

Children at risk- domestic violence, child protection and the Children's Court of New South Wales decision-making process

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***Children at Risk-
Domestic Violence, Child Protection and
The Children's Court of New South Wales
Decision-Making Process***

Nisha Prichard

A thesis in fulfilment of the requirements for the degree of

Doctor of Philosophy



School of Social Sciences

Faculty of Arts and Social Sciences

31 August 2015

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This study set out to examine the decision-making process in care proceedings brought before the Children's Court involving allegations of domestic violence as a child maltreatment concern in accordance with NSW Children and Young Persons (Care and Protection) Act, 1998. The growth in understanding of domestic violence as a specific category of child maltreatment has seen increased attention and involvement of an array of professionals in the child protection field including statutory caseworkers, solicitors, and other external services working with children and families. Court decisions encompass risk assessment and immediate and long term safety planning. They also involve professionals navigating both shared and individual language in the process of assessment. What constitutes the specific risk of domestic violence, and decision-making in cases involving domestic violence is often contested in care and protection matters. This study utilised qualitative methodology, specifically applying a case study approach involving both a prospective and retrospective review of cases. The retrospective review followed a series of cases from the commencement of the court case, to the finalisation of orders. A parallel retrospective review of archive cases and court files from Community Services was undertaken.

Central to this study was examination of the role of professional stakeholders, their assessments and contribution to court decision-making. The findings in this study highlight that much professional decision-making occurs prior to proceedings. The decisions made in all reviewed matters were found to be the result of the coalescence

of professional knowledge, interpretation and interagency collaboration. Professionals developed discourses of risk, compliance, insight and safety in their assessments.

Such assessments formed a narrative of domestic violence characterized by an emphasis on summarising patterns within key incidents, evaluating the parent's ongoing relationship dynamics and parenting capacity. Significantly, in this narrative, an inability to separate from a violent partner was indicative of a lack of maternal protectiveness. Additionally, childrens' age and gender influenced the assessment of the impact of violence on individual children. These interpretations informed the court's evaluation of evidence of domestic violence and its impact on children as well as the proposed interventions and care plans necessary to ensure children's safety.

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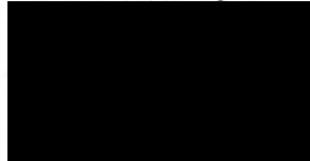
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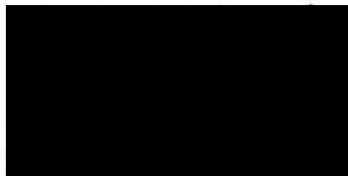
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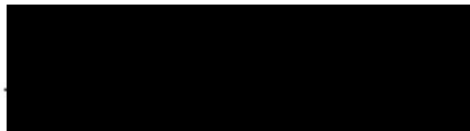
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1. Introduction

'Meena¹ told caseworkers very definitely, "Daddy's shoes went on mummy's face."

How do you think she felt?'

This question was posed during care and protection proceedings at the Children's Court of New South Wales ('the Children's Court'), following over two hours of cross examination of Meena's mother. In this instance, the proceedings were to determine long term care arrangements for Meena. Meena, under 5 years old, was currently with a relative 'kinship' carer. The Children's Court application for Meena to be moved into her eleventh foster care placement was prompted by the claims that Meena had witnessed the violence referred to above.

Decisions to seek formal court orders from the Children's Court are triggered by a range of concerns that relate to child maltreatment and parenting capacity. Court applications are the result of assessments conducted by caseworkers from the statutory child welfare authority in NSW, The Department of Family and Community Services ('Community Services')², following reports that a child is at risk of significant harm due to abuse or neglect. Children such as Meena come to the attention of Community Services following reports of child maltreatment concerns that may include domestic violence, physical abuse, sexual abuse, parental substance abuse and neglect. Reporter determination that there is a sufficient level of risk to warrant reporting, forms the initial external form of input into court decision-making. Reporters, such as teachers, doctors, and non-government community support services may have mandatory reporting obligations through their work with children. These professionals follow guidelines to determine whether a risk constitutes a

¹ NB All names used are pseudonyms

² NB The current full title for the department is NSW Department of Family and Community Services ('FACS'). At the time this study was conducted (2009-2012) its title was 'Community Services.' As all court documents and proceedings analysed for this matter refer to 'Community Services' that will be the term used, unless referring to the present day FACS.

significant level of harm in accordance with The *Children and Young Persons (Care and Protection) Act 1998* S27). Alternatively, reports may come from any community member or person who is familiar with the family and who is concerned for the welfare of the child. Following reports, Community Services caseworkers will then conduct an assessment in consultation with their managers. Community Services, as well as the parents and other parties formally included in court proceedings, are assisted by solicitors. In addition, clinicians usually expert social workers, psychologists or psychiatrists, are regularly called upon to assess the child, parents and proposed long term care arrangements for the child.

Care proceedings are usually initiated at the Children's Court by Community Services in accordance with the *Children and Young Persons (Care and Protection) Act 1998*; ss43-8. Court orders in the care and protection jurisdiction can allocate care and parental responsibilities for the child, in addition to formal parenting assessment and contact arrangements (FACS, 2011). These arrangements may include remaining with one or both of the natural parents, through orders accepting 'undertakings' between Community Services and parents. These undertakings can outline appropriate standards of care and engagement with support services. Alternative arrangements may involve placement of the child with a kinship or relative carer, foster care, or out-of-home care residential service placement. The judicial officers of the Children's Court have the responsibility to consider the assessments and recommendations offered to them within the context of the available information concerning the background and current circumstances of the child and family.

The judicial officer Hearing the Matter of Meena Miller was faced seemingly with one unequivocal decision regarding the authorisation of care arrangements for Meena. On closer inspection, this decision comprised a complicated series of interconnected decisions throughout proceedings. Decisions concerning the credibility of evidence, the relevance of this evidence to the current level of risk for the child, and the

realistic possibility of restoration to the parents, often intersect. In all of these decisions the risks of leaving a child in an unsafe home are balanced with the potential negative consequences of intervention for this family (Waldfoegel, 1998). Ultimately the judicial officer in Meena's case was obliged to deliver a final judgement that assessed parental capability, the needs of the child, and the suitability of proposed care arrangements.

The proceedings and decisions made in the Matter of Miller were the outcome of over two years of assessment and decision-making from multiple professionals at different levels. Each professional stakeholder in Meena's case was required to interpret issues of fact and form opinion and recommendations for the Children's Court. Key professional stakeholders in care proceedings include Community Services caseworkers, solicitors representing the clients and Community Services, and Children's Court clinicians. In addition, external services working with children and families, including police, medical services, counsellors, schools and family support services provide evidence and assessment to assist the Children's Court. The role of professional stakeholders, their assessments and contribution to the decision-making process at court will form the core of this study.

This introduction will be divided into four parts. The first section introduces the context and environment in which decision-making takes place. The second section describes the objectives, and theoretical approach used in the present study. The third section outlines definitional issues in relation to key concepts for this research: child maltreatment, domestic violence and domestic violence as a child maltreatment concern. The fourth section provides an overview of the remaining chapters in this thesis.

1.1. Area of Inquiry

1.1.1. The complex care and protection jurisdiction

This study seeks to examine the decision-making process in care proceedings in the Children's Court that involve allegations of domestic violence as a form of child maltreatment. The care and protection legal jurisdiction provides a unique decision-making context. The Children's Court's judicial officers are required to deliberate on an increasing scope of significant issues such as domestic violence. However, children's courts were a twentieth century development in legal responses to societal problems. For instance, the Children's Court of NSW was established 1905, and the children's court of Victoria was established in 1906. Historically, the role of the state and the legal system in private family life has been a vexed issue (Debus, 2005). The emergence of Children's Courts, and specific law relating to children have served as an official acknowledgment by governments that the interests of children and their parents may not always align. This has led to a case for state intervention in cases of abuse, or where parents are unable or unwilling to meet the needs of their children (Bromfield and Higgins, 2005). The notion that it is the responsibility of an impartial and specialist court to make decisions about the life and plans of a child, considered to be in need of care and protection, has emerged over the past century, as a fundamental aspect of responding to issues of child abuse and neglect.

The specific work of the care and protection jurisdiction is directly affected by the broader context of child protection work in NSW. Current data available concerning the number of reports, substantiations and court orders involving child abuse and neglect in Australia, indicate a significant rise in the number of children identified as experiencing some level of maltreatment. The most recent Australian Institute for Health and Welfare (AIHW) report into child protection in Australia, in the year 2013-14, indicates that 304,097 (cases) reports were received (AIHW, 2015). This is a substantial increase from the 137,938 reports received in the previous decade (AIHW,

2015). Of these reports, around 54,438 cases were categorised as substantiated abuse or neglect cases (AIHW, 2015). This is approximately 1 in 128 children aged 0-17 years. Across Australia 45,746 children were on a care and protection order as at 30 June 2014 (AIHW, 2015). NSW has 17,242 children subject to a care order, the highest number of children subject to orders in Australia. By comparison, the second highest number of children subject to orders is in Victoria, at 9,233 (AIHW, 2015). In 2013-14, the Children's Court issued 2,995 new care and protection orders (AIHW, 2015). These court orders are a direct result of the substantiation of maltreatment.

A number of explanations have been offered for the high volume of court applications present in NSW. Whilst the raising of the threshold for reporting child maltreatment concerns from 'risk of harm' to 'risk of significant harm' by legislative amendment in 2010 led to a decrease in reports, the number of children on care and protection orders has continued to rise (Sheehan, 2012). According to AIHW (2015), the high number of children on court orders can be viewed as a direct result of care and protection orders being issued for younger children, and a consequence of children remaining in care for longer periods. The AIHW report (2015) also refers to the increased national focus by child protection departments on providing early intervention, as well as statutory responses to those most in need of protection. Moreover, as a consequence of more targeted investigation there has been higher rates of substantiation, leading to a greater number of child protection assessments resulting in court applications (AIHW, 2015). Higher rates of substantiation have a direct impact on the workload of the Children's Court, due to increases in the number of court applications and court orders received. It has been suggested in prior research examining the Children's Court that data reflecting an increase in court orders concerning care and protection of children may represent an increase in cases of substantiated maltreatment, as well as growth in professional and public awareness of maltreatment issues and willingness to act (Fernandez et al., 2013a). Hearn (2013) has stated that the broadening of definitions of what constitutes child abuse and neglect has increased public attention to issues of emotional abuse and neglect. Growth in public awareness has included recognition of

the complex and multifaceted reasons for child protection intervention, such as parental dual diagnosis (combined mental health and substance abuse issues) and domestic violence involving multiple members of the same family.

The high volume of substantiated child maltreatment and the subsequent number of children placed on court orders and in out-of-home care has had a significant impact on the role and function of court decision-making. Decisions that are made in the care and protection jurisdiction of the Children's Court occur in an environment where the legislative framework and policies that govern child protection decisions have undergone substantial revision. Recent policy changes, including increased long term casework responsibility for non-government out-of-home-care agencies and expansion of Alternative Dispute Resolution measures have been triggered by the high number of substantiated cases of child maltreatment in NSW (Murray and Powell, 2007).

In 2001 there were several amendments to the principal care legislation in NSW, the *Children and Young Persons (Care and Protection) Act 1998*. These amendments outlined that the paramount principle in court decisions is the safety, welfare and well-being of the child or young person. In addition these amendments defined permanency planning as the goal to provide a secure and stable home for the child or young person, and actions to achieve this to be outlined in care plans. Further amendments were enacted in 2014 included the introduction of Parenting Capacity Orders, and expansion of Family Group Conferencing to enable mediation prior to court proceedings. The current amendments have been informed by prominent public inquiry, such as the 2008 Wood Special Commission of Inquiry into Child Protection Services ('The Wood Inquiry') and subsequent 'Keep Them Safe' and 'Safe Home for Life' policy discussion papers. Child protection policy reform has occurred often with intense public and media scrutiny. According to Sammut and O'Brien (2009), the public discussion of child protection reforms has been characterised by an emphasis on perceived failures of the

state to make adequate and timely decisions for vulnerable children, including those experiencing domestic violence.

1.1.2. Care jurisdiction and domestic violence matters

Domestic violence is an issue that has garnered an increasing amount of attention in recent times, and particularly in the present year. The selection of Rosie Batty, a survivor of domestic violence whose son, Luke, was murdered by her ex-partner, as the 2015 Australian of the Year, highlighted the prominence that is being given to addressing the issue of domestic violence. The subsequent publicity surrounding Ms Batty's story and advocacy, and the work of others in the field of domestic violence prevention, has seen increased pressure placed on both the Commonwealth and State Governments to take further action to reduce 'the national emergency' of domestic violence (Little, 2015). At a federal level, a new advisory panel, that includes Ms Batty, has been formed to guide the Commonwealth Heads of Government (COAG) on new initiatives to reform domestic violence laws.

In NSW, a new ministerial position, Minister for the Prevention of Domestic Violence was announced on International Womens Day, 2015.³ This announcement followed the 2014 introduction of a new state-wide framework for responding to domestic violence, 'It Stops Here'.⁴ These initiatives, and media coverage of high profile cases of violence against women and children, have increased the public and political discussion of domestic violence as a prominent public safety issue (Little, 2015).

Domestic violence is an issue dealt with by multiple legal jurisdictions. In NSW the two additional major jurisdictions to address the issue of domestic violence are the Local and District Courts of New South Wales and the federal Family Court of Australia. Despite a care application being the end result of a long process of reporting,

³ For coverage see: <http://www.abc.net.au/news/2015-04-02/pru-goward-minister-prevention-of-domestic-violence-nsw-cabinet/6366908>

⁴ See for example: <http://www.nsw.gov.au/news/new-domestic-violence-framework-unveiled>

assessment, referral and child protection casework, the Children's Court has received relatively little attention compared with other jurisdictions that deal with the issue of domestic violence (Tsantefski and Connolly, 2013).

Existing analysis of local and district court criminal jurisdiction processes relating to domestic violence, have documented a substantial shift in conceptualisation of domestic violence from a private family issue to one of public safety requiring community driven responses (Gillingham and Humphreys, 2010). Recent inquiries and policy changes in the criminal jurisdiction regarding categories of domestic violence have occurred at the same time as for the care and protection jurisdiction. Reforms to measures such as Apprehended Domestic Violence Orders have placed further emphasis on strengthening state-based interventions to address the high number of women reporting domestic violence incidents (McDermott, 2014).

The family law jurisdiction has also implemented significant reforms in recent years in relation to the handling of domestic violence allegations. The recent Australian Law Reform Commission Inquiry into Domestic Violence highlighted a number of ongoing challenges in the way domestic violence is addressed in the legal context (ALRC, 2010). Whilst existing analysis of these reforms contributes to understanding the development of legal approaches to decision-making, little material is available pertaining to the Children's Court care and protection jurisdiction, and how domestic violence is interpreted and responded to in matters involving children deemed at significant risk of harm as a result of the violence they have witnessed. Importantly, as evident in the Matter of Miller described earlier, a tension exists in the care and protection jurisdiction, as judicial officers deal with complex issues and requirements in their deliberations. Their decision-making is informed by a structure of legislative requirements and guidelines, in addition to their own individual discretion and moral judgement.

Where facts in cases are unclear and the evidence that is submitted is unable to offer unequivocal answers, the need develops for judicial officers to rely on both formal procedures and individual judgement to interpret the individual circumstances of a matter (Sheehan, 2000). As the issues being considered by the Children's Court cover past, present and future incidents, judicial officers are required to be flexible in their interpretation of these issues. Judicial officers are considering not only the probability of alleged events having occurred, but what is likely to happen in the future. The process and influences governing such deliberations are the focus of this study.

1.1.3. Principles informing decision-making

Care and protection legislation contains a number of core principles to be applied by the Children's Court in making decisions and conducting proceedings. Decisions made by the Children's Court are guided by one overarching principle; to ensure 'the safety, welfare and well-being' of the child or young person (Crawford, 2005). An additional principle used by the court is that all decisions be made with the intention of ensuring 'the best interests of the child' (Borowski, 2013). The 'best interests' principle offers judicial officers a significant element of authority in their decision-making role (McLachlan, 2008).

This principle has some effect in positioning the Children's Court as a specialist institution addressing the subject of childhood, including having expertise in child development and attachment, childhood trauma and safety (Borowski, 2013). The phrase 'best interests' places emphasis on the outcome of proceedings, and not the process of determining if a child is in need of care and protection (McLachlan, 2008). Existing analysis describes the process of deciding the care of children as being fraught, due to the frequently adversarial nature of the highly emotive topics of parenting and the maltreatment of children, being raised within a formal court setting (Crawford, 2005). In this context, it can be seen that the word 'best' emphasises the goal of optimal and positive results, and 'interests' emphasises the need for primary

consideration to be the child. The 'best interests' principle shifts attention from the concerns and interests of adults, thus signalling the specific contribution of this jurisdiction.

There are additional principles informing decisions made by the Children's Court that focus on the conduct of proceedings. These principles focus on fair procedure, ensuring support for vulnerable children and families, and on optimal outcomes from proceedings for children (Meiksans et al., 2015). Principles relating to fair procedure require the court to consider the specific background and identity of the child including their needs in relation to culture and religion. Additionally, they require that any intervention authorised by the Children's Court should be the least intrusive response for the child and their family, with a primary view to protect the child (Schulz, 2012). Furthermore, in order for a response to be least intrusive, relationships with significant people for the child should be maintained, unless contrary to the best interest or wishes of the child. Finally, principles relating to support for children include that a child, temporarily or permanently separated from family, deserves special assistance and protection from the state, and that out-of-home care should provide a safe, stable, nurturing environment (Holt and Kelly, 2012). Principles relating to optimal outcomes stress that early decisions need to be made for permanency particularly for younger children, and that the name, identity and cultural ties of a child separated from family should be maintained. Young people should be provided with relevant information and assistance to participate in decisions. Young people able to form their own views should be given opportunity to express them. Finally, children and young people should be informed of the outcome of decisions concerning them (Sheehan, 2003). Of relevance to the present research is judicial officers' application of these principles governing court decision-making and conduct of proceedings, in matters that involve evidence of domestic violence.

1.2. Research Aims and Objectives

This section will provide a brief description of the research objectives and the relevant theoretical arguments influencing this study.

1.2.1. Research aims

This study has three major objectives. The first objective is to examine the ways in which professional stakeholders including judicial officers, solicitors, and caseworkers, frame child maltreatment and domestic violence issues in court proceedings. The second objective is to understand the processes that guide the court decision-making around matters involving child maltreatment and domestic violence. The third objective is to identify the links between professional stakeholders' interpretation of child maltreatment and domestic violence concerns, and the outcomes from court-based decision-making.

1.2.2. Research approach

The present research utilises qualitative methodology, specifically a case study approach involving both a prospective and retrospective review of care and protection matters. The present study involves analysis of three major data sets. These are archive or previous court matters from 2009-10, observed matters current at the time of data collection 2012-13, and interviews with professional stakeholders, including judicial officers, solicitors and caseworkers. The case study approach adopted in the present research is designed to fulfil the research aims through the identification and analysis of the core thematic frameworks of domestic violence and child maltreatment that are present in evidence and proceedings, relating to the selected archive and observed matters. This analysis allows consideration of the impact of the social and policy

context on the development of specific language and conceptual frameworks to describe domestic violence as a risk factor for children in children's court decision-making.

1.2.3. Social Constructivism and Feminist theoretical contributions

The research approach to this topic has been developed with a social constructivist and Feminist theoretical basis. Feminist research has frequently been described as encompassing a wide variety of both traditional and contemporary approaches (James and Palmer, 2002). The variety of manifestations and positions within Feminism are closely linked with a large body of work that has developed over the past century of Social Constructivist scholarship (See Lorber and Farrell, 1991; Coppock et al., 2014; Weinberg, 2014; Alcoff, 1987; Campbell and Wasco, 2000).

Social Constructivist theory seeks to explain the process by which language and meaning shape social structures (Sharyn and Anleu, 2000). Social Constructivism has influenced the Feminist approach. For instance, according to Orme, Feminist approaches regularly emphasise the paradoxes present in, 'the ways in which the world and women's place in it is explained and understood' (2012:87). Feminism has always, at its very core, maintained a focus on power and the establishment and reproduction of specific gendered power relations in society (Davies, 2007). The present research is interested in the reflection of power relations in perspectives on domestic violence, parenting and child maltreatment that inform court intervention within the care and protection jurisdiction. Different Feminist theoretical traditions including Liberal, Radical and Postmodern Feminism have informed Feminist legal scholarship in this area (Dominelli, 2002).

Whilst there is a broad range of Feminist scholarship and diverse standpoints in Feminist theory, the present research is particularly informed by Feminist legal

scholarship and its emergence from Social Constructivist thought (Hekman, 1997). Feminist legal traditions offer critiques of gendered power relations, and the impact of these on society (Fineman, 2005, Graycar and Morgan, 1990). There are specific implications in Feminist legal scholarship for understanding the discourses surrounding families, parenting and children, contained in the findings from the present study. According to Greycar and Morgan, Feminist legal scholarship poses 'fundamental questions as to the impact of the law on women and their participation in society' (1990:833). The understanding of gendered power dynamics is a significant aspect of Feminist analysis. It should be noted that the theory that harmful and uneven power relations are not only present in private interactions and relationships, but are built into public institutions. Law and the legal profession have been described as inherently patriarchal in Feminist scholarship such as, Scutt (1990). This is reflected in the focus of present study in identifying gendered assumptions present in legal structures and the process of legal decision-making surrounding topics such as domestic violence.

Liberal Feminist theory provides an initial conceptual framework that links societal structures, such as law and the development of specific gendered perspectives (Lahey, 1984, Wendell, 1987, Whelehan, 1995). The consideration of the structure of social power has implications for understanding the work of professional decision-makers, an objective of the present study. Liberal approaches anticipate the capacity of laws to incorporate women's experiences and perspectives, and thus become, as Strasser conceptualises, 'a truly generally inclusive and neutral system' (2010:58). This interpretation suggests that the liberal perspective offers a positive interpretation of the role of law in promoting and upholding equality, and using legal channels to reflect women's experiences (Wendell, 1987).

The Radical Feminist focus is seen as distinct from earlier liberal approaches in its aim, not only to understand overarching power structures such as law, but also to reform them (Macleod and Saraga, 1988; Bell and Klein, 1996; Rowland and Klein, 1996).

Radical theories emphasise the masculine foundation of law, which suggests that it can never incorporate women's experiences (Strasser, 2010). Research, through a Radical Feminist lens, therefore necessarily takes on a reformist agenda. Specific issues of inequality including discriminatory laws and practices and the role and functioning of basic human rights in society, are interrogated with the purpose of generating reformist activity. The purpose of Radical Feminist research is not to describe 'what is happening', but to say 'why it must change' (Dwyer et al., 1995: 158). Using Radical Feminist understandings of inherent power inequalities, assists in challenging existing paradigms and assumptions that may contain patriarchal or discriminatory interpretations (MacKinnon, 1987).

Postmodern Feminism seeks to reshape existing discussion of Feminism, including the assumptions of liberal and radical approaches, to emphasise the significance of the process of interpreting gender through conventions including legal processes (Frug, 2014). As one branch of the larger Postmodernist movement, Postmodern Feminism argues against viewing gender as two categories that are distinct and diametrically opposed (Millett, 1970) 'Postmodern Feminism instead uses a social constructivist epistemology to analyse gender as a social construct that seeks to validate the specific roles and categories that define social interaction.' . Postmodern Feminism can be considered a reconceptualisation of Feminism that specifically addresses the process of how language constructs and reconstructs gender, including within legal institutions (Strasser, 2010). Interrogation of the gendered nature of language and discourse is a further Feminist contribution to this study. The findings of this study have highlighted that constructions of expected parental behaviour and ideologies of mothering were present in the assessments of domestic violence that were made by caseworkers, solicitors and judicial officers. The significance of language in shaping the formation and presentation of private issues within the formal institution of the court room provided the impetus for the development of

thematic analysis in the present research and the selection of a coding framework that included the themes of domestic violence and mothering.

The postmodern approach seeks to discuss not only specific discourses, but also the process of their construction (Wheeldon and Faubert, 2009). This suggests that everyday conflicts must be translated into the language of rights and regulation to enable law to exercise power. These conflicts include the legal regulation of women through marriage, sexuality and motherhood (Eichner, 2001).

Feminist legal theory demonstrates the ways in which legal doctrine and practices discriminate against women and reinforce gender inequality. The law gives the appearance of neutrality when in fact it is deeply biased (Sharyn and Anleu, 2000). This conceptualisation of law as a specific social institution that reproduces inequality is not unique to one specific Feminist stance (James and Palmer, 2002). Disagreement as to whether existing legal structures can be reformed to accommodate women's experiences has been ongoing between radical and liberal Feminist scholars (Sharyn and Anleu, 2000). However, the existence of such debate suggests that Feminist conceptualisations of law provide an important and useful exercise in looking at the way that gendered power imbalances can be reproduced in social institutions, including legislation and court processes (Armstrong, 2004). The Liberal, Radical and Postmodern theoretical foundations have aided analysis of legal systems and government policy relating to gender-based issues such as domestic violence (Herald, 2010, Smart, 2002). The research questions selected for this topic were developed to illuminate child protection decision-making and professional practice in responding to domestic violence. Feminist Theory has responded to the issue of domestic violence through the argument that violence is the result of power, control and the way healthy and unhealthy relationships are formed. For instance, the way that parenting and, mothering is depicted in professional assessments of domestic

violence focuses on the actions of mothers. Where there is a focus in assessment of mothers as primary caregiver it overlooks assessment of perpetrating behaviours of fathers who are non-primary caregivers and how their actions may account for the concerns in relation to the primary caregiver.

Policy on domestic violence interventions has reflected the influence of the above Legal, Liberal, Radical and Postmodern Feminist approaches to practice (Phillips, 2006, Jaggar, 1983, Cornell, 1998). The development of the refuge movement in Australia in the 1970s has been analysed as an important achievement of those within Feminism, which advocated for the creation of safe spaces for women and children who face ongoing danger and need to seek protection from a violent perpetrator needing to leave violence (Kaye et al., 2003). While the Feminist interpretation of violence gives a detailed account of the complex interconnections of family, community and over-arching systems, there remains a challenge to implement this into professional discourse and practice (Franke, 2006, Lacey, 1998).

The emphasis that Feminist theory places on understanding power relations and, specifically, male dominance, can have practical application in understanding the gendered nature of language and processes within courts (James and Palmer, 2002). Specifically, much of the analysis of domestic violence remains fixated on either 'victims' or 'perpetrators', or evaluation of larger community based interventions to prevent domestic violence or support victims (Kelly and Pringle, 2009, Breckenridge, 1999). The interpretations of domestic violence utilised in child protection work are ultimately a product of the way individual professionals produce and reproduce specific discourses that maintain the current focus on responding to a 'victim', rather than discussion of how gender inequality contributes to the prevalence of domestic violence (Damant et al., 2008).

Using a Feminist theoretical perspective, the present research will interrogate the language and evidence that is used as part of court intervention, and chart the development of cases of domestic violence, and how they are interpreted and judged in the care and protection jurisdiction. The current debates around terminology used to describe domestic violence will be discussed in the next section.

1.3. Key Definitions

Language is one of the most crucial entry points for understanding the decision-making process surrounding domestic violence allegations in the Children's Court. This section will examine the current definitions and conceptualisations of domestic violence and child abuse. This key terminology, and the varied ways it is developed and employed, is significant in the development of approaches to child protection decision-making. The convergence of knowledge and practice relating to child maltreatment and domestic violence, is of particular importance to understanding the parameters that govern the Children's Court's decisions.

1.3.1. Child maltreatment

Child protection responses to domestic violence can be seen as a component of a contemporary understanding of child maltreatment as these responses acknowledge that indirect actions witnessed by a child, or in a child's environment, can have serious long-term consequences for children. Debates in existing literature refined the concept of child maltreatment to encompass intentional and unintentional acts that cause, or are likely to cause, harm to children (Friend et al., 2008). Where possible the present study will use the term 'child maltreatment' as opposed to 'child abuse' as it encompasses specific acts of physical harm, as well as more complex issues of neglect and non-action, that can cause harm. The term 'abuse' fails to adequately encapsulate the broad spectrum of behaviours that are present in domestic violence situations

witnessed by children (Helfer, 1982). Edleson suggests, 'any definition of witnessing violence must include the diverse impact that witnessing a violent event has on children' (1998: 196). Prior research has highlighted that children experiencing domestic violence can experience exposure to physical abuse, as well as more indirect forms of maltreatment, such as parental incapacity, lack of supervision, parental alcohol and drug use, and unmanaged parental mental health conditions (Best, 2003). Therefore, the term 'child maltreatment' will be used in this study to refer to all forms of indirect and direct harmful experiences impacting on children.

1.3.2. Domestic violence as a form of child maltreatment

Existing research examining the impact of domestic violence on children has informed developments in current policy and procedures which identify domestic violence as a specific category of risk for children. This research has been used to mount an argument for improved legal responses to protect victims (Bromfield and Higgins, 2005, Laing, 2003, Humphreys and Stanley, 2006). Crucial to the development of the domestic violence risk category for children have been findings pertaining to the longer term and far reaching emotional and psychological consequences for children experiencing domestic violence. Existing analysis acknowledges that children 'witness' or 'experience' violence within their family in a multitude of ways (Fusco, 2013). These include overhearing incidents from another room and seeing their mother injured. In addition children can experience post-separation contact arrangements being used as a means of intimidation or control by the perpetrator (Edleson, 1999).

Physical danger has been found to be present for children who have experienced homes where there is domestic violence. This can include being caught directly in the 'crossfire' of assaults or misdirected aggression, or being used as a 'weapon' in assaults such as being forced to hurt the other parent (Keeling and Mason, 2008). In addition, an increased likelihood of sexual abuse has been identified, either as a means of ensuring compliance amongst family members, or as a means of 'indirect abuse'

against the other parent. Physical danger and sexual assault are immediate, visible consequences of violence (Keeling and Mason, 2008).

Other consequences include learned behaviour such as aggression, physical violence, intimidation and verbal abuse (McGee, 2000). Additionally previous studies have identified that children can also display symptoms similar to the victim parent, including low self-esteem, depression and anxiety (Zuckerman et al., 1995). Overly responsible behaviour by the child towards the victim, commonly referred to as 'parentification', is similarly a learned behaviour that begins in violent incidents where children may be called on to assist (Hester, 2011). Educational and developmental delays have also been identified in children who have experienced domestic violence, but the frequency of this is perhaps difficult to determine, given there are likely to be several adversities being faced by the child at the same time (Zuckerman et al., 1995).

Existing analysis demonstrating a clear link between child maltreatment and domestic violence has led to the development of a specific domestic violence risk category in current child protection legislation (Humphreys et al., 2014). Despite this growth in awareness, and the existence of public inquiries (Wood, 2009, Feigan, 2011) consistent responses from professionals to domestic violence as a form of child maltreatment remains an area to be further addressed in child protection policy and practice. There is a lack of firm conclusion as to what, if any, response should eventuate, and how outcomes can be improved (Sudermann and Jaffe, 1999). Several key questions remain unanswered regarding domestic violence as a category of risk for children. These include how professionals working within the Children's Court and Community Services have approached and implemented this category within the narrative of the matters in which they are involved, and how these interpretations affect the outcomes of court-based intervention. These are clear avenues for inquiry into the role of the Children's Court within the larger sphere of child protection decision-making.

By the time an application is made to court a number of definitions and conceptualisations of the concurrence of domestic violence and child abuse have been

incorporated into its decision-making process (Edleson, 1998). A key influence in existing discussion defining the domestic violence as a child protection concern is the tendency to polarise decisions as 'child protection focus' and 'domestic violence' or 'battered women's movement' focus (Lessard et al., 2014: 494). When this is considered, it becomes evident that the subjective discourse in prioritising, defining and understanding domestic violence, is a crucial factor in creating a child protection decision-making framework (Axford, 2009).

The 'child protection' focus to decision-making around domestic violence is seen to be forensic, rational, and almost clinical in its categorisation of domestic violence as a significant risk of harm to children (Jouriles et al., 2008). The approach of child protection agencies is often categorised as being focused on investigation of complaints and removal of children, to the exclusion of working with the family, or the primary caregiver, usually the mother (Douglas and Walsh, 2009). This focus has developed from a necessity of seeking to substantiate or eliminate the possibility of risk to a child (Friend et al., 2008). In this construction the negative consequences of domestic violence on children are emphasised by child protection professionals and mothers are blamed for a 'failure to protect' (Friend et al., 2008:680). In the context of such understanding of domestic violence there is need to address professional interpretations of violence.

Misconceptions regarding their agenda can surround those professionals working with a domestic violence focus. There is a perception that the refuge, or, as previously labelled, the 'battered women's movement', carries a gender-based ideology and political agenda with its understanding of domestic violence as an experience predominately affecting women (Edleson, 1998). Critics of the so-called agenda, claim a domestic violence focus has a bias towards viewing child protection concerns as inextricably linked to the victimisation of the mother, while ignoring the needs of the child (Dutton and Nicholls, 2005). Such criticisms separate the experiences of mothers and children, whereas a Feminist approach and understanding of domestic violence does allow for the reality that a female victim of violence may also be responsible for

her own actions and treatment of her children (Laing, 2003). The present study is interested in examining how these responses and ongoing tensions in defining and understanding the experience of domestic violence impact on court-based intervention.

1.4. Thesis Structure

This thesis contains eight chapters, including this introduction.

Chapter Two examines contextual issues that impact on the decision-making processes of the Children's Court. This includes the decisions it makes, how it is able to make decisions and the reasoning governing these decisions. It will provide an overview of the development of the Children's Court and its decision-making context, the purpose of the Children's Court, the rise in public interest in child protection and the unique policy and procedures established to guide this specific jurisdiction. This includes reference to specific principles emerging from the legislation and existing case law, and the influence of recent policy reforms on the specific powers and function of the Children's Court.

Chapter Three provides a summary and evaluation of key areas of literature and prior research relevant to this study. It explores the present ambiguities in the understanding of child maltreatment and the resulting child protection based responses. This chapter also considers existing evaluations of responses to domestic violence as a child maltreatment issue. Finally, it reviews existing research into child protection decision-making and children's courts. This chapter concludes with an appraisal of the literature and discussion of the relevance of previous research to the particular research questions being considered in this study.

Chapter Four describes the methodological approach used in this research. It introduces the research questions and objectives, and discusses the use of qualitative methodology and its connection to the aims and objectives. The use of case study method within the research design will also be discussed in this chapter, including sampling, data collection procedures, and approaches to thematic data analysis. Finally, this chapter will address ethical issues pertaining to this research and the use of reflective strategies within the research process.

The research findings are presented in Chapters Five, Six and Seven. These findings identify the key influences across the different stages of the Children's Court decision-making process in the matters analysed. These stages will be categorised as background preparation, court proceedings and outcomes from decision-making. Chapter Five outlines the evidence regarding domestic violence and additional risk factors that prompted intervention in the reviewed matters. The process of presenting information to the Children's Court concerning children deemed at risk is discussed with reference to the archive matters reviewed. It discusses the contested nature of the evidence presented to the Children's Court regarding domestic violence and other risk factors identified in the archive material.

Chapter Six presents the findings concerning decisions made within the proceedings in the archive and observed matters. Court proceedings are explored through the lens of the decisions that are made at key points during the court process. This includes the progression from preparatory decisions, to decisions made during proceedings and, ultimately, the outcome of those proceedings.

Chapter Seven describes the findings in relation to professional stakeholders and their knowledge and interpretation of domestic violence as a child maltreatment issue. It discusses the development of discourse for professional understanding of parenting in

the context of domestic violence and how professionals' assessment of domestic violence impacts on care and protection proceedings.

Chapter Eight, the concluding chapter, reviews the findings from this research, including the professional knowledge and understanding of domestic violence, professional contributions to decision-making, and the challenges present in court decision-making. This chapter discusses the key influential factors in the development of narratives of violence and risk that emerge from the process and outcomes of court decision-making. This discussion will position the study's findings within the context of existing scholarly work. This chapter will conclude the thesis by outlining the implications for this study, and make recommendations for further research, policy and practice.

2. *The Children's Court Context*

2.1. Introduction

The Children's Court of New South Wales ('the Children's Court') is a crucial location for child protection interventions. This chapter discusses the social and legal context of the Children's Court decision-making that combines elements of public interest, policy, and the application of very specific principles to individual cases. In doing so this chapter provides an overview of the processes governing decision-making, and the challenges experienced in fulfilling the objective of the Children's Court to determine the most suitable outcomes for the children who come to its attention.

The Children's Court, formally established in 1905, is known as one of the oldest children's courts in the world (Debus, 2005). The initial mission of the Children's Court was to fulfil the government's obligations to deal with the welfare of abandoned children, and, to respond to petty crime committed by destitute children and young people (John, 2009). Since then it has evolved into a highly specialist court with jurisdiction over a number of key matters involving young people: criminal offences, drug and alcohol offences, apprehended domestic violence orders, and care and protection (John, 2009). The care and protection jurisdiction of the Children's Court is the focus of this research. The principle legislation guiding the work of the Children's Court is currently the NSW Children and Young Person's Care and Protection Act (1998) ('the 'Care and Protection Act'). Alongside ongoing procedural reforms has been a gradual move to clarify the Children's Court's approach and the scope of its work. These reforms have embedded specific principles within the Children's Court processes, and clarified their meaning and appropriate application (Lawrence et al., 2010). Four principles for decision-making are apparent in the legislation and the available case law: the criteria of 'risk of significant harm', the 'least intrusive' approach in deciding alternative care arrangements, the determination of 'best interests' for the

child, and ensuring ‘permanency’ in the orders that are granted (Dingwall et al., 2014). Judicial officers determining care and protection matters are required to be proficient, not only in their application of legislation, but in interpreting these principles within the legislation and policy, and utilising them to ensure suitable outcomes for children.

This chapter examines three core elements in the decision-making processes of the Children’s Court: what decisions it makes, how it is able to make these decisions and the reasoning behind these decisions. The first section examines some specific examples of the types of decisions the Children’s Court makes that arise from legislation and existing case law. The second section outlines the rise in public interest and evolution of public policy determining the specific powers the Children’s Court has, as well as the types of orders it can make. This section specifically discusses recent policy changes in shaping the current operation of the Children’s Court, including placement principles and the expansion of Alternative Dispute Resolution procedures. The final section examines the implications for the application of policy and principle in court decision-making. The court decision-making context is essential to understand for the present study, as the complex structure and environment is where a report concerning child maltreatment progresses to court intervention and formal court order.

Clear intersections are evident in understanding the ‘what’ - the function of the court; the ‘how’ - the shifting policy agenda; and the ‘why’ - the application of principles in individual matters. The care and protection jurisdiction has been required to develop over time, changing the type of decisions it makes and the way it makes them, in order to meet policy requirements. The nature of multiple concerns emerging from care and protection matters has also meant individual judicial officers are required to apply core values and principles to their interpretation of legislative guidelines. Consequently, in order to understand the decisions made by the Children’s Court, it is necessary to understand the practice and principles that guide proceedings.

2.2. Court Jurisdiction

This section will introduce some core elements to the current overall context of the Children's Court. Core contextual elements for court decision-making include the scope of the court's authority, and the influence of principles that underpin its operation, the unique non-adversarial model for proceedings, and the complexities of managing evidence through a standard of 'balance of probabilities'.

2.2.1. Scope of authority

The state jurisdiction of the Children's Court has a unique role in addressing child protection concerns. The care and protection jurisdiction has authority to make court orders to ensure their safety, welfare and well-being (Care and Protection Act NSW, s23). In NSW The orders of the Children's Court sanction diverse arrangements, including the removal, or formal assumption, of children into care on an emergency basis, restoration with parents, long term allocation of parental responsibility and contact arrangements (Loughman, 2013). The Children's Court orders result from evidence that is provided to evaluate future possibility of risk, in contrast to other jurisdictions that primarily review evidence in order to establish facts and determine responsibility (Maclean et al., 2011).

A substantial amount of existing literature compares the state Children's Court system with the role and function of the federal Family Court system and the administration of the Family Law Act (Chisholm, 2009, Armstrong, 2001, Mantle, 2007, Foote, 2006). It should be noted that the present research is concerned with the state care and protection jurisdiction, and the operation of the Children's Court. The Family Law Act contains specific provision regarding the handling of child abuse allegations (s67ZBB), in addition to several sections defining family violence and establishing the Children's Court's obligation to protect children from family violence. However, there are

specific limits to what the Family Court can address and the way it can approach child abuse allegations, hence the need for the specific care and protection jurisdiction of the Children's Court (s67).

The current provisions within the constitution allow for the supremacy of any federal court decision over the state system (s109) (Bromfield and Higgins, 2005). Interestingly, however, under the Family Law Act, this provision is suspended under certain conditions, specifically in relation to child protection decisions (s69ZK). This provision includes the specific caveat that any current family law proceedings must be delayed if there are Children's Court proceedings in relation to care and protection of a child, that pre-date commencement of family law proceedings. Additionally, no family court order can be made for a child where there is a Children's Court order granting Parental Responsibility to the Minister - placing the child in out-of-home care (Chisholm, 2009). Effectively this provision creates restrictions on the power of the Family Court over child protection decisions. These restrictions have led to some confusion over the division of responsibility between the two systems, and their interaction (Mantle, 2007). However, in considering the specific decisions the Children's Court can make, these provisions give some indication as to the authority of this court, and the urgency and supremacy that is perceived within care and protection matters.

2.2.2. Court applications and orders

Children's court interventions commence with applications that provide the formal background and justification for recommended court orders, typically by the statutory child welfare authority in NSW, Community Services. Reports made to Community Services are through a specific telephone helpline that has a unique team structure and procedure regarding the recording of information. The helpline assessment procedure includes an initial determination of a particular level of response needed,

for example, when an urgent response is required within 24 hours, a response is required within a week, a response is required within 28 days or the report has been provided for information only, and no response is needed (FACS, 2012a). Following this initial assessment, if the level of risk warrants further response or investigation, the matter will generally be referred to the relevant local Community Services Centre intake team, in the current geographical location of the child. After examining the report the intake team conducts a search of prior reports and any records of prior intervention by Community Services to assess the level of priority for response. Finally, the report will be discussed in allocation meetings to determine the level of risk and priority for allocation with other reports (FACS, 2012a). If allocated, the matter will then move to a specific child protection team within the local Community Services Centre to determine the appropriate intervention. Examination of the files for the analysed matters identified that the next stage of assessment will usually involve the assigned caseworker contacting the parents and children for interview (Reder and Duncan, 2003). On the basis of this ongoing investigation and casework by Community Services, caseworkers will seek court orders to determine various aspects of children's care arrangements (FACS, 2011). Currently under the Care and Protection Act, when concerns have been raised about a child or young person under the age of 18 years, the Children's Court is obliged to consider the granting of orders to ensure their safety, welfare and well-being (Chisholm, 2009).

Throughout the decision-making process to determine which, if any, court orders are to be granted, there are several key professional stakeholders: Community Services caseworkers, solicitors representing the clients and Community Services, Children's Court Clinicians, and other external services working with the children and family (counsellors, schools, family support services). The official parties to the Children's Court proceedings usually include Community Services representatives, parents, relatives or carers with particular interest in the arrangements of the child.

The need for flexibility in interaction between key professional stakeholders and the children and families who are the subject of proceedings, has led to the wide scope of orders that can be sought. The main orders granted by the Children's Court include: interim care orders, orders allocating parental responsibility, assessment orders, orders accepting undertakings by a party to proceedings, orders prohibiting specific acts, contact orders, orders for the provision of specific services and orders to attend therapeutic programs (Care and Protection Act, NSW, ss. 43-8, 71). Allocation of parental responsibility is a primary focus of orders granted, with options including sole parental responsibility to Community Services, 'The Minister', on an interim or final basis, or shared parental responsibility with a parent or suitable relative or carer. These orders allow for a number of care arrangements for the child to be sought including remaining with one or both of the natural parents following signing of 'undertakings' between Community Services and parents about appropriate care and services needed for the family. For example, Community Services may have evidence from parental capacity assessments that the restoration of a child to the parents is suitable, but the parents require additional time to source adequate housing. In this situation, proceedings may begin with an interim order granting alternative placement of a child and Parental Responsibility to the Minister, then involve a time-limited supervision order, followed by orders allocating parental responsibility solely to one parent, with specific orders for parents accepting undertakings regarding maintaining stable accommodation and continued engagement with appropriate support. It is apparent from examination of the varied requirements of matters that no one order would enable the Children's Court to fulfil its function in determining suitable care arrangements for children. Importantly, these orders allow for facilitating engagement between family and child protection officials, a key influence on the model used for proceedings

2.2.3. Informal/ non-adversarial model

Care and protection proceedings within the Children's Court are designed with a purpose to avoid as much 'formality and legal technicality as possible' (Willis, 2012: 129). It is acknowledged in existing discussion of the Children's Court that, in reality, proceedings operate in a hybrid of both an informal approach and aspects of a traditional 'adversarial' approach (Debus, 2005). The combination of traditional and informal processes places the court in a unique situation in terms of fulfilling requirements for fairness as well as accuracy in the manner in which proceedings are conducted. Traditional adversarial aspects of Children's Court proceedings includes the legal representation of parties, and in fact, as indicated by Walsh and Douglas (2011), any party that chooses to represent themselves is encouraged to seek formal legal advice. Other traditional aspects of proceedings include the subpoenaing of evidence, and the examination and cross-examination of witnesses and evidence.

Measures to avoid formality in the handling of care and protection matters include a non-adversarial approach to proceedings. These measures are to ensure that there is full participation of all parties in proceedings in circumstances where discussion of issues has reached a critical point and sensitivity is needed. The wide range in types of orders available offers one way to facilitate a flexible approach. The ability to involve all parties in orders is seen as a strength of the Children's Court (Fernandez et al., 2013a). In a practical sense, flexibility in the way proceedings are conducted can also involve the type of language that is commonly used in the Children's Court (Thomson et al., 2015). Removing unnecessary formality in language requires judicial officers to conduct proceedings with all parties in mind, including parents, ensuring the use of plain English and clear explanation of any jargon, and allowing for breaks and interaction between parties and their legal representatives (NSW Ombudsmen, 2006). Court decision-making can thus be viewed as a result of a complicated process of balancing assessment of evidence relating to the suitability of parents with the

feasibility of alternative arrangements, while ensuring equity and support to vulnerable children and families, and the safety of children.

2.2.4. Handling of evidence: the 'balance of probabilities'

The 'hybrid' model combining informal and traditional procedures has a clear influence on one particular aspect of the operation of the Children's Court - the standard of proof required to evaluate evidence (Sharland, 1999, Pecora et al., 2012). The standard of proof that is used in care and protection matters addresses the type of evidence that is provided to the court and the specific circumstances of the issues to be addressed in care proceedings (Holt and Kelly, 2012).

A standard criminal matter in NSW, by comparison, will use the 'beyond reasonable doubt' benchmark – meaning that no question should exist over a determination regarding evidence (Bainham, 2005). The Children's Court, as with other children's courts nationally and internationally, considers its evidence 'on the balance of probabilities' (Bromfield & Higgins, 2005). Under a 'balance of probabilities' evidentiary standard a party has to demonstrate that, in all likelihood, there is more chance of the evidence in a certain case being correct rather than not (Bainham, 2005). This is distinct from the 'beyond reasonable doubt' evidentiary standard requiring an unequivocal answer. The concept of 'balance of probabilities' is a crucial acknowledgment that, in the field of child protection, much is uncertain, and it may not always be possible to wholly demonstrate the nature of a past or future event and its impact on a child (Block et al., 2010). Furthermore, if proceedings are to be as informal as possible and allow for focus on consideration of the future directions for a child, then standards of proof need to allow for a degree of fluidity in the process in which evidence is provided (Cooper, 1993). The use of evidence is still an important factor in the running of cases, highlighting that the Children's Court, however informal, still holds to some traditional legal standards (Atwood, 2004). Therefore, the issues the Children's Court is assessing impact on its ability to determine the evidence it can admit

into proceedings. Existing alongside this reality is the development of over-arching policy responses to these challenges, which will be outlined in the next section.

2.3. Policy Developments

This section will examine the specific influences of policy and legislative amendments on the process of decision-making within the Children's Court. Policy can be understood to develop and adapt in response to community needs (Freeman, 1992). In the specific area of child protection policy, the availability of data and the emergence of greater understanding of the impact of specific issues on children, have meant that policy and legal responses are constantly evolving.

In addition, public interest and media reporting of child protection issues and policy in NSW, have grown enormously over the last several decades. A strong link has been demonstrated between media reporting of child protection cases and the development of 'public inquiries' calling for policy change in several states, including NSW (Sammut and O'Brien, 2009). The links between public interest, policy development and subsequent changes to the scope of decision-making at the Children's Court is highlighted through the recent Wood Inquiry and the NSW Government response in the current 'Keep Them Safe' and 'Safe Home for Life' policies. This is specifically demonstrated through the current growth of Alternative Dispute Resolution through the Dispute Resolution Conference and Family Group Conferencing Schemes. Additionally there are new measures initiated relating to assessing parenting capacity and enforcement of prohibition orders (Johnstone, 2014).

2.3.1. Rise in public interest

Over the past two decades, alongside the increased level of reporting of child protection concerns and numbers of children and families receiving child protection intervention, there has been a remarkable rise in public interest in the reporting of child protection issues. The rise in public interest has publicised a need for reform, as well as the need to address the most critical and extreme cases of child maltreatment (Newton et al., 2010). The connection between public interest, media reporting and Special Commissions or Inquiries has been explored by several commentators in Australia and overseas (Axford and Bullock, 2005).⁵ In the United Kingdom reports from the Victoria Climbié Inquiry (Laming, 2003) and the Munro Review into Child Protection (Munro, 2011), as well as the Goudge Report in Ontario (Goudge, 2007), have prompted discussion of reform. In Australia, the circumstances surrounding the most recent and wide ranging public inquiry into child protection in NSW, the Wood Inquiry, highlighted the particular convergence of public interest, and need for systemic reform (Westwood, 2014).

Fuelling the rise in reporting and media interest in serious cases of child abuse has been a sense of ‘rediscovery’ of the public responsibility to be informed about the prevalence and impact of child abuse. Media reporting on cases has provided a specific focus on the most heinous and extreme cases, namely those that result in non-accidental child fatalities. In 2007 two children made headlines in NSW and nationally, Dean Shillingsworth, two, and a three year old now only publicly known by her first name, Ebony. Reports centred on Community Services’ (then known as DoCS) perceived ‘failure’ to act to prevent the deaths of these two children. When the NSW Ombudsman Child Death Review released the reports into both deaths, the large number of reports and long history of both families’ involvement with (then) DoCS was

⁵ See <http://www.theaustralian.com.au/news/nation/docs-failed-to-protect-toddler-dean-shillingsworth-from-being-murdered-by-his-mother/story-e6frg6nf-1225808952431>

detailed.⁶ Several media reports, and indeed in the official investigations, cited stressed workers within teams experiencing high turnover rates and high caseloads, a lack of experience and a lack of communication between workers and other services engaged with the families as key contributing factors in these cases.⁷

A sense of crisis clearly emerged from the publicising of high profile cases, as well as a build-up of information available on issues within the overall NSW child protection system. Specific problems identified in the analysis of these cases included risk of harm reports not followed up, families not receiving visits, cases closed with no assessment and poor staff performance. Several calls were made through the media, specifically for government action.⁸ Concurrently, in this period the number of reports of child abuse and neglect in Australia were at their highest.

The resulting pressure for reform to the system in handling and investigating these reports, as well as providing early intervention services to families and support to children removed from families in out-of-home care had an impact on the Children's Court in terms of its role in addressing matters at the most critical point where decisions are made regarding removal. It should be noted that cases analysed for the present research focus on proceedings during the period 2009-2012, a time when much discussion and planning for reform was taking place.

2.3.2. The Special Commission of Inquiry into Child Protection Services in NSW

The government's 2008 announcement of The Special Commission of Inquiry into Child Protection Services in NSW (The Wood Inquiry), headed by Justice James Wood as Commissioner, followed directly after the release of the NSW Ombudsman's reports

⁶ See ABC NEWS (2008) 'Child deaths inquiry calls for reporting overhaul'
<http://www.abc.net.au/news/2008-11-24/child-deaths-inquiry-calls-for-reporting-overhaul/216586>

Date Created: 24/11/2008 Date Accessed: 12th January 2013

⁷ Ibid.

⁸ Ibid.

into the handling of the cases of Dean Shillingsworth and Ebony. This was largely perceived as the government's response to the issues raised in these reports (Newton et al., 2010). The terms of reference to the Wood Inquiry made specific reference to 'the adequacy of the current statutory framework for child protection including roles and responsibilities of mandatory reporters, DoCs, the Children's Courts and the oversight agencies' (Wood, 2009). This specific term of reference highlighted the wide scope of recommendations required from the committee, and a foreshadowing that any changes to policy would necessarily involve examination of the role of the Children's Court in determining outcomes for children involved in the child protection system. The Children's Court's positioning in this inquiry, as a specific, and sometimes final, component of the statutory child protection response, indicates that the role and capacity of the court would be one issue that needed to be addressed by the subsequent reforms. The Wood Inquiry's consideration of the role of the Children's Court and subsequent policy reforms has had an immediate flow on effect to the management of care and protection proceedings.

The final report and recommendations of the Wood Inquiry were handed down in 2009. Twenty-five recommendations were developed encompassing various aspects of NSW child protection policy, including mandatory reporting, administration of out-of-home care, provision of early intervention services, and staff recruitment, retention and training. Five specific recommendations were included regarding the capacity of the Children's Court, as well as several references to the Children's Court in various subsections in recommendations on changes to the legislation (Wood, 2009). The specific recommendations concerning the Children's Court centred on guidelines for judicial officers in relation to contact, expansion of alternative dispute resolution, expansion of the Care Circle Pilot model for Indigenous communities, filing of material by Community Services in proceedings and training and supervision of Community Services staff in relation to preparing for court proceedings (McCallum, 2009).

Analysis in the literature responding to the Wood Inquiry can be viewed as largely positive, with some qualifications about the implementation of reforms. McCallum

highlighted the prevailing dilemma of how to ensure appropriate implementation of the wide ranging reforms from the Wood Inquiry's recommendations with the summation, 'We will however need to learn to walk and chew gum at the same time' (2009:4). The need to ensure that the momentum, begun with the Wood Inquiry and release of the report, was followed up with appropriate steps to meet the recommendations was accepted in most analyses. One barrier noted in the NSW Ombudsman's official statement responding to the Inquiry was the lack of reliable data on care proceedings, and a 'gap in information'. This made it difficult to determine if the proposed changes to court proceedings in areas such as Alternative Dispute Resolution, available orders, and evidence requirements, would actually have any impact in managing the complicated and often conflicting priorities in proceedings (Hansen and Ainsworth, 2009). This study responds to this gap through some analysis of matters that have involved the use of Alternative Dispute Resolution.

2.3.3. Keep Them Safe/National Child Protection Framework

The NSW Government's response to the Wood Inquiry was detailed in the 2009 policy agenda 'Keep Them Safe'. Included in this agenda were major changes to the Care and Protection Act and the operations of the Children's Court (NSW Cabinet, 2009). These legislative changes involved several specific actions including implementation of an alternative dispute resolution scheme, requirements of emergency interim care applications no more than 72 hours after assumption of a child into care, removing the requirement of a formal affidavit to accompany applications replacing it with a new template, allowing new evidence to be admitted throughout proceedings, and limiting contact orders to only interim orders specifically for cases involving restoration in care plans.

Of these proposed amendments responding to the Wood Inquiry recommendations, only the last, in relation to contact orders has not been implemented or amalgamated

into the latest legislative amendments (NSW Cabinet, 2009). All others have been fully enacted by parliament (Adamson et al., 2010). While it is still pre-emptive to consider the impact of these changes on decision-making for the Children's Court, one clear area that is beginning to receive some consideration already is the implementation of expansion to Alternative Dispute Resolution, through the Dispute Resolution Conference Scheme at the Parramatta Children's Court.

2.3.4. Current policy amendments

Following a 2012 discussion paper and extensive public and community sector consultation NSW Department of Family and Community Services (FACS) released its 'Safe Home for Life' report (2013b). The most prominent legislative amendment to be implemented from this report is the hierarchy of preferred placements. This hierarchy identified support for children to remain with parents where possible, followed by other relatives (kinship care), the adoption and placement in out-of-home care (foster care) as a last resort (Goward, 2012). Of particular relevance to this current study was the 'Safe Home For Life' report's first discussion point, 'Promoting Good Parenting' (Goward, 2012). According to the report two important measures were identified to 'improve parents' accountability for providing their children with a safe and nurturing home' (FACS, 2013b). These measures were designed to 'strengthen existing casework with families and assist in developing parents' motivation to implement required changes' (Goward, 2012). The first proposed measure included the creation of standalone parenting capacity order (PCOs), and the expansion of Parental Responsibility Contracts (PRCs) in Community Services work prior to court application, including in early intervention programs that aim to put support in place for vulnerable families to avoid them entering the formal child protection system. Parenting Capacity Orders (CPO'S) are a new measure for the Children's Court, designed to require parent to attend programs or services designed to enhance their parenting capacity (Johnstone, 2014). The second measure involved the use of Family Group Conferencing

as part of Alternative Dispute Resolution measures, prior to court proceedings. The third measure entailed the introduction of breaches for prohibition orders - orders that prohibit action contrary to the safety and well-being of children. In addition, prohibition orders are now able to be issued to persons not named as parties to proceedings (Johnstone, 2014).

The community sector has had a strong response to these new child protection measures. The Association of Children's Welfare Agencies, representing their member organisations, identified the following concerns relating to the ability of these orders to support hard to reach families, the mechanisms for reporting to the Children's Court and the additional pressure this would place on service providers. The following statement highlights clear challenges in the implementation of reforms for both the Children's Court and service providers:

The use of strong casework where risks, protective factors and strengths are assessed, and appropriate goals are set, monitored and reviewed and services provided, is a more appropriate approach. In this model, individual family needs must be matched to the service type. Magistrates and families may, at present, agree to Undertakings such as attending parenting courses. A Parental Capacity Order would add an additional layer of red tape (Foote, 2012).

This statement emphasises that the implications for particular families and children of implementing such additional procedures at the Children's Court is a concern warranting further evaluation.

The Women's Legal Centre response to the legislative reforms draws attention to implications for victims of domestic violence potentially being subject to a parenting capacity order:

In the context of domestic violence, it is often the case that rather than holding the perpetrator (often the father) to account, the mother is punished for not acting in a

protective manner. This can be explained by the different professional approaches used in responding to domestic violence in criminal, child protection and family law contexts which can result in conflicting messages. (Loughman, 2013).

These concerns, and similar ones articulated in similar responses to community consultation by other major non-government organisations with child protection responsibilities, such as Barnardos Australia and Unitingcare Burnside, indicate that there still exists a fundamental lack of consensus as to the appropriate role of the Children's Court within child protection decision-making. On the one hand a child welfare perspective has led to the establishment of the Children's Court, designed to deal with highly sensitive and complex material relating to children within a formal structure. On the other hand, an adversarial and compliance oriented interpretation seeks to position the Children's Court as a coercive authority, with recent amendments only further cementing this focus. The NSW Government's announcement in 2014 of new 'It Stops Here' initiatives are designed to address some of the concerns about statutory responses to cases of domestic violence and to enhance coordination of domestic violence services (FACS, 2014). This announcement included a specific 'Safer Pathways' program, establishing guidelines for the sharing of information between services dealing with cases where there is intersection of domestic violence and child maltreatment (FACS, 2014). As these changes were announced in 2014, after data collection had been completed for this study, and are yet to be entirely implemented, it is still premature to evaluate their impact on individual case practice.

