



DAHLIA-19

DOMESTIC ABUSE:
Harnessing Learning Internationally under COVID-19

The National Covid-19 List: An Australian case study

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Introduction and case study rationale

In Australia it is widely recognised that domestic and family violence (DFV) is one of a complex range of issues affecting parents who come into contact with the family law system – and that it “may adversely affect their capacity to make decisions about parenting arrangements and about the safety of themselves and their children” (National Domestic and Family Violence Bench Book, 2021, n.p.).

Relatedly, the operation of the family law arena has been the subject of many reviews in Australia, particularly in terms of the ways in which these contested issues of child abuse and family violence should be addressed. In 2006, changes were made to family law and the services which surround separating families when the Australian government implemented changes to the *Family Law Act 1975* (Cth) through the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth).

Section 60A of the *Family Law Act* (Cth) confirmed that the best interests of the child need to be considered when making a parenting order. Primary consideration under s 60CC (2) highlighted the benefit to the child of having a meaningful relationship with both parents as well as the need to protect the child from physical or psychological harm, and from being subjected to, or exposed to, abuse, neglect or family violence. Following significant advocacy, particularly from domestic violence services, and further inquiries, it was established that the child’s safety was the primary consideration in cases where these two issues were in conflict.

While only a minority of separating couples file applications before what is now called the Federal Circuit and Family Court of Australia (FCFCoA), it has been argued that the culture of family law is established through the decisions and case law made in these courts (ANROWS, 2018). In 2020–21, the majority of cases before what was then called the Federal Circuit Court of Australia involved allegations of family violence (64% between November 2020 and June 2021) and considerable complexity (44%; Federal Circuit Court of Australia, 2021, p. 38).

In the months prior to the Covid-19 pandemic arriving in Australia, reform mechanisms were again underway in the family law arena. In addition to the new Notice of child abuse, family violence and risk¹ implemented in the second half of 2020, the “Small claims” property pilot (PPP500)² and the co-location of police and child welfare officials in family law registries,³ one such mechanism is the Lighthouse Project,⁴ which seeks to address the protection of vulnerable parties (including DFV victims and survivors) and children in family law proceedings. A further reform mechanism, announced in May 2021 but not directly related to the pandemic, is the training of court officials (judges, registrars and family consultants) by the Safe & Together Institute⁵ which, through the leadership of David Mandel, seeks to develop domestic and DFV-informed practice within organisations.

1. See <https://www.fcfcga.gov.au/fl/forms/notice-cafvor>.

2. See <https://www.fcfcga.gov.au/ppp500>

3. See <https://plan4womenssafety.dss.gov.au/initiative/co-location-of-state-and-territory-child-protection-and-other-officials-in-family-law-court-registries/>.

4. See <https://www.fcfcga.gov.au/fl/fv/lighthouse>

5. See <https://ivylawgroup.com.au/family-courts-introduce-new-family-violence-training-initiative/>.



Situated against this background of changes to the family law context is the National Covid-19 List – the focus of this case study. The Australian mapping report for the DAHLIA-19 study found that a major innovative change that took place in response to the Covid-19 pandemic was a rapid shift from face-to-face practice to tele-practice and online/working-from-home models (McKibbin et al., 2021). The National Covid-19 List, established on 29 April 2020 by the then Family Court of Australia and Federal Circuit Court of Australia,⁶ represents a landmark shift in how urgent family law matters are addressed and progressed, with the transition to an online model giving rise to a new possibility of managing these matters centrally. This critical shift allowed the Courts, for the first time, to allocate resources where they were required nationally, and not be beholden to allocations per state and territory.

Further issues that informed the choice of the National Covid-19 List included that it was reported on positively by key informants from the first half of the DAHLIA-19 study; it was not a development which was widely known within the DFV sector; and the team wished to understand more about the details which could be of interest beyond Australia. While the list is not DFV-specific, the early reports are that many of the cases that are slated for a priority response are cases which involve DFV.

Background, evidence and consultations

The National Covid-19 List is a court list dedicated to addressing urgent family law disputes arising due to the Covid-19 pandemic. Examples of matters addressed by the List include:

- an escalation or increase in risk of family violence
- suspension of parenting orders due to a family violence order
- disputes about children being vaccinated against Covid-19
- parties being unable to fulfil parenting obligations due to testing positive to Covid-19
- travel arrangements or border restrictions impacting children travelling between residences
- Covid-19-related employment that impacts parenting arrangements or compliance with orders (FCFCoA, 2021a).

