

## Impact of domestic and family violence on children and parenting capacity - Key Literature

### Australian Law Reform Commission and New South Wales Law Reform Commission, [Family Violence – A National Legal Response \(ALRC Report 114\) 2010](#).

This report presents a comprehensive review of legal responses to Family Violence in Australia. The commissions received many submissions. The effect of family violence and parenting arrangements is discussed at [15.11] (p 675). The report notes that –

- > ‘Spousal abuse may not end with separation—in particular, abusive controlling violence may escalate after separation.
- > People who use family violence may be deficient or even abusive parents and poor role models for their children. They may also undermine their victims’ parenting role.
- > Victims of family violence may find parenting difficult, as a result of abuse, poor self-esteem and the stress of separation and court proceedings. Time, protection and support may be required to re-establish their parenting role. A victim’s behaviour under the stress of an abusive relationship or separation should not prejudice parenting decisions.’

### Bagshaw, Dale et al, [‘The effect of family violence on post-separation parenting arrangements The experiences and views of children and adults from families who separated post-1995 and post-2006’ \[2011\] \(86\) Family Matters 49](#).

This article reports key findings of two national online surveys with adults and children in relation to post-separation parenting, which formed part of the larger research. Adult respondents described how family violence affected their parenting arrangements and their use of family services to assist with parenting decisions. There were gender differences in the reported experiences of and responses to violence, with women reporting more serious forms of violence than men. Many adults felt dissatisfied with service providers’ acknowledgement and appreciation of the impact of family violence on adult and child victims. Adults were most dissatisfied with services for decision-making regarding planning for their children’s care post-separation. Their concern for their children’s safety was supported by children’s own reports. The study raised many questions about how well family law policies, as expressed in the legislation and implemented in the national service system, respond to violence in families such as those who were involved in this research (p 49).

**Bromfield, Leah, et al, 'Issues for the Safety and Wellbeing of Children in Families with Multiple and Complex Problems: The Co-Occurrence of Domestic Violence, Parental Substance Misuse and Mental Health Problems' (National Child Protection Clearinghouse Issues Paper No 33, Australian Institute of Family Studies, December 2010).**

This paper investigates the separate impacts of parental substance misuse, domestic violence and parental mental health problems. It presents evidence regarding the extent to which these problems co-occur and a discussion of the wider context of exclusion and disadvantage, its causes and its consequences. Finally, it provides an overview of research and theory for working with families with multiple and complex problems. This literature review cites statistics from a US study, the statistics were collected from household census data from over 20,000 households (G. Fox and M. Benson 'Violent men, bad dads? Fathering profiles of men involved in intimate partner violence.' In R. Day & M. Lamb (Eds.), *Conceptualizing and measuring father involvement*. (Mahwah, New Jersey: Lawrence Erlbaum Associates Publishers, 2004)):

- > 37% of children were accidentally hurt during domestic violence;
- > 26% of children were intentionally hurt during domestic violence;
- > 49% of mothers were hurt protecting children;
- > 47% of perpetrators used the child as pawn to hurt mothers;
- > 39% of perpetrators hurt mothers as punishment for children's acts;
- > 23% of perpetrators blamed mothers for perpetrators' own excessive punishment of children.

**Carson, Rachel, Edward Dunstan, Jessie Dunstan and Dinika Roopani, *Children and young people: Family law system experiences and needs - Final Report 2018* (Research Report – June 2018, Australian Institute of Family Studies).**

This report sets out findings from the Children and Young People in Separated Families: Family Law System Experiences and Needs project, a qualitative study commissioned and funded by the Australian Government Attorney-General's Department (AGD). This study aimed to investigate the experiences and needs of young people whose parents had separated and had accessed the family law system.

The study comprised in-depth, semi-structured interviews carried out between May 2017 and April 2018, with 61 children and young people aged between 10 years and 17 years (supplemented by interviews with 47 parents of these children). The interviews with 47 parents of these children were undertaken by telephone to enable the collection of demographic information by way of background to the data provided by the children and young people. These data enabled the research team to understand the services accessed by the parents and the pathways used to resolve their family law matters. Against this backdrop, the data from the interviews with children and young people provided rich insights into the experiences and needs of children and young people whose parents had separated and had accessed the family law system.

