Allegations of domestic and family violence - Key Literature

Australia


This article reports on the findings from the analysis of data from two national online surveys (one for adults and one for children), which collected quantitative data and also allowed for qualitative comments about family violence and its impact on parenting and parenting arrangements. The study included adults and children who had separated after 1995 and after the introduction of the Family Law (Shared Parental Responsibility) Amendment Act (Cth) in 2006. The researchers gained the views of a total of 1,153 adults (90%) and children (10%).

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.

See in particular at p 53 – ‘Some women felt powerless over arrangements to share care of the children with the fathers and felt they had been pressured into unfair agreements. For example, one woman who used services before the 2006 reforms said: ‘The power he held over me during the relationship continued afterwards in regard to parenting arrangements and finances’. See also at p 55 where reports of confusion about the meaning of ‘equal shared parental responsibility’ are discussed.


The paper discusses the report: Moloney et al. ‘Allegations of family violence and child abuse in family law children’s proceedings: A pre-reform exploratory study Research Report No. 15 — May 2007’ (Australian Institute of family Studies, 2007)- see below. The article notes the Maloney et al report provides evidence challenging a common myth that women frequently claim false allegations of family violence in child custody cases and that unless allegations are accompanied by strong evidence, they will have little impact on post-separation child contact.

This article provides and analysis of interviews conducted with 60 separated parents as part of a wider study on links between post-separation parenting and financial settlements, following major family law and process amendments in 2006.

The authors note that their interviews suggested that disclosure of family violence was discouraged in a context where there was pressure to support the abusive partner’s involvement and agree to shared time’ (p 239). The authors conclude that ‘family violence often influenced parenting arrangements and thus indirectly influenced financial settlements. Family violence often affected mothers’ child support receipt, including in CSA Collect/Child Support Collect cases. Mothers who described family violence that affected property settlements also commonly described problems obtaining child support from their ex-partner. Family violence that diminished or ceased after separation could still have a continuing influence, discouraging pursuit of legal remedies by those exposed. (at 24)

Humphreys, Cathy and Meredith Kiraly, ‘Developmentally sensitive parental contact for infants when families are separated’ [2010] (85) Family Matters 49.

This paper uses data from an initial research study which explored issues with infants where the children’s court ordered high-frequency contact (4-7 days per week) between infants and their parents while the infant was living with foster or kinship carers. The infants originally came into care due to significant issues in relation to child abuse and neglect. The applicable issues for infants taken into out-of-home care are different from situations where infants’ parents have separated. However, family law proceedings relating to separated parent of infants contain similar dilemmas in relation to contact orders (p 49).

Importantly, ‘experiencing violence and abuse is also dangerous territory for infants. Babies who are “incubated in terror” show attachment disruption and poor neurological development, as the chemicals released in a pervasive environment of fear are inimical to healthy brain development. Protection from violence and abuse is pivotal to the infant’s healthy development and safety, particularly given their physical fragility. This issue cuts across all jurisdictions’…‘Adversarial processes may not be optimal to finding the way through to the best interests of babies, particularly when some flexibility may be needed. This is true of both the Children’s Court and family law jurisdictions. However, by definition, violence and abuse tramples on the rights of the most vulnerable (in this case, infants) and they may in the end need the protection of the court in order to safeguard their interests.’ (p 58)

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 in three respects:

- Responding to Family Violence - a survey of family law practices and experiences which primarily involved online surveys of professional practices and perspectives
- Survey of Recently Separated Parents 2014 based on a large-scale survey of parents’ experiences and perspectives
- Court Outcomes Project involving:
  - a quantitative analysis of patterns in orders for parental responsibility and time made in the Family Court of Australia, the Federal Circuit Court of Australia, and the Family Court of Western Australia
  - a national analysis of court filings data provided by those courts
  - an analysis of published judgments

See especially at p 49 relating to court orders for parental responsibility - ‘The analysis demonstrates largely consistent levels in the proportions of orders for shared parental responsibility in the consent after proceedings and consent without litigation samples, with around nine out of ten children in each sample subject to orders for equal shared parental responsibility (CO report, Table 3.25). In judicial determination files, 40% of children were subject to orders for shared parental responsibility after the reforms, compared with 51% pre-reform. Overall, the proportion of children with shared parental responsibility outcomes where no allegations of family violence or child abuse were raised remained stable in the two time frames, at about nine in ten (CO report, Table 3.26). Where both these issues were raised, marginal decreases were evident, with the proportion of such children subject to orders for shared parental responsibility decreasing slightly, from 72% to 70%. Where only one of these issues was raised, the likelihood of a shared parental responsibility order increased slightly after the reforms, rising from 80% to 84%.’

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 used family law system services in 2011; and the 6,079 parents surveyed in the SRSP 2014, who experienced the system in 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 their post-reform experiences.