2.3.5. Developments in Alternative Dispute Resolution

Court decision-making is the outcome of the interaction between the Children's Court's interpretation of legislation and the application of legal principles. The most recent changes since the Wood Inquiry are still in a stage of implementation. One potential area for development, highlighting the connection between the established

guidelines for the Children's Court and the application of core values, is the move towards a greater emphasis on the use of Alternative Dispute Resolution.

Alternative Dispute Resolution Conferencing is not a new legal mechanism, and has been introduced in various jurisdictions across several systems in Australia (Cross et al., 2011). Whilst Alternative Dispute Resolution has existed in legislation previously, it was not commonly used in proceedings (Borowski, 2013). Supporters of expanding Alternative Dispute Resolution cite its aims of ensuring flexibility and open-mindedness within court proceedings as having a beneficial impact. For instance, Atwool (2011) has referred to the positive role of Family Group Conferencing as a model of Alternative Dispute Resolution in cases of neglect in the New Zealand child protection system. Moreover, involving families in decision-making from the early stages of engagement, and removing the adversarial setting of a court room, enhances communication and recognises the role all parties have in coming to a resolution (Giovannucci, 1997).

There have been several attempts at using different models of Alternative Dispute Resolution within various stages of the child protection process in New South Wales. Child protection processes incorporating aspects of alternative dispute resolution include case conferences, care plan meetings and mediation prior to attending court. For instance, the 'Keep Them Safe' policy provided judicial officers with greater authority and encouragement to utilise the Children's Court system to undertake dispute resolution during proceedings, rather than an expectation that it would occur before or at the completion of court involvement. One difficulty with the implementation of Alternative Dispute Resolution is the level of training and knowledge professionals and involved parties have of the process, and how they can ensure the fidelity of the model at a practice level. Early analysis of the Dispute Resolution Conferencing scheme at Parramatta Children's Court conducted by the Australian Institute of Criminology, indicates that the effectiveness of dispute

resolution can be compromised where professionals enter into mediation with fixed views, and are not willing to reach mutual agreement (Morgan et al., 2012). For instance, it was found that where Community Services workers and legal representatives attend conferences and dominate discussion, their capacity to ensure parents are able to sufficiently participate in the conference can be compromised, which may further jeopardise ongoing communication and casework with the family (Morgan et al., 2012).

An additional concern is the lack of reporting and communication to the judicial officer on the progress of negotiations, and the parties' satisfaction with the procedure. An absence of proper feedback on dispute resolution procedures results in uncertainty for judicial officers and solicitors as to the value of advocating for the use of Dispute Resolution Conferences within suitable proceedings (Morgan et al., 2012). Several years have now passed since the Wood Inquiry and the implementation of its recommendations and associated reforms. Given the ongoing and substantial nature of policy changes mentioned above, it is still premature to determine the impact of amendments on the way the Children's Court manages care and protection matters. The specific area of Dispute Resolution Conferencing provides some indication that, where changes are actioned, the support and training of judicial officers and professionals involved in the case is essential to the progress of policy reform. One area where support is needed is in enabling judicial officers, in particular, to incorporate the new practice such as Dispute Resolution Conferencing in fundamental guiding principles already used in decision-making.

The reforms commenced with the 'Keep Them Safe' guidelines subsequently merged into the new 'Safe Home for Life' reforms, with formal legislative amendments now enacted which provide additional powers to the Children's Court in regards to compelling parents to access support services and issuing penalties for serious cases of child abuse. Given the very recent nature of these amendments, it remains uncertain

how these changes will impact on the day to day operation of the Children's Court, particularly in circumstances where, whilst judicial officers are guided by legislation, much is left to their application and interpretation of the principles the legislation contains. These principles will be discussed in the next section.

2.4. Connecting Principles within Policy

Principles used for responding to issues of child abuse and neglect are enshrined in legislation and policy to guide the management of care proceedings (Masson, 2010). This section will examine some of these current guiding principles that are used in decision-making at the Children's Court. The care jurisdiction is acknowledged in Australia as one fraught with competing principles (Morgan et al., 2012). When a care and protection matter reaches the point of official court proceedings much has already been established in terms of the positions of various parties, the evidence available, the particular orders the Children's Court can consider, and the procedure that can be followed (Levesque, 2009). Throughout proceedings, an additional strand emerges guiding the work of the Children's Court, the application of specific principles to the decision-making practice of the Children's Court. Four clear guiding principles have emerged, both through legislation and the available case law: establishing a criteria of 'risk of significant harm', application of the 'least intrusive' approach in deciding alternative care arrangements, determination of 'best interests' for the child, and ensuring 'permanency' in orders granted. Each of these principles will be further elaborated upon in this section.

2.4.1. Risk of significant harm

A child or young person is 'at risk of significant harm' if current concerns exist for the safety, welfare or well-being of the child or young person (Care and Protection Act NSW 1998)

The first action for a care application to be considered by the Children's Court is the establishment phase. This involves the consideration of whether, at the time of application, the child was in need of care and protection due to risk of significant harm. The interpretation of 'risk of significant harm' is detailed in Chapter Three of the Care and Protection Act with a set of seven subsections with an additional clause stipulating that 'any such circumstances may relate to a single act or omission or to a series of acts or omissions' (Peltola, 2002: 3). A new, higher benchmark of 'risk of significant harm' has been raised following the Wood Inquiry recommendations of 2008. The benchmark was raised to 'risk of significant harm', as the Wood Inquiry found that the criteria of 'risk of harm' was too low, leading to reports that did not always warrant a statutory response (Peltola, 2002). A high volume of reports were found that would be more appropriately addressed through non-government services such as local family support groups or counselling (McCallum, 2009).

In various publicly available judgements judicial officers have sought to further clarify and define 'risk of significant harm' to ensure its proper consideration. Some judicial officers have pointed to the fact that within the act there is not an actual definition of 'harm' but instead a list of what may be considered harmful (McCallum, 2009). It is left to the judicial officer to interpret how, by act or omission, any of those categories may have a negative impact on the well-being of a child. Also outlined in recent case-law is the specific challenge of judicial officers in considering the likelihood of the presence of one or more of the criteria of 'risk of significant of harm' concurrently (McConnell and Llewellyn, 2005).

Adding to the complexity of court assessment of risk is that the evidence of 'risk' of these harm categories may be based on information relating to both the past and the future for the child. This means a judicial officer is required to consider all available evidence and assessments to substantiate what has occurred, current risks and their potential future impact. In cases such as domestic violence, where the evidence may not be available, or incidents may not be reported, judicial officers may not have

substantial information to make such assessments. The commentary from judicial officers within decisions indicates that a specific dilemma in evaluating risk and safety is that people may use different thresholds in determining the seriousness of allegations, and judicial officers do not have the specific tools and criteria available to caseworkers.⁹ Judicial officers therefore have to rely on the information, sourced from completed risk assessments, and selected by caseworkers and solicitors for inclusion in court documents.

2.4.2. *Best interests*

This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount (Care and Protection Act NSW 1998)

The phrase, ‘in the best interests of the child’, pervades all aspects of the NSW child protection system from early intervention schemes designed to address reports of low level risk, through work with families, to formal statutory investigation, the resulting legal responses and the provision of out-of-home care services to children and young people placed in care. By the time a specific case appears before a judicial officer at the Children’s Court, various interpretations have already been made of what may be in that particular child’s best interests. The application and reports that initiate proceedings at the Children’s Court contain sections asking for clarification around prior action and why the proposed orders are required. These sections indicate a requirement to outline what steps will lead to ensuring the safety and well-being of the child. As proceedings progress, the ‘best interests’ of a child will usually be articulated most directly in the care plan that Community Services presents to the

⁹ See (Department of Human Services (NSW) re Amanda & Tony, 2012)).

Children's Court. Care plans may be the result of external consultations with the other parties, or within the Alternative Dispute Resolution process.

The meaning of 'best interests' and the reasons for its importance within care proceedings have been the subject of much debate (Hansen and Ainsworth, 2009). Authors, including Goldstein (1984) and Hubbell and Parker (1994) have debated the establishment of this specific criteria within decision-making. Freeman (1997) outlined particular difficulties raised with the use of the 'best interests' principle, including the lack of substance available in the term. Where so many interpretations are possible its relevance can be lost when there are no specific guidelines for the use of the principle (Fernandez et al., 2013b). Another factor is how realistic the 'best' scenario may be. The reality of court orders not actually being able to fully predict all possible future eventualities and risks for a child, is raised as to why it is not always possible to reach a decision on what is 'best'. What is realistic and the least detrimental alternative may instead be what is reflected in the Children's Court orders (Fernandez, 1996). Despite these concerns Judicial officers continue to refer frequently to 'best interests' as the cornerstone of the work they do (Zito, 2010). The prevalence of the 'best interests' discourse indicates that, despite the complex system that has developed surrounding the care and protection of child, it ensures that children's welfare remains central to the Children's Court's decision-making agenda (McLachlan, 2008).

Professional judgement and the application of specific values in interpreting child protection cases provides a broader context for understanding discussion of 'best interests' within court decision-making. The consideration of child well-being and 'best interests', as with other discourses surrounding poverty, social-exclusion and disadvantage, can have definitions that are narrow and categorical, or broad and encompassing (Delfabbro, 2009). It is possible for one practitioner, for instance, to conceptualise well-being utilising a strict set of criteria and organisational guidelines, while another may be required to provide summaries and recommendations informed by a generalised picture of a child's situation and circumstances at a particular point.

A body of work exists examining challenges involved in ensuring clarity in definition (Hansen and Ainsworth, 2011, Zito, 2010, Scott, 2009, Ross, 2013). Various applications of the 'best interests' principle used within the overall child protection process include assessment/investigation procedures, and the development of new models examining best practice in existing child protection assessment procedures (Delfabbro, 2009). The concept of professional judgement in relation to 'best interests' is of particular relevance when it is considered that the Children's Court can only make decisions on the evidence put before it, and Judicial officers need to consider this principle within the context of the specific interpretation already provided to this value, in addition to their own.

2.4.3. Least intrusive measures

In deciding what action it is necessary to take (whether by legal or administrative process) in order to protect a child or young person from harm, the course to be followed must be the least intrusive intervention in the life of the child or young person and his or her family that is consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development (Care and Protection Act NSW 1998)

The current Care and Protection Act requires that, where possible, the 'least intrusive' course of action is followed. Consideration is given to this following the establishment of a matter, and the finding that, due to the current threshold of 'risk of significant harm', the child is in need of care and protection. The Children's Court is now charged with considering several courses of action to address this, typically to alter the care arrangement and parental responsibility for the child. The implication of 'least intrusive' measures, crucially acknowledges that court involvement with a family will inevitably have long term consequences for a child. Considerations of when court

intervention is appropriate, and where more time may be needed for specific services to work with families, or for parties to engage in mediation, attempt to ensure that any orders made are necessary, and suitable (Block et al., 2010a).

Clear links can be made between principles of 'least intrusive' and 'best interests'. Crucially, the legislation provides that any intervention must be made in connection with the primary concern of safety and well-being for the young person. The reference to safety and well-being in relation to 'least intrusive' measures indicates the reality that, in many situations, the placing of a child in care is a substantial intervention that may be needed to ensure the appropriate concerns are addressed (Hansen and Ainsworth, 2011). 'Least intrusive', therefore, suggests that arrangements may be optimal, but not necessarily ideal (Fernandez, 1996). In these situations, the judicial officers' role in considering the specific care plans that are proposed, and in confirming whether or not any kinship placements have been assessed or are appropriate, is a further measure designed to ensure the 'least intrusive' approach for a child.

2.4.4. *Permanency*

If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child's or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement (Care and Protection Act NSW 1998).

The optimal path for achieving best interests for children is a key consideration for judicial officers. The idea that decisions made should lead to a sense of stability and security in order to promote a child's optimal growth is a construct that has become entrenched further within the Children's Court over various reforms. Permanency planning guidelines are a result of data indicating that insecure care arrangements and

multiple placements have negative consequences for children who enter the care system (Ainsworth and Hansen, 2013, Maluccio, 2011, Thoburn and Courtney, 2011).

Currently, the Children's Court is asked to consider whether permanency planning has been addressed prior to the granting of any final orders. In practice this is usually through the endorsement of a care plan file by Community Services, or consideration of specific undertaking any parents or carers may be required to sign in relation to proposed arrangements for the child. In addition to consideration of care planning Judicial officers also consider permanency when making administrative decisions regarding proceedings, such as the granting of any adjournments or the length of time allowed for evidence to be submitted or Hearing dates fixed. The impact of delays on the child's current placements, main attachments and emotional well-being, has increasingly been cited by judicial officers (McLachlan, 2008). A focus on timeliness of proceedings acknowledges that, within the care jurisdiction, there are long term consequences for a very vulnerable section of the population, and that ensuring 'least intrusive measures' and the ultimate 'best interests', also requires making court procedures focused on achieving stability for the child.

The application of principles of 'risk of significant harm', 'best interests', 'least intrusive measures' and 'permanency' indicates that one essential component of the Children's Court decision-making process is professional opinion provided both in evidence, and in the judicial officer's own interpretation of it. It is apparent that a major aspect of the work of judicial officers is ensuring a balance of the consideration of the evidence with their judgements and perceptions of the principles inherent in the policy and legislation available to them. Families and circumstances are so varied that even the development of definitions and interpretation of the core values of the Children's Court is dependent on further clarification within case law. Judicial officers are required to place these specific core values within the very specific context of the information available on a matter, and what the interaction between the values and evidence means for determining suitable outcomes for children. Of particular interest

to this study is the convergence of such guidelines for decision-making with the knowledge and interpretation of individual professionals.

2.5. Conclusion

This chapter has outlined the scope and challenges present in the Children's Court jurisdiction. It has provided analysis of the broad context of both growing trends on child abuse and neglect prevalence, and also the growing public interest in matters of child maltreatment. A number of factors, including growth in awareness and reporting of child maltreatment, as well as the development of specific principles to respond to it, have combined to develop a very unique model of operation for the Children's Court. The challenging nature of the concerns that are brought before the Children's Court have created a hybrid approach to court proceedings and specific standards of evidence. This points to a system challenged to deal with highly charged subject matter, requiring nuanced and flexible approaches. The care and protection jurisdiction is distinct from other jurisdictions that handle domestic violence related material, such as the Family Court, as it is required to utilise retrospective material to ascertain future level of risk, as opposed to a purely forensic review to determine facts and blame (Fehlberg, 2000).

When a care and protection matter reaches the point of official court proceedings much has already been established in terms of the positions of various parties, the evidence available, the particular orders the Children's Court can consider and the procedure that can be followed. Throughout proceedings, an additional strand emerges guiding the work of the Children's Court, the application of specific principles to the practice and decision-making process of the court including *risk of significant harm, best interests, least intrusive measures* and *permanency*. The care jurisdiction is acknowledged in Australia as one fraught with competing principles (Fehlberg, 2000).

Decisions made in the care and protection jurisdiction of the Children's Court are made in difficult and contested conditions. This chapter has described the jurisdictional, legislative and policy circumstances in which decisions are made. The Children's Court has specific authority in making court orders that have long term impacts on extremely vulnerable children and families.

A clear challenge in this responsibility is that both the past and future issues at the core of a court matter may not be able to be fully clarified. Due to these unique circumstances, the Children's Court has been established and operates with as little formality as possible, with a 'hybrid' model that is both adversarial and mediation focused. The influences of legislation and overarching policy reform can be seen to be translated in the changing approaches to care matters by the Children's Court. Of great significance to this study is the role of judicial officers in the application of core values to ever-changing guidelines for highly specialised cases. The next chapter reviews the existing research and literature that has informed this study.

3. Conceptualising Domestic Violence and Child Abuse Factors in Child Protection Decision-Making: A Review of the Literature

3.1. Introduction

Existing literature has established the parameters for understanding court decision-making. This literature includes the development of definitions and approaches to assessing child maltreatment and domestic violence. Prior research into child protection decision-making and court decision-making is also important in understanding the Children's Court Of New South Wales ('the Children's Court') response to domestic violence as a specific issue of child maltreatment.

This chapter is divided into five sections. These discuss the key areas identified in the literature relevant to the present study. The first and second sections explore the present discourses and challenges in the understanding of child maltreatment and domestic violence. The third section considers existing evaluations of child protection responses to domestic violence as a child maltreatment issue. The fourth section reviews prior research and analysis of child protection decision-making and court decision-making. This appraisal of literature provides a foundation to this present study.

Literature specifically examining Children's Court decision-making is underrepresented in the existing research in Australia. As Sheehan et al. state, 'there is a dearth of literature examining the meaning of protective intervention for children whose lives are intersected by the law' (2012:67) . This chapter will review available material examining child protection decision-making, and court decision-making in general, as a basis for understanding the Children's Court approach to making decisions. Reference will be made to the relevant Australian research and international research in this field.

3.2. Child Maltreatment

The development of interventions in child abuse and child maltreatment have been closely tied to the discourses surrounding childhood and the role of children. Historically the treatment of children has developed from the child, 'being considered basically a nonentity or miniature adult to being a special class of human being; and from property to partial person status' (Hart, 1991: 53). Positive notions of childhood have informed the development of a perspective on 'children's rights', which in turn has seen the emergence of protections and safeguards necessary to ensuring children's rights, including the right to be free from abuse (See Block et al., 2010; Freeman, 1997; Franklin, 1996). Recent discussion has centred on the expansion and refinement of child abuse categories such as physical, emotional and sexual abuse (See Barnett et al., 1993; Blakester, 1993; Cleaver, 2011). This has included more recent incorporations of a specific 'neglect' category to define the absence of basic needs or requirements for children (National Research Council 1993). Thus child maltreatment is not only abuse or the 'committing' of certain acts of physical, sexual or emotional violence but also the 'omitting' of care responsibilities (Block et al., 2010b).

3.2.1. Historical constructions of childhood and parenting

The concept of an 'optimal' childhood has been studied in many permutations, specifically in the psychological field. Existing research, defining and categorising child maltreatment has been instrumental in identifying the complex needs of children including security, attachment and a sense of self-worth (Aldgate, 2006a). It has been stated that to meet the needs of children 'society has long relied on the assumption that parents should be responsible for the welfare of their children and they should be allowed wide latitude in how they meet this responsibility' (Waldfogel, 1998: 8). Developmental psychologists have criticised the notion of an optimal childhood as moralistic by countering that this concept only serves to construct and police modern

childhood in an unrealistic and unrepresentative fashion (Jones and Lynch, 1998). Such critiques of the concept of an 'optimal childhood' prompt consideration of the opposite end of the spectrum of childhood experience, a sub-optimal childhood or maltreatment, and the consequences of such experiences for children (Jones and Lynch, 1998). There have been further arguments regarding the confronting nature of the recognition of child abuse:

One of the our most cherished folk beliefs is that human nature compels parents to rear their young with solicitousness and good intentions, and tender and loving care. Evidence to the contrary - the rather alarming frequency with which parents harm or fail to adequately care for their offspring - has forced the recognition that child abuse and neglect are well within the repertoire of human behaviour (Korbin, 1980: 11).

The above statement highlights that the recognition of child maltreatment has posed a fundamental shift in the way that childhood and parenting is understood. The decisions that are made by professionals working in the child protection sphere are influenced by discourses of childhood, parenting and appropriate care of children. Such discourses have evolved over time.

3.2.2. Child welfare discourse: Identification of child abuse and child maltreatment

The increasing rate of identification of different forms of child maltreatment in the second half of the twentieth century saw the emergence of a specific model of child welfare in many western societies (Parton, 1991). Helfer has described this period of the 1960's as, 'a time when the abuse and neglect of children became nationally recognized and subsequently became a social problem' (Helfer, 1982: 251). Medical practitioners conducted specific investigation and reporting on the presentation of children with non-accidental injuries (Kempe et al., 1984). Kempe and colleagues coined the phrase the 'battered child syndrome', triggering international efforts

focused on finding methods to protect children and understand the dynamics of child abuse (Helfer, 1982).

A crucial development in the understanding of professional and government prioritisation in child maltreatment intervention has been the construction of the specific category of neglect and emotional abuse (Daniel et al., 2011, Stevenson, 1998). Significantly, this expansion of the understanding of child maltreatment has included categories such as nonphysical forms of trauma (Giovannoni and Becerra, 1979). Behaviour commonly identified as neglect, comprises characteristics including unsafe housing, unhygienic accommodation, lack of suitable food, lack of medical care, lack of education, and, inappropriate levels of supervision (Giovannoni & Becerra, 1979). More recently in social work research (Brandon et al., 2010, Antle et al., 2007, McGillivray, 1992), there has been a focus on understanding children's emotional and psychological development needs, and the risk of emotional abuse from threats to harm the child or loved ones, severe discipline, insufficient attachment or emotional distancing in the relationship with the parent, belittling or demeaning actions. The process of defining neglect and emotional abuse in existing literature has created a distinction between acts of commission and acts of omission. For instance, being unable or unwilling to seek medical treatment for a child can be viewed as an act of omission, whereas, deliberately choosing to isolate a child for long periods is an act of commission (Daniel et al., 2011). It is important to note that acts of physical or sexual abuse can have elements of neglect or emotional abuse, such as leaving a child alone with known offenders (Helfer, 1982). Conversely, acts of emotional abuse can cause physical ramifications, for example, inappropriate forms of discipline that result in physical injuries. Trauma and the cumulative detrimental impact of maltreatment are the common factors across all established categories of neglect (Helfer, 1982). The expansion of knowledge in areas of childhood trauma and neglect have been crucial to defining child maltreatment and also creating an evidence base for responses to cases, such as those reviewed in the present study.

The influence of the medical and psychological fields have been critical to the defining of child maltreatment. They have shaped the prevailing public consciousness of what constitutes child abuse and neglect. The association of child welfare with science, medicine and psychology can be perceived to provide objectivity, precise determination and legitimacy to the establishment of categories of child maltreatment. Yet in practice, as Parton and Byrne (2001) argue, what constitutes abuse and neglect is frequently open to conflicting interpretations. Despite such conflicting interpretations of child maltreatment issues, clinicians are cast as experts, with their judgements in matters of abuse and neglect counted as truth claims (McConnell and Llewellyn, 2005). Ongoing difficulty with such claims to objectivity have been described:

The influence of the clinical sciences is critical in at least two respects. They have shaped the prevailing consciousness of what constitutes child abuse and neglect. The association of science with medicine and psychology bestows a veneer of objectivity, precise determination and legitimacy. Yet in practice what constitutes abuse and neglect is open to frequently conflicting interpretations. (McConnell and Llewellyn, 2005: 555).

The claim of subjectivity in child protection assessment has been furthered through suggestions that:

Debates regarding the need for clear and established categories of child maltreatment fail to account for a lack of universal understanding of the role of children, or how children should be treated, despite overall agreement of their inherent vulnerability and the need for action, particularly through the emergence of notions of child welfare and child protection (Daniel, 2010: 240).

The references to the role of objectivity and subjectivity in the above statements suggests that how child protection responses are conceived and described is a key

factor in understanding the approaches to intervention of child protection professionals in cases of child maltreatment. Literature examining interventions by the child protection field have inevitably raised questions regarding the subjective nature of defining child maltreatment. Korbin explains the essential complexity of defining child abuse and neglect:

Conventional wisdom might lead one to believe that child abuse and neglect would be easily identified across cultural boundaries. As one begins to explore the considerable variation in childrearing beliefs and behaviours cross-culturally, however, it becomes clear that there is not a universal standard for childrearing, or for child abuse and neglect. At the same time, we cannot take a stance of extreme cultural relativism in which all judgements of humane treatment of children are suspended (Korbin, 1980: 68)

The above statement demonstrates the importance of acknowledging the cultural and individual influences that inform definition and responses to child maltreatment. The assessment and identification of abuse is a key dilemma in professional responses to child maltreatment. The concept of abuse encompasses socially and culturally constructed notions of what is acceptable and unacceptable treatment of children, and what constitutes unacceptable harm for a child (Axford, 2009). Child protection assessments involve:

... deciding a threshold, or a point at which parent behaviour constitutes abuse. The setting of threshold of intervention is influenced by moral and legal questions, theoretical orientation, and knowledge of the impact of maltreatment as well as resource constraints (Fernandez, 2014: 33).

Definitions and categories that inform responses to child abuse and maltreatment are therefore an important consideration for the present study, ultimately because they are derived from social values and these values are incorporated into the definitions

used in our laws, professional guidelines and legislation (McArthur et al., 2011). In the case of NSW, the state government and specifically the Minister for Community Services are essential elements in the process of establishing thresholds and priorities for intervention. For instance, in 2012, the Minister for Community Services issued a press release titled, 'Sweeping Reforms Proposed to Improve Child Protection in NSW' (Goward, 2012). In this statement the Minister outlined the following hierarchy for intervention:

We first try to help families change so their children can live at home. If this is not possible, children should then live with other family members who have long-term guardianship and if that is not an option then open adoption. Children should only go into the long-term parental responsibility of the Minister (foster care) as a last resort (Goward, 2012).

Such announcements of policy priorities inform the processes of the Children's Court (Sheehan, 2000).

3.2.3. Emerging state intervention: the growth of 'child protection' responses

The shift from child welfare to state directed child protection responses to child maltreatment has been a crucial stage in the development of the child protection discourse identified in existing literature such as Buchanan (2007). State response to child maltreatment is deemed controversial, as it provides for the role of the state in intervention, as opposed to relying on a moral imperative for families and communities to ensure welfare of children (Jones and Lynch, 1998). The state is required to take further action to respond to child maltreatment, as there are renewed calls for further law reform and actions to safe-guard the rights of vulnerable children and families. In detailing the role of the state in child protection Jones and Lynch argue that, 'Feminist critique of power relations along with the "discovery" of child sexual abuse opened the private sphere of the family to scrutiny' (1998: 485). According to Farmer and Owen (1998), public concern about violence towards children occurring within the

traditionally private domain of the family home has been the result of strong campaigns by Feminist activists calling for tougher responses to cases of male violence. The success of these campaigns contributed to reinforcing the children's rights movement, as discussed by McGillivray (1992) and Parton and Byrne (2001).

The rapid expansion of public interest and response in the treatment of children, including responses informed by concepts of welfare and child protection are closely linked to acknowledgement that children are in fact a specific category of people who have claims to rights (Parton, 2014). International conventions including the UN Convention on the Rights of the Child are very detailed in outlining expectations for signatory states (Goldfarb et al., 2015). The convention's expectations for signatory states include taking all appropriate legislative, administrative, social and education measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, while in the care of a parent or legal guardians (Jones and Gupta, 1998). These conventions have therefore sanctioned the role of the state in ensuring protection of children (Svevo-Cianci et al., 2011).

The debate surrounding state intervention has comprised two arguments – those who have advocated for greater action on the part of governments to address child maltreatment as evident in the work of Winkworth (2009), and those proposing a greater focus on preventing the individual and family vulnerabilities that contribute to child maltreatment such as Collings and Davies (2008) and Fox Harding (1991). A vocal parental rights movement has also emerged in response to a perception of over-zealous intervention by the state (McConnell and Llewellyn, 2005). This parental-rights response views the family as almost sacrosanct and lambasted state intervention as an unwanted intrusion, calling instead for better resourcing for families, and promotion of informal and community generated interventions (Thorpe, 2007).

The state intervention debate has centred on the fundamental question of the responsibility for child abuse and the response to it:

If a child was abused, someone (parents, social worker) or something (the 'system') must be to blame, either for causing the abuse or for failing to predict and prevent it. The emphasis on individual pathology virtually excluded consideration of the effects of such factors as poverty, social deprivation and discrimination (Davidov et al., 2012: 610).

Distinctions have therefore been made between the state's responsibility to intervene in responding to address structural and ecological factors in child maltreatment, and the individual responsibility of parents (Svevo-Cianci et al., 2011). Schmidt argues that approaches emphasising the need for whole community responses to the welfare of children have been replaced in many western countries with discourse 'focused on fixing dysfunctional parents when there is abuse or the risk of abuse through an investigative, stand-alone child protection system' (2007: 247).

Child protection responses have been described as crisis and resource-driven, especially as the number of individual families requiring services continually increases (Cash, 2001; Cashmore, 2007). The construction of crisis in child protection, both nationally and internationally, has also furthered the understanding of the statutory response to child protection (Briede and Loffell, 2005). Currently, there is a perception of a financial and resource crisis that threatens the ability of the child protection system to operate effectively (Briede & Loffell, 2005). Sammut and O'Brien (2009) argue that this crisis extends beyond child welfare agencies, to the Children's Courts, government departments and other associated services. According to Schmidt (2007), only in recent years have states formally acknowledged the personal toll of these constraints on social workers. These institutional shortages impact on children, as tertiary services are compromised and, 'considerable backlogs have developed and the residual nature of service delivery is reinforced' (Schmidt et al., 2007: 259). Consequently, discussions of crisis and resource shortages in the child protection system can potentially shape discourse of child protection issues, particularly the

definition of risk. Of specific relevance to this study is the above identification of crisis driven responses, and the current emphasis in child protection practice on the need to prioritise the statutory management of immediate risk concerns.

Definitions of risk have been crucial to understanding child protection interventions. Daniel argues that, 'in the context of child protection, "risk" denotes the chances of adversity translating into actual negative outcomes for children' (2010:241). Furthermore, in practice, risk is used as shorthand for capturing an often ill-defined combination of issues including:

the chances of a child experiencing a particular adverse circumstance; the chances of a child being sexually or physically abused, or re-abused; the chances of the parents or carers being unable (or unwilling) to ameliorate the impact of adversity (Rojek, 1985: 65).

The acknowledgement of the agency and rights of children has been instrumental in the growing awareness of the impact of domestic violence and child maltreatment on children. Of interest to this study is the process by which the social and political context in which child maltreatment is responded to, can potentially widen or limit the scope of interventions that are deemed important. For instance, if general terms are used to describe complex issues such as the interface of domestic violence and child maltreatment, professionals are likely to be bound to respond from that general standpoint. The next section will outline the development of different approaches to the understanding of domestic violence and their implications for court decision-making in cases involving the interface of domestic violence and child maltreatment.

3.2.4. Domestic Violence

Domestic violence is a relatively new area of inquiry. The definitions and specific categories that have been established have increased public attention in recent decades. Several distinct approaches to the issue of domestic violence are present in

the existing literature. This section will discuss the key issues relating to these approaches and the emergence of current definitions of domestic violence. Thereafter, existing domestic violence literature will be considered in terms of several major responses to domestic violence including Feminist, family violence, community and legal centred responses and their relevance for court decision-making.

3.2.5. Defining domestic violence

Currently there is a lack of consistency in definitions and terminology around the issue of domestic violence. Many different definitions and terminology have been used to describe the experience of domestic violence: 'violence against women', 'intimate partner violence', 'family violence' and 'marital violence'. These terms have been used to variously expand or limit the categories of violence, victims and perpetrators. Domestic violence is generally accepted to involve:

Abusive behaviour used to control and dominate which, in the vast majority of cases, tends to be violence from men to women. Domestic violence is not limited to any particular class or ethnic or social group but occurs across the social spectrum-even if it is experienced differently by women from different contexts (Hester and Pearson, 2011: 837).

This statement highlights the nature and scope of the issue of domestic violence, and that its impact is not confined to any one social group. Terms that are used to describe domestic violence have particular implications for who is prioritised in naming experiences of violence, and the experiences that may be discounted (Murray and Powell, 2009). There are specific political and social agendas behind many of them. According to Carrington analysis of domestic violence must begin with:

Clear definitions and explanations of the language used, as there is much room for miscommunication due to the co-opting of language and the debate as to what constitutes domestic violence. (2012: 116).

For instance, the term 'domestic' appears to limit the context for the violence to those who live together, whereas violence from male partners often continues after women leave (Kaye et al., 2003). Moreover, the word 'violence' may indicate exclusively physical abuse, whereas women experience a range of different forms of abuse from their violent partners-including physical assault, sexual abuse, rape, threats and intimidation, humiliating and controlling behaviour, deprivation, isolation, belittling and criticising (Kaye et al., 2003). Frequently the abuse will involve a mixture of these, with the emotional abuse, constant criticism, undermining, humiliation and living in fear having equally detrimental consequences upon the health of victims, in addition to the impact of more extreme events of physical and sexual violence (Othman et al., 2014). Hester and Pearson (2011) suggest that domestic violence may include a range of abusive behaviours not all of which are in themselves inherently 'violent'. Furthermore, there is an essential paradox in defining domestic violence in that violent relationships involve the co-existence of violence and intimacy. Consequently, the complexity of the phenomenon of domestic violence raises important issues including 'the importance of the naming and framing of such violence; explanation, responsibility and agency; and gender, hegemony and discourse in men's violence to known women, as part of a multifaceted power approach' (Hearn, 2013: 152).

In analysis of domestic violence two dominant schools of thought have been family violence theorists (Lessard et al., 2014, Murray and Powell, 2007, Ryburn, 1993) and Feminist theorists (Breckenridge, 1999, Humphreys and Stanley, 2006, Damant et al., 2008). The Feminist response to the problem of domestic violence has advanced both practical and conceptual understanding of the issue in several important ways. Firstly, this has occurred through developing theoretical underpinnings to explain the issue, and positioning it in broader discussions of gender stereotypes, power relations,

patriarchy and the position of women in society (Farmer and Owen, 1998). Secondly, Feminist activism has identified the need for a response to promote victim safety and accountability of perpetrators (Crenshaw, 1989). Finally, the Feminist framing of domestic violence has been used to argue the need for effective community and legal engagement around the issue (Hagemann-White et al., 2014).

The development of Feminist theoretical explanations has supported the understanding of the reasons for and impact of domestic violence at individual, family, community and international levels. Feminist theory has reframed the issue from one of simple and inevitable marital disharmony and typical behaviour, to a serious and negative infringement of personal rights, specifically the rights of women. Several theoretical explanations for domestic violence have been advanced through broader discussions of power relations between the genders, and the specific consequences of un-checked patriarchal authority (See Brown et al., 2011; Wangmann, 2012; Hanmer, 1990; Dutton, 2007). Discussion of power relations between genders has included critical examination of stereotypes surrounding appropriate roles for women as wives, mothers and acquiescent family members, and for men as head of the household, commanding automatic respect and subservience (Carrington, 2014). Such gender-biased assumptions affected theoretical constructions in a whole range of fields from science, religion, industrial relations and education (Humphreys and Stanley, 2006). Particularly vital in the area of domestic violence has been the challenge to the fundamental notion that the family is sacrosanct, and that traditional roles and values must be upheld no matter the cost (Humphreys and Stanley, 2006).

Numerous criticisms of Feminist constructs of domestic violence have emerged, highlighting important necessary clarifications to the defining of the issue. The counter claim to arguments of domestic violence as a gender-based issue of control and female subjugation, follows a central argument that 'it's about more than gender', highlighting individual psychopathology, conflictual relationship dynamics, socio-economic

stressors, and correlations between violence and alcohol and drug abuse (Nixon and Humphreys, 2010: 137). A further criticism relating to Feminist responses to domestic violence is a lack of consideration of the intersectionality of women's experiences, meaning the way that race and class combine with gender to increase the vulnerability of some women (Murray and Powell, 2009). A common argument made in this area is that this is not solely an issue of men's violence against women, and that definitions need to be expanded accordingly. Examples are cited of female perpetrators and male victims, and cases of mutual violence, in research from Anderson (2002) and Straus (1980). Feminist researchers, including Dobash and Dobash (1979), Hanmer and Maynard (1987) and Tomison (2000), have sought to redress this through a focus on explaining the individual consequences of patriarchal domestic violence. As suggested by Berk et al. (1983), Browne (1992) and Larrivée et al. (2012), analyses that expand definitions of violence are helpful in seeking more nuanced interpretations of the experience of violence. Larrivée et al. (2012) argue that domestic violence should be interpreted as an issue that is predominantly, but not solely, impacting women, occurring across boundaries of class, race and sexuality.

The phrase 'family violence', has emerged in recent years in an effort to include the specific experiences of children, and to allow for the reality that there may be varied relationships between victim and perpetrator, and in some cases even multiple perpetrators (Humphreys and Stanley, 2006). Family violence theorists, including Lynch et al. (1997), argue that emphasis on individual roles of victims and perpetrators in domestic violence fail to account for the structures of patriarchy and inequality that contribute to violence. However, from another perspective, when the focus shifts to the general 'family' rather than the specific relationship between victim and perpetrator, issues are raised regarding the victim's role in the abuse (Fleck-Henderson, 2000). Women may feel implicitly blamed for the abuse that has occurred when they are confronted with terminology that labels their role in the violence, alongside the pressure to leave abusive relationships. This pressure can be further

compounded when the identified treatment goals, such as addressing the presence of violence, are overwhelmingly focused on them. This approach to defining domestic violence ignores the need for understanding the specific experience of women, for instance 'why victimised women behave and react as they do' (Nixon and Humphreys, 2010:142). The key issue raised in debate about defining domestic violence is that of interpretation. This is dependent on a whole range of factors including context, status and connection to the specific incident itself. Existing research has acknowledged the importance of the specific role of factors including age, gender, and cultural context in the experience of domestic violence (Dwyer et al., 1995). Significantly, current data have identified that the majority of perpetrators of violence are men and the majority of victims are women (ABS, 2013). This indicates that perspectives of gender and traditional gender roles will be important in how the broad issue of domestic violence is identified and understood. This thesis is particularly interested in the discourses surrounding domestic violence that influence and are used by professionals in their assessment of individual experiences of children.

For the purposes of the present research, the term 'domestic violence' will be used in accordance with the wording of the *Children and Young Persons (Care and Protection) Act 1998*. In addition, the current definition of domestic violence from Community Services will be used as follows:

Domestic and family violence includes any behaviour, in an intimate or family relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear. It is usually manifested as part of a pattern of controlling or coercive behaviour (FACS, 2014).

The specific criteria used when considering domestic violence in the Children's Court proceedings can be found in section 23 of the Care Act. This section of the legislation states that 'the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at

risk of serious physical or psychological harm' (Care and Protection Act NSW 1998, s23). For the purposes of this research 'harm' will be used also as defined in this section of the Care and Protection Act. This section stipulates that, 'a child or young person is "at risk of significant harm" if current concerns exist for the safety, welfare or well-being of the child' (Care and Protection Act NSW 1998 s23). It is worth noting for the purposes of the present research, that psychological harm has been interpreted further from Community Services to include, 'a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour' (FACS, 2011a).

3.2.6. Assessing domestic violence

The process of identifying and responding to the specific phenomenon of domestic violence provides a rich source for research and analysis. Several trends have emerged in analysis undertaking a diagnostic approach including: focus on predictive factors, patterns of behaviour, specific time frames of risk and help seeking behaviour of clients (Berns and Schweingruber, 2007). Existing literature has established domestic violence as a specific pattern of behaviour, both in relation to victims and perpetrators (Jouriles et al., 2008). Key work, such as that from Bagshaw (2000), characterised domestic violence in terms of the 'cycle of violence' - this has identified the key components and phases that occur in violent relationships. These include, the honey moon phase - where there is an absence of violence, tension building - establishing an unstable dynamic, tensions escalating where an increased threat or risk can be observed, critical incidents involving direct physical violence or other indirect forms of abuse. A final stage is bargaining to maintain relationship which can lead to a repeat of the cycle (Bagshaw, 2000). This concept of the cyclical nature of violence establishes that the experience of domestic violence is not an isolated incident in itself, but involves a complete spectrum of behaviour. Crucially, the bargaining and honeymoon phases provide an acknowledgement that violence is a pattern and is often repeated, and the

decision to remain in a violent relationship occurs within this pattern of violence. The notion of the cycle of violence is one early approach to understanding domestic violence and has been built upon in subsequent analysis, extending or revising the cycle to include additional categories of 'stagnation' that acknowledge there are periods that are routine with no incidents or a reduction in abusive behaviour, and further responses that emphasise the individual experiences of violence (Ehrensaft, 2008). Carrington (2014) has created a 'vortex of violence' tool in order to help professionals and victims understand the process through which the cycle of violence can shift in intensity, and have a negative impact on a woman's individual construction of her own experience and worth. This is a key example where research pertaining to domestic violence has implications for professional practice, equipping workers to acknowledge the individual experiences of women.

Existing research has provided a clinical framework that is used to understand the predictive factors that create environments where domestic violence can occur. Detailed lists of environmental and contextual elements for domestic violence have been identified (Bagshaw, 2000). These include stress, changes in life-style, pregnancy, birth, separation, losing or gaining employment, alcohol or drug abuse, changes in daily habits and routines, and changing or expanding social networks (McPhedran and Baker, 2012). An important caveat provided by researchers including Laing (2008), is that these behaviours are not entirely prescriptive in every case and that a combination of elements is more common than the presence of any one factor. A particular focus in recent studies has been the risk of violence during and post separation (Humphreys and Stanley, 2006). This has been interpreted to be a period of time where victims may be communicating to parties outside the relationship and seeking to establish independence, which in turn leads to a perpetrator response of using violent or controlling behaviours as a means to maintain the relationship and the pre-existing power dynamic (Morrison and Wasoff, 2012).

A final behavioural element that has been expounded in current literature providing analysis of domestic violence, is the help-seeking behaviour of victims. Identification of the particular needs of victims, and the process of ending violent relationships and seeking assistance acknowledges that the cycle of violence is a deviation from normal standard of behaviour in healthy relationships, and that victims will need support to move on. Authors, including Humphreys and Stanley (2006), McDermott (2014) and Browne (1992), have identified both informal and formal mechanisms for support, and have found their effectiveness to vary. Informal mechanisms for victim support including family, friends, religious and community groups, can be seen as helpful, but can also be destructive, depending on their particular focus and interpretation of events (Humphreys et al., 2011). For instance, family members may place strong emphasis on the need for a relationship to be reconciled and the family unit maintained, and discourage making any separation final. Formal mechanisms of support including, the women's refuge movement and the development of a particular support service network for women, have had a large scholarship, both internationally, and within Australia. The particular professional challenges and opportunities inherent in working with victims has established this as a unique component of social work practice and scholarship. Many researchers, including Davidov et al. (2012), Abel (2000), Gondolf and Fisher (1988), Lempert (1996), Dunn (2005), have provided studies into examples of best practice, as well as areas for improvement for professionals working with victims of violence. Dunn (2005) examined the help-seeking behaviours of women, in order to understand the conditions necessary for women to seek assistance within a therapeutic environment. Consideration of the trends in help-seeking behaviour and the conditions necessary for help-seeking behaviour to occur, has formed a large part of identifying training and development needs in professional practice (Lundy and Grossman, 2001).

3.2.7. Community responses

Professional engagement, both in community and criminal responses to domestic violence and child maltreatment, has entailed regular evaluation and contribution from the social research field. The need for regular research and evaluation into domestic violence has developed, as policy and best practice further evolves within this area. Strong empirical examples of the destructive ramifications of domestic violence for the community have expanded discussion of violence from the realm of the theoretical to the practical. Numerous studies have highlighted the consequences of violence, for instance the financial cost of domestic violence in a number of policy areas including health care and mental health resources, community housing, social services and lost employment productivity (Walby, 2004). The interpretation of the 'problem' of domestic violence evolved beyond individual and gender rights, to one of public concern requiring effective community and legal engagement to enhance safety. At a national and international level, public awareness and advocacy campaigns about the issue of domestic violence such as public service announcements and social media advertising by organisations including White Ribbon Day Australia, have been evaluated (Kaufman, 2001). The contribution of such movements has been to 'name the problem' publicly. This constitutes a key step for an issue often interpreted as 'private' and not appropriate for discussion in the public space (Gillespie et al., 2013). According to Gibson (1996), community based programs challenge a number of previously held public pre-conceptions about family problems being confined to specific communities, or to those only in economically disadvantaged areas.

Community concerns relating to domestic violence and ongoing advocacy, both at an international and national level, have not only focused on identification of the issue, but also on identification of the appropriate responses. The development of specific community responses to domestic violence has been analysed by Sabol et al. (2004) as existing alongside other social movements, and making a contribution to both the

construction and response to the issue as a whole. Research on community response has examined specific approaches and best practise examples involving professionals working in domestic violence, including counsellors, social services, refuge workers and doctors. Parton (1991) has acknowledged that perceptions of violence as a 'private' family based issue have fundamentally shifted through public discussion and subsequent legislation and policy. This process moves the debate around domestic violence from the abstract and theoretical to the practical, and is orientated towards building effective policy and resources.

At both state and national levels increasing acknowledgment of the negative consequence of domestic violence for children has resulted in reviews of child protection legislation across multiple Australian states including NSW, and debate over whether living in an environment of domestic violence constitutes grounds for state intervention to ensure safety of the child (Murray and Powell, 2007). The way domestic violence is conceptualised as a public issue directly impacts on the responses that are developed to address it. There are specific implications for the way that the problem is framed, and whose experience is included or excluded. For instance, analysis of domestic violence that has focused on 'family preservation', including Gordon (1988, cited in Murray and Powell, 2007), seeks to identify policy responses that 'strengthen families'. Critics of past domestic violence policies that contained family preservation orientations argued that these responses lacked understanding of gendered causes of domestic violence (McDonald, 2005; Phillips, 2006). Such analysis is useful as, according to Buchanan (2007), policy frames both understanding of causes of violence, and also potential solutions. This interpretation of policy informs the present study's focus on the links between professionals' knowledge of domestic violence and the assessments that they make regarding appropriate interventions, in implementing child protection policies.

3.2.8. Legal responses

Legal researchers, including Bailey-Harris and Harris (2002), have described the process of definition and framing of domestic violence as crucial to emerging legal responses. It should be noted that a similar process has occurred in the development of statutory responses to child maltreatment, with the emergence of the argument for public responsibility and engagement in the welfare of children. Domestic violence studies have created awareness of social research being utilised under a banner of ‘the personal becoming political’, referring to the re-positioning of domestic violence as not private but rather a social issue warranting public consideration and response (Weissman, 2007).

As community awareness of domestic violence has grown, discussion has increasingly turned to the role of the state and law in addressing the issue. The last several years have seen the creation of specific domestic violence legislation, with resulting analysis and comparisons. According to Hagemann-White et al. (2014), in NSW anti domestic violence measures are still under a process of reform and refinement. Research and evaluation thus has a crucial role to play in guiding these developments. Such analysis is obviously complicated by the need for a legal response to engage in several jurisdictions simultaneously (Kane and Darlington, 2009). There are specific preventative civil measures in terms of Apprehended Domestic Violence Orders (ADVO), and family court measures to facilitate the negotiation of separation, divorce, and residency and contact for children. It should be noted that there have been reforms in these preventative measures, for instance the expanded provisions of the ADVO scheme replaced the previous Apprehended Violence Orders (AVO) in NSW in 2013 (Bessant, 2015). Where sufficient evidence exists, criminal proceedings may be enacted in relation to assault or other relevant charges. The overlap of state and federal legislation and criminal and civil jurisdictions can therefore have an impact on how cases of domestic violence are managed. The confusion that can result for victims

going through multiple proceedings at once and indeed even confusion between the legal systems as to any hierarchy to systems and procedural issues, such as sharing of evidence or testimony, has been identified by Lewis et al. (2001) as an area for further investigation.

Much material has been made publicly available regarding the federal jurisdiction of the family law court and its response to child protection issues related to domestic violence. A large body of case law material for example has assisted research into this area. Existing literature has highlighted the heated environment of the family law disputes, where allegations of abuse, including domestic violence, have been made within proceedings in relation to separation, and residence and visitation for children. This analysis, crucially, has focused on the impact of domestic violence on children, and on considering how the best interests of children should be considered in such circumstances (Shlonsky and Friend, 2007). Authors, including Shlonsky and Friend (2007), have provided an important overview of the decision-making involved in family court matters involving child protection concerns and how issues of parenting and risk are considered within such proceedings. Researchers predominantly examining the family law jurisdiction, including Seddon (1993), Jouriles et al. (2008) and Best (2003), have identified domestic violence as a critical area for legal reform. There has been substantial reform in the family law jurisdiction in recent years, particularly in relation to guidelines for the handling of cases involving child abuse allegations.

The conceptualisation and definitions that have been developed about violence that were discussed in this section, have implications for the present research. For instance, current analysis of the responses to domestic violence suggest an inconsistency in interpretation of the issues that create competing priorities, as well as a bias in the way domestic violence is described. Caseworker assessment of domestic violence reflects their particular understanding and response to the problem. Following on from assessment, caseworkers' understanding and approach to domestic violence will

determine the language they use in court to describe violence. The issues are widened or narrowed according to the particular understanding of and priority that professionals give to domestic violence. If there is variation in the level of professional understanding of the issue of domestic violence this will impact on the quality of information and assessment provided to the Children's Court. The capacity of the Children's Court to base decisions on adequate understanding of the impact of violence in a given case may then be compromised (Axford, 2009). Of particular interest in this study is professional interpretations of domestic violence that intersect with interpretations of child maltreatment, and how these interpretations are influential in forming a basis for decisions in the children's court. The link between domestic violence and maltreatment consequences for children will be described in the next section.

3.3. Conceptualising Domestic Violence as Child Abuse

Domestic violence as a specific risk factor for children is an emerging area of interest in existing literature. Parental domestic violence is acknowledged to impact on children in many ways, both directly and indirectly (McGee, 2000). The need for diverse approaches and perspectives to understanding the interface of domestic violence, child maltreatment and parenting is explored in several key works, for example Holt (2008) and Moffitt and Caspi (1998). This section will review the multiple perspectives on domestic violence as a risk factor for children in existing research. Ogbonnaya and Pohle (2013) and Yoo and Huang (2012) have conducted research into indicators to assist practitioners in the assessment of children (Ogbonnaya and Pohle, 2013) Other research has examined the perspectives of professionals working with women and children experiencing domestic violence (Postmus and Merritt, 2010). A third major focus in research has identified the legal implications of domestic violence allegations within the family court setting (See Edleson, 2004; Kelleher et al., 2005). What stands out in existing investigation into children's experience of domestic violence from

authors such as Holland (2000), Hoyle (2008) and, Toews and Bermea (2015), are the various and often complex responses exhibited by parents and children. As both the parent and the child are victims, both are likely to display trauma based behaviour that can impair the relationship (Beeman et al., 2001). The underlying trauma of the parent and child, who are likely to be the only witnesses in incidents of domestic violence, may not be readily apparent to professionals (Hoyle, 2008). Moreover, as indicated by Hester and Pearson (2011), professionals who are working in child protection are required to make the link between domestic violence and ensure safe outcomes for children.

In several studies examining the impact of violence on children, including McGee (2000), Cleaver et al. (2011) and Barker et al. (2013) children have provided accounts of strong awareness of the presence of domestic violence. Examples of this awareness have included children observing parental interactions prior to and after incidents, as well as their involvement in the aftermath of events, for instance comforting the traumatised parent and needing to care for younger children (Krane & Davies, 2000). Such behavioural evidence offered by Davies clearly demonstrated that these experiences take place and impact on children, despite frequent assertions from parents that they were able to keep children removed from the situation (Krane & Davies, 2000). This research has demonstrated the very strong impact violence has on children. The research described in this thesis considers how caseworker knowledge of the impact of domestic violence on children may be incorporated into their assessments and the evidence that is provided to the Children's Court.

3.3.1. Parenting in the context of domestic violence

A large body of discourse and interpretation exists around what is acceptable and what is unacceptable parenting in situations of domestic violence in applications put to the Children's Court. Establishing domestic violence as a very real and distinct category of

risk to children in court proceedings acknowledges two crucial points. Firstly, the experience of domestic violence can have a negative impact on children (Holt et al., 2008). Secondly the impact of the experience of domestic violence can vary from extremes of direct physical harm, to neglect and long term developmental consequences arising from deterioration of parenting (Holt et al., 2008). The range of consequences of violence requires flexibility in interventions for parents and children, depending on the child's exposure to the violence and their observations and supports.

According to existing research, professional evaluation of parenting capacity has often equated parenting with mothering, despite a distinct trend in men who are violent to their wives and partners also abusing their children (Davies and Krane, 2006). This research suggests that in child protection assessments there continues to be an absence of appraisal of a father's responsibilities for their children's abuse, which Davies and Krane refer to as a 'silent perpetrator' problem (2000: 35). Two clear approaches have emerged in the framing of parenting in domestic violence situations: one approach assumes that the mother should leave the abusive partner in order to halt the violence, the other approach blames the mother for providing the opportunity for the violence occurring, and thereby accuses her of failing to protect her child (Davies et al., 2007). Researchers, including Waterhouse and McGhee (2015) and Radford and Hester (2006), have argued that in child protection work a strong emphasis is placed on assessing the mother, a view reinforced by Bourassa et al., 'caseworkers would be preoccupied with the mother's reactions to the violence rather than with the behaviour of the violent partner, thus rendering the latter unanswerable for his violence' (2006: 1216). Acknowledgement of the role played by the father, who is often the perpetrator, in shaping the experience of a child is thus overlooked. Also unnoticed is the reality that, in some instances, and sometimes it is the intention of the perpetrator, that violence or abuse directed towards a child will have a 'recognisably abusive impact on the woman' (Hester, 2011: 837). If this dynamic between parents in violent relationships is not understood by caseworkers, then it is

not likely to be discussed in the Children's Court setting. Furthermore, as Lapierre suggests:

Despite some recognition that men's violence creates a situation that complicates mothering, most work on children's exposure to domestic violence does not question the burden of responsibility that is placed upon women in these circumstances (2008: 463).

Lapierre builds on this approach to argue that, 'the dominant discourse in this area has been characterized by a deficit model of mothering' (2010: 34). This deficit model of mothering refers to the notion that there must automatically be some incapacity to effectively and caringly parent, resulting from a mother's experience of domestic violence (Lapierre, 2008). There have been criticisms of the dominant discourse surrounding 'deficit' mothering and domestic violence that argue for the need to recognise that the safety of a child can indeed often be linked to the safety of the mother (Finkelhor et al., 2005). Humphreys and Stanley further conclude that, 'archives of child welfare services identify a long history of excluding the mother's experience of domestic violence from consideration of child's needs' (Humphreys and Stanley, 2006: 5).

3.3.2. Challenges in responses to domestic violence as child maltreatment

The growth in awareness of domestic violence as an issue in care proceedings requires specific consideration of the perspectives of judicial officers, solicitors and caseworkers involved in proceedings. Caseworker assessments of domestic violence may incorporate immediate risk and the development of legal argument for child protection intervention, in addition to determining care arrangements. The legal arguments that are developed by caseworkers and solicitors in preparing for proceedings are informed by the discourse that is used in caseworker assessments. A closer examination of the professional construct of children's experiences of violence

and the impact of violence on parenting capacity in general is necessary in understanding how such cases are handled at the Children's Court. The present study seeks to provide this examination.

Research explaining the overall increase in professional responses of domestic violence as a form of child maltreatment has focused on challenges in verifying allegations (Fusco, 2013). A perception is created that the only factor in child protection assessments is whether an allegation of domestic violence is true or false. Such analysis does not look at how allegations may sit within a broader picture of a child's circumstances, and the suitability of their current care and living arrangements (Winkworth, 2009). Decisions are to be based, not only on the veracity of prior reports and claims, but also on the present circumstances of the child and of the parents/carers, and indeed the entire family and community setting for that child. This process of child protection decision-making will be discussed in the next section.

3.4. Decisions and Interventions in Child Protection

This section will review current concepts of child protection decision-making present in existing research. These concepts include medical, sociological, ecological and legal typologies, in addition to theories of interagency collaboration.

3.4.1. Understanding the development of narratives in child protection decision-making

Approaches to child protection decision-making can be divided into several typologies. Aber and Zigler (1981) identified medical/diagnostic, sociological and legal approaches to the assessment of child maltreatment. Medical and investigative approaches to the assessment of child maltreatment rely on the prioritising of evidence diagnosis and corresponding treatment of abuse or neglect. As evidenced in the work of Parton (1991), medical or diagnostic understanding aims to locate individually based

underlying symptoms of maltreatment in order to produce interventions that treat or cure the problem.

Sociological responses, in comparison to medical/diagnostic responses, take a broad view of child maltreatment, prioritising conceptual understanding of the social context in which it occurs. For instance, Dubowitz et al. (1993) has argued that ecological factors focus on the social context in which basic needs of children that are not met, rather than on behaviours or intentions of parents. Similarly, researchers, including Garbarino and Collins (1977) and Aldgate (2006b), have built on Bronfenbrenner's (1974) development of an ecological approach to social problems to examine factors contributing to child maltreatment such as overcrowding, poverty and inadequate level of services. Aldgate (2006a) has suggested that the ecological approach enables analysis of the links between the maltreatment issue and parents, family and their wider environment.

The existing research pertaining to child protection decision-making highlights a need for further consideration of the way matters are interpreted, including which standards are applied and how predominant terminology and categories influence judgement. This leads to recognition of a decision-making ecology where the connection between the caseworker, the parent, child, and organisational and social context can be considered as developing a unique 'practice wisdom' that professionals use when making decisions (Platt, 2006; Scott, 1990). 'Practice wisdom' can be interpreted as a useful concept for acknowledging the experience developed in judicial officers, solicitors and caseworkers. Critics of the term 'practice wisdom' have argued that there is a need for clarity around whether practice is informed by experience, or by rigorous process of empirical testing of professional knowledge (Fook, 2002). Similarly, Foote (2012) has argued that critical reflection is an important facet of implementing learning throughout social work careers. However, 'practice wisdom' is

relevant for this thesis as a concept that captures judicial officers' individual experience and professional judgement, and its utility in their decision-making.

As suggested by Nixon and Humphreys (2010), a key unresolved issue in evaluation of outcomes from decision-making surrounding domestic violence is one of child protection practitioner interpretation. Child protection assessment has been analysed in general child protection work (see Beeman, 2001 and Drury-Hudson, 1999). Darlington et al. (2010) conducted a study of four different child protection services to identify the thresholds used for intervention. Findings from this study highlighted that thresholds of an abusive act causing harm are likely to vary across stakeholders. Research from Horwarth (2007) into the identification of child neglect suggested that views on child maltreatment can be developed by the impact of a whole range of factors including context, status and connection to the specific incident itself. Other studies have also acknowledged the specific role of factors including age, gender, and cultural context in the formation of professional opinion (Brenner, Kindler, & Freundlich, 2010). Research into the use of family support services and short term foster care to enable families to address risk of harm issues, suggests that the professional relationship with families is essential to understanding the contributing factors for child maltreatment (See Aldgate and Bradley, 1999; Tunstill et al., 2007; Dawson and Berry, 2002 and Berry, 2004). From this literature on child protection decision-making it is apparent that professionals face a number of key challenges and competing interests (McNamara, 2009).

Analysis of practice in seeking legal intervention for domestic violence concerns indicates that varying definitions and conceptualisations of the co-occurrence of domestic violence and child maltreatment are encountered during child protection assessments. A reporter's motivation to report a case of child maltreatment is informed by specific individual and cultural notions of gender, family, childhood and violence, as well as whether the reporter is mandated by legislation to report, or if

they are acting voluntarily as a concerned family or community member (Axford, 2009). It is possible that a mandated reporter, who is obliged to report a disclosure of domestic violence by a child or parent, may be making this report as one of many reports concerning the family, and may have prior awareness of the issues of this particular family, or of the issue of domestic violence. Alternatively, a reporter may be new to the role and inexperienced with the obligations of mandatory reporting within the wider procedures of working with a family (Axford, 2009). In addition, extended family members may view their rights and responsibilities in relation to a child very seriously, or may use reporting as a means to seek legal intervention in ongoing family issues involving the adults (Edleson, 1998). The context of reports of domestic violence and child maltreatment can therefore play a crucial role in the interpretation and assessment of issues impacting on the child. Whilst the benefits of consistent approaches to child protection assessment have been acknowledged in previous analyses, including McNamara (2009), Bolton and Lennings (2010), research on how such assessment is translated into court proceedings has not been addressed. The present research aims to address this gap.