Findings are included in the executive summary and included:

- > Most children and young people (76%) wanted parents to listen more to their views in relation to parenting arrangements and regarding the separation more generally, to provide them with space and time to process events, and for their parents to respect their views as their own even if they disagree with them.
- > Of those children and young people who indicated that they felt both parents listened to them (21% of participants), all except one felt either quite close or very close with both parents.
- > More than one-third (38%) of children and young people described wanting ongoing communication with parents and others to understand more about what was going on in the post-separation context.

**Chisholm, Richard, 'Family Courts Violence Review: A Report' (Canberra: Attorney-General's Department, 2009).**

This report considers extensively the issue of family violence in the family law system. Part 2 considers court practices and procedures of the federal family courts in cases with family violence issues. Part 3 discusses issues with the applicable legislation in force at the time. Part 4 considers other matters, mainly relating to support services, information sharing and legal representation.

See generally from p 4 – ‘There are few more difficult or more important challenges for the family law system than dealing with cases where family violence is an issue. Family violence happens throughout the community, and is especially likely to be present among families that separate and resort to the family law system. More than half the parenting cases that come to the courts involve allegations by one or both parties that the other has been violent, and violence issues often go together with other problems, for example those associated with substance abuse and mental ill-health. Violence is bad for everyone, and particularly dangerous for children, whether or not it is directed specifically at them. These cases present the courts with truly daunting tasks: to provide a setting in which the parties feel safe and confident that they will be treated with respect; to deal with the cases with necessary efficiency but most importantly with justice and fairness; and to ensure as far as possible that arrangements made for children, whether as a result of the parties’ consent or by the court’s adjudication, are suitable for their needs, which will include being safe and having both parents contribute to their developmental needs’ (p 4).

The theme of the report is discussed at p 5 - ‘A theme that recurred during the Review was that family violence must be disclosed, understood, and acted upon. This theme seems helpful whether we are thinking of a lawyer interviewing a client, a dispute resolution practitioner dealing with a new case, the work of a counter clerk at a family court, or of a judicial officer. The family law system, and each component in it, needs to encourage and facilitate the disclosure of family violence, ensure that it is understood, and act effectively upon that understanding’.

**Croucher, Rosalind, ‘Family Law: Challenges for Responding to Family Violence in a Federal System’ in Hayes, Alan, and Daryl Higgins (eds), *Families, Policies and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014).**

This chapter discusses the history and place of family law in Australia’s federal system. Difficulties in addressing family violence in what is an often fragmented legal framework are discussed. Many different courts and jurisdictions are involved, especially where the dispute extends between states or territories. This is particularly problematic where child protection is an issue.

**De Maio, John, et al, ‘Survey of Recently Separated Parents: A study of parents who separated prior to the implementation of the Family Law Amendment (Family Violence and Other Matters) Act 2011’ (Commissioned Report, Australian Institute of Family Studies, 2013).**

This report presents key findings from the Survey of Recently Separated Families (SRSP) 2012. The study aimed to gain a more detailed understanding of parents’ experiences of family violence and concerns about child safety, and how well the legal system responds. Interviews were conducted with 6,119 parents who separated between 31 July 2010 and 31 December 2011 - that is, five years after the family law reforms of 2006 and one year prior to the legislative reforms introduced by the *Family Law Amendment (Family Violence and Other Measures) Act 2011*. The study found that family violence is common among separated

families, and though many of the participants reported this violence to police or other services, a sizeable minority (47%) of them did not.

**Family Law Council, 'In Response to the first two terms of reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems' (Interim Report to the Attorney-General, June 2015).**

The Attorney-General requested the Family Law Council to consider the following matters in relation to the complex needs of families seeking to resolve their parenting disputes, including emotional, sexual and physical abuse, family violence, substance abuse, neglect and mental health issues. This report relates to the first two matters. The remaining matters will be dealt with in a report due June 2016.

- (a) The possibilities for transferring proceedings between the family law and state and territory courts exercising care and protection jurisdiction within current jurisdictional frameworks (including any legal or practical obstacles to greater inter-jurisdictional co-operation).
- (b) The possible benefits of enabling the family courts to exercise the powers of the relevant state and territory courts including children's courts, and vice versa, and any changes that would be required to implement this approach, including jurisdictional and legislative changes.
- (c) The opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services.
- (d) The opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services.
- (e) Any limitations in the data currently available to inform these terms of reference.

