulate contact and shared parenting arrangements or that the aggrieved parent is in a position to continuously negotiate respondent parent-child contact with an abusive (ex)partner. As discussed throughout, these assumptions are at odds with wider research evidence around the utilization of FLOs among separating parents in Australia (Kaspiew et al., 2015) and the wider evidence that victims experiencing ongoing trauma and abuse are often not in a position to negotiate safe contact arrangements with a potentially intimidating and coercively controlling (ex)partner (Balos, 2006; Birnbaum et al., 2017; Laing, 2017; Meyer & Reeves, 2021).

In terms of everyday parenting, duty lawyers and police participants acknowledged that a DVO frequently prevents the respondent parent from having ongoing contact for extended periods of time despite recognising that a DVO does not terminate parental responsibilities or legally preclude respondent parent-child contact. Nevertheless, national prevalence data shows that if pursuing child contact via family law proceedings, 97% of fathers are granted ongoing and regular contact with relevant children (Kaspiew et al., 2015) and that shared parental care arrangements have not significantly declined in recent years despite recent DV specific family law reforms designed to better protect children from ongoing exposure to parental DV (Smyth & Chisholm, 2017). This wider evidence suggests that while 'no contact' DVOs may temporarily disrupt respondent parent-child contact where respondent-fathers comply with 'no contact' conditions, respondent fathers' parental responsibilities are frequently upheld by family law determinations related to shared parenting arrangements. In the absence of integrated court proceedings for DV and family law matters, this frequently leaves aggrieved and respondent parents underinformed in relation to order implications on child contact. These findings reveal the need for greater court system accountability to ensure clear guidelines regarding subsequent child contact, for example via the issuing of interim parenting orders as part of DVO proceedings.

Limitations The study is based on two non-representative samples of duty lawyers and police officers respectively. While the duty lawyer sample is a state-wide sample, police focus group participation was limited to two police districts. Survey and focus group participants who self-selected to participate in the research may have had a specific interest in policing and/ or adjudicating DV matters. While this likely limited the two samples to specific groups of practitioners, this was suitable to the exploratory nature of the study and ensured participants were engaged in DV specific practice areas. Findings contribute additional insights into the challenges associated with parenting in the context of DV and the role of system accountability in jurisdictions where DV and family law matters are addressed in siloed court proceedings. Findings demonstrate how court proceedings need to improve processes to ensure family-centred approaches to DVO proceedings involving parents that consider parental responsibilities while addressing the safety needs of adult and child victims.

Future research should examine the nature and extent of respondent fathers' motivation to engage in behavior change to address past use of DV and ensure their capacity to engage in safe shared parenting arrangements. Here, large scale studies incorporating the voices of respondent fathers, aggrieved mothers and – where age appropriate – dependent children, as a heterogeneous group are required to inform family-centred approaches to DVO proceedings that meet the short- and long-term needs of diverse family populations.

Implications for Policy and Practice This research has clear implications for court systems responding to separating or separated parents affected by DV. It is important to emphasize that the argument presented here is not one for ongoing or increased contact between respondent parents and children affected by parental DV. Instead, findings highlight the need for greater system accountability in the context of DVO proceedings involving parents to ensure that where respondent parent-child contact is deemed unsafe by a magistrate as the result of child-centred risk assessment, contact should be terminated or determined to be supervised via relevant (interim) parenting orders incorporated into DVO proceedings. This avoids leaving parents in a space where a 'no contact' DVO logistically prevents respondent parent-child contact but legally does not override parental responsibilities held by all parents in Australia unless determined otherwise by a FLO or child protection order (*Family Law Act 1975*, s61C). A family-centred approach to DVO proceedings involving parents should therefore be investigated. This would require the use of standard risk assessment practices that go beyond an assessment of whether ongoing contact between the aggrieved and respondent parent should be prohibited to mitigate the risk of subsequent DV. It should include an

assessment to determine whether ongoing respondent child-contact is deemed safe for children and feasible without requiring contact with the aggrieved parent where the latter is deemed unsafe. Identifying risk associated with ongoing contact with the respondent parent may differ for adult and child victims and would thus require a more family centred risk assessment. Such risk assessment should follow the principles of identifying patterns of behaviour posing risk to short- and/ or long-term wellbeing of child and adult victims, the short- and long-term impact of such behaviour and the accurate identification of the primary aggressor of DV. One suitable example of risk assessment may be the PPP (potency, pattern and perpetrator) which is endorsed by the Australian Family Law Court (Family Court Australia, 2016). Here, onsite specialist DV practitioner roles may assist with consistent risk assessment as well as communicating what conditions mean in daily life for parents.

Integrating parenting matters, including risk assessment and family law specific legal advice into DVO proceedings is in line with recent law reform recommendations proposing an integration of federal level family law and state level DV jurisdictions (ALRC, 2019). Such an integration has been pursued in other jurisdictions (cf. Birnbaum et al., 2017) and may offer multiple benefits. Firstly, it sets out clear parameters of parenting arrangements in the context of DV, thus reducing the onus currently placed on the aggrieved parent to negotiate ongoing contact around parenting arrangements with an abusive co-parent and prioritising victim safety. Secondly, determining and clearly outlining the nature and extent of contact deemed safe between a respondent parent and relevant children addresses child welfare concerns associated with children's experiences of DV. Further, an integration of parenting matters into DVO proceedings involving parents of mutual, dependent children promotes system accountability and acknowledges the need to consistently determine across court systems whether a respondent parent is safe to have ongoing contact with relevant children, may require (temporary) supervised contact arrangements, may be motivated to engage in father-focused behavior change around the use of DV and may be able to co-parent in a safe and meaningful way in the short- and/ or long-run. It would also address current concerns that separate family law proceedings are lengthy and costly matters (ALRC, 2019; Kaspiew et al., 2015) and frequently used as a form of systems abuse in the context of DV (Reeves, 2020; Royal Commission into Family Violence, 2016). Finally, clear parameters stipulating the nature and extent of contact permitted between the respondent parent and relevant children as separate to contact permitted or prohibited between the aggrieved and respondent parent reduces ambiguities of 'no contact' DVOs and would thus facilitate the policing of non-compliance.

While magistrates currently hold certain powers to incorporate family law matters into DVO proceedings, findings discussed in this article suggest that magistrates remain reluctant to do so. This is partly the result of time pressures and the absence of family law specific duty lawyer schemes. To support magistrates in better integrating parenting matters into relevant DVO proceedings, courts need to be adequately resourced, both in terms of specialist staff supporting such matters (cf. Birnbaum et al., 2017; Bond et al., 2017) and the time available for magistrates to dedicate to DVO matters involving separated or separating parents. Sufficient allocation of time and the presence of DV specialist practitioners and legal practitioners providing family law related advice to aggrieved and respondent parents as part of the DVO process may also have other benefits. It may, for example, create opportunities to identify other support needs of DVO-involved parents, including father-focused men's behavior change interventions to ensure visibility and accountability of respondent fathers and support long-term behavior change (Stover, 2013; Thiara & Humphreys, 2017). Our research shows that DVO court proceedings involving children require further investigation to ensure court responses that promote aggrieved child and mother safety and wellbeing along with respondent father accountability and access to suitable interventions.

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Declarations

Conflict of Interest The authors have no conflicts to declare.

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