See in particular section 5.3.3 entitled ‘Influence on care-time arrangements of disclosure of family violence and safety concerns’. 53% of parents in both cohorts who disclosed family violence ‘reported that this “very much” or “somewhat” influenced their child’s parenting arrangements. This was similar to the corresponding proportion of parents who disclosed safety concerns (2012: 56% and 2014: 53%)’ (p 111).


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).

It identified that arguments about 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. Table 3.13 on page 45 sets out the extent to which allegations of family violence and child abuse were raised in the pre- and post-reform samples according to the way in which matters were resolved (by judicial determination OR by consent after the proceedings had been issued or by application for consent orders). 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 is consistent with the aim of the 2012 reforms.


This chapter examines recent empirical evidence on post-separation parenting arrangements, with a
particular focus on arrangements where children have little or no contact with one parent. It demonstrates that a range of factors is linked with circumstances in which fathers have little or no contact with children, but that contact with services and courts is supportive of maintaining, and in some circumstances, increasing fathers’ involvement with their children’ (p 224-225).


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.


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. The Survey of FRSP Clients 2009 also revealed high rates of family violence in separated families. The data shows that 33% of clients reported being physically hurt by the person about whom they attended the service and 77% reported being seriously put down or insulted. The participating client reported the other party making threats to harm them, themselves (i.e., the other party) or others (including pets) in 43% of cases. Controlling behaviour on the part of the other party had been experienced by 50% of clients participating in the survey.’ (pp26-27)

Family lawyers expressed concerns that arrangements were being made that were developmentally inappropriate or in the context of a history family violence, and such arrangements proved to be unworkable in practical terms’ (p 214).

Laing, Lesley, No Way to Live: Women’s Experiences of Negotiating the Family Law System in the Context of Domestic Violence (Faculty of Education and Social Work, University of Sydney, 2010).

This research reports on the experiences of 22 women who were involved in the family law system following their separation from a relationship in which they had experienced domestic violence. In particular
see section titled: “‘He just wants to see his children’ – a lens for excusing men’s behaviour” (from pp47-49) that draws on a number of excerpts detailing how fathers have manipulated police to harass and intimidate mothers (e.g. calling police to her house alleging she’d threatened to kill her children; turning up late for contact).


This research was commissioned by the Federal Attorney-General's Department to provide baseline information to assist in informing the Australian Government's Family Law Violence Strategy. The study examines (a) the prevalence and nature of allegations of family violence and child abuse in family law children's proceedings filed in 2003 in selected registries; (b) the extent to which alleging parties provided evidence in support of their allegations, and to which allegations were denied, admitted or left unanswered by the other party; and (c) the extent to which court outcomes of post-separation parenting disputes appeared to be related to the presence or absence of allegations. The study was based on a content analysis of two random samples of court files from the Melbourne, Dandenong and Adelaide registries of the Family Court of Australia (FCoA) and the Federal Magistrates Court (FMC): 240 files from the general population of cases in which parenting matters were in dispute (the general litigants sample), and 60 files from judicially determined matters in which parenting was in dispute (the judicial determination sample). In summary, a total of 300 court files were analysed: 150 from the Family Court of Australia and 150 from the Federal Magistrates Court. It should not be assumed that this sample is representative of the divorcing population. In other words, the findings should not be generalised to this population. The research found that more than half the cases in the FCoA and FMC in both samples contained allegations of adult family violence and/or child abuse. Note the discussion in chapter 8 which identifies that the ‘most extensive work to date on the subject …has concluded in that country (Canada) that false denials are more common that false allegations.’ Findings included that:

- Cases in the FCoA that required judicial determination were more likely than other cases to contain evidence of spousal violence that appeared to have some strong probative weight.
- Cases that seemed to contain the most severe allegations of spousal violence were especially likely to be accompanied by evidentiary material. Many of these cases required a judicial determination.

This article summarises key findings from two recent Australian studies of outcomes for two potential risk groups: school-aged children living in separations characterised by high inter-parental conflict (Study 1), and infants and pre-schoolers in the general population of separated families (Study 2). Both studies were commissioned by the Australian Government Attorney-General's Department.

See in particular at p 46, where it is noted that ‘regardless of socio-economic background, parenting or inter-parental cooperation, shared overnight care of children less than four years of age had an independent and significantly deleterious impact on several emotional and behavioural regulation outcomes.’ For example, young infants less than two years old living with a non-resident parent for only one or more nights a week ‘were more irritable, and were more watchful and wary of separation from their primary caregiver than young children primarily in the care of one parent. Children aged 2–3 years in shared care (at the policy definition of five nights or more per fortnight) showed significantly lower levels of persistence with routine tasks, learning and play, than children in the other two groups’ (p 46). They also showed ‘severely distressed behaviours in their relationship with the primary parent’ which is consistent with attachment theory. However, by kindergarten or school entry (children aged around 4-5 years), these effects were no longer evident as the children were capable of, inter alia self-soothing and organising their own behaviour. That is, the child truly ‘knows what tomorrow is’ which makes them better able to straddle households in a shared overnight parenting arrangement (p 46).