3.4.2. Interagency collaboration

Interagency work is an important aspect of the child protection decision-making process due to the impact of interactions between stakeholders on the way that they view and respond jointly to particular cases of child maltreatment and domestic violence. Horwath and Morrison (2007) outline three specific levels or models in the interagency collaboration process: 'co-ordination' with formal joint working structures with no incentive for compliance with any procedures for working with other agencies; 'coalition' where joint work is aided by joint structures, and an acknowledgement of less autonomy of individual agencies; and 'integration' where there is a formation of a complete joint identity.

The benefits of functioning interagency work have been identified to include: faster and more innovative responses, more complete services offered to families, and lower levels of stress and impact on personal lives (Nixon et al., 2007). Morrison and Wasoff (2012) have identified barriers to achieving collaboration including lack of resources, lack of supportive guidelines and policies, differing organisational cultures and styles, and prioritising of intervention strategies. These barriers have led to the possibility that, for much of the case preparation process, professionals remain in the 'co-ordination' phase, and unfortunately, there has been very little shared understanding or joint working practice (Whitzman, 2008: 9). White and Featherstone (2005) and Munro (2005) have identified that there are serious barriers faced by professionals collaborating in child protection work. Lack of trust between agencies where there has been a history of dispute over appropriate responses to concerns has been found to lead to a lack of willingness to attempt to engage with the other agency (White and Featherstone, 2005).

The interface of domestic violence and child maltreatment concerns is one area where research has identified challenges and failures in attempts to collaborate (Banks et al., 2009; Moles, 2008). Specific challenges between the domestic violence and child protection sector have included conflicting priorities in orientations that seek to support either the adult or child victim as well as a failure to share all available information (Moles, 2008). A major difficulty with child protection interagency work remaining in the 'co-ordination' phase is that it can be perceived as allowing domestic violence and child abuse to often be approached as two separate problems (Hallett, 1995). Whilst collaboration between different agencies and professionals working with families is necessary in providing integrated and consistent services, this is hampered by lack of a consistent approach and understanding (Lessard et al., 2014). When cases of domestic violence are considered, the need for collaboration becomes especially clear as safety issues will continue to be present while parents are together as well as

post-separation, and especially during times of high stress, such as court Hearings and parenting assessments (Lessard et al., 2014). In these situations support for mothers can be complicated by differing directives or advice. For instance, a mother may have a family support worker recommending relatives as an invaluable source of assistance and emotional support to cope with her new found single parent status. Simultaneously, a conflicting message may result for the mother should a Community Services caseworker seek undertakings at court that a mother is to move to a completely different area and limit contact from those known to the perpetrator. It is almost inevitable in such a scenario that a mother will feel isolated, and less likely to remain open to advice and seeking support.

Possible ways forward towards an 'integration' model to promote engagement between domestic violence and child protection services that have been identified in ongoing discussion, include focussing on ongoing joint child protection work to ensure the overall welfare of the child, not on seeking to work with external specialist agencies as a singular action after particular incidents (Mathews, 2008). Information relating to the ongoing joint work with a family is relevant in a court setting because, 'if the judicial arm of the child protection system is to embrace evidence-informed strategies, that evidence must be suitable for integration into the routine practices of the Children's Court and in to strategic planning and evaluation' (Mathews, 2008: 236). Analysis of joint work between child protection and domestic violence agencies has also stressed that collaboration provides, 'integrated and consistent assistance to families affected by co-occurrence' (Lessard, 2014: 110). Safety Action Plan Meetings that are currently being implemented as a pilot project in some areas as part of the NSW Government's 'It Stops Here' Domestic Violence Reforms are potentially one avenue available for professionals to build integrated services (FACS, 2014). Further policy announcements that have been made this year in NSW, including a proposed register of domestic violence offenders for individuals to search for any prior offences from their partner, with the potential for the pilot to be expanded for a national model to coordinate

information between states.¹⁰ Such announcements signal that there is a growing level of awareness at a government level that a significant part of addressing domestic violence is sharing of resources and information between the multiple agencies handling the issue. Moreover, the development of a consistent understanding and strategic advice and support to victims of violence across all services involved in the Children's Court process.

One example of an approach that seeks to address issues of developing integrated understanding across the entirety of the child protection is Turnell and Edwards' (1999) argument of the need for strengths based engagement within child protection work and risk assessment. Turnell and Edwards 'Signs of safety' approach starts from the premise that a self-perpetuating cycle often presents itself in child protection cases involving domestic violence, where 'the focus on deficits and weaknesses, rather than strengths and resources, contributes to family defensiveness, which may be assessed as further evidence of resistance' (1999: 19). To address this concern a shift in assessment and evidence gathering that looks at the strengths and indicators of safety already present needs to occur.

One example of the implementation of a specific interagency policy based on the Signs of Safety approach is the Scottish framework *Getting it Right For Every Child*. It has been implemented for best practice in child protection and has ten core components designed to address the spectrum of child protection work with families. (Directorate, 2012). These components involve shared understanding, a common approach to consent and information exchange, streamlined and unified planning, co-operation, maximising workforce skill (Directorate, 2012). Two major requirements that have been introduced are that every child and young person has a Named Person and a Lead Professional (Directorate, 2012). The role of the Named Person is to be the main point of contact for children and their families for any advice or support. The role of the lead professional co-ordinates the assistance provided for a

¹⁰ For announcement see: <http://www.abc.net.au/news/2015-05-21/nsw-pushes-ahead-with-domestic-violence-scheme/6485982>

child where there are two or more agencies that are working with them. According to the *Guide to Getting it Right For Every Child (2012)*, neither the Named Person nor Lead Professional will necessarily have additional duties beyond their regular work. The concept of a Lead Professional in particular, is to ensure that there is optimal exchange of information and communication between agencies that are working with a family. For instance, where a mother and children have escaped domestic violence and are accessing housing and counselling supports during the period of child protection investigation may require a Lead Professional to ensure all services are informed of significant events.

Using Signs of Safety and integrated interagency collaboration in relation to domestic violence cases could potentially see greater expertise and professional recognition that the current and likely future safety of a child should be prioritised in decision-making above analysis of the past status of a relationship. The separation of a mother from a perpetrator may initially indicate that the mother is making positive changes. However, where this is the only change evaluated by caseworkers it may not actually be a sufficient indicator of safety. The complex dynamic present in assessing parental domestic violence is particularly evident when the high rates of post-separation violence are considered. The Signs of Safety approach is therefore one potential avenue for existing research to provide clarity for workers approaching collaboration with other agencies in cases involving domestic violence, particularly in the creation of long term care plans during court proceedings.

3.4.3. Participation of children: implications for professional decision-making

The participation of children, and the representation of the needs of children in child protection decision-making has been a large concern in existing child protection literature. Some needs identified for children from prior studies into the inclusion of children in decision-making include adequate information in a language the child can understand, opportunity to freely express views, assistance to express views, information on how views will be recorded, information about outcomes of decisions made under this act

concerning them and opportunity to respond to any decision made (Beckett and McKeigue, 2010; McNamara, 2013). An alternative to this participation oriented approach argues that children's safety is imperative and their right to participation cannot override the professional obligation to ensure full disclosure to the Children's Court of all evidence pertaining to maltreatment (Butler et al., 1995). It is important to note that recent NSW guidelines have been developed with the aim of addressing these conflicting perspectives and ensuring the best approach to involving children in proceedings, listening to their voices, and protecting them from exposure to disadvantages and pressure (Cashmore and Parkinson, 2007). These guidelines have included, for example, the use of independent children's lawyers and submission of 'views and wishes' statements from the children in court proceedings (Parkinson, 2001).

The increasing emphasis on child-focused decision-making has implications for determining how the assessment and evidence gathering process can best focus on the child's experience of issues such as domestic violence. Working with children to determine their experience, and the ideal outcome for them becomes complex as the extent of risk may not be clear, but still may seem very real to them (MacMillan et al., 2013). It is commonly accepted that, 'children who have witnessed domestic violence have been found to be fearful and inhibited and show more anxiety than other children' (Kolbo et al, 1996: 281). Therefore, as suggested by Fusco (2013), child protection workers and legal practitioners will therefore face challenges working with children experiencing trauma to develop a factual and detailed account of events necessary for the Children's Court to make determinations. A child who is inhibited will obviously not automatically give full disclosure, particularly to a new adult figure, and will exhibit anxiety pertaining to repercussions of disclosure, such as losing loved ones, or if threats and intimidation have been made by the perpetrator to not reveal any of the violence (Othman et al., 2014). An important factor in achieving positive outcomes for children as a result of the intervention process identified by Pecora et al. (2014) is

that recognition of experiences and anxieties they have had both prior and during the Children's Court process, will play a large part in the success of the arrangements and the decision-making process.

When the existing discussion of key necessary factors in decision-making, such as assessment and interagency work are considered it becomes clear that the Children's Court Hearing is but one aspect of much larger work that takes place. Overall, it can be seen that in the child protection and domestic violence research examined, a need exists for examination of best practice and areas for improvement within the decision-making process surrounding domestic violence. Existing discussion has not provided holistic and systemic evaluation of the effectiveness of the entire decision-making process. A key issue in child protection decision-making is the ongoing challenges for professionals who are working across the different structures of government and non-government agencies having effective engagement in court proceedings. The present research considers the entire trajectory of care matters in the children's court, from the construction of protection concerns through to assessment and finally to court decisions determining best interests for children.

3.4.4. Legal approaches to child protection decision-making

Children's courts have been recognized as a specialist jurisdiction (Levesque, 2009). As children's courts are specialist, judicial officers are also specialist in their competence in understanding the specific laws that apply to the subject of child protection decision-making (Tilbury, 2013). There have been several prior international and national studies pertaining to children's courts and judicial officer decision-making. At an international level, there have been two major studies into court decision-making relating to children's care matters in England (Masson, 2012). The Care Profiling Study (Masson et al., 2008) comprised a quantitative survey of 396 care cases from eight county courts. The study identified the main concerns that prompted court

applications, including the representation of domestic violence in over 50% of cases. A further major finding was the reliance of expert evidence in over 90% of cases (Masson et al., 2008). Masson et al. (2011) conducted a further study into Parent's Representation, which utilised observation techniques in order to understand care proceedings. This study highlighted that, 'the process leading care proceedings is long and torturous', involving much activity prior to the commencement of court proceedings (Masson, 2011:3). In both these studies a number of complex issues that can have an impact on care proceedings were identified, including the substantial number of decisions that were decided by negotiation between lawyers for the different parties (Masson, 2012). A further challenge for courts noted in both studies was the lack of continuity of judges, lawyers and caseworkers, leading to 'drift and delay' in proceedings (Masson, 2012: 9). Masson (2012) further concluded that 'evidence in childcare proceedings is 'created', not found', as evidence is not only presented to the Children's Court but the implications of the evidence have to be well argued (2012: 11). The present research augments this existing knowledge by analysing multiple professionals' assessment of evidence in a sample of cases.

Challenges of professional collaboration have also been identified in American Children's Courts. Ellis (2010) conducted an exploratory study of child welfare caseworkers in the Washington jurisdiction to ascertain their perspective of the role of juvenile court judges and attorneys on child welfare practices. The study suggested that child protection professionals and court professions were critical of each other and this tension was 'fuelled by the values and principles of court personnel conflicting with child welfare agency policy and best practice guidelines for social work' (Ellis, 2010: 168). Significantly, Ellis (2010) argued that training of child protection professionals leads to a recognition of the benefits of the involvement of judges in cases, as well as greater skills in negotiation and collaboration during proceeding.

Research specifically into children's court decision-making in Australia has been scarce. However, there are some key examples of studies examining key areas of relevance for the present research. These areas include professional decision-making in court proceedings, judicial officer perspectives and the challenges present in the care and protection jurisdiction. In a five year study over the period 1981-1985 Fernandez (1996) tracked the professional decision-making informing the initial out-of-home care placements of 294 children. An important component of this research was an 18 month follow up of placement decisions in six matters in the Children's Court to identify how workers and judicial officers recognise risk of harm, and the decision-making process involved in taking a child into care through court intervention (Fernandez, 1996). A key conclusion from Fernandez (1996) was that the process of making decisions about care orders begins prior to court involvement, with the involvement of multiple professionals and agencies. This study identified that discourses of risk, parental compliance and the operationalisation of the 'best interest' standard of evidence are influential in professional decisions making. These areas are important aspects of inquiry in this research.

In another study of circumstances prompting court involvement Campbell et al. (2003) analysed decisions from a specific group of caseworkers involved in the Victorian Child Protection Service's High Risk Infant service. Campbell et al., (2003) argued that the age of children, while raising specific concerns for workers that prompted applications, did not ultimately impact on the type of order that were granted. A further significant finding from this study relating to professional child protection decision-making was that the 'vividness' or high emotional intensity of child protection cases can be heightened by poor communication and lack of understanding of the thresholds for legal intervention (Campbell et al., 2003).

Judicial officer decision-making is another focus evident in research on children's courts in Australia. Travers' (2007) research into judicial co-operation in the Children's

Court of Tasmania uncovered a number of key factors that can influence judicial officer decision-making. Travers (2007) suggest that judicial work is collaborative and incorporates elements of administrative decision-making and social values. An additional key finding from this study was that there are challenges for judicial officers communicating what they do effectively to the community, and this can result in some confusion and resentment about the role of the Children's Court (Travers, 2007). Similarly, in their national study of decision-making in Magistrates Courts, Anleu and Mack (2007) found that the desire to make a difference in individual circumstances and a positive social contribution was strong in magistrates (Anleu and Mack, 2007). However, the ability for magistrates to be effective in the endeavour of social change, 'can be hampered when social agencies, such as child protection departments, do not have adequate resources to implement the preferred recommendations of the magistrate' (Anleu and Mack, 2007: 188). The study further found that introduction of 'problem-solving courts' such as drug courts can present opportunities for magistrates to harness the Children's Court system to progressive social change. Whilst examining magistrates working in adult courts these findings are relevant to the present study as they highlight the orientations of service to the community is an important principle for judicial officers.

The first attempt at co-ordinating a national study of the state children's courts was led by Sheehan and Borowski (2013). This involved eight separate parallel studies examining the views of key court stakeholders on, 'the Children's Court's contemporary status and challenges for future reform directions with a view to informing current policy debates and deliberations' (Borowski, 2013: 167). This study found, across the various courts, that there was an underinvestment in the work of the Children's Court, and an inadequacy of resources available for judicial officers to achieve their mandate in the juvenile justice or care and protection jurisdiction (Borowski, 2013). For instance, in both NSW and the Northern Territory, study participants offered little criticism of the Children's Court but saw its effectiveness as

largely dependent on the broader youth justice and child welfare systems' (Borowski, 2013:167).

In the NSW component of the national study Fernandez et al. (2013), conducted 45 semi-structured interviews and ten focus groups with a purposive sample of judicial officers, caseworkers from government and non-government caseworkers, clinical practitioners (psychologists and social workers) and policy makers. Participants in this study identified that access to legal representation and support services were significant for the children and parents appearing before the Children's Court (Fernandez et al., 2013b). Participants suggested that access to mental health services for parents may result in fewer court applications, or the greater likelihood that children may be able to restore to their parents' care, thus making matters less complex and time consuming. (Fernandez et al., 2013). A significant finding from this component of the study was that, 'the volume and complex nature of cases heard in the Children's Court leaves magistrates with less time to explain outcomes to children and/or parents, resulting in poor understanding of court decisions' (Fernandez et al., 2013: 33). Participants critiqued the adversarial nature of proceedings, the lack of transparency in communication between Community Services and parents due to lack of trust. The prioritising of evidence gathering was not found to be beneficial to building collaborative relationships (Fernandez et al., 2013b). Communication was highlighted as a key factor in other states, such as Northern Territory (West and Heath, 2013) and South Australia (King et al., 2013).

Fernandez et al. (2013) noted that a strength of the Children's Court is the high calibre and professionalism of workers. However, an important caveat to the benefits of the knowledge and experience of workers was that the Children's Court does not have any judicial officers who were considered specialist in domestic violence matters (Fernandez et al., 2013). The need for decisions in individual care and protection matters to be informed by the whole family context and empirical evidence concerning realistic outcomes for a child has been acknowledged by Easteal and Grey (2013).

Cashmore and Parkinson (1994) identify child's age, family resources and the specific problems faced by parents (including domestic violence) as important information that can benefit courts making decisions about children.

A further challenge for courts identified in the national study was the development of realistic care plans or restoration plans. Some participants suggested that interventions that emerge from court proceedings need to be evidence informed (Borowski, 2013). A key recommendation to improve the quality of interventions emerging from this study was that child protection workers who were involved in court work should be required to have a specialist qualification (Borowski, 2013).

A gap in this national study was a lack of data collected on the Children's Courts' overall impact and contribution, for example in protecting children. Such information would provide useful insight into the motivations that drive professionals who work in the care and protection jurisdiction. For instance, it has previously been identified that this ambiguity arises because, legal and child welfare professionals work from different knowledge and value orientations. Moreover, the child welfare professional utilizes interventions based on a collaborative systems perspective while the legal professionals stress the protection of the rights of individuals based on an adversarial system (Han et al., 2008: 115). Jonge argues that, 'an examination of the recent Australian case law can perhaps best be described as a tangled web of ambiguity, arising out of the complex interrelationship between various factors which courts can take into account' (1989:164)

An unresolved issue from prior studies into court decision-making is the apparent tension in the application of legal approaches to child maltreatment concerns by judicial officers. The child protection role of the Children's Court does not easily align with the traditional adversarial style of legal intervention (Sheehan, 2009). As found in Sheehan's (2001) study involving monitoring of cases and interviews with

magistrates to identify influential factors in their decision, the underlying problems of social and economic marginalisation and poor parenting that characterise care and protection matters are not easily resolved through legal channels. For instance, as King and Tatasciore (2006) argued in their analysis of 'therapeutic' approach to decision-making in local courts in Perth, measures to ensure the welfare of children can be frustrated by requirements for parties to provide opposing accounts to 'prove' or 'disprove' the existence of child abuse. A key conclusion from the Sheehan study (2001) was that children's courts need a balance in both legal and welfare approaches to child protection primarily because,

The legal approach fails to respond to the complexity of child abuse, to the need to be pro-active and, at times, intervene to prevent child abuse. It may also diminish the contribution of the welfare approach to assist the Children's Courts' (Sheehan, 2001: 8).

Similarly, Jabes (1982) argues that where professional skill in managing technical issues of court processes are considered equally valid as professional awareness of welfare issues this can have a detrimental impact on the prioritisation of decisions. An explanation for this is that a combination of legal rules, discretion and assessment of behaviour of court participants has been necessary to guide court decision-making (Konečni and Ebbesen, 1984). Given these multiple approaches used by judicial officers, it has been crucial that, 'the criteria used to make these decisions are clear, open and agreed between professionals if there is to be a more coherent approach to child protection' (Konečni and Ebbesen, 1984: 92). For instance, whilst there may be particular views judicial officers hold about the importance of welfare and families, they also perceive themselves as community representatives, and needing to ensure their decisions reflect current community standards (Sheehan, 1999). Given the multiple approaches and competing interests identified as influential in court decision-making, further investigation is needed into how judicial officers, and other professionals engaged in children's court proceedings, approach decisions regarding issues of child maltreatment.

The adversarial nature of the court process has been identified by Freiberg (2011) as a major challenge in jurisdictions such as the Children's Court making decisions that engage all relevant parties. For instance, Hansen and Ainsworth (2011) suggest that the Children's Court's ability to reach decisions that are child-focused and ensure their 'best interests', is constrained by lack of engagement between caseworkers and parents. The adversarial nature of court proceedings can lead to a perception that the Children's Court is pitting parent's rights against children's rights (Holt and Kelly, 2012). Masson (2011) has suggested that child protection legislation has been found to strike a delicate balance between the primary objective of protecting children, whilst also acknowledging the interests and rights of parents. Parkinson (2006) discusses the problems inherent in the focus on binary choices about children's rights versus parent's rights that may be assumed in child protection matters, and how this focus tends towards adversarial techniques.

A key gap in the above prior research is discussion of domestic violence as a key issue that judicial officers are confronted with during care and protection proceedings. Legal scholarship has established a clear role for legal decision-making in responding to the area of domestic violence, and the need for the Children's Court to have specific awareness and sensitivity towards these issues (See Doughty, 2013; Dimopolous, 2010; Cross et al., 2010; Freiberg, 2011). The need for further consideration of the Children's Court's role in child protection decision-making is particularly apparent in cases of domestic violence, where multiple community service agencies and legal jurisdictions may be involved. The increase in the prominence of domestic violence as an issue in care and protection proceedings requires consideration of how interpretations of domestic violence impact the actual practice of the Children's Court and related staff. For instance, there are unique challenges in identifying the impact of violence on particular child protection cases, largely due to problems of definition and identification (McArthur, 2010). For instance, as McArthur (2010) has suggested, there are unique challenges in identifying the impact of issues such as domestic violence

within child protection cases. However, as yet, there has been no research that examines how domestic violence is dealt with in decisions surrounding care and protection matters in children's court. The present research fills that space.

3.5. Conclusion

This chapter has reviewed existing literature in relation to the development of definitions and approaches to child maltreatment and domestic violence and the emerging response to domestic violence as a unique form of child maltreatment. It has reviewed existing discussion of models for child protection and legal decision-making. The literature review has established the broad environment of the issue of domestic violence as a form of child maltreatment and how this is addressed in child protection decision-making, and identified the key areas for further consideration.

The use of court intervention is viewed as an outcome or endpoint of investigation. This rests on the assumption that once matters progress to court, caseworkers and other professionals involved have a diminishing role to play in determining outcomes of proceedings. A key gap in previous research on Children's Courts is the contribution that different professionals (solicitors, caseworkers, clinicians) make to informing judicial officers' decisions.

The present study endeavours to extend this by explaining the key influential factors on these decisions, and how the structures of decision-making are operationalized within the setting of the Children's Court care and protection jurisdiction. Key factors that have an impact on care and protection matters include the construction of evidence and assessment, the formation of external opinion on matters with complex history, and responsibility for determining long term arrangements for children (Doughty, 2014).

This literature review has raised some important questions relating to the existing conceptualisations of domestic violence within the child protection context that need further clarification in order for the Children's Court to enhance its response to the issues. A central unresolved question from this review is the impact of current understandings of safety, risk and inadequate parenting, on professional practice and decision-making in relation to care and protection matters involving domestic violence in the Children's Court. The process of assessing evidence relating to domestic violence raises the question of how legal and welfare practitioners make decisions in care and protection matters involving the combination of domestic violence and child maltreatment. Furthermore, what are the factors that influence the assessment of evidence of domestic violence and child maltreatment that is presented to the Children's Court in care and protection matters. The current role and policy context for the Children's Court raises questions regarding how Community Services practitioners, solicitors and judicial officers interact in making decisions in care and protection matters involving domestic violence. Finally, there has been an absence of child protection literature that establishes the Children's Court as a key component of child protection case narrative. This raises the question of what the outcomes are from care and protection proceedings, and the key factors determining these outcomes for children in cases involving the combination of domestic violence and child maltreatment. These research questions identify core themes that impact on decision-making outcomes. The core themes include the conceptions of 'domestic violence' by professionals, in conjunction with their understanding of 'child maltreatment', and the influences of constructs of 'child maltreatment' in conjunction with 'inadequate' parenting. The next chapter will elaborate further on these research questions within the context of outlining the objectives and methodological approach developed for this study as background to the current study.

4. Methodology

4.1. Introduction

Court intervention addressing the interface of domestic violence and child maltreatment is a complex social phenomenon. This is a rich area for social inquiry and the generation of results with wide community and policy implications. The preceding chapters have outlined the broad dilemmas encountered in the literature, and the responses of the Children's Court of New South Wales ('the Children's Court'). This chapter introduces the methodological approach adopted for this study.

Research concerning the multifaceted issues of child maltreatment and domestic violence requires qualitative understanding. As concepts of domestic violence and child maltreatment are subjective and contested it is not possible to approach the topic with traditional positivist assumptions of neutrality (Payne, 2014, Stover, 2005). To adequately explore the construction of these issues within the Children's Court context it is necessary to consider the epistemological approaches governing the process of research, and the standpoints of researchers and participants.

Crucial to the development of the present study is critical reflection on the role of the researcher, evident in existing research literature as an essential component of qualitative methodology (Denzin and Lincoln, 2000). This researcher's background in social work and experience in working with children at risk, and mothers and children escaping domestic violence, has had a clear influence on this research. Indeed this background is the very reason for the topic selection. In order for this research to be considered valid, a full explanation is necessary of how the researcher has developed the structure for the research, and the approach to data analysis. Also imperative in qualitative methodology are the specific strategies for the handling of ethical concerns,

management of sensitive data and the selection and deconstruction of often complicated material.

This chapter will expand on the methodological issues concerning the present study in five sections. The first section introduces the research questions and objectives of the study. The second section discusses the selection of qualitative methodology and its appropriateness in fulfilling the research aims and objectives through the application of a case study design. The third section presents the case study research design approach, its place within qualitative methodology and its applicability to this study. The fourth section outlines the use of case study method throughout the research design including sampling, data collection procedures, and approaches to thematic data analysis. The fifth section provides an examination of the key issues encountered in the research design alongside the measures taken to ensure accuracy and validity. The sixth section concludes the chapter with a reflection on the role of the 'insider' researcher and the impact of the researcher's perspective and experience.

4.2. Research Questions and Aims

The research questions and aims identified for this study form the basis of the methodological approach that was selected. This section will introduce the research questions and aims for this study. The central research question identified for this study was, 'How does professional knowledge and interpretation of the impact of domestic violence and child maltreatment on children inform decision-making in care and protection matters in the Children's Court?'

Further sub questions to enhance this focus included: How do legal and welfare practitioners make decisions in care and protection matters where domestic violence is a primary risk factor or one of several concurrent risks? What are the factors that influence the assessment of evidence of domestic violence and child maltreatment

that is presented to the Children's Court in care and protection matters? What are the interactions between NSW Department of Family and Community Services ('Community Services') practitioners, solicitors and judicial officers in the context of child protection decision-making in care and protection matters involving the combination of domestic violence and child maltreatment? How are the Children's Court's decisions regarding permanency planning legislative requirements for children negotiated in the context of domestic violence and child maltreatment allegations in care and protection matters? What are the outcomes from care and protection proceedings and the key factors determining these outcomes, for children in matters involving the interface of domestic violence and child maltreatment?

The research questions identified for the present topic guided the objectives for the research. To respond to the above questions the first objective was to undertake a systematic qualitative observational study of a sample of current care and protection matters involving allegations of domestic violence. In parallel to this a retrospective review was undertaken of a sample of archive court files pertaining to domestic violence allegations. The second objective was identification and analysis of core themes of domestic violence, child maltreatment and parenting that were present in the archive and observed matters. Particular emphasis was given to exploring the construction of domestic violence as a risk factor for children. The final objective was consideration of the impact of the social and policy context on the development of professional perspectives and narratives of domestic violence and child maltreatment in children's court decision-making.

4.3. Qualitative Methodology

Before outlining the research design selected for the study it is necessary to describe the specific qualitative methodological and social constructivist standpoint from which the present topic and research design have emerged. This section will describe three

key areas in the development of the research approach. These areas are the qualitative research methodological approach to research, the key measures for quality assurance in qualitative research and the specific constructivist ontological perspective selected to address the research questions.

4.3.1. Qualitative research

Qualitative research methodology is often described as primarily concerned with the interpretation of issues through specifically connecting them to the social reality in which they are formed (Abbey and Zittoun, 2010). As Wheeldon and Faubert suggests, qualitative research places emphasis on social inquiry and ‘provides an interpretation of the social world of research participants by focusing on experiences, perspective and histories and thus privileges their constructed realities when reporting social science findings’ (2009b:67). The development of explanation and responses to social phenomena is an element considered typically present in qualitative design. As Denzin and Lincoln noted, ‘the concept of the aloof researcher has been abandoned. More action, activist orientated research is on the horizon, as are more social criticism and social critique’ (2000:40). The word qualitative implies an emphasis on processes and meanings that are not rigorously examined, or measured (if measured at all) in terms of quantity, amount, intensity, or frequency (Kahlke, 2014). Key elements underpinning the qualitative approach in the present study have included a focus on social phenomena, transparency in procedure and design, incorporation of self-reflection and the combination of multiple methods (Morse et al., 2001). This research reflects qualitative methodological characteristics in several aspects of the process.

Morse identifies the following characteristics of qualitative research:

- ‘a) the concept is immature due to a conspicuous lack of theory and previous research
- b) the notion that the available theory may be inaccurate, inappropriate, incorrect or biased
- c) a need exists to explore and describe the phenomena and to develop theory

or d) the nature of the phenomena may not be suited to quantitative measures' (2001: 5).

The present research topic can be seen as fulfilling these qualitative requirements in two respects. Firstly, it is describing an area that is not currently explained in existing theories in the area of child protection that do not specifically address the Children's Court and legal facets of child protection work. Secondly, there is a need to explore in depth the nature of court decision-making to illuminate the overall process of child protection work and determining long term care arrangements for children in need of care and protection.

A great deal of emphasis in recent research in child protection in NSW has been placed on the need to address the increasing numbers of children reported at risk of significant harm, and the subsequent increase of children remaining in out-of-home care on long term orders. (McConnell and Llewellyn, 2005). Statistics have also demonstrated the often poor outcomes for children in out-of-home care in comparison with their peers using benchmarks such as education, health, and career (Lapierre and Côté, 2011). These comparisons and indicators provide decision makers with crucial information regarding the state of the child protection system, and the impact of child protection interventions on children. The qualitative contribution to child protection research provides the ability to build on this information to interrogate the meaning and implications of this data and develop theory to describe it. Research interviewing caseworkers, parents and children, longitudinal tracking of children's experiences in care and international comparative policy analysis have provided a rich qualitative understanding of the child protection field, and this research seeks to build on this through specific focus on court decision-making.

4.3.2. Social Constructivism in qualitative research

Social Constructivism forms a strong theoretical basis for qualitative research due to its emphasis on interpretive studies that focus on, 'how people interpret their experiences, how they construct their worlds, and what meaning they attribute to their experiences' (Kahlke, 2014: 37). The constructivist approach can be seen as encompassing the major facets of the qualitative approach and applying to them the core assumption that reality is socially constructed with diverse interpretations. As Romm states, 'the constructivist ontological perspective emphasises the context specific nature of social reality' (2013: 159). This research is constructivist in the ontological concentration on ways the social world is socially constructed and how that social construction is shaped by particular language.

The constructivist ontological position within qualitative research can be viewed as a response to concerns regarding the need for social research to describe conclusive patterns in social life. Romm describes this concern:

once social research is seen as a process of making advancements in grasping more adequately the patterning of social life, the unique ability of the qualitative paradigm to appreciate that social reality is subject to multiple interpretive frameworks (as applied by research participant and by researchers) becomes lost (2013: 170).

The constructivist response therefore addresses this concern by suggesting that social scientists need to concentrate not only on the topic of research, but on the word and language that give it meaning.

The constructivist epistemological position suggests that the process of obtaining knowledge through research does not operate within a binary researcher/participant construct. Instead multiple perspectives and relationships operate. Perspectives that are offered in constructivist research include the knowledge participants impart to

researchers as well as the specific impact researchers have on the field they are researching, and the influence of a particular audience or reader's interpretation of work presented. A central contribution of constructivism is the suggestion that the social world is in fact created partly by language used and interpreted as part of the social interaction of research. Social researchers are engaged in a process of co-constructing interpretations of social reality as they conduct their inquiries. The present research is constructivist epistemologically due to understanding that researchers are actively involved in the process. The process of mutual construction of meaning between author and subject requires constructivist research to adequately reflect the particular values and circumstances impacting on the topic, and on the process of the research itself (Abbey and Zittoun, 2010). This requires having a more narrative-driven and nuanced stance than alternatives that strive for a more neutral account of how social research works. The present study focuses on understanding individual case narratives as it is primarily concerned with the way that professionals interpret and evaluate highly contested issues of child maltreatment and domestic violence.

4.3.3. Quality in research design

Qualitative methodology has informed this research through the consideration of multiple research devices and techniques to ensure quality in research. Qualitative researchers often combine elements of diverse methods including semiotics, narrative discourse, and archival analysis in addition to statistics. Qualitative research may involve the use of a variety of empirical materials-case study, personal introspective experience, life story, interview observational, historical, interactional and visual texts-that describe routine and problematic moments and meanings in individuals' lives (Ravenek and Rudman, 2013).

An ongoing debate within research literature has concerned the appropriate assessment of quality of research. The assessment of the quality and contribution of qualitative work is complicated by the plethora of methods and specific criteria appropriate to each method. As Caeli states, 'the processes of knowledge developments are framed by the types of knowledge that are sought and are, of necessity, rigorous demanding and meticulous' (Caelli et al., 2008). This is a concern noted in much qualitative research literature (Ravenek and Rudman, 2013). To ensure concerns raised concerning the ability for qualitative research to be rigorous qualitative researchers strike a careful balance. There is a requirement for the qualitative researcher to evaluate the specific topic and the experiences and influences of research participants whilst also overtly addressing their own bias through reflection of their personal and epistemological influences (Wheeldon and Faubert, 2009).

A key feature of the qualitative approach implemented in the present study is transparency in relation to procedure and theoretical underpinnings influencing the research. The need for qualitative researchers to make their procedures for editing and analysis clear are well documented. Creswell indicates that, 'the procedure for a qualitative study includes advancing the assumptions of qualitative designs, indicating the specific type of design, reflecting on the researchers role, discussing data collection, developing data recording procedures, identifying data analysis procedures, specifying verification steps, and delineating the narrative outcomes of the study (Creswell, 2013). The structure of this thesis and the outline of the chapters have been developed with a view to establishing clear explanation of each of these procedural components. Additionally, the research design has accounted for the need to enhance rigour through strict selection criteria, sampling and coding.

It has been clearly demonstrated within the qualitative tradition by authors including Denzin and Lincoln that, 'every researcher speaks within a distinct interpretative community, which configures, in its special way, the multi-cultural, gendered

components of the research act' (Denzin and Lincoln, 1994). For a qualitative approach the context of the researcher becomes as imperative as the context for the topic itself. In order to acknowledge this methodological component, this chapter concludes with a reflection on the role of the researcher. Whilst self-reflection is a challenge to the positivist assumptions of the neutral researcher, it acknowledges the tensions that can exist in undertaking social research. As Denzin and Lincoln explain;

On the one hand researchers have assumed that qualified, competent observers can with objectivity, clarity and precision report on their own observations of the social world, including the experiences of others. Second, researchers have held to a belief in a real subject, or real individual who is present in the world and able, in some form to report on his or her experiences (Denzin and Lincoln, 2000: 11).

The next section will outline the specific method utilised in this study and this chapter will conclude with a reflection on the impact of the researcher's identity as an 'insider' on the execution and outcomes of research.

4.4. Case Study Design and Rationale

This section will describe the case study method that was adopted in this study and the challenges in utilising case study method. Major proponents of case study including Yin have described it as a complete valid research methodological approach with clear boundaries and requirements in terms of ensuring validity and generalizability (Yin, 2009). The qualitative context for this research establishes an agenda for the development of a case study approach. The central unit in any definition of case study is the case, and the study of the peculiarity of its environment and activities in order to understand their significance (Stake and Savolainen, 1995) . Stake identifies five core requirements for case study: issue choice, triangulation, experiential knowledge context and activities (Stake and Savolainen, 1995). Gillham identifies that a further requirement for case study method involves the use of multiple data sources including

written documents, observation and interviewing (Gillham, 2000). There is a specific site or area in which the research is located, the Children's Court. In addition there is a contemporary phenomenon present in the decisions made during care and protection proceedings at the Children's Court.

4.4.1. Defining the case

A fundamental concern with case study in research has been the identification of what a case study actually is, and where it can be utilised. The term 'case study' has been applied to describe differing components of research, and has a very broad scope. Yin (1999) has defined case study as, 'a focus on a contemporary phenomenon in its real life context, when research questions are based around 'how' or 'why' (1999:13). Descriptions of case study have ranged from over-arching methodology, to method, design and strategy (Tight, 2009). Alternatively, in areas as diverse as health, government and public health, case study has been seen instead as a tool for analysis and presentation of findings, a contribution to a larger research design rather than a stand-alone approach (Andersson and Kalman, 2012). With such widespread variations case study has been considered a convenient label that can be applied to nearly any social research project. The sheer number of research titles involving the term 'case study' has led to the argument that case study approach is cited where researchers simply cannot find a more fitting description for their work (Baxter and Jack, 2008). There is a lack of clarity due to some researchers maintaining very broad parameters around what types of data and analysis constitute case study research, and others advocating a very strict set of criteria. The quality of results can be called into question due to the interactive role of the researcher in defining the object and the field of research. For instance, Baxter and Jack contend that confusion exists, not only about the aspect of research that is meant by the term 'case study', but even the basic unit of analysis of 'the case' (Baxter and Jack, 2008). Further, the process of identifying the unit of analysis of 'the case' can result in a whole range of results, leading to a

criticism that 'just about anything can be a case' (Baxter and Jack, 2008: 17). These definitional discrepancies highlight a number of important considerations for the design of a case study. Firstly defining and establishing clear criteria for the research, secondly the utility of small scale research and finally the need for a clear goal or outcome for the research. Those who have considered case study in great detail consider that in the process of addressing these issues, case study researchers have furthered the development of a unique qualitative research design (Smith, 2009).

A further common pitfall associated with case study is that researchers attempt to use a very narrow range of empirical evidence to address an issue or answer questions that are too large in scope, thus compromising the strength of the research (Snyder, 2012). The case study methods literature identifies key responses to ensuring quality and validity of the case study research design. Yin summarised the process of achieving credibility in case study through ensuring;

- a) Research questions and any hypothesis appropriate to the case study type are precise
- b) case study method is appropriate to the research question
- c) purposeful sampling strategies appropriate for the case study have been identified
- d) data is collected and managed systematically
- e) data is analysed correctly (Yin, 2009:199).

The design for the present research responded to case study requirements for validity in a number of ways. One of the major aspects of the research design addressing these concerns was the use of purposive sampling and a clear selection criterion to be described later in this chapter. This ensured that cases that underwent detailed observation, documentary analysis and interview had sufficient richness in available data and thematic content to form useful case studies. Additionally, the fact that the topic itself identifies matters involving domestic violence allegations automatically establishes a clear control in focus for the research. The use of a focused topic, purposive sampling, clear selection criteria and timeline provided a targeted data set for analysis.

4.4.2. Suitability of case study approach

The case study design selected for this study was selected as the enquiry meets both Yin (199), Stakes (2005) and Gillham's (2000) previously stated requirements for case study. The research is a contemporary phenomenon within its real life context. Furthermore, the boundaries, the nature and extent of influences on the decision-making process cannot be divorced from the institutional and legislative frameworks that govern the work of the Children's Court.

At the core of the present research topic is decision-making, with an emphasis placed on understanding the pattern of constructs or interpretations of issues prevalent in court proceedings. This includes the prioritising of particular forms of evidence and how they are evaluated by various stakeholders, and the manner in which particular definitions of domestic violence determine case outcomes. The process and result of the matters examined are crucial to this topic, thus lending itself to a case study approach. The research questions selected for this study fulfil case study requirements. They are exploratory and explanatory in that they seek to detail the process of decision-making and consider the 'what' of the handling of domestic violence allegations. The questions also lend themselves to exploratory enquiry as they seek to examine how different stages and stakeholders in the process influence the final outcome. A simple survey of stakeholders or a pure documentary analysis will not present a full picture of the complete process that occurs at the Children's Court. This research responded to the research question through a longitudinal study that incorporated both prospective and retrospective reviews of court matters and combined multiple techniques of data collection, to be detailed in the next section.

4.5. Sampling and Data Collection

This section will discuss the process of data selection, collection and analysis followed during this research. The data used for this research combined both retrospective cases through archive matter documents which will be referred to as '*archive matters*' and material from prospective court decisions from current matters that were observed, to be referred to as '*observed matters*'. Where findings across both sets of data are discussed the phrase '*reviewed matters*' will be used to indicate that the finding applies to both the archive and observed matters. The data collected from the observed matters included observation at court proceedings, documents from the Children's Court files connected to the matter and interviews with professional stakeholders.

4.5.1. Archive matters

The first sources of data were archive court files from matters deliberated on in the period 2009-2012. This period was selected as being the first available cases following The Special Commission of Inquiry into Child Protection Services in NSW ('The Wood Inquiry') and the subsequent policy changes discussed in detail in Chapter Two (The Children's Court Decision- Making context). A purposively selected sample of twenty cases that involved applications with some reference to domestic violence as a specific risk factor for children was reviewed.

The purpose of the review of the archive matters was to utilise files of completed matters to identify a framework of the court decision-making process and develop a set of themes to inform analysis of observed matters. In this preliminary phase analysis was undertaken of a sample of 15-20 NSW Children's Court archive matter files from 2009/2010. This created a template of the Children's Court decision-making process e.g. *report, assessment, court application, establishment, Hearing, finding*. Additionally

a coding framework was developed for initial analysis of the key language and themes that are present in court matters. This retrospective phase of the research generated crucial data on decision-making and a guide to the analysis of the main prospective observation of matters. Additionally, the random sampling and development of a coding framework identified within the findings from the archive matters provided a check against any pre-existing assumptions in observing matters.

Archive matters contain evidence submitted to the Children's Court during proceedings in addition to follow up reports provided to the Children's Court after deliberations conclude. These follow up reports provide a complete picture of the entire lifespan of a court matter and the progression of key issues, including placement and contact. This lifespan of a court matter involves several layers of the construction of the risk of domestic violence and child maltreatment, from initial discussion in the Children's Court application and evidence, to ongoing progress following the conclusion of court involvement. The perspective offered in these archive matters is unique in that the caseworkers, solicitors and expert witnesses responsible for these written documents have had time to form their professional opinion, and, importantly the optimal way to convey their concerns and recommendations. By contrast the observed matters offer a context in which to understand how these opinions evolve and are interpreted in the midst of proceedings.

4.5.2. Observed matters

The second data source was the sample of six current matters where proceedings were observed prospectively until resolution. This involved three sets of data, observation of court proceedings, review of court and Community Services files and interviews with professional involved in the matters selected for observation. These included judicial officers, solicitors and caseworkers involved in matters selected for observation.

The six observed matters selected for case study were NSW Children's Court care and protection matters from the period 2011-2013. The criteria for selection of matters was determined through initial screening of the Children's Court applications, and observation of the weekly care 'list' –where matters stand for mention or for administrative checks prior to Hearing. Matters initially were observed based on the presence of references to domestic violence in the Children's Court application and risk of harm/risk of significant harm reports (depending on the timing of application and therefore the risk threshold that was used). A further criterion for inclusion was evidence included in the court file referencing domestic violence and co-occurrence of multiple risk factors in addition to domestic violence. Additional criteria applied included matters involving an initial or new application and not variance to or continuation of existing orders. Matters not progressing to Hearing were also excluded. Matters were observed on the basis that permission was granted by the judicial officer, and if necessary, the parties to proceedings.

I observed proceedings during the early phase, prior to Hearing, in order to gather general information on the process of court deliberations and to record the progress of cases. This was followed up by attendance at any subsequent dates for the six cases selected from the general care list identified as meeting criteria for case study analysis. The examination of observed matters is an important facet of this research as the Children's Court is unique in operating as a closed court system that does not permit general public entry. Only those persons with specific connection to the particular proceedings, or those given special permission for purposes of training or development, are granted permission to attend. Negotiation with judicial officers and court staff was necessary for me to have approval to attend the Children's Court as a research scholar. The context and trajectory of cases are significant to understanding the process followed at court and the specific issues the Children's Court is expected to address.

Observation has typically been associated with ethnographic and sociological research, as it provides the opportunity to capture human behaviour in its broad natural context (Paterson et al., 2008: 33). However, Paterson et al. (2008) have argued that observation is now used not only to describe culture or group practices, but to collect data about the outcomes of specific practices, and to document physiological and psychological processes. Such data can determine the practices and processes that lead to particular outcomes. Denscombe (2014) has noted that key advantages of observation include examining real life situations in their natural setting. An important consideration in the use of observation is that the perception of the researcher is important, and that clear categories for observation should be established early so that interpretation is concentrated on specific events (Denscombe, 2014). In addition the researcher needs to be conscious of the 'observer effect' where participants may behave differently from normal as they are aware they are being observed (Denscombe, 2014). These particular issues were addressed during court observations for this research. Firstly a specific checklist template was created to ensure there were clear categories guiding the observations for example, noting the references to domestic violence. Secondly any 'observer effect' was minimised as I sat towards the back of the Children's Court room and did not have any interaction with anyone during proceedings.

The review of multiple cases through both archive and observed matters demonstrates the depth and variety of material that is gleaned on the life of a child/young person in this study. The recording of communication with parents provides an example of the ongoing casework. Copies of letters are placed on file. Significant conversations are printed out from the online case management system. Interview transcripts are typed. As a result material that is provided to the Children's Court by caseworkers can provide an indication of parents' perspectives and version of events, as well as the NSW Department of Family and Community Services ('Community Services') interpretation of the material. Importantly, each archive matter was finalised and therefore a complete record, providing a useful insight into the typical stages present in a matter

before the Children's Court, and the types of decisions needed at each stage of proceedings.

4.5.3. Stakeholder interviews

The purpose of interviews with stakeholders including judicial officers, solicitors and caseworkers involved in the observed cases was to obtain the perspective and opinion of professionals involved in proceedings. Additional objectives for the interviews included gaining further insight into the decision-making process and obtaining any supplementary contextual detail of cases observed. Requests were made through relevant Community Services Directors and Team Leaders for interviews with caseworkers and solicitors involved in the matters observed. Interviews with judicial officers involved in observed matters were sought through a direct request. All participants were asked to indicate if they wished to review their responses, and were provided with a summary of the interview transcript and key findings, with an option to receive a copy of this full thesis. 'Children and parents were not asked to participate in interviews or comment on court proceedings. Whilst such perspectives would have further enhanced the contribution of this thesis, consideration was given to the extenuating circumstances experienced by these children and parents during proceedings, and the additional pressure that participation would place on them.'

In several key aspects the data collection strategies for managing both the archive matters and the observed matters relied on the strength of the broader qualitative tradition and the specific case study approach. Purposive sampling was used in data collection to enhance the validity of the research through ensuring data contributes to the explanatory requirement of case study outlined by Stake and Savolainen (1995). Interviews provided a cross-reference, challenging existing assumptions from the documentary material or observation. Wheeldon and Faubert (2009a) describe the use of written documents as an important tool to aid observation in qualitative approaches as it provides triangulation to assist validity of findings. In this study the Children's

Court and Community Services files were reviewed to aid both selection of observed matters and obtain further data for analysis. Files belonging to all cases appearing in the care list for mention prior to Hearing were viewed weekly to identify cases meeting selection criteria for inclusion. Following the proceedings in the six observed matters the Children's Court and Community Services files were requested and reviewed to identify any further background information and documents to assist in the analysis. This included examination of the evidence and supporting material submitted to the Children's Court, for example affidavits from caseworkers or parents, police reports, hospital records, interview transcripts, AVOS and support letters. Examination of this written material was an important strategy to confirm initial findings from the observation of current matters. Wheeldon (2009a) describes the combination of observation and documentary analysis as an example of the necessary steps in the process of ensuring triangulation of data. Importantly analysis of the opinions and perspective of participants and key actors within the site of the phenomenon (court decisions) was considered alongside the existing material (court files). Triangulation of data and exploration of the phenomena from multiple viewpoints therefore assists with data convergence and confirmation of findings. Prolonged and intense access to the field of the phenomena assists with triangulation and depth of analysis.

4.5.4. Data analysis: Framework Theory

Both thematic and framework analysis were employed in the analysis of the data in the present study. Thematic analysis is a widely used method in qualitative research enabling the 'complex holistic picture' of a social problem to emerge through the generation of themes (Tesch, 1990: 9). The structure for analysis of this data also involved use of Framework analysis. According to Srivastava and Thomson, Framework analysis specifically identifies concepts to explain social interaction, behaviour, and meaning attribution (Srivastava and Thomson, 2009). These concepts create specific understandings and interpretations that frame an issue and the decisions concerning

those issues (Srivastava and Thomson, 2009). In this regard Framework analysis can be seen as extending thematic analysis. According to Tesch (1990), 'the Framework approach has many similarities to thematic analysis, particularly in the initial stages when recurring and major themes are identified', in addition to both analytical approaches emphasising the need to form linkages between varied concepts. This suggests that patterns and linkages in language are central Thematic and Framework analysis.

Framework analysis is a useful component in the case study approach as it allows for the discussion of the significance of specific themes and language to particular cases. Framework analysis operates within the field of Social Constructivism, and is considered to be in essence the study of how social problems are constructed, disseminated and how these constructs influence perspective and public debate. The issue of the construction of perspectives is crucial for this research in terms of the approach and context stakeholders bring to the evidence and proceedings in the Children's Court. Both Framework analysis and Thematic analysis allow for a focus on construction of the crucial ideas and rhetoric emerging from the data collected, in this instance observation, documents and opinions from the Children's Court.

Framework analysis has provided a useful starting point for examination of the divergent perspectives encountered within the cases studied in this research. Framework analysis provides a guide and structure to explain the interaction between the various professional stakeholders (judicial officers, solicitors, caseworkers). Important to this interaction is also the connection between stakeholders, the evidence submitted to the Children's Court and the actual proceedings of the observed matters at the Children's Court. Significantly for the cases observed, specific language and phrases can trigger formations of stereotypes that become difficult to override.

Utilising Framework analysis the data collected on each case was examined and coded according to two major strands, Identification of the key trends in decision-making, and identification of major concepts and constructs illuminated within that decision-making process. The core stages of decision-making present in court proceedings were categorised using the following major categories: initial identification of risk, reporting, assessment, child protection response, and court process and decision outcome. Each category was further broken down into further sub-categories for thematic analysis.

Carey (2013) and Aronson (1995) have described thematic analysis as an inductive approach to combining data collection and analysis. Aronson (1995) suggests that the key stages of thematic analysis in social work include identifying themes and patterns, piecing them together to develop a narrative, and linking any findings to relevant practice. In this research the selection and analysis of major themes and constructions was an ongoing process that ran through all stages of data analysis. The initial applications and court files provided written evidence of the core issues in proceedings. Observation of proceedings allowed for the consideration of the various terminology and priorities of all stakeholders. Community Services files provided access to the context of proceedings and the primary material forming the basis of the Departmental position as it was phrased in court. Interviews provided further insight into professional perspectives on decision-making, as well as the process of case preparation. The major themes identified included domestic violence, child maltreatment co-factors, and parenting within the context of domestic violence. Within the theme of parenting this study identified a specific framework that encompasses constructs of risk, compliance, insight and safety. The data source for each case was coded according to these themes, and then cross referenced against the additional data sources prior to consolidation of all cases from comparative analysis. Given the multiple types of data managed during the process, and the broad scope of analysis available in the rich data there were several challenges encountered, and the

need to ensure quality in analysis gained importance during the process, to be further reflected in the next section.

4.6. Challenges Encountered In the Research

This section will examine both the challenges encountered in this research design, and the responses developed to address them. These included the broad dilemmas in case study design, specific issues encountered in this research and steps taken to ensure quality of the research. There are two essential criticisms of case study as a research approach. The first relates to the process of defining and establishing clear boundaries around what constitutes a case study and the design of a case study research project. The second is in relation to the usefulness of this approach in terms of obtaining sufficiently valid results.

4.6.1. Challenges in designing research

A clear potential limitation in the present research was the low number of cases examined. This has the potential to place a limitation on the generalizability of the results. The suggestion from authors such Yin and Snyder is that placing boundaries on the topic can prevent it from becoming too broad and there can be replication in results through expanded discussion in findings (Snyder, 2012). Case study approach is unique in its ability to ensure validity, integrate multiple data sources and converge into a single analysis, as has been undertaken in this research.

A second limitation present in the present research was the time limited nature of observations. As it was unclear in the early stages of the exact length of the proceedings chosen for observation there was potential for time required to attend court compromising time available for data analysis. Initial planning for observing 15 matters took into account the possibility of some natural attrition due to Hearing dates

not being established or matters being stood down and not proceeding to Hearing. A further firm boundary was placed on the research timeframe in terms of setting a firm deadline for completion of case study selection and observation by February 2014, ensuring sufficient time was able to be devoted to the in depth analysis of the cases selected.

A final limitation of the present research was that it was not possible to determine the long term outcomes for children of the Children's Court orders in observed matters as follow up reports were not available at the time of data collection. Significant changes to possibility of restoration to parents, placement and contact arrangements are likely to have occurred following the granting of court orders. The review of archive file matters, including examination of follow up reports submitted to the Children's Court in these matters allowed for consideration of the general context of long term consequences that may typically occur following proceedings. The boundaries established in the research question confined this research to the Children's Court process, and not external events occurring following proceedings. Such boundaries, whilst limiting the study, ensured there were clearly defined cases.

4.6.2. Quality assurance and validity in research

In the specific topic and evidence used in the present research there were risks involved in ensuring the quality and generalisability of the findings obtained. In analysing the data and reaching conclusions my knowledge and background relating to both child protection and domestic violence work (to be discussed in further detail in the next section) could lead too easily to assumptions regarding outcomes based on previous experience that may not be applicable in current cases. The child protection focus of this topic can contribute to the potential for bias or presumption due to the subjective nature of much of the available material available on a case. For example interpretations of evidence and the weight given to particular forms and sources of

evidence can vary. A parenting assessment that has negative comments concerning the capacity of a mother who has experienced domestic violence may not always be automatically accepted as complete fact by a judicial officer. In order to avoid specific assumptions or making any pre-determinations during data collection and analysis I was required to be mindful of the impact of my prior experiences, and ensure specific selection criteria and framework for analysis were applied as described earlier.

A further particular challenging aspect of this research was the time consuming nature of undertaking case study work-particularly observation phases. The Children's Court matters have no defined period so there was a clear risk that analysis and writing might be undertaken without the final outcome being known. It is not possible to know at the outset of a matter the duration of the case and it may prove necessary to observe more matters than is intended to be included in the final sample to allow for attrition due to irrelevance of the case or length of proceedings. This will mean more time was invested in the researcher attending court to observe Hearings, and in the necessary follow up with the Children's Court and other relevant stakeholders to access any appropriate written reports and documentation associated with the analysis of court decision-making.

The issue of research involving court matters with unclear time-frames raises a broader concern regarding research in child protection and court decision-making. The nature of child protection cases is such that a clear measurement of outcome or result is complicated by the changing context for the children, their families and carers. While each of the cases tracked for this research resulted in a decision and final order, such orders do not automatically cease the involvement of the Children's Court. Section 82 reports, requiring Community Services to update the Children's Court on a child's progress and the ongoing administration of any court orders form a substantial aspect to the follow-up work of the Children's Court. The Care Act also permits applications to the Children's Court to rescind or vary orders. This allows Community Services to

recommend changes if specific orders or undertakings are no longer appropriate or valid. An example of this may be where an order was granted care to the minister for a twelve month period followed by a restoration plan, and the restoration plans and work with the parents subsequently fails. In addition parents and other significant relatives/carers are able to apply to vary orders due to a change in circumstances. This could involve potentially a parent who has left a violent relationship, secured appropriate accommodation and assistance, is addressing the concerns that led to the placement of children in care and now wishes to be considered as a suitable carer for their children. The need for flexibility, both in law and in court process thus makes a definitive answer to the question of final outcomes for children involved difficult to determine. This is particularly evident given the time-limited nature of this particular research, as distinct from more longitudinal studies that may be able to monitor cases and specific young people as they progress to adulthood.

The clear criteria and the mixture of data collection methods and forms of data in this research contribute to grounding the results in a naturalistic context. Alternative methods such as statistics, experiment or quantitative survey would not capture the full process of the Children's Court. The phenomenon of decision-making in cases involving domestic violence allegation in a Children's Court context cannot be adequately explained through traditional quantitative approaches. For instance a study of the prevalence of domestic violence allegations can provide evidence as to the existence of the problem, but not the illumination of the decision-making process. Similarly decision-making typologies and biases/leanings of judicial officers can be quantified but only through isolation from the process as a whole which would not explain the context and key influences in the decision-making process. Crucially, the discourses and understandings of domestic violence in operation in the Children's Court matters require the full attention and depth that comes with a case study approach. The next section will make specific reference to the role of the researcher and ethical principles as an important component of ensuring depth to research.

4.7. Reflections on the Research Journey

This section describes the journey that led to the creation of this research. Attention to ethical issues and the ‘insider’ nature of this research were key considerations for me because of my background in social work and the sensitive nature of the cases examined in this study.

4.7.1. Ethical considerations

Strong attention has been paid throughout the research process to maintaining high ethical standards, especially given the sensitive nature of the topic and data to be accessed. This research was referred to the University of New South Wales Human Research Ethics Committee for approval prior to research commencing.¹¹ The application and feedback process with the committee in the initial stages of formulating the research design ensured that any potential ethical consideration for research involving humans was addressed. Official approval was granted on the basis that all measures outlined were to be followed throughout the process, with yearly feedback to the committee and an agreement to seek approval for any adjustment to the research design.

Consideration of standards for ethical research influenced the research design in several respects. The researcher did not have any direct interaction with children/young people. The only interaction the researcher had with families or other parties to proceedings was via their solicitor to seek permission to remain in court when directed by the judicial officer. All names and identifying information of children, parents, other family members or parties to proceedings has been removed and pseudonyms are used in the description of cases and findings. Professionals involved

¹¹ Human Ethics Approval Reference Number # HC11450

in the research are not to be identified by name or other characteristics in the research.¹² Any identifying information regarding the cases is deliberately not described in the findings; only generalised terminology is used where relevant. Coding systems were developed to preserve identity of participants and families and stored confidentially. All electronic material is password protected and all paper copies securely stored for the duration of the research.

Research involving child protection topics requires a high level of sensitivity. The children and families who have come to the attention of child protection workers have experienced major challenges, both in their history and during the current process. Risk of significant harm concerns do not operate in isolation but within a range of other circumstances that may include social isolation, financial, housing and employment stress, health and mental health concerns, substance dependency. These personal circumstances inevitably build their way into reports and documentation. Having access to information of this nature places a researcher in a privileged position. This is imperative for understanding children who have been placed, either temporarily or on a long term basis, in out-of-home care. As well as the ethical implications, there is specific legislative guidance to ensure the security of such information.

In addition to the broad privacy concerns relating to child protection research, placing this research within the field of the Children's Court carries further obligations in relation to privacy. The Children's Court is unique in its design and function, as will be discussed further in the next chapter. It is a closed court, restricting public access only on a needs basis, including support people of parties, or individuals seeking permission to attend as part of specific professional development or training connected to their role. In addition to the judicial officer presiding over Hearings being satisfied all confidentiality would be protected for these matters, parties involved and their solicitors were also able to indicate their permission for proceedings to be observed.

¹² A copy of consent form is provided in Appendix Three

This ensured all individuals present at court were fully informed of my presence, the purpose of my attendance, and the obligation of confidentiality. Importantly judicial officers were able to give any party the opportunity to ask that proceedings not be observed. All parties across all matters observed indicated to the Children's Court, through their legal representative, that they consented to the observation of proceedings.