The List was designed to operate online, in response to the extensive lockdowns in place across Australia early in the pandemic, and as part of a greater shift to online models: applications are filed electronically, and are dealt with in one of three ways:

- an electronic court hearing before a judge
- an electronic court hearing before a senior judicial registrar or judicial registrar
- electronic dispute resolution, mediation or conciliation (where appropriate) with a judicial registrar – and with a court child expert in certain circumstances (FCFCoA, 2021a).

The List was established in response to a 39 per cent increase in the number of urgent applications filed in the Family Court of Australia, and a 23 per cent increase

6. On 1 September 2021, these two courts were amalgamated into the Federal Circuit and Family Court of Australia.

in the same in the Federal Circuit Court of Australia, over a four-week period in the beginning of the pandemic (March to April 2020; Family Court of Australia & Federal Circuit Court of Australia, 2020, April 26). Urgent applications increased by 181 per cent in the Family Court, and 96 per cent in the Federal Circuit Court, between March and December 2020 (Interview 2, FCFCoA representative).

Statistical analysis processes taking place within the Courts identified an increase in the number of urgent applications filed since the pandemic began. At the same time, consultations were underway with key external stakeholders – including Women’s Legal Services in New South Wales, Queensland and Victoria, and Women’s Safety NSW – who notified the Courts that they were receiving an increasing number of enquiries concerning Covid-19 and parenting matters:

What happened on our DV helpline when we went into lockdown was our calls changed to be women seeking assistance on longstanding child contact arrangements that were disintegrating in the Covid environment. They sought our assistance because they were concerned about their children, and their children’s health. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL)

The Courts initially advised family dispute resolution in accordance with s 60I of the *Family Law Act 1975*, unless one of the exemptions applied, but

for our clients – they can’t work it out, they haven’t got someone reasonable on the other side. One of our clients stopped contact because their kid had an autoimmune issue. She must have sent him a note. And then he came through the door and bashed her up. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL)

There were also concerns reported by the service system about Covid-19 being “weaponised” by perpetrators, and the Court response provided clear messages that contradicted the stories perpetrators were telling:

It sent the message that the Court is still open. Perpetrators were telling women that the court is shut, you have nowhere to go. But this sent the opposite message. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL)

The crisis also potentially was an opportunity created through an urgent and online response.

By opening up courts and also making it a quicker turnaround, you’re probably going to get a different client base coming through, probably there’ll be more clients who are at greater risk. Because the inaccessibility of the court usually pushes those clients out. They don’t have time to get there. They can’t go through the number of hoops that have to be jumped through to get into there. So in all likelihood, you possibly will be dealing with more dangerous situations. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL)



In summary, the National Covid-19 List provided a response in a crisis that, while not singularly directed at DFV, enabled increased visibility of and faster response to situations involving DFV connected to the Covid-19 pandemic.

Implementation and funding

The National Covid-19 List is a new initiative, established by the Chief Justice in response to the Covid-19 pandemic and the resulting rapid increase in urgent applications.⁷

The List is for family law matters – urgent or of a priority nature – where applications have been filed as a direct result of, or with a significant connection to, the Covid-19 pandemic. Individuals can file on their own behalf in the List, with applications pertaining to matters including, for example, those involving an escalation or increase in risk of family violence stemming from the Covid-19 pandemic, and suspension of parenting orders due to a family violence order (FCFCoA, 2021a).

It was initially established without additional funding – made possible through the temporary reallocation of existing resources – but it received funding of \$2.5 million over two years (up until 30 June 2022), for four registrars and two registrar support staff, through Australia’s Economic Recovery Plan (Commonwealth of Australia, 2020, p. 55).

National Covid-19 List registrars administer the List. If an application meets the criteria (FCFCoA, 2021a), it is given a first return date before a judicial registrar, a senior judicial registrar or a judge either:

- within three business days of being considered, if assessed as urgent
- within seven business days, if assessed as priority but not urgent.

To meet the criteria, an application:

- must be filed as a direct result of the Covid-19 pandemic (or, if not as a direct result, the application must have a significant connection to the pandemic)
- must relate to a matter that is urgent or of a priority nature
- must be accompanied by an affidavit
- must relate to a matter that can be addressed using electronic means (e.g. telephone, video link; FCFCoA, 2021a).