See also at p 48 ‘The task continues to be to determine those arrangements and attitudes that will maximally support each child within his/her unique developmental context’. 


This chapter considers the history and contemporary issues around reform to family law in Australia, particularly in relation to parenting orders.


In this article Parkinson argues that it is important to focus on current safety concerns rather than a history of violence throughout the relationship so as to direct resources to the parents and children at most risk as a result of post-separation parenting arrangements (pp 12-13). He nevertheless acknowledges that a history of coercive controlling violence remains important in relation to, for example, a child’s attitude towards living with or visiting a violent parent. It is also important ‘in assessing the mother’s capacity for parenting and her attitude towards contact between the child and the other parent. For many women who
experience this kind of subjugation and control, the psychological effects may have a greater lasting impact than the physical abuse. These effects include fear and anxiety, loss of self-esteem, depression and post-traumatic stress (p 14).


This report examines, ‘the pathways that separating families have taken through the family law system, and the impact the changes to the family law system have had on these families. The Longitudinal Study of Separated Families examined relationships and wellbeing in separated families in Australia. Some 10,000 separated parents with children were interviewed for the first wave in 2008, as part of the evaluation of the 2006 Family Law reforms. This report presents findings from the second wave, when the parents had been separated for two to three years’.

See in particular at p 117 – ‘the presumption of “equal shared parental responsibility” does not apply where there are reasonable grounds to believe that a child’s parent, or another person in this parent’s household, had engaged in family violence or child abuse. In Wave 2, as in Wave 1, decisions were less likely to be shared equally where respondents expressed safety concerns or said that their child’s other parent had been abusive towards them during the preceding 12 months, with abuse in Wave 2 mainly taking the form of humiliating insults.’

Also, ‘Although the emergence of safety concerns or experiences of abuse in the 12 months preceding Wave 2 was associated with a decline in the rate of shared decision-making, a substantial minority who reported safety concerns in Wave 2, whether recently emerging or longstanding, said that decisions were made jointly. For fathers, safety concerns mostly represented concerns about their child, and often related to their child’s mother. Furthermore, quite serious behaviours, such as violence and anger management issues, were generally behind these concerns (see Chapter 3) (p 117).’


This article examines the prevalence of different care-time arrangements for separating families after the 2006 reforms, parents’ views about the flexibility and workability of their arrangements, characteristics of families with different care-time arrangements and the strength of the relationship between child wellbeing on the one hand and care-time arrangements and family dynamics on the other.

Note at p29: ‘Across all care-time arrangements, children’s wellbeing appeared to have been compromised where there had been a history of family violence, where parents held safety concerns (for them or their child) associated with ongoing contact with the other parent, and where the inter-parental relationship was
either highly conflictual or fearful. Children in shared care-time arrangements appeared to be no worse off than other children where there had been a history of family violence or a negative inter-parental relationship. However, mothers’ assessments suggested that, where there were safety concerns, children in shared care fared worse than those who lived mostly with their mother.

International

Jaffe, Peter G., Janet R. Johnston, Claire V. Crooks, Nicholas Bala, ‘Custody disputes involving allegations of Domestic violence: toward a differentiated approach to parenting plans’ (2008) 46(3) Family Court Review 500.

Premised on the understanding that domestic violence is a broad concept that encompasses a wide range of behaviors from isolated events to a pattern of emotional, physical, and sexual abuse that controls the victim, this article addresses the need for a differentiated approach to developing parenting plans after separation when domestic violence is alleged. A method of assessing risk by screening for the potency, pattern, and primary perpetrator of the violence is proposed as a foundation for generating hypotheses about the type of and potential for future violence as well as parental functioning. This kind of differential screening for risk in cases where domestic violence is alleged provides preliminary guidance in identifying parenting arrangements that are appropriate for the specific child and family and, if confirmed by a more in-depth assessment, may be the basis for a long-term plan.

Regarding the credibility of allegations of child maltreatment, domestic violence and parental abuse of drugs and alcohol, the authors (at pp506-509) write there is virtually no research on the extent to which spousal abuse allegations are clearly false and maliciously fabricated, but this issue is becoming an increasing concern for the justice system …it is critical to emphasize that the making of false allegations of spousal abuse is much less common than the problem of genuine victims who fail to report abuse, and the widespread false denials and minimization of abuse by perpetrators (earlier research sources cited in support).