4.7.2. Insider research: reflection on background and experience

This section will conclude the chapter with a reflection on my journey as a researcher and my role in the area of child protection and domestic violence. One specific example of the broad ethical considerations addressed within qualitative methodology is the concept of 'Insider' research. Insight into the role and involvement of the researcher in shaping and influencing the field of research has been regularly recognised as a particular strength of qualitative research. As will be demonstrated in this section this concept has specific relevance for this research due to the impact of my particular status as an 'insider' in the field of child protection. The need for reflexivity and the acknowledgement of the role 'insiders' in conducting research is highlighted in several key works, specifically within the social-work research field that this research topic is located in. These include contributions from Hesse Bieber (2010a), and Merton(1972). These contributions identify a specific strand of 'Insider Research' and highlight key issues it raises for the qualitative tradition. Firstly there is the consideration of the position of the researcher within both the topic and the site of research. Secondly there is acknowledgement of the specific benefits of sharing particular language and communication patterns with research. Lastly there is a need for consideration of the requirement of reflection from the researcher throughout the process, and the impact of their prior knowledge and experience (Smith, 2009).

The appropriate position for a researcher and the creation of space to account and reflect on its significance are fundamental considerations in 'Insider' research (Hesse-

Biber and Leavy, 2010b). Merton, in his conceptualising of insider research, points out that the idea of researchers as absolute insiders or outsiders is founded upon 'deceptively simple' notions of identity and status (Merton, 2009). The classical notions of an omnipotent and neutral researcher can, and should be challenged. The construction of a specific identity for the researcher is multi-faceted. As Davies (2008) discusses, the notion of being an insider in an absolute sense can indeed be a misleading. Researchers perceived as insiders can face a level of ostracism, and difficulty in gaining acceptance or obtaining information due to the intertwining of their duty as researchers and their duty within the group studied. Conversely, researcher perceived as outsiders can unwittingly find themselves having status within a group conferred on them due to the time and depth of their involvement. Researcher identity can therefore be considered to exist within a spectrum, rather than on a binary scale of 'insider' or 'outsider' (Davies, 2008).

The benefits of insider research have been discussed in existing work in relation to the connection and rapport that can be established with research participants. Roseneil proposes that 'insider researchers are liable, to some degree, already to share with respondents an 'internalised language and range of experience' (1993:67). The ability to view the research process as not simple gathering of information, but rather a shared exchange of knowledge requires consideration not only of the researcher's identity, but also their ability to connect and build rapport with subjects.

For insider research to be considered valid, appropriate space must be given to self-reflection. According to Roberts and Sanders (2005), reflection can aid validity only when it is considered as part of the entire process, and not purely situated at the completion stage. The researcher should consider their position and its impact 'before they make contact with the research setting, during the process of research, and subsequently in the time taken to unravel the theoretical importance of the research after the fieldwork' (Roberts and Sanders, 2005: 295).

This process of reflection and examination of the identity of the researcher and connection with participants has influenced this work in a number of ways. It must be acknowledged at the outset that my experience in the field of child protection has helped initiate and drive this research. I have been a caseworker for what was then Department of Community Services (DoCs) and thus received specific training and experience in the role of court proceedings and court orders in work with children and families. In a different capacity as a senior case manager at a women's refuge I worked directly with women and children leaving violent homes. This often included acting as a support person and attending court for women involved in care and protection proceedings for their children at the Children's Court. Currently as a youth officer with a non-government organisation I continue to have obligations as a mandatory reporter and work therapeutically with young people, the majority of whom have some history with child protection involvement that includes past or current experiences of domestic violence and time spent living in out-of-home care. Some have a dual experience of the Children's Court system through appearances in the criminal division. This work can also encompass young parents who are now involved with the child protection system, or at risk of involvement due to concerns for their own children. These different roles I have experienced have provided a multi-faceted awareness of the function and processes of the Children's Court and a specific interest into the way domestic violence is understood and addressed within this context.

My background has brought benefits to this research in a number of ways. I have sat in the Children's Court room before, and I have listened to many second hand accounts of experiences of the Children's Court system. This provides some crucial background information on court process including: common jargon used, types of orders available and typical procedures. On a more abstract level, this experience has allowed appreciation of the complexities of the decisions made and the general principles of ensuring the best interests of the child. Furthermore, this knowledge allowed me to

communicate effectively with judicial officers, solicitors and court staff because I was already familiar with the unique pressures and circumstances of the jurisdiction. An example of this was my understanding that matters may take over the recommended standard of twelve months, matters may proceed to final orders following external mediation or agreement outside of court, and that crucial developments such as carer assessment, parental undertakings and care plan agreements take place as part of 'everyday' case work with families, with only the end result being provided to the Children's Court in care plans.

While my specific experience had enormous benefits in the development of this topic and enabling effective access to the 'field' of the Children's Court there were some specific challenges. The risk of too much prior awareness of a chosen field is in trying to predict outcomes based on previous experience that may not be applicable in current circumstances. To form accurate observations it is imperative to acknowledge that each case is unique in terms of the interpretations of evidence used and the weight that may be given to particular forms and sources of evidence. For instance, a parenting assessment that has negative comments concerning the capacity of a mother who has experienced domestic violence may not always be automatically accepted as complete fact by a judicial officer. In order to avoid specific assumptions or making any pre-determination during analysis I was required to be mindful of the impact of my prior experiences. The use of an ongoing journal, as well as supervision meetings to de-brief on each court attendance and each session of file review, provided the opportunity to reflect upon any potential biases or attempts to pre-determine matters and allowed me to see the way my understanding of particular matters developed and changed over the period of proceedings. The use of case study method, strict sampling and selection criteria as detailed earlier provided beneficial guidelines to the process of conducting research and the development of findings.

4.8. Conclusion

This chapter has described this study's objectives, qualitative and constructivist approach and case study research design. The approach and design of this study responds to the phenomenon of court decision-making in relation to cases of child maltreatment involving allegations of domestic violence. Case study approach was selected for this research because in essence case study is the examination of a particular social phenomenon, where the goal is to uncover a variety of sources of information and data available on specific examples of that particular incident or phenomenon. Despite specific challenges, the use of case study method contained benefits to both the design and execution of this research. One very strong benefit in the utilisation of case study methodology for this particular topic was the use of multiple sources of data. Given the small size of the sample the utility of the case studies selected comes from the verification of major themes and discourse throughout the different sources available for each case. Definite patterns emerged within each case from the written documents including applications, affidavits, assessments and evidence tabled by parties to proceedings. This is further verified through observational analysis of the issues discussed in court proceedings and the way language highlighted particular concerns and understandings. Transcripts of interviews with professional stakeholders simultaneously allows for further verification of the major themes emerging from each case, as well as an opportunity to place them in a wider context.

The approach to both the execution of the research and analysis has centred on the need to produce clear narrative to explain what decisions have been made in the cases examined, how they are made, and the broader significance of these decisions in evaluating professional understanding issues of child maltreatment and domestic violence. Observation and became a particularly vital part of the data collection process in the observed matters as the researcher encounters the phenomenon in real

time. Another significant consideration in the execution of the research was the 'insider' status of the researcher. The sampling and data collection procedure involved reflexive responses to reporting both the research process and findings. The next chapter will discuss findings relating to the assessment and selection of evidence for court intervention.

5. Findings: How is Evidence about Domestic Violence Conveyed to the Children's Court?

5.1. Introduction

Decisions that are made in care and protection matters necessitate multiple stages of information gathering and interpretation. The process of gathering the evidence and assessments that are provided to the Children's Court of NSW ('the Children's Court') is the first stage for court based decision-making. The assessment of the background and circumstances of children and their families, provides context and interpretation of child maltreatment issues, including domestic violence. The purpose of this chapter is to describe the professional knowledge and interpretation of domestic violence and child maltreatment that determines the identification and presentation of evidence to the Children's Court. Background evidence and trends in family circumstances from the retrospective review of archive care and protection court matters, and the prospective analysis of observed care and protection matters, are main sources of data presented in this chapter. Material from the archive care and protection matters will be referred to as '*archive matters*' and material from observed care and protection matters will be referred to as '*observed matters*'. Where findings across both sets of data are discussed the phrase '*reviewed matters*' will be used to indicate that the discussion relates to both the archive and observed matters. This chapter specifically addresses the sub-research question, 'What are the factors that influence the assessment of evidence of domestic violence and child maltreatment that is presented to the Children's Court in care and protection matters?'

This chapter is divided into three sections. The first section describes the demographics and background factors for children that were presented to the Children's Court in the archive and observed matters. The second section summarises the evidence presented to the Children's Court regarding domestic violence in all reviewed matters. The third

section outlines the additional child maltreatment risk factors that were connected to domestic violence in all reviewed matters. These additional factors included parental alcohol and drug use, extended family risk factors and parental mental health. The progression of evidence and assessment in the reviewed matters is a useful entry point to understanding the parameters of the decisions made by the NSW Children's Court. The material available within the reviewed matters offers an indication of several key aspects of decision-making in the Children's Court. These include the specific stages where decisions are made, the challenges encountered in these stages, and the impact of professional interpretations of parenting and child maltreatment on court outcomes.

The retrospective review of archive matters discussed in this chapter forms the first data set for this study. The archive file review charts the progress of the matters contained in the selected archive matters - from initial *preparation*, through *application*, to *Hearing* and the *outcome* from proceedings, final orders. The archive matters selected were sourced from a pool of complete court files of cases from 2009-2012. Files were viewed with respect to developing a thematic analysis of the Children's Court decision-making process in domestic violence. The six matters selected for observation involved thirteen children aged between four days and twelve years. There were six mothers and eleven fathers involved in these matters as parties to proceedings. Due to ethical considerations each archive and observed matter was de-identified and assigned a pseudonym prior to analysis. No identifying information will be provided on the backgrounds of the children. The focus of this analysis is the major risk factors and concerns that prompted Community Services involvement and application to the Children's Court. Whilst review of the archive matters offered indication of the typical stages and outcomes of decision-making, the observed matters offer further detail as to how evidence is used in proceedings. This detail includes the types of decisions that are made about evidence during proceedings. The perspectives on evidence offered by judicial officers, caseworkers and solicitors during

proceedings are also relevant to analysis of court decision-making. Data from the observed matters provide a link between the professional conceptual understanding of domestic violence that is present in caseworker interpretation of evidence, and the manner in which this is conveyed to the Children's Court. Additionally this chapter will refer to statements from interview participants including judicial officers, solicitors and caseworkers who were involved in observed proceedings.

5.2. Profiles of Children and Families in Archive and Observed Matters

Information that is provided to the Children's Court about the lives of children establishes the groundwork for the issues that are to be discussed in the court setting, and the manner in which the discussion will take place. This section will provide an introduction to the demographic information provided in the selected sample of archive and observed matters, and the trends in caseworker and solicitor presentation of evidence. The initial background that is provided to the Children's Court includes demographic details of the children and families, and the types of risk factors prompting court involvement. Information that is contained in evidence will typically comprise age, gender and the physical environment and care arrangements for children. The terminology used to describe these factors emphasises specific aspects of children's circumstances and directs the focus of the court to inform its interpretation of key thematic concepts including the nature and level of the risk of domestic violence experienced by children in specific matters.

The background of the children and families appearing before the Children's Court has a significant bearing on the decision-making process. By the time a court application is made caseworkers and solicitors have likely formed opinion on the nature and extent of the issues impacting on children. This includes the type of risk present, the capacity of parents, the appropriate intervention required and suitable long term arrangements for children. One judicial officer interviewee presiding over the observed matters referred to children's family background and circumstances as the starting point of decisions:

Generally I like to get the basic facts clear—who are the children, who are the parents, how old are they, looking at genogram to get a picture of siblings and wider family connections, then I like to get a feel for why the matter has come to the Children’s Court and what are the immediate concerns what are the issues surrounding the risk factors that have led the matter to come before us. (Judicial Officer A)

The judicial officer’s perspective in the above statement demonstrates a desire to ensure decisions are informed by the individual circumstances of each child. The background information pertaining to parents and children is of particular interest to judicial officers, as such information allows them to prepare for the proceedings and consider the range of potential decisions applicable within an individual case. The background of the 33 children in the archive matters is summarized in Table 5.1 and a full case summary is provided in Appendix One. Table 5.2 provides a summary of the children who were the subject of the six observed proceedings. A full case summary on each matter is provided in Appendix Two.

TABLE 5.1 CHILDREN IN ARCHIVE FILE MATTERS			
AGE RANGE	NUMBER OF CHILDREN	GENDER	
		MALE	FEMALE
0-1	6	2	4
2-5	6	2	4
6-9	8	4	4
10-12	10	6	4
13-16	3	2	1
TOTAL	33	16	17

TABLE 5.2 CHILDREN IN OBSERVED MATTERS			
AGE RANGE	NUMBER OF CHILDREN	GENDER	
		MALE	FEMALE
0-1	1	0	1
2-5	5	3	3
6-9	3	3	0
10-12	3	3	0
TOTAL	13	9	4

The background information summarised in Tables 5.1 and 5.2 was significant to the development of specific arguments for the need for formal court orders that were put forward to the Children's Court for consideration in these matters. These arguments included the specific needs and vulnerabilities of the children involved, the previous and future likelihood of risk to these children due to their vulnerability, and the need for court intervention to ensure the safety of children. The above demographic information available in the reviewed matters, offers context and emphasis to the arguments put forward by parties involved in proceedings, and is the first step in the development of a narrative for the Children's Court of the need for care and protection for a child.

5.2.1. Location of children: previous and proposed placement arrangements

A significant demographic factor presented in the reviewed matters was the physical location of children. 'Location of children' refers to information relating to the general socio-economic environment of the children at the time of assessments, in addition to the practical considerations of distance in facilitating the long-term placement and contact arrangements for children that eventuate from court orders. All reviewed matters were sourced from a single court in the greater Sydney metropolitan area. This meant that the children and their families, who were the subject of the matters observed, were all residing within a similar region of Sydney at the time of the application. In some instances, following the children's assumption into care, the placement necessitated relocation to a different region of NSW. Caseworkers interviewed as part of the proceedings for observed matters, identified location as a significant element in the formulation of care arrangements for children:

When preparing care plans I note down any barriers that child may experience due to the location of a placement i.e. if it's likely to put too much strain on the child to travel for contact, or it is unrealistic for parent. (Caseworker B)

This statement highlights that, where caseworkers such as Caseworker B do note issues with the location of the placement, they will need to develop measures to address it in their care plans. Similarly, the affidavits from parents' solicitors also noted geographic challenges, such as occasions where the parents had moved due to separation, availability of employment, or accommodation affordability and stability. In three of the matters selected for observation parents were described during proceedings, by their legal representatives, as being homeless or at risk of homelessness due to financial disadvantage and lack of available family or community assistance. One judicial officer also referred to location as a factor impacting on the circumstances of children:

When I review a file, and the caseworkers will give us mostly a very rich account of what home life has been like, I also pay attention to the suburb as well. You can't always place all blame on a parent if they are limited by their housing option, or unscrupulous characters. I do wonder sometimes if more could be done in the housing area to avoid creating such isolation, however I can only look at the reality of the present situation, and the immediate environment a child would be going back to.

(Judicial Officer B)

This judicial officer's comment suggests that the physical location of families has some impact on the interpretation of the children's circumstances and opportunities for support.

Links between children's well-being and the socio-economic profile of their geographical location have been identified as relevant in social work literature including Lonne (2008), Bebbington and Miles (1989), Holman (1988) and Aldgate (2006a). In cases of domestic violence, insecure or inappropriate housing has been noted as one factor that increases the likelihood of children experiencing domestic violence (Spinney, 2012). According to the Australian Institute of Health and Welfare (AIHW) (2012) Report on Specialist Homelessness Services, approximately 25% of all people seeking specialist accommodation reported as being homeless due to escaping

domestic violence (AIHW, 2012). In two of the observed matters, Matter of Buckthorp and Matter of Jant, a lack of stable accommodation of parents was specifically cited as a concern by caseworkers in their application to the court. Subsequently, in the Matter of Buckthorp, several references to accommodation were made by the judicial officer in confirming the establishment of the case that the children were in need of care and protection at the time of their assumption into care. In the Matter of Jant, the judicial officer mentioned lack of accommodation in the endorsement of the Community Services plan for the children to be placed in kinship care. The location of the parents and children in this study can thus be seen as influential in the court's analysis of the prior circumstances that led to a court application, as well as the endorsement of proposed future arrangements. Moreover, based on the previous judicial officer interviewee comments, judicial officers are particularly mindful of location when considering the realistic possibility of restoration of children to their parents.

5.2.2. Age of children: vulnerability in developmental stages

Several trends were identified from the ages of the children in all reviewed matters. There were 31 children across the 20 archive matters, ranging in age from birth to 16 years. While the Children's Court applications for these matters provide the date of birth and ages of children, age is also presented through caseworker descriptions of the stage of development and level of vulnerability that is applicable for each child. In 15 cases across the archive matters, for example, a common factor noted by caseworkers was the presence of young children under the age of two. Of those involving children under two, seven files involved a child less than six months of age. The ages of the children in the observed matters further suggest a connection between age of children and their risk of child maltreatment. Observed matters involved children ranging from four days to twelve years of age. Children under five made up the majority, totaling nine, or 70%, of the total group. While there was a distinct trend

towards applications for younger children in these matters, within the younger age groups the distribution remained steady with two to five children in each age group.

There were no young people over the age of 12 in the matters selected for observation. The term 'young people', as it is used in the Children's Court, refers to the specific category created in the NSW care legislation to identify children over the age of twelve (Children and Young Persons (Care and Protection) Act , 1998). There are some explanations for the lack of reports for this group. Firstly, any risk of harm concerns for these young people are likely to have already been reported and addressed at an earlier age, particularly where concerns have been reported by people with mandatory reporting obligations including police, health professionals, child care workers, teachers and social workers. This also means that decisions regarding any necessary court application have already been made. Secondly, where reports have led to previous court applications, court orders will have already been finalised, and any new reported concerns may not have met the required standard to make alternative applications to vary or rescind the existing orders. Thirdly, mandatory reporting is only compulsory in NSW concerning young people under the age of 16, making it less likely for reports to have been made for young people over the age of 16. Finally, where reports have been made regarding young people or Community Services is already aware of concerns due to their existing work with a young person or their family, other interventions not requiring court orders may be considered more appropriate. For instance, caseworkers may develop plans with young people that involve sourcing independent or supported accommodation, family therapy or reunification services, or involvement with youth support.

The trend towards younger ages of children in the matters suggest that the developmental stage of children is an important consideration in the assessment of risk and the decision to intervene through court processes. It is consistent with the current data from AIHW indicating that court orders are more likely to be granted at

younger ages (AIHW, 2015). This indicates that the children in younger age groups are perceived to have a higher level of vulnerability. There are several explanations for professional interpretation of risk differing in assessment of different age groups.

Prior research into child maltreatment, such as Karski (1999), has found that the age of children, and their stage of development can heighten the level of risk that they experience. Generally younger children in a pre-verbal stage of development, are considered to be more susceptible to severe forms of maltreatment due to a number of circumstances. Firstly, their physical vulnerability and stage of development require more intensive care, as do particular stresses, such as crying and sleeplessness in newborns and infants (0-12 months), and behavioural issues and testing of boundaries typically displayed in toddlers (1-3 years). Additionally, undeveloped or immature communication skills make any disclosure of non-physical harm difficult. Moreover, children in the under-five age group can be seen as potentially having less visibility in the wider community, if they are not receiving medical attention, spending significant periods of time with extended family or friends, or attending child care or play groups, which are not compulsory for children in New South Wales (unlike primary and high school education) (Jent et al., 2011).

The data available across all the reviewed matters is reflective of child protection professionals' awareness of the coalescence of children's ages, developmental stages and their vulnerability to risk. An explanation for the higher rate of younger children in the court applications is caseworkers' determination that the child's developmental stage, and access to external support, are relevant to the court's evaluation of safety. Repeated references to children's ages by judicial officers further confirmed the significance of age in the court's evaluation of children's safety. Solicitors were asked on several occasions to confirm the current age of the children. One judicial officer interviewed reflected that:

It is obviously concerning when you have infants such as this matter, or very young children are in highly volatile situations. The child's ability to have some level of self-protectiveness, or ability to ask for assistance has to be considered.

(Judicial Officer B)

In the above remarks, the judicial officer suggests that a powerful element in their understanding of the impact of different forms of risk for a child is that child's particular stage of development. As this judicial officer interviewee has suggested, very young children are likely to be assessed as particularly vulnerable, and this is likely to be a key consideration for judicial officers when considering both the nature and level of impact that violence may have on the child.

5.2.3. Gender

Gender is acknowledged in existing research as an influential factor in the impact that domestic violence has on children (McArthur, 2010). The data from the reviewed matters suggests that caseworker awareness of differing impacts of violence for boys and girls, is likely to be significant in their assessment of the children requiring court intervention. There was a variation in the proportion of male and female children in both the archive matters and the observed matters. There were 16 male children and 17 female children identified in the archive matters, indicating an almost even distribution in gender. However, when gender was cross referenced against age it can be seen that the majority of female children, 12 out of 17, were aged under ten at the time of court application, whilst just over half of the male children, 9 out of 16, were aged over 10. In the six observed matters there were nine males and four females. Consistent with the archive matters, all the female children in observed matters were under five at the time of application. The children over ten years old were all males. These trends in the data suggest that when preparing court applications caseworkers make assessments that link gender and age. Potentially such assessments are significant in terms of how caseworkers interpret both the child's age and gender as

well as their level of awareness of the presence of violence (Karski, 1999). Caseworkers' assessment of gender and age are likely to be informed by understandings of behavioural and developmental impacts of witnessing violence (Moffitt & Caspi, 1998). This suggests that understanding of assessment processes would be aided by further investigation into the assumptions of caseworkers relating to gender and age.

Gender and age of children were linked to their relationship with their parents in the information caseworkers included in court applications. The trend towards children aged under twelve suggested that this age group was seen as particularly vulnerable. However, in the observed matters, in their verbal testimony, caseworkers made reference to the relationship between older male children and their fathers, and the negative influence of violence on this relationship, suggesting that this is an important factor in their assessment. This assessment demonstrates that the use of verbal testimony in this way improved the ability of caseworkers to convey the long term consequences of domestic violence as a child maltreatment issue. When the caseworkers in the observed matters were questioned about the negative influences for a child witnessing a parent's violent behavior, they were able to describe their concerns for that individual child, but when writing applications they prioritised information about the general vulnerability of the children at different developmental stages being exposed to violence. An explanation for this is that written applications are used by caseworkers to outline their prior actions, and emphasise the need for further intervention, hence the need to refer to generic information about how violence may affect a child based on their developmental stage or gender. Whilst within the application format it is likely to be challenging to define and encapsulate the complex issue of domestic violence, in testimony caseworkers can further elaborate on their reasoning in relation to the individual experience of the child in question.

The background stage of information gathering provides the Children's Court with specific professional assumptions of the impact of domestic violence that link age,

gender and identity formation. The following statement indicates that age and gender are important to judicial officers to understand children's experiences of domestic violence:

These were boys at a particularly crucial stage, dad is a hero. I am concerned looking at the caseworkers statements and at the school reports that these boys not only lacked a male role model, they had the very opposite. What they saw, is what they learnt. You need to find better ways to deal with anger Mr (Sukaw), and you need to be a positive influence. You do not want them repeating this cycle.

(Judicial Officer, Matter of Sukaw)

The judicial officer's statement suggests that, in terms of the court decision-making process, gender is a factor in judicial officers' interpretation of the parent-child relationship. This refers to the modelling of positive behaviours as well as the assumption that any exposure to poor parental behaviour will influence children to replicate the same dynamics in their own life. Domestic violence was not viewed by the judicial officer as impacting on children in isolation, rather age and gender became specific considerations in the way they assessed the risk of domestic violence. Thus, male role modelling can be seen as important to judicial officers in their understanding of the links between parenting and domestic violence, which is consistent with the information and assessment provided by caseworkers.

Professional assumptions that older male children are particularly susceptible to learned behaviours are conveyed through the caseworker's (and subsequently judicial officer's) interpretation of the child's circumstances, and are linked with current research examining negative behaviours in children experiencing domestic violence (See Izaguirre and Calvete, 2015; Widom, 2014; MacMillan et al., 2013). Such interpretation may not always be confirmed by the external evidence in specific cases. The significance of female role modelling is absent in the way gender is addressed in professional discussion of domestic violence across all files reviewed. In these matters there were no references to gender, for example, in the influences of mother to son, mother to daughter, and father to daughter relationships. The disregarding of

assessment of these relationships creates a negative and limited examination of the complex interplay of gender and domestic violence. A demographic profile is established for the Children's Court that highlights a thematic discourse of male influence on older male children, and the vulnerability of younger female children. Such constructions of material relating to the background of children, determine the manner in which evidence of domestic violence is presented, an issue addressed in the next section.

5.3. Evidence of Domestic Violence

Specific evidence relating to domestic violence was presented as a risk factor in all the matters reviewed. Caseworkers' concerns relating to domestic violence were presented to the Children's Court using evidence to validate their assessment and interpretation of the violence. This section will examine specific themes present in the representations of domestic violence in the matters. These themes include the pattern of violence, source of the allegation, parental responsibility for the violence, relationship status of parents and the impact of post separation violence on children.

5.3.1. Single critical incidents of domestic violence

Specific risk factors for children were detailed by Community Services in the Children's Court applications in the archive matters, as either critical incidents or ongoing patterns of behaviour. The prevalence of allegations of single incidents and ongoing patterns of violence in the archive and observed files are provided in Tables 5.3 and 5.4:

TABLE 5.3 PATTERN OF DOMESTIC VIOLENCE ALLEGATIONS IN ARCHIVE MATTERS <i>Nb All Names Are Pseudonyms</i>		
ARCHIVE MATTER	SINGLE 'DOMESTIC VIOLENCE INCIDENT' <small>*Application describes one incident</small>	'ONGOING PATTERN OF VIOLENCE' <small>*Application notes continual violent behaviour</small>
Bales	X	
Caden		X
Deen		X
Ha		X
Jacobs		X
Jamison		X
Johanson	X	X
Johns		X
Johnson		X
Julian		X
Kane		X
Kim		X
Koroma	X	
Lassoni	X	X
Loach		X
Maan		X
Maken		X
Makie		X
Markus	X	X
Thonkins		X
TOTAL FILES	5	18
TOTAL NUMBER OF REFERENCES	30	50

TABLE 5.4 PATTERN OF DOMESTIC VIOLENCE ALLEGATIONS IN OBSERVED MATTERS <i>NB All names are pseudonyms</i>		
OBSERVED MATTER	SINGLE 'DOMESTIC VIOLENCE INCIDENT' <i>*Application describes one incident</i>	ONGOING PATTERN OF VIOLENCE <i>*Application describes ongoing continual violent behaviour)</i>
Buckthorp	x	X
Chrea		X
Hanna		X
Jant		X
Miller	X	X
Sukaw		X
TOTAL FILES	2	6
TOTAL NUMBER OF REFERENCES	4	18

Tables 5.3 and 5.4 indicate that in both the archive and observed matters the trend was towards references to domestic violence that described a pattern of ongoing, continuing violence. Examples of the different style of references to single incidents and ongoing violence will be provided in Table 5.5 and Table 5.6.

TABLE 5.5 SINGLE CRITICAL INCIDENTS OF DOMESTIC VIOLENCE IN ARCHIVE MATTERS: * Evidence referring to isolated or specific individual incidents of violence ** NB All names are pseudonyms
Allegations that the natural mother and older sister of the children were assaulted by the natural father. (Taylor)
Domestic violence incident from the birth father following the child's assumption into temporary care. (Johns)
Children placed at risk during contact visits. (Jacobs)
Children placed at physical risk due to breach of existing undertakings (agreement), signed by the natural father, to not engage in intimidating or threatening behaviour towards the children. (Maan)
Natural father allegedly providing unsafe supervision and causing potential physical harm to the child whilst heavily intoxicated. (Bales)
Natural mother and older sister of the children assaulted by the natural father. (Markus)

The descriptions in Table 5.5 highlight that significant changes such as separation, or removal of the child from the father have the potential to increase the likelihood of a violent incident. Several of the descriptions clearly state that the child or children were at direct risk as a result of a specific incident.

5.3.2. *Ongoing patterns of domestic violence*

In contrast to the allegations of single incident applications in Table 5.5, Table 5.6 contains examples of descriptions of ongoing patterns of behaviour:

TABLE 5.6 Ongoing Patterns of Domestic Violence in Archive Matters

* Evidence referring to isolated or specific individual incidents of violence ** NB All names are pseudonyms

Exposure of two infants to drug use, violence and inadequate supervision, the young age of the parents and the current status of their relationship. (Johanson)

Ongoing allegations of mutual violence between parents, aggressive behaviour and untreated mental health issues. (Deen)

Concerns surrounding the mother's commitment to the restoration plan, specifically maintaining the contact schedule and engagement with services. (Johnson)

Concerns regarding serious ongoing family conflict with extended family. (Caden)

Concerns regarding mutual violence between the natural mother and natural father, followed by the new step-father's violence towards the mother. (Kane)

Multiple reports for family regarding domestic violence, physical abuse, psychological mistreatment and children not receiving medical treatment. (Thonkins)

Concerns regarding the complexity of family dynamics, the mother's ability to act protectively and report breaches of AVO. Specific mention was made of the family's experience of inter-generational violence and statutory care, and the impact of these experiences on the suitability of proposed carers. (Jamison)

Concerns regarding the resumption of the alleged previously violent relationship between the parents. The mother had breached the order agreeing to undertakings by allowing unsupervised contact for the father with the children and amending an AVO protecting her and the children without informing Community Services. (Lassoni)

When the descriptions from Table 5.6 are viewed in comparison with Table 5.5 there emerges a trend towards descriptions of violence that focus on cumulative evidence of multiple, rather than singular, incidents. Applications based on single critical incidents are unusual. Of the 20 archive matters examined two contained reference to specific critical incidents of violence as a current concern for Community Services. The remaining archive matters contained applications where the domestic violence concern was referred to as an ongoing pattern of behaviour. This pattern was detailed in the Children's Court applications, not only in terms of the length of time that violence was present (seventeen applications), but also through references to multiple reports (thirteen applications) and to reports referring to multiple forms of violence (eleven applications).

In the initial stage of information gathering and interpretation in the reviewed matters strong links were made between the presence of violence and consequences for children. In one archive matter (Rubbar) the application contained information not only in relation to a long history of reports of violent behaviour, but also to recent concerns that the child was mirroring abusive language and intimidating behaviours with family members, and with students and teachers at school. The examples of the child's challenging behaviours served a dual purpose in this application, to demonstrate the presence of violence, and to highlight the level of trauma the child is experiencing as a result. In affidavits for this matter the caseworker noted that 'the child was reported to be unsettled.' The caseworker further assessed that 'the verbal and domestic violence had a psychological impact on the child which led them to display aggressive behaviour at school.' These examples of the impact of domestic violence on children provided to the Children's Court demonstrate the ability of caseworkers to convey the experience of violence for children beyond immediate physical risk concerns. However, equally present in the archive matters were statements and terminology, in evidence of domestic violence, that were vague. The descriptions of parents 'dealing with' or 'needing to address' domestic violence

operate, as very broad depictions of domestic violence as child maltreatment. These generalised phrases demonstrate that a consistently precise approach to assessment of domestic violence was not apparent in material provided to the Children's Court. A discrepancy therefore becomes apparent between developing a case for intervention utilising extensive information on multiple incidents, and the vague terminology that is used in evaluating incidents of domestic violence as child maltreatment. The need for precision in evaluation of cases where both domestic violence and child maltreatment co-exist is most apparent where evidence relates to complex examples of how violence has impacted on parenting capacity and where violence has posed a direct physical threat to children.

5.3.3. Sources of evidence of domestic violence

The Children's Court procedure and care legislation outlines requirements for evidence concerning the specific risk issues that warrant a child being considered in need of care and protection by the court. The source of the allegation is the first reference to domestic violence found present in the reviewed matters. The way that the source of an allegation is discussed raises important questions in terms of the Children's Court's threshold and process in considering evidence. The Children's Court needs to be satisfied that the claims and assessments made in evidence are reliable. Contested issues relating to the source of allegations across all reviewed matters included disputes over evidence regarding proof of violence, the current relationship status of the parents, connections between parenting concerns and the impact on children, and identification of the person responsible for maltreatments.

In one particular archive file (Bales), the application referred to the presence of the natural father's sister during Community Services discussion with the parents, and her subsequent assertion that the natural father was physically threatening when under the influence of alcohol, and that this had been directed at various times in the past

towards the mother, and towards other family members. Both parents denied this and claimed that the evidence provided in the application from police reports had been unduly influenced by a specific agenda of the sister to discredit their parenting. The specific 'balance of probabilities' evidentiary requirements of the Children's Court proceedings was then applied in this matter. This, in effect, meant that neither Community Services nor the parents, as party to proceedings in the Hearing for this matter, needed to conclusively prove the claim that violence had occurred or, alternatively, that the sister was providing false information. The judicial officer was required to consider the role of both the alleged victim and the perpetrator, and whether their roles impacted on the child in this matter. The inclusion of this material indicates that parents are labelled with specific categories and responsibilities in relation to domestic violence. The assessment is likely to vary if the parent is a victim or a perpetrator. In contrast, caregivers solely assessed in relation to risk issues such as neglect, are more likely to be assessed as having similar levels of responsibility, and not have their status and role in a relationship scrutinised to the same degree.

Allegations of child maltreatment are often disputed in proceedings, and may typically include the cause of injuries, the source of allegations, and the timing and purpose of reported concerns. Proving significant risk of harm is a necessary requirement for Community Services to adequately conduct their case in court proceedings. In order to demonstrate that a child requires care and protection, there needs to be an assessment finding that care cannot adequately be provided by the parents. In situations of domestic violence, demonstrating a risk of harm is particularly contentious. In the matter of Hanna there was a layer of complexity added in the need to determine the legitimacy of the violence experienced and prove the level of risk present in the children's experience of domestic violence. For instance, not all facts of the violence was accepted by all parties. Evidence of domestic violence was disputed. In contrast, the additional issue of lack of appropriate supervision of the children was raised and was deemed uncontroversial. The exact frequency of the violence, when it

began and when it finished, became particularly significant in determining the impact it had had on the children. As one judicial officer participant commented:

It is really important to look for objective evidence. It is quite hard to do that just watching a person in a witness box for two hours, or reading one medical document or police report. That is where caseworkers come in and psychologists as well as other people who have observed what is happening over a longer period of time.

(Judicial Officer A)

The judicial officer participant is indicating in this statement that the ‘fact’ of violence was not accepted by them based solely upon police statements, AVO records, hospital records and other evidence relevant to the case. In order to demonstrate a pattern of concerning behaviour the evidence was required to be viewed as serious and present over a sustained period. Thus a larger volume of material needs to be considered by judicial officers. The high volume of reports from multiple sources in the reviewed matters meant that there were multiple accounts of the same incidents. Such repetitive accounts of the same incident, whilst establishing the presence of violence, also required caseworkers to convey to judicial officers how incidents may form a pattern, and what the immediate level of severity may be for a child. Thus, while multiple reports are likely to enhance judicial officer certainty that domestic violence was regularly occurring in the child’s environment, the caseworker assessment of the evidence is essential to emphasise the significance of the potential harm to an individual child.

The challenge of proving domestic violence was highlighted in the observed Matter of Jant. The natural mother in this matter faced a particular barrier regarding the submission of evidence supporting her claim that the father of the third child still posed risk to the child, due to domestic violence. This was a particularly important claim as this father was seeking restoration of their child to him, and was submitting evidence as to the stable and appropriate environment he could provide. The natural mother

made reference, during her introductory remarks in the Hearing, to a recent incident with the father of the third child. She described to the Children's Court an occasion where he had deliberately driven recklessly to intimidate her, and had threatened to cause the car to crash to harm her and her children. This was considered inadmissible evidence as it was absent in any prior affidavit or supporting material, and the agreed deadline to submit material had passed. In her response to the decision to not examine her oral evidence, the mother indicated a concern that the Community Services and father's case for restoration of the child to the father, would now not be tested against her claim that he had recently been violent and posed a risk to the child.

In the Matter of Jant there was also a lack of current external supporting evidence, as the recent incident was not reported to police, and had not been investigated, despite multiple forms of evidence identifying an historical pattern of violence. The historical information provided dated back to the maternal grandparents and their relationship at the time the natural mother was a child. The source of this evidence was subpoenaed police records. The mother's relationship with the fathers of the second and third children was described as violent, in key evidence used throughout proceedings. This included direct disclosure of the mother, both in interview with Community Services and in affidavits sworn by her. In addition to caseworkers' assessment of domestic violence and their account of information provided in interview, all parents' police records and AVO applications were submitted as supporting material. The inclusion of external records provided a first hand and official account of violence, written during, or close to, the time of the events described. A police officer's record of the incident, while not finalised at the time of attending a scene, will be written soon after, and based on the officer's log at the time of the incident. For instance, one police officer's reports submitted for this matter were dated the day following the date of the incident. The timing of the disclosure at the commencement of proceedings, and the lack of external validation hindered the ability of the mother to reach the evidentiary standard of 'the balance of probabilities.' This

meant she was unable to demonstrate that it was more likely that violence occurred than it did not without conclusive third party records. This outcome further demonstrated the significance of third party verification of domestic violence during court proceedings.

References to reports or allegations of domestic violence were not used in any of the observed matters without specific reference to the presence of children. These references can be viewed within the growing body of literature that links children's exposure to domestic violence with long term emotional and psychological harm (Holt et al., 2008). In the archive matters that referred to isolated incidents of violence, any description of the incident contained reference to the presence of the children, or alternatively examples of how the incident had affected the mother's capacity to provide a safe environment. This indicates that caseworkers are aware of the research demonstrating the impact of violence on children and are able to identify violence in individual cases. However, this caseworker reliance on a link between the presence of children at incidents and research showing negative consequences of violence for children, does not consistently establish impact for children in each individual case.

Despite the consistent 'balance of probabilities' standard that must be applied to the evaluation of evidence, the validity of domestic violence evidence was challenged more frequently than other child maltreatment issues, a pattern consistent with previous research from Kolbo et al. (1996). In the Matter of Sukaw, the issue of verifying violence was more time consuming than discussion of other issues relevant in this matter, such as drug abuse and inappropriate domestic environment, which were not seen as controversial claims and were accepted by all parties. This matter highlighted that even a legal document, such as an AVO, can be disputed as irrelevant in an attempt to provide mitigating circumstances. In this case, there was clear and unambiguous third party evidence of physical abuse and a pattern of behaviour the father had had in previous relationships. Despite this evidence, the issue of domestic

violence was disputed. The father denied these claims of past violence, until he was actually confronted with the direct copies of the AVOs from that time. Even when these were admitted into court as evidence, the father asserted that he was pressured to agree to the AVOs, and that an injustice had been done. When asked to explain police reports and photos detailing injuries to the mother, the father claimed that she may have done these herself, or that it was a result of him trying to stop her harming him and was therefore 'self-defence.' The time and effort concentrated on addressing these points indicates that domestic violence was a complicated risk factor for the Children's Court to consider in relation to the parenting capacity of Mr and Ms Sukaw in comparison with other issues, including the parent's substance abuse.

The Matter of Sukaw is an example of a strong level of contestation at an individual case level regarding the presence of violence. Less time was available for the Children's Court to evaluate Mr Sukaw's parenting capacity as the Children's Court invested time in Hearing his protestations that he was not violent. Caseworkers were required to use a large amount of evidence from different sources to respond to the father's denial of the allegations of violence. In contrast, other concerns raised regarding use of alcohol and other substances were not contested by Ms and Mr Sukaw. Comparatively, therefore, evidence of domestic violence was perceived as complex and required a high level of interpretative skill on the part of the caseworker and judicial officer.

5.3.4. Evidence of responsibility: victim and perpetrator labels

The second significant aspect of domestic violence found present in the applications from the reviewed matters was the discussion of the parent's role in the violence. The use of evidence where parents are analysed as 'victims' and 'perpetrators' offer examples of how caseworker interpretation of domestic violence impacts on the analysis of evidence that they offer. It was evident in the archive matters that domestic violence terminology was used differently and had different levels of impact. An

example of terminology labelling parental responsibility for violence was noted in a particular archive file (Caden). This matter involved extensive claims and counter-claims of assault and threatening behaviour, from both the natural mother and the natural father.

The police records that were included in the evidence for this matter referenced both parents as 'persons of interest' and 'persons needing protection'. However, the corresponding application and affidavits filed by Community Services did not give either parent a specific status but used vague terms including 'mutual violence', 'serious hostility between both parties'. These terms do not offer a precise description of incidents, but reflect the same descriptions offered by police in the source material that is selected for inclusion by caseworkers. Whilst caseworkers need to preserve the authoritativeness of the source information to ensure its validity in proceedings, the effect of such terminology is to prioritise physical actions of violence and the information provided that supports the claim that violent incidents had occurred. Where the evidence implies both parties are responsible for violence it does not address the more complicated and subjective issue of the cause of violence, whether there is ongoing abuse present in the parents' relationship, and what the implications may be for the child. Where caseworkers rely on unclear evidence of violence there is potential for their assessments to not address these complex issues.

The selection of non-specific phrases by caseworkers to attribute responsibility for violence suggests that if there were no third party evidence available to identify a victim or immediate harm to the child, caseworkers will instead rely on judicial officers inferring that violence has been present. Furthermore, caseworker reliance on generalised terms suggests that domestic violence is difficult to categorise as connected to the child, because it primarily concerns the parental relationship. This broad assessment of the relationship does not account for the interrogation of the uneven power dynamics or gendered nature of the violence. In this respect, domestic

violence was not treated as a substantive issue, but rather, examples of more generalised concerns. This is not consistent with the way that the source of the allegation is scrutinised in terms of establishing clear proof of violence and its ongoing consequences. The discrepancy between assessments of the source of evidence and evidence of responsibility for violence suggests inconsistent depth of analysis in evidence of domestic violence. This inconsistency indicates a lack of confidence or understanding on the part of the professionals in their treatment of evidence of domestic violence.

5.3.5. Complex relationships? Evidence of protectiveness

In the reviewed matters, the need to ascertain the current relationship status and communication patterns of parents highlights the connection caseworkers made between the relationship dynamic of parents and the risk of domestic violence. Parents' current levels of communication were closely linked by caseworkers to assessment of the protective abilities of mothers. In one archive matter (Lassoni), concerns were raised regarding the current level of communication between the parents in the application, and in subsequent supporting material provided by Community Services to the Children's Court. Phrases such as 'willingness to maintain close contact' and 'prioritising the reconciliation wishes of the father', indicate that, in this instance the caseworker determined that Ms Lassoni was placing the relationship with the father above consideration for the safety of her children. The caseworker was effectively creating a link between the mother's choice to have communication with the father, and the future likelihood of violence resuming and the children being placed at risk. The phrases used by the caseworker do not contain reference to proposed actions or responsibilities of Mr Lassoni. This caseworker has thus placed an onus on Ms Lassoni (a survivor of violence) to ensure the safety of her children through limiting communication with their father (the perpetrator of the violence). Such expectations do not adequately take into consideration the stages that are present in the cycle of

violence, and the existing research explanations for why the cycle may repeat many times before a woman leaves a relationship (Bagshaw, 2000). The caseworker's decision to use contact between the Lassoni parents as a measure for Ms Lassoni's protectiveness towards the children also ignores the constraints that she faced in extracting herself and the children from violence. Caseworker acknowledgement of the challenges women face in ending violent relationships has been found to be an important tool for engaging mothers with child protection intervention (Buckley et al., 2011).

A further example of a caseworker focusing on parental relationship status and the parents' protective abilities can be seen in the following statement from the application:

Community Services do not feel that it is in the children's best interest for the father to return home before both parents are able to maintain separation and demonstrate a deeper level of insight and understanding about the domestic violence cycle and issues which led to the children being removed from their care initially.

(Caseworker - Matter of Lassoni)

The caseworker's statement above suggests that they have observed that the parents have maintained communication and alliance. Where such alliance occurs, the complexity of a matter increases and the need to assess the risk relating to the relationship can take precedence over other direct risk to children. The current relationship status of the parents was identified as a contested issue in the Matter of Lassoni. The application and care plans submitted during court proceedings for this matter by Community Services, labelled the relationship between the parents as a complex dynamic, but references to how the relationship may be categorised as fitting a pattern of violence were absent. Caseworkers referred in the application to a concern that, 'the father denied that there was any history of domestic violence between him and the mother describing his relationship with her as being perfect.' Particular

emphasis was given to the lack of prior assistance sought by either parent to address this, and to the fact that recent counselling and support obtained by the parents could not show a sustained period of engagement.

Care plans submitted in the Lassoni matter made specific reference to the father's breach of the AVO and parole conditions, and failing to complete assessments for entry into domestic violence programs. It was noted, both in the application and in the care plans, that the parents had actively lied to Community Services by failing to inform them of the existence of the AVO and parole conditions, and his subsequent breaches. The application refers to concerns regarding the mother's role in the relationship. Community Services identified the mother as both a victim and perpetrator in her relationship with the father. The application further refers to a specific requirement from Community Services for the mother to demonstrate insight into the complex dynamics present in the parents' relationship and domestically violent relationships in general. A further requirement was detailed for the mother to engage in domestic violence programs and support groups for women who have experienced domestic violence.

In the observed Matter of Buckthorp, despite the concerns detailed by Community Services' caseworkers regarding the parents' relationship, the application also contained some assessment of the complexity of the violence Ms Buckthorp experienced. The caseworker indicated in the application that they had observed an affectionate and close relationship between the parents. This description does also contain the caveat that there appeared to be regular incidents and AVO applications, followed by denials or AVO amendments and withdrawals. Concern was expressed in the application regarding the environment that such a pattern would create for the child, and that it renders the child at risk of emotional and psychological harm, and possible exposure to physical and verbal abuse, causing long term emotional disturbance. The major concern for the caseworker in the Matter of Buckthorp appears

to be not purely the presence of violence, but the lack of acknowledgement or action on the part of the parents to change their behaviour. In comparison with the major emphasis on relationship factors in the Matter of Lasoni, the assessment from the caseworker in the Matter of Buckthorp is indicative of a thorough attempt to assess the direct level of impact that violence can have on a child's safety and well-being, as well as the capacity of their parents.

The application for the Matter of Buckthorp outlined the association between Mr Buckthorp's use of alcohol and drugs, and issues pertaining to domestic violence. The application indicated that Community Services' assessment of the relationship was that drug and alcohol use escalated the severity of particular situations, and that therapy for both parents was needed to address this. The application also made connection between the father's refusal to follow medical treatment and the presence of violence in the parents' relationship. Specific reference was made to an incident where the father assaulted the mother on a busy highway after suffering a 'black-out'. The father claimed no memory of the incident and that he suffered from pre-existing conditions. Community services outlined concern that, without maintaining treatment, the father could not ensure the safety of the mother or their child. The complex issues relating to Mr and Ms Buckthorp suggest that caseworkers need the skill to consider multiple factors that may contribute to the presence of violence, both in the past and the future. Such assessment is particularly significant given the often sustained nature of violence (Toews and Bermea, 2015).

5.3.6. Maternal management of post-separation risk

Applications in the reviewed matters provided the Children's Court with the caseworker's evaluation of the necessary steps for parents (and particularly mothers) to address the issue of violence and therefore demonstrate a sustained ability to be protective of the child. Across all applications reviewed, caseworker assessment of the

parental relationship and protective ability did not appear to take into account information regarding ongoing violence post separation. Post separation violence was referred to in the archive matters in a limited way as a particular concern during contact visits with the offender. An example of violence during supervised contact was provided by caseworkers in one archive file (Jacobs). In this matter the Children's Court application was to vary existing orders, due to allegations that the natural father had been physically abusive towards a child and was making threats to harm the natural mother during a supervised contact visit. In this case, despite the relationship between the parents being over, there was still an identified risk to the children, and to the natural mother, thus continuing the pattern of violence. In a second archive file (Lassoni) a high level of potential future risk was assessed due to an inference that communication between the parents would lead to a resumption of violent behavior, which could potentially endanger the children. The mother's ability to act protectively was specifically measured by her ability to report breaches of the AVO. Specific mention was also made of the family's experience of inter-generational violence and statutory care, and the impact of these experiences on the suitability of proposed carers. Additionally, parenting capacity and domestic violence was measured in this matter through taking into account the experience of domestic violence, both directly and in the parent's broader family context.

When caseworker concerns are examined as a complete narrative for this family it indicates that for the Children's Court to be satisfied there is a sufficient level of risk, it needs evidence of past concerns as well as the current circumstances for a child. Past incidents and information related to the extended family are not sufficient grounds for the Children's Court to assess risk without the additional assessment of the current circumstances for the children in the matters reviewed. The current level of safety of the Jacobs and Lassoni children was an important threshold that the Children's Court was required to measure in order to determine the current protectiveness of the parents.

The assumption that it is the mother's role to keep children safe and that safety is enhanced through separation does not take into account data regarding the high frequency of post-separation violence and the ongoing access perpetrators can have with children through contact (Kitzmann et al., 2003). For instance, in the Lassoni matter the following statement was made to convey the argument for mother's responsibility for protection of the children:

At this point in time Community Services does not believe that the mother will be protective of the children should the father return to the home and resume violent behaviours. This is due to the mother engaging in sporadic counselling sessions. In addition the mother was not honest about having resumed a relationship with the father until the beginning of the year. (Caseworker - Matter of Lassoni)

This assessment statement provides a negative assessment of the mother. Whilst the statement gives reasons why the mother is being assessed as likely not to be protective, but does not offer any indication as to what would be sufficiently protective behaviours. Also ambiguous is why, despite both parents being involved in proceedings, there is an emphasis on the expectation for the mother to be protective, rather than the expectation for the father to refrain from violence. The assessment did not examine the likelihood of the father resuming violent behaviours, an immediate factor for the safety of the children. The assessment did not involve identification of Ms Lassoni's particular strengths and the resources available to her, both significant facets in her ability to be protective. This is distinct from references that were made in this and other reviewed matters to parental alcohol and drug use, that provided a causal link between alcohol and drug usage and compromised parenting capacity, as well as outlining specific steps to be taken, including treatment and counselling. In such circumstances, it is easier for caseworkers to determine if protective factors have increased and risk therefore minimised than to assess more nuanced circumstances of violent relationships. The assessment also suggests that, where examples of domestic

violence following parental separation are provided to the Children's Court, some caseworkers place responsibility on the mother for ensuring safety post parental separation.

It is important to note here that in the matter of Lassoni, despite the negative assessment of the mother that was offered by Community Services, the Children's Court ultimately did not grant the original application for long term care orders, but instead requested an amended proposal for twelve month supervision orders followed by a further two years of shared parental responsibility between the minister (Community Services) and the parents. This particular case suggests that descriptions linking relationship status and experience of violence with parenting abilities are not always sufficiently comprehensive. The Children's Court needs to be satisfied that the safety concerns are serious enough to warrant long term alternative care arrangements, where other options such as ongoing casework with the family may be gauged as sufficient to improve the safety of a child. The next section will examine the additional child maltreatment issues that are identified by caseworkers in the Children's Court application for the matters, and how the relationship between these co-factors and domestic violence is addressed.

5.4. Child Maltreatment Co-Factors

The reviewed matters offer an insight into additional risk factors that are simultaneously presented to the Children's Court with allegations of domestic violence. This section will describe caseworker identification and presentation of child maltreatment risk factors in addition to domestic violence in the archive and observed applications. Non-domestic violence risk factors that were referenced in the reviewed matters files included drug abuse, physical abuse of child, psychological abuse, sexual abuse and unmanaged parental mental health. Analysis of applications for the matters reviewed, identified several key themes in caseworker discussion of child maltreatment co-

factors existing alongside domestic violence including parental alcohol or drug use, parental mental health, extended family dynamics and access to housing.

Caseworkers' references to multiple concerns suggests that domestic violence is likely to be presented in applications as one of several factors impacting on a child. The caseworker references to different child maltreatment factors in the archive and observed matter applications are summarised in Table 5.7 and Table 5.8:

TABLE 5.7 RISK CONCERNS IN ARCHIVE MATTERS					
All names are pseudonyms					
ARCHIVE MATTERS	PARENTAL ALCOHOL OR DRUG USE *Current at time of application	PARENTAL MANAGEMENT OF MENTAL HEALTH * Current diagnosis at time of incident	EXTENDED FAMILY FACTORS * support available to parents, child protection history	UNSTABLE/ UNSUITABLE HOUSING *Current/ potential homelessness unsafe housing	OTHER RISK FACTORS * Physical/ Sexual/ Emotional Abuse
Total Number Of Matters	18	2	5	6	3
Total References In Files	53	5 NB 5 additional references to potential suspected diagnosis	7	11	6

Table 5.8 Risk Concerns in Observed Matters All names are pseudonyms					
OBSERVED MATTERS	PARENTAL ALCOHOL OR DRUG USE *Current at time of application	PARENTAL MANAGEMENT OF MENTAL HEALTH * Current diagnosis at time of incident	EXTENDED FAMILY FACTORS * support available to parents, child protection history	UNSTABLE/ UNSUITABLE HOUSING * Current/ potential homelessness unsafe housing	OTHER RISK FACTORS * Physical/ Sexual/ Emotional Abuse
Miller			X		
Buckthorp	X			X	X
Sukaw	X		X		X
Hanna	X				x
Jant	X		X	X	x
Chrea					X
Total Files	4		3	2	5
Total References	8		8	3	6

The identification of these risk factors provides an overview of the multiple factors in considering what constitutes a sufficient safety concern and potential risk to warrant an application. Importantly these references highlight a range of factors identified by caseworkers that can impact on the parent's ability to provide adequate care and protection. Across all applications examined the references to particular risk factors is an indication of the assessment caseworkers have made of the most concerning issues for a child. The high frequency of references to parental use of alcohol and other drugs, and negative impact of extended family identified in Table 5.7 and 5.8 indicate

caseworker association of these issues with domestic violence. Moreover the references in Tables 5.7 and 5.8 suggest that caseworkers have prioritised these concerns in determining the relevant information to guide the Children's Court's consideration of the issues that are impacting on the welfare of the child. As a result of these references, factors external to domestic violence have a significant role in the way that the level of risk for a child is described in court applications. The reported risk factors outlined by caseworkers in the applications for the observed matters further confirm the existence of a perception that incidents of domestic violence in isolation are not sufficient grounds for Community Services, or court involvement.

The following excerpt from an archive application (Rubbar) highlights the way that multiple additional concerns can be intertwined with domestic violence allegations by caseworkers:

The reports outlined a history of exposure to severe domestic violence and serious physical harm to the child, which resulted in bruising to his face. These reports have also outlined concerns of alcohol abuse by the father. Many of the incidents of domestic violence between the mother and father have resulted in injuries to the mother. The mother has not contacted the police on any of these occasions, except for the most recent one, whereby the mother was taken to the police station by a friend and the police applied for the AVO in her behalf. Given the children's history, concerns were heightened for the children's safety.

(Caseworker - Matter of Rubbar)

The selection of information that is provided by caseworkers in the archive and observed court matters suggests that choices are made at the preparation phase of court involvement regarding the presentation of background factors such as age, gender and co-factors. Importantly, this information is not only provided, but specifically requested by judicial officers to inform their decisions. Whilst applications specifically asked caseworkers to list concerns about risk, there was not a specific

question prompting caseworkers to identify specific strengths of the parent or child's living environment. Incidentally, caseworkers included such information through their description of parents' actions when describing their interactions or events, but this was often brief and not consistently undertaken across the matters reviewed. This section will now examine the presentation of the other major co-factors referenced alongside domestic violence. Based on the reported risk concerns in the observed matters, ongoing domestic violence is often mentioned in conjunction with parental alcohol and drugs or unsafe or suitable housing. These two issues have been identified in existing research as both co-factors and consequences of domestic violence (Holt et al., 2008).

5.4.1. A need for role models: Intergenerational child maltreatment and exposure to extended family risk factors

The caseworkers' assessments of risk in all the Children's Court applications reviewed contained regular references to the impact of extended family on children's safety in the reviewed matters. Extended families are part of a broader environment for the children and the parents, which can either decrease risk or increase the likelihood of the child being safe (Turnell and Edwards, 1999). This includes factors such as the continuation of experiences of trauma through successive generations (intergenerational trauma), the unsuitable nature of the environment the parents were raised in, and the parenting they experienced as children. In addition to these historical concerns, relatives can also take a significant role in assessment of children's safety where they are considered, potentially, to have ongoing involvement with the children, either through their proximity to parents, or potential to be kinship carers or contact supervisors.

A generalised picture of an unsuitable extended family environment was created in some of the observed matters. For instance, in one matter (Jamison), reference was made to the number of family members across three generations who had

experienced periods in care. Several concerns were raised in the application and affidavits submitted by Community Services, including the complexity of the extended family dynamics, the mother's ability to act protectively and a reported breach of AVO. Analysis of family dynamics, including the interactions between parents and extended family, the time children spend with extended family and available support from other family members, assisted caseworkers in providing justification for their assessment of Ms Jamison.

In all of the observed matters, references were made to the children experiencing an atmosphere of family conflict. Examples of family conflict that were provided also included references to dangerous living conditions, drug use, interactions with inappropriate strangers, and threats or intimidating behaviours. For instance, in the Matter of Jant, written evidence was submitted by Community Services that the mother's current temporary arrangement to live with relatives would not be considered a suitable placement for the children. This was due to concerns regarding the safety of the physical environment, as well as allegations of domestic violence perpetrated by the grandfather, and ongoing conflict and aggression between the grandparents and various neighbors and local community members. This was further expanded during the proceedings, when the caseworker provided testimony confirming that Community Services continued to hold concerns regarding the grandparents. In other cases, including the observed Matter of Buckthorp, references were made in the applications and supporting material submitted prior to the Hearing, that family members including siblings, were involved in violent incidents in the parents' home, where police had been called, or that there were various persons, including siblings, involved in drug use or inappropriate behaviour witnessed by children. This indicated that the impact of the extended family living environment, and individuals in the family network likely to cause harm, is assessed by Community Services when preparing material for the Children's Court.

The purpose of Community Services' inclusion of broader family and environmental factors in the observed matters and archive matters was to provide both historical and environmental explanation for the presence of parenting deficiencies, and an argument for court intervention. This is illustrated in the following excerpt from an archive application examined (Bales):

Both Mr and Mrs. Bales have reportedly had extremely poor childhood parenting role models and experiences. These previous childhood experiences are likely to have been influential in forming their current parenting knowledge and skills. In addition, while understanding their wishes to parent independently, the incident, which is the subject of this report, actually exposes (the child) to highly emotionally charged experiences and a risk of harm.

(Caseworker - Matter of Bales)

This caseworker's statement provides a very specific lens from which information pertaining to the history of these parents can be viewed. A connection is drawn between the circumstances experienced by the parents and their ability to parent and understand potential risk factors for their child. The implications of selecting and highlighting such details of the wider family dynamics are that 'risk' is not viewed as an immediate and singular occurrence, but rather an ongoing combination of circumstances and environment in which the children are being raised (Mathews, 2008). The inclusion of such details acknowledges the difficult circumstances many parents face, and provides a larger context for the Children's Court to view the current risk concerns for the children throughout the various stages of decision-making.