If safe to have done so, reasonable attempts to resolve the matter before filing in the List must have been made (FCFCoA, 2021a).

The electronic operation of the List, in terms of both applications and hearings, enables national resources to be distributed most effectively.

You could file in Brisbane but get a judge in Tasmania – they could shuffle resources so you weren’t limited by local resourcing. And people away from the eastern seaboard had access that they’d just never had before. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL)

⁷ Note: litigants could previously apply to have matters listed urgently; the new National Covid-19 List allowed these applications to be managed nationally – using national resources – and thus heard as quickly as possible.

Interaction with other sectors

Before the List was established, the Family Court and the Federal Circuit Court investigated whether a similar structure was in place, either nationally or internationally, but did not find any comparable structures to aid in the modelling for the List (Interview 2, FCFCoA representative).

However, the current Federal Circuit and Family Court of Australia works with legal actors, legal aid agencies and child welfare agencies to ensure the effective operation and take-up of the List: the Chief Justice and other Court officials meet regularly with stakeholders, and remind practitioners in all states and territories about the benefits and availability of the List (Interview 2, FCFCoA representative).

Funding and continuation beyond Covid-19

At the time of writing (March 2022) it is unclear whether the initiative will continue beyond the Covid-19 pandemic. Funding is scheduled to run out on 30 June 2022 (Interview 2, FCFCoA representative).





Case study methods

The case study method developed by Yin (2009) emphasises that it is an iterative rather than a linear process. It involves planning, design, preparation, collection of data, analysis of data and the sharing or writing up of the data. The case study method creates visibility of the “messy” process of research, whereby research questions, new informants, examples and documentation come to light across the life of the study.

Data collection

The case study involved semi-structured interviews (N=2), analysis of media reports, public websites, and documentary analysis of written response to questions.

The semi-structured interviews (Braun & Clarke, 2019) involved key informants with specific knowledge of the history, development and implementation of the initiative. These were interviews of up to one hour and were recorded prior to transcript analysis. One key informant, rather than providing an interview, chose to respond in written detail to the questions provided through the interview schedule.

Further sources of information were taken from an analysis of selected websites and media as the team searched for further evidence and information.

Ethics

The ethics process established for the DAHLIA-19 project through University of Melbourne and University of Central Lancashire provided the ethical framework for the study.

Limitations

The List has not yet been evaluated and hence there is little public evidence of effectiveness. Covid-19 provided a crisis to which the FCFCoA responded. While there is formal feedback provided on a regular basis to the Chief Justice to ensure that the List is responding to its original goals, it has not undergone a process of formal evaluation.

Evidence

Reach, acceptability and impact

No formal report assessing the impact of the List has yet been prepared, but private internal briefings – to monitor the operation of the List and ensure appropriate, ongoing resourcing – are provided to the Chief Justice and the CEO of the FCFCoA (Interview 2, FCFCoA representative).

A communique, dated May 8 2020 and addressed to Geoff Dickson QC (President, Family Law Bar Association) from the Hon Will Alstergren (Chief Justice of the FCoA and Chief Judge of the FCCoA), noted that the Covid-19 List had been a “great success” in its first week, and that 91 per cent of applications filed had met the criteria and were accepted into the List (Alstergren, 2020, May 8).

In December 2020, the FCoA and the FCCoA announced the expansion of the Covid-19 List to provide for additional senior registrar and registrar resources, and reported that that Courts had received in excess of 430 applications for the List since the initiative began (in April of that year; FCoA & FCCoA, 2020). Justice Alstergren said:

We are preparing for the likely increase of urgent applications following the holiday period which is a time that often places additional emotional and financial stress on families ... The Courts have demonstrated this year that they have the ability to respond to a changing environment and to deal with these types of matters quickly and on a national basis. (FCOA & FCCOA, 2020)

Barriers encountered

An interview with an FCFCoA representative indicated that the primary challenge facing the establishment of the List was the unpredictability of the developing Covid-19 pandemic, and the different impacts with which it was felt in different states and territories. There was also a need to reallocate resources in support of the operation of the List, but this interviewee noted that “these impediments were successfully negotiated” (Interview 2, FCFCoA representative).