This report comprehensively summarises the legislative provisions governing the resolution of parenting disputes under the Family Law Act, and the intersection with legal systems governing family violence and child protection. Some important observations:

- > Fragmented legal systems – families most likely to be involved with more than one of these jurisdictions are those with support needs associated with DFV and at a time of high risk and vulnerability (child protection/children's court; family courts; state/territory DFV courts)
- > Reluctance by state/territory magistrates to use s68R FLA to vary Family Court orders when making DFV orders in order to resolve inconsistencies between DFV orders and parenting orders; can be done on its own motion without the consent of the parties; and sometimes magistrates assume that the parenting order is sufficient to protect child without needing to include the child on the DFV order (concerns about inadequate time limits in s68T on variation/suspension of parenting order where done in interim proceedings)

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The Australian and New South Wales Law Reform Commissions examined similar concerns about the use of s 68R by state and territory magistrates and the application of s 68T in their 2010 Family Violence – A National Legal Response report. They concluded that the underuse of s 68R at that time was attributable to a range of factors, including:

- > a lack of awareness or understanding of s 68R among judicial officers, lawyers police and others involved in family violence protection order proceedings;
- > a view taken by some magistrates that issues in relation to parenting orders should be a matter for the family courts;
- > judicial officers lacking adequate information or evidence necessary to amend the parenting orders; and
- > parties to proceedings not having access to appropriate legal advice.

**Family Law Council, [Report to the Attorney-General on ‘Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Final Report, June 2016 \(Terms, 3, 4 & 5\)’](#).**

The Attorney-General requested the Family Law Council to consider the following matters in relation to the complex needs of families seeking to resolve their parenting disputes, including emotional, sexual and physical abuse, family violence, substance abuse, neglect and mental health issues. This report relates to the matters listed below in items 3, 4 and 5.

- (a) The possibilities for transferring proceedings between the family law and state and territory courts exercising care and protection jurisdiction within current jurisdictional frameworks (including any legal or practical obstacles to greater inter-jurisdictional co-operation).
- (b) The possible benefits of enabling the family courts to exercise the powers of the relevant state and territory courts including children’s courts, and vice versa, and any changes that would be required to implement this approach, including jurisdictional and legislative changes.
- (c) The opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services.
- (d) The opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migrant settlement services.
- (e) Any limitations in the data currently available to inform these terms of reference.

The Family Law Council made 22 recommendations (summarised at pp12-18) in the following areas:

- > Family safety services
- > Early whole-of-family risk assessments
- > Family lawyers and risk identifications

- > Family dispute resolution practitioners and risk management strategies
- > Judicial risk assessments and court-ordered programs
- > A court-based integrated services model
- > Case-managed integrated services in the family relationships sector
- > Self-represented litigants with complex needs
- > Support services for families in rural and regional areas
- > Collaboration between family law and state and territory courts
- > Family violence competency
- > Joint professional development
- > Children's views and experiences
- > Family dispute resolution and confidentiality
- > State and territory courts exercising family law jurisdiction
- > Aboriginal and Torres Strait Islander families
- > Culturally and linguistically diverse families
- > Court support workers
- > Self-represented litigants and misuse of process
- > Crossover cases
- > Consent parenting orders
- > Legislative reform.

**Faulks, John, 'Justice and the protection of children' in Hayes, Alan, and Daryl Higgins (eds), *Families, Policies and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014).**

This chapter considers how the Family Court of Australia deals with matters involving children where there are allegations of abuse. It identifies that the balancing of the interests of the children and the parents, and frequently of other people associated with the children, is at the centre of what is just in the family law system. This issue is examined here, together with the differences in the roles of judges and experts in child development and abuse, and child psychology and psychiatry, and how each has a part to play in the system of justice. Also of concern is how the voices of children are being heard in the system. Evidence issues are discussed in detail.

**Humphreys, Cathy and Monica Campo, *Fathers who use violence: Options for safe practice where there is ongoing contact with children* (CFCA Paper No. 43 – June 2017, Australian Institute of Family Studies).**

The following summarises the key aspects of this paper:

## Background

This paper responds to a challenge that has continued to frustrate workers attempting to intervene to support women and children living with DFV – that the DFV intervention system (in the specialist women's DFV sector and statutory child protection) is structured around women and their children separating from men who use violence. However, many women and children may not be in a position to separate from their abusive and violent partners, and some women and children's wellbeing and safety may not be enhanced by separation.

