



Australian Government  
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EVALUATION OF THE 2012  
FAMILY VIOLENCE AMENDMENTS

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## Synthesis report

Rae Kaspiw, Rachel Carson, Jessie Dunstan, Lixia Qu, Briony Horsfall, John De Maio, Sharnee Moore, Lawrie Moloney, Melissa Coulson and Sarah Tayton





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# Contents

Acknowledgements	v
Executive summary	vii
Characteristics of separated families	viii
Influence of the 2012 family violence amendments	viii
<b>1. Introduction</b>	<b>1</b>
1.1 Background	2
1.2 Methodology	4
1.3 Research questions	5
1.4 Terms used in this report	7
1.5 The structure of this report	9
<b>2. Parents' characteristics and professionals' views of the 2012 reforms: An overview</b>	<b>10</b>
2.1 Demographics	11
2.2 Family relationships and parenting arrangements	11
2.3 Indicators of complexity in separated families	12
2.4 Summary	18
<b>3. Service use</b>	<b>21</b>
3.1 Broad patterns of service use	22
3.2 Professional practices	25
3.3 Formalising parenting arrangements	26
3.4 Court use dynamics	27
3.5 Summary	29
<b>4. Identification and assessment of family violence and child abuse concerns: Professional practices and parents' experiences</b>	<b>31</b>
4.1 Complex families, pathways and practice models	32
4.2 Parents' experiences	32
4.3 Identification and assessment: Practitioner views	36
4.4 Identification and assessment: Legal and court pathways	39
4.5 Summary	44
<b>5. Parenting arrangements</b>	<b>46</b>
5.1 Patterns in parenting arrangements	47
5.2 Dealing with family violence and child safety: Professionals' views	51
5.3 Summary	52
<b>6. The operation of the legislative amendments</b>	<b>54</b>
6.1 The Part VII framework	55
6.2 The new definition of family violence (s 4AB) and child abuse (s 4(1))	56
6.3 Greater weight on protection from harm?	58
6.4 Application of the legislation: Published judgments	59
6.5 Summary	61
<b>7. Positive, negative and unintended consequences of the family violence amendments</b>	<b>62</b>
7.1 Parents' views and experiences	63
7.2 Positive consequences of the reforms	65
7.3 Negative consequences of the reforms	65
7.4 Summary	70

8. Have the reforms made any difference? Summary and conclusion	72
8.1 Aims of the reforms	72
8.2 Characteristics of separated families	72
8.3 Responses to the research questions	74
8.4 Summary	81
9. References	82

## List of tables

Table 2.1: Behaviour generating safety concerns, by parent gender, LSSF 2009 and SRSP 2012 and 2014	16
Table 2.2: Complex issues and family law pathways, 2012 and 2014	16

## List of figures

Figure 2.1: Frequency of parental experience of physical hurt inflicted by focus parent in the 12 months before and since separation, 2012 and 2014	13
Figure B.1: Proportions of children witnessing violence before/during and since separation, by type of family violence and parent gender, 2012 and 2014	14
Figure 5.1: Care-time arrangements made in the presence of safety concerns associated with ongoing contact with focus parent, 2012 and 2014	48

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# Executive summary

This report sets out the overall findings of the Evaluation of the 2012 Family Violence Amendments to the *Family Law Act 1975* (Cth) (FLA), which substantively came into effect on 7 June 2012. The evaluation was funded by the Attorney-General's Department (AGD), and examined the effects of these amendments, which were intended to improve the family law system's responses to matters involving family violence and safety concerns.

The evaluation research program involved the following elements:

- the Responding to Family Violence (RFV) survey of family law practices and experiences, which was primarily based on online surveys completed by judicial, legal and non-legal professionals across the family law system;
- the Experiences of Separated Parents Study (ESPS), which comprised two cross-sectional quantitative surveys (the Surveys of Recently Separated Parents [SRSP] 2012 and 2014) and provided pre- and post-reform data on parents' experiences of separation and the family law system; and
- the Court Outcomes Project (CO Project), involving an examination of quantitative data from court files providing insight into patterns in orders made by judicial determination and consent, including in relation to parental responsibility<sup>a</sup> and parenting time; 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.

The findings from these three projects are described in detail in three separate reports.<sup>b</sup> This synthesis report draws together findings from each of these three studies to address the six research questions that guided the evaluation research program. Overall, the conclusions are based on data from 12,198 parents (pre-reform:  $n = 6,119$ , post-reform:  $n = 6,079$ ) (ESPS), 653 family law system professionals (RFV), and 1,892 family law court files (pre-reform:  $n = 895$ , post-reform:  $n = 997$ ) (Court Files Study of the CO Project). Additional insights were derived from the other components of the CO Project, namely, the administrative data supplied by the family law courts and an analysis of published judgments, together with data in some areas from comparable earlier studies that contributed to the AIFS Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009), including the Longitudinal Study of Separated Families (LSSF).<sup>c</sup>

It is important to note that the evaluation research program reflects practice some two years after the reforms were implemented. This is a comparatively short period of time for change to unfold, and the evidence of limited effects in some areas—such as patterns in parenting arrangements—in the context of more significant changes in other areas—such as screening—suggests that further effects of the reforms have yet to emerge.

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a Parental responsibility in relation to a child means “all the duties, powers, responsibilities and authority which by law, parents have in relation to children” (FLA s 61B).

b *Responding to Family Violence: A Survey of Family Law Practices and Experiences* (Kaspiew, Carson, Coulson, Dunstan, & Moore, 2015; “RFV report”); *Experiences of Separated Parents Study* (Kaspiew, Carson, Dunstan et al., 2015; “ESPS report”) and *Court Outcomes Project* (Kaspiew, Carson, Qu et al., 2015; “CO report”).

c The LSSF research program involved a national, longitudinal study of parents who had at least one child under 18 years of age, who separated after the 2006 reforms to the *Family Law Act 1975* (Cth) and who were registered with the Department of Human Services—Child Support (DHS-CS). Data collection took place in 2008 (Wave 1), 2009 (Wave 2) and 2012 (Wave 3).



## Characteristics of separated families

The data collected from the cross-sectional ESPS and in the three waves of the LSSF indicate that each cohort of separated parents represented in three samples applying comparable methodologies and sampling strategies had similar patterns of family violence, safety concerns and other indications of complexity. The parents' reports reflected a spectrum of severity of family violence that varied in form, frequency, intensity and effect, and established family violence as a complex and dynamic issue. Important findings emerged in relation to the levels of prevalence of complex issues among separated parents, including family violence, mental ill health and substance misuse. Some 60% of separated parents reported a history of emotional abuse and/or physical violence before/during separation, and this continued for a slightly lower proportion after separation (ESPS report, Table 3.4), with a longer term insight suggesting that problematic dynamics continue for some 25% of separated parents, up to five years after their separation (Qu et al., 2014, Table 3.6).<sup>d</sup> The data show that the prevalence of physical hurt diminishes after separation, as does the prevalence of emotional abuse alone, though to a much less significant extent.

The ESPS and LSSF datasets indicate that both fathers and mothers reported experiencing family violence, but the analysis of intensity reports among the ESPS cohorts shows that at the two higher of the five possible ranges, mothers outnumbered fathers as victims, with a ratio of around two to one at the highest range in relation to pre-separation experiences (ESPS report, Figure 3.5). Mothers were also more likely to report more effects than fathers, and were significantly more likely than fathers to report that the experience induced feelings of fear both before/during and since separation (ESPS report, Figure 3.9), as well as being more likely than fathers to report feelings of coercion and control before/during separation (ESPS report, Figure 3.14).

Reports by parents of concerns for their safety or for the safety of their children as a result of ongoing contact with the other parent were pertinent for nearly one-fifth of parents (ESPS report, Figure 3.12). For the majority of these parents in the LSSF and ESPS, the safety concerns arose from issues such as emotional abuse or anger issues, mental health concerns, violent or dangerous behaviour, or substance misuse (Table 2.1 in this report, and ESPS report, Table 3.10). The LSSF data suggest that for a core group of about five per cent, safety concerns indicative of sustained and entrenched difficulties continued over a five-year period (Qu et al., 2014, Table 3.8).

While the majority of parents in both the ESPS and LSSF had some contact with family law services (ESPS report, Tables 4.2 and 4.3), most parents did not nominate a family law system service as their main pathway to sort out their parenting arrangements (ESPS report, Table 4.8). Parents using these services were more likely to report the presence of complex issues, including family violence, substance misuse, mental ill health, problematic social media use, pornography use (prior to separation) and safety concerns (after separation) (Table 2.2 in this report). These characteristics were evident in parents who reported using FDR/mediation, lawyers and courts, but were most evident among parents reporting that they used court services, and least evident among parents who reported using FDR/mediation. In 2014, nearly four in ten court users had four or more of these issues, compared with nearly three in ten who used lawyers, and two in ten who used FDR/mediation (Table 2.2 in this report).

## Influence of the 2012 family violence amendments

### Patterns in post-separation parenting arrangements since the 2012 family violence amendments

The evaluation data establish that subtle changes have occurred in patterns of parenting arrangements since the 2012 family violence amendments. For separated parents holding safety

<sup>d</sup> The percentage quoted reflects participants' reports of physical hurt and/or emotional abuse in all LSSF survey waves (Waves 1–3).

concerns, the main shift indicated in the ESPS data involved a substantial increase after the reforms (falling just short of statistical significance) in parenting arrangements involving 100% mother care time where the child spent time with the father during the daytime only (2012: 19% and 2014: 23%; see Figure 5.1 in this report, and ESPS report, Figure 3.17).

More generally, ESPS data show that parents who disclosed experiencing family violence and/or safety concerns were more likely to have care time involving little or no contact with a father compared to parents who did not disclose such experiences, save for fathers in the 2014 cohort who disclosed family violence (ESPS report, Figures 5.7 and 5.8). These ESPS data also indicate that as parents' care time increased towards more shared arrangements, their perceptions that disclosure of concerns influenced their parenting arrangements decreased (ESPS report, Figure 5.9).

Together, these findings suggest that the greater emphasis on identifying family violence and child safety concerns has supported modest, positive shifts in the making of parenting arrangements in the post-reform period. There was, however, a reduction in reports of parenting arrangements involving supervision between the 2012 and 2014 SRSP cohorts (2012: 13%; 2014: 10%; ESPS report, Table 2.7), together with a decline in parents holding safety concerns reporting that the focus child lived with one parent for 100% of their time and spent no time with the other parent, although this decrease was not statistically significant (Figure 5.1 in this report, and ESPS report, Figure 3.17).

The Court Files Study component of the CO Project also indicated subtle shifts in court orders for parenting arrangements that varied according to whether the orders were judicially determined, settled by agreement after proceedings were initiated, or presented to court for endorsement as consent orders. Findings from the judicial determination sample show that orders for shared parental responsibility decreased after the reforms (from 51% to 40%; CO report, Table 3.25), but changes in patterns of care-time orders were very limited (CO report, Table 3.30). More specifically, negligible changes in shared care-time orders were evident in matters where family violence and/or child abuse allegations had been raised in judicial determination cases (CO report, Table 3.33). In relation to the consent after proceedings sample, orders for shared parental responsibility did not substantially change after the reforms (CO report, Table 3.25), but orders for shared care time were less frequent to a statistically significant extent (CO report, Tables 3.31 and 3.33). Orders for children to spend a majority of their time with mothers were more frequent to a statistically significant extent (CO report, Table 3.31). Orders for supervised time remained stable (4% of files in both the pre- and post-reform samples; CO report, Figure 3.2), and orders involving arrangements for no face-to-face time with one or other parent were rare in both periods (no face-to-face time with fathers: 2012: 2%; 2014: 3%; no face-to-face time with mothers: < 1% in both periods; CO report, Table 3.28).