Recommendations for strengthening/adapting initiative

The National Covid-19 List requires adequate resourcing – in particular, funding registrars, registry staff and registrar support staff, and ensuring the availability of judges to hear applications when necessary – to provide the service of quickly identifying and listing urgent matters while managing the unpredictability of the pandemic (including restrictions associated with public health orders enacted in response to its spread; Interview 2, FCFCoA representative).

Future promise

Transferability to other contexts

The Covid-19 List is part of the Courts' case management pathway, and "the successful nature of the national and electronic Covid-19 List has led to the implementation of other national lists such as the National Contravention List" (Interview 2, FCFCoA representative). The National Contravention List is designed to address alleged breaches of court orders; like the Covid-19 List, individuals who allege a breach of court orders can file in it on their own behalf, and it operates electronically across all Australian jurisdictions.⁸

There is also a suggestion that elements of the model could be transferred to state contexts, and rural and remote areas. The legal services professional interviewed acknowledged that while the federal courts had the technology required to successfully and rapidly make the shift online, this is not the case in state courts. They continued:

But you can see how that model of doing something, like a specialist court using technology e.g. state specialist DV courts – maybe they should be thinking about investing in technology to open up the specialist nature of those courts to other geographical zones. So it gives ideas ... I think for so long there's been an impediment to doing things remotely because e.g. what about it not being the most pure form of evidence? But then ... what about people in rural areas who have no access at all? Where is that line drawn in terms of a level of access that is sort of good enough, vs. absolutely nothing, and being left to their own devices to work these things out? In places with geography like Australia that complete and utter lack of access needs to be factored in in how we go forward. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL)

Potential to be used in future pandemics/crises and to be embedded in policy/practice in the long term

As mentioned above, the long-term status of the initiative is unclear. Until funding is scheduled to cease in June 2022, the Court will monitor the need for the continuation of the List, noting that its success has seen it used as a model for other national and electronic lists (for example, the National Contravention List). In November 2021, a court official noted:

The continuity of the Covid-19 Lists is yet to be determined in the context of the ever-changing Covid-19 landscape. The Court is committed to ensuring that a specialist method of hearing is available for matters involving specialist criteria, such as Covid-19-related issues, and we will continue to actively consider the most effective way to enable this both during the funded period and post-funding.

(INTERVIEW 2, FCFCOA REPRESENTATIVE)

8. For further information, see <https://www.fcfcog.gov.au/national-contravention-list>

Learning for other sectors

At the point of writing, there is much yet to understand about the operation of the National Covid-19 List. Feedback from children, women and men as well as service providers and legal professionals will be critical to understanding the potential of the List. There are a number of issues that are not clear at this point including the extent to which children impacted by DFV are prioritised; how perpetrators of violence are impacted; the experiences of children and adult survivors of DFV; and the views of practitioners engaged with the List.

Stakeholder consultation is crucial - including listening to experts and opening up dialogue with external stakeholders. Through the consultation process:

We got credibility, it established us as relevant stakeholders for the Court – not just private lawyers and law societies. I told them that if you open up, you’re going to get cases where women are in much more danger, because they’re going to be able to get in there quickly. And it seems like they are preparing for that – they’re now talking about safety. But you have to start somewhere and have an openness to bringing expertise in. (INTERVIEW 1, LEGAL SERVICES PROFESSIONAL, EMPHASIS ADDED)

The ability of an online service to distribute work to where there is capacity has not necessarily been used extensively in Australia. The demand during a crisis and the rapid shift to tele-practice and other online services has brought about a rapid change in the DFV sector as well as other areas (McKibbin et al., 2021). A “snapback” to pre-Covid-19 working arrangements would fail to capitalise on opportunities demonstrated in the recalibrating of the service system, with the National Covid-19 List a good example.

The List does not stand alone. The implementation of new risk assessment processes (the Lighthouse Project) and DFV-informed training and education for court personnel highlights the need for a broader systems approach to change. Change in one area needs to be supported by change in another if there are not to be unintended consequences (Ison & Straw, 2020).

A crisis creates threat, harm and vulnerability, but can also be an opportunity for positive change. The introduction of the National Covid-19 List demonstrated that when a group of stakeholders (in this instance from inside the Courts and CEOs from the DFV sector) were ready with an innovative plan, change that can often take years was able to be rapidly instituted. There are lessons for other sectors in “seizing a crisis” to create much-needed change.



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9. This report is also available through the DAHLIA-19 website: <https://www.dahlia19study.com/reports>

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