## Inquiry

The paper explored these questions by conducting a review of existing literature:

- > What is the practice or evidence base for working with families where the perpetrator remains in the home?
- > Are there safe ways to work with women and children living with a perpetrator of DFV, or for women and children who still have significant contact with a perpetrator post-separation?
- > In particular, whether there are strategies for working with fathers who use violence, that engage and address the issues for children, women and men who are continuing to live with DFV.

## Observations

This review demonstrates that there is a paucity of evidence for effective approaches for responding to DFV in families where the perpetrator remains in the home or in regular contact with women and children. There are, however, a number of practices developing in these areas: nurse home visits; restorative justice approaches; couple counselling; statutory child protection investigations; and interventions with vulnerable families/whole of family approaches. All urge caution and all recommend a priority on training workers, and only ever bringing men and women together under certain circumstances and with strict caveats. This is necessary if work is to be effective and not inadvertently escalate danger and/or collude with the power and controlling tactics of the perpetrator of violence.

## Conclusions

There is some experimentation with interventions in these complex family situations, and some early signs of success. The challenges of working with the diverse nature of fathers who use violence are significant. Nevertheless, this may prove to be an important practice development for future DFV intervention.

**Kaspiew, Rae, et al, 'Court Outcomes Project' (Report, Australian Institute of Family Studies, October 2015).**

The 2012 amendments to the *Family Law Act 1975* (Cth) 'were intended to support increased disclosure of concerns about family violence and child abuse, and to support changed approaches to making parenting arrangements where these issues are pertinent to ensuring safer parenting arrangements for children.

The Court Outcomes Project examined the effects of these 2012 reforms on court filings, patterns in court-based parenting matters and the judicial interpretation of key legislative provisions introduced by the amendments' (p vii).

The report contains numerous statistical comparisons of the situation pre- and post-reform. It identified that allegations of family violence or child abuse have been raised more frequently since the 2012 reforms. This increase in disclosure of family violence and child abuse was a key intent of the reforms. The presumption of equal shared parental responsibility is not applicable where concerns about family violence or child abuse exist (p xii). Therefore, a decrease in the number of orders for equal shared parental responsibility in the context of family violence or child abuse is consistent with the aim of the 2012 reforms.

A detailed overview of the prevalence of family violence allegations in family court proceedings after the amendments is provided from p 43. 36% of cases after the 2012 amendments involved allegations of family violence, compared with 26% pre-reform. The prevalence of allegations of both physical and emotional abuse also increased after the reforms, but this was more marked for physical violence.

The proportion of allegations made against both parents also increased (p 43). Other statistical interpretations of this data, such as the prevalence of family violence allegations after the reforms according to the way the matters were resolved (p 45) are provided.

An overview of factual issues raised (particularly how factual issues changed following the reforms) is provided from p 46. It is noted that issues such as substance abuse and mental ill health are 'not uncommon' for parents who use family law services (p 47).

Parental capacity is discussed in section 4.5 (p 89).

**Kaspiew, R., Horsfall, B., Qu, L., Nicholson, J. M., Humphreys, C., Diemer, K., ... Dunstan, J. [Domestic and family violence and parenting: Mixed method insights into impact and support needs \(ANROWS, 2017\)](#).**

The Domestic and Family Violence and Parenting Research program examined the impact of domestic and family violence (DFV) on parenting capacity and parent-child relationships in Australia. It focused on three main issues:

- parental conflict in families and impacts on the emotional health and parenting behaviours of mothers and fathers and child functioning;

- > how DFV experienced before separation, after separation, or both affects parents' emotional health and parent–child relationships; and
- > mothers' experiences of engagement with services in the domestic and family violence, child protection, and family law systems in the context of DFV.

A mixed method approach involved: literature review; analysis of the Longitudinal Study of Australian Children; analysis of two (Australian Institute of Family Studies) datasets of over 16,000 separated parents; qualitative in-depth interviews with 50 women who had experienced DFV and engaged with services in the DFV sector, the child protection system, or the family law system.