Overall, the findings in relation to court orders establish that for the total sample, the frequency of orders for shared parental responsibility did not change substantially after the reforms (CO report, Table 3.24), but orders for shared care time were less common to a statistically significant extent where allegations of both family violence and child abuse were raised (CO report, Table 3.29). Where both allegations were raised, nearly one-fifth of cases had shared care time before the reforms, compared with just under one-tenth after the reforms (CO report, Table 3.29). There was no difference in the frequency of shared care-time orders in cases where no allegations of family violence or child abuse were raised (CO report, Table 3.29).

The evidence of very limited changes in these datasets is consistent with findings in the RFV study indicating that among family law system professionals there were reservations about the capacity of the family law system to deal adequately with cases involving family violence and child abuse concerns.

## Identification of family violence and safety concerns

The evidence from all three components of the evaluation research program demonstrates that there is an increased emphasis on identifying family violence and safety concerns across the family law system, particularly among lawyers and courts. However, the evidence also indicates that refinements in practice in this area are required, and the development of effective screening approaches has some way to go.

The ESPS study indicated statistically significant increases in the proportions of parents who reported being asked about family violence and safety concerns when using a formal pathway (FDR/mediation, lawyers and courts) as the main means of resolving their parenting arrangements (ESPS report, Figure 5.2). Nevertheless, close to three in ten parents in 2014 reported never being asked about either of these issues in dealings with these formal pathways.

The ESPS findings also suggest that there were small increases in the proportions of parents who reported disclosing concerns. A small but statistically significant increased proportion of parents reported experiencing family violence before/during or since separation to one of a range of possible services and organisations (not confined to the family law system) (2012: 53% cf. 2014: 56%; ESPS report, Table 5.1). The proportion of parents who reported disclosing family violence or safety concerns specifically to family law services increased by about three percentage points between 2012 and 2014 (ESPS report, Table 5.5). In 2014, equal proportions of parents (38% each) disclosed family violence and safety concerns to family law services, which represented statistically significant increases when compared with the 2012 cohort (ESPS report, Table 5.5). Substantial minorities of parents still reported not disclosing either kind of concern (ESPS report, Table 5.10), but this was more marked for family violence than safety concerns (ESPS report, Figures 5.3 and 5.4). In both time periods, mothers were more likely to disclose family violence and safety concerns than fathers to a statistically significant extent, but the reforms are associated with a statistically significant increase in fathers disclosing family violence and safety concerns to lawyers (ESPS report, Tables 5.7 and 5.9).

The proportions of parents who reported disclosing family violence or safety concerns increased across each pathway (from FDR to lawyers to courts) in both 2012 and 2014, with reports being lowest for parents who used FDR and highest for parents who used courts (ESPS report, Tables 5.6 and 5.8). Consistent with this, the evidence from the Court Files Study in the CO Project indicates that allegations of family violence and child abuse have been made in court proceedings to a greater extent since the 2012 family violence amendments (CO report, Table 3.10). The data from the Court Files Study also indicate that there is a greater emphasis on identifying concerns about family violence and child abuse in matters that proceed to court, with evidence of more discussion of risk assessment in Family Reports (CO report, Table 3.16), and more evidence about family violence and child abuse on court files, including evidence concerning engagement with state child protection agencies (CO report, Tables 3.19 and 3.22).

While the RFV study indicated that professionals were more confident in their own capacity to identify family violence and child abuse/child safety concerns since the reforms (RFV report, Tables 4.3 and 4.4, and Figure 4.3), this did not translate into high levels of confidence among the aggregate sample of professionals in relation to the system's general capacity to screen for these concerns (RFV report, Table 4.1). Data from participants in the RFV study also suggest that the Detection of Overall Risk (DOORS) screening tool had a mixed reception and limited take-up. The evaluation evidence indicates that Form 4 Notices/Notices of Risk were filed in substantially more cases following the reforms (CO report, Figure 2.9), although the effect of this increase on statutory child protection services has been identified as a cause of concern across the family law system.

## Patterns in service use

The evidence from the Evaluation of the 2012 Family Violence Amendments indicates a continuing consolidation of the aims of the 2006 family law reforms in terms of encouragement to use non-legal mechanisms for the resolution of parenting disputes. In both cohorts of the ESPS sample, around half of the sample reported contacting FDR providers and lawyers at the time of separation, and around one in five contacted courts (ESPS report, Table 4.1). This translated into substantially fewer parents overall using these pathways as the “main pathway” for making parenting arrangements in both time frames (ESPS report, Table 4.8). The ESPS study evidenced a shift towards more agreements being reached in FDR for parents using these pathways, including those parents not affected by family violence (ESPS report, Table 4.13). This is most likely to reflect the implementation of s 60D(1), which requires advisers to inform parents/parties that protection from harm should be prioritised over the benefit to the child of a meaningful relationship with each parent after separation when making decisions

about parenting, and that they should regard the best interests of the child as the paramount consideration.

In relation to those parents participating in the SRSP 2014 who had sorted out their arrangements, around 10% reported using FDR/mediation, around 6% used lawyers and 3% used courts as their main pathway (ESPS report, Table 4.8). The findings of the SRSP 2014 also show that the use of formal pathways was strongly associated with the experience of family violence, and that parents, especially mothers, who also reported experiencing the conditions of fear, coercion and control as a result, were more likely to be using family law services as their main pathway to sort out parenting arrangements (ESPS report, Figures 4.1 and 4.2).

Each of the studies in the evaluation research program support the finding that the 2012 family violence amendments have been associated with longer resolution time frames for sorting out parenting arrangements among parents who are affected by a history of family violence. The ESPS findings evidence an increase in the number of parents in 2014 who reported that they had not sorted their arrangements at the time of the survey (ESPS report, Table 4.4). The Court Files Study data show that time frames for the resolution of matters resolved by judicial determination or consent prior to or during trial had doubled, on average, from around four to eight months (CO report, Table 3.4). While the views of professionals participating in the RFV indicate that these changes were at least in part linked to the need for a greater level of scrutiny of family violence and child abuse arising from the 2012 family violence amendments, other influences such as court resourcing and the evaluation sampling method are also relevant considerations.

## Changes in professional practices

The evaluation indicates that professional practices on the whole have changed in a direction consistent with the intention of the reforms, with a greater emphasis on identifying and assessing concerns about family violence and child abuse. Self-assessments by lawyers and non-legal professionals participating in the RFV study indicated shifts in advice-giving practices in a direction consistent with the intention of the reforms, though this is evident in legal practice to a greater extent than non-legal practice (RFV report, Table 2.10). However, the RFV study also indicates that while in-principle support for the reforms was strong, there was less confidence that changes in practice had occurred in key areas, including approaches to identification, and responses to matters involving family violence and child safety concerns (RFV report, sections 4.2 and 6.2).

Professionals participating in the RFV study also raised concerns about the limited effects of the reforms, including the level of resources required to assess family violence and child abuse concerns, the need for improvements in training and practice tools, and the complexities associated with the family law system, including overlaps with and inconsistencies between the family law system and state/territory child protection and family violence responses (RFV report, sections 4.2–4.3 and 6.2–6.3).

The Published Judgments study component of the CO Project demonstrated that the effects of s 60CC(2A) varied according to the way in which the court analysed the facts in the case at hand and applied its discretion in the context of the Part VII decision-making framework overall. In some contexts, s 60CC(2A) appeared to operate as a tie-breaker leading to the prioritisation of protection of children from harm, in some cases it supported an unacceptable risk analysis, and in other cases it tipped the balance in favour of an outcome restricting or ceasing contact between a child and a parent. While the inclusion of s 60CC(2A) was intended to provide a means of resolving the tension between the two primary considerations, the analysis suggests that this provision has had limited effects, especially where courts found there to be ambiguity associated with the allegations of family violence or child abuse or in the way in which one parent had behaved in relation to the other parent's relationship with the child. The analysis suggests that courts remained concerned to ensure that, wherever possible, children's relationships with both parents were maintained after separation, except in cases where the evidence was unambiguously in favour of an outcome inconsistent with this approach. That is, judicial determinations in the Published Judgments study involving orders for sole parental responsibility and limited or no care time with the other parent appeared to arise in cases where a very severe history of family violence had been established and the behaviour of one parent

was clearly deficient compared to the behaviour of the other. In less clear-cut circumstances, particularly where the parents' motivation for raising allegations of family violence or child abuse was questioned, care-time decisions were more likely to favour arrangements that maintained the child's relationship with both parents.

## Influences of legislative changes on patterns in parenting arrangements, disclosure and professional practices

The evidence from the three components of the Evaluation of the 2012 Family Violence Amendments suggest modest, mixed or limited effects. There are areas where practice is developing in response to the legislative amendments, including in the refinement and development of identification approaches in court and non-court based practice, and in the educative effect associated with the new definitions of family violence (s 4AB) and child abuse (s 4(1)) and with the introduction of s 60CC(2A). At this stage, however, limited effects are evident in relation to parenting arrangement outcomes. An indication of the limitations in the achievement of these outcomes in practice is evident in the comparison of RFV responses as to whether "adequate priority" was placed on "protection from harm" and "meaningful relationship". The rate of endorsement in relation to the meaningful relationship consideration (87%) was twenty percentage points greater than that for the protection from harm consideration (67%) (RFV report, Table 2.1).

There was also a weak association between the repeal of the "friendly parent" criterion and an effect consistent with the intention of the reforms to encourage the disclosure of concerns about family violence and child safety (RFV report, Table 3.4), and a relatively weak association between increased disclosures and the repeal of s 117AB (which explicitly supported a court's power to make costs orders where a party was found to have knowingly made a false statement in proceedings) (RFV report, Figure 3.1). In relation to both of these changes, however, differences in response patterns between professional groups suggest that a positive effect was more likely to be perceived by non-legal professionals who were not concerned with the direct application of the law, and responses overall were more indicative of a lack of effect from these changes, or a reticence to express a view.

Findings from the Court Files Study and Published Judgments component of the CO Project indicate that the extent to which one parent has supported the other parent's relationship with the child remains a significant issue in litigation, and the frequency with which this issue is raised has increased since the reforms.

## Unintended consequences

Data from the ESPS and the RFV components of the evaluation indicate that the reforms have not, in general, worsened parents' experiences with the family law system, although the forensic complexity involved in assessing family violence and child abuse concerns pose challenges for professionals. However, the changes are associated with longer resolution time frames for court and non-court based parenting matters (CO report, Table 3.4).

Positive views in most areas on measures of efficacy in relation to the family law system increased incrementally among both mothers and fathers between the SRSP 2012 and 2014 cohorts (ESPS report, Table B.4). While fathers in both cohorts were less satisfied with the family law system than mothers, the disparity remained similar in the SRSP 2014, and the data support the conclusion that no generalisations can be made about whether the 2012 family violence amendments favoured fathers or mothers. In relation to the experiences of parents reporting family violence, the data suggest a marginal improvement in the views of parents affected by family violence, though this was true to a greater or lesser extent according to the measure and whether the experience involved was physical violence or emotional abuse (ESPS report, section 6.1 and Table B.5). Differences among these groups are evident in different areas, suggesting an uneven effect of the reforms, consistent with findings reported in relation to service responses to the disclosure of family violence and child safety concerns. In general, less positive findings emerged in relation to safety concerns, with the experience of parents with safety concerns for themselves or their child (or both) in some areas changing little if at all,



and there is some indication of a negative shift for some sub-groups (ESPS report, section 6.1). These findings suggest a particularly mixed set of views and experiences among these parents.