Knowledge of intergenerational experiences of child maltreatment has informed caseworker assessment of families, as well as the evidence regarding parents that caseworkers convey to the Children's Court. Caseworker knowledge of intergenerational child maltreatment and domestic violence can be viewed as being informed by ongoing research in that area. Relevant research in the area, has found

some correlation between childhood experiences of violence and violent relationships in adulthood (Moffitt and Caspi, 1998). The archive matters contain specific references to inter-generational violence, parental experience of out-of-home care in childhood, and the caring ability of extended family members. In one matter (Johnson), family dynamics that were outlined included a history of conflict, drug use and criminal behaviour. In a further matter (Maken), the childhood trauma of the mother as a victim of sexual assault was referenced several times. Two applications involved parents themselves who had been placed in out-of-home care as children. The observed Matter of Hanna provides some insight into caseworker perceptions of parents' childhood experiences. The affidavits supplied to the Children's Court by Community Services contained reference to the mother in this matter having been placed in foster care at a young age, due to sexual abuse. This was submitted as a potential explanation of the mother's allegations and response to the possible sexual assault of her own daughter. These examples may suggest that caseworkers apply conceptual understanding of inter-generational experiences of maltreatment to their assessment of cases.

In addition to questions about the impact of the parents' childhood experiences on their children's own abuse and neglect, concerns were also raised, across the six observed matters, regarding the suitability of current involvement from the extended family. This was described as relating to proposed placements and supervision responsibilities during contact, as well as a more general sense of involvement in the life of the parents and the children who were the subject of proceedings. Four of the six current matters selected for observation involved questions over the suitability of kinship carers, either current or prospective.

In the observed Matter of Jant, the caseworker assessment provided to the Children's Court suggested that caseworkers viewed intergenerational violence as a substantial factor in the level of risk for the Jant children. The application from Community Services

and the submissions provided by the solicitor representing Community Services, allege that the maternal grandfather was a perpetrator of violence against both the kinship carer and the natural mother. The Independent Legal Representative for the children referred to this evidence, and the evidence regarding the presence of violence in the relationship between the natural mother and the fathers of some of the children, as indicative of a pattern of learned behaviour on the part of the natural mother. This statement implies that the Children's Court assumes a causal link between a victim's prior experiences of witnessing violence and their parenting capacity. The evaluation of Mr and Mrs Jant did not offer examples of the specific ways that their historical experiences had impacted on the safety of their children. For instance, the specific implications of intergenerational violence on Ms Jant's relationship with her children were not clarified. However, caseworkers did make reference to concerns regarding the ability of the children's relatives to provide a suitable environment for the natural mother and the children, and the lack of support available to the mother to develop her parenting skills.

An additional issue relating to extended family that was connected to children's experience of violence, was the level of appropriate support assessed to be available to parents. In the Matter of Sukaw, the importance of family, and of having strong supportive relationships, was mentioned at several different stages during these proceedings. The connection between parenting and the availability of family and community networks was a concern, both for Community Services and for the judicial officer. The judicial officer summarised the volatile history that the father had had with his family members, including two children from prior relationships. Assault allegations, AVOs, and long periods of no communication, were viewed by the magistrate as a pattern. The father's sister was mentioned by the father as being the only sustained relationship in his life. Even this relationship seemed to have not been entirely positive, as under cross examination the father did mention a number of times that he had had physical altercations with strangers, resulting in assault charges, due

to various slights against his sister. The father's perspective offered on this was that it demonstrated his connection to family, how protective he was and loyal to those he cared about. A particular concern in relation to the children who were the subject of these proceedings, was the lack of support available to the father, and his inability to maintain long term relationships. It is the recurrent pattern of behaviour that becomes the focus of the assessment of evidence relating to this father. The caseworkers and clinicians involved in this matter appear to have reached a conclusion informed by the larger environment that was impacting on the parenting capacity of this father. Such assessment was not evident across all assessments of the mothers and fathers involved in the matters reviewed, suggesting that individual caseworkers may apply differing levels of importance to evaluating the impact of extended family and social environment on parents. Assessment of the wider community environment and support network for a parenting has been identified as an important task for improving caseworker evaluation of what is happening for children and young people (Rose and Horwath, 2001).

In the Matter of Sukaw, the Community Services caseworker was questioned about the suitability of the current kinship carers. This was not only in terms of their age and health issues and whether these had been appropriately assessed and documented, but also in terms of their behaviour. The caseworker was cross examined regarding allegations of the grandfather's past violent behaviour and drug addiction, and the grandparents' role in sanctioning this relationship between their daughter and Mr Sukaw, despite now maintaining animosity towards him and describing him publicly as unfit to parent. The caseworker's response was to maintain that the positive assessment of these grandparents should not be diminished by past allegations, and that Community Services would remain actively engaged with the case to support the placement and address concerns about the parents and grandparents inappropriately denigrating one another. Information that was provided by caseworkers concerning these carers can be seen as complex and difficult to evaluate due to way that concerns

from the past were applied to discussion of the immediate response the caseworker was requesting from the Children's Court in this matter. Further assessment of the relevance of the evidence of past behaviour from kinship carers would aid judicial officers in determining how such evidence relates to the children involved in the current proceedings, and the impact it has for their safety, welfare and well-being.

The Matter of Sukaw concluded with the children remaining in placement with their kinship carer, alongside their cousins. This was despite historical information outlined above. When the case worker for this family was questioned regarding this decision, the response was that, while the mother could be seen as not demonstrating sufficient parenting capacity, there were no current concerns about her parents to warrant their exclusion as suitable carers. In summarising their decision to allocate all aspects of Parental Responsibility to the Minister, the judicial officer made specific reference to the historical concerns regarding these relatives who were proposed as carers. The past behaviour of these carers was considered a crucial factor in the judicial officer's determination of whether they were suitable role models for the Sukaw children and whether they could provide a long term stable placement without supervision.

In other matters such as the Matter of Hanna, the historical information regarding the mother's sister, in particular childhood abuse and previous violent relationships, was considered still relevant in the determination that she would not be a suitable kinship carer. Cross examination of the mothers and caseworkers in the Matters of Hanna and Sukaw contained questions addressing the negative impact and trauma that the mothers may have been experiencing as a result of childhood abuse. It is worth noting that different caseworkers and Community Service Centres (CSCs) had responsibility for these matters and the placement assessments that were undertaken. It is not known whether different assessment tools or approaches were used by the caseworkers, which may account for the varying assessment of these relatives, despite the similar family context. What remains ambiguous from the applications and

evidence in the archive and current files is the criteria that governs decisions regarding the use of past family history and how caseworkers understand risk in the context of historical abuse.

Intergenerational experiences of maltreatment and violence were depicted as having strong relevance to the ability of parents to be positive role models in the reviewed matters. The concept of role-modelling, referring to the behaviours that children observe and are taught by their parents, was highlighted in the majority of matters that were reviewed. Different influences on parents' ability to model acceptable behaviour were described in the reviewed matters. In the observed matters caseworkers' affidavits used terminology including 'negative influence', 'demonstrating destructive behaviour' and 'ability to provide guidance' to refer to the concept of a parent as a role model. Social work research examining caseworker descriptions of parenting have linked negative parental behaviour with negative mirrored behaviours on the part of children, in addition to limiting parents' ability to discipline and provide adequate boundaries (Cleaver et al., 2011). Evidence linking the presence of violence by parents with children's behaviours was submitted in the observed matters. For instance, the application for the observed Matter of Chrea included the conclusion by caseworkers that due to the negative impact of observing parental behavior, one child was displaying, 'ongoing escalating behaviours that included threats of self-harm and withdrawal from classroom activities'. The detrimental consequences for children witnessing violent behaviour is seen as one distinct way that domestic violence enhances risk and compromises parenting capacity.

Three of the six current matters selected for observation involved parents who had reports made about specific risks posed to them when they were children. In the Matter of Chrea, caseworkers recorded in the application that, 'the mother made reference to her own childhood that included living on the streets at 12 and becoming

a State Ward at aged 13'. The idea of role-modelling being crucial to a child's safety and positive development, was evident in a number of aspects of the Matter of Sukaw. Oral submissions were made by the Community Services solicitor that the mother in these proceedings, and her sister, both had children assumed into care, due to a lack of parenting capacity and insight, as a result of their own negative experiences of being raised in various foster care placements. There were inferences that were contained in the written evidence submitted by Community Services regarding a lack of suitable role models available for both the mother and the father. The judicial officer drew a specific connection between the domestic violence children have experienced and the negative role modelling this has exposed them to. The judicial officer made specific reference to the fact that the children in this matter were all boys, to express concern over what they had been learning about conflict resolution and relationships from their father. The judicial officer acknowledged that the police evidence indicated that at least one of the children was present in the house at the time of a critical incident that resulted in severe injuries to the mother and her hospitalisation. Reference was also made to other statements from the mother describing multiple occasions where she needed to run from the house with the children. The judicial officer concluded that the evidence pointed to a 'toxic environment' of ongoing conflict, which especially the older two children would have understood and worried about. In addition, connections were made by caseworkers between children's 'learned behaviours' and outcomes for the Sukaw children.

The concept of learned behaviour has long been a part of discussions in child development literature. Munro (2008) has described the significance of child protection workers' growth in understanding of the links between child maltreatment and child behaviour. Thus, in evidence regarding the involvement of extended family in the lives of children experiencing domestic violence, notions of intergenerational violence are strongly linked to concerns about parenting capacity and about the living

environment of the family, in addition to the appropriate use of support available to parents, and long term consequences for children witnessing violent behaviour.

5.4.2. Alcohol and other drugs

Parental misuse of alcohol and other drugs was identified as a major co-factor alongside domestic violence in the majority of archive file evidence examined. Eighteen applications within the twenty archive matters contained references to drug use. The key areas of concern in relation to drug use was the resulting impact on parenting capacity. This was noted in the applications through allegations of inadequate parental supervision while under the influence of alcohol or drugs. A further concern raised was the exposure of children to drug related paraphernalia, and erratic behaviour and anger from parents while intoxicated. References to alcohol and drug use provide examples reflecting recent analysis of domestic violence that suggests alcohol and drug use increases the likelihood of domestic violence (Cleaver et al., 2011, Neger and Prinz, 2015). Therefore the inclusion of such references suggest that caseworkers are aware court may view alcohol and drug use as an aggravating factor, increasing the seriousness of the risk of violence to children.

5.4.3. Parental mental health

Parental management of mental health was a further category of risk selected by caseworkers in the archive matters. Only two applications contained reference to a specific connection between the parent's failure to manage or seek medical assistance in relation to their condition, and their ability to provide adequate care for their child. Specific risks referred to in relation to the mental health of the parent included unpredictable behaviour and outbursts whilst not taking medication, and the parent providing inadequate supervision due to constant sleeping.

While only two archive matters contained reference to unmanaged parental mental health as a current risk factor for children, five other files contained reference to mental health conditions for parents, either confirmed or suspected. The reference was provided as background information, compounding the circumstances of the children and parents. This, in a similar fashion to drug abuse, interprets present risk, not only in relation to the immediate incident or the treatment of the child, but connects this maltreatment also to the parent's capacity to provide effective care. Absent from this interpretation offered in court applications was explanation of how this information was relevant to the present circumstances and care of the child. Also absent was the caseworker's justification for not seeking alternative forms of intervention, such as a supervision order or signed undertakings requiring the parent to attend appropriate support services. Whilst background information on parental mental health establishes a reference point for judicial officers in terms for the general environment the child has been living in, it forms only one part of the overall narrative provided by Community Services to detail concerns and justify the need to commence court proceedings. The absence of a separate 'background' section to care applications limits the capacity of the caseworker to explain to the judicial officer how all avenues have been exhausted, and therefore placing a particular child in care is the optimal solution.

5.4.4. Additional factors

There were some risk factors that were not frequently referenced by caseworkers in the archive matters. These additional risk concerns were psychological abuse, sexual abuse, and physical abuse. Physical abuse was identified as a co-factor in substantially fewer applications than drug use. Five applications contained references to allegations of physical abuse. This was identified in the application through terms including 'assault' (two applications) and 'unexplained injury' (three applications). The risk of physical abuse was also described in a broader context of the non-perpetrating parent

and their capacity or willingness to intervene. The phrasing used to describe the link between physical abuse and parenting capacity in the archive matters included 'protective ability', 'willingness to be a protective ally' and 'failure to intervene'. Examples of evidence of physical abuse raised in the archive file applications included identification of bruise marks, direct disclosure from the child, reports of assault during a contact visit and the child's presentation to hospital with an unexplained fractured elbow. Where there were examples of physical abuse present, the applications indicated that there were fewer reports made to Community Services, and that reports were made over a shorter time span. There are some explanations for this, including the level of risk warranting immediate response from Community Services and assumption of care, or alternatively, that the reporter's primary information concerned single incidents, i.e. evidence or disclosures of physical injuries rather than ongoing patterns of behaviour or severity of incidents.

The discrepancy in reports suggests that the process of gathering information pertaining to physical abuse is faster and less complex than in gathering information of an ongoing impact of exposure to domestic violence. There was one incident of psychological mistreatment mentioned in the archive matters, involving allegations that a child was continually teased and referred to in derogatory terms by the adults in the house. Similarly there was one incident of current sexual abuse referred to in the archive matters reviewed. Four others contained reference to historical incidents of sexual abuse, where a sibling or other child linked to the family, rather than the child, who was the subject of the proceedings referred to in the file. References to sexual abuse as a risk were also made in the archive matters through a more generalised concern, including phrases such as 'possible exposure to perpetrators'. Information pertaining to allegations of direct abuse of children, sexual and psychological, was presented in the archive matters in an unambiguous description of key risk factors that the Children's Court was requested to consider, in a similar process to the description of parental alcohol and drug use. As with physical abuse allegations,

this information was not framed in terms of background or context but rather, as more immediate issues that required consideration and action. As was shown earlier in this chapter, domestic violence references in the reviewed matters were related to a cumulative amount of concerns and history rather than single incidents. It is likely that the background circumstances of domestic violence allegations are treated differently by the caseworkers preparing court applications.

The reviewed matters indicate that the presence of multiple risk factors are identified by caseworkers concurrently with domestic violence. In comparison with other risk factors, domestic violence is more likely to be linked to other concerns. Additionally, domestic violence was understood by caseworkers as a long term issue encompassing aspects of physical risk, long term consequences and impaired parenting incapacity. Applications across all reviewed matters suggest that the course of discussion of risk concerns is established through the caseworker's presentation of information to justify the ultimate action of a court application. The way in which this discussion intersects with the different types of decisions made in the lifespan of a matter, will be discussed in the next chapter.

5.5. Conclusion

This chapter has reviewed the presentation of background evidence in the reviewed matters, with specific reference to the construction of domestic violence as a specific child maltreatment issue. This chapter has identified recurring themes in discourse of domestic violence from judicial officers, solicitors and caseworkers in the reviewed matters that including age and gender as factors that influence that way professionals interpret domestic violence, professional focus on assessment of maternal protectiveness despite the actions of father perpetrators, the importance of risk co-factors such as alcohol and drug use to convey the seriousness of allegations of violence to the court.

Background evidence provides an overview of the circumstances prompting court involvement. Caseworker presentation of demographic information and evidence of domestic violence and additional child maltreatment thus operates as an introductory stage in court decision-making. In reviewing the background evidence of these matters this chapter has explored the research question ‘What are the factors that influence the assessment of domestic violence and child maltreatment evidence that is presented to the Children’s Court in care and protection matters ’

The background to care and protection matters described in this chapter are key to understanding the Children’s Court’s decision-making in several respects. Firstly, it is the background evidence that determines court proceedings are necessary. Solicitors and caseworkers must present the context of the matter to the Children’s Court in the application in order for proceedings to commence. Furthermore, the language used to describe the background evidence in court applications gives emphasis to particular interpretations of the evidence. Finally, the selection of evidence, and language used to describe the evidence, by caseworkers and solicitors in preparing matters, were the decisions that were made as part of case preparation, and were made prior to the involvement of judicial officers that are made in a court matter.

This chapter demonstrates that a major factor in the Children’s Court’s ability to interpret risk is the evidence and assessment that is provided to it. There were multiple facets to the treatment of the risk of domestic violence that were provided by caseworkers involved in all reviewed matters. For instance, analysis of all matters reviewed suggests that caseworkers assess domestic violence differently in relation to girls and boys. The data analysed displayed a potential trend towards court applications for older boys, and younger girls. Additionally, while descriptions of fathers emphasised the risk they posed in individual incidents, mothers were described in relation the level of general protectiveness they were able to provide. The criteria that caseworkers used for determining these factors in relation to the individual children in the matters reviewed, was not elaborated on in the Children’s Court

applications. Assessments of violence can therefore have the potential to be adult-centric and do not capture the individual experience of the child.

The background information in the reviewed matters suggests that the manner in which evidence is provided to the Children's Court is a key factor in conveying the experiences of the children and families in all matters that were reviewed. Complex intersections of factual information and nuanced assessment of risk have a direct impact on how judicial officers are able to interpret key issues in matters. The archive file and observed matter evidence discussed in this chapter demonstrate that, whilst descriptions of domestic violence may be precise in identifying single incidents of violence, the language used by caseworkers to assess the consequences of these incidents for children is vague. Where there is a large volume of evidentiary material that is provided to demonstrate an historical pattern of violence, or describe the complex impact of the parental relationship on children, it becomes challenging for a judicial officer to evaluate the importance of this evidence for a particular child. A clear link is needed between the violence and the consequences of this violence for the child experiencing the violence. In addition, historical and current information about violence is blended, without clear reference to the current impact of the violence on children. Both historical and current incidents are important to understanding domestic violence, but judicial officers require a clear link between them. In addition, evidence of factors associated with violence, such as parental alcohol and drug use and negative impact of extended family members, is important to the assessment of violence that caseworkers provide to the Children's Court.

This chapter has outlined the way risk is described and interpreted in background information to prepare a matter for court intervention. The risk analysis undertaken by caseworkers, contains an imperative to seek and include specific examples to establish a case for intervention for the Children's Court. In all files reviewed specific constructs of risk were not developed from one source alone, but rather a variety of forms of evidence including applications, written evidentiary material, oral submissions and testimony. This has implications for the way the Children's Court is

able to receive and interpret information in relation to contested issues, such as domestic violence. The evidence provided in reviewed matters demonstrates a specific gap in applying conceptual understanding of domestic violence and child maltreatment to the specific experiences of children. Caseworkers therefore appear to face unique challenges in capturing evidence of domestic violence when preparing for proceedings. Significantly, professional understanding and approach to core issues can continue to develop throughout all stages of decision-making. The next chapter will present findings relating to the decisions, outcomes and conclusions of the reviewed court matters.

6. *Findings: What Decisions Concerning Domestic Violence Are Made During the Children's Court Process?*

6.1. Introduction

Decision-making concerning allegations of domestic violence highlights the specific challenges present in the process of child protection intervention via the Children's Court of NSW (the Children's Court). The previous chapter examined decisions regarding the assessment and presentation of evidence to establish the need for court intervention. This chapter examines the decisions and outcomes arising from court proceedings in the reviewed matters. The findings identify typical stages of the Children Court's decision-making and provide an understanding of the progression of court matters. These stages are *application*, *preparation*, *Hearing* and *outcome*. There are three sections to this chapter. The first section outlines key factors that influence the stages of decision-making from application to preparation and Hearing. The second section discusses the role and procedures followed by professional stakeholders including judicial officers, solicitors and caseworkers. The third section examines the outcomes from the Children's Court process in the reviewed matters. This includes consideration of disputed issues such as placement, contact and restoration.

This chapter will address the central research question through the specific examination of the procedural elements of court decision-making and the role of various professional stakeholders in this process. It addresses the following additional questions: 'What are the interactions between NSW Department of Family and Community Services ('Community Services') practitioners, solicitors and judicial officers in the context of child protection decision-making in care and protection matters involving the combination of domestic violence and child maltreatment?' 'How are the Children's Court's decisions regarding permanency planning legislative requirements for children negotiated in the context of domestic violence and child maltreatment allegations in care and protection matters?' 'What are the outcomes from care and protection proceedings and the key factors determining

these outcomes, for children in matters involving the interface of domestic violence and child maltreatment?’

Court structures and processes which are influential in the construction of domestic violence and child maltreatment emerge in the reviewed matters. Key procedural elements of court decision-making include assessment of evidence, advocacy on the part of solicitors and caseworkers, the upholding of specific principles and case management of proceedings by judicial officers. Analysis of the pathway of professional decision-making and the judicial officers, solicitors of the professionals involved in the reviewed matters indicates the presence of several recurring frameworks for professional understanding. These included Preparation and assessment prior to court proceedings, the utility of Alternative Dispute Resolution and the complexity of achieving permanency for children.’

6.2. Stages of Decision-Making

This section will outline findings pertaining to the progression of decisions in the reviewed matters and, the nature of the decisions that were made at different stages of the Children’s Court process. The typical stages of decision-making identified in the reviewed matters are summarised in Table 6.1:

TABLE 6.1 STAGES OF COURT DECISION-MAKING IDENTIFIED IN REVIEWED MATTERS	
COURT PROCESS	TYPE OF DECISIONS
PREPARATION	<ul style="list-style-type: none"> - Inclusion of Evidence - Dispute Resolution Conferencing
HEARING	<ul style="list-style-type: none"> - Finding (in need of care and protection) - Establishment (no realistic possibility of restoration)
OUTCOME	<ul style="list-style-type: none"> - Type of Order - Care Plan - Placement - Contact - Supervision

While Table 6.1 presents the stages identified in the progression of decision-making in the reviewed matters it is important to note that each matter was unique in the issues to be addressed, and therefore the decisions that the Children's Court needed to make. As one solicitor interviewed commented, regarding his experience in the particular observed matter (Matter of Jant):

I wouldn't really say any case has common factors. There are some common elements you can see, and domestic violence is one but you could also say one common feature is also that you can rarely predict absolutely where it will lead.

(Solicitor Mc)

This statement suggests that solicitors involved in proceedings perceived that each matter was paradoxically both subject to common as well as unique stages. Variable aspects of these proceedings included the number of risk of significant harm reports, the length of Community Services involvement prior to commencing proceedings and the primary impetus for the Community Services' decision to initiate court proceedings. While the course of decisions made in each matter were unique, there were common features across the processes in each matter, particularly within the preparation, Hearing and outcome stages of decision-making. The structure that emerges throughout these stages assists in understanding the development of particular understandings of parenting, domestic violence and child maltreatment in court decision-making.

6.2.1. Applications

The initial point in the preparation phase of court decision-making is the application to initiate proceedings. Applications are typically submitted by Community Services. The applications to initiate proceedings in the six observed matters highlight the knowledge and experience caseworkers require in legislation and court procedure. The

applications are highly technical documents that require understanding of a number of elements of court procedure. This includes the type of order that is needed.

Also important are the relevant grounds on which orders can be granted, under Section 71 of the Care Act. These grounds cover the spectrum of issues that warrant court applications. In this study the three most common grounds used across the six observed matters were section 71 C, D and E. They are as follows

71C) the child or young person has been, or is likely to be, physically or sexually abused or ill treated

71D) the child's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents or primary care-givers

71E) the young person is suffering, or is likely to suffer, serious developmental impairment or serious psychological harm, as a consequence of the domestic environment in which he or she is living

(Children and Young Persons (Care and Protection) Act, 1998).

The caseworker's involvement in matters begins prior to any other stakeholder. It is Community Services that receives and assesses the risk of significant reports. Caseworkers summarise their interpretation of the risk of significant harm reports in their applications to initiate proceedings. Reports will, in most cases, contain reference to multiple categories of child maltreatment. Such categories are not mutually exclusive. Table 6.2 indicates the frequency of caseworker identification of specific report categories that were identified in the applications to initiate proceedings in the observed matters:

TABLE 6.2 CASEWORKER USE OF REPORTING CATEGORIES IN OBSERVED MATTERS	
REPORT CATEGORY	NUMBER OF APPLICATIONS USING CATEGORY
Domestic Violence	6
Child Sexual Assault	2
Child Physical assault	3
Parental incapacity due to drug or alcohol misuse	5
Parental incapacity due to mental illness	2
Neglect	3
Failure to seek necessary medical attention	2
Failure to ensure the child attends school	1
Failure to provide adequate nutrition	1
Failure to provide appropriate clothing	1
Failure to maintain hygienic and appropriate domestic environment	3
Failure to provide appropriate parental supervision and support	3

These areas of concern cover a wide variety of reports received across the six observed matters. It should be noted here that references to these categories were often prefaced with qualifying or descriptive statements.

For instance, terminology such as ‘adequate’, ‘appropriate’ and ‘necessary’ was selected by caseworkers in these applications to highlight their concerns. However, such assessment is based on the caseworker’s interpretation of issues and events as they were described by a reporter. The template used for applications in the observed matters provided only a summary of the number and category of reports, and do not include details of the reporter, or the context of the report. The applications submitted in the archive matters contained comparatively more information, including further details such as the date and outcome of each report. The use of reporting categories in the observed matter applications outlined in Table 6.2 suggests an effort on the part

of caseworkers to use concise language and a consistent format in their description of risk. However, without further contextual information, the standardisation of language in applications raises a concern that such language may limit the ability of the Children's Court to understand the relevance of the concern for an individual child, and the process by which these concerns were raised. The information that is provided at this initial stage has an impact on the way the Children's Court makes decisions as court applications establish the parameters of the issues to be discussed.

6.2.2. Preparation for Hearing

The next aspect of decision-making found in the preparation phase of the reviewed matters examined is preparation for Hearing. As mentioned previously, matters will generally begin their progress at court in the general 'care list'. From examination of the files for reviewed matters it was noted that, in the early stages, multiple judicial officers carry responsibility for decision-making. This is due to the roster system in place to alternate the judicial officers Hearing the general list of matters. This list is for matters only in a preparatory phase, and not yet listed for full Hearing. The organisation of such matters into a general list serves the purpose of addressing matters that only need short mention to progress forward (dates for next mention, continuation of interim orders or arrangements), to finalise administrative issues (submission of documents, return of subpoenaed evidence), to provide updates (outcome of mediation/alternative dispute resolution) and to reach readiness for Hearing or expected completion of proposals.

The key formal decisions prior to Hearing were referred to in the matters as Establishment and Finding. Establishment refers to the question of whether the child was in need of care and protection at the time of application (or at the time of any emergency assumption of care of child by Community Services if undertaken prior to application) (Children's Court Practice Note 5, 2011). Finding refers to the next stage following Establishment, where the risk of significant harm must be considered (NSW

Children's Court Practice Note 5, 2011). Additionally there were notations made by judicial officers in the archive and observed matter files. These notations included continuation or variance of existing orders, various applications made by the parties, evidence to be admitted, and provisions for mediation and time-frames for proceeding.

The continuation or variance of existing orders is a key administrative function of the preparation phase. The decision to continue or vary orders is likely to have immediate priority for judicial officers, particularly where the current placement of a child is only subject to an interim order. Where no final orders are currently in place, children can only be considered to be under the care of the Minister (Community Services) for the length of time the Children's Court has specified, and this will typically be until the next date for mention of the matter. This means that each time the matter appears before the Children's Court, the judicial officer must confirm that they consent to continuation of the current arrangements for the child to continue. Parties to proceedings, specifically Community Services, are therefore often required to update the judicial officer on the current status of the child, or to confirm the type of placement that has been provided for the child. Alternatively, a parent or other party such as a relative, may be asked to confirm their willingness to abide by certain conditions in order for the child to remain placed with them.

Decisions regarding time-frames were found to include dates to be granted for mention or Hearing, adjournment or vacation of existing dates listed for the matter, and deadlines for submission of various documents or evidence. These decisions are significant throughout the entire lifespan of proceedings because, whilst children remain on interim orders, they can limit the options available in terms of final placement. Children who are not able to be placed with an authorised relative or kinship carer, need to have an appropriate authorised foster carer. These carers may be available on an emergency (up to two weeks), short term (variable, depending on agreement with their relevant agency), or be considered for multiple types of placement that can include long term. Adjournments or changes to previously agreed

timeframes approved by the Children's Court may occur following verification that any delay will not have an adverse impact on the child who is the subject of proceedings. The temporary nature of interim orders can have a distinct influence over the decisions made in the establishment phase of proceedings, specifically those decisions regarding the time-frame for the running of the matter.

The use of Dispute Resolution Conferencing (DRC) was identified as a further significant focus of decisions during the preparation phase of proceedings. Dispute Resolution Conferencing aims to promote participation from the parents in the decisions, ensure all parties convey their positions, and reach some agreement on the key unresolved issues the Children's Court needs to consider. Ensuring that parties have enough information in order to participate and to understand the other parties' concerns and proposals, as well as making sure that it is still at an appropriately early stage for these positions to be changed, is an important balancing act. Whilst the majority of observed matters (four) were referred to DRC, in the archive matters there was a lower representation of matters that involved any form of alternative dispute resolution (nine out of twenty). There are some explanations for this. Firstly the use of DRC was only phased in as a pilot in 2010, meaning that matters from 2009 would not have been involved. Furthermore, not every case from the 2010 group would have been deemed eligible for inclusion. Finally there has to be willingness from all parties to agree to this process. Thus, it cannot be assumed that every matter will proceed to a DRC. If a DRC takes place, the next steps after the conference will usually involve a report back to the Children's Court of what has been decided, and the remaining unresolved issues. The Children's Court will then need to consider whether there remain sufficient grounds for matters to proceed with preparation for Hearing.

The final preparatory consideration for judicial is the readiness of matters for Hearing. As outlined in chapter four of this thesis, all 20 archive matters examined for this research involved Hearing as part of the selection criteria. However, not every care and protection matter automatically proceeds to Hearing. The decision to grant Hearing dates, and endorse that the matter is in readiness for Hearing, are dependent on a

number of factors. They include the identification of the precise issues that were in dispute, and the issues deemed to be 'substantive', or of large enough scope to require the adjudication of the Children's Court. Thus, many crucial decisions and identification of significant issues have occurred before a matter reaches Hearing stage. The parameters for discussion of key issues were found to be determined in the preparation stage of court decision-making.

6.2.3. Hearing

Following the progression of a matter to Hearing, there were several key decisions identified in the transcripts included in the reviewed matters. These involved witnesses, evidence and direction of proceedings. These procedural issues were noted regularly in the progress notes from judicial officers in the archive matters. Examples included, responding to objections raised during questioning and cross-examination of witnesses, decisions on inclusion of late evidence, and any requests for new or amended applications or adjournments. In order for a matter to proceed to Hearing solicitors in the reviewed matters were required to demonstrate compliance with the Children's Court's requirement for readiness for Hearing. The Children's Court requires that judicial officer conduct a 'compliance check' prior to the Hearing date. For example, a 'compliance check' may include ensuring appropriate evidence has been submitted or returned to court following request for subpoena, Determining the readiness for Hearing can be considered a precautionary measure by judicial officers, to ensure that due process has been followed to prepare the matter, and an attempt to mitigate the possibility of an appeal of decision at a later date, due to the matter proceeding without meeting requirements. Importantly, it can also provide a level of assurance for judicial officers that the time allocated for this Hearing is realistic, and that parties are unaware of any need for any further adjournments.

The length of proceedings was a challenging court requirement noted by multiple sources regularly throughout the period of court observation. An explanation for this

is the most recent Practice Note, containing directives regarding the management of cases issued by the previous President of NSW Children's Court, Judge Marien, in September, 2011. This Practice Note 5 indicates that judicial officers are required to aim for a recommended timeframe of 90% of matters being completed with nine months, and a standard time-frame for all cases to be completed within twelve months (Children Court of NSW Practice Note 5, 2011). The purpose of establishing the recommended and standard timeframes is to encourage scrutiny of any unnecessary delays and ensure the Children's Court is running smoothly. Making sure that resolutions are achieved as efficiently as possible is a specific strategy to meet the interests of children, through enhancing chances of stability and optimal adjustment to the care arrangements that have been determined.

In the preparation phase of decision-making, all observed matters involved time allocated for general mentions within the care and protection 'list dates' as well as the individual Hearings for each of the six matters. The mentions were in addition to Hearings varying in length from one to five days. The length of time proceedings had been running, or was likely to continue, was mentioned by judicial officers, as well as legal representatives for all parties. The length of time from application to final orders in the six observed matters is summarised in Table 6.2:

TABLE 6.3: LENGTH OF OBSERVED PROCEEDINGS: (APPLICATION TO FINAL ORDERS)	
NB All names are pseudonyms	
Chrea	17 Months
Miller	15 Months
Jant	9 Months
Buckthorp	6 Months
Sukaw	6 Months
Hanna	6 Months

Table 6.2 identifies that the majority of the observed matters (four of the six matters) were completed within the recommended timeframe of nine months. Thus, the timeframe established in the Children's Court Practice Note 5, referred to above was an achievable goal in these matters. However, the two matters that were not completed within this timeframe, ran substantially longer than the nine month aim, and also ran over the twelve month standard for completion of matters. The Matter of Miller ran for the duration of fifteen months, and the Matter of Chrea ran for seventeen months duration.

There are several explanations for matters running beyond recommended and standard durations. Firstly, there is a possibility that the issues to be considered are of particularly complex or sensitive nature, and thus required longer time. For instance, in the Matter of Miller, consideration of permanency planning was complex due to the proposal by Community Services to remove Meena from placement with her kinship carer. It was the eleventh placement change in two years for this child, despite indications that the child and their relative enjoyed a particularly strong bond. Evidence of the placement history for Meena was therefore central to the case for Meena to remain with the relative, and warranted substantial assessment and deliberation. In this matter the need to ensure a timely decision was weighed against the need to minimise the possibility of Meena needing further placement changes, thus extending proceedings.

An additional consideration for matters running beyond the recommended and standard timeframe is the Children's Court's obligation to ensure that all requirements have been met for the issuing of final orders. For instance, in the Matter of Chrea the judicial officer did not approve the initial care plan and directed Community Services to prepare a new one. In order to meet the legislative requirements to ensure permanency for the Chrea children the judicial officer required further information regarding the caseworker's decision not to assess Mr Chrea, and the status of the

search for a long term placement. Consequently Community Services required additional time to consult with external out-of-home care agencies regarding placement. The adjournment of the matter suggests that the complexity involved in ensuring all options available for children are considered can impact on the Children's Court's ability to ensure that proceedings are completed within a standard time frame.

In decisions regarding the timing of proceedings the ability of the Children's Court to have accurate information about long term care arrangements from the professionals working closest with the family is balanced with the immediate needs of the child. As Solicitor Mc commented in their interview:

It is almost inevitable when a parent comes to you with a new crisis you straight away are mentally constructing your speech to the Children's Court justifying further time. Other times you do need to say the parent we are out of time so this is your best bet. Have that meeting with the caseworker; let's get your view on the long term plans on the table because right now the clock has run out for court. (Solicitor Mc)

In the observed matters, stakeholder positions did change during proceedings. For example, in the observed Matter of Chrea, the father of the second child had originally argued that there was a realistic possibility of restoration, and, towards the latter stages of proceedings, indicated that there was no longer a realistic possibility of restoration. His solicitor indicated to the Children's Court that this was after he had received advice from a counsellor and from his legal representative, following an unsatisfactory parenting assessment. Other parties who are not parents, including Community Services and Independent Legal Representatives acting for children, can also change their position following receipt of new information regarding the child or family, or following significant incidents. In the observed Matter of Miller, Community Services changed their initial application supporting an order of parental responsibility to the kinship carer, due to a breaching of signed undertakings by this carer in allowing unsupervised access to the child by both parents, and a subsequent incident of domestic violence occurred at that time. Therefore, for Meena's caseworker, a specific

challenge was the emergence of new evidence and changing circumstance within the Hearing stage of the Children's Court process. The Hearing stage of decision-making in the reviewed matters was therefore complicated by a need for solicitors to balance efficiency in their management of proceedings with accuracy in their assessment. The role of professional stakeholders including judicial officers, solicitors and caseworkers in communication and provision of information and opinion during proceedings, will be discussed in the next section.

6.3. The Role of Stakeholders during Court Proceedings

Professional stakeholders in the Children's Court are crucial in every facet of court decision-making and are particularly influential during the proceedings. The professional stakeholders that had a key role in proceedings in the reviewed matters were judicial officers, solicitors, caseworkers and expert witnesses. Their roles included caseworkers' submission of evidence, solicitors' advocacy and collaboration and judicial officers' case management and application of principles during proceedings. Each of these stakeholders has significant interactions with the others in the form of information sharing, collaboration and negotiation. Crucially, each of the stakeholders has varying forms of interaction with the subject children and their parents. The perspectives offered by professional stakeholders provide the frame of reference and justification for the decisions that are made throughout the Children's Court process.

6.3.1. Caseworker input into proceedings

The essential role of the caseworker in court proceedings became apparent during court observation and in the interviews with judicial officers, solicitors and caseworkers. Caseworkers were found to make strong links between the background information of families' supporting evidence and the assessment of risk that they put

forward to the Children's Court. Caseworkers were placed in a privileged position in a number of respects during the observed proceedings. Firstly, in each of the six proceedings, it was NSW Department of Family and Community Services ('Community Services') filing the application to initiate proceedings, using the current care legislation. Secondly, as each child in the observed matters had been assumed into care, Community Services had responsibility for appropriate placement, but also had overall decision-making authority concerning their welfare. Thirdly, Community Services caseworkers have the benefit of overarching knowledge of child protection, child welfare and options available to support children and families.

Caseworkers have authority within court proceedings in the provision of information and updates in relation to the child, as part of the exercise of parental responsibility. As one caseworker mentioned in court during observed proceedings:

One of my key tasks is to keep the solicitor briefed, as fully as possible, on all developments with the children and parents, so contact visits, calls, home visits anything we get from these, needs to be provided to the Children's Court.

(Caseworker, Matter of Hanna)

This statement suggests that caseworkers are primarily oriented towards their ensuring contribution to proceedings through the provision of overarching knowledge regarding child protection, child development and child welfare. Tasks related to court proceedings undertaken by caseworkers are but one aspect of a much larger role they are required to fulfil, not only in assessment and investigation of risk concerns, but also in meeting the day to day needs and safety of children and their families. Through direct access to the children and parents, they hold significant information and expertise, relied upon by other professional stakeholders. Frequently, during proceedings for the observed matters, solicitors representing Community Services and other parties, such as Independent Children's Representatives, indicated they needed to obtain further details from caseworkers. These details included information pertaining to the current situation and progress of the child, and clarification of dates

and times of significant events, in addition to the caseworker's perspective on the feasibility of proposed care arrangements, based on their previous experience. Caseworkers were also consulted regarding the viability of certain proposals, for instance queries from judicial officers relating to the viability of various placement options. Thus the role of caseworkers in court proceedings is to contribute their specific knowledge of a particular child or family as well as their larger expertise in this field.

Caseworkers identified that there were significant constraints in undertaking their role. One caseworker remarked,

We have to be clear and honest with the Children's Court about the capacity of Community Services, and the constraints in time and resources that are often placed on us as caseworkers. In the end the caseworker's limited time needs to be spent on making sure that attention is given to the children and families that need it the most.

(Caseworker A)

The above statement suggests that this caseworker was aware of the challenges present in managing their role within the larger policy and organisational environment, and the expectation for caseworkers to have the capacity to provide information and assessment to the Children's Court. These expectations may be internal to Community Services. External expectations may come from partner organisations working with caseworkers, or individual professionals such as solicitors and judicial officers.

Solicitors and judicial officers that were involved in the Children's Court process had a high level of awareness of the contribution of caseworkers. The role of caseworkers was described positively by the solicitor and judicial officer interview participants. Additionally, caseworker responsibility for ensuring long term care and support for children, was incorporated into discussion in court proceedings. Judicial officers in particular, were largely positive in their description of caseworkers, through acknowledgement of the role they play in assessing risk and providing key information to the Children's Court.

6.3.2. *Solicitors as advocates*

Advocating for the needs of clients, and especially the needs of children, is a major focus for solicitors in the care jurisdiction. As Susskind states, 'Many people who choose to specialise in care could be doing better paid work in family law - the skills in dealing with children, parents and psychologists, for example are transferable to family law, where the earnings can be much higher. But they do it because they believe in it' (2011: 16)

The solicitors interviewed all provided statements indicating that they viewed advocacy for their parents and for children in general, as their core function. This was the case regardless of whether their duties typically encompassed representation of children. Solicitor interviewees made several statements that highlighted the importance of advocacy in their work at court for instance, 'we are not only responding to clients' needs but advocating for them.' Other solicitor interviewees who regularly represented parents suggested that, 'my core aim is constantly using knowledge of policy and awareness of processes to make a difference for parents', and, 'parents need help to address issues; it is not enough to say issues are not addressed.'

These statements indicate that solicitors viewed their role as advocates, and incorporated into their practice tasks that extended beyond the court room, to assist parents and children to improve their circumstances. Solicitors interviewed further perceived their role as belonging to a specialist field. One solicitor interviewee remarked, 'the accreditation process made me more confident that I do have specialist knowledge.' This statement highlights the value that this solicitor placed in the specific skills they had developed in the care and protection jurisdiction. Solicitors perceived their skills of advocating for specific outcomes within proceedings, as extending beyond representation of clients and children to encompass education and advice to both judicial officers and clients, external to the Children's Court process.

Solicitors, especially those representing Community Services, were observed to play a crucial advisory role to judicial officers. An example of advice provided by these solicitors included confirmation of the orders, and the sections of the legislation that were applicable to the matter in question. Significantly, solicitors also provided clarification to judicial officers relating to application of particular principles, and anticipated outcomes from court involvement. For instance, there was a high level of collaboration between solicitors and judicial officers on issues of principle evident in the Matter of Buckthorp. In this matter, the judicial officer asked the Community Services solicitor to confirm that the judgement, just delivered, had fulfilled all requirements for a final order. These requirements were findings of: the need for care and protection of the children, no realistic possibility of restoration, and endorsement of the care plan. This is consistent with an expectation that the final orders provided by the Children's Court should be consistent in the application of legislative principles, and solicitors will play a supportive role in achieving this.

A further aspect of advocacy, highlighted by a solicitor interview participant, was advice provided to parents. Interviewees Solicitor H and Solicitor S, who predominantly represented parents, identified strongly with the need to assist clients through information and recommendations.

Advice regarding courses is an important part of de-briefing after proceedings. It is a way to provide clients support, and to encourage progress.

(Solicitor H)

It is so important after the judgement, whether favourable or not, to have the conversation with the client to explain their obligations and options.

(Solicitor S)

These statements are further indication that solicitors provide mediation between parents and Community Services. Solicitors explain court decisions and processes to

parents, as well as the necessary steps that need to be taken for the safety, welfare, well-being and best interest of their children. In circumstances where a parent may also be a victim of domestic violence there is an increased need for solicitors to be conscious of any power imbalances that may be continuing between parties, and how court proceedings may negatively impact on the safety of children and parents. For instance, care and protection proceedings may be occurring at the same time as other legal intervention such as criminal proceedings or property settlement. Alternatively a mother may be concerned about the ongoing interactions her children are having with their father during contact visits. The solicitor in these circumstances needs to have strong knowledge of the ongoing impact of domestic violence on parent and children survivors, and skills to enable vulnerable clients to feel comfortable in divulging sensitive details about their experience, to phrase the concerns in sufficient detail for the Children's Court to deliberate on the issues.

6.3.3. Clinicians and external experts

Expert witnesses provide a crucial step in the construction of credible arguments regarding the level of risk present for children. They have a unique role as stakeholders in proceedings, as their involvement is both direct and indirect. In the six observed matters expert witnesses played a direct role in providing testimony to the Children's Court. The indirect role was in the production of evidence that Community Services or solicitors obtained and presented. Two types of expert witness were utilised in the proceedings for the matters; NSW Children's Court Clinicians and external psychologists and counsellors.

Recent commentary from the Children's Court highlights the importance of The Children's Court Clinic and its clinicians: 'The Children's Court Clinic is an integral part of decision-making at the Children's Court, 'the principal role of the Clinician, therefore, is to assist the Children's Court in its determination of the matters in

dispute’ (Johnstone, 2012: 5) . There are two key ways that the clinic provides this assistance: firstly, by offering expert opinion through specialist knowledge outside the experience of the average community member or court; secondly, through impartial and objective information that is new, or provides context to other material before the Children’s Court. As the Children’s Court current president Judge Johnstone has noted,

There are advantages available to the Clinician, not available to the judicial officer, such as the ability to observe the protagonists over a period of time, to interview parents, children and others in detail and on different occasions, in neutral or non-threatening environments, away from courts and lawyers, untrammelled by court formalities and processes. (Johnstone, 2012).

The use of expert witnesses, including social workers, doctors and psychologists involved with the family or the Children’s Court Clinicians, was referred to in several documents in the archive matters. The names and titles of witnesses were regularly recorded by judicial officers in their progress notes for these matters. Sixteen archive matters contained copies of letters or summary reports from medical professionals treating either a parent or a child, or having assessed issues, including parenting capacity or placement. Five archive matters contained copies of the Children’s Court Clinic assessment report. The low rate of clinic assessments in these files indicates that involvement of the Children’s Court Clinic was not determined as necessary in every matter, and that information provided by other experts not working within the Children’s Court Clinic were considered sufficient to assist the Children’s Court’s decisions.

Testimony from the Children’s Court clinicians was provided in four out of six observed matters (Matters of Chrea, Sukaw, Jant, and Miller). The use of the Children’s Court Clinic assessment was proportionally higher than archive matters, suggesting that clinic assessment was deemed beneficial in these matters. In the two observed matters that did not have a clinic assessment, this was due to an application not being lodged for an assessment order. The Children’s Court is unable to order an assessment without

a specific application to consider. In the Buckthorp and Hanna matters, the solicitors were likely to have considered feasibility of assessment. It was not likely that the parents would be available for assessment, due to incarceration. Thus, individual case circumstances, as well as the decisions of professional stakeholders, play a role in involving the Children's Court Clinic in proceedings.

The information provided by external witnesses in the observed matters indicates that there is a tension in the way The Children's Court Clinic and external witnesses handle and interpret evidence. As interviewee Solicitor M remarked:

The usefulness of experts is conflicting. Independent clinicians can only use information they are given. Treating psychologists cannot be objective, and are also limited by their therapeutic setting.

(Solicitor M)

In this statement Solicitor M highlights that the role of the external witnesses and the evidence they are using is an important consideration for other professional stakeholders, including solicitors and judicial officers, who are utilising the recommendations of expert witnesses. Solicitors need to ensure that experts have appropriate information, and that the Children's Court is briefed as to the nature of the evidence the experts are using to inform their recommendations. This is imperative in cases of domestic violence where parents are being assessed based on multiple instances of violence and multiple sources of evidence. Such evidence progresses assessment from the issue of domestic violence to evaluation of the parent's abilities and how this connects to their children's' experience of risk.

For instance in many of the matters reviewed, verification from counsellors and support service workers of a parent's participation and any services they have referred to were relevant to the Children's Court's assessment of the current impact of issues of domestic violence. Community Services affidavits in the matters reviewed

frequently implied that caseworkers interpreted a parent's non-attendance as a lack of commitment. An important caveat to evidence of parental non-attendance at counselling that was not provided in the reviewed matters was that the verification of a parent's attendance at a counselling session or appointment with a service does not provide an indication of the quality or suitability of the support the parent is receiving, nor does it necessarily reflect the state of mind of the parent. There are several potential explanations as to why a parent may not attend an appointment. For example, the parent may not be ready for counselling, especially if feeling insecure about practical issues of housing, finances and arrangements for children, but may be able to identify friends or family who can assist her to ensure safety, and also to manage parenting duties while establishing a new routine and environment for the children. Parental patterns of behaviour in cases of domestic violence are therefore complex, and require a high level of contextual information and interpretation which is comprised in strict time frames of child protection assessment (Widom et al., 2014). Therefore, caseworkers need to rely on the interpretation of external professionals working with parents. In order to evaluate the ongoing impact of violence on a parent's behaviour and capacity caseworkers need to seek information from external experts regarding the appropriate support and services that are relevant and available for that parent.

6.3.4. Stakeholder communication during proceedings

Throughout the observed proceedings judicial officers expected a high level of communication from solicitors with other solicitors as well as the Children's Court. For example, in the Matter of Chrea, the judicial officer was unequivocal in the expectation of solicitors to be concise in what they were asking for, and not to waste any time. The question, 'What is it that you are wanting?' was used repeatedly by judicial officers.

Collaborative communication between solicitors was frequently present during the observed matters. The solicitors, and particularly those attending court frequently, had a very good rapport with each other. They assisted each other in keeping up to date on the frequently amended court schedule. Solicitors often sat together in breaks and used this period to brief the other representatives of particular matters on what they were asking, and what they expected to take place, resulting in frequent agreement prior to appearance before the judicial officer. There were a few noticeable exceptions, where obviously the solicitor had not been consulted, indicating perhaps the lack of available time. The use of meetings between solicitors during court breaks potentially leads to a reliance on this arrangement as an informal mechanism of communication.

While collaboration was largely positive between solicitors, and between the solicitors and the Children's Court, the observed matters did suggest the presence of pressure to concede and reach consensus. The following statements from interviewees Solicitor J and Solicitor M highlight the challenging nature of time related pressure in court: 'you can only do what you can do in the time you have available and you can't do everything perfectly' (Solicitor M), and, 'the time constraints of court are tough' (Solicitor J). The time related pressure identified by the solicitor interviewees was also evident during observed proceedings, that regularly involved negotiation between all the solicitors and, at times, solicitors were moving back and forth between court rooms, or briefing other clients in order to ensure no delays to their allocated matters. Multiple judicial officers also expressed that during the early stage of proceedings in the observed matters, they were not willing to accept solicitors' conflicting schedules as valid reasons for delaying Hearing dates, a contributing factor in some of the pressure that was later the subject of reflection from the solicitor interviewees.

The solicitor interviewees suggested a relationship between time-related pressure and the pressure to reach consensus. Interviewee Solicitor S stated, 'as matters run on there is a definite sense of pressure to concede and to reach consensus' suggesting the

length of the matter increased the focus on negotiation. In referring to negotiation interviewee Solicitor H remarked, 'sometimes there are negotiations over the terms, and the idea is to try to get agreed terms and issues early.' These statements suggest that time based pressures during proceedings make the preparation stage of decision-making significant in communication and negotiation between parties. In addition, solicitors have responsibility to balance best practice in court appearances with advocacy for the needs of their clients, and the safety of the children who are the subject of the proceedings. Where matters are more complex, solicitors felt they needed more time to work with all parties and to ensure that the needs of the child remain a primary consideration, whilst at the same time ensuring the child is not disadvantaged by any delays in proceedings, and credible arguments are formulated for proceedings.

6.3.5. Judicial officer case management in proceedings

'Case Management', in the NSW Children's Court context, refers to ongoing decision-making responsibility for matters. The case management of matters formed a crucial part of the interaction judicial officers had with caseworkers, solicitors and parents during proceedings. Case management is considered an example of current best practice within the NSW Children's Court and is outlined in Practice Note 5 for the Children's Court (Children's Court Practice Note 5, 2011). The aim of case management is to ensure that, where possible, judicial officers are able to familiarise themselves with a particular matter, and that legal representatives are not required to continually re-submit background or contextual information. During the observed matters, five different judicial officers were in rotation on the care list dates, prior to allocation to a specific judicial officer for case management. The low number of judicial officers sitting in the care and protection jurisdiction meant that, while multiple judicial officers did hear matters in the care list stage, often they would hear the matter in the list several times, thus becoming familiar with matters.

Despite the low number of judicial officers the rotation for the care list does mean that key decisions were made at this early stage by different judicial officers in the reviewed matters. Significant decisions including the establishment and finding of the matter were made by an alternative judicial officer who did not have further involvement in proceedings. Decisions relating to the establishment stage of the matter involved determination of whether the child is in need of care and protection. Decisions relating to the finding stage involved consideration of the realistic possibility of restoration of the child to the parents. Other decisions, by a different judicial officers at the preparation stage of the reviewed matter, prior to case management included mediation, submission of evidence and the continuance of interim orders. Therefore, consistency between judicial officers in terms of the approach to decision-making and the application of the relevant legislative requirements became particularly significant due to this rotation of judicial officers on Care list dates. Where a number of judicial officers are involved in early stages of proceedings using a consistent interpretation of significant issues such as domestic violence became an important requirement for judicial officers as matters progressed to Hearings. Judicial officer operationalisation of their understanding of guiding principles was one avenue that was identified to ensure consistency in decision-making.

6.3.6. Upholding principles

The observed matters presented two key, overarching principles that were employed by judicial officers during proceedings. The first principle, identified and referred to in legislation as the 'paramount principle', requires that safety, welfare and well-being of children are the paramount consideration in all decisions the Children's Court makes (Children and Young Persons (Care and Protection) Act, 1998).

Judicial officer interviewees A and C identified strongly with the objective of upholding safety and well-being for children.

When there are multiple options presented it can be an agonising stage, particularly in cases where it is not immediately clear the long term consequences for the children. We are all reminded by the legislation that, first and foremost, our duty is to ensure orders that are made in the Children's Court, contribute to the child's level of safety.

(Judicial Officer A)

We, as judicial officers, in the care jurisdiction are required to do much interpretation and understand highly subjective material, and it is inevitable that you must draw on your own experience. The constant through this is the needs of the children, and the principles of safety, welfare and well-being.

(Judicial Officer C)

In observed proceedings, this paramountcy principle was applied in a very practical way. Judicial officers frequently requested that solicitors to confirm the current circumstances of children, including any safety concerns, such as potential risk for children during contact visits. An interesting tension emerges in this practice, and in the above statements, between personal beliefs and guiding principles. The legislation specifically requires all judicial officers to consider the safety, welfare and well-being of children, and judicial officers point to this as providing a balance against personal judgement. However, the terms 'safety', 'welfare' and 'well-being', are all highly subjective, and a personal judgement is required to apply these concepts to individual cases. As interviewee Solicitor J suggested:

It's not easy because we, and the Children's Court, are outsiders to the situation, but we must inform the Children's Court and represent our clients, and the Children's Court must then make its decision. For instance, what is safe? In a domestic violence situation a parent may genuinely hold fears regarding removing the children from the offending parent, yet the Children's Court will, and rightly so, hold legitimate concerns about returning a child to an environment that is potentially violent.

(Solicitor J)

In this statement the solicitor is acknowledging that safety is a primary concern in cases of domestic violence, and the use of safety as a paramount principle can inform how domestic violence is evaluated within court proceedings.

The second principle upheld by judicial officers in decisions made in the current observed Hearing, was ensuring that the 'best interests' of children are met. As previously mentioned in Chapter Two, and in Chapter Five, the phrase, "best interest", has a high frequency of usage during proceedings, and has become an overarching term to describe many facets of the work of the Children's Court, including the paramount safety, welfare and well-being principle, referred to above. In observing proceedings the 'best interest' phrase regularly operated as a mechanism for justifying decisions. The following are statements from decisions delivered by judicial officers in three of the observed matters (Matter of Sukaw, Matter of Jant, and Matter of Hanna):

While it is clear mum has taken some good steps, and (Ms Jant) I do want to commend you for that, however I do not have enough detail in front of me to be confident that returning to you at this time is the best solution for these children. Hence I will today be making the following orders.

(Judicial Officer A - Matter of Jant)

At this point in time it is apparent that it is the best interests of these children that parental responsibility be allocated to the minister, subject to the care plan submitted .(Judicial Officer C - Matter of Sukaw)

This is not a punishment; I want to be very clear on this. It's to ensure that what I have allowed today will be what's best for your kids and will work in the long run.

(Judicial Officer B - Matter of Hanna)

Collectively these statements point to best interests as an overarching justification for decisions that are made. The judicial officers interviewed expanded upon their

particular understanding of the meaning of best interests. Judicial Officer B stated that, 'We have to look at the big picture here and what is best for those kids.' Judicial Officer A remarked, 'while bonds and attachments can be formed it is important children are not moved around if it can possibly be avoided.' A focus from judicial officers on a long term perspective, is apparent in these statements. Stability, attachment and permanency are considered best for children.

In the reviewed matters it was not consistently apparent how best interests are assessed, and whether there were alternative interventions available to ensure the best interest requirement. For instance, where Community Services are assessing different placement options, they may need to balance the level of attachment a child has to a particular carer with logistical considerations of the distance from the placement to the child's existing school and suitable locations for contact with family. These details, and caseworkers' reasoning regarding the priorities for a particular child, were not consistently present in the care plans for the matters reviewed. The variation in the level of detail in the care plans suggests that different caseworkers may hold different views as to the role and function of care plans, and the level of information that is required in court proceedings.

During observed proceedings in the Matter of Jant, Judicial Officer A made an assessment of the best interests for J at regular intervals. This was evident in several questions and statements throughout the day, indicating that he was wanting as much information as possible on the children involved and the key issues for them. These questions included:

What is in the best interest of this child? What evidence do you have that the proposed placement is actually considered to be a stable one by the children themselves? Why is time for the mother to enter a rehab program and address her issues and then work towards restoration not being considered here? Surely if she works with the caseworker it would be a better outcome for the kids if they can be returned to her.

(Judicial Officer A - Matter of Jant)

These questions indicate that the application of overarching principles moves the judicial officer role from one of purely an arbitrator or functionary to that of a guardian. Whilst much consideration of the needs of the children takes place outside of the Children's Court's realm, ultimately it is the judicial officer's role to ensure that the Children's Court orders made ensure the child's well-being.

The third principle for judicial officers in decision-making, related to ensuring fairness and equity in the conduct of proceedings. This principle was found to be closely linked with the paramount and best interests principles described above. This principle was linked to case management in Practice Note 5, which refers to the Children's Court's objective to deal justly with care and protection matters (Children's Court Practice Note 5, 2011). It further describes justly dealing with cases, to involve the paramount consideration of the safety, welfare and well-being of the children involved in the case.

The equity principle was applied by judicial officers to the observed matters. For instance, in observing the Matter of Hanna, it was apparent that the judicial officer in these proceedings made a particular effort to talk directly with the parents in all matters, and checked their understanding. Ms Hanna, who did not have legal representation, was urged, repeatedly, to seek legal aid urgently. Judicial Officer B, while firm, was also sympathetic in checking that the mother was aware of what was required. Interestingly, while Judicial Officer B was polite and respectful towards the mother, this did not have any impact on the interactions between the solicitors representing the other parties and the mother. The solicitors were observed to interrupt proceedings by interjecting, whilst she was speaking. On several occasions Judicial Officer B was required to intervene, to ask that the mother to continue without interruptions.

Whilst the solicitors were demonstrably friendly towards each other, using warm greetings and offering small assistance to each other, such as passing documents or repeating any missed instructions from the judicial officer, the mother was not included in this. She was also physically isolated, as she was seated at the opposite end of the bench to where the solicitors were, and so was unable to hear any conversations, or join in. The interaction that was observed in these proceedings highlights that both negative and positive relationships between solicitors and parents impact on their court room interactions. Consequently the relationship between parties can impact on the judicial officer's ability to implement the fairness and equity principle. In matters where a parent may have experienced domestic violence s/he may be the major source of information for the Children's Court on the experience of their children, particularly if there are few external forms of evidence available. It is therefore beneficial for the Children's Court to ensure that sufficient opportunity is given to hear and test evidence resulting from the participation of parents. Moreover, judicial officers are required to operationalise principles of equity to mediate the involvement of parents in court proceedings.

Based on the observation of matters, a specific challenge arises in communication between professional stakeholders in matters involving domestic violence. Where one party has been a victim, and one party has been a perpetrator, there is likely to be a history of pressure from the perpetrator, for issues to be resolved in their favour. Solicitors representing both sides are then faced with a client perspective, based on this history and power dynamics, and the Children's Court perspective, based on expediency. Solicitors require a combination of skills in advocacy, guidance and communication to serve as intermediary between often marginalised parties and a formal court system. The paramount principle of safety, welfare and well-being is operationalised by the Children's Court to resolve such circumstances. Part of the delivery of this assessment to the Children's Court involves solicitors providing advocacy for their clients and in general for children deemed in need of care and

protection. It is the caseworkers to whom the solicitors and judicial officers then turn, for assessment of levels of risk and safety for the children. The delivery of decisions and final court order were found in the reviewed matters to reflect the intersection between individual case evidence, overarching principles and professional understanding and judgement. The end result of Hearings, a court order, is therefore a product of extensive communication between stakeholders, and the application of overarching legislative principles and requirements for the management of proceedings. The findings relating to the outcomes from decisions will be outlined in the next section.