The Key findings and future directions research summary related to this report identifies specific implications for practitioners engaging with mothers, fathers, and children against a background of DFV:

- > Women who engage with services against a background of DFV have a number of complex material and psycho-social needs.
- > If women are not already engaged with a specialist DFV service, then such a referral is usually necessary.
- > It is likely that women and their children are experiencing ongoing abuse unless contact with the perpetrator has ceased and other safety measures to prevent abuse are available (e.g. being legally permitted to live at an undisclosed address to prevent stalking).
- > Women may need assistance and referral in relation to financial and housing needs, including being informed about the availability of Financial Wellbeing and Capability services and Financial Counselling.
- > Women and their children may be experiencing physical and emotional consequences from DFV and abuse and may need long-term therapeutic assistance.
- > Mothers may need referrals to programs and services that will support the restoration of parenting capacity from a perspective of understanding the dynamics of DFV, including programs that offer services to mothers and children together. Children may also need assistance separately.
- > Where relationships between fathers and children are being maintained, fathers may need referral to services in relation to parenting. Where this is occurring, the wellbeing and safety of children need to be monitored.
- > Service providers should be alert to the fact that their services and other types of services and agencies may be used in a pattern of systems abuse. Staff, including legal professionals, should be trained to recognise this and provide appropriate advice and referrals where this is occurring.

**Kaspiew, Rae et al, 'Evaluation of the 2006 Family Law Reforms' (Australian Institute of Family Studies, 2009).**

This evaluation of the impact of the 2006 changes to the Family Law Act involved the collection of data from some 28,000 people involved or potentially involved in the family law system - including parents, grandparents, family relationship service staff, clients of family relationship services, lawyers, court professionals and judicial officers - and the analysis of administrative data and court files.

- > See generally Chapter 2: 'Characteristics of separated parents: Challenges and issues for family relationships and wellbeing'. Of particular relevance is the discussion from p 24 dealing with 'Separated parents' reports of experiencing family violence'. It was found that nearly two-thirds of separated mothers and just over half of separated fathers indicated that they suffered emotional abuse from their partner before or during separation. 26% of mothers and 16.8% of fathers indicated that they suffered physical abuse prior to their separation. Of this group, most respondents indicated that their children witnessed violence or abuse.
- > See from p 29 which considers - 'Co-occurrence of family violence, mental health problems and addiction issues'. It was found that parents who indicated that both mental health and addiction issues were present were most likely to report that the other parent had physically hurt them (43% of fathers and 50% of mothers). Overall, 'experiences of family violence were reported by 85% of fathers and 92% of mothers who said that both mental health and addiction issues had been present before separation, compared with 41% of fathers and 46% of mothers who said that neither of these problems had been present. In other words, family violence seemed to be pervasive among families in which both mental health and addiction issues were thought to be present' (p 30).
- > See Chapter 10: 'Family violence and child abuse: Parents' pathways and professionals' perspectives'. This chapter is relevant in relation to its general discussion of family violence in the family law system.
- > See Chapter 11, 'Children's wellbeing', in particular section 11.3 (p 262) which discusses 'Family violence, safety issues and the nature of inter-parental relationships'.

**Kaspiew, Rae, et al, 'Evaluation of the 2012 Family Violence Amendments' (Synthesis Report, Australian Institute of Family Studies, 2015).**

Building on findings of the Survey of Recently Separated Parents 2012, the Longitudinal Study of Separated Families, and the 2009 AIFS Evaluation of the 2006 Family Law Reforms, this report examines the impacts of changes to the *Family Law Act 1975 (Cth)* in the area of family violence and has three parts:

- > Responding to Family Violence - a survey of family law practices and experiences which primarily involved online surveys of practices and perspectives of family law professionals ( $n=653$ )
- > the Experiences of Separated Parents Study (ESPS), which comprised two cross-sectional quantitative surveys - the Survey of Recently Separated Parents [SRSP] 2012 ( $n=6,119$ ) and the Survey of Recently Separated Parents 2014 ( $n=6,079$ ) providing pre-reform and post-reform data on parents'

experiences of separation and the family law system; and

- > Court Outcomes Project involving:
  - > Court Files Study: an examination of quantitative data from 1,892 family law court files providing insight into patterns in orders made by judicial determination and consent made in the Family Court of Australia, the Federal Circuit Court of Australia, and the Family Court of Western Australia, including in relation to parental responsibility and parenting time (pre-reform:  $n=895$ ; post reform  $n=997$ );
  - > an examination of patterns in courts filings based on administrative data from the three family law courts and
  - > an analysis of published judgments applying to the 2012 family violence amendments.