In terms of negative consequences, systemic pressures were raised by some professionals participating in the RFV study. There was concern about the capacity of the family law system to deal with the increased requirement for scrutiny of parenting matters where concerns about family violence and child abuse are raised (RFV report, section 8.2.1). A further set of responses raised concerns about false or frivolous allegations of family violence and child abuse being raised (RFV report, section 8.2.3). Such concerns are not new in the family law system. Concern about the limited effects of the reforms was a significant theme in the comments of many professional participants. Not only were systemic pressures raised in this context, but other issues canvassed were the complexity of the legislation, the complexity of the family law system, and a need for more effective education and training in the areas of family violence and child abuse.

## Summary

Overall, the 2012 family violence amendments were perceived positively by a majority of professionals across the system, although stronger support was evident among non-legal professionals than it was among lawyers and judicial officers.

The data indicate a greater emphasis on screening for family violence and child abuse concerns across the system, but particularly among lawyers and courts. This, however, has not translated into more parents considering that their concerns about both of these issues (especially safety concerns) were dealt with appropriately after the reforms.

In relation to parenting arrangements, the evaluation evidence indicates subtle shifts in a direction consistent with the reforms in both the ESPS samples and Court Files Study. Overall, the evidence indicates that the 2012 family violence amendments have had a greater influence on identification and screening practices than they have had on patterns in parenting arrangements. Practice continues to evolve and it is likely that greater effects from the reforms will unfold over time.



# 1

## Introduction

This report sets out the overall findings of the Evaluation of the 2012 Family Violence Amendments. The evaluation, funded by the Attorney-General's Department (AGD), examined the effects of amendments to the *Family Law Act 1975* (Cth) (FLA) that were intended to improve the family law system's responses to matters involving family violence and safety concerns. The reforms substantively came into effect on 7 June 2012. The evaluation research program had three different elements:

- the Experiences of Separated Parents Study (ESPS), which comprised two cross-sectional quantitative surveys (the Surveys of Recently Separated Parents [SRSP] 2012 and 2014) and provided pre- and post-reform data on parents' experiences of separation and the family law system;
- the Responding to Family Violence (RFV) survey of family law practices and experiences, which was primarily based on online surveys completed by professionals across the family law system, including judicial officers, legal practitioners, family consultants, family dispute resolution practitioners and family relationship services practitioners; and
- the Court Outcomes Project (CO Project), which encompassed three aspects: a quantitative study of patterns in orders made by judicial determination and consent in relation to parental responsibility and time; an examination of patterns in courts filings based on administrative data from the three family law courts; and an analysis of published judgments applying the 2012 family violence amendments.

The findings from these three projects have been separately described in the following reports:

- ***Experiences of Separated Parents Study* (ESPS report)**  
Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L., Smart, D., Qu, L., Coulson, M., & Tayton, S. (2015). *Experiences of Separated Parents Study* (Evaluation of the 2012 Family Violence Amendments). Melbourne: Australian Institute of Family Studies.
- ***Responding to Family Violence: A Survey of Family Law Practices and Experiences* (RFV report)**  
Kaspiew, R., Carson, R., Coulson, M., Dunstan, J., & Moore, S. (2015). *Responding to Family Violence: A Survey of Family Law Practices and Experiences* (Evaluation of the 2012 Family Violence Amendments). Melbourne: Australian Institute of Family Studies.
- ***Court Outcomes Project* (CO report)**  
Kaspiew, R., Carson, R., Qu, L., Horsfall, B., Tayton, S., Moore, S., Coulson, M & Dunstan, J. (2015). *Court Outcomes Project* (Evaluation of the 2012 Family Violence Amendments). Melbourne: Australian Institute of Family Studies.

This report synthesises findings drawn from each of these reports to address the six research questions that guided the evaluation research program.

## 1.1 Background

The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth) was introduced to improve the family law system's response to family violence. In particular, it aimed to better support the disclosure of concerns about family violence, child abuse and child safety by parents engaged in the family law system and to encourage professionals to respond to these disclosures in a manner that prioritises protection from harm.

The main elements of the family violence reforms involved:

- introducing wider definitions of “family violence” and “abuse” (s 4AB and s 4(1));
- clarifying that in determining the best interests of the child, greater weight is to be given to the protection of children from harm where this conflicts with the benefit to the child of having a meaningful relationship with both parents after separation (s 60CC(2A));
- strengthening the emphasis placed on protecting children from harm by imposing obligations on advisers<sup>1</sup> to inform parents/parties that post-separation decision making about parenting should reflect this priority and that they should regard the best interests of the child as the paramount consideration (s 60D);
- imposing a legislative obligation on an “interested person” (including parties to proceedings and Independent Children’s Lawyers [ICLs]) to file a Form 4 Notice/Notice of Risk when making an allegation of family violence or risk of family violence (s 67ZBA);
- extending the obligation to file a Form 4 Notice/Notice of Risk when making an allegation that a child has been abused or is at risk of being abused to “interested persons” (including ICLs) as well as parties to proceedings (s 67Z);
- imposing obligations on parties to proceedings to inform the courts about whether the child in the matter or another child in the family has been the subject of the attention of prescribed child welfare authorities (s 60CD);
- imposing a duty on the court to actively enquire about whether the party considers that the child has been, or is at risk of being, subjected or exposed to family violence, child abuse or neglect (s 69ZQ(1)(aa)(i)), and whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence (s 69ZQ(1)(aa)(ii));
- setting out the court’s obligation to take prompt action in relation to a Form 4 Notice/Notice of Risk filed in relation to allegations of child abuse or family violence (s 67ZBB);
- amending the additional best interests consideration relating to family violence orders (s 60CC(3)(k)); and
- amending or repealing provisions that might have discouraged disclosure of concerns about child abuse and family violence.

The AVERT Family Violence training package (AGD, 2010) and the Detection of Overall Risk Screen (DOORS; McIntosh & Ralfs, 2012)<sup>2</sup> are two further initiatives implemented in recent years with the intention of improving practices in relation to identifying, assessing and responding to risks and harm factors in the family law system context.

The 2012 family violence amendments responded to a series of reports that examined the operation of the family law system (Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011: Explanatory Memorandum, 2010–11; detailed in section 1.1.1).

### 1.1.1 Relevant developments in family law and other areas from 2006 to 2015

In 2006, the Australian government introduced reforms to the family law system intended to achieve two broad aims. The first was to support the involvement of both parents in children’s

<sup>1</sup> s 60D(2) of the FLA provides that an adviser is: (a) a legal practitioner; or (b) a family counsellor; or (c) a family dispute resolution practitioner; or (d) a family consultant.

<sup>2</sup> See <[www.familylawdoors.com.au](http://www.familylawdoors.com.au)>. Note that a validation study has been conducted but was not publicly available at the time of publication.

lives after separation, at the same time as protecting children from harm from violence and abuse. The second was to encourage a move away from adversarial mechanisms for the resolution of parenting arrangements after separation. To support these intentions, a range of systemic and legislative changes was introduced. The establishment of a network of 65 Family Relationship Centres (FRCs) was the main systemic change. These publicly funded centres provide a range of services for separated and non-separated families, including family dispute resolution (FDR) and post-separation support for parents and children.

The 2006 legislative changes had three main elements. The first supported shared parenting after separation through the introduction of a presumption in favour of equal shared parental responsibility, with a linked obligation on courts to consider making orders for equal or substantial and significant time when orders for equal shared parental responsibility pursuant to the presumption were made. The second supported a less adversarial resolution of parenting arrangements and was reflected in the enactment of FLA s 60I, which requires parents to attempt family dispute resolution prior to lodging a court application for parenting arrangements, except in certain circumstances, including those where there are concerns about family violence and child abuse. It was also reflected in the enactment of Division 12A of Part VII of the *Family Law Act 1975* (Cth), which enshrines a series of powers, duties and obligations that are intended to support court proceedings in relation to children's matters being conducted in a less adversarial manner. The third element was concerned with protecting children from family violence and child abuse. This was reflected in a number of different aspects of the 2006 legislative reforms, including making matters where these issues were relevant exceptions to both the s 60I requirement and the presumption of equal shared parental responsibility, as well as recognising this as an aim of Part VII in the Objects and Principles that guide decision making in relation to children's matters. At the same time, a number of different elements of the 2006 legislative reforms responded to concerns that "false" allegations about family violence and child abuse may be raised in parenting proceedings. These elements included provisions requiring courts to consider the extent to which one parent had facilitated the involvement of the other in the child's life (the "friendly parent" criterion), provisions requiring the courts to make costs orders against a party who was found to have "knowingly made a false statement in proceedings", and provisions restricting the courts' attention to personal protection orders made on a final and contested basis (rather than on an interim basis or by consent).

Shortly after the 2006 family law reforms were implemented, AIFS completed research examining the extent to which family violence and child abuse allegations were raised in court proceedings (Moloney et al., 2007). The research (which pertained to the period prior to 2006) found that such allegations were commonly raised in parenting matters. Consistent with an earlier small-scale study (Kaspiew, 2005), it found that where allegations of "spousal violence" or "child abuse" were made and accompanied by evidence of "strong probative weight", they had an influence on court outcomes. Without such evidence, allegations did not seem to have an effect on outcomes. The report concluded that "legal advice and legal decision making may often be taking place in the context of widespread factual uncertainty" (p. viii). At the same time, an evaluation of the Family Court of Australia's (FCoA) Magellan case management program for cases involving allegations of serious sexual or physical abuse (Higgins, 2007) reinforced the need for collaborative approaches involving state child protection agencies for family law cases involving child abuse concerns. However, this resource-intensive approach is applied to small proportion of FCoA cases, and over time the caseload in children's matters has become concentrated with the Federal Circuit Court of Australia (FCC). Several analyses have drawn attention to the implications for families of having responsibility for child protection issues resting with the states and territories and family law matters being the preserve of the federal government (ALRC & NSWLRC, 2010; Higgins & Kaspiew, 2011; Kelly & Fehlberg, 2002), with the Family Law Council (2015) recently making recommendations to support a better interface between these two systems for matters involving court intervention, in relation to dealing with the needs of complex families and the family law system.

In the period after the 2006 family law reforms, concern about the family law system's ability to respond appropriately to the family violence and child abuse that had been evident prior to the 2006 reforms (House of Representatives Standing Committee on Family and Community Affairs, 2003), continued to gather pace. In addition to the AIFS Evaluation of the 2006 Family Violence Reforms (Kaspiew et al., 2009), which concluded that the system had some way to go

in finding an effective response in this regard, several other reports highlighted difficulties in legislation and processes in this regard. The *Family Courts Violence Review* by Richard Chisholm (2009) recommended legislative change and a range of measures intended to support the family law courts' ability to respond to these issues. Legislative and systemic changes, including a broadened definition of family violence, were recommended by the Australian and NSW Law Reform Commissions (2010) and the Family Law Council (2009). A report by Parkinson and colleagues (2010) also highlighted the poorer outcomes for children in separated families as a result of being exposed to family violence and conflict. A report by Bagshaw and colleagues (2010) focused on family violence and family law system use and found significant dissatisfaction with family law system services among people affected by family violence.