6.4. Outcomes from Decision-Making

Outcomes from the reviewed matters were found to encompass the formal conclusion of court decision-making as well as identification of proposed future arrangements for children. This section will discuss the specific challenges in the outcomes identified in the reviewed matters. These include types of orders granted, the endorsement of care plans detailing long term arrangements for children, and decisions regarding the ongoing role of parents. Outcomes from proceedings in this instance, do not refer to long term results for children that could include aspects such as stability of placement, health, education, future employment and the formation for trusting relationships. These typical benchmarks, considered in research into experiences of children in out-of-home care such as Meiksans et al. (2015), require a longitudinal assessment not possible in the time-frame of this particular research. Results that can be seen from the observed matters include the type of order granted, judgements or decisions regarding the specific issues in dispute that escalated these matters to proceeding, and the immediate placement and contact arrangements for the child at the conclusion of proceedings. A consistent outcome across all matters was the Children's Court order at the conclusion of proceedings. Chapter Two, Section 2.2 has provided an outline of

the potential court orders. Table 6.3 summarises outcomes from the matters to be discussed in this section

TABLE 6.3 COURT OUTCOMES RELATED TO ARCHIVE MATTERS					
NB All names are pseudonyms					
PARENTAL RESPONSIBILITY (PR)	TOTAL	TYPE OF PLACEMENT	TOTAL	RECOMMENDED CONTACT FREQUENCY	TOTAL
PR to Minister	13	Foster Care	6	6 to 8 times per year	6
		Kinship Care	5	4 times per year	5
		Mother	2	According to child's wishes	1
				4 times per year (father)	1
PR To Minister/ 12 Month Supervision Order	2	Both Parents	1	No contact schedule required	1
		Mother	2	No contact schedule required	1
				No contact with father	1
		Father	1	4 times per year (mother)	1
PR to minister/ 4 month supervision order	1	Mother	1	6 times per year (father)	1
PR to Kinship carer	2	Kinship Care	2	6 to 8 times per year	1
PR to kinship carer/PR to Minister (shared	1	Kinship Care	1	6 to 8 times per year	1

Table 6.3 indicates that whilst there were a variety of orders and placement options available were utilised in the archive matters, some of the options were selected with greater frequency. The most likely outcome from the archive matters was an order

granting Parental Responsibility to the Minister, a placement for the children with relatives and contact with parents recommended six to eight times per year. Eleven of the files involved a result of an order granting permanent decision-making authority and responsibility to Community Services for care of the children it should be noted that while this was the trend, not every archive file resulted in Parental Responsibility to the Minister, or to the children not being placed with parents. Two matters concluded with placement with both parents, three concluded with placement with the mother and one concluded with placement to the father. Also noteworthy was the use, in three matters, of shared parental responsibility between the Minister and a parent or kinship carer, indicating that, while the placement was stable enough to warrant the allocation of parental responsibility to the parent or carer, Community Services was still required to provide support. In two matters supervision orders were granted, allowing for restoration of the children to parents, monitored by Community Services. Table 6.4 summarises outcomes identified in the observed matters:

TABLE 6.4 COURT OUTCOMES RELATED TO OBSERVED MATTERS			
<i>NB All names are pseudonyms</i>			
OBSERVED MATTER	PARENTAL RESPONSIBILITY	PLACEMENT	RECOMMENDED CONTACT FREQUENCY
Matter Of Miller	PR to Minister until 18	Kinship	Mother-once per month Father- Once per month
Matter Of Buckthorp	PR to Minister until 18	Long Term Foster Care	None
Matter Of Sukaw	PR to Minister until 18	Kinship Care	Mother- 6 times per year Father-8 times per year
Matter Of Hanna	PR to Minister until 18	Kinship Care	Mother-8 times per year Father-6 times per year
Matter Of Jant	3 siblings- PR to minister until 18 1 child –Supervision Order (Shared PR Minister/ father)	Kinship Care	6 to 8 times per year
Matter Of Chrea	PR to minister until 18	2 siblings long term foster care (separate)	Mother-6 times per year Father- 4 times per year

In the observed matters, there was very little variation in the type of order granted at the conclusion of proceedings. Five of the six matters were concluded with a final order of Parental Responsibility to the Minister until eighteen years. As previously mentioned in discussion of the Children's Court context in Chapter Two, this is one of the more common orders granted by the Children's Court. This order officially sanctions the placement of the child into out-of-home care, and removes parental decision-making and rights from one or both parents, placing it with the Minister for Family and Community Services, to be delegated to the relevant Community Services Centre and case-work staff. The only matter not receiving this order was the Matter of Jant. In this case, three of the four children received orders granting full Parental Responsibility to the Minister until eighteen years. The third child received orders granting shared parental responsibility between the Minister and the father, as the father had been assessed as an appropriate permanent carer, with the ability to work with Community Services regarding ongoing issues, such as contact between the child and the mother. Shared parental responsibility can thus be seen as a mechanism to facilitate a parent or appropriate carer having decision-making responsibility, while allowing Community Services to maintain a monitoring role, and responsibility for any areas deemed necessary. This could include the facilitation of contact with the other parent or relatives, and provision of funding for support services.

6.4.1. Court orders

The first outcome of court decision-making can be considered to be court orders in the reviewed matters. The type of order issued by the Children's Court at the conclusion of proceedings is also referred to in court documents as 'final orders'. There are a number of options available to the Children's Court that allow for it to issue a variety of orders in relation to parental responsibility.

To allow an order to be finalised the legislation requires that the magistrate confirm that the order meets the following requirements as outlined in the care and protection legislation:

- i. The child is found to be in need of care and protection*
 - ii. There is no realistic possibility of restoration to the natural parents*
 - iii. Permanency planning has been addressed*
 - iv. No other order would be sufficient to ensure the care and protection of the child*
- (Children and Young Persons (Care and Protection) Act, 1998).*

Additional notations or orders may be added to the care order. These can include undertakings signed by the natural parents, carers or other parties, agreeing to certain conditions and behaviours. Contact orders are available to detail particular time-frames and conditions for contact with significant others. Contact orders were found as attachments in only three of the archive matters examined. A notation can include any specific addition or variation to standard orders. A notation found in many of the archive matters examined was a request for section 82 (follow up reports). This requires Community Services to submit updates to the Children's Court on the implementation of the orders, any changes in circumstances or agreed plan for the child, and the general progress of the child. This was information available in the archive matters that was unable to be examined for the observed matters, as no follow up reports were available at the time of analysis.

The final summations that were delivered by judicial officers offer a key insight into the way judicial officers link principles, evidence and professional opinion in their decision-making. The final summations that were delivered in the six observed proceedings were substantial, and judicial officers spent a lengthy period of time presenting them. For instance, in the Matter of Sukaw, Judicial Officer C presented a decision that lasted over two hours. The final order was granted for Parental Responsibility to Minister, with section 80 update reports on progress of children ordered for every six months. The care plan was endorsed by the judicial officer, noting permanent placement with a kinship carer, along with the mother's support of this

placement. The main factor in this decision was that the evidence suggested ‘the father had adequately failed to protect his children or demonstrate significant changes that would indicate he could now act protectively’. The judicial officer notes that despite recommendations of Community Services and the independent assessment agency, the father had failed to attend any specialist anger management treatment. The judicial officer further highlighted Community Services concerns regarding the father’s decision-making capacity. References were also made to the father’s substance abuse behaviour, and also his lack of insight into the inappropriateness of the relationship with the mother.

In the judgement in the Matter of Sukaw Judicial Officer C noted that, in the specific violent incident in question, a child was present, and this was a major factor in the Children’s Court forming the view that the father lacks insight into the impact of violence. The judicial officer also noted the father’s denials of the seriousness of allegations, and refusal to seek assistance for, or even acknowledge, anger issues. In her summation the judicial officer indicated that it was concerning for a family of children, who will look to male role models for guidance. Major concerns that were emphasised by Judicial Officer C in the summation were the domestic violence present in the home, and the inappropriateness of the relationship between the mother and the father, and specifically the ‘concerning dynamic’ that it created. Judicial Officer C concluded that the father lacked insight into these issues and to the associated risk for the children. An example provided by Community Services to indicate the father’s lack of insight was that he was aware of the mother’s substance abuse and held some safety concerns for the children, but did not take the children, as he believed ‘that was not allowed’ by the existing Family Court order and AVO. Mr Sukaw also provided evidence that previously he personally believed the children belonged with the mother. Based on this evidence the judicial officer found the Mr Sukaw did not demonstrate insight into the children’s needs through reporting his concerns to Community Services, or alternatively seeking intervention through the Family Court. The issues highlighted by the judicial officer summarised the specific risk issues present, the key sources of

evidence they relied on, and what they perceived as the unresolved issues for the parents and the children. Summations thus provide an avenue for judicial officers to communicate with parties their view and justification for decisions, incorporating assessment from caseworkers and evidence provided by court clinicians and external experts.

6.4.2. Permanency and care plans

Permanency planning is a core legislative requirement of the Children's Court. Care plans serve a crucial role in the final judgement stage of decision-making, as they are required to be authorised by the judicial officer as addressing permanency planning issues before final orders can be granted. Permanency planning, through the endorsement of care plans provide an outcome from care proceedings. Issues of permanency are fundamental to the process of court decision-making as it is at this point in decisions that a focus shifts, from past and present concerns, towards future issues. This involves consideration of the ongoing impact of issues such a domestic violence on long term prospects for parenting and care arrangements for children. Permanency planning decisions and the resolution of the question of restoration were two issues that impacted on the length of proceedings. Permanency was raised as particularly significant in both immediate and long term arrangements for the child in the Matter of Miller. The application and affidavit material submitted by Community Services indicated that Meena had experienced ten placement changes in three years, including two failed restoration attempts to the mother, and one failed restoration attempt to the father. Meena latest placement with her kinship carer, for twelve months at the time of proceedings, was the longest duration of all placements. The independent legal representative for Meena and the representatives for both the parents and the kinship carer, cross examined caseworkers at length, during proceedings, regarding the consequences of further placement change. It was acknowledged, by the caseworkers, that there would, at the least, be immediate

negative impacts of placement change, including emotional distress and a sense of grief and loss for the child. More long term consequences, including emotional and brain development and attachment disorder, were also referred to throughout the proceedings. The prominence given to the issue of permanency for Meena was a strong example of the use of the 'least intrusive measures' principle for court decisions being debated at an individual case level to ensure the optimal outcome for Meena.

Care plans were prepared in the matters with description of the future steps required to meet the child's specific needs across all matters. These care plans contained proposed long term arrangements for children including placement and contact, as well as discussion of any ongoing support needs for the child such as health, education and the maintenance of cultural identity. One standard feature across all care plans was a final section outlining the consultation with parents and significant others, and their response to the proposed care plan, as well as signatures indicating consent and non-consent to the plan. A caseworker's willingness to engage with parents in a flexible manner was highlighted as a further significant factor in preparing care plans for the Children's Court. For example, in one archive matter (Jamison), a key area in dispute was the development of a care plan that involved a placement that was not in line with the Aboriginal Placement Principles in this plan. The dispute regarding the cultural needs section of the care plan highlights the potential for care plans to be contentious, and the consultative work required from caseworkers in order to produce plans that satisfy the Children's Court.

The participation of parents in permanency planning throughout court proceedings was seen in care plans as well as multiple documents in the matters reviewed. For instance, in progress notes judicial officers confirm the dates that parents appeared before the Children's Court, and the significant outcome from court date, such as parent's conceding or contesting a finding of no realistic possibility of restoration. These notes provide specific communication between the parents and the Children's

Court. Communication from parents provides an indication of their participation in decisions concerning the child, their behaviour at court their level of engagement, and their ability to work with Community Services. Such information can be valuable to the Children's Court in determining the viability of the parent's involvement in the care plans, and any long term arrangements for their child.

The archive matters examined offered a unique source of analysis of the success of permanency planning through the Section 82 'follow up reports' that were not available for the observed matters. These reports are a significant resource available to the Children's Court for monitoring of the implementation of final orders, and the ongoing progress of the children involved. Follow up reports provided in the archive matters examined give some insight into the medium and longer term outcomes for children as final orders are implemented. These reports noted challenges experienced by children following final orders, including issues relating to placement instability, decisions to change placement, and implementation of restoration plans and contact schedules with parents. Positive outcomes for children indicated in these reports included improved behaviour and results at school, long term medical issues being addressed, support provided through trauma counselling, and opportunities provided to participate in extra-curricular and community based activities. The level of feedback or follow up that occurred in response to the challenges identified in the follow up reports is unclear in the archive matters. As parties to proceedings are also provided a copy of the report, they are able to request to rescind (terminate) or vary existing orders, if evidence exists of significant change in circumstances. The information provided by Community Services in the section 82 reports, along with any other reports or information to verify the specific changes, can prompt further intervention from the Children's Court. Fourteen of the archive matters reviewed included orders with notations specifying six monthly follow up reports. Of these fourteen files, eight contained reference to incidents or assessment from Community Services that indicated concerns or potential risk issues. Specific phrases used by caseworkers to

indicate a negative progress included 'unstable placement', 'escalating behaviours of child', and 'lack of engagement by parent'. Critical incidents that were referred to in these files involved inappropriate behaviour or lack of attendance by a parent at contact visits, physical or verbal violence and threatening behaviour from perpetrator towards the other parent or other family members, and children fighting with other students at school. These incidents highlight the reality that the issue of domestic violence and its impact on a child is a long term issue and that contact visits and support for children's behavioural issues are examples of content that is useful for judicial officers to see are accounted for in care plans.

The ongoing assessments available in the follow up reports suggests that the Children's Court has the ability to build into its orders an understanding that ensuring safety is a longer term outcome extending beyond court Hearings, and further assessments of safety and well-being for children, will fluctuate over time. However interviewees Solicitor M and Solicitor S described particular challenges in liaising with caseworkers regarding permanency planning issues, such as contact, as these decisions occur external to the Children's Court proceedings, with an expectation that they will be conveyed in the care plan. In describing the role of care plans in court decision-making, solicitors interviewed made the following statements:

The intention is that all the child's needs should be set out in a care plan along with contact and permanency issues. The reality is that this is achieved inconsistently.

(Solicitor S)

Care plans are important in recording cultural issues and acknowledging their importance for the child but caseworkers don't have adequate time or support to fully explore this.

(Solicitor M)

These statements highlight a disconnect between the aim of care plans informing the court's decisions regarding long term care and permanency for children, and the reality of the time constraints for caseworkers.

Where caseworker experience time related pressure to write care plans, the particular needs and circumstances for the child in relation to addressing the trauma of domestic violence may not be sufficiently articulated for the Children's Court. The amendment and negotiation of wording and proposals in care plans highlights the contested nature of what is considered 'best interests'. Solicitors identified time and funding as key factors in the caseworker's ability to collaborate with parents effectively on care plans.

Solicitor interviewees identified time devoted to consultation with parents as an important factor in the preparation of a good care plan. For instance, Solicitor M suggested that, 'more consultation is needed with those that know the children best, especially cultural issues.' From this statement it is apparent that this solicitor perceived that care plans are a useful tool for the Children's Court to understand the long term needs for children, when there has been adequate consultation with parents and relevant community or cultural groups. Thus, a significant aspect of the permanency planning recommendations that are provided to the Children's Court through care plans is likely to be the caseworkers' level of skill in communicating with parents and any other relevant parties.

6.4.3. Out-of-home care placement

Information available relating to the matters reviewed indicate that a major priority in care plans is the quality and suitability of the placement. The time devoted to the collection of information relating to proposed arrangements and the endorsement of the placement is not reflected in the very brief court orders following judgement. The information provided in care plans is the main source that judicial officers are provided

when endorsing proposed placements, making this information crucial to the Children's Court decision-making process.

Several types of placement were identified in the care plans in the reviewed matters. In the archive matters reviewed this involved the child being placed with the natural parents, kinship carers or foster carers. Six of the care plans in the archive matters reviewed indicated a long term placement of the child with natural parents. Five of these were with only one parent. One involved an amended care placement of the children with both parents, with supervision by Community Services. Of the five placements with one parent, four were with the mother and one with the father. Fourteen matters involved placement of children in out-of-home care placements, either with kinship carers or authorised foster carers. Nine of the archive file matters involving out-of-home care placements were kinship care. Eight of these were with direct blood relatives of the children, and one whose close relationship and cultural connection, allowed her to be considered as a family placement for those children. These archive matters indicate that kinship care is a significant factor for consideration in care plans in proceedings.

The specific elements of care plans in the observed matters that were disputed included kinship care, and the availability of long term care options. Also disputed was the process of connecting risk and safety to placement in circumstances where this was solely described and assessed by caseworkers. For example, in one file (Jacobs) availability of kinship carers and alternative long term care options was a significant disputed element during proceedings. At the same time subsequent amendments to the care plan in this matter suggest that priority was given to documenting the holistic needs of children. Note was made by multiple parties of the importance of ensuring that contact between the parents and children followed any agreed guidelines and was used to meet the needs of the children. Evidence was also provided of the involvement of counselling services, including ongoing support for carers and children. The

counselling service also provided some education sessions for the parents in an attempt to make contact positive, and raise awareness for all adults involved, of the impact of abuse and trauma on children's functioning. Ensuring the Children's Court was provided with these details indicates that outcomes from a care and protection case can be measured in a number of different ways, beyond simple categorisation of whether a specific decision was made on one element alone, such as placement or contact. For instance, the inclusion of parents and children in planning, and the quality of information provided to the Children's Court, are potential benchmarks to account for decisions reflecting a holistic account of a child's best interests.

In the six matters selected for observation, all thirteen children who were subject of these proceedings were to remain in the placement they were in at the time of proceedings. In three of these matters (Matter of Hanna, Matter of Chrea and Matter of Buckthorp), the placement that the children were residing in was not considered permanent, and placement assessments were still to be finalised, or a permanent placement was yet to be sourced. Of these three, the matters of Hanna and Buckthorp included an available kinship care placement that was referred to, in both the care plan and judgement, as being a possible placement outcome. Additionally, the continuation of an existing kinship care placement was referred to in the Matter of Miller and the Matter of Sukaw. Thus, kinship care was a frequently used option in judgements across four of the six observed matters.

The choice of placement was linked with evaluation of risk as identified in a statement from interviewee Judicial Officer B:

I would say that one key aspect I look out for through all the care plans is risk. What is still not resolved, what is unclear? How is risk going to be removed for that child if we change their environment

(Judicial Officer B)

The endorsement of placement, from the perspective of this judicial officer, is therefore based on the need for certainty that the placement will address issues of risk and safety. In the observed matters, the care plans presented did not explicitly detail how the placement will address risk concerns. Specifically there were no references to whether caseworkers determined that any ongoing parental domestic violence would pose any threat to the child in their proposed placement. Based on the reviewed matters and explanation for the lack of assessment of risk was the reality that caseworkers needed to devote substantial time to source available placement options as a priority. For example, in the Matter of Buckthorp the determination of a suitable long term placement for the child was difficult to establish, resulting in the original care plans not being able to be endorsed by the judicial officer, as not enough information about the different potential placement options was available. The justification for the lack of information provided by Community Services was that the proposed kinship carers identified by the parents were siblings of the father, and both were living interstate so caseworkers would require additional time to arrange assessment of their suitability as long term carers. A second option of a suitable, stable, out-of-home care placement 'to meet her developmental, medical, social and educational needs' was recommended by Community Services. The care plan did not give specific details about the placement, but alluded to one being sourced. Hence the judicial officer could not approve this and more time was needed for another care plan, and the proceedings were prolonged. Moreover the discussion was centred on information about the placement options, and not how placement options assist in addressing risk issue for the child, such as ensuring they are protected from domestic violence.

The suitability of the different kinship carer, proposed separately by Community Services and the mother, was the subject of several affidavits. The care plan was in fact amended to place the child with a kinship carer, put forward by the mother, despite Community Services' concerns about her ability to maintain a neutral position towards

the parents, and also the kinship carer's parenting of her own children. Issues of permanency planning are therefore addressed in evidence, not simply through the ability for a placement to be safe and long term, but also in terms of meeting all needs of a child, including their cultural and spiritual development. However, it is significant to note that in the Jamison matter this was only amended following the query from the mother and her representatives about whether Aboriginal placement principles had been adequately addressed. This meant that notations were made by the judicial officer requesting re-consideration of the kinship carer, and what supervision and support could be provided to establish that placement. This case indicates that parental perspectives have a necessary role to play in proceedings, and in the development of ensuring that final decisions regarding the child's 'best interest' consider all elements necessary for a child to flourish. Placement and Contact were found to be two very significant components of 'best interests' emphasised by caseworkers in care plans. These are two issues difficult to encapsulate in the single formal document of the Children's Court order, particularly where there are significant issues of domestic violence. A care order is typically brief and operates to allocate overall parental responsibility. Care plans provide the detail of the needs for the child and the proposed actions to meet their needs. Care plans therefore become the formal record to determine the needs of children requiring out-of-home care and it is used to assess whether proposed court intervention is able to ensure permanency for children. Domestic violence is a significant issue that needs to be documented and addressed in care plans to ensure long term childrens' safety.

The benefits and difficulties of kinship care as a proposed outcome are highlighted in several archive matters. In one matter (Caden) kinship care with paternal grandparents was seen as a good outcome. It is worth noting that the complex combination of issues was highlighted as a reason that restoration was not realistic. There were also ongoing fears for the safety of the children in this matter, largely due to the unstable mental health and parenting capacity of the parents. Despite the complexity of issues, it was

felt that the particular carers were able to provide adequate and appropriate care. In contrast, in another matter (Johnson-Matthews), the father's cousin was assessed as not appropriate, due to over involvement in family matters. The level of involvement caseworkers feel is acceptable for family members, and the priority given to the continuation of significant relationships for children, remained ambiguous in this case. The 2014 'Safe Home for Life' amendments highlighted, that while kinship placement is a preferred outcome in the hierarchy of placement options, in circumstances where a kinship care placement is not possible, it is necessary to ensure that the reasoning behind such an assessment is accurately conveyed to the Children's Court (Neville, 2014).

6.4.4. Contact

The need for ongoing arrangements for contact between children and their family members following their placement in care emerged in both the reviewed matters as a crucial component of care planning and court decision-making. Contact arrangements identified in the reviewed matters referred to formal arrangements for supervision of contact visits between parents and children as well as between children and siblings or other significant extended family members. These cases confirm prior research that contact reports provide a useful source of evidence for assessing risk, bonding and attachment, parenting skills, possibility for restoration, and long term planning, if children are to remain in care (Dingwall et al., 2014). Additionally, contact has been acknowledged in existing literature to form a significant part of negotiation between parties during proceedings, and also in more recent time, in dispute resolution conferences (Kiraly and Humphreys, 2015).

Contact arrangements varied across the observed matters. For instance, in delivering judgement in the Matter of Chrea, Judicial Officer B referred to the long term importance of contact for the children, and expressed the wish that the father use

contact as a positive way to remain involved in the children's lives. In the Matter of Sukaw, the issue of contact was determined on the basis of safety concerns and, particularly, ongoing threats and intimidation from both parents towards each other. The judgement referred to the need for ongoing close supervision directly from Community Services, and for follow up reports to the Children's Court, to indicate whether contact was proceeding with appropriate behaviour from the parents. The emphasis in determining contact in this situation was not on longer term outcomes for children, but instead, on ensuring immediate safety.

As Solicitor B noted in interview:

In that matter (Hanna) I would suggest that contact was as much a tool for the caseworkers as the parents. The parents were using it to negotiate; the caseworkers were using it to collect information. My role as the children's representative was to assess what those reports were actually saying about contact and the children.

(Solicitor B)

This statement implies that contact became a central issue in the decisions made by the judicial officer in this matter. Initially, the mother was disputing that there was no realistic possibility of restoration, but later in proceedings had indicated that she did concede this, leaving contact as the only issue to be resolved. The matter was somewhat complicated by the fact that both children were placed with the paternal grandparents of one child, the second child having a different father. While the first father was happy with his parents continuing placement and supervising contact, the solicitor of the second father did express concern that he would not receive the same frequency or fairness in contact, as inevitably the grandparents would favour their son. The judicial officer's analysis of this was that if the placement was stable then children should remain there, but Community Services would be better to supervise contact as they can provide a neutral space. Ensuring maximum contact was a goal for all parents involved. There appeared to be little reference to the benefits to children, but instead,

to fairness and to the amount of time the parent had seen the children in comparison with other parents. This creates a complicated area for judicial officers to address, as equality in contact across all parents may not work in practice for children. For example children may have conflicted feelings, or be more attached to one parent than the other.

In the Matter of Chrea, the Children's Court file records for this matter and the case management document submitted by Community Services indicate that contact arrangements was one of the specific matters requiring resolution at Hearing. The issue of contact required resolution in two key respects, contact between the Chrea children and their parent, and contact between the Chrea siblings. Firstly, in relation to contact for the children with their parents, a specific concern raised in affidavit material and in oral submissions to the Children's Court by solicitors, was the frequency of contact to be supported between the father of the second child and both children. A close bond between the first child and the father of the second child was noted in the application, care plan and clinic assessment. Contact was determined to be beneficial for both children. A determination of no realistic possibility of restoration was made late in proceedings, approximately fifteen months after the initial application. This left the undecided issue of what was the suitable amount of contact for the father. Following submissions by Community Services and consideration by the Clinic assessment report, the Children's Court recommended in the judgement that the father of the second child have contact every two months - this was agreed to by Community Services. This in effect was a compromise solution between the once every six months offered by the mother, and the proposal of contact every month by the father.

Sibling contact became a further key issue in the Matter of Chrea. Both children had a half sibling (from their mother's side), and the second child had three additional half siblings (from the father's side). As the father had acrimonious relationships with each

of the mothers of his children, and two of these mothers still had full time care of their children, the need for consent from them for sibling contact to occur was raised, both in the care plan for the children, and in the judgement delivered for these proceedings. The final result indicated that there would not be sibling contact for the second child with the two half siblings still in the care of their mothers. The judgement encouraged the father to work with Community Services and these mothers to examine avenues to repair any issues creating barriers with these mothers, and for their approval for contact to occur. The oral submissions and regular references in the written material, including the case management document, affidavits from both parents and the Children's Court Clinic assessment report, indicate that contact was seen as a significant issue for the Children's Court in having an agreed plan to ensure permanency for the Chrea children.

Solicitors identified particular challenges in the information provided in care plans that related to contact. Interviewee Solicitor H identified that, 'there is a formula, a standardisation that can compromise their usefulness.' Another solicitor interviewee expressed the opinion that, 'there are standards based on funding that are applied in every case.' The notion of a formula for determining the amount of contact a child should have is described negatively by Solicitor H. Solicitor H perceived that, if care plans are developed in a standardised manner, for instance the use of particular guidelines used by Community Services regarding contact that does not take into account the individual needs of a child, the judicial officer's ability to assess permanency planning is compromised. To fulfil permanency planning obligations the proposed contact arrangements in care plans may need to contain additional explanation as the relevance of factors in individual matters such as age of the children, possibility of restoration and length of time in care.

In decisions that are made about contact there are considerations of ensuring suitable outcomes for children alongside consideration of larger issues raised of fairness and

equity, in a negotiated 'acceptable' solution for professionals, parents and children. Crucially, much discussion of both family preservation and contact refers to a sense of justice and fairness, both for parents and children. Importantly, the solicitor interviewees identified that good relationship with parents was a factor in caseworker's ability to be flexible in making arrangements for contact. For instance, Solicitor M mentioned that in their experience of contact negotiations, 'arrangements can be more flexible where caseworkers have a good relationship with the parents.' The concept of parental rights to contact, and to having some continual involvement in aspects of a child's life, is the subject of much discussion. It is a particularly contested subject when balanced with the rights of children and the specific benefits and risks to them. There are risks for children of disrupted placements, feelings of disappointment or rejection if contact plans are changed or cancelled, and also, importantly, continual exposure to the same risks and concerns that led to child protection concerns. Risks also exist for children in relation to kinship care placement (McDowall, 2014). These include a sense of confusion regarding their place in a family, and exposure to ongoing family conflict (specifically if siblings are placed separately or a placement is contested by either or both parents or if there are disputes between family members about placement of children) (McDowall, 2014). The capacity of elderly grandparents to adequately parent young grandchildren is often raised, as well as increased likelihood of children having unplanned or frequent unsupervised contact with a parent where risks have been identified (Cleaver, 2000). In circumstances of domestic violence the need for contact that is closely monitored by an adult with sufficient awareness of the domestic violence and suitable protective ability, is increased. The risks and benefits of responses to domestic violence, can vary depending on who is analysing them, for what purpose and also their specific perspective on 'the best interests of the child'. The varying perspectives on analysis of domestic violence in discussion of placement and contact in the reviewed matter thus impacted on the court's deliberations concerning these two significant permanency planning issues.

6.5. Conclusion

This chapter has provided an overview of the key issues in relation to specific decision-making that occurred during different stages of proceedings for the reviewed matters. In this chapter the key themes that have been identified included the significance of preparation and professional assessment prior to court proceedings, the increasing significance of Alternative Dispute Resolution in refining the volume of unresolved issues that the court needs to determine, and the importance of professional consideration of the ongoing impact of domestic violence in permanency arrangements such as care plans that are created for children.

The stages of decision-making identified in this chapter included preparation, Hearing, and outcomes from proceedings. Findings from the reviewed matters include a specific course that is followed in court decision-making, from initial applications, to case management of proceedings, to final court orders and endorsed care plans. The identification of these specific trends in the processes followed in the reviewed matters allows a holistic account of the decisions that were made.

The data presented in this chapter has highlighted that professional stakeholders involved in the Children's Court decision-making process, experience specific challenges and pressures in the care and protection jurisdiction. Despite the privileged positions of professional stakeholders, they articulate their dilemmas and express feelings of frustration with their ability to address the specific challenges. Solicitors face challenges in their intermediary role between the parents and caseworkers who possess the evidence of domestic violence, and the Children's Court that is evaluating it.

In examining the decision-making process followed in the reviewed matters this chapter has identified that outcomes from court decision-making are a result of

substantial input from professional stakeholders, including caseworkers, solicitors and external experts. The findings in this chapter demonstrate that judicial officers and solicitors place a high level of importance on the knowledge from expert witnesses and caseworkers. Judicial officer participants strongly expressed that their core duty in ensuring court orders provide for the safety, welfare and well-being of children is dependent on the people who know and work with the family. Particularly significant in the reviewed matters were decisions made in preparation for court proceedings, and communication and collaboration between stakeholders during Hearings. The principles applied in court decision-making were found in this chapter to not only be the responsibility of the judicial officer, but also the solicitors who represent Community Services, parents and children.

This chapter has found outcomes from court proceedings can be assessed through court orders regarding the immediate issue of parental responsibility, as well as care plans addressing proposed long term arrangements for children, and both these documents are driven by Community Services. In the decisions that were made in these cases critical disputes required court mediation around permanency planning issues, placement and contact. These issues may require time to assess, and they are balanced by judicial officers implementing guidelines and principles of the legislation to ensure that safety, welfare and well-being of children is paramount. In the matters reviewed the Children's Court's ability to assess safety in care plans was constrained by an absence of detailed analysis of the ongoing impact of domestic violence, and how children's placement and contact may be effected by ongoing domestic violence. The following chapter will focus, in depth, on the findings which reflect the development of professional discourse that frames court understanding of parenting, child maltreatment and domestic violence.

7. Findings: What Are The Key Discourses Influencing Professional Interpretations Of Domestic Violence?

7.1. Introduction

Professionals involved in the Children's Court of NSW ('the Children's Court') are the lynch pin in the court building an understanding of domestic violence, child maltreatment and parenting in each of the court proceedings. Findings presented in the previous chapters have demonstrated that multiple professionals are involved in the Children's Court process in the preparation, Hearing and outcome stages of court decision-making. These professionals include judicial officers, solicitors and caseworkers.

The findings presented in this chapter specifically relate to the sub question 'How do legal and welfare practitioners make decisions in care and protection matters where domestic violence is a primary risk factor or one of several concurrent risks?' This chapter will identify the discourses of parenting, domestic violence and child maltreatment, used by these professionals throughout the stages of decision-making in the reviewed matters. The first section of this chapter identifies the professional understanding of parenting capacity and risk present in the reviewed matters. The second section describes the emergence within care and protection matters, of a specific framework of parental compliance and insight for professional understanding of parenting in the context of domestic violence. The third outlines the professional interpretation of safety within the context of domestic violence.

Professional interactions with families reflected a framework for assessments of parenting that comprised narratives of risk, compliance, insight as well as safety. These broad concepts were then applied at an individual family level to determine how domestic violence was compromising parenting and the children's level of safety.

Assessments focused on the impact of violence on the parent and the parenting relationship, or, on the overall negative pattern and environment created for a child. Of particular relevance is how these perspectives became incorporated into court proceedings, and informed judicial officer decision-making.

7.2. Assessing Risk

The framework for professional understanding of parenting identified in the reviewed matters can be understood through consideration of four specific themes of risk, compliance, insight and safety. This section will discuss material from the reviewed matters to identify and describe the specific theme of risk that emerges from evidence submitted for the Children’s Court’s consideration. Findings relating compliance, insight and safety will be presented later in this chapter. In Chapter Six, the typical decisions made in different stages of the Children’s Court process were summarised in Table 6.1. The stages of decision-making are provided again in Table 7.1, and incorporate the different professional assessments of parenting that occur within the stages of the Children’s Court process.

TABLE 7.1 STAGES OF COURT DECISION-MAKING AND ISSUE ASSESSMENT		
COURT PROCESS	TYPE OF DECISIONS	Issues Assessed
PREPARATION	<ul style="list-style-type: none"> - Inclusion of Evidence - Dispute Resolution Conferencing 	<ul style="list-style-type: none"> - Risk - Compliance
HEARING	<ul style="list-style-type: none"> - Finding (in Need of Care and Protection) - Establishment (No Realistic Possibility of Restoration) 	<ul style="list-style-type: none"> - Risk - Compliance - Safety - -
OUTCOME	<ul style="list-style-type: none"> - Type Of Order - Care Plan - Placement - Contact - Supervision 	<ul style="list-style-type: none"> - Risk - Compliance - Insight - Safety

Table 7.1 demonstrates some links between the stages of court decision-making, the types of decisions made in these stages, and the issues that were assessed in the matters. In the preparation stage of decision-making, risk was evaluated. As proceedings progress from preparation to Hearing, decision and outcome, the professional discourse of parental compliance, insight and children's safety used by professionals was evident. However, professional consideration of risk remained prominent across every stage of the Children's Court process.

7.2.1. Caseworker perspectives on risk

The interpretation of evidence concerning risk is one specific area where caseworkers were found to provide a high level of information and assessment to the Children's Court in the reviewed matters. Caseworker discussion surrounding the risk of domestic violence involved several components: descriptions of incidents of domestic violence, description of the dynamics of violent relationships, the impact of domestic violence on parenting capacity, and the impact of domestic violence on children. The prominence of these topics in caseworker discussion revealed the process they used to assess domestic violence in addition to the type of information that they perceived was relevant for the Children's Court

The language used by caseworkers in the Children's Court applications in the observed matters indicated that the pattern and frequency of violence are of particular concern to caseworkers in their interpretation of evidence. For example, in the Matter of the Hanna, one affidavit provided by the caseworker contained this statement, 'however, the continued frequency of Risk of Harm Reports and the escalation of harm and neglect, suggested these historical issues remain ongoing and unaddressed.' A focus on frequency of violence was also prevalent in caseworker interviewee statements regarding the key factors in cases involving domestic violence. Caseworker A comments indicated that their assessment of violence was founded on their identification of specific patterns and frequency of violent incidents:

With violence, it is not so much about the parent, but about the environment for the child. This can be difficult because a natural reaction from a social worker, when confronted with someone in distress, is to care and to help. But we have to try to see the bigger picture. If there is a report of violence, we know it is not likely to be one off, that there is more to the story.

(Caseworker A)

In this statement Caseworker A suggests that, when assessing violence, caseworkers use historical reports and material to identify the pattern and frequency of that violence. The frequency and pattern of violence is significant to a caseworker assessing violence, as it can be indicative of the level of severity of risk for a child, and how that might fluctuate over time (Kantor and Little, 2003). Indicators of severity of violence such as the use of weapons and whether the child sustained any injuries are crucial to determining the level of risk the child has been exposed to (Easteal and Grey, 2013). The cycle of violence provides an additional concept that caseworkers can use to place descriptions of violence into the larger context of the child's ongoing living environment (Stover, 2005). However, where caseworker assessments in reviewed matters focused on patterns and frequency of violence but did not contain specific examples of the severity of the violence the degree of risk for the child was not readily apparent.

The applications for the current proceedings also highlighted the caseworker's assessment of domestic violence as strongly linked to the relationship dynamics between parents. In the Matter of Buckthorp, Caseworker D's perspective on the need for the relationship to be addressed, in order to improve the level of safety for the Buckthorp children, was highlighted in caseworker statements in the application:

She is required to demonstrate insight and understanding of the complex dynamics involved in domestically violent relationships...Needs to show a high level of engagement and participation in such a program to ensure her safety in the relationship.

(Caseworker D- Matter of Buckthorp)

These remarks demonstrate a pattern in the way that the caseworker in the Matter of Buckthorp viewed these parents, and the requirements of the mother to demonstrate a renewed focus on ensuring the safety of her children. This caseworker expected Ms Buckthorp to engage with support services to develop her understanding of domestic violence and its impact on her and her children. Two layers of analysis are apparent in this caseworker's assessment of violence. Initially Caseworker D describes and interprets the parents' relationship and the negative impact of the relationship on the children. Parallel to this assessment, Caseworker D has also evaluated the mother's awareness of the domestic violence, and identified a need for the mother to develop further insight into her abusive relationship. Thus, Caseworker D's assessment is based on her interpretation of violence as well as her assessment of the parent's level of awareness of the violence.

Parental perspectives on violence and its implications for children in the reviewed matters were often not provided directly but in written statements that were submitted by their solicitors. These statements indicated that parents did not automatically concede the presence of violence as a risk to their children. A specific example in an archive file (Rubbar) included the mother's written affidavit evidence that she believed the violence did not affect her children because she kept it from them - they were well dressed, fed, and they did homework and were cared for. Ms Rubbar has therefore represented good parenting in relation to meeting these needs. Parental education on the emotional and psychological impacts of being exposed to domestic violence and its consequences would therefore be useful to a parent with limited understanding of domestic violence and its different impacts on children.

It is apparent from the reviewed matters that an important component of the process of defining and categorising the risk of violence to children is consideration of the specific influences that domestic violence has on parenting capacity. In relation to the parenting experienced by children in the archive matters, the phrase 'protective ability' was used in 22 out of 30 files. The references to 'protective ability' were used in the caseworker's assessment of the mother's reaction in responding to domestic

violence incidents. 'Protective ability' was also used to describe the mother's understanding of domestic violence as posing a current or future harm to children. Whilst this phrase was not used in relation to the father's parenting behaviour and responsibilities, phrases including 'creating an unsafe environment' and 'posing a threat' were used by caseworkers to demonstrate the caseworkers' concern in relation to the father. These phrases illustrate that a different emphasis on parenting ability is placed on the mother, and on the actual physical threat from the father, thus influencing the focus of caseworker assessment.

The most recognisable impacts of violence on parenting capacity have been identified in the existing literature referred to in Chapter Three, and can be summarised to include physical incapacity from any injuries, and emotional and mental deterioration. Such experience compromises the mother's focus and ability to be responsive to the needs of her children. Perpetrators may utilise the mother-child relationship in several ways to further abuse the mother, obstructing her ability to parent (Humphreys and Stanley, 2006). Victims of violence have provided accounts of how perpetrators have diminished their confidence and assertiveness to obstruct their relationship with their children (Rasool, 2015). Examples of this include removal or abduction of children, placing restrictions on time spent dedicated to children's care, and actively denigrating and belittling the mother to children (Thiara and Humphreys, 2015). Such behaviour directly targets attachment and bonding between mother and child, and uses the mother's role as a parent as one avenue through which to harm her (Thiara and Humphreys, 2015). Threatening or endangering children ensures compliance and entrenches the uneven nature of power dynamics. Finally, the threats to report the mother to police or Community Services, or place the children in the alternative care of the perpetrator's choosing, isolate the mother and the children from support.

Parental capacity was determined to be inadequate due to both immediate and past concerns of violence. For instance, in archive matters such as Rubbar, references to

past risk concerns were documented. However these references did not contain an explanation as to how historical concerns were relevant to the children's current circumstances, beyond a generalised history of the complexity of the family. Caseworker provision of a general historical overview of a family's experience that includes violence, without reference to current examples, indicates a lack of clarity overlooks the subtle process of the corrosion of confidence and increasing anxiety that may have an impact on a mother's current parenting capacity. There is an assumption here that the Children's Court has enough knowledge regarding domestic violence to determine that, if previous risk factors have been indicated, then there will be sufficient grounds for the Children's Court to consider historical risks relevant to present proceedings. Thus, the way that caseworkers assess risk in relation to domestic violence can be viewed as distinct from other allegations such as lack of management of parental mental health, where current records and incidents are provided to show the impact of the issue on a parent's capacity, rather than an historical pattern of behaviour.

Discussion of the connection between risk and parental capacity was seen in the caseworker documents submitted in an additional archive file (Maken). Domestic violence was portrayed as having a particular impact on parenting and the mother's attachment to the child. Evidence was provided that the mother needed further time to deal with the trauma of domestic violence, as the child reminded her of the father. This evidence used language about domestic violence in order to describe the specific impact that the mother's experiences of violence were having on the child. However, in other matters, the risk of domestic violence was not consistently described with specific examples of impact on children. In some matters domestic violence as a risk factor was alluded to in more generalised terms. Where general terms, such as 'experience of violence', 'witness of violence' and 'victim of violence', were used in court applications the origin or context of the allegations were not always clear. Particularly when the phrases are connected to descriptions of parents, rather than incidents there is an assumption that the Children's Court would automatically

conclude that the experience of violence would negatively impact on a parent's capacity. Caseworker C's affidavit included in one archive file (Maken) made reference to this, 'she (the mother) had experienced severe difficulties in coming to terms with being a victim of domestic violence.' In this statement the phrase, 'coming to terms with being a victim of domestic violence' emphasises the caseworker's concerns regarding Ms Maken's emotional state following domestic violence. Caseworker C's interpretation of domestic violence is focused on Ms Maken's lack of perceivable action to process her experience of violence, rather than understanding of the unique dynamics of violence that may explain her challenges in coping as a parent. Crucially, the above statement does not provide an indication of how Ms Maken's experience of violence has affected the parenting of her children, as the children's issues were described separately. In contrast when interviewed Caseworker A highlighted that, 'What is most damaging about violence for a child is when it is consistent, when there is an ongoing climate of control, hostility and fear'. This statement, whilst acknowledging the adversity children experience in violent homes, did not link the 'climate of fear' to analysis of how this may have contributed to any concerns they have regarding the parent's capabilities. The two previous statements demonstrate that in some matters examined, caseworkers did not make adequate links between the mother's responses to violence and complex gender and power dynamics involved in domestic violence that may impact on her parenting. Such analyses would provide for the Children's Court a more detailed evaluation of the evidence of domestic violence that encompasses the links between parenting and the level of risk for the child.

From the reviewed matters it becomes apparent that there are multiple approaches and conceptualisations of risk present within care and protection matters. The process of determining risk has been identified in existing child protection literature as subjective and difficult to unravel (See Parsloe,1999; Booth, 2004; Keddell, 2011). Daniel, describes the term 'risk' as 'a list of often ill-defined combination of issues', and suggests that caseworkers are interpreting the current concerns for the child , the chances of these concerns translating into negative outcomes, and the capacity and

willingness of parents to prevent negative outcomes (2010: 241). According to Lonne et al. (2013) the way that professionals define and understand different forms of risk, is the basis of their practice, particularly in establishing the priorities and focus of risk assessment. For instance, as caseworkers perceived parental capacity as a significant risk factor in the reviewed matters, the interventions proposed to address domestic violence focused on parental willingness to engage with support.

7.2.2. The role of the solicitor in interpreting evidence of risk

In the Children's Court setting solicitors are required to interpret evidence of risk in addition to understanding the caseworker assessment of the evidence. In order to provide their perspective on the evidence, and the caseworker assessment, solicitors essentially conduct their own assessments of child maltreatment and domestic violence. When asked to describe their process of preparing for court appearances, solicitors articulated varying processes that they followed. Some solicitor interview responses identified evidence as their initial priority, 'it is a process to consider evidence and make an argument for the best course of action' (Solicitor J). Other responses indicated that legislative principles were paramount: 'It is a process of working backwards, starting with legislation, developing argument, and then finding suitable evidence' (Solicitor M) and, 'it is a process to look at the background, apply the provisions of the act and build in the instruction you have been given, and the supporting evidence' (Solicitor H). Collectively these statements indicate an effort on the part of solicitors to evaluate the existing evidence, assessment and interventions pertaining to a case.

Following their own evaluation, Solicitor J, Solicitor M and Solicitor H also identified a second process, formulating a suitable position on the case to be used during proceedings. Interestingly, while the focus of Solicitor J, Solicitor M and Solicitor H had similar approaches in their examination of background, supporting evidence and construction of legal argument, the structure they used for court preparation varied.

While Solicitor M and Solicitor H suggested they focus on understanding background, then use legislation and evidence to support their conclusions, Solicitor J began with the applicable legislative and legal arguments to guide their interpretation of evidence.

Solicitor interviewees were asked to describe key sources of evidence used in court decision-making. Common responses were medical records, interview transcripts, and case-worker file notes recording key incidents pertaining to a matter. The form in which this evidence was provided was described as either current firsthand accounts, or summaries provided after the event. Firsthand accounts of violence from third parties were identified by these solicitors as important in verifying violence for the Children's Court. In each of the solicitor interviews, there was an indication of the need for evidence to be from the time of an incident, or as contemporaneous as possible. For instance, Solicitor S identified medical records as a useful source of corroborating evidence because, 'they are written at the time of the event. Parents are more likely to give full information to the hospital.' Solicitor J also indicated that, where possible, solicitors attempt to locate multiple sources of evidence of domestic violence, and particularly more than one source to independently verify the facts of an incident of violence. Solicitor M stated that 'evidence in relation to domestic violence is important, especially if it can be cross-checked with another source from the same time.' This statement aligns with the earlier judicial officer statements, suggesting that judicial officers are ultimately looking for both knowledge and for insight from those connected or known to the child and the family. The use and interpretation of evidence by solicitors is therefore dependent on strong communication with clients, and those providing evidence in relation to domestic violence.

It was apparent in the reviewed matters that solicitors, as with caseworkers, will offer their own perspectives on the risk of violence, in conveying evidence to the Children's Court. When asked to describe the definitions they use to interpret domestic violence, solicitor interview participants were diverse in their responses. Solicitor J provided general summaries of differing forms of violence such as, 'violence is abuse of power

or control through physical abuse, emotional abuse, controlling behaviour, stalking, and intimidation.’ Similarly, Solicitor M remarked that,

Violence is any physical or emotional abuse. It can be restricting the person, controlling actions designed to harm or isolate the person from their community and family. It can be threats, either to that person or to loved ones, or themselves.

(Solicitor M)

These responses emphasise that these particular solicitors are aware of the range of actions that can be considered to fall within the current legislative definition of domestic violence. In other responses solicitor interviewees emphasised what they considered to be the most destructive aspects of violent relationships. Examples of these responses included, ‘It can be seen in less obvious forms of control not easily picked up’ (Solicitor H), and, ‘the most destructive form of violence is emotional. Patterns of control are very disempowering’ (Solicitor S). Solicitor H and Solicitor S identified in these statements that domestic violence can at times be subtle and pervasive, and thus challenging for professionals to identify when working with parents. Solicitor H and Solicitor S identified emotional abuse as especially serious and difficult to identify. The term ‘control’ was a recurring word used by solicitor interviewees to describe violence, suggesting knowledge of the power dynamics that are present in violent relationships. The solicitor interviewees’ definitions of violence were therefore indicative of knowledge of the official legislative terminology in addition to their own perceptions of control and emotional abuse as important factors that professionals need to be aware of when managing a case of domestic violence.

Solicitor interviewees perceived domestic violence as a significant and complex issue that professionals frequently came across in their cases. Solicitor J stated that, ‘violence is routine, it is almost automatic that you will go through the case, the risk of harm reports. It is routine that there will be reports of family violence - not in every case but in majority of cases you see it.’ Direct experience in cases, rather than formal

training was the main way solicitor interviewees described how they learnt to interpret evidence of domestic violence and develop the necessary argument for the Children's Court about its significance in a case. According to Solicitor H, 'knowledge of domestic violence in court is built on direct experience in cases, not formal training.' Such statements are highly self-reflective on the part of the solicitor interviewees. Together solicitor interviewees' discussion of experience in domestic violence paint a picture of domestic violence as a common issue where individual case experience, rather than formal training is used to strengthen professional knowledge.

The solicitor interviewees were conscious of domestic violence as a complicated issue to manage in legal processes, such as care and protection matters. Solicitor interviewees indicate that there were numerous challenges in having adequate evidence of domestic violence to use in proceedings. Responding to denials and counter claims from perpetrators of mutual violence was mentioned as one way domestic violence can come become difficult to prove in a court setting. For instance in discussing the challenge of proving violence Solicitor M gave the example of how allegations of a victim's unstable mental health requiring self-defence on the part of the perpetrator can appear plausible if there is not any further documentation of domestic violence. A further barrier to obtaining sufficient evidence that was cited by several solicitor interviewees was a lack of reports of violence to police, especially in small communities. Where there is police involvement in incidents Solicitor M identified that an additional barrier to high quality evidence was that police reports can be influenced by the police officer, 'being frustrated in responding to the same families continuously', and therefore not providing as much detail or content in their reports. These barriers that were identified by solicitor interviewees suggest that a high level of skill in interpretation is required by solicitors to identify the presence of violence and evaluate how the perspective of the person providing the evidence may impact on the quality of the information that is provided. The evidence provided to judicial officers is thus not limited to a collection of information of separate incidents,

but an amalgamation of different interpretations and responses to allegations of violence from solicitors, caseworkers and third parties. These solicitor interviewee responses also confirm existing research that has identified the handling of reports and allegations of violence as a key area to be addressed in government and community responses to the issue of domestic violence (See Bailey, 2010; Grauweiler, 2008; Murray and Powell, 2009).

Despite challenges in interpreting and handling evidence of domestic violence, solicitor interview participants offered some examples of how the handling of care and protection matters involving domestic violence could be improved. They acknowledged that support for victims was one particular area warranting further consideration. For example, Solicitor H suggested that, 'there is pressure on parents to leave the violent partner which can be counter-productive'. Solicitor J expressed the opinion that, 'victims can sometimes be seen as enemies, and this can be a fair assessment, but victims can be supported to address this.' In describing their work with parents Solicitor S indicated that:

We provide advice that they need to carefully assess if they need to be separated from the perpetrator, where there is violence between two parents, which is the usual scenario. Community Services try to deal with it by requiring the mother, usually the victim, to separate from the partner. (Solicitor S)

Collectively these statements provide some insight into the perception that solicitors have regarding their role in supporting victims of violence. Solicitor H, Solicitor J and Solicitor S indicated their awareness that victims of violence can experience challenges in communicating their experiences with child protection professionals. They identified particular areas of need for victims such as the handling of separation with violent partners and dealing with the adversarial nature of court settings. The pressure placed on mothers in particular, was referred to multiple times by solicitor interviewees, indicating that further critical reflection is needed in how solicitors and

caseworkers communicate expectations with mothers in care and protection matters. These statements support existing research including Buckley et al. (2011) and Waterhouse and McGhee (2015) regarding the significance of ongoing and non-judgemental support from professionals when working with women who have been victims of violence. Waterhouse and McGhee (2015) reported that both mothers and social workers can experience fear in reflecting on domestic violence as a reason for child protection intervention in a family. The role of the solicitors who represent parents is therefore crucial as they evaluate the parent's experience, providing support during court proceedings, and often acting as a mediator between them and Community Services.

Ultimately, how caseworkers and solicitors assess domestic violence is vital, as it is caseworkers who are required to implement the orders that the Children's Court endorses, and it is the solicitors who represent parties during the proceedings from which the orders eventuate. Significantly, the Children's Court relies on caseworker and solicitor interpretation of the how domestic violence is a risk. Such assessment was found to be challenging in the reviewed matters due to the need for consideration of multiple factors; the presence of domestic violence, subsequent impact on parenting capacity and how these factors relate to children's experience of risk.

7.2.3. Children's experience of risk

Two very different perspectives that connected risk with children's experiences of violence were presented by professionals in the Matter of Miller. The first perspective, from Community Services, was based on the assessments undertaken as part of proceedings and their interactions with the kinship carer and parents. The conclusion, articulated in the written material provided by Community Services and the testimony of the caseworkers and their manager, was that there was long term risk posed to the child if restored to the kinship carer, as there was a lack of insight from the carer

regarding the violence between the child's parents, and therefore a potential to not act protectively if there were further incidents of violence, or if either parent behaved inappropriately. The alternative perspective, offered by the legal representatives of both parents and the relative, was that the child was having all their needs met, including strong bonding and attachment with a close family member who has been consistently present in their life in spite of any other instability in the child's life. The risk of disrupting this significant relationship needed to be weighed against the possible risk that an inadequate understanding of the issues relating to the parents might pose. Additionally, the legal representatives for the parents and the kinship carer also claimed that there was not sufficient evidence to discount the possibility that the provision of information and support services would be effective in working with the carer to reduce any risk that a lack of insight about domestic violence might pose.

Assessment of childrens' experience of violence in the reviewed matters involved direct and indirect participation of children in proceedings as well as assessment from experts and adults known to the children (Holland et al., 2003). Participation is acknowledged as a fundamental requirement in international discourse on the rights of children (Parton, 1991). Experts disagree as to the exact age at which children's participation can be considered appropriate, and whether the process of children's participation is able to assist the Children's Court (Block et al., 2010). Evidence from various advocacy organisations including the CREATE foundation suggests that, while children in care understand that it may not be possible for their wishes to be entirely realised in a court decision, the opportunity to be heard is important (Scott et al., 1995).

In the observed matters childrens' specific views of risk and violence were incorporated in various ways. In the Matter of Hanna, a child, aged under 13, was able to work with their independent children's representative to write a views and wishes statement. This served the purpose of making the time spent with the solicitor

constructive, letting the child know there was a purpose to their interaction (to prepare a statement for the consideration of the Children's Court), rather than just being in the situation of telling their story to yet another adult. This also enabled a crucial way for direct wording from the child to be brought into proceedings. The response of the independent children's solicitor to this, when officially submitting the document, was to say that the fact the child was under thirteen was a factor in determining what weight should be given to the statement. Such prefacing of material from children prompts the judicial officer to consider the age of the children before considering their views. Second hand evidence of children's perspectives thus has the potential to pre-determine the validity of their perspective. Consequently, second-hand evidence can impact on whether children's perspectives are considered at the Children's Court. The issue of children's direct and indirect participation will be expanded upon further in the next chapter.

A potential explanation for infrequent references to views and wishes of children in these matters is the highly subjective nature of violence, and the reality that it is easier to report on a child's experience of an incident rather than complex circumstances such as what the child has experienced in role modelling or the impact of intergenerational violence:

It is much stronger to present violence as a potential harm for a child based on a specific pattern rather than more vague issues of what the child has understood from the violence, or what long term factors may or may not be important.

(Jaffe et al., 2003:16)

Assessments of violence that focus on patterns of behaviour have the potential to be adult centric and fail to capture the individual experience of the child. However, violence can be linked to the child's experiences through reference to direct disclosures from the child, identification of particular incidents causing harm, or evidence of longer term impact of a violent environment on the child. There is a strong

connection between professional assessment of evidence regarding parenting, and the decisions the Children's Court makes regarding what that means for a child. Where evidence entwines the factual information with the assessment and opinion on the information that is submitted, the process of making decisions becomes challenging for the Children's Court. The selection of evidence in the archive matters suggests a focus on vague descriptions from multiple risk of harm reports relating to the level of risk of domestic violence. Caseworkers and solicitors were able to ascertain and describe evidence of risk, including the nature of violent incidents, the relationship dynamics, and the impact of violence parenting capacity. However, the impact of these factors on children was not consistently evaluated, limiting the Children's Court's capacity to incorporate a well-rounded understanding of domestic violence into its deliberations. Additionally, a caseworker's judgement of the negative impact of extended family involvement, the effect of a violent relationship on parental capacity, and the level of risk and safety for children governs their presentation of evidence of domestic violence. Moreover, caseworker discussion of parenting revealed additional themes of compliance and insight, to be discussed in the next section.

7.3. Perceptions of Compliance and Insight

This section discusses two key themes of parental compliance and parental insight that were present in the professional discussion in the reviewed matters. The use of concepts of compliance and insight was found to be a significant aspect of professional interpretation of how domestic violence creates risk for children to examination of how parents respond to various forms of intervention.

7.3.1. Compliance

Compliance specifically refers to the cooperation of parents with services, and engagement with prescribed interventions. Assessing parental ability to appropriately

implement required changes has been a large focus in recent times, both in child protection practice and in court decision-making (Sinclair, 2005). Agreements, parental contracts and formal undertakings have been designed and implemented by professionals with a view to educating parents and developing their commitment to addressing the identified areas of concern that need to be addressed to ensure children's safety and well-being (Daniel, 2010).

The archive matters indicate that a key factor influencing the preparation phase of court matters is Community Services' perceptions of positive parental co-operation with authorities. This is crucial, not only in the way professionals assess 'acceptable' behaviour and the level of risk present in any given outcome, but also in the way that the parents are viewed and their parenting capacity labelled through the life span of the matter. In one archive file reviewed (Bales) the word 'compliance' was referenced several times in follow up reporting to indicate favourable perception of the parent. 'Working co-operatively' was a phrase repetitively used to convey caseworker expectations in the documentation relating to the parents' undertakings. The parents were required to complete the Triple P Parenting course. In another matter (Rubbar) the focus on evidence was on the mother's service engagement. Where the caseworkers in these matters documented instructions given to parents, the level of engagement that was to be expected of the parent was not readily apparent. It was unclear whether it would be sufficient for Ms Rubbar to follow up the referral or recommendation that was initially made by her caseworker, or whether longer term commitment to the referral would be necessary, or the length of commitment that the caseworker determined was necessary for Ms Rubbar to demonstrate engagement.

Caseworker descriptions of parents' willingness to 'engage' and 'demonstrate positive changes' were used in multiple ways in the archive matters. Caseworkers used the descriptions of insight to highlight positive changes by parents to minimise risk, but also to indicate where there had been a lack of action, or further work was needed from the parents. An example of this in the Matter of Markus was the caseworker's

stating that, 'during current orders Ms (Markus) has not demonstrated any capacity for significant change; she is yet to complete a drug rehabilitation program and has not made any contact with Community Services.' Lack of engagement with services, including lack of counselling for domestic violence was mentioned in the same affidavit as an additional example of lack of effort on the part of Ms Markus. It is evident that the caseworker writing this affidavit has associated a lack of communication from the parent with a lack of compliance, and subsequently an inability to make positive change. In contrast, the parents' solicitors' descriptions of compliance were linked to evidence of engagement in an effort to show what they had achieved and the support they had. The differing interpretation of compliance used by the caseworker and solicitor reflects two different approaches described by Schmidt, 'an approach seeking to provide solutions, and an approach seeking to re-dress undesirable behaviour' (2007: 68). These different interpretations raise a further significant challenge in professional assessment of parenting and particularly parental compliance, that such assessments are the result of subjective nature of the various power relations that are present (Platt, 2006). These include the ways that child protection workers can dominate and hold power over parents, and the way the power can shift between parties at various points in a case. For example in the Maken matter while the caseworker had the authority to evaluate options that included whether to take action based on their concerns relating to Ms Maken's level of engagement, or to attempt to undertake further casework with her.