One of the ‘Key messages’ from the report is that parents who use family law systems tend to be those affected by complex issues including family violence, mental ill-health, substance abuse and safety concerns for themselves and/or their children. This is discussed in detail in chapter 2. In particular, it was found that each cohort of separated parents studied had similar patterns of family violence (p 10). Around two-thirds of separated parents indicated that they had a history of emotional abuse or physical violence prior to or during separation and this continued for a slightly lower proportion after separation (p 10). It noted the ‘prevalence of physical violence diminished after separation, as did the prevalence of emotional abuse, though to a much less significant extent’ (p 10). The exposure of children to family violence for each cohort of separated parents is discussed at p 14. Chapter 4 sets out the evaluation findings on whether the 2012 family violence amendments had supported increased disclosure of family violence and child abuse concerns to family law system professionals, the screening and assessment practices and responses to disclosures of family violence and/or child safety concerns.

**Kaspiew, Rae, et al, ‘*Experiences of Separated Parents Study*’ (*Evaluation of 2012 Family Violence Amendments*)’ (Report, Australian Institute of Family Studies, 2015).**

This report sets out the findings of a core element of the Evaluation the 2012 Family Violence Amendments project—the Experiences of Separated Parents Study (ESPS). This element is based on a comparison of data from two cross-sectional samples of the Survey of Recently Separated Parents (SRSP): the 6,119 parents surveyed in the SRSP 2012, who had separated between 1 July 2010 and 31 December 2011; and the 6,079 parents surveyed in the SRSP 2014, who had separated between 1 July 2012 and 31 December 2013. The family violence amendments introduced by the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 came substantially into effect on 7 June 2012, meaning the SRSP 2012 survey represents parents’ pre-reform experiences and the SRSP 2014 represents parents’ their post-reform experiences.

Together with the Longitudinal Study of Separated Families (LSSF) Wave 1 data, these samples of separated parents reported similar levels of family violence, with around 1 in 5 parents indicating they suffered physical hurt by their former partner and nearly 2 in 5 reporting emotional abuse alone (p 14). See generally chapter 3 – ‘Family Violence and Safety Concerns’. Most parents in both cohorts reported at least one type of emotional abuse before/during or since separation (p 58). Further, ‘overall, mothers reported experiencing emotional abuse in greater proportions than fathers both before/during separation and since separation’ (p 58). The most commonly reported form of emotional abuse (see p24) was ‘—insults with the intent to shame, belittle or humiliate’ (p 58). A similar proportion of parents in both cohorts reported that their children saw or heard family violence prior to or during separation (p 60). However, the proportion of parents reporting that their children witnessed family violence in the period since separation decreased in the second cohort.

**Kaspiew, Rae, et al, ‘[Independent Children’s Lawyers Study](#)’ (Final Report (2nd Edition), Australian Institute of Family Studies, June 2014).**

This report has examined the role of ICLs in the family law system. The capacity of many ICLs is recognised to be excellent (p xii). Issues identified throughout the report include the need for ICLs to have greater awareness of child development issues and the overall limitations of ICLs in consulting effectively with children. Indeed, some ICLs emphasised the delineation of their role from that of a social science expert. It is important to ensure ICLs do not go beyond their expertise (pp48-49). However, it was nevertheless thought prudent for ICLs to have more training in child development issues.

**Kaspiew, Rae, et al, ‘[Responding to Family Violence: A Survey of Family Law Practices and Experiences](#)’ (Report, Australian Institute of Family Studies, October 2015).**

This report presents the findings of Responding to Family Violence: A Survey of Family Law Practices and Experiences (Survey of Practices). This report draws on surveys and interviews with professionals (n653) (judicial officers and registrars, lawyers and non-legal family law professionals) working across the family law system and telephone interviews with parents (n2,473) who used family law system services in the period of approximately 12 months preceding August 2014.

It concludes that ‘overall, the general patterns in findings suggest a positive response to the 2012 family violence reforms, with practitioner responses indicating that protection from harm is given greater weight now than it was previously, and that advice-giving practices have shifted in a direction consistent with the intent of the reforms to better identify families where this is an issue. At the same time, the responses do not suggest that any less weight is placed on maintaining relationships with parents and children after separation where this is appropriate’ (p 13).

Practitioners’ views about striking the right balance between protecting a child from harm and maintaining a

meaningful relationship with both parents (in the context of the 2012 reforms and the ‘tie-breaker’ provision (s 60CC(2A)) of the *Family Law Act 1975* (Cth)) are discussed from p 14. Many practitioners were positive about the effect of s 60CC(2A) in re-prioritising family violence and protecting children from harm which leads to better outcomes for children.