Alongside these developments, policy and community concerns about family violence and child protection continued to gain momentum. At an inter-jurisdictional level, two national frameworks respond to these concerns. The National Plan to Reduce Violence Against Women and their Children 2010–22 was endorsed by the Council of Australian Governments in 2010 and is now being implemented in its Second Action Plan. Similarly, the National Framework for Protecting Australia's Children 2009–20 was endorsed by COAG in 2009 and consultations for the Third Action Plan (2015–18) are currently taking place. In each of these areas, Australia's fragmented jurisdictional framework for responding to family violence and child abuse—which sees responsibility for these issues spread across different state, territory and Commonwealth agencies, legal and policy frameworks and courts—continue to cause concern. Most recently, this has been reflected in the Attorney-General's request to the Family Law Council to consider ways in which the family law system's response to families with complex issues can be improved.

Further indications of community and policy concerns about family violence and child abuse are evident in a range of ways, including through two royal commissions dealing respectively with each of these issues (the national Royal Commission Into Institutional Responses to Child Abuse, and the Victorian Family Violence Royal Commission), an inquiry by the National Children's Commissioner into the exposure of children to family violence, and a Senate Committee report into domestic violence in Australia (Finance and Public Administration Standing Committee, 2015). In addition there are two reports that have taken broad stances in examining systemic approaches to family violence: *Not Now Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Special Taskforce on Domestic and Family Violence in Queensland, 2015) highlighted the complexity of systemic responses to family violence in the context of separation and the negotiation of parenting arrangements; and the *Opportunities for Early Intervention* report by the RMIT Centre for Innovative Justice (2015) examined systemic responses to family violence perpetrators and identified opportunities for the development of approaches to bring about behaviour change.

In the context of the developments outlined in this discussion, there are three features of the contemporary family law landscape that form an important backdrop to the findings outlined in this report. The first of these, which arises from the empirical evidence base that has been under development since 2006, is that the family law system is only used to a significant extent by a minority of separated parents. Most parents resolve parenting and property arrangements with no, little or limited engagement with family law services. The parents who do use services (FDR/mediation, lawyers and courts) are those affected by a range of complex issues, including family violence, child safety concerns, mental ill health and substance abuse. The other two elements relate to the configuration of the family law system in 2015. This configuration means that FDR/mediation are used to a greater extent now than they were in 2006, with a resultant 25% decrease in court filings for applications involving children (Kaspiew, Moloney, Dunstan, & De Maio, 2015). At the same time, the relative distribution of cases between the two courts that exercise family law jurisdiction outside of Western Australia (the FCoA and the FCC) has shifted substantially. Compared to a near even distribution of children-related filings in 2004–05, by 2012–13 the FCC was handling some 79% of applications for final orders in matters involving children.

## 1.2 Methodology

The methodology applied in this evaluation was based on a multidisciplinary mixed-method approach using data from multiple sources that are designed to support the examination of six key research questions. The ESPS and the Court File Study in the CO Project allowed comparisons to be made between benchmark data establishing the pre-reform position and data

collected after the reforms. In this way, assessments of the effects of the reforms in key areas are based on quantitative data shedding light on pre- and post-reform patterns. Interpretation of these data was further supported by the findings from the other elements of the evaluation.

Importantly, the methodologies applied in the three evaluation components extended methods previously applied in the AIFS Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009), which supported the interpretation of data from the studies in this evaluation and provided a means of assessing the significance of changes in key areas.

The following sections provide a summary of the research questions and methodologies for each study. Comprehensive explanations are provided in the separate reports for each evaluation component.

## 1.3 Research questions

The following broad-level research questions guided the evaluation research program:

1. To what extent have patterns in arrangements for post-separation parenting changed since the introduction of the family violence amendments, and to what extent is this consistent with the intent of the reforms?
2. Are more parents disclosing concerns about family violence and child safety to family law system professionals?
3. Are there any changes in the patterns of service use following the family violence amendments?
4. What is the size and nature of any changes in the following areas and to what extent are any such changes consistent with the intent of the reforms:
  - practices among the following groups of professionals:
    - advisors (within the meaning of FLA s 63DA(5) [legal practitioners, family counsellors, family dispute resolution practitioners and family consultants]);
    - professionals associated with courts, including judges;
  - court-endorsed outcomes (consent orders) and court-ordered outcomes (judicially determined orders); and
  - court-based practices, as reflected in the manner in which practitioners and judges fulfil their obligations under the *Family Law Act 1975* (Cth)?
5. Does the evidence suggest that the legislative changes have influenced the patterns apparent in questions 1–4 above?
6. Have the family violence amendments had any unintended consequences, positive or negative?

### 1.3.1 Experiences of Separated Parents Study

The Experiences of Separated Parents Study comprised two cohorts (2012 and 2014) of the Survey of Recently Separated Parents, together providing samples of some 6,000 parents who had separated before and after the 2012 family violence amendments. The SRSP 2012 cohort had separated between 1 July 2010 and 31 December 2011 ( $n = 6,119$ ), and the SRSP 2014 cohort had separated between 1 July 2012 and 31 December 2013 ( $n = 6,079$ ). The 2012 family violence amendments came substantially into effect on 7 June 2012, and as such, the SRSP 2012 represents parents' pre-reform experience of the family law system and the SRSP 2014 the post-reform experience. Each of these samples comprised about 2,800 fathers and 3,200 mothers.

The samples for the two surveys were derived from the Department of Human Services–Child Support (DHS-CS) database and this substantially replicated the approach applied in the Longitudinal Study of Separated Families (LSSF) research program.<sup>3</sup> Together, these studies

3 The LSSF research program involved a national, longitudinal study of parents who had at least one child under 18 years of age, who separated after the 2006 reforms to the *Family Law Act 1975* (Cth) and who were registered with the Department of Human Services—Child Support (DHS-CS). Data collection took place in 2008 (Wave 1), 2009 (Wave 2) and 2012 (Wave 3). See Kaspiew et al. (2009), Qu and Weston (2014) and Qu, Weston, Moloney, Kaspiew, and Dunstan (2014).



allow an understanding of the experiences of separated families over a substantial period of time. In both cohorts of the SRSP, the samples were primarily comprised of opposite-sex separating couples, with consistent numbers of fathers and mothers participating in each cohort (2012: fathers: 2,853, mothers: 3,266; 2014: fathers: 2,817, mothers: 3,262). There were 17 fathers and 31 mothers in the 2014 cohort, and 14 mothers in the 2012 cohort reporting that they had separated from same-sex partners.

The core focus of the SRSP 2012 and 2014 studies was to investigate parents' experiences of family violence and safety concerns (including children's exposure to family violence), and of disclosing these to family law system professionals. The research also explored parents' use of services, patterns in parenting arrangements, child support arrangements, and parent and child wellbeing. The data collected from these surveys both informed conclusions about the effect of the 2012 family violence amendments and further developed the evidence base established in the LSSF research program.

### 1.3.2 Responding to Family Violence Study: Survey of Family Law Practices and Experiences

The views and experiences of professionals working across the family law system were examined on the basis of quantitative and qualitative data from judicial officers and registrars ( $n = 37$ ), lawyers ( $n = 322$ ) and non-legal family law professionals (e.g., family consultants and FDR practitioners;  $n = 294$ ). The data from these professionals were obtained via an online survey conducted between December 2013 and February 2014. Participants were recruited through a range of agencies and organisations, including the three family law courts (FCoA, FCC, and the Family Court of Western Australia [FCoWA]), Family Relationship Services Australia (FRSA), and the Family Law Section of the Law Council of Australia.

As part of the first half of the fieldwork period for the SRSP 2014, telephone interviews were also undertaken with parents who had used family law system services in the period of approximately 12 months preceding August 2014 to examine their experiences of these services.

Overall, 653 professionals across the various groupings contributed to the data collection, together with 2,473 parents in the interim SRSP 2014 sample ( $n = 3,428$ ) who had reported using family law system services in the relevant period.

### 1.3.3 Court Outcomes Project

The CO Project focused on the effects of the legislative amendments on parenting matters dealt with in the family law courts by consent or judicial determination. The CO Project had three parts.

The first part (the Court Administrative Data Study) was an analysis of administrative data obtained from the three family law courts, to assess patterns in filings in parenting matters and other relevant issues, including filings in relation to Form 4 Notices/Notices of Risk, the number of memoranda or reports provided by family consultants (long or short) and the number of matters in which orders for Independent Children's Lawyers (ICLs) were made.

The second part (the Court Files Study) was an analysis of court files involving matters resolved by judicial determination and consent both before and after the reforms, allowing a rigorous comparison of outcomes in these two time periods. It examined patterns in orders for parental responsibility and care time, and a range of other relevant issues, including the prevalence in the files of allegations about family violence and child abuse.

The third element (the Published Judgments Study) was an analysis of published judgments to examine how the legislative amendments were being applied in court decision-making.

### 1.3.4 Limitations

The evaluation data were gathered in a fairly early time frame in the evolution of the 2012 family violence amendments, and this timing might explain the limited evidence of change.



Although, there are indications of an increased identification of family violence and safety concerns, less progress has been identified in relation to professionals' responses, which may suggest that responses are still evolving. Nevertheless, the amendments were intended to have an immediate effect rather than bringing about generational change.

Limitations also arise in the context of the survey methods applied for assessing family violence, which have been recognised in a range of commentaries, including one by the Australian Bureau of Statistics (2013). Objective measures such as those applied in the ESPS go some way towards establishing prevalence and intensity, but they do not shed light on a range of important questions. These include the dynamics of aggression and defence, which research in clinical samples from the US has shown are important in understanding family violence experiences from the perspective of gender (Hamberger & Larsen, 2015), or the subjective construction of the experiences, which previous research has indicated vary according to gender (Bagshaw et al., 2010).

There are two other issues that may influence findings in some areas to an uncertain extent. Practice initiatives such as the AVERT Family Violence training package (AGD, 2010) and the DOORS tool (McIntosh & Ralfs, 2012) may be having influences that are difficult to disentangle from the effects of the legislative reform. The question of risk assessment is examined in some depth in Chapter 4, but it is difficult to attribute effects in some areas to one or other of these issues since they were implemented at the same time in a way that reflected an intention for the practice initiative to be supportive of the legislative change. Similarly, as some of the evaluation evidence was being collected, the Department of Health and Human Services in Victoria was trialling an initiative involving a child protection practice leader being co-located in the Melbourne and Dandenong Registries of the family law courts (Wall et al., 2015).

More broadly, the intersection between the federal family law system and the state/territory-based child protection and family violence protection order systems are pertinent to some areas of discussion in this report. However, with its focus on the federal family law system, the evaluation methodology did not provide scope for the dynamics in each of the intersecting state/territory systems to be examined. Thus, the influence of changes or developments in state/territory systems that may have coincided with the implementation of the 2012 family violence amendments were not addressed, and conversely, only limited insight into the effects of the federal changes on state/territory systems is available in this report.

A further issue that may be relevant is the extent to which the focus on family violence has gathered pace in policy making, the media and the community in the period since the reforms were implemented, which are reflected in developments implemented under the National Plan to Reduce Violence Against Women and Their Children. The extent to which the evaluation findings in some areas—such as parents' awareness of the family law system's response to family violence and safety concerns—may also be influenced by wider developments in the community is uncertain.

## 1.4 Terms used in this report

### *Family dispute resolution and FLA s 60I*

Under s 60I of the FLA, parties are required to attempt FDR prior to lodging a court application for parenting orders (s 60I(1)). Certain exceptions to this requirement apply, including circumstances involving urgency, and matters where there are reasonable grounds to believe there has been, or is a risk of, family violence or child abuse by one of the parties to the proceedings (s 60I(9)). Where these grounds are established, a court may hear a matter without an s 60I certificate being lodged (s 60I(7)). Under s 60I(8), FDR practitioners may issue certificates on the basis that:

- the party did not attend FDR due to the refusal or failure of the other party or parties to attend (s 60I(8)(a));
- the FDR practitioner made an assessment that the matter was not appropriate for FDR (s 60I(8)(aa));
- the parties attended FDR and made a genuine effort to resolve the dispute without success (s 60I(8)(b));

- FDR was attempted but one or both parties did not make a genuine effort to resolve the dispute (s 60I(8)(c)); or
- the parties began FDR, but the FDR practitioner decided it was not appropriate to continue, having regard to the circumstances of the matter (s 60I(8)(d)).