A need for clarity about caseworker expectations of parents was highlighted in the Matter of Maken, where the mother's lack of counselling attendance was noted. While a failure to attend recommended counselling has been used as an example of failure to comply, what remains ambiguous is whether this was the sole measurement of parental engagement, and what alternatives were excluded. In this matter, the only information regarding Community Services' assessment was an affidavit attached to the application explaining that the mother was 'not meeting minimum outcomes

required'. The affidavit denotes a very narrow interpretation of compliance. Similarly, in the Matter of Johnson-Matthews there was no discussion of the parents' ability to comply with caseworker recommendations. In this case, the parents were under twenty and lacked a supportive extended family network to address barriers such as the need for practical advice about locations of places, travel time, which method of transport etc. In addition there was an absence in this matter of discussion of interaction between Community Services and parents in relation to the provision of support or parenting education for young parents.

In contrast to the matters mentioned above, a different matter (Lassoni) included evidence that a lack of service engagement did not lead to a determination of non-parental compliance, but instead a decision to re-visit plans and outcomes expected. A supervision order was granted for the children to remain in the home and the father, who had previously left, was to return. What is ambiguous in Community Services' discussion of their recommendation was why, in this case, this was allowed, despite stated risks of the father and mother not following AVO conditions, and knowledge that the children were being coached to say they were no longer afraid of their father. A potential explanation is that caseworkers had determined it would be more effective to work with the family to maintain safety. In all other respects, besides their relationship and the father's residence, the parents were noted to be demonstrating new willingness to comply. Examples were provided showing that they attended counselling, and there was an absence of other issues. Similarly, in a different matter (Rubbar), undertakings, including continued attendance at domestic violence counselling and advising Community Services of any contact the father had with the mother, were seen as sufficient. In this matter a fine line between 'service engagement' as treatment versus punishment for incorrect behaviour or failure to adhere to expectations was apparent. Whilst the evidence in this matter demonstrates willingness and ability on the part of the parents to follow instructions, there was little

explanation from caseworkers as to how parental cooperation with instructions enhanced the child's safety.

The response that professionals have to the absence of perceived 'compliance' or 'engagement' on the part of the parents, is significant in shaping the information provided to the Children's Court. This entails the type of information provided and the manner in which it is conveyed. This is evident in the following statements from Caseworker A in one archive file application (Maken):

Ms (Maken) has failed to demonstrate her willingness and ability to work in co-operation with the Department and accept the support services as recommended by the department...This is evidenced by her unwillingness to enforce the AVO and dissolve her relationship with the father.

(Caseworker A - Matter of Maken)

Such remarks offer examples of caseworker representation of co-operation and engagement. They highlight the power dynamic that can be present in interactions between parents and caseworkers who operate from the position of the 'Department.' Also relevant in these statements are the conflation of compliance with 'willingness', a much simpler phrase to define and measure.

Where constructs of compliance refer to willingness, a rationale is provided for the Children's Court to evaluate parental responses to domestic violence and subsequent recommendations that are provided by caseworkers. In the Children's Court setting, a judicial officer is unlikely to have had direct communication with parents prior to proceedings, or an opportunity to form an opinion on the parents. Even in cases where the family may be familiar to the judicial officer due to prior court appearances, the judicial officer will still require updated evidence from caseworkers relating to the parents circumstances, current level of parenting capacity and engagement with appropriate support services. Thus, parental responses to caseworker recommendations on addressing domestic violence can be significant to the way the

Children's Court evaluates the parent's capacity and protective abilities. Considering these requirements for compliance alongside the specific effects of violence, allows a more nuanced understanding to emerge. There are practical, emotional and relationship factors that influence compliance, not purely willingness, but ability to actively move beyond the past (Krane and Davies, 2000).

7.3.2. Insight

A further example of the professional construction of 'unacceptable' parenting engagement can be found in the third theme of professional discourse identified in the reviewed matters, insight. Parental insight is closely connected to compliance as both these thematic constructs of parenting focus on the parent's response to issues of risk and safety. In the Matter of Jamison for instance, the caseworker referred in the affidavit to having a concern that, 'it is unknown what the mother's capacity to adapt or deal with circumstances is.' Such statements indicate that parental awareness and responsiveness are important to demonstrating their protectiveness. The use of the specific term insight in the reviewed matters refers to caseworkers' expectation parents needed to demonstrate awareness of the impact of domestic violence on children. The phrase 'lack of insight' into issues, was present in most affidavits from caseworkers in the reviewed matters. The following statements from Caseworker B and Caseworker G highlight the connection drawn by caseworkers between parental engagement with services and their level of insight into the link between domestic violence and children:

Ms (Johns) appeared to have a level of insight into the effect her behaviours and turbulent relationship with Mr Johns has had on their children however she was not able to identify specifically how domestic violence impacts on children.

(Caseworker B - Matter of Johns)

The mother minimises concerns regarding the children's exposure to domestic violence and states that she will attend drug and alcohol counselling if it looks good in court. The mother does not appear to take responsibility for what her children have experienced in her home, nor does she appear to have insight into the effects of her behaviour on her children.

(Caseworker G- Matter of Rubbar)

Collectively these statements strongly link parents' level of participation in services and their level of insight into negative consequences for children and the issues that they need to address. However, these statements do not address the link between parental insight and safe care of their children. The connection between the lack of insight demonstrated by Ms Jamison and Ms Rubbar and the level of safety of their children, was not articulated by the caseworkers in these matters. The affidavits and evidence submitted to the Children's Court did not contain any references, to caseworker evaluation of the ultimate goals or outcomes that would be achieved should Ms Jamison and Ms Rubbar achieve insight. For instance, 'taking responsibility' and 'insight into effect of her behaviour on children', as mentioned in the above caseworker statement, articulates the identified problem in Ms Rubbar's parenting, but not the specific steps to address this, or the reasons why insight is important to parenting. The caseworker's evaluation of Ms Rubbar required further explicit explanation that insight refers to the goal of improving parental understanding, for instance Ms Rubbar understanding the need to improve the focus and attention she gives to her children.

Assessment of parental insight is important to court decision-making as it is used as a benchmark to consider the potential that parents have to demonstrate required behavioural changes. In order to determine this judicial officers must consider the level of safety offered by the parents, and the level of safety likely to be offered into the future. In the matters of Jamison and Rubbar judicial officers were not provided with sufficient information relating to what the parents' current level of insight means for their protective ability and the safety of their children. For cases such as Jamison

and Rubbar that involved domestic violence there is need for additional analysis of whether the parent's experiences of violent relationships are likely to continue to affect their level of insight. Such assessment would assist the Children's Court to consider the connection between the parent's abilities and the level of safety for a child should restoration eventuate.

The difficulty with terminology such as 'insight' is that it implies that there is a single universally accepted level of awareness that is attainable regarding an issue such as domestic violence. 'Insight' assumes that it is possible for all parties to have a consistent interpretation of domestic violence, when in reality domestic violence is a contested issue. This can be a difficult proposition for parents who may have different understandings and language around domestic violence from the professionals around them. Where parents deny that domestic violence is present, as occurred in several of the reviewed matters, it remained unlikely that would reach agreement with their caseworker about the adverse impact of violence of children, and subsequently the steps to be taken to address the issue. In addition, the capacity to self-reflect, let alone reflect on the effect of your behaviour on another person, does not operate in the same way for each individual. Caseworker references to insight did not differentiate between circumstances where parents may be supported to understand violence but were unwilling to do so, and circumstances where parental insight was low, but could be developed with support. Such differentiation is important as a judicial officer is required to make a decision on the individual's capacity, from the written evidence and their testimony in the Children's Court. It is a nuanced area, as, evidently, people reach understanding, and express such understanding, in a multitude of ways, thus requiring careful assessment.

The manner in which questions are posed to parents in court can prompt specific responses. In the very formal setting of a court room, or even a Community Services Office, if the question asked is, 'Did you notice the child was upset during this

incident?', it is going to be met with a very different response from a more open ended, less subjective question like, 'What do you think the child might have been thinking?'. These questions have specific implications for mothers who are victims of domestic violence and may face challenges to clearly recall and disclose details of incidents. The assessment of domestic violence made by judicial officers and solicitors may not automatically take into the account the impact of violence on a parent's presentation under cross-examination. The use of a balance of probabilities approach to evidence thus becomes particularly important in considering testimony relating to domestic violence, particularly in cases where restoration is being considered.

7.3.3. Restoration

From the reviewed matters it can be seen that the insight issue becomes particularly relevant in cases where proceedings have been directed by the parent contesting a Community Services claim of a lack of realistic possibility for restoration. Where this occurs, proceedings become concentrated towards first establishing why in fact the parent, or parents, should not be considered a viable option to care for the child, in either immediate or long term (Neville, 2014). Restoration was connected to compliance and insight by Community Services caseworkers, as these requirements had a bearing on parents' ability to address the issues that led to the children being placed in care. Examples of phrases used to describe caseworker requirements for restoration included 'good enough parenting', 'need for insight' and 'parental commitment to change'. Evaluations of the likelihood of restoration were closely linked to descriptions of risk. For instance, as reviewed matters involved allegations of domestic violence there was specific consideration of whether parents had adequately addressed the issue of domestic violence. It was apparent in these matters that where caseworkers were evaluating the possibility of restoration, evidence of parental insight was balanced with the likelihood of existing risk factors continuing. Interviewee Caseworker T described the process of assessing restoration as:

Essentially gazing into a crystal ball and trying to juggle the uncertain/cloudy aspects of the future where it may well work against a clear mirror beside it that reflects the current situation. You can see both and you need to make what you can from it.

(Caseworker T)

This remark reflects the challenges for caseworkers in predicting the outcome of restoration. Such uncertainty provides some explanation for caseworker reliance on benchmarks of compliance and insight when evaluating the prospects of successful restoration.

The concept of 'good enough' parenting was articulated by representatives of the mother, father and kinship carer in the Matter of Miller. Questions were asked regarding the standard of parenting assessment undertaken by Community Services by the judicial officer and solicitors during proceedings. These questions were informed by the application and supporting affidavits provided by Community Services. Additional information guiding discussion of parenting assessment included statements made during proceedings by the Community Services solicitor, as well as testimony from caseworkers and managers. In their testimony during proceedings, it was apparent that Community Services had assessed both parents, as well as the kinship carer, as failing to meet acceptable standards of parenting. These claims were scrutinised under cross-examination by the legal representatives of both parents and the kinship carer.

Solicitor M in observed proceedings used the phrase 'good enough parenting' to build an argument that while there was not an overall high standard of parenting in this case there were specific examples where the level of parenting had been acceptable. Crucially, this solicitor argued that the attachment between Meena and her carer was solid, and this warranted the continuation of the child's placement. Furthermore, the placement should continue until adequate assessment of the long term possibility of

the restoration to Ms Miller was completed. The phrase 'good enough' parenting encapsulated the complexity of assessing the capacity of Meena's carer and parents. A further crucial, contested element to discussion of restoration in this matter was insight. Insight was highlighted in the Matter of Miller, through Community Services' consideration of the level of insight that the parents and the carer have in terms of the concerns that led to the child's assumption into care. Regular references to insight were made, both in the written evidence and in the testimony of caseworkers, during proceedings. Language pertaining to insight, including awareness, understanding, and ability to act was used repeatedly. Insight was connected specifically with the risk factors that had been present for the child, and understanding the reasons why the child had been assumed into care. A link is thus drawn by caseworkers between a parent or carer understanding the reasons the child was in need of protection and their ability to address issues and provide a suitable environment for the child. In the Matter of Sukaw, insight was specifically used as a benchmark in determining the awareness or understanding that the parents have regarding their behaviour, its impact on children, and specifically, the issues that led to the children being considered in need of care and protection.

In the Matter of Sukaw, the father was found to be failing to demonstrate insight. This was cited by Community Services as a factor in assessing that there was serious risk of harm for these children, and that neither parent was able to provide adequate care and protection. In addition, it was referenced by Judicial Officer C several times in their findings, as a key factor in determining that parental responsibility should go to the Minister until 18 years of age. This was particularly evident in the expressions used by the Community Services caseworker and the judicial officer, when discussing domestic violence allegations. Both referred to 'denials' and 'unwillingness to admit fault' when discussing the father's position that he had not been violent. What was not articulated in this matter was the connection between admission of the domestic violence issue and insight into children's needs in matters such as Sukaw. The above statements

assume acknowledgement of domestic violence increases ability to act protectively, and therefore improves chances for restoration. This was not demonstrated in this matter. Insight was used in tandem with the concept of 'judgement'. Much was made during proceedings of the age difference between the parents and the fact that the mother was younger. However, this information was discussed in terms of poor judgement on the part of the parents, rather than consideration of how such power imbalance may contribute to a controlling dynamic that increases the potential for violence, as articulated by Brown et al. (2011). Such assessment would assist the Children's Court's understanding of the relationship between domestic violence, the parent's relationship and impact on parenting capacity.

Based on analysis of proceedings in the reviewed matters, where benefits of a potential restoration are being balanced against key risks, including domestic violence, there can be an onus on parents to demonstrate appropriate understanding of what has happened, what the children's needs are, and necessary steps to be taken in order for the children to be able to be restored. Demonstrating commitment to change is an additional contested factor in restoration decisions in the observed matters, and is closely linked to insight. Alongside awareness of what has occurred in the past, it is considered necessary for a parent to demonstrate to the Children's Court what will be different in the future.

When a judicial officer is faced with a decision, a benchmark of 'significant runs on the board' is a commonly used phrase, meaning that the parent has to have already made changes, or at least made significant progress towards them. For instance, in the Matter of Sukaw, the father provided evidence he was completing a course on responsible decision-making and how to manage anger in relationships and social situations. Community Services provided evidence that they had attempted to engage the father with a specific violent offenders program, but that he had not attended beyond an introductory session, and this was interpreted by Community Services as

evidence of his lack of insight. Under cross examination, the father provided the explanation for his non-attendance. He provided testimony that he did not feel it was a correct course for him as he did not see himself as a violent person, and in fact felt he had been the victim of much violence so he felt uncomfortable to be in a room listening to men discuss their anger and what they had done in the past. It should be noted that Mr Sukaw's denials of violence and opposition to treatment are consistent with the reactions of many offenders when they are first presented with treatment options (Kane et al., 2000). The impact of Mr Sukaw's testimony was that the issue of violence became contested. The focus of proceedings was the consideration of whether the father's denials of violence raised questions about his ability to be an appropriate carer. It is noteworthy that the caseworker was not cross examined about the decision to require the father to attend an offender's course, and whether this was the appropriate course of action, or an appropriate indicator of addressing domestic violence. This is despite the need for consideration of individual readiness to change being identified as an important pre-requisite for optimal participation in such course (Kane et al., 2000). Caseworker use of insight and compliance as benchmarks for restoration therefore featured strongly in the plans that they provided to the Children's Court.

7.4. Evaluating Safety

The final thematic construct of parenting that was identified within the archive reviews was the process of linking both risk and parental compliance and their level of insight to overarching outcomes of safety. It is now accepted that in current legislation, including the NSW Children's Care and Protection Act (1998), the benchmark for addressing the fundamental issue of safety is the 'unacceptable risk of harm' test. The key issue here is the creation of distinctions between 'acceptable' and 'unacceptable', parenting behaviours predicting future likelihood of safety. Currently, Structured Decision-making tools and safety assessment processes, such as the Safety

Assessment, Risk Assessment and Risk Reassessment (SARA) tool are common approaches that caseworkers are using to evaluate levels of safety and actions to promote safety (Stanley and Humphreys, 2014). Current analysis of safety assessment in NSW suggests that the definition of safety varies amongst professionals, and that this can impact on the quality and outcomes of the assessment (Stanley and Humphreys, 2014).

Analysis of from the Children's Court documents indicates two different conceptualisations of safety offered by Community Services. The first is ensuring that children remain safe with their parents as the optimal long term solution for children, and the second is ensuring immediate safety through the use of out-of-home care placement. The first approach is articulated by a caseworker in the care plan in the matter of Bales through the statement that, 'there does not appear to be any reason that the child should not remain in the care of their parents.' This statement is a substantial shift in emphasis away from the need for parents to demonstrate why it is safe for children to remain with them, towards the need for caseworkers to demonstrate why there is not a sufficient level of safety present. The default assumption in this statement is that the child should be with the parents. However, based on the placement outcomes identified for the children in the reviewed matters it was apparent that this caseworker's interpretation of safety assessment was the exception, rather than a common approach. It should be noted that the Bales matter was heard prior to the new legislative changes that establish a hierarchy of placement principles that specifies that maintaining children with parents is a preferred outcome. Whether the placement hierarchy results in a greater trend towards assessments consistent with the approach of the caseworker in this matter is yet to be determined.

In all of the archive matters examined domestic violence was judged as having particular impacts on levels of safety for parents and for children. One archive file (Tissala) contained an application referring to 'an absolute climate of fear' experienced

by the mother, leaving her unable to complete basic tasks without prior approval from her husband, thus impacting on her role as the main carer for the children. Another matter (Taylor) contained interview transcripts with the child referring to them viewing their home life as 'having nowhere to go and nothing to stop it all'. The use of such statements from this child demonstrates that domestic violence does not only compromise safety through specific actions and incidents that place parents and children in danger, but also through a sustained climate of fear and hostility.

The provision of documents from parents in the archive matters indicated that safety was a crucial concept to foster agreement with professionals and develop understanding of the necessary tasks to improve standards of parenting. This could be seen as a more specific and sustainable goal than the expectations of insight. A crucial point in determining appropriate safety through work with parents, can be seen as recognising the strengths and protective abilities that may have been present for the mother, despite adverse conditions (Krane and Davies, 2000). This was seen in two archive matters. The first file (Maken) included affidavits from the mother indicating she felt the children needed her 'in a more stable way', meaning that she understood that her standard of parenting had not been consistent and she had ongoing emotional issues she needed to address in order to improve her parenting. The second file (Kane) included an assessment report summarising the mother's session with the Children's Court Clinician and a specific list from the mother of what she felt was needed for the children to be safe with her, such as ongoing counselling and an established daily routine. Thus, safety in these matters was conceptualised jointly with parents as an attainable goal, rather than a characteristic that should be automatically present, and therefore not possible for the parent to obtain. An interesting example of this in the matter of Rubbar was the caseworker using the following statement from Ms Rubbar to indicate she had differed from caseworkers in her interpretation of her children's level of safety under her care:

I have always attempted to look after and protect the children from the domestic violence in the home. The home is always clean and tidy and there is always ample food, the children are dressed well and attend school on time and complete their homework.

(Caseworker C - Matter of Rubbar)

This statement demonstrates that that parents and caseworkers had their own interpretation of the goal of safety, and felt that certain levels were able to be maintained not only after Community Services intervention, but also prior to it. The interpretation of safety offered by Ms Rubbar referred to in this statement, highlights that some parents will have particular views on what needs to happen to keep them and their children safe. Therefore, when caseworkers are conducting safety assessments they are required to assess the parent's need for support and education to address the particular impact violence is having on their children, and their parenting capacity. Caseworkers can potentially assess that perpetrators of violence should be offered information about programs aimed to stop violence. In addition, parents who have been victims of violence may be considered by caseworkers to require a response aimed at assisting the parent to build their own level of safety as well as the safety of their children.

Much research has been done on the topic of ensuring balance in child protection decision- making and the need to consider broad categories of safety (Jenney et al., 2014; Jones and Gupta, 1998; Parkinson, 2006; Gillingham, 2011). Existing research indicates that family preservation is increasingly valued by social workers and parents in NSW, but is balanced with foreseeable risks (Fernandez, 2014a). The acknowledgement of family preservation as a preferred decision in child protection matters, stems from theories on child development, including attachment theory, as evident from authors including Payne (2014) and Howe (1999). In these theories the perspective offered is that there is an imperative to pursue every possible avenue either to allow children to remain in their home, or to maintain specific close

relationships with family members (Payne, 2014). The archive matters examined indicate safety with family as encompassing extended family through the use of kinship placement. Placement of children with extended family members, or kinship care arrangements, either supervised or through formal allocation of responsibility to the carer, were all options pursued in the archive matters examined. The follow up reports provided in the archive matters, such as the Matter of Jacobs contain references to the kinship placements as allowing for minimal disruption of attachment. Additionally, the follow up reports contained the option of frequent, informal contact with parents as appropriate, for example as in the Matter of Maan. Maintaining links with family members in a safe way can however mean different responses by caseworkers in individual cases.

The reviewed matters indicate that evidence is used to conceptualise safety in several different ways. It can be interpreted as either concern from past actions, or a future consideration, a goal for parents or a standard not able to be met. These interpretations offer insight into the way evidence is used to either validate or question the process of assessing safety.

7.4.1. Including parents in proceedings and decisions

The participation of parents in decisions related to court proceedings was strongly connected with safety and insight by both caseworkers and solicitors in the observed matters. In these matters parents had varying levels of involvement in decisions, and also varying levels of personal adversity including domestic violence, impacting on their ability to participate in decisions. Three forms of parental participation were identified in the observed matters: firstly, as previously mentioned, the evidence submitted either by the parents or Community Services regarding the parent and their capacity; secondly, the participation of parents in proceedings through attendance, testimony or cross examination, mediation and either liaison with solicitor or self-

representation; thirdly, the involvement of parents in permanency planning in various forms, such as restoration, kinship placement or ongoing contact.

One particular observed matter was characterised by direct and regular involvement of parents in proceedings was the Matter of Hanna. In observing this matter, it was apparent that the judicial officer did ask questions of them, and confirm details, rather than relying solely on the solicitor. Adequate time for parents to view affidavits and file responses was important, and shows active effort on the part of the Children's Court to encourage parents to have full engagement with proceedings. Two fathers were able to participate while incarcerated, through setting up of an AV link-up to the courtroom. Other carers/family members were expected to be involved, and this was factored into the setting of Hearing dates: in one case a matter was adjourned to require grandparents (current carers) to attend to give their views.

A further example of direct participation of parents in proceedings was found in the Matter of Buckthorp. The mother, who was representing herself, addressed the Children's Court and stated, 'I did everything myself and just want that noted', in response to a comment from the judicial officer, regarding accepting the support of Community Services in any service referrals. This mother felt she had sourced her own supports. The judicial officer's response to this was to clarify that any requirements to access support was not punitive, but to ensure that the approved plans could succeed. The exchange between Ms Buckthorp and the judicial officer demonstrated a conscious effort on the part of the judicial officer to ensure that court proceedings were an encouraging and motivating process for Ms Buckthorp.

Another important finding from the reviewed matters was that the significance of parental involvement in observed proceedings was demonstrated where their absence from proceedings became a focal point. The absence of several parents, fathers in particular, was noted by the judicial officer, as a failure to comply with instructions or

engage with the Children's Court process. Solicitors were required to give a full explanation as to why they were not involved such as a written statement or affidavit confirming that this parent did not want to be involved in proceedings. Issues of DNA testing and confirmation of paternity also featured in relation to paternal absence, and mothers were questioned by the judicial officer about knowledge of the father, or explanations as to why he was not present in court. The absence of fathers in some matters was thus found in the present matters to be another way in which the role of mothers came to be emphasised, as discussion would then turn to the mother's role in relation to the children.

While this demonstrates parental involvement as an important component of the process, it is also indicative of the judicial officer's role in ensuring the effective management of proceedings, as well as meeting the principle of equity, by promoting the need for participation of parents. Existing research has emphasised the positive aspects of including parents in court proceedings. According to Susskind:

Research has shown a big benefit when parents experienced a sense of inclusion, participation, validation and empowerment in the decision-making process, even if the children were not returned to their care. It was much better than having a contested Hearing in court and an imposed decision (Susskind, 2011).

Solicitor interviewees highlighted that a specific positive aspect of parental participation was the maintaining of links between parents and children:

I think in this matter the fact the mother at least felt she was included in some part of the process was important to her. She had been understandably upset and had a real sense of hopelessness that the baby was no longer with her, and she was not privy to information, the day to day of how her child was. To feel at least in this sphere like she had a chance to put information forward that was significant to her.

(Solicitor B)

In this comment Solicitor B suggests that the benefit of participation for the mother in this example (Matter of Buckthorp) was a sense of inclusion, and the ability to contribute information relevant to the child's care. Another example of this was provided by Solicitor M:

We often prepare clients, and in particular parents, for court but are so focused on our purpose we can forget the way they see it. The other day I was finishing up with a client and as she was leaving I asked in an offhand fashion what the rest of the week held for her. Her face immediately brightened and she replied, 'Well now I have to go call this detox service, and I have to see my counsellor to get my letter, then I need to see if hospital discharge letters are at my sisters...' she continued to give me her to do list. Rather than seeming exasperated as some might, it seemed to give her energy, to know that she had something to contribute to this, anything at all.

(Solicitor M)

In the above statements the solicitors indicated that parents interpreted their participation in court as an avenue to demonstrate compliance and engagement with caseworkers as well as investment in their child. The two parents mentioned above identified that they had a contribution to make to the Children's Court process and were eager to demonstrate this. Interestingly, the solicitors emphasised that they were minor inclusions, for example being asked to locate hospital records or to seek a support letter to add to the documentary material. The solicitor participant is inferring that the benefit of involving parents may not be their contribution to decisions, but rather, to offer a sense of purpose and progress to the parent. This has implications, not only for understanding the value of the inclusion of parents in proceedings but also the way that professionals use court proceedings to engage with parents. The solicitor interviewees indicated that there is some potential for the Children's Court to have a therapeutic role, in encouraging parents to seek support for issues. The concept of 'therapeutic potential' for courts to work with parents has previously been described

by Blagg (2008), particularly in child protection proceedings, where discussion is not centred on sanctions but instead on ensuring children's safety

The motivation for some professionals in reviewed matters to use parental participation in proceedings as an avenue to recommend further support to improve children's safety raises an interesting issue regarding the adversarial nature of court proceedings. In circumstances where the outcome from proceedings is a care order granting ongoing Parental Responsibility to the Minister (Community Services) but restoration is included in the agreed care plan, or supervision orders are granted to allow for the child to be placed with parents, with ongoing Community Services involvement, caseworkers are required to maintain effective communication with parents. These comments from Solicitor M suggest that parents may believe their engagement in court will have some influence on the progress of their case, and how they are perceived. Therefore in cases where parents are actively engaged with the Children's Court process solicitors and caseworkers may need to be conscious that the ability to work with parents can be impacted by the way parents are described in court documents and proceedings. Caseworkers have statutory responsibilities to provide evidence of existence of domestic violence that coexist with their regular duties to effectively engage with families and provide service to improve safety and well-being for children. The Children's Court process can make it challenging for caseworkers to action a strengths-based approach to work with parents in cases of domestic violence. Moreover, from the discussion of safety by professionals in the reviewed matters it is clear that the Children's Court is a mechanism to ensure safety for children, but professionals face challenges to balance formal legal processes with ensuring safety for children given the unique aspects of individual matters.

7.5. Conclusion

This chapter has identified the construction of specific discourses on parenting in the context of domestic violence in the reviewed matters. This chapter has discussed key themes present in professional decision making discourse including risk, parental compliance, parental insight and safety. These discourses are central to the primary research question, 'What is the impact of current understandings of safety, risk and inadequate parenting, on professional practice and decision-making within care and protection matters involving domestic violence in the NSW Children's Court?'

This chapter provided an indication of the perspectives and interpretations that are influential in the formation of the evidence and decisions described in Chapters Five and Six. It has presented findings which address the additional research questions: 'How do legal and welfare practitioners make decisions in cases involving the interface of domestic violence and child maltreatment?'

The data presented in this chapter has demonstrated that professional stakeholders involved build upon and further develop professional discourses surrounding domestic violence, parenting and the impact of violence on children through the Children's Court decision-making process. This discourse develops in circumstances where professionals are managing complex evidence, engagement with parents, and challenges and obligations to fulfil core principles of ensuring safety, equity and best interests.

This chapter has highlighted the process through which professional stakeholders portray domestic violence as an issue of risk within court proceedings. In responding to domestic violence as an issue of child maltreatment, professional stakeholder participants conveyed a wide range of responses. These included either a focus on the impact of violence on the parent and the parenting relationship, or a focus on the

overall negative pattern and environment created for a child. The findings from this chapter suggest there is a need for greater clarity in professional discussion of the links between the risk of violence, its impact on parenting capacity and how this relates to the level of safety for children. Further, key elements of the professional construction of parenting that were identified included themes of compliance, insight and safety. Professional stakeholders were found to have significant interactions with each other in the form of information sharing, collaboration and negotiation. Professional stakeholder participants acknowledged the links between their interaction and the engagement of parents and children with the Children's Court decision-making process, particularly in decisions about restoration. This was found to be particularly significant for children, whose evidence and perspective is largely an indirect form of engagement via solicitors and caseworkers. In addition parental participation in court proceedings was connected to assessment of their compliance and insight and provided opportunity to enhance their understanding of the important steps to ensure children's safety.

This chapter has outlined findings that indicate that conceptions of risk, compliance, insight and safety to provide the framework and justification for the decisions made throughout the Children's Court process. Common to both the procedural and interpretative elements of decision-making are decisions about the amount and type of information offered to establish a case for intervention based on particular understandings of parenting, and the appropriate role of parents. The next chapter, Chapter Eight, will conclude the thesis with discussion of the findings presented in Chapters Five, Six and Seven and the implications and recommendations arising from this study.

8. Discussion and Conclusion

8.1. Introduction

‘These are judgements of Solomon at times, you know, and we do make them, and that is so scary’ (Beckett et al. 2007: 54).

This thesis was introduced with reference to the decisions made in a care and protection matter, the Matter of Meena Miller. To summarise the findings for this matter, it is clear that Meena’s experience of domestic violence was evaluated by Community Services to be of grave concern that warranted the intervention of the Children’s Court. In delivering the judgement in this matter the judicial officer stated:

In determining what is in the best interest of Meena, I have considered the level of understanding present in the adults in Meena’s life. That involved understanding what has occurred for Meena, which I have earlier stated is very concerning and I tend to agree with the casework manager’s testimony that action needed be taken. However, for me today it also means looking at the role these adults can have in making sure Meena is safe and cared for (Judicial Officer, Matter of Miller).

There are several elements of court decision-making that contributed to this judicial officer’s remarks. The combination of parental violence, lack of supervision and unaddressed mental health concerns, meant that Meena’s parents were assessed as unsuitable for restoration. The Children’s Court of New South Wales was able to determine that Meena was a child in need of care and protection, due to the evidence of domestic violence provided by Community Services. The principles of permanency planning in NSW care and protection legislation enabled Meena’s placement with a kinship carer to be considered a more beneficial outcome for Meena than sourcing a foster care placement.

The present study set out to examine the decision-making process in care proceedings brought before the Children's Court that involve allegations of a combination of domestic violence and child maltreatment. Court-based decision-making in relation to child maltreatment and domestic violence is an increasingly significant issue due to increasing professional awareness of the links between domestic violence and other forms of child abuse (Zannettino and McLaren, 2014, Widom et al., 2014, Laing, 2003). Increased understanding of the interface of domestic violence and child maltreatment can be attributed to research demonstrating the immediate and long-term consequences of domestic violence on levels of safety for children (See Laing 2008; Rasool 2015; Waterhouse 2015) .

There were three major objectives in this study. The first objective was to examine the ways in which professional stakeholders, including judicial officers, solicitors, and caseworkers, interpreted maltreatment and domestic violence issues in court-based interventions. The second objective was to understand the processes that guide the court decision-making around matters involving child maltreatment and domestic violence. The third objective was to identify the links between the assessment of child maltreatment and domestic violence and the outcomes from court-based decision-making. These objectives were key to answering the research question, 'How does professional knowledge and interpretation of the impact of domestic violence and child maltreatment on children inform decision-making in care and protection matters in the Children's Court?'

The study was also steered by the following additional questions:

- How do legal and welfare practitioners make decisions in care and protection matters where domestic violence is a primary risk factor or one of several concurrent risks?

- What are the factors that influence the assessment of evidence of domestic violence and child maltreatment that is presented to the Children's Court in care and protection matters?
- What are the interactions between NSW Department of Family and Community Services ('Community Services') practitioners, solicitors and judicial officers in the context of child protection decision-making in care and protection matters involving the combination of domestic violence and child maltreatment?
- How are the Children's Court's decisions regarding permanency planning legislative requirements for children negotiated in the context of domestic violence and child maltreatment allegations in care and protection matters?
- What are the outcomes from care and protection proceedings and the key factors determining these outcomes, for children in matters involving the interface of domestic violence and child maltreatment?

The previous chapters have outlined findings from the study relating to the professional assessment of evidence of domestic violence and other child maltreatment, the stages of court decision-making and court proceedings. Key findings, in summary, are that much professional decision-making occurs prior to proceedings and that this decision-making develops a general narrative of domestic violence and child maltreatment that determines how domestic violence is discussed in court applications and care plans. The decisions that professionals made in the matters reviewed were the result of the convergence of their knowledge, interpretation and collaboration. Ultimately, the language that professionals used informed the court's understanding of evidence, but also the priority that was given to

responding to domestic violence within the interventions that the Children's Court endorsed. The primary principle of the Children's Court, ensuring the safety, welfare and well-being of children, was operationalised by judicial officers in an environment of shifting guidelines in relation to alternative dispute resolution and permanency planning.

The four sections of this chapter discuss the implications of this study and locate its findings in the existing literature on child protection decision-making and court decision-making. The first section discusses the professional understanding applied to the assessment of domestic violence in the preparation phases of a care and protection matter. The second section examines the professional contribution of caseworkers, solicitors and external experts to the Children's Court process. The third section evaluates the key challenges present in court decision-making, including the evaluation and endorsement of care plans and judicial officer operationalisation of principles for decision-making. The final section concludes the thesis, and considers the implications for this study, and recommendations for practice, policy and future research.

8.2. Professional understanding of Domestic Violence and Child Maltreatment

This section will discuss findings relating to the research questions, 'what are the factors that influence the identification of domestic violence and child maltreatment within evidence presented to the Children's Court?' and 'how do legal and welfare practitioners make decisions in cases involving the combination of domestic violence and child maltreatment? The present study has attempted to analyse the current context and challenges that impact on the provision of evidence to the Children's Court through the use of specific cases as examples of the way that domestic violence is constructed in court proceedings. In doing so, this present study has provided a unique perspective on issues of child maltreatment, domestic violence and child protection decision-making. Gillingham (2011) and Humphreys (2006) reflected the position of

many researchers in suggesting that decisions in child protection cannot be understood separately from the broader context and social environment in which they emerge.

8.2.1. Professional knowledge

This study has found that the use of evidence relating to domestic violence presents a number of complexities. There was an absence of information on the assessment used to determine the existence of domestic violence, and what the child experienced or witnessed in the reviewed matters. There are several explanations for this. Domestic violence rarely appears as an isolated incident but in a wider range of behaviour (Stanley and Humphreys, 2014). Furthermore, it is harder to gain information about a pattern of violence when the only evidence provided is where physically violent behaviours have escalated to a level, which either prompt action from the victim, or draw attention to the family from people external to the incident including extended family, neighbours, police or medical professionals. The other behaviours that sustain a pattern of violence may continue unnoticed, such as emotional abuse, social isolation, and financial control. Finally, evidence suggests that domestic violence remains an underreported issue, both internationally and in Australia (Blakester, 2007). While the cases examined for this study contain examples of violent incidents, and describe ongoing patterns of violent behaviour, there were potentially unreported incidents. Based on recent statistical trends, it can be assumed that further incidents of violence that occurred in the homes of the children involved in the analysed current and archive matters were potentially not reported (Wangmann, 2012).

‘The narrative of the risk of domestic violence that was provided by caseworkers in the Children’s Court applications in reviewed matters was characterised by a tendency to summarising key incidents and interactions prior to removal. For instance, in the Matter of Hanna, caseworkers determined the significance of violence through

reference to the timing of the parents' separation and allegations that they had reunited. The independent children's solicitor tested the relevance of this information for the safety of children and queried the Community Services' claim that domestic violence was a current risk to the Hanna children. This suggests that the relevance of evidence of domestic violence to children's individual experiences was not explored in depth by all professionals in the reviewed matters. Existing research has discussed the difficulty of caseworker preconceptions about children's experiences that are formed solely on information concerning the family provided by reporters making potentially subjective allegations of child maltreatment (Karski, 1999).'

This study has revealed that professional identification of domestic violence is closely linked to evidence of other forms of child maltreatment. Professional stakeholders in the Children's Court decision-making process, including caseworkers, view domestic violence as strongly connected with other issues, including paternal alcohol or substance abuse and parental history. This was distinct from the way that other concerns related to parenting, such as parental alcohol or drug use were often described as separate entities from other concerns in the reviewed matters. In addition, this study found that a particular caseworker focus on linking parental, specifically mother's, experience of violent relationships through historical and cumulative information was present in these matters. 'Caseworker assessment that is focused on parental separation as an indicator of safety suggests a lack of confidence, or available professional support, in creating an argument for intervention based solely around the children's experience of domestic violence. Where children's experiences of violence were described this study found that caseworkers assessed the immediate impact of the perpetrator's behaviour on the safety of younger female children, or longer term impact on older male children due to poor role modelling. Analysis conducted along these lines in the reviewed matters did not provide a complete view of the child's experience of violence.'

8.2.2. Professional interpretation

Central to the objectives of this study was consideration of the development of professional narratives of domestic violence, child maltreatment and compromised parenting. The construction of these narratives and how they are applied to specific cases remained the core focus of the data collection and analysis stages of this research. Professional perspectives on domestic violence, child maltreatment and inadequate parenting were found in this study to have substantial impact on outcomes for court proceedings. An emerging theme in judicial officer decision-making present in the reviewed matters was the different ways that evidence was valued. It was apparent from judicial officer's decisions in these matters that the court bases its assessment of domestic violence on both expert assessment from external sources such as psychologists and social workers known to the family as well as the court ordered assessment of the Children's Court Clinic. Judicial Officer interviewees also indicated strongly that their own personal knowledge and research into the issues provided them with necessary insight into the issue, and specifically the detrimental physical, developmental and emotional consequences of domestic violence for children.

Whilst professionals are required to assist the Children's Court and operate within specific guidelines to fulfil legislative requirements, much information that is conveyed to the Children's Court regarding issues of domestic violence is described in vague terms relating to risk, parental compliance, parental insight and safety. These themes that were common in caseworker analysis in the reviewed matters were found to be vague when they were not contextualised with caseworker assessment of the connection between domestic violence, parenting capacity and child maltreatment concerns. This study found that the issue of domestic violence was interpreted at a number of key stages in the reviewed matters. Firstly, the specific facets of domestic violence relevant to the matter in question were identified. Secondly, the children's

experience of the violence, and the level of risk the children were exposed to was assessed. Thirdly, the parental response to the violence was evaluated. These professional assessments of domestic violence varied in detail and depth of analysis across the matters, suggesting some inconsistency in professional operationalisation of understanding of domestic violence.

The present study has found in the applications to the Children's Court, that vague and formulaic phrases and terms are used to indicate the presence of violence. These phrases include wording such as 'an ongoing pattern of violence' or 'the presence of domestic violence.' These general descriptions of violence were specifically selected by caseworkers to be included in the material provided to the Children's Court. This suggests, as with material provided by non-government agencies and external experts, caseworkers have determined that particular references to violence posed some usefulness to their case. However, in circumstances where there was not specific examples of critical incidents of violence verified from external sources such as police or hospitals, the use of the general phrase 'the presence of domestic violence' was considered sufficient to convey the caseworkers concern to the court. Where descriptions of specific incidents were not provided, a further explanation might be that general phrasing was instead chosen by caseworkers to avoid confusion or repetition, when incidents follow a similar pattern. These conscious selections of references to domestic violence are significant because, in comparison with other forms of child maltreatment, physical evidence or proof of domestic violence is often more challenging to obtain (Krane and Davies 2000). For instance, proof of ongoing alcohol and drug use is available for caseworkers to submit due to a process of drug screening, in the form of urinalysis. While caseworkers can subpoena police records or hospital records relating to specific incidents of physical violence, it is harder to prove, and therefore harder to explain, an ongoing environment or atmosphere of violence. Domestic violence is consistently acknowledged in research as a cycle of behaviour that is likely to repeat due to a combination of factors including stress, change in lifestyle and habits (Laing, 2003). It is therefore difficult to link incidents to the specific

impact they may have on the child, and thus, there is a tendency to rely on professional judgement and knowledge of existing research on the generalised link of consequences of violence for children.

A recurring assumption regarding domestic violence and child maltreatment that was made by professionals in the reviewed matters was that past existence of violence or presence of violence within the wider family was indicative of violence in the home. The use of such information appears to contradict existing research into intergenerational violence, which suggests that, while some parents who have experienced violence or abuse as children form violent relationships as adults, these two experiences are not consistently correlated (Holt et al., 2008). The following statements from applications in the archive matters highlight the link between caseworker descriptions of extended family history and environment, and children's recent experience of violence:

When questioned about the suitability of requesting that her parents be assessed as kinship carers, given the existence of multiple AVOs between her parents and their various children, the mother's response served to minimise the gravity of this. It is concerning that the mother could not, or chose not to, recognise or acknowledge the gravity of the incident
(Caseworker - Matter of Markus).

This statement implies that caseworkers are linking the presence of past violence in the extended family with parents' current level of insight into domestic violence and ability to ensure children's safety. While this was an accurate reflection for some matters such as Matter of Markus, in other matters such explanation was absent. In those cases, further contextual information is needed to convey the level of impact that violent history or extended family violence has on the parent.

A second assumption, regarding parents' experience of violence present in evidence from the observed matters, was that mutual violence was indicative of relationship difficulties and aggression from all parties, and not related to any gender power imbalances. Caseworkers provided the following statements that emphasised parents' violence as mutual, or as a result of relationship issues:

Police records indicate frequent requests to attend this address and the records name both parents as persons of interest (...) both parents have a history of assault charges and threatening behaviour (Matter of Chrea).

The caseworker in the Matter of Chrea, directly referenced the police records in this statement, and subsequently incorporated the police description of the parents as 'persons of interest'. The above statement, whilst providing the source of the evidence of domestic violence, does not offer any indication of whether the caseworker sought any clarification from police about the incident, or the role of each parent. Specifically, there was no indication of which parent's behaviour is of most concern, in the caseworkers' assessments. For instance, this can be seen where the caseworker's statement references the parents to be having 'difficulties' without clarifying whether this was an interpretation of the relationship or a statement from the parent. These references from the reviewed matters provide the Children's Court with information about incidents of violence, but no elaboration on how the caseworker was aware of the incidents, or what evidence was available to the caseworker. The overall tone of the statement creates the impression that the caseworker has assessed this matter as one of mutual violence, but without providing supporting evidence. Statements from professionals that emphasise incidents of mutual violence demonstrated a 'broader concern' that Davies and Krane refer to as the 'myth of the perfect mother' (Krane and Davies, 2000:35). This is an unconscious bias that child protection workers hold in assuming that a mother must also be at fault if children are not protected (Krane and Davies, 2000). Such bias may also lead to a view that mothers are not compliant when they do not respond the way caseworkers might expect a victim should, such as when

a woman retaliates with violence towards the perpetrator. Existing data from examining women who commit violence against their partners and those who are involved in mutual violence indicate the presence of self-defence in a substantial number of cases (Laing, 2008). Yet in none of the matters examined for this study was the possibility of self-defence on the part of either party raised by caseworkers.

Where evidence of domestic violence provided by caseworkers emphasised singular incidents in the reviewed matters, the larger consequences of violence for the child and the victim parent were not adequately explained. For instance further analysis was necessary concerning the role of father perpetrators in diminishing a mother's ability to be protective and to ensure a safe and happy environment for their children (Hester, 2011). Evidence of the father's impact on their children and the impact of their behaviour on their children's relationship with their mother were not evident in the matters analysed for the present study. Such approaches assume passive incapacity or inability on the part of parents who have been victims of domestic violence, or alternatively, assume that continually exposing children to domestic violence is an active 'failure to protect' (Humphreys and Stanley 2006: 2). This is a key discourse that influences the complete trajectory of court matters.

The evidence of domestic violence provided to the court contained recurring themes of the risk of violence, the impact of the violence on the children, the impact of the violence on parenting capacity and the likelihood of the violence continuing. The risk of domestic violence was understood by the court to create imminent threat and an unsafe environment for children. This led to the process of Establishment, the court finding that the children were in need of care and protection. The impact of domestic violence on children was understood by the court to encompass the negative consequences that experiencing violence has for children's growth and development. The impact for a child or young person experiencing and witnessing violence without was perceived by the court to create a potential risk of replication of similar patterns of behaviour Domestic violence was understood by the court to have a specific

impact on parenting capacity as parent's in the matters reviewed often did not provide stable routines for the children, left children unsupervised or in the care of the older siblings for frequent periods of time and lacked an awareness of their child's needs. The court's assessment of the impact of parenting provided the foundation for the finding that there was no realistic possibility of restoration of the children to the parents'. Where the evidence indicated that the violence was not addressed the court found a high likelihood that the children would continue to experience this standard of parenting and the violence they had witnessed would continue to impact them. Judicial officers assessed the likelihood of violence continuing based on the reasoning that where parents maintained some form of communication in cases of domestic violence there was a reasonable chance the violence would continue and children would continue to be at risk. More detailed and specific assessment of the connections between violence, parenting and safety for children would enhance the Children's Court's understanding of the diverse impact that violence can have on children, and thus the Children's Court's ability to ensure their needs are met.

8.2.3. Connecting violence with children's levels of safety

The present study found that while domestic violence may be strongly linked to other forms of child maltreatment in material professional stakeholders submit to court, the connection between the issue of domestic violence and the negative impact on children is not as clearly articulated in comparison to other categories of child maltreatment. As with terminology to describe domestic violence, vague and standardised phrases were used to link domestic violence and risk to children in the documents in the archive matters and observed matters. These included phrases such as 'violence which the child allegedly witnessed' and 'the child was present.' These phrases contain reference to the negative impact of violence on children's lives but do not explain the type of risk the actual incident of violence in a particular family poses

to an individual child. These depictions do not convey the actual risk posed to the child. These generic phrases were found in the discussion of the ongoing effects of domestic violence for children, and these generic phrases were also carried over into care plans detailing proposed long-term arrangements for the child. Thus, the quality of evidence and assessment of domestic violence can be considered important to incorporate into discussion of long-term safety for children as an outcome of court involvement.

When evidence is submitted to the Children's Court, judicial officers require enough information to be satisfied that in all likelihood there is violence present in the home and it is likely to continue to adversely impact on the children's safety should they remain with their parents. Without a direct disclosure from a third party, the major source of information regarding the presence of violence in the family unit becomes the children, who potentially may be considered at an unsuitable developmental stage to provide evidence, or the parents, who may not consider the violence relevant to the children. The evidence that is consistently submitted to the Children's Court comes from caseworkers, and it is not articulated in the Children's Court process whether such assessments are grounded in research or individual professional interpretations.

Establishing a reasonable level of certainty regarding the facts of the matters presented a specific challenge for the judicial officers and solicitors. Parents disputed particular facts or versions of events, and this became especially complicated when second or third hand verbal accounts are recorded and then transferred to written evidence. Often the only other direct witnesses were children themselves. Under section 96 of the *Children and Young Persons (Care and Protection) Act 1998*, children are not required to give evidence or attend court. If they do attend under section 104, children may be asked to leave the Children's Court if the potential for psychological harm from observing proceedings outweighs any detrimental impact of excluding them. These provisions acknowledge that there are circumstances where it may be unsuitable to expose children to sensitive information regarding themselves and their parents in the formal environment of the Children's Courtroom (Alderden and Ullman,

2012). Sensitive information may include details about the child's current welfare and well-being. In the reviewed matters, proceedings involved managing evidence that assesses parenting capacity, level of attachment between children and parents, and the viability of proposed placements or plans for restoration. Such evidence is not provided through children's testimony, but in written reports, as well as oral testimony and cross-examination of parents, caseworkers and expert advisers. Whilst the evidentiary standard of a balance of probabilities provided a level of flexibility in these cases, the private sphere of domestic violence can make even conclusive verification of violence very difficult to obtain. Whilst the majority of the parents in the archive and observed matters acknowledged that domestic violence had been present in their relationships, there was reluctance to translate this into acknowledgement that the domestic violence had adversely impacted on the children. Where consensus was unable to be reached on what constituted the facts of the case, expert assessments became significant. Judicial officers interviewed for this study acknowledged the large contribution that experts play in court processes, and particularly the work of the Children's Court. Judicial officers emphasised the status and experience of the senior social workers, psychologists and psychiatrists who operate as court clinicians. When specifically asked about the contribution made by court clinicians to the Children's Court's understanding of the impact of domestic violence on children the judicial officer interviewees used terms such as 'crucial', 'very significant', and 'valuable'. Judicial officers highlighted a caveat to these positive statements when discussing evaluations from external experts. Whilst the Children's Court requires multiple forms of evidence, judicial officers expressed a strong commitment to carefully assessing reports and testimony from experts and applying scrutiny to the logic of conclusions made in the evidence. For instance, one judicial officer interviewee noted that, 'It is really important to look for objective evidence'. Scrutiny of evidence was considered specifically necessary by judicial officer interviewees when the reports had been provided by parties to proceedings rather than when those reports were derived from the Children's Court Clinic assessment team. Analysis of the statements from judicial

officer participants in the present study demonstrates that the source of evidence is crucial in the Children's Court's perception of its impartiality. Examples of judicial officer statements concerned:

You are looking to see that opinion expressed has sound factual basis and that information provided us, reasoned, considered and logical. You need to be careful to ensure that the person assessing the evidence isn't biased (Judicial Officer A).

It is clear the judicial officers valued evidence derived from objective sources. Court clinicians are seen as a source of interpretation of evidence which is external to the parties involved in proceedings. In addition to these statements, the use of the Children's Court Clinic assessments in four out of six observed matters suggests the privileging of the court clinician's assessment. Testimony acknowledges the expertise and objective position of these clinicians. Their expertise in child development is valued for interpreting evidence in the context of potential long-term consequences for children. In the reviewed matters such expertise was necessary to frame violence, not as an adult-centric issue, but as having an impact on the child's world. Where there are conflicting or ambiguous accounts of violence, further development of caseworkers' practice in the recording of assessments of domestic violence, would assist in greater integration of well-rounded understandings of domestic violence into the Children's Court process.

A need for caseworkers to expand on incident-focused descriptions of violence to demonstrate the consequences of the violence for children was highlighted in the application for the Matter of Miller. The Children's Court heard directly from the mother. The Children's Court Clinic assessment report submitted to the Children's Court also indicated that the mother had admitted the child was witness to many incidents of domestic violence perpetrated by the father, and that the mother blamed the father for these incidents. The father denied a pattern of violence, only conceding one incident of violence referred to in the Children's Court application and in transcripts of caseworkers' interviews with the child. When asked to describe the

impact of the violence, the Children's Court Clinic assessment report indicates that the father considered the impact of the violence to be irrelevant as the child was too young to really be aware of any danger at the time, despite the child clearly recalling and disclosing an incident directly to the caseworker. Questions were raised during cross-examination of the mother, as to her opinion of the impact of seeing incidents of domestic violence on the child. She did acknowledge that the incident the child was able to recall and disclose would have been especially frightening as police and ambulance needed to be called, and that the child was aware of everything that was happening. The ongoing impact of the general environment of tension the child was experiencing was a more complicated issue, and therefore not sufficiently articulated in this matter. As part of their evaluation of children's safety, judicial officers, solicitors and caseworkers have responsibility to draw connections between their professional understanding of domestic violence and the experiences of children. Preparation for the Children's Court process is linked to the larger process of developing knowledge and applying this understanding to individual cases. Given such complicated factors, caseworkers require adequate time to provide explanation for their reasoning and how they have applied their general knowledge of domestic violence to a particular case.

In the present study there was a trend towards caseworkers' assessments emphasising the use of separation from the violent partner as the key solution to domestic violence. As the findings from the previous chapter indicate, there exists a strong belief on the part of professional stakeholders that mothers bear responsibility for exposing their children to violence in situations where they choose not to separate from their partners. This responsibility also extends to their ability to seek and uphold AVOs to protect themselves and their children. The ability to action and maintain separation was used by caseworkers as an indicator of parental insight and compliance. Strong links are made between the separation of parents and the child's level of safety. Despite such links, there seems to be a lack of awareness of research that suggests that the severity and frequency of violence can often increase for women during periods

when they are preparing for separation or after they have recently separated (Laing, 2008, Toews and Bermea, 2015, Kaye et al., 2003). Even in situations where children are no longer in the care of either parent, there are implications for children's safety in supervised contact visits. The archive matters analysed in this present study contained examples of two instances of violent incidents occurring during contact visits. As Hester and Pearson (2007) argue, separation in the context of domestic violence cannot be viewed as a safe outcome in isolation from the wider circumstances of the children and parents. McGee (2000) has further identified that domestic violence has ongoing practical, emotional and psychological consequences for children that may not be present during the actual period of violence and may vary between individual children in families. How domestic violence may continue to impact on children should therefore be a crucial component of a caseworker's discussion of arrangements to ensure each child's safety needs in care plans.

Professionals face challenges in evaluating the presence of risk and ascertaining outcomes that consider the child's best interest and safety. The multitude of ways that domestic violence is interpreted make this process challenging. For instance, in the reviewed matters parental protectiveness was assessed in relation to the level of insight parents had into how domestic violence was harming their children. In addition, parental compliance and engagement was evaluated by the level of participation in services and programs recommended by the caseworker. These assessments of parental insight and compliance emphasised the need for parents to 'address domestic violence issues'. The instruction to 'address domestic violence issues' acknowledges that a level of risk is present for children and that it needs to be dealt with in order for children to be safe. However, the need for intervention calls for further elaboration by caseworkers. Proposed interventions and care plans need to take into account the complexity of domestic violence and the reality that, in circumstances where one parent has been abused and not in a position of control, their ability to meet external requirements to prove their capacity as parents is compromised.

This study has found that judicial officers' understanding of a child's experience of domestic violence would be assisted by having information about the process followed to assess the violence, and how caseworkers have come to interpret the violence as compromising parenting and posing a risk to that child. Without a shared understanding and definition of domestic violence, the ability of the Children's Court is compromised in its ability to operationalise a robust analysis of the impact of domestic violence on the safety, welfare and well-being of children. The level of knowledge and expertise that caseworkers have of domestic violence is thus a key factor in how the issue is conveyed in court proceedings. Judicial officers are only able to consider the evidence that is provided to them thus making it necessary for them to consider the context of the evidence and assessment as well as their own interpretation of issues. For instance in the reviewed matters, a large amount of material could be drawn on to confirm the presence of risk and the suitability of specific proposed arrangements for placement and contact. Younger children who are not able to be formally interviewed may still have their views recorded through the use of specific quotations from the children when they have made relevant disclosures or comments. For example in the Matter of Jant, quotations were included from a child under four years old referring to 'mum (being) sad' and 'dad (...) throwing things everywhere'. These quotations have been selected by a caseworker to illustrate a specific point. However, given the child was not present during the Children's Court proceedings, the judicial officer does not have material directly from the child to be used to inform the final assessment.

Professionals who have direct interaction with children are placed in a unique position in relation to court decision-making, as judicial officers perceive them as providing the crucial information that informs judgements and future implementation. For example, the care plans that were submitted in the six observed matters were prepared by the caseworkers with a specific view to the realistic long-term placement options for that

child, and the caseworkers included the in the care plan a proposal for transfer to a suitable non-government out-of-home care agency. Care plans clearly may be endorsed without the Children's Court being able to consider the level of consultation that has occurred at an individual case level between Community Services and the non-government out-of-home care agency. Whilst the judicial officer may have prior knowledge about the practice and procedure of particular non-government out-of-home care agencies, individual case information is provided by Community Services. Information that may have been originally provided by the non-government agency is likely to be presented from the Community Services caseworker's perspective in care plans. Without a mechanism for non-government agencies to communicate directly with the Children's Court, there is a missed opportunity for the Children's Court to be informed by professionals who may have potentially had the closest interaction with children, thereby diminishing their role in addressing safety issues both in the immediate and long term.

8.3. Professional Contribution to Court Decision-Making

Key findings from this study relating to the professional contribution to court decision-making highlighted the unique positioning of the Children's Court in relation to other jurisdictions particularly in relation to evidence and outcomes from proceedings, the specific pressures for stakeholders during proceedings, the significance of timing in proceedings, the establishment of facts, and the use of external experts. These findings reviewed in this section are relevant to the research question, 'What are the interactions between NSW Department of Family and Community Services ('Community Services') practitioners, solicitors and judicial officers in the context of child protection decision-making in cases involving the combination of domestic violence and child maltreatment?'

8.3.1. Collaboration

Collaboration between professional stakeholders forms a key component of the decision-making that occurs external to the Children's Court and during Hearings. Findings from all matters indicated a high level of communication and negotiation between solicitors, caseworkers and external experts during preparation and Hearing stages of decision-making. The solicitor and caseworker participants in this study suggested that collaboration was a large and continual facet of preparing court matters. Prior to any consideration of the need for a court application, a typical matter will be assessed by multiple caseworkers evaluating the level of risk of a concern such as domestic violence.

The serious nature of much evidence requires collaboration with other jurisdictions. Collaboration will be important in cases of domestic violence, where evidence will come from multiple sources and may involve several jurisdictions. This study found that in the reviewed matters, specific constructs of risk were not developed from one particular source alone, but rather a variety of sources including applications, written evidentiary material, oral submissions and testimony. The preparation phase of decision-making provides a valuable opportunity for professionals to receive support and resources around evidence and assessment of domestic violence. The preparation stage is specifically important in this task due to the time constraints and permanency planning requirements of the Children's Court.

Collaboration amongst stakeholders forms a significant component of the development of assumptions regarding domestic violence. Importantly, within this collaboration is the development of particular constructs of risk and its role in the perception and approach professional stakeholders adopt in a court matter. Professional interviewed in this research were found to cover a diverse spectrum of understanding and accountability within care and protection decision-making. This was observed in instances including the assessment of risk by caseworkers, the consideration of often-contested issues by solicitors, and in the overall case

management and upholding of principles by judicial officers. Professionals interviewed perceived their role as focused on communication, advocacy and ensuring positive outcomes for children.

Judicial officer interviewees in this study indicated that they placed high value on the contribution that solicitors make in proceedings through their knowledge of the background and context for specific matters, as well as their expertise in particular aspects of court procedure. For instance, one judicial officer commented that, 'ICLs (independent children's lawyers) are valuable in providing a chronology of court matters: what has previously occurred; what direction the matter is taking (Judicial Officer C).' Another judicial officer interviewee emphasised the importance of solicitors representing parents:

Solicitors can often, when communicating well, help move proceedings forward and help parties gather some focus when unnecessary disputes and delays arise. Quite often, just a gentle voice saying, 'Hey, it's not about you – it's about the kids', can make a difference (Judicial Office A).