**Parkinson, Patrick, ‘The ties that bind: Separation, divorce and the indissolubility of parenthood’ in Hayes, Alan, and Daryl Higgins (eds), *Families, Policies and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014).**

This chapter considers the history and contemporary issues around reform to family law in Australia, particularly in relation to parenting orders. See especially from p 179 which discusses ‘Shared parenting and family violence’. The author notes, ‘the issue of protecting women and children from violence has not proved effective as an argument against laws that recognise the indissolubility of parenthood, nor against having any provisions in legislation that encourage the continuing involvement of non-resident parents. One reason is the lack of an evidence base for the supposed connection between laws that encourage the involvement of non-resident parents in their children’s lives, and an increased risk of violence. There is simply no evidence for a linear relationship between the time that non-resident parents spend with their children, and a greater incidence of post-separation violence towards the primary caregiver.’

The chapter concludes – ‘There is no future in arguments that say encouraging the involvement of both parents in children’s lives through legislation will expose women and children to a greater risk of violence. Successive Australian parliaments have responded to this argument not by winding back the emphasis in the law on the involvement of both parents but by enacting stronger and stronger legislative provisions that address, or purport to address, the issue of family violence... The issue of violence against women is one of great importance, but the middle ground is to be found in articulating more clearly the circumstances when parenthood ought to be dissoluble, rather than resisting the historic transformation in the law of parenting after separation. In that way, the law can avoid too simplistic a bifurcation where the only issue that might stand in the way of court orders for substantially shared care is if there is a proven history of family violence’ (p 183).

**Qu, Lixia et al, ‘Post-separation parenting, property and relationship dynamics after five years’ (Commissioned report, Australian Institute of Family Studies, December 2014).**

The Longitudinal Study of Separated Families examines the experiences, circumstances, and wellbeing of separated parents and their children in Australia. It was commissioned as part of the evaluation of the 2006 Family Law reforms, and three waves of surveys have now been conducted. This current report presents findings from wave 3, conducted in 2012 with 9,028 parents five years after separation. It explores the opinions and experiences of separated parents regarding: quality of inter-parental relationships; child-focused communication between parents; safety concerns and violence and abuse; use and perceived helpfulness of family law services; pathways for developing parenting arrangements; family dispute resolution; stability and change in care-time arrangements; property division and their timing and perceived fairness; and child support arrangements and compliance. The report also asks parents about their child's wellbeing, and compares this with care-time arrangements and family dynamics.'

The findings painted a positive picture of separated families overall but there were still a minority of parents who faced significant issues such as violence and abuse and held safety concerns. 'It has become increasingly clear that each of the mainstream professions in the family law system has a potentially constructive role to play in helping to untangle the serious predicaments in which a minority of family law clients find themselves' (p xix).

For example, higher levels in children's wellbeing emerged where parents indicated that there was a positive inter-parental relationship – 'consistently low or worsened child wellbeing was more likely to be reported by parents who reported experiencing violence/abuse, holding safety concerns, or having negative inter-parental relationship in both waves compared with reports of other parents' (p 162).

Also, where emotional abuse was experienced by a small minority of parents (in Wave 3 of the data), large proportions of these victims indicated that the abuse occurred 'sometimes or often', as opposed to 'rarely or only once' in the preceding 12 months (p 40).

'In fact, most respondents who stated that the other parent had engaged in humiliating insults, monitored their whereabouts, or circulated of defamatory comments also indicated that these behaviours occurred sometimes or often. After about five years of separation, the monitoring of a person's whereabouts may be particularly likely to reflect obsessive harassment, unless such monitoring has been instigated by genuine concerns about personal safety or the safety of others, including the children' (p 40).

**Tomison, Adam M, 'Exploring Family Violence: Links Between Child Maltreatment and Domestic Violence' (National Child Protection Clearinghouse Issues Paper No 13, Australian Institute of Family Studies, June 2000).**

This article reviews the research about the relationship between domestic violence and various forms of child maltreatment. In particular, it points to the high proportion of cases of emotional abuse of children identified by child protection workers in families where there is domestic and family violence and to the mild association between presence of domestic violence and a higher than expected proportion of children

sustaining injuries. Pages 8-9 of this article discusses the variety of ways a child may be exposed to domestic violence, including as a hostage to ensure the mother's return home and forcing a child to watch assaults.