These matters are referred to as being heard as a result of an s 60I certificate being lodged.

FDR and the operation of the exemptions have been extensively examined by the Australian Institute of Family Studies (AIFS) in a range of reports including: Kaspiew et al. (2009); Qu and Weston (2014); Kaspiew, De Maio, Deblaquiere, and Horsfall (2012); De Maio, Kaspiew, Smart, Dunstan, and Moore (2013); Qu et al. (2014); Kaspiew, Carson, Coulson et al. (2015); and Kaspiew, Carson, Dunstan et al. (2015).

## *Independent Children's Lawyers*

ICLs are specially trained legal practitioners appointed by legal aid commissions in each state and territory, which also administer the funding for them. They are appointed to represent the best interests of children in particularly complex cases, including those involving serious allegations of family violence and child abuse. Recent research by AIFS has examined the role and efficacy of ICLs (see Kaspiew et al., 2014).

## *Form 4 Notice/Notice of Risk concerning family violence and child abuse*

A Form 4 Notice/Notice of Risk is the form that courts require litigants (and other interested persons) to file with an application to alert the courts to cases involving concerns about family violence and child abuse. In the period covered by this research, court practices concerning notices of family violence and child abuse changed, as explained in section 2.3. Other AIFS research relevant to courts and family violence and child abuse includes: Kaspiew et al., 2009; Kaspiew et al., 2014; Higgins, 2007; and Moloney et al., 2007.

## *Magellan*

This is a special case management program operated in the FCoA. It is designed to deal expeditiously with parenting matters in the FCoA that involve allegations of sexual abuse or serious physical abuse of children (see Higgins, 2007). It involves collaboration between the FCoA, state and territory child protection agencies and legal aid commissions to support an intensively case-managed approach to a limited number of serious matters.

## *Family consultants*

Family consultants<sup>4</sup> are psychologists or social workers who work with the family law courts and provide expert clinical assessments to the courts about families involved in court proceedings.<sup>5</sup> The family consultant role is set out in FLA Part III.

Child Dispute Services,<sup>6</sup> which is the service within the FCoA and the FCC that coordinates family consultant activities, employs about 80 internal family consultants, with a further group engaged as sub-contractors pursuant to Regulation 7 of the Family Law Regulations 1984. Family consultants may provide brief reports to the court to inform decision-making at an interim stage (s 11F memoranda), or longer reports as proceedings develop (Family Reports, s 62G). All of their dealings with families are reportable to the courts (s 11C). The case management approaches of the FCoA and the FCC are different, and this means that family consultants operate in a slightly different way in each court (see section 2.4). As of August 2015, family

4 See Family Consultants: <[www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/child+dispute+services/family-consultants](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/child+dispute+services/family-consultants)>.

5 National standards have recently been developed to inform the assessment process: <[www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting)>

6 See Child Dispute Services: <[www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/child-dispute-services/](http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/child-dispute-services/)>.

consultants in the Melbourne and Brisbane registries were conducting a trial of a behaviourally based family violence screening questionnaire to be completed by each party prior to their interview with the allocated family consultant, with the trial expected to be completed in late 2015 (FCoA & FCC, 2015, p. 15).

## *Consent orders*

Arrangements for children and property matters may be agreed to and made legally binding by obtaining written consent orders. This may occur after an application for final orders has been lodged to initiate legal proceedings. It may also occur as a result of an agreement negotiated in FDR, with or without the assistance of lawyers. In such instances, the parties may decide to have their agreement endorsed by a court as consent orders so that the agreement becomes legally binding, and file an application for consent orders pursuant to the Family Law Rules 1984, Rule 10.15. The FCoA and FCoWA have special forms and processes for this (FCoA: Application for Consent Orders, and FCoWA: Form 11 Application for Consent Orders).

## 1.5 The structure of this report

This report has seven further chapters. Chapter 2 provides an overview of the key characteristics of separated parents, with a particular focus on the features of those who used family law system services. It supports this introduction with an overview of the views expressed by family law system professionals in relation to the 2012 family violence amendments. The five chapters that follow each set out a synthesis of the core evaluation findings on the six research questions. Chapter 3 provides insight into whether or not the 2012 family violence amendments have had an effect on patterns of service use. Chapter 4 examines the identification of concerns about family violence and child abuse among separated parents. Chapter 5 sets out findings on patterns in parenting arrangements. Chapter 6 examines the application of the changes to Part VII of the *Family Law Act 1975* (Cth), and Chapter 7 analyses the extent to which the reforms appear to have had positive, negative and unintended consequences. A summary of the findings relating to the evaluation questions is provided in Chapter 8.

# 2

## Parents' characteristics and professionals' views of the 2012 reforms: An overview

This section has two aims. It sets out some core empirical insights about the characteristics of separated families and the ways in which they engage with family law system services, which are central to understanding the findings set out in later parts of this report. This profile of the family law system client base is followed by a summary of some findings about professionals' views of the 2012 family violence reforms, which informs the evaluation findings in specific areas.

The general overview of the characteristics of separated families in this chapter draws on the cumulative evidence base of the three quantitative datasets described in Chapter 1—the LSSF and the two ESPS surveys (SRSP 2012 and 2014). LSSF Wave 1, and SRSP 2012 and 2014 each examined separate cohorts of parents early in their post-separation trajectories. In addition, LSSF Waves 2 and 3 provide insight into experiences over the longer term.

Considered together, these three datasets provide consistent and reliable insights into many of the salient characteristics of separated families, including demographics, family profiles, patterns in service use and the prevalence of issues such as family violence and safety concerns, which are of particular significance for the questions examined in this report.

The main findings discussed in this chapter are:

- Each cohort of separated families represented in the LSSF and the SRSP 2012 and 2014 had similar patterns of family violence, safety concerns and other indicators of complexity.
- Some two-thirds of separated parents reported a history of emotional abuse and/or physical violence before/during separation, and this continued for a slightly lower proportion after separation. The prevalence of physical violence diminished after separation, as did the prevalence of emotional abuse, though to a much less significant extent.
- Issues giving rise to safety concerns were relevant for up to one in five parents in each cohort of separated parents. The majority of safety concerns associated with ongoing contact with the other parent involved violent or dangerous behaviour, emotional abuse, substance misuse or mental health issues.
- The analysis demonstrates that family violence varies widely in form, frequency, intensity and effect.
- Data relating to violence intensity in the ESPS cohorts show that at the two higher ranges of the five possible categories, significantly more mothers than fathers reported being victims. They were also more likely to report more effects from physical violence. Mothers were also significantly more likely than fathers to report that the experience induced feelings of fear both before/during and since separation.
- Most separated parents made little or no use of family law system services. The use of formal legal mechanisms (lawyers and courts) for the resolution of parenting disputes was most common among parents who also had the greatest level of complexity in their circumstances.

## 2.1 Demographics

The average age of participating parents was 36 years in both cohorts of the ESPS, with a majority of parents holding a post-secondary qualification. Differences between mothers and fathers were most evident in the 2014 cohort in relation to full-time employment (fathers: 74% and mothers: 19%; ESPS report, Table 2.1). Housing tenure remained relatively similar between mothers and fathers, and between fathers across both the 2012 and 2014 cohorts, with private rental being the most common housing arrangement. Just over one-quarter of parents reported owning or purchasing their home, though there was a decrease in mothers' reports between the two surveys (2012: 29% cf. 2014: 26%). An increase was also identified in the reports of parents (and in 2014 significantly more fathers than mothers) living with family members (2012—fathers: 9% and mothers: 6%; 2014—fathers: 11% and mothers: 8%). Consistent with the 2012 cohort, a majority of parents in the 2014 cohort reported experiencing financial stress since separation. Significantly more mothers than fathers in both cohorts and significantly more mothers in the 2014 cohort than in the 2012 cohort reported experiencing financial difficulties. More than one-third of parents in the 2012 cohort (35%) and in the 2014 cohort (39%) reported that mental health problems preceded separation, and one-quarter of parents in both cohorts reported difficulties associated with drug and alcohol use, with mothers reporting these issues significantly more often than fathers (ESPS report, Table 2.3).

Although a majority of parents in the 2014 cohort (63%) reported that they were married to the focus parent<sup>7</sup> prior to separation, this represented a reduction in the proportion of such reports compared to the 2012 cohort (70% cf. LSSF Wave 3: 54%), and there was a corresponding increase in reports of cohabitation (2012: 29% cf. 2014: 34%). Consistent with the SRSP 2012, the majority of separated parents in the 2014 cohort reported having one or two children from their relationship, and the average age of the focus child in both the 2012 and the 2014 cohort was seven years of age.

## 2.2 Family relationships and parenting arrangements

A majority of parents participating in both the 2012 and 2014 SRSP cohorts reported that their relationship with the focus parent was “friendly” or “cooperative” (ESPS report, Figure 2.1). While differences between the positive responses of mothers in fathers in both the 2012 and 2014 cohorts were minimal, a higher proportion of mothers than fathers in both SRSP cohorts described their relationship as “fearful” (mothers—6% in both cohorts cf. fathers—2012: 3% and 2014: 4%), with more fathers (2012: 22% and 2014: 21%) than mothers (19% in both cohorts) describing their relationship as “distant”.

Mother majority care-time arrangements (66–99% of nights spent with mother) remained the most commonly reported parenting arrangement, although such arrangements were reported at a significantly reduced rate in the 2014 cohort (2012: 50%; 2014: 46%; ESPS report, Figure 2.3). Notably, 20–21% of focus children 2012 and 2014 were reported to be in shared care-time arrangements, a higher proportion than that reported by parents in the LSSF Wave 1 (16%). The average age of children in the SRSP samples was older than that of the children in the LSSF Wave 1, which may provide some explanation for the higher rate of shared care-time arrangements in the SRSP cohorts.

Parents' reports of decision-making responsibility in four key areas (education, health care, religious/cultural ties and sporting/social activities) illustrated differences in the views of mothers and fathers in the 2014 cohort regarding who was responsible for these decisions. These varying perceptions broadly reflected the response patterns identified in the 2012 cohort, with 42–62% of participants in both cohorts reporting the mother as mainly making decisions, and joint decision making being reported by fewer than half of the participants in relation to some parenting issues. Generally, however, the data indicate that the age of the focus child was a key factor in the way in which parents exercised decision-making responsibility, with shared decision-making increasing with the age of the focus child (ESPS report, Figure 2.7).

<sup>7</sup> In both the SRSP 2012 and 2014, the participant's former partner is referred to as “the focus parent”, and the eldest child from their union listed in the DHS-CS database is referred to as the “focus child”.