These comments, when viewed in the context of the recent Keep Them Safe policy amendments that have increased use of dispute resolution conferences in proceedings, suggest where solicitors advocate for the full participation of all relevant parties in discussions concerning the care plans, they will increase their likelihood of success (Adamsom, 2000). As stated by Abram, 'alternative dispute resolution extends good casework practice', and it is effective particularly where designed with sensitivity to individual case circumstances (2001: 20). Similarly Giovanucci (1997) has argued for a need for those implementing forms of alternative dispute resolution to take into account the privileged role of professionals in negotiations when using alternative dispute resolution. The findings from the present study support Giovanucci's (1997) argument, and extend this by emphasising that parents who have experienced domestic violence benefit from support from solicitors to engage with the

caseworkers, court staff and any other professionals involved in dispute resolution conferencing.

Professionals interviewed in this study highlighted the specialist nature of the care and protection jurisdiction, and the need for specific knowledge and understanding. Whilst they acknowledged the positive contribution of their roles, they also noted that challenges were present when fulfilling these responsibilities according to particular legislative guidelines for conditions such as timeframes for decisions, and according to the permanency planning guidelines. Further challenges were perceived by the professional stakeholder participants, particularly solicitors, in relation to their reliance on interactions with other professionals, when trying to obtain sufficient information and interpretation of evidence.

8.3.2. Information provided by essential decision-makers

Despite the authority of the Children's Court, it is apparent from the reviewed matters that most decisions that are made about care and protection matters may be made external to formal court proceedings. External decisions in the preparation phase were found to include the selection and admission of different forms of evidence and expert testimony in the matters reviewed. Negotiation and mediation within a dispute resolution conference, whilst occurring within the Children's Court setting, can be viewed as an external process in the sense that they promote discussion between parents and caseworkers outside of court proceedings. Finally, reviewed matters were found to include external decisions relating to the long-term arrangements for children, including placement and schedules for contact visits. Each of these external decisions narrows the parameters of the options to be considered by the Children's Court and creates an assessment that privileges the long-term removal of children who have experienced domestic violence and child maltreatment, as evident in the reviewed matters. The external decisions in the reviewed matters revealed that

professional assumptions regarding domestic violence impacted on the assessments that they provide during court proceedings.

The present study identified the specific roles that various professionals have in court proceedings, and specifically the key role of Community Services caseworkers and their managers. Analysis of applications from the matters in the present study revealed that, although caseworkers have direct interaction with families, they are guided by the instructions and recommendations of their managers. For instance, in the Matter of Miller, one caseworker under cross examination, repeatedly indicated that the decision to remove the child from the kinship carer's placement was based on consultation with the caseworker's direct manager, and the manager of the unit. When the manager of this child protection team was also cross-examined, the manager affirmed that, while familiar with the details of the case, the manager had not actually had any direct conversations with the current kinship carer for the child. However, this lack of interaction was unique to the Matter of Miller. In other observed matters of Sukaw and Jant, direct interaction with parents and managers was confirmed under cross-examination. Based on analysis of the matters used in the present study, this interaction rarely occurred. Circumstances that warranted this interaction were when the regular caseworker was absent, or the parent or carer wished to escalate a specific issue to a manager for attention. Consultation was also sought when it was deemed that the caseworker required additional support due the complexity of the case. Thus, professionals with varying levels of knowledge and access to children and families are observed to be involved in the assessment of risk. Importantly, where the interaction between caseworkers and managers was described in the Children's Court, in the analysed matters, it added evidence to the caseworker's claim that consultation and careful deliberation had occurred. However, if under cross-examination the manager's contribution to assessment caseworker is limited to 'I consulted with my manager', this cannot be regarded as adequate explanation to the Children's Court of the process of consultation, or the method of caseworker and manager joint assessments. In

observed matters the process of consultation and the impact of the manager's perspectives were only apparent in the Matter of Miller, in the cross examination referenced above. Therefore, there is potential for judicial officers to be provided with an inadequate account of the contribution made by the senior staff and supervisors involved in the significant decisions resulting in court proceedings.

Findings from analysis of the matters examined in the present study suggest that while direct involvement of direct line managers and other management staff may be limited to specific situations, the level of remote involvement was high. Indirect involvement included team meetings where cases were discussed, one-on-one supervision with the caseworker responsible, and attendance at care-planning meetings. Importantly, non-government out-of-home care agencies may have been involved in these discussions, especially in relation to proposed future placement and contact arrangements for children. The present study found that whilst four out of the six observed matters (Sukaw, Jant, Buckthorp, and Chrea) involved a care plan with transfer of casework responsibility to a non-government out-of-home care agency, no record on court files or statements during proceedings referenced consultation with the proposed agency.

The absence of description of the input of Community Service managers or non-government out-of-home care agency workers, who may have had a high level of remote involvement in directing caseworkers, contrasted strongly with these judicial officer participants' comments expressing a preference for evidence from those who are involved with the families and children:

It is quite hard to make a reasonable assessment from just watching someone in a witness box for two hours. That is where it is important to listen to caseworkers and psychologists, who regularly observe people over a long period of time (Judicial Officer A).

Their (caseworkers') direct knowledge of the backgrounds and circumstances is usually valuable (Judicial Officer C).

The judicial officer interviewees suggest that they value the opportunity to receive information and assessment from those who are directly involved with the children and families. In addition, judicial officers indicated that the information and assessment provided by caseworkers is valuable to their decision-making. One judicial officer interviewee stated, 'I rely heavily on the caseworkers who have worked closely with the families involved' (Judicial Officer B). This statement highlights that judicial officers rely on caseworkers to inform the Children's Court's decisions. Consequently, the professional stakeholders who have direct interaction with children can be placed in a unique position within court decision-making. For instance, caseworkers are required to develop a sufficient connection with a family to conduct assessment and provide assistance. At the same time as providing assistance, caseworkers in the matters reviewed were undertaking the assessments that informed court proceedings.

When the above judicial officer statements are viewed in the context where Community Services caseworkers may feel dual pressure to have sufficient understanding of the dynamics of a family while simultaneously preparing this information in a format suitable for presentation to the Children's Court it is unsurprising that caseworkers may need further consultation with managers and other workers. However, this process of consultation and subsequent impact assessments was not explained in proceedings for observed matters. Specifically, the absence in court of information pertaining to the involvement from Community Services managers and non-government out-of-home care agency workers does not align with a judicial officer's need to hear from those with knowledge of the family described in the above statements. In essence, while Community Services managers and non-government out-of-home care agency workers and carers were key persons responsible for making decisions, they were not always included in court proceedings. Moreover, while the evidence from key persons may have assisted the Children's

Court's understanding of the child's circumstances, it was often not provided in any significant way. Hence, where there was limited involvement of Community Services managers or non-government agency workers in the proceedings, their role in the assessment process could be considered a form of remote decision-making.

8.3.3. Alternatives to court intervention

Findings relating to court applications from the present study suggest that court applications contain substantial justification for the decision to remove a child and seek court orders. Court applications were found to be crucial to the decision-making process in the archive file and current matters included in the present study. It is at this point that court intervention is sought, usually following the assumption of a child into care. This is a determination made by caseworkers, their team and managers. Seeking a court order is a particularly significant decision as it privileges formal legal processes over other forms of intervention. Analysis of each of the matters included in this study indicates that alternative forms of intervention were not chosen in these matters. None of the matters reviewed contained explanation as to why alternative forms of intervention were not appropriate.

In the reviewed matters, the decision to remove the child into alternative care was made based on risk assessment made prior to the Children's Court process by the respective Community Services child protection team. Existing research on risk assessment indicates specific challenges in both their application and usefulness. Gillingham identifies two specific challenges: 'First, it cannot be assumed that practitioners will use tools in the intended way, even if mandated to do so. Second, tools cannot be used to replace expertise' (Gillingham and Humphreys 2010: 98). The present study has found that, prior to court proceedings, the process of defining and assessing domestic violence has already begun through a mixture of standardised processes and the use of professional judgement to evaluate any risks and the need for intervention. For instance, risk assessment tools were commonly used by

caseworkers in the reviewed matters. Caseworker assessment in the reviewed matters consistently led to a decision to remove a child from their parent's care. It should be noted that removal is one potential outcome of risk assessment, and that matters that may have resulted in an alternative response to a court application were outside the scope of this study. However, the matters in this study did raise an issue of concern regarding the level of information that is provided to the Children's Court regarding prior actions from Community Services, and caseworker consideration of alternative interventions.

Whilst parents can choose to contest an interim placement at the early stages of proceedings, they are likely to be advised not to do so by solicitors and to focus instead on their case in relation to the longer term final orders. In every matter reviewed, the interim placement of children was automatically authorised. This suggests that it is rare for parents to contest that a child is in need of care and protection, during the initial 'finding' phase of court proceedings. Darlington et al. (2010) suggests that when confronted with a case of substantiated child abuse, coercive forms of intervention are the dominant mode of operation. Authors including Cash (2001) and Jack (1997) have highlighted the negative consequences of coercive intervention and argued that, while certain measures can be viewed as coercive in approach, the purpose is in fact related to safety. For example, where parents contest the removal of their children into statutory care, the action can be viewed as coercive while also necessary to ensure the child's safety. Professional awareness of the dichotomy of these perspectives has been found in existing research to be significant in ensuring depth in child protection assessment. For instance, recent research by Jenney (2014) in relation to domestic violence indicates that professional awareness of victim narratives can assist to overcome any barriers between mothers and caseworkers who are conducting risk assessments.

Where matters involve interpretation of domestic violence, it is necessary for the Children's Court to be provided with information regarding the process and source of the assessment in order for it to be placed in appropriate context. The matters

reviewed in this study did not contain consistent references to the processes that underpinned assessment of domestic violence. This finding is significant as the provision of appropriate level of context to assessment is likely to enhance judicial officer appreciation of the caseworker's interpretation of domestic violence. Judicial officer review of assessments can therefore be couched in an understanding of what caseworkers are highlighting for the Children's Court when assessments contain general terms such as 'a child is experiencing domestic violence'.

The present study identified that the template used by Community Services for court applications contained a specific section 'prior alternative actions', formatted as a checklist that included referral, provision of financial assistance, and home visits. The template used by Community Services for the Children's Court application reviewed does contain a section requesting information on any prior form of intervention, and asking if any form of intervention other than the proposed order would be sufficient. However, it does not specifically ask for explanation as to why only the Children's Court order is sufficient. Whilst to satisfy the legislative requirements it is only necessary to outline what prior intervention has occurred and that the granting of an AVO would not be sufficient to protect the child, the use of a checklist to provide information about alternative actions means that specific detail about the alternative responses and services that were offered fails to be documented and scrutinised. Explanations can potentially be excluded as to why, at the time of application, no further alternative action was possible other than removal of the child. Consequently, judicial officers may focus on the events and circumstances prompting the application, making it less likely that an alternative course of action be considered, including the provision of support to a parent to access an appropriate and accessible support service.

Previous research has highlighted examples of best practice in relation to alternative forms of child protection intervention that do not involved placement of children into statutory care (Thorpe, 2007). These include early intervention programs, in-home assessments and case-management, and family support. Early intervention programs

are typically utilised by caseworkers in circumstances where children are not yet deemed at significant risk of harm, but potential risk factors have been identified for the family, such as recent police involvement due to parental intense arguments or anti-social behaviour (Fernandez, 2007, Thorpe, 2007, Ward and Rose, 2002). Early intervention services included the provision of financial support, referral, education and ongoing case-management support. Local area health services provide a number of collaborative services, including in-home visitation and parent education programs to help parents address concerns, including domestic violence (Russell, 2010). Residential treatment can refer either to the above in-home model or to the family living in a specialised external residential setting. There are also specific drug and alcohol, and mental health facilities that can accommodate children remaining with their parents, with ongoing monitoring by caseworkers. Refuges have been established with the particular purpose of accommodating women and their children leaving domestic violence, staffed by workers specialising in domestic violence. The challenge with these models is that, due to the high level of staffing and intensive support required, they are expensive, and in NSW diminished funding has led to the closure of many domestic violence refuges over the last two years (Prinz, 2015). Furthermore, they are not appropriate in every situation. For example, while in-home assessment may help address short-term neglect issues, such as an unhygienic environment or a lack of routine for the children, parents will vary in their ability to maintain recommendations in the long-term (Healy et al., 2012). Thus, the ability of caseworkers to make decisions involving the referral of families to early intervention or local health services is influenced by considerations of available resources as well as the suitability of these services for individual families (Cash et al., 2009). Analysis of the matters included in this study indicated that the significant information on the process caseworkers use to consider these alternative options for intervention is not consistently documented in court applications.

8.4. Challenges in court decision-making in cases of domestic violence and child maltreatment

This study has highlighted the unique positioning of the Children's Court in relation to other jurisdictions particularly in relation to evidence and outcomes from proceedings, the specific pressures for stakeholders during proceedings, the significance of timing in proceedings, the establishment of facts, and the use of external experts. In describing the role of the Children's Court, Sheehan highlighted the pivotal role that the Children's Court has played in child protection decision-making (Sheehan, 2012). The present study has highlighted the Children's Court as a central component of the decision-making process. According to Jaimeson et al (1990), court decision-making occurs within a very specific environment. The present study acknowledges this through the use of case study as the specific approach to research the environment of court decision-making. Although the challenging environment of child protection decision-making has been noted by many, the specific challenges faced in the Children's Court's matters has not been given sufficient attention in comparison with other areas. The present study suggests that it is not only overarching legislation and court processes that guide decisions, but also the narrative constructed by individual stakeholders, and, significantly, the interaction between stakeholders in the court process. This section addresses relevant findings for the research questions, 'how are the court's decisions regarding permanency planning legislative requirements for children negotiated in the context of domestic violence and child maltreatment allegations?' and 'what are the outcomes from court proceedings and the key factors determining these outcomes for children in cases involving the combination of domestic violence and child maltreatment?'

8.4.1. The principles guiding decision-making in the Children's Court

A further unique aspect of the care and protection jurisdictional process identified in the present study was the handling of evidence. This is particularly evident in the 'balance of probabilities' evidentiary standard, and the way that judicial officers implement this concept is distinct from traditional adversarial models (Borowski 2013). In addition, the care and protection jurisdiction is distinct from criminal and civil jurisdiction that include sanctions as a key component of outcomes, such as sentencing or awarding of costs or compensation (Borowski 2013). In addition, matters that include potentially criminal offences against children are required to be heard through the criminal jurisdiction, often in a similar time span to the care and protection proceedings. Judicial officers are sensitive to the potential influence any parallel proceedings can have on evidence submitted as part of care and protection Hearings so will often allow for adjournments or scheduling of specific dates. This allows more information to be obtained as to the likelihood of any criminal charges or criminal proceedings but also increases pressure for professionals involved in proceedings.

The findings from the present study confirm previous analysis of the specific pressures that the care and protection jurisdiction presents for judicial officers, solicitors and caseworkers (Shdaimah, 2010). The caseworker and solicitor interviewees described unique pressures in their role in proceedings:

Often there has been a very long lead up time before you actually receive a Hearing date so when it finally arrives it is difficult not to feel somewhat anxious to make sure that everything goes to plan. You have done the work, and to be under the microscope can feel uncomfortable. (Caseworker B)

This caseworker interviewee highlights in the above statement, that court Hearings are a source of pressure for caseworkers, requiring a high level of preparation. The Children's Court system places particular pressure on caseworkers and solicitors in

relation to the timeliness of decisions. Timeliness in proceedings noted in matters was not only relevant to discussions of the child, but also to the process of negotiation and collaboration, as a preferred mode of operation within court proceedings. There was substantial effort to nominate each party's perspective and requirements. If one party was in disagreement, the judge specifically asked for an explanation as to why where there was agreement with all others involved and this party was choosing to remain in disagreement. For instance, the lack of consensus in the Matter of Jant drew the particular attention of judicial officers. Prior to removal, Community Services had received over 20 reports over a period of three months with no action. There was a high degree of encouragement from the judicial officers, for solicitors to reach agreement and move forward; even asking them to spend time discussing with other solicitors outside before appearing again. The judicial officer was definite that procedural issues and the specific agendas of parties to proceedings should not be detrimental to the progress of the matter. This suggests that judicial officers put a specific emphasis on consensus and on determining that there were no unnecessary delays or additional stages in court proceedings without valid reasons. The emerging priority became ensuring unnecessary delays were avoided recognising the implications of proceedings for children.

In the observed matters, discussion around timing of proceedings usually occurred after judicial officers had confirmed the placement of the child and the length of the placement. Consequently, it is clear that the judicial officer was interested not only in the administrative procedures or technical aspects of the case, but also in how court proceedings were impacting on the overall experience of the child. In the reviewed matters, the justification offered by judicial officers for the pressure placed on completing matters in set time frames was that any delay must be detrimental to the child, who may or may not already be in a proposed long-term placement. Judicial officers need to balance the process followed in court proceedings with the reality that

a child has both immediate and long-term needs to be addressed to meet the Children's Court's obligations in relation to safety, welfare and well-being for the child.

8.4.2. Integrating principle, experience and evidence in judicial officers' decisions

A unique challenge present for the Children's Court is the intersection of guiding principles and professional judgement. A difficult dynamic was highlighted in this study between formal structures, such as policy requirements, and informal judgements at individual case level. This finding is consistent with other research examining broader issues around child protection decision-making. The development of 'practice wisdom' as described by Sheppard (1995) is a crucial component in the preparatory phase of child protection casework.

Analysis of the statements from judicial officer interviewees suggest that judicial officers use both legal and personal understanding of issues in delivering their judgements, drawing on guiding principles such as 'best interests' to inform decisions. However, the process by which judicial officers utilise these principles in their decisions alongside professional interpretations and narratives of domestic violence poses a number of significant dilemmas. Judicial officers rely on solicitors and caseworkers for case context and procedure. This means that interpretation of issues of domestic violence and the level of risk for children emerges fourth or fifth hand, removing it somewhat from the judicial officer with the authority to endorse specific proposals and issue orders. The findings from the present study suggests that caseworkers cite changes in relationship status and dynamics, fluctuating levels of understanding and insight into domestic violence in its various forms, as well as the stress levels of parents during meetings, among the difficulties in verifying a pattern of violence to present to the Children's Court. Therefore, the evidence submitted to the Children's Court must

be viewed with consideration of the specific challenges professionals face in accessing and interpreting violence.

In assessing domestic violence judicial officers also rely on expert opinion at the same time as requiring evidence from professionals, such as counsellors or social workers, who had actually spent time and were familiar with the child and family. Whilst court clinicians may undertake interview and observation of the parents, children and other significant persons, this is time-limited and usually within the settings of the Children's Court Clinic or a scheduled contact visit, not the home. This places the expert in a removed position. The alternative is that the clinicians such as social workers, psychiatrists, psychologists and counsellors who are already working with a family providing treatment to parents or children face a challenge to ensure their assessment is considered objective by the Children's Court. In parallel with this tension between external and court-appointed expert evidence, is the need for the Children's Court to consider the safety, welfare and well-being of children. Judicial officer participants in this study expressed a clear necessity to base their decisions on recommendations from those who know the child and parents. The challenge to this arises when the external and court-appointed experts disagree, and the Children's Court needs to determine which evidence or assessment is appropriate. This is particularly significant for cases involving domestic violence where professional stakeholders in the study indicated challenges to locate consistent evidence.

The level of priority that judicial officers afforded evidence of domestic violence in the reviewed matters was the result of their own evaluation, as well as their interactions with caseworkers and solicitors. Such interactions provided limited opportunity for judicial officers to respond in ways that diverge from the recommendations of those perceived to know the child best, regardless of whether this holds true in a particular case.

We know domestic violence is bad for kids, the experts tell us this, we see their reports, so if a caseworker tells us domestic violence is happening then we shouldn't waste time on this, research has already told us it is a risk.

(Judicial Officer B).

The above statement suggests that the judicial officer feels confidence in the level of information and awareness they have about domestic violence. However, this approach to understanding domestic violence requires that caseworkers refrain from describing domestic violence as simply 'bad' without evidence to the level of risk for an individual child. As the judicial officer above states, a judicial officer is likely to be aware of the interface of domestic violence and child maltreatment issues. Yet, their obligation during proceedings is to determine the appropriate intervention to address the presence of violence in the life of that individual child. If the professionals involved in assessing the child are not able to offer clear and objective accounts of domestic violence relevant to a particular case then judicial officers are limited in how they can assess the impact on the level of safety for a child.

8.4.3. Endorsement and implementation of care plans

Care plans form a crucial aspect of the determination of long-term care arrangements for children. A final court order is not permitted without the presence of a care plan endorsed by the Children's Court. There were specific difficulties found in content that was included in the care plans provided in the matters in this study. The care plans submitted for matters in this study contained extensive background information concerning the reasons the child was considered in need of care and protection. Additionally, the majority of these matters also contained reference to assessment that the restoration to the parents was not possible. This historical and contextual justification for the proposed arrangements was intermingled with the actual proposal for the care of the child. Parents and their legal representatives have a complex task in formulating responses to this evidence. The parents and their solicitor need to

simultaneously respond to information about the alleged facts of the case as well as to the assessment by Community Services and their proposal to ensure long-term safety and well-being for the child. In matters involving domestic violence as a child maltreatment concern, this challenge is likely to be heightened by the need to determine appropriate support for both the victim parent and child.

In the care plans submitted in the reviewed matters the connection between the evidence, the risk to the children, and the concerns held by the professional stakeholders were not always expanded upon. Statements describing a child witnessing domestic violence do not sufficiently explain how the violence has impacted, or is likely to have future impact, on them. An assumption is made that if domestic violence is present, that is sufficient grounds to indicate risk. The evidentiary attachments in the archive and current files do indicate that children consistently have the opportunity to provide information in an interview. This opportunity is obviously dependent on age; some files provided full transcripts of interviews where possible with older children. These provide a judicial officers with a rich account of the child's experience and their perspective. However, although the recording is made by a caseworker, the possibility of substitution of particular words or phrases cannot be discounted. The perspective that is provided to the Children's Court is subsequently the caseworker's, and not the child's, who may have had particular views on what has occurred for them to provide the Children's Court better insight into their perceived level of safety. Therefore, it can be seen that the terminology and detail utilised to describe violence forms an influential component of the care plans relevant to the Children's Court's decisions about the safety and well-being of the child.

Another complex issue relating to care plans that was identified in this study was the lack of inclusion of statement regarding how Community Services was intending to consult with the non-government out-of-home care agencies regarding sourcing long-term placements for children. Additionally, there was no record of any evidence

provided by Community Services or non-government agencies to demonstrate that the agency had been consulted regarding the care plan in these matters. Several of the matters contained reference to a general intention of Community Services caseworkers to 'consult where appropriate' with agencies. Such general statements do not clarify for the Children's Court the specific process and plan for such consultation. They rely on the judicial officer inferring that an appropriate placement will be found as a result of the consultation. The absence of information regarding the role of non-government agencies in care plans can be seen as a further example of the lack of opportunity for the non-government out of home care agencies to provide input into care proceedings. The lack of input from non-government out-of-home care agencies diminishes the Children's Court's ability to appropriately integrate such input in decisions about long-term arrangement for care and protection of the child.

8.5 Implications

In this final section, the implications and recommendations emerging from this study will be explored. The findings from the present study have implications at the individual professional practice level in relation to the way assessments are made and communicated to the Children's Court, and the training and resources that professionals require around domestic violence to participate in court proceedings. There is need for further development of professional knowledge of domestic violence and its implications for court decision-making, care planning and dispute resolution conferencing. Additionally, there are implications from the present research at a wider policy level

8.5.1. Training

Training and preparation of caseworkers to assess and interpret complex evidence of domestic violence are relevant areas for improving the contribution of caseworkers to court proceedings. The significance of caseworkers' provision of background context

and information in guiding the Children's Court's decisions around risk and safety was confirmed in analysis of the reviewed matters. The findings of the present study suggest that where caseworker assessments of violence are provided to the Children's Court, these assessments prioritised evidence of particular incidents. Emphasis on particular incidents does not provide a sufficient account of the cumulative impact for children of living in an environment characterised by violence. Adequate description is needed for the Children's Court of the connection between the general experience of risk and specific incidents of violence, so that the impact of violence on the safety, welfare and well-being of children is captured. For instance, this study has found that an important area professionals need to assess is parents' non-engagement with support in cases of domestic violence or parents' denial of the violence. Caseworker training in relation to domestic violence would benefit from incorporating knowledge from domestic violence practitioners of services regarding processes of engaging parents with services. If caseworkers have the appropriate information about the current resources available to support a parent, and they are accessible for the parent, assessments can then be made to identify barriers to engagement that might be present in parental behaviour.

The training relating to cases of domestic violence that is offered to caseworkers and solicitors would benefit from an inclusion of specific questions and issues they could raise with parents who have experienced domestic violence. Then this targeted information gathering would enhance the contribution in court made by the caseworkers and solicitors. One particular component of assessment, recommended by Finkelhor et al (2005), may be considering not only a victim parent's ability to implement any caseworker recommendations, but also their current capacity to independently choose their actions. Questions asked by caseworkers and solicitors during assessment could focus on key topics such as the perpetrator's pattern of behaviour, specific triggers and threats to children, and the victim's input into measures to enhance safety for the children on an ongoing basis. Targeted questions

around these topics would ensure an accurate representation of the overall context of domestic violence for a family that extends assessment of particular incidents. .

Caseworkers, solicitors and judicial officers need specific training on the evaluation of behaviour change for victims and perpetrators of domestic violence. This training could include understanding the impact of the trauma of domestic violence on the behaviour of survivors as well as perpetrator patterns of behaviour during relationships and following separation. Partnering with organisations that provide educational programs and support groups, such as Relationships Australia, would mean greater awareness for professionals of the types of services available for parents in addition to the emotional and behavioural processes exhibited by survivors and perpetrators of violence. Using the knowledge and skills of organisations working with victims and perpetrators in the development of caseworker training would facilitate development of caseworker skills in assessing and documenting the strengths and challenges parents confront in addressing their issues and their realistic potential to do so. Such enhanced evidence would ensure that care plans and court orders are considered within the context of ongoing child protection work, as opposed to a last resort form of intervention.

The present study has identified the need for further consideration of the mechanisms available for caseworkers to document and convey information to the Children's Court regarding the risk of domestic violence and the need for court-based intervention. Caseworkers and solicitors expressed feelings of frustration in managing complex evidence, engagement with parents, and obligations to fulfil core principles of ensuring safety, equity and best interests within tight timeframes. Further development of existing training modules on court proceedings could address these challenges through increased focus on the skills in writing documents for proceedings, and providing and substantiating verbal evidence. In providing assessment to the Children's Court, caseworkers require further training on their role in fulfilling legislative requirements are fulfilled, particularly concerning the justification for the granting of a court order.

Training relating to court applications should place emphasis on ensuring adequate context is given to evidence. For instance, where applications involve domestic violence specific descriptions of incidents of domestic violence, rather than generalised descriptions, are required to explain the impact of violence on an individual child. Caseworker training relating to court applications should make explicit the need to document prior actions by Community Services in cases of domestic violence and how the proposed court orders will specifically address the issue of domestic violence. The input of judicial officers and the Community Services Court Liaison team in amending existing caseworker training or the development of new training modules would ensure the information is relevant and accurate for the current court processes.

8.5.2. *Practice*

This study has highlighted a need for an expansion of current understandings of domestic violence as a form of child maltreatment within casework practice, specifically in court applications and care plans. Limited information is available in care plans regarding actions prior to removal of children, and the reasons why alternatives to removal, such as provision of further assistance, or short-term or respite care were not considered by caseworkers, despite prior research from Cash et al. (2009) highlighting the benefits of such approaches in addressing child maltreatment issues. Of specific relevance to the Children's Court is why alternative forms of action were not chosen and why court action is needed. For instance, alternative responses may include the use of short-term care, kinship care arrangements or respite care to enable a parent leaving domestic violence to develop an appropriate safety plan and find accommodation, and to manage the process of separation.

In the context of the current political and funding environment caseworkers need to widen the orientation of their assessments to consider the systemic issue of whether parents have adequate access to resources including housing, legal advice and specific domestic violence services. Community Services assessments will increasingly need to

determine whether caseworker concerns derive from a lack of parental willingness or a lack of resources available to parents in their situation. Such information would provide the Children's Court with greater understanding about the realistic options available to parents who have experienced violence to address child maltreatment concerns.

8.5.3. Policy

Judicial officer participants in this study strongly expressed that their core duty in ensuring that court orders provide for the safety, welfare and well-being of children is dependent on the people who know and work closest with children. The findings from this study suggest a lack of inclusion of evidence from non-government agencies relating to their expertise in working with families experiencing domestic violence in addition to their role in proposed long term plans for the child. Partnerships between Community Services and NGOs in the out-of-home care sector can offer the Children's Court vital information and assessment through NGO caseworkers who are working with families. Involvement of NGO workers can be incorporated into early stages of proceedings, where the Children's Court is considering either removal decisions and/or the realistic possibility of restoration. Information provided by NGO workers can also assist in the later stages of court Hearings where focus is on long-term outcomes such as care plans and contact, given that they are likely to be implicated in the care plan.

A formalised process is needed for the inclusion of evidence from NGO workers in court proceedings. This could include a requirement for a statement from the NGO who is nominated to carry long-term casework responsibility, either as a separate document or attached to a care plan. An alternative avenue for the inclusion of NGO's in court proceedings could be including NGO workers as witnesses during Hearings to allow their testimony regarding any risk concerns, and views on current and proposed arrangements for the child. Testimony or written statement from the proposed long-

term NGO would place the Children's Court in an improved position to meet permanency-planning guidelines.

A further consideration for the Children's Court in relation to decision-making procedure, relate to the challenges in the implementation of dispute resolution conferencing, in the context of domestic violence. Court registrars with mediation responsibilities, as well as the solicitors involved in these conferences, need advice and training in managing the specific dynamics of relationships affected by domestic violence. For instance, awareness that the use of male and female 'co-facilitators', or allowing additional support people present, may be required to ensure safe and effective participation from both parents. An additional consideration in the use of dispute resolution conferences in matters involving domestic violence is the capacity of workers and parents to implement realistic care plans. All professionals involved in the negotiation and development of care plans need awareness of the available housing and counselling services for victims of violence, as well as of the challenges of parenting post separation. The inclusion of such information, as part of dispute resolution conferences where care plans are tabled for discussion, would allow for the development of realistic and meaningful care plans for the consideration of the Children's Court.

8.5.4. Research

The present study has considered the context of the specialist work of the Children's Court care and protection jurisdiction through examination of the specific language and discourses professional stakeholders use to describe domestic violence as a specific risk factor for children. The case study approach to both the execution of the research and analysis has centred on the need to produce a clear narrative to explain what decisions have been made in the cases examined, how they were made, and the broader significance of these decisions in creating a framework for understanding issues of child maltreatment and domestic violence. The present study follows a

tradition of Feminist scholarship that has endeavoured to highlight the underlying causes and gendered power relations present in social problems such as domestic violence.

According to Davies and Krane (2000) the patriarchal assumptions that govern the way female victims of domestic violence are perceived to prevail in many legal structures. In the care and protection jurisdiction, these definitions are combined with an imperative to ensure safety of children that necessarily separates the interest of a child from the interest of their parents, despite the fact that both child and parent may be victims that require support and legal recourse (Davies et al., 2007).

This study contributes to an area that is under researched, as there have been few prior studies addressing the area of children's court decision-making. There has been no specific examination of the handling of domestic violence allegations in the care and protection jurisdiction, despite existing research and policy addressing domestic violence within the family court setting and studies examining the challenges of children's court decision-making (Sheehan and Borowski, 2013, Campbell et al., 2003, Fernandez, 1996). The present study has sought to expand and combine these analyses to highlight the interactions between professional stakeholders in the court decision-making processes. This study highlights the continuing importance of the way decisions are made and the influences of the bureaucratic structure, as well as how individual knowledge and interpretation have an impact on decisions made in the Children's Court setting. The influences extend from initial investigation and preparation for proceedings to the final court orders and care plans that conclude proceedings.

Some limitations with this study provide avenues for further research. Firstly, the study sample was relatively small, confined to a selection of twenty archive matters and six observed matters. As with other such studies, the use of small samples limits claims to generalisability (Richards, 2014). However, as previously discussed in the Chapter Four

the benefit of the small sample size for this study was the ability to ensure depth of analysis through the multiple data collection methods including observation, file review and interviews. A second limitation for this study was that the primary focus was on matters involving court intervention and so other matters that involved alternative interventions for families, such as early intervention programs, were not reviewed. The findings from this study may therefore be extended by a comparison with decision-making in cases of domestic violence and child maltreatment that do not result in court intervention. Finally, this study did not contain follow up on the longer-term outcomes for children, or any changes that may have occurred to endorsed care plans at the conclusion of proceedings. While long-term outcomes were outside the scope of this study, analysis of the implementation of care plans and longer term outcomes for children who had had court intervention due to domestic violence would be useful to determine the longer-term impact of professional discourse and decisions relating to domestic violence and child protection. In addition the present study provides an avenue for further inquiry into court decision-making. For instance decisions relating to the use of Dispute Resolution Conferencing in court matters, and professional perspectives on its implementation and effectiveness are potential areas of further inquiry.

A specific challenge in this study was that court intervention is currently occurring in an environment of reform and characterised by a high level of ambiguity in relation to assessment and intervention. Matters heard in the Children's Court which are included in this study date from 2009 to 2012 during the period following the 2008 Wood Special Commission of Inquiry in New South Wales, when its recommendations were being considered and enacted in the development of the policy reforms known as 'Keep Them Safe' in 2009 (FACS; 2012), 'A Safe Home For Life' (FACS,2013b, FACS, 2012b) and 'It Stops Here' (FAC,2014). Thus, much of the reform taking place was unable to be analysed in this study. Particular areas for further analysis relating to child protection interventions addressing domestic violence include how the 'It Stops Here'

(FACs, 2014) model for joint work in domestic violence cases affects caseworker assessment and work with families. Future research in this area will be important as the Children's Court is likely to deal with an increasing number containing references to domestic violence. It is hoped that this study will encourage further review of court decision-making about child protection and domestic violence.

8.6 Conclusion

The impetus for this study was the researcher's observation that children like Meena, and their mothers, faced unique challenges due to their experiences of domestic violence and in responses to their situation by various professionals. During the period of this study the significance of professional discourse relating to domestic violence has increased, as growing public attention and government response to the issue will continue to mean that a greater number of children such as Meena are likely to come to the attention of the court. The major goal of this research was to explore how professionals understand domestic violence as a child maltreatment concern, and how this understanding is incorporated into the court process. This study has demonstrated that professionals use key discourses of risk, compliance, insight and safety to interpret the impact domestic violence has on children, and to explain how parenting is navigated in the context of violent relationships. Such discourse is key to the court's evaluation of evidence and to the prominence given to analysis of the impact of domestic violence on children in the plans that are endorsed to ensure their safety. This study has demonstrated that, in order to verify and legitimise the experience of children and parent survivors of violence, there is a need for expansion of professional knowledge and practice in the assessment of domestic violence, which is used in care and protection proceedings. Such assessment is key to the court being able to understand and respond effectively to children such as Meena.

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Appendix One- Participant Information and Consent

UNSW



Approval No (HC11450)

THE UNIVERSITY OF NEW SOUTH WALES

PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM (PROFESSIONALS/PRACTITIONERS)

Domestic Violence, Child Protection and The NSW Children's Court Decision Making Process

You are invited to participate in a study of decision making in the NSW Children's Court in matters involving domestic violence. We, at the UNSW School of Social Science and International Studies hope to learn how the understanding of combined domestic violence and child abuse concerns effects decisions made at NSW Children's Court. You were selected as a possible participant in this study because of your professional involvement in a sample of current matters in the NSW Children's Court being observed as part of this project.

This research aims to contribute specifically to understanding within the legal and community sectors on key factors and influences in New South Wales Children's Court matters involving domestic violence and child abuse.

If you decide to participate, we will be provided with copies of the current case files involving the following matters you are involved in. Following our review of these files we will be arranging with you a suitable time to conduct a brief 30 minute follow up interview. The purpose of this interview/discussion will be to obtain your professional perspective on decision making processes in care proceedings at the NSW Children's Court and the handling of combined domestic violence and child protection concerns raised in NSW Children's Court. This interview will be recorded on audiotape and in writing for use in a PhD thesis. Your name and any identifying information will not be used in any publication of this research, and will be stored securely. We cannot and do not guarantee or promise that you will receive any benefits from this study.

Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission, except as required by law. If you give us your permission by signing this document, we plan to publish the results in a brief report on research findings will be provided to your supervisor and yourself and other participants from the NSW Children's Court, NSW Children's Court Clinic and NSW Department of Human Services. In any publication, information will be provided in such a way that you cannot be identified.

Complaints may be directed to the Ethics Secretariat, The University of New South Wales, SYDNEY 2052

AUSTRALIA (phone 9385 4234, fax 9385 6648, email ethics.sec@unsw.edu.au). Any complaint you make will be investigated promptly and you will be informed of the outcome.

If you do not wish to receive the research findings please contact Ms Nisha Prichard- n.prichard@student.unsw.edu.au, 0400391822

Your decision whether or not to participate will not prejudice your future relations with the University of New South Wales... If you decide to participate, you are free to withdraw your consent and to discontinue participation at any time without prejudice.

If you have any questions, please feel free to ask us. If you have any additional questions later please contact, **Ms Nisha Prichard-n.prichard@student.unsw.edu.au, 0400391822**

You will be given a copy of this form to keep.

THE UNIVERSITY OF NEW SOUTH WALES

PARTICIPANT INFORMATION STATEMENT AND CONSENT FORM
(continued)

Domestic Violence, Child Protection and The NSW Children's Court Decision Making Process

You are making a decision whether or not to participate. Your signature indicates that, having read the information provided above, you have decided to participate.

.....
Signature of Research Participant

.....
Signature of Witness

.....
(Please PRINT name)

.....
(Please PRINT name)

.....
Date

.....
Nature of Witness

REVOCATION OF CONSENT

Domestic Violence, Child Protection and The NSW Children's Court Decision Making Process

I hereby wish to **WITHDRAW** my consent to participate in the research proposal described above and understand that such withdrawal **WILL NOT** jeopardize any treatment or my relationship with The University of New South Wales,

.....
Signature

.....
Date

.....
Please PRINT Name

The section for Revocation of Consent should be forwarded to
Ms Nisha Prichard-n.prichard@student.unsw.edu.au, 0400391822

Appendix Two-Archive Matters

BALES

The Bales Matter involved an application for Parental Responsibility to the Minister involving one child under two years old. The application proceeded to Hearing as both parents denied the critical incident of the father being heavily intoxicated with his friend and both of them roughly handling the child, causing discomfort and distress. Upon police and Community Services reporting to the family home to follow up this incident, the mother refused to hand the child over and did not disclose her location for several days. Following further investigation, several other reports emerged concerning the father's intimidating and abusive behaviour. The mother denied the incidence of domestic violence in her response to this evidence. Historical file checks by caseworkers found that both parents were known to Community Services as children and that the mother was exposed to domestic violence. The Hearing resulted in a Supervision order for 12 months. Follow up reports provided by Community Services indicated that the family were doing well, and that there were no further alcohol issues or reports of violence. The child was observed by caseworkers to be healthy and meeting all developmental milestones. At the time of the last report the mother was pregnant with her second child and has been attending all necessary medical appointments.

CADEN

The Caden Matter involved an application to vary a previous order for supervision of children with Parental Responsibility to the Minister for three children under three years old. Key changes in circumstances for these children included allegations of domestic violence, parental mental health issues, and shared parenting capacity. The matter was finalised for all three children with parental responsibility granted to the proposed kinship carer until 18 years and additional shared Parental Responsibility to the Minister for contact and residence. Community Services' follow up reports indicate that the children had made significant progress in their health and behaviour and were receiving appropriate care and treatment.

JACOBS

The Jacobs matter involved a Section 90 application from the father to vary the care order in relation to contact of two children under ten years old. The key issue listed in Community Services' response to the application was that previous orders regarding contact have not been effective due to new allegations that children have placed at risk during contact visits. The matter proceeded to Hearing as the mother contested this claim and provided evidence indicating that Community Services' claim of risk did not involve her and that she was separated from the father and had been addressing previous issues. The previous presenting issues outlined by Community Services included ongoing violence in the presence of children as well as gambling and alcohol addictions. Police evidence offered in proceedings indicated the violence has continued and there have been several assaults post separation. The Hearing was finalised with Parental Responsibility granted to the Minister and endorsement of a care plan encompassing placement of the child with a kinship carer, and ongoing counselling. Follow up reports addressed concerns regarding further domestic violence incidents from the father, and indicated that the father had been incarcerated and therefore contact with him would be ceasing.

JAMISON

The Jamison matter was listed for an application for Parental Responsibility to the Minister for a child under ten years old. The matter proceeded to Hearing due to the mother's dispute of the proposed care plan. The care plan involved the placement of child with a kinship carer. The mother argued that this was not culturally appropriate or in keeping with Aboriginal placement principles within the current legislation as the proposed carer did not identify as Aboriginal and there were other placement options to be considered. Also in dispute was whether there was a realistic possibility of restoration due to mother's engagement with various services and undertaking domestic violence counselling. Several concerns were raised in Community Services' evidence including the complexity of family dynamics, the mother's ability to act protectively and reported breaches of an Apprehended Violence Order. Specific mention was made of the family's experience of intergenerational violence and statutory care and the impact on these experiences on the suitability of proposed carers. The outcome from these proceedings was a Final Order allocating Parental Responsibility to the Minister, with endorsement of a care plan that provided for a foster care placement.

JOHANSON

An application was made to the court for Parental Responsibility to the Minister for three children aged under ten years old. Prior to this application 17 risk of harm reports had been received by Community Services. These reports related to verbal abuse, domestic violence, lack of stable housing, and parental drug abuse. These allegations were denied by the father. Whilst caseworkers were conducting enquiries to follow up these reports an older child who was not the subject to these proceedings reported sexual abuse by the father involved in these proceedings, her step-father. Further affidavits from the caseworkers involved indicated that that the family refused to proceed with any charges or investigation into this assault, or to receive support for any reported issues. The children were placed in foster care following the mother's hospitalisation during a drug induced psychotic episode. The orders granted at the conclusion of proceedings allocated Parental Responsibility to the Minister until 18 years. Follow up reports provided by Community Services suggest that contact arrangements in the care plan will need to be reduced as both parents are not attending contact visits or communicating with caseworkers.

JOHNS

This matter was listed for application for Parental Responsibility to the Minister until 18 years of age for one child under 15 years old. Supporting affidavits provided by caseworkers with the application initiating proceedings noted that 30 risk of harm reports were received by Community Services regarding this child. The application lists the reported issues as domestic violence, drug use by carers, emotional state of carer, physical harm, inadequate shelter, inadequate supervision and alcohol use. A critical incident prompting Community Services' application was described where an alleged physical assault by the father forced the child to run to the mother's home from the father's home. The court orders issued at the end of these proceedings granted full Parental Responsibility to the Minister. The care plan contained provisions for the child to remain in the care of the mother with contact with the father to occur regularly, subject to the child's wishes.

JOHNSON

This matter was listed as an application for Parental Responsibility to the Minister for two children under two years old. The key areas of concern were exposure of the children to drug use, violence and inadequate supervision, the young age of parents and the current status of their relationship. Caseworkers mentioned the parents' lack of engagement with

services, including domestic violence counselling, in all affidavits. The issue in dispute during the Hearing was the suitability of father's cousins to act as carers due to their extensive involvement in the case and perceived bias towards the parents. The proceedings concluded with Final Orders allocating Parental Responsibility to the Minister, and foster care placement for the child. Follow up reports indicated that contact remained an unresolved issue as the mother was not attending the visits.

JULIAN

This matter was listed an application to vary previous orders granting full Parental Responsibility to the Minister for a child under ten years old. The application was prompted by allegations of abuse experienced by the child whilst in a kinship care placement, with the carer relinquishing care to the mother. Community Services were unable to substantiate three risk of harm reports received over a five year period the child spent in care. Records provided from previous proceedings indicate that previous caseworker assessments identified concerns relating to risk of physical harm, risk of psychological harm, and domestic violence. The orders granted at the conclusion of these proceedings granted Parental Responsibility to the Minister until 18 years, and an endorsed care plan restoring the child to the mother.

KANE

This matter was listed as an application to allocate Parental Responsibility to the Minister for five children under 15 years. The caseworker affidavit provided listed 15 risk of harm reports received prior to the date of court application. These reports related to domestic violence, alleged alcohol and drug use, risk of psychological harm, risk of sexual harm and neglect. These reports included reference to a critical incident of domestic violence where it was alleged the father was aggressive to the mother and caused extensive property damage, and made threats to extended family members. Police records indicated an extensive history of the family relating to assault, property damage, and theft and drug abuse. At the conclusion of proceedings a four month supervision period was granted, and the children placed solely in the care of the mother. Follow up reports provided to the court contain caseworker assessment that the mother has demonstrated an appropriate level of care for the children, with the children having all basic physical and medical needs met, and recommended further support be provided regarding the children's educational needs.

KIM

This matter was listed as a care application, with Community Services seeking Parental Responsibility to the Minister until 18 years for three children under 15 years. Historical information provided by caseworkers in their affidavits indicated that 12 risk of harm reports were received over a four year period. These reports pertained to issues of alcohol abuse by carer, exposure to domestic violence, physical abuse, psychological mistreatment and medical treatment not provided. Further to this material, caseworkers provided an assessment that the children were at immediate risk of serious harm at the time of their removal due to recent serious violent incidents between their step-father and mother, and the mother refusing to take action against repeat breaches of an existing AVO protecting her and the children. The children were subsequently placed with their birth father. The orders granted at the conclusion of proceedings allocated full Parental Responsibility to the father.

LASSONI

The matter was listed as an application to vary previous orders due to breach of undertakings by the mother for four children under 15 years old. The major concern under discussion was the resumption of the alleged previously violent relationship between the parents. The mother had undertakings by allowing unsupervised contact with the children and amending the AVO without informing Community Services. Additional concerns were that the children had been coached into being uncooperative with caseworkers and rehearsing statements asking for their father to return to live with them. At the conclusion of proceedings an interim order allocated Parental Responsibility to the Minister for twelve months shared with the mother, and the children to remain with the mother. No follow up reports were provided for this matter.

MAAN

This matter was listed as an application for care order, with Community Services requesting Parental Responsibility to the Minister until 18 years for two children under ten years old. The application indicates that seven risk of harm reports regarding domestic violence, lack of age appropriate supervision, failure to meet basic needs, (i.e. food) , parental unmanaged mental health issues, and risk of physical and psychological harm.

Affidavits submitted by caseworkers stated that the decision to remove the children into care was made following interviews with both the children and mother where caseworkers assessed that there was serious mental health concerns regarding the mother and that she was unable to address the violence occurring from the father who was still regularly residing with her and the children despite her attempts to separate from him. During proceedings a number of conflicting parenting assessments were submitted to the court from the court clinic and psychiatrist treating the mother. The recommendations of the assessment reports varied from recommending the children be restored to the mother, to recommending the children be placed permanently in kinship care. Final orders granted allocated Parental Responsibility to the Minister and endorsement of an amended care plan not recommending restoration to the mother but long term kinship care placement. Follow up reports provided to the court stated that the children have remained in their kinship care placement but that this has been strained by ongoing threats and harassment by the mother. Community Services submitted that the caseworkers have responded to these concerns by seeking an AVO protecting the children and kinship carers from the mother, and that all contact visits with mother had been ceased until further notice.

MARKUS

This matter was listed as a care application, with Community Services seeking Parental Responsibility to the Minister until 18 years old for one child under five years old. In their supporting affidavits caseworkers outlined ten risk of harm reports received over three years. These reports began prior to the child's birth, with concerns reported regarding domestic violence between the parents and the emotional and psychiatric state of the mother. These reports contained allegations that the mother was suicidal and non-compliant with medication, that both parents use drugs, there is inadequate parenting and a failure to meet basic needs of the child, including stable accommodation. The child was removed following a critical incident whereby the mother needed to be transported to hospital and placed under psychiatric care. The father in these proceedings disputed caseworker assessment that there was no realistic possibility of restoration, and also the proposed care and contact arrangements. This resulted in a revised care plan with an increased contact schedule to be supervised by a relative. Final orders granted full Parental Responsibility to the Minister until 18 years, with the child placed in a long term foster care placement. Follow up reports provided to the court indicate that the placement is stable

and that the contact schedule needs to be revised as the mother has not been contactable despite the caseworkers attempts.

ROSS

This matter was listed as an application seeking full Parental Responsibility to the Minister for one child under one year old. Community services had received seven risk of harm reports over a period of three months relating to domestic violence, lack of pre-natal care for the mother, mother's alcohol and drug use and housing instability. At the time the child was born Community Services was asked to speak with the mother as she had mentioned she was considering placing the child for adoption due to her circumstances and fears that the father may try to resume contact and harm the child. The mother subsequently retracted this statement and the child was discharged from hospital into foster care as the mother was not able to provide a consistent address for caseworkers to conduct an assessment. During the proceedings the mother was not contactable, and a relative overseas made enquiries to be assessed as a potential carer, which was dismissed due to lack of information available. The matter concluded with final orders allocating Parental Responsibility to the Minister until 18 years, and the child placed in long term foster care. Follow up reports provided to the court indicate that the mother and relatives have had no further communication with caseworkers and that they were continuing attempts to locate them to discuss adoption arrangements for the child.

RUBBAR

This matter was listed as application for interim Parental Responsibility to the Minister with supervision orders for two children under ten years old. The major concerns detailed in Community Services' evidence included the impact of witnessing episodes of domestic violence and mirroring abusive behaviours. Concerns were also raised that the children experienced direct physical abuse in trying to protect their mother. The care plan provided by Community Services detailed support services for the mother in relation to parenting and domestic violence counselling as well as therapeutic intervention for the children. This matter was finalised with an order allocating Parental Responsibility to be shared between the minister and the mother for a period of nine months, followed by a twelve month period of supervision.

TAYLOR

This application was listed as a section 90 application to vary an existing care order for one young person under 18 years old. Previous court orders granted a six month period of Parental Responsibility to the Minister, followed by sole Parental Responsibility allocated to a carer previously known to the child. In the application to vary orders caseworkers submitted that this carer was no longer prepared to take on Parental Responsibility for the child and that the child had placed themselves several times with various relatives and was requesting to remain in the care of one relative. The child made several allegations against the carer that was identified in previous proceedings and caseworkers were unable to substantiate the allegations. Final orders granted Parental Responsibility to the Minister until 18 years with arrangements made for placement with a new carer identified by the child, with the child to have contact with relatives according to their wishes and a safety plan arranged with caseworkers to ensure that the child did not have to spend time with anyone who had previously been identified as a risk.

THONKINS

This matter was listed as a care application with Community Services seeking Parental Responsibility to a kinship carer for two children under ten years old. The application by caseworkers contained historical information of 20 risk of harm reports received regarding risk of harm to the children over a seven year period. These reports are regarding the mental health status of the mother and other family members residing with the children, neglect and failure to meet basic needs, parental drug use, and domestic violence. The child was taken into care following a home visit by caseworkers where it was observed the child had been left with adults who were known to be violent and inappropriate carers. Final orders granted Parental Responsibility to a kinship carer. Follow up reports indicate the children are settled and a contact schedule had been established, with caseworkers attempting to work with mother to enable her to attend visits.

TISSALA

The matter was listed for application for final orders for Parental Responsibility to the Minister for a child aged under one year old. While previous interim orders and a restoration plan had been agreed, Community Services amended the care plan due to concerns regarding the mother's commitment to the restoration plan, specifically in terms of maintaining the contact schedule and engaging with services. Evidence was provided from counselling services and the mother regarding her experiences of domestic violence, ongoing trauma associated with childhood sexual abuse, and attachment issues with her child. At the conclusion of this matter Final Orders granted Parental Responsibility to the Minister until 18 years of age, and the child was placed with kinship carers. Follow up reports indicate the mother has not met requirements for restoration and the kinship placement would continue.

Appendix Three-Observed Matters

MATTER OF BUCKTHORP

The Matter of Buckthorp involved one child, newborn. This child is the sixth for the mother. The five older siblings of this child had previously been assumed into care, and placed either with foster carers or relatives. The application from Community Services to initiate proceedings for the child indicated that concerns for the child related to historical information regarding the natural mother's care of the older children, and ongoing behaviours, including violent relationships and drug use. In this application Community Services indicated that there was the high likelihood of the child's exposure to domestic violence whilst the parents remained living together. The recent concerns listed by Community Services in the application involved allegations of domestic violence from the father towards the mother, and the parents breaching AVO conditions (protecting both the mother and the child), by choosing to resume living together. Reports to Community Services, summarised in the application, also indicated ongoing serious drug dependency from both parents, and a failure to seek necessary medical attention. Community Services classified the mother's lack of ante-natal appointment attendance, as well as the father's refusal to take medication to treat epilepsy, as evidence of failure to seek necessary medical attention. Allegations regarding the mother's current drug use were not able to be validated by an external source. The hospital the mother attended for the birth of the child, did not conduct any drug screening on either the mother or the child at the time of the birth.

The mother was described in the application as not having addressed previous concerns, and lacking insight into these problems the previous child of the mother had been assumed into care three years prior to the birth of the child who was the subject of these current proceedings. The mother's situation was categorised in the application as unique, in that there is a long history of denial of drug use, and she had yet to acknowledge any problems to any service that was working with her.

MATTER OF CHREA

The Matter of Chrea involved two children, under 15 years old. The children were originally reported at risk of significant harm in 2012, as the youngest, at the time three years old, was found wandering unsupervised at a local train station. Further reports summarised by Community Services in the application also highlighted concerns regarding lack of supervision for the older child before and after school, their escalating violent behaviour at school, and disclosures of sexual abuse (previously substantiated as part of a police investigation). When interviewed by Community Services caseworkers, the older sibling disclosed witnessing frequent physical violence from the younger child's father towards their mother, that 'mum is always upset and sleepy', and that their house frequently was full of unknown younger men. When interviewed about these disclosures the mother sought to minimise the risk experienced by the children, and she maintained that the youngest child's father was a 'good dad'.

This matter had two prior Hearings, with final orders not able to be made due to several outstanding issues. Firstly, placement of the children was unresolved, as a sibling placement together was unable to be found, and further details were sought from the Out-of-home Care agency responsible as to efforts underway to address this. Secondly, the youngest child's father had originally maintained that there was a realistic possibility of restoration, but had subsequently disengaged from contact, working with Community Services, and court proceedings. The mother also sought leave to withdraw her earlier concession of no realistic possibility of restoration. At the second Hearing both parents conceded no realistic possibility of restoration, and a finding was made that the children were in need of care and protection. Issues outstanding for final Hearing included a determination on the adequacy of permanency planning and also contact arrangements for the youngest child's siblings.

MATTER OF HANNA

The Matter of Hanna involved two children under ten years old. The children were assumed into care following ongoing reports relating to domestic violence between the mother and the father of the youngest child. The application initiating these proceedings indicated that the primary concern for Community Services was the mother's ongoing experience of domestic violence from several different partners, including the fathers of both children and her most recent boyfriend.

Additional risk of harm issues provided in the application indicated that there was a long history of concerns for the children and an older half-brother. These included alcohol use and mental health concerns. Recent reports indicated that there serious concerns regarding an incident of sexual assault of the youngest child by the mother's most recent boyfriend. Additional risk factors mentioned included failure to meet educational needs (the older child was noted as having long periods of unexplained absences) and unwillingness to engage with support services. Concerns were also raised during the early stages of proceedings regarding the current status of the relationship between the mother and the father of the second child, how recently it had ended, and whether sufficient time had passed for this issue to be considered as addressed by the mother.

MATTER OF JANT

The Matter of Jant involved four children under fifteen years old, with the same mother and four different fathers. Reports of domestic violence from the fathers of the second and third child toward the natural mother were made by both the mother and external reporters. In addition to the ongoing of presence of violence for the children, reports to Community Services indicated that the mother had long term drug and alcohol issues, and regular periods of homelessness.

The removal of the children from the mother's care was prompted by concerns from Community Services regarding the natural mother experiencing drug-induced psychotic episodes and using drugs whilst pregnant with the youngest child. Concerns also existed regarding the maternal grandparents, as the mother was temporarily residing with them. Concerns in relation to this arrangement were due to reports regarding past and recent domestic violence from the grandfather towards the grandmother, the unhygienic environment in the home, and ongoing conflict between the family and various local residents. The fathers of these children had varying levels of contact and involvement in the care of their children. Some of the fathers were engaged in proceedings and others did not attend at all and had no contact with Community Services.

MATTER OF MILLER

The Matter of Miller involved one child, under four, who had been placed with a kinship carer for approximately twelve months after experiencing ten prior placement changes, including two failed restoration attempts to the mother and one failed restoration attempt to the father. The issues of concern raised in the application included allegations of domestic violence from the father towards the mother, the ongoing continuation of their relationship, the mother's alcohol abuse, and her failure to provide adequate supervision and a reasonably safe and hygienic environment for the child. In the application initiating proceedings, evidence was submitted of a recent critical incident concerning violence from the father. Community Services received information that, while he had care of the child, he and the child had visited the mother, in breach of court order accepting undertakings not to let the child see the mother without Community Services' supervision. Both parents consumed alcohol and became involved in a dispute. The father became aggressive, assaulting the mother. The child witnessed this. The mother called police who attended and transported the child to the police station. Community Services found this incident to be a breach of previously signed undertakings from the parents and the kinship carer, as the kinship carer had care of the child at the time, and had allowed the parents unsupervised access.

Community Services initiated court proceedings seeking to remove the child from the kinship carer, on the grounds that the kinship carer lacked appropriate insight and protective abilities. Examples submitted in the application included: allowing regular phone calls between the mother and the child, allowing the mother to pick up the child from pre-school regularly, requesting the mother attend activities and querying the existing undertakings with the caseworker. References were also made in the application to the kinship carer having inappropriate conversations with the child regarding expectations that the child would be returned to the mother. Historical concerns were also raised regarding the kinship carer's parenting of her own children who have presented as adults with substance abuse and anger issues. Caseworkers provided testimony during proceedings that the historical concerns were relevant in their present assessment due to the potential impact of behaviour of the kinship carer on the child.

Community Services' application for parental responsibility indicated that they would seek an interim foster care placement for the child, with a view to permanent placement.

Evidence responding to Community Services' concerns, submitted by the parents and kinship carer, supported the child to remain with the kinship carer. References were made to a strong attachment from the child to the kinship carer. Caseworkers confirmed under cross examination that no risk of harm reports were received during the child's placement with the kinship carer, nor were any concerns raised about the standard of basic day-to-day care provided by the kinship carer. Both the mother and father indicated, in their written responses to Community Services evidence that they strongly wished for the child to remain with the kinship carer, until the mother is able, in the future, to complete further steps towards requesting restoration. The kinship carer is seeking permanent care of and responsibility for the child.

MATTER OF SUKAW

The Matter of Sukaw involved three children, under ten years old. The children were assumed into the care of Community Services following reports regarding specific risks posed while the children were in the care of the mother. The application to initiate proceedings detailed particular concerns from Community Services relating to the ongoing effect of the children's exposure to domestic violence that had occurred previously, whilst the mother was still in a relationship with the father. Evidence was provided by Community Services indicated the existence of a current AVO protecting the mother against the father.

Additional concerns, raised by Community Services in the application, related to the care provided by the mother. Concerns were raised regarding ongoing drug use and ongoing neglect issues, including unsafe housing, lack of supervision, access to the children by strangers known to be criminals or to have drug issues, and failing to seek medical support to address learning and developmental delays experienced by the children. The father was also deemed an unsuitable carer for the children, due to an ongoing pattern of domestic violence and anger issues, regular drug use, poor insight into his past behaviour, and lack of consistent care and interaction with the children.