## 2.3 Indicators of complexity in separated families

The LSSF and ESPS datasets<sup>8</sup> indicate that family violence<sup>9</sup> and safety concerns<sup>10</sup> are pertinent to a significant proportion of separated parents and may co-occur with other complex issues, including mental ill health and substance misuse. In broad terms, the LSSF and ESPS datasets show that relatively consistently, family violence is reportedly experienced by about two-thirds of separated parents in the period before or during separation. Physical hurt, often accompanied by emotional abuse, was reported by about a quarter of the sample, and emotional abuse in the absence of physical hurt was reported by about 39%.<sup>11</sup> Family violence was reported after separation by a substantial proportion of separated parents in the ESPS datasets (60%) (when interviewed some 17 months after separation), although in this time frame, physical hurt was substantially less commonly reported (8%). Taking a longer term perspective, the findings of LSSF Wave 3 show that family violence (primarily emotional abuse) continued to be relevant 5–6 years after separation, with 43% of mothers and 38% of fathers in LSSF Wave 3 reporting experiencing emotional abuse in the preceding twelve months (Qu et al., 2014, p. 22). While the LSSF Wave 3 data show that parents holding safety concerns were more likely to report that their relationship with the other parent was conflictual or fearful, 20% of fathers and mothers holding these concerns nevertheless described their relationship as friendly or cooperative (Qu et al., 2014, Figure 3.10).

### 2.3.1 Prevalence and effects of family violence

The discussion in the preceding section establishes that family violence is a commonly reported phenomenon among separated parents, both before/during and after separation. Together the LSSF and ESPS datasets establish that family violence is complex, dynamic and variable, and the analysis based on these data is substantially more detailed than has been available before. The discussion in this section provides a brief overview of some key findings, with full analysis set out in Kaspiew, Carson, Dunstan et al. (2015; Chapter 3) and Qu et al. (2014; Chapter 3). The first part of the discussion sets out findings on the frequency of reported experiences of emotional abuse and physical hurt, with a focus on gender patterns in this regard. In considering these findings, it is important to understand that the data, albeit detailed, impose some important limitations on understanding the significant issue of gender dynamics in family violence, including that the parents' reports do not shed light on the extent to which such violence could be classified as aggression or defence. The second part of the discussion sets out findings on the effects of the reported experiences of emotional abuse and physical violence; the association between emotional abuse and physical violence with feelings of fear, coercion and control; and the exposure of children to behaviour that gives rise to feelings of fear, coercion or control.

8 The discussion in this section is based on the measures used by AIFS in the LSSF (Wave 1: Kaspiew et al., 2009; Wave 2: Qu & Weston, 2014; and Wave 3: Qu et al., 2014), and in the ESPS surveys (SRSP 2012: De Maio et al., 2013; and SRSP 2014: Kaspiew, Carson, Dunstan et al., 2015).

9 Family violence is a complex phenomenon. Measures that were common to both the LSSF and ESPS were questions about physical hurt and whether the former partners had: tried to prevent the participant from using the telephone or car, contacting family or friends, or knowing about or having access to money; threatened to harm the participant, the child, themselves, other family or friends, pets; damaged or destroyed property; or insulted the participant with intent to shame, belittle or humiliate. In addition, the SRSP included a further question on whether there had been attempts to force unwanted sexual activity, as well as a number of questions about the frequency of the behaviours (De Maio et al., 2013, p. 23). In LSSF Wave 3, the family violence measures concerning attempts to prevent access to money, cars, family and friends etc. were omitted, but three others were asked: attempts to force unwanted sexual activity; monitoring whereabouts; and circulating defamatory comments with intent to shame, belittle and humiliate.

10 The term "safety concerns" refers to concerns about the safety of a parent and/or child as result of ongoing contact with the other parent.

11 See Kaspiew et al. (2009), Tables 2.2 and 2.6; Kaspiew, Carson, Dunstan et al. (2015), Table 3.4 and Figure 3.7. De Maio et al. (2013) applied a similar methodology with a more detailed focus on family violence. Subtle differences in sample selection for the LSSF and SRSP 2012 resulted in slightly different sample profiles as far as parents who had never lived together were concerned. There were fewer of these in the SRSP 2012 sample (cf. LSSF) and this may account for the subtle differences in the incidence of family violence reported in the two studies (De Maio et al., 2013, p. 12).

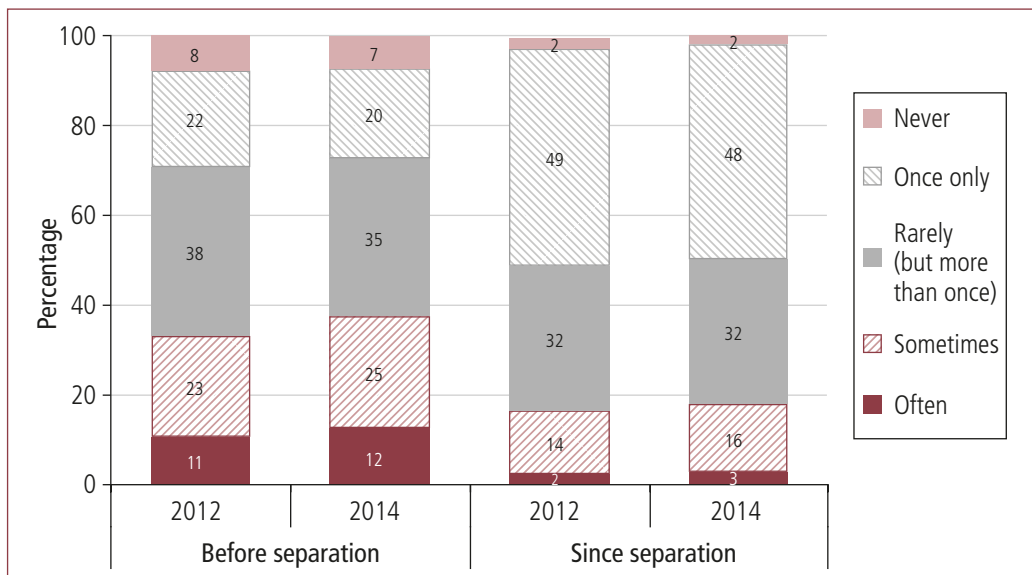


## Prevalence of family violence

The ESPS datasets show strikingly similar patterns between the two SRSP cohorts in the numbers of different types of abuse experienced and the frequencies with which they were reported. While 16–20% of the parents in the 2012 and 2014 cohorts reported experiencing “low intensity” emotional abuse in the *before/during* separation period (score of 1–5), a not insubstantial 8–9% of fathers and a significantly higher 17–18% of mothers reported very frequent experiences of at least five emotional abuse items *before/during* separation (score of 21–55) (ESPS report, Figure 3.5).

A similar analysis of experiences of emotional abuse *since* separation (data not shown, see ESPS report, Figure 3.6) indicates a diminution in the proportions of parents reporting abuse at the highest levels of intensity (4–10% with scores of 21–55), and statistically significant gender differences (4–7% of fathers cf. 9–10% of mothers with scores of 21–55).

Figure 2.1 shows parents’ reports of the frequency with which they experienced physical hurt before and since separation. The reported frequency of physical hurt for both mothers and fathers *since* separation declined substantially in comparison to the before separation period. In relation to the *before* separation period, a higher proportion of mothers (12–14%) than fathers (8–10%) in both the 2012 and 2014 cohorts reported that they had been hurt “often”, and a lower proportion of mothers (33–35%) than fathers (38–42%) said they had been hurt rarely but on more than one occasion (ESPS report, Figure 3.8).



Notes: Data have been weighted. No. of observations: before separation—2012: total  $n = 1,253$ ; 2014: total  $n = 1,241$ ; since separation—2012: total  $n = 340$ ; 2014: total  $n = 319$ . Parents who had reported experiencing family violence before separating were asked: “How often were you physically hurt by <focus parent> in the 12 months before you separated?” Parents who reported experiencing family violence since separation were asked: “How often have you been physically hurt by <focus parent> since separation?” The “don’t know” and “refused” responses were excluded from this analysis (< 1%). Percentages may not total 100.0% due to rounding. Statistically significant differences between 2012 and 2014 were not found.

**Figure 2.1: Frequency of parental experience of physical hurt inflicted by focus parent in the 12 months before and since separation, 2012 and 2014**

## Effects of family violence

The variability in the experience of family violence is also reflected in the measurement of the effects of family violence on work, household tasks or social activities, mental health, feelings of security, and eating and sleeping habits. Overall, the ESPS data show that parents reported a higher average number of effects before/during separation when physical violence was experienced (2012: 2.3 effects and 2014: 2.0 effects) compared to emotional abuse (2012: 1.6 effects and 2014: 1.7 effects). A greater differential between the effects of physical

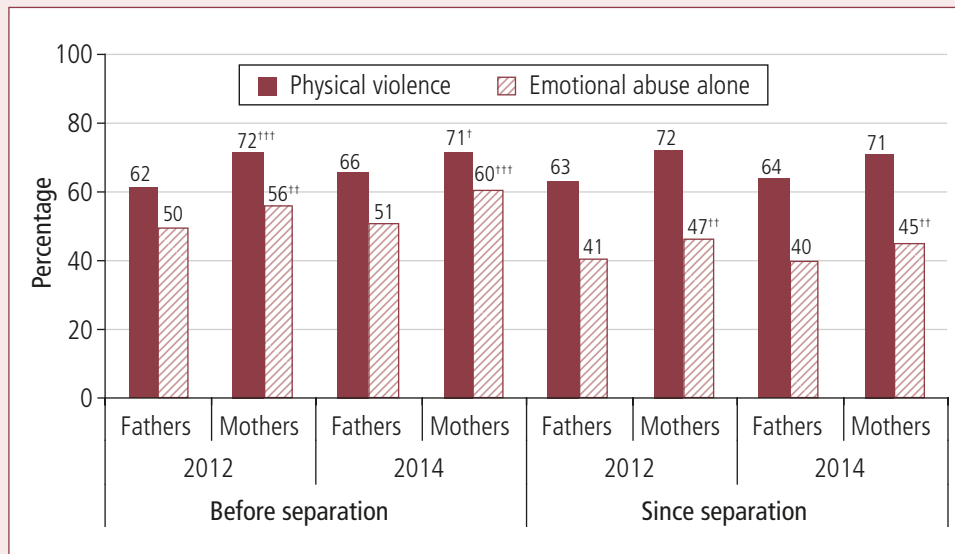
violence compared with emotional abuse emerged in relation to these experiences occurring after separation, with parents reporting an average of 2.1 effects when physical violence was experienced, compared to an average of 1.7 effects when emotional abuse was experienced. Overall, mothers reported a higher average number of effects than fathers on their day-to-day activities, whether these reports were accompanied by physical violence or emotional abuse, with statistically significant differences between mothers' and fathers' reports with respect to the before separation period in the 2014 cohort (ESPS report, Figure 3.10).

A further dimension of the phenomenon of family violence is the effects it may have on the dynamics in the relationship between the perpetrator and the target. The new definition of family violence introduced as part of the 2012 family violence amendments refers to family violence as including behaviour that “coerces or controls” a family member or “causes the family member to be fearful” (s 4AB). Accordingly, the extent to which these effects were

### Exposure of children to family violence: prevalence and effects

Parents in both the 2012 and 2014 SRSP cohorts indicated that their children had witnessed the reported emotional abuse or physical hurt in similar proportions although mothers reported in greater proportions than fathers in both the before/during and since separation periods. There was a non-statistically significant decrease in parents' reports of post-separation exposure to family violence in the 2014 cohort which may suggest the emergence of greater awareness of the harm caused to children by such exposure, through parents' interaction with family law system professionals in the post-reform context.

A significantly higher proportion of mothers than fathers reported that their children had witnessed physical violence compared to emotional abuse alone, with these affirmative reports being particularly pronounced in the post-separation context (Figure B.1).



Notes: Data have been weighted. Parents who experienced family violence before/during or since separation were asked: “Did the children ever witness any of this behaviour? This would include seeing or hearing it or seeing you hurt or property damaged afterwards”. Differences between 2012 and 2014 were not statistically significant. Statistically significant differences between mothers and fathers within a given population (years) are noted: † p < .05; †† p < .01; ††† p < .001.

**Figure B.1: Proportions of children witnessing violence before/during and since separation, by type of family violence and parent gender, 2012 and 2014**

The ESPS also collected data in relation to the exposure of children to behaviour by the focus parent that gave rise to the participant feeling fearful, coerced or controlled, with 54–60% of parents reporting that the focus child was “often” or “sometimes” exposed to this behaviour before/ during separation, and 39–43% since separation (ESPS report, Figure 3.15).

reported by parents was examined in the SRSP 2014 component of the ESPS data collection. The findings indicate both emotional abuse and physical violence are associated with feelings of fear, coercion and control to varying extents among mothers and fathers.

Overall, the ESPS data indicated that feeling fearful, coerced, or controlled was more commonly reported by parents who had experienced physical violence as opposed to emotional abuse, with this response pattern being evident both before/during and since separation. Statistically significant differences were also identified between mothers and fathers who reported feeling fearful, coerced or controlled and experiencing either form of family violence (ESPS report, Tables 3.9 and 3.10). Mothers who reported experiencing either physical violence or emotional abuse reported feeling fearful in significantly higher proportions than fathers both before/during separation and since separation. Lower level discrepancies emerged between mothers' and fathers' frequency responses relating to reports of experiencing either form of family violence *and* feeling controlled or coerced before/during separation. Overall, participating parents rated the severity of their feelings at a higher level when family violence was experienced before/during separation, compared with the post-separation period, with mothers' reports being at higher severity levels than those of fathers. Notably, mothers' reports regarding the severity of feeling fearful, coerced or controlled were also substantially higher than those made by fathers (ESPS report, Figure 3.16).

## 2.3.2 Prevalence and nature of safety concerns

### *Prevalence of safety concerns*

The findings of the LSSF and ESPS show that in the 15–17 months after separation,<sup>12</sup> around 17% of parents reported that they held current safety concerns for themselves as a result of ongoing contact with the other parent (ESPS report, Figure 3.12; Qu et al., 2014, Table 3.7). The extent to which such concerns may be maintained over time are suggested by the findings of Waves 2 and 3 of the LSSF, with between 15% and 17% of parents reporting safety concerns for themselves and/or their child as a result of ongoing contact with the other parent. For some parents (2%), these concerns dissipated between waves, while for others (3%), they arose newly between waves. For 4–6% of parents, these concerns persisted across the three waves (Qu et al., 2014, Table 3.8).

### *Source and behaviour generating safety concerns*

Similar patterns in the dynamics surrounding safety concerns are also reflected in the findings of the three datasets, in terms of the circumstances in which they arise and the nature of the behaviours that they reflect. This discussion summarises relevant findings from LSSF Wave 1 and ESPS data, but focuses on data from the SRSP 2014 cohort to illustrate specific points, as they are the most recent. Broadly, the findings indicate that for both fathers and mothers, the source of the safety concerns was most frequently the other parent, with this particularly being reported by mothers (LSSF Wave 1—mothers: 92% cf. fathers: 68%; ESPS: 2012—mothers: 93% cf. fathers: 71%; 2014—mothers: 94% cf. fathers: 75%). The differences between mothers' and fathers' reports reached statistical significance in the SRSP 2014 cohort, with a significantly greater proportion of mothers reporting the focus parent as the source of safety concerns, and significantly fewer reporting the source of concerns to be another adult or the focus parent's new partner (ESPS report, Table 3.9; Qu et al., 2014, Figure 3.9).

Table 2.1 shows that for ESPS participants, emotional abuse or anger issues, violent or dangerous behaviour and alcohol or substance abuse were key sources of safety concerns for parents, particularly for mothers, with statistically significant differences between mothers and fathers in the SRSP 2014 cohort. Mental health issues and emotional abuse or anger issues were also highly nominated sources of safety concerns, with parents in the SRSP 2014 cohort raising these concerns to a significantly higher extent than in 2012 (mental health—2012: 55% cf. 2014: 62%;

12 The average length of time since separation for the LSSF Wave 1 sample was 15 months (Kaspiew et al., 2009, p. 21). The average length of time since separation for the ESPS (both the SRSP 2012 and 2014 cohorts) was 17 months (Kaspiew, Carson, Dunstan et al., 2015, p. 14).

emotional abuse/anger—2012: 77% cf. 2014: 81%). These patterns are consistent with the LSSF findings (Qu et al., Table 3.9).

**Table 2.1: Behaviour generating safety concerns, by parent gender, LSSF 2009 and SRSP 2012 and 2014**

Behaviour generating safety concerns	SRSP 2012 (%)			SRSP 2014 (%)		
	Total	Fathers	Mothers	Total	Fathers	Mothers
Emotional abuse or anger issues	77.0	71.3	80.6	81.3 *	75.8	85.4 †††
Mental health issues	55.3	56.2	54.8	61.5 **	60.5	62.3
Violent or dangerous behaviour	50.5	47.5	52.3	53.3	47.8	57.4 ††
Alcohol or substance abuse	44.3	39.0	47.7	42.9	34.2	49.5 †††
Gambling problems	8.0	4.4	10.3	7.8	3.6	10.9 †††
Something else	12.9	14.4	11.9	8.7 **	9.8	7.9
No. of participants	1,090			1,093	437	656

Notes: Data have been weighted. Parents who had safety concerns were asked: "Do your concerns relate to any of the following issues: [behaviours generating safety concerns]". Percentages do not sum to 100.0% as multiple responses could be chosen. Statistically significant differences between 2012 and 2014 within a given population are noted: \*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ . Statistically significant differences between mothers and fathers for SRSP 2014 data within a given population (years) are noted: †  $p < .05$ ; ††  $p < .01$ ; †††  $p < .001$ .

### 2.3.3 Family law service use and safety concerns

The empirical evidence from the LSSF and ESPS also supports the understanding of service use dynamics among separated parents. These three datasets have consistently shown that most separated parents are able to resolve post-separation parenting issues without recourse to family law system services. The parents who do rely on family law system services are those whose circumstances are suggestive of significant complexity.

Table 2.2 sets out the extent to which parents in the SRSP 2012 and 2014 who used different family law system pathways to resolve parenting also reported a range of issues indicative of problematic behaviours and dynamics. Parents were asked whether seven issues were of relevance to their situation prior to separation (alcohol or drug use, mental health, gambling, problematic Internet or social media use, pornography use, emotional abuse and physical violence). The analysis also includes parents with current concerns for the safety of themselves or their child as a result of ongoing contact with the other parent. The focus is on the relative

**Table 2.2: Complex issues and family law pathways, 2012 and 2014**

Pre-separation problems	FDR / mediation (%)		Lawyer (%)		Court (%)		Discussions (%)		Just happened (%)		Other (%)	
	2012	2014	2012	2014	2012	2014	2012	2014	2012	2014	2012	2014
Alcohol or drug use	22.4	27.5	26.6	29.5	27.5	41.6*	21.3	19.0*	27.2	27.8	30.0	32.2
Mental health	40.5	45.8	40.5	50.5 *	55.4	59.3	28.6	32.2**	28.0	34.4	39.9	41.3
Gambling	6.3	8.7	6.5	6.8	6.1	12.0	5.6	4.5	8.9	9.4	5.6	9.9
Internet or social media	27.5	26.2	26.3	33.1	28.0	31.2	19.5	19.6	20.0	19.8	26.9	22.5
Pornography use	9.3	13.0	12.7	12.7	13.9	15.2	7.2	6.7	7.1	8.3	10.8	7.0
Emotional abuse	72.2	73.7	79.9	86.1	92.6	85.3*	49.9	47.8	58.0	58.4	76.4	82.5
Physical violence	33.0	26.6*	33.7	38.9	49.7	53.7	16.1	14.8	23.9	21.8	28.4	29.8
4+ issues	18.7	21.1	23.0	26.8	28.5	38.1	11.3	10.5	14.8	16.8	23.0	24.4
Mean no. of issues	2.1	2.2*	2.3	2.6	2.7	3.0	1.5	1.4***	1.7	1.8***	2.2	2.3
Current safety concerns	22.6	25.6	29.3	33.8	41.7	46.4	12.1	11.5	16.1	18.0	25.4	27.3
No. of participants	439	453	322	282	177	145	2,927	2,778	433	450	130	111

Notes: Data have been weighted. Percentages do not sum to 100.0% as multiple responses could be chosen. Statistically significant differences between 2012 and 2014 within a given population are noted: \*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ .

prevalence of these issues among families who used each of the three formal pathways for the purpose of establishing the context for the discussion in forthcoming chapters. Shifts in service use dynamics as a result of the 2012 family violence amendments are the focus of discussion in Chapter 3 of this report and at 4.1, 4.23 and 4.3 of the ESPS report.

Several noteworthy findings about the relative levels of complexity evident in the client groups in different parts of the system are evident in the table. These findings reflect the implications of the operation of s 60I of the *Family Law Act 1975* (Cth), which was introduced in 2006 to support the encouragement of greater use of non-legal mechanisms for the resolution of parenting disputes (see Chapter 1). Under this provision, parents are required to attempt to resolve parenting disputes through FDR before lodging a court application for parenting orders, unless they can establish that certain exceptions apply, including concerns about family violence and child abuse (see also description of FDR in section 1.4). Even when these issues are relevant, the empirical evidence establishes that FDR/mediation are commonly attempted. Nevertheless, the findings in Table 2.2 clearly illustrate that the use of formal legal mechanisms (lawyers and courts) for the resolution of parenting disputes are most common among the parents who also have the greatest level of complexity in their circumstances, as detailed in the following points.

In both time frames, the most common formal pathway nominated was FDR/mediation (2012:  $n = 439$ , 2014:  $n = 453$ ) and the least commonly nominated was courts (2012:  $n = 177$  and 2014:  $n = 145$ ). Lawyers were nominated more often than courts and less often than FDR/mediation (2012:  $n = 322$  and 2014:  $n = 282$ ). However, problematic behaviours were more frequent and highly concentrated for parents who used lawyers in comparison with those who used FDR/mediation and most concentrated among those who used courts. For example, just over a quarter of parents nominating “FDR/mediation” as the main pathway had also reported experiencing physical violence, compared with nearly four in ten who used lawyers and more than five in ten using courts. Courts had the greatest proportion of parents with four or more problems in 2014 (38%), compared with lawyers (27%) and FDR/mediation (21%). In 2014, nearly half of court users reported having current safety concerns, compared with one-third of parents who used lawyers and one-quarter of parents who used FDR/mediation. Table 2.2 shows that there were increases in complexity reflected in the proportion of parents in the 2014 cohort who reported mental health issues and nominated lawyers or discussions as their family law pathway, and of parents who reported alcohol or drug use and nominated the courts or discussions as their pathway.

Overall, parents who reported that “discussions” was their main pathway for the resolution of parenting matters were substantially less likely to indicate that any of the specified problems were relevant to their situation compared to parents who used the three formal pathways: FDR/mediation, lawyers and courts. More specifically, parents in the 2014 cohort nominating discussions reported having significantly fewer safety issues than the 2012 cohort. Decreases in complexity were also reflected in the significantly lower proportion of parents reporting alcohol or drug use as a safety concern and nominating discussions as their pathway, and significantly fewer reporting physical violence as a safety issue and nominating FDR/mediation as their family law pathway. There was also a decrease between the 2012 and 2014 cohorts in the number of parents reporting emotional abuse as a safety concern and nominating the court system as their family law pathway.

There were no significant changes in service use by parents reporting gambling, Internet or social media, or pornography as safety concern issues.

Taking a longitudinal perspective, LSSF Wave 3 showed that complex negative dynamics in families are associated with longer time frames for the resolution of parenting arrangements and a recurrent use of FDR over the five-year period covered by the research. The analysis showed that parents with one or more of a history of family violence, negative inter-parental relationships, or safety concerns were significantly more likely to report re-use of FDR over the five years and were also more likely to report that such negative dynamics were sustained over time (Qu et al., 2014, pp. 62–63). These patterns were particularly evident for parents with two or more of these dynamics. Findings from the CO Project contribute insight into recurrent use of court processes, showing that 38% of matters in the judicial determination sample and 32%

of matters in the consent after proceedings sample had prior court proceedings (CO report, Figure 3.1).

These findings highlight the point that the client base of family law system services have features indicative of complex and problematic behaviours. This was true of substantial proportions of parents who used each of the three formal pathways, but parents who used courts, and to a slightly lesser extent lawyers, manifested, at aggregate level, greater complexity than those who used FDR/mediation. This means that risk assessment and risk management practices and approaches are important across the system, but are particularly critical for lawyers and courts.

### 2.3.4 Attitudes of professionals to the 2012 family violence amendments: An introduction

The RFV report examined professionals' attitudes to the family violence reforms in both general terms (e.g., the need for the reforms) and specific terms (e.g., the effects of the new family violence definition). The 2012 family violence amendments had broad support, but in general, non-legal professionals were more positive about the reforms than legal professionals.

The direction of the 2012 family violence reforms had the support of a substantial majority of the participants in the RFV study. On an aggregate basis, 77% of the sample agreed that the family law system needed the 2012 family violence reforms (RFV report, Table 2.5). The professional group most in favour of the reforms was non-legal professionals (88%), followed by a smaller but substantial majority of lawyers (70%) and a still smaller majority of judicial officers/registrars (57%). Disagreement with the proposition that the "family law system needed the family violence reforms" was evident among about one third of judicial officers, one in five lawyers and just under one in ten non-legal professionals. Generally, there was a greater level of support for the 2012 family violence amendments than there was for the 2006 family law reforms among the groups from whom survey data about both sets of changes was available (lawyers and non-legal professionals).<sup>13</sup>

## 2.4 Summary

This chapter has provided a profile of separated parents, with a particular focus on the characteristics of the families that rely on the family law system for assistance with parenting arrangements post-separation. The empirical evidence from the three datasets derived from the LSSF and the SRSP 2012 and 2014 demonstrate that each cohort of separated families represented in these datasets had similar patterns of family violence, safety concerns and other indications of complexity. In relation to family violence, the experiences reported by parents reflect a spectrum of severity, and establish that the experience of family violence is complex and dynamic. For some parents, such a history did not preclude the subsequent development of functional post-separation relationships (denoted by the descriptors "friendly" and "cooperative"). For others, however, clearly negative ("fearful", "lots of conflict") or ambiguous ("distant") relationships were the sequelae to such a history. For many separated parents, the experience of family violence extended well beyond the post-separation period, with LSSF findings showing that 45% of participants reported experiencing family violence before/during and since separation (Qu et al., 2014, Table 3.6).

Of particular significance was the prevalence of complex issues, including family violence, mental ill health and substance misuse among separated parents. Some two-thirds of separated parents reported a history of emotional abuse and/or physical violence before/during separation, and this continued for a slightly lower proportion after separation, with a longer term insight suggesting that problematic dynamics remained relevant for some 25% of separated parents up to five years after their separation.<sup>14</sup> Concerns for the safety of themselves and/or their

<sup>13</sup> The comparative data are derived from the Family Lawyers Surveys 2006 and 2008 and the surveys of Family Relationship Services Program (FRSP) and Family Relationships Advice Line (FRAL) staff that were part of the research program for the Evaluation of the 2006 Family Law Reforms.

<sup>14</sup> See Qu et al., 2014, Table 3.6. The percentage quoted reflects participants' reports of physical hurt and/or emotional abuse in all LSSF survey waves (Waves 1–3).



children were pertinent for nearly one-fifth of parents. Increases in the complexity of matters were reflected in the proportion of parents in the 2014 cohort who reported mental health issues and nominated lawyers or discussions as their family law pathway when compared with the 2012 cohort, as well as an increase in the number of parents who reported alcohol or drug use and nominated the courts or discussions as their pathway. Decreases in complexity were also reflected in the significantly lower proportion of parents reporting alcohol or drug use as a safety concern and nominating discussions as their pathway, and significantly fewer reporting physical violence as a safety issue and nominating FDR/mediation as their family law pathway. There was also a decrease between the 2012 and 2014 cohorts in the number of parents reporting emotional abuse as a safety concern and nominating the court system as their family law pathway. Again, a longer term perspective suggests that for a core group of about five per cent of the annual cohort represented in the LSSF study, safety concerns—suggestive of sustained and entrenched difficulty—were maintained over a five-year post-separation period (Qu et al., 2014, Table 3.8).

The empirical evidence also establishes that the phenomenon of family violence varies widely in form, frequency and intensity. The prevalence of physical hurt diminishes after separation, as does the prevalence of emotional abuse, though to a much less significant extent. In both ESPS time frames, the most common form of emotional abuse was insults with the intent to shame, belittle or humiliate. Abuse associated with a higher level of risk, including threats to harm the participant before/during separation, were less common, but reported by 29% and 28% of mothers in the 2012 and 2014 cohorts respectively, and by a significantly lower proportion of men (19% of fathers in each cohort) (ESPS report, Figure 3.1). Importantly, the findings based on a detailed examination of intensity (frequency of multiple forms of abuse) reveal some consistency in these patterns across the SRSP cohorts of recently separated parents.

Although the three datasets show that both men and women reported experiencing family violence, an important limitation in considering the implications of this is the lack of evidence about the dynamics of aggression and defence that are relevant to understanding the significance of the experience. The analysis of violence intensity in the ESPS cohorts shows that at the two higher ranges of the five possible categories, significantly more mothers than fathers reported being victims. In addition, compared to men, women were more likely to report more effects from physical violence, and significantly more likely to report that the experience induced feelings of fear both before/during and since separation, and feeling controlled before/during separation.

Findings in relation to safety concerns establish a similarly dynamic picture. The data indicate that these are pertinent for up to one in five parents in each cohort of separated parents. The LSSF showed that the proportion holding safety concerns was fairly stable from Waves 1 to 3, but within this proportion were parents for whom concerns had arisen newly between waves and others for whom they had dissipated between waves. Notably, across the three waves, concerns persisted for a core group of nearly 5% of participants. These findings indicate the complexity of family violence and safety concerns and the challenges they pose for the family law system, given the system is dealing with common but variable and dynamic phenomena in this context.

In considering the data on family violence and safety concerns reported in the following chapters, it is important to bear in mind the complexity that these terms denote. In relation to family violence in particular, this discussion establishes that it varies significantly in form, intensity and effect. In recognition of this, where relevant, the forthcoming analysis and discussion may be based on the categories of emotional abuse (alone) and physical hurt (which almost always occurs with emotional abuse), and may refer to these kinds of behaviour experienced before/during and since separation. Although data indicate that only 5% of parents held safety concerns over all three waves of LSSF, it is important to recognise that these concerns were likely to have been substantial. As the data presented in section 2.3.2 indicate, the majority of safety concerns associated with ongoing contact with the other parent involved a range of dysfunctional behaviours, including violent or dangerous behaviour, emotional abuse, substance misuse or mental health issues. It is important to point out that these concerns were current at the time of the survey.

Most separated parents make limited use of family law system services. Those who do are also those affected by complex issues, such as family violence, substance misuse, mental ill health, problematic social media use, and pornography use (before separation), and safety concerns (before and after separation). Such issues were evident in the client bases of the three types of services used to develop parenting arrangements—FDR/mediation, lawyers and courts—but were evident to a greater extent among parents who used lawyers compared with those who used FDR/mediation, and were evident among court users to the greatest extent of all. In 2014, nearly four in ten court users had four or more of these issues, compared with three in ten who used lawyers and two in ten who used FDR/mediation.

Against this empirical backdrop, the complexity inherent in the achievement of the aims of the 2012 family violence amendments—to improve the family law system's responses to concerns about family violence and safety concerns—is evidenced in some of the broad level findings set out in this section. The findings of the RFV study indicate that the necessity for the 2012 family violence amendments was broadly supported by family law system professionals. However, the evidence set out in further chapters of this report also demonstrate that progress in achieving the aims of the 2012 family violence has been incremental in some areas, and professionals have encountered significant practice challenges.

# 3

## Service use

This chapter brings together the findings from the three main projects in the evaluation research project to consider the extent to which any shift in service use dynamics may have emerged since the reforms. Unlike the 2006 family law reforms, which sought to reduce litigation and increase reliance on services (Kaspiew et al., 2009, p. 1), the 2012 changes did not have such a focus. However, three aspects of the 2012 reforms have the potential to indirectly influence service use patterns. First, the aspects of the reforms concerned with identifying family violence and child abuse concerns potentially mean a shift in referral and service response patterns. Second, the explicit recognition of emotional abuse and other behaviours (e.g., financial abuse) as violence potentially widen the scope of the behaviours identified as problematic in the FLA. Third, the explicit instruction to accord greater weight to protection from harm where it conflicts with the child's right to a meaningful relationship in considering the child's best interests in court and legal practice (s 60CC2A) and in advice-giving practice (s 60D(1)) potentially reduces ambiguity in the legislation and may produce shifts in some parents' understanding of their legal position.

Overall, the evidence from all three components of the Evaluation of 2012 Family Violence Amendments summarised in this section indicate subtle shifts occurring in all of these areas, at the same time as broad trends of service use patterns remaining substantially unchanged. The findings indicate that alongside an increased focus on referrals and a small increase in responses consistent with an emphasis on safety, the legislative changes have supported agreement-based parenting resolution mechanisms, particularly "discussions" and FDR-based pathways. One area where a less positive shift associated with the reforms is evident is in relation to resolution time frames. Data from both the ESPS and the CO Project indicate that parenting matters are taking longer to resolve post-reform than pre-reform. It is unclear, however, whether this is entirely attributable to the reforms or whether other issues, such as resources, may have contributed to this situation in different parts of the system.

The findings set out in this chapter suggest incremental changes consistent with the intention of the reforms have occurred in some areas, while unintended consequences have emerged in others. They also evidence the continued consolidation of some of the directions of the 2006 family law reforms. The key points in this analysis are:

- Reliance on formal services such as FDR, lawyers and legal services among parents not affected by family violence continued to diminish since the reforms were introduced.
- The reforms are associated with longer time frames in courts and other pathways for sorting out parenting arrangements for parents affected by family violence.
- After the reforms, more parents affected by emotional abuse reported using FDR as the main pathway for resolving parenting arrangements, and fewer used courts.
- More parents reported reaching agreement in relation to parenting arrangements in FDR after the reforms, and this was not confined to the groups affected by family violence.
- At this stage, there is little indication that the overall numbers of parenting matter applications lodged with courts have changed since the reforms.

## 3.1 Broad patterns of service use

Parents' use of services was examined at several levels in the ESPS. Parents were asked about the services and supports they contacted at the time of separation, and more substantive service use was explored through asking parents what their "main pathway" was for sorting out parenting arrangements, where these had been resolved. Questions captured the use of informal services and supports (e.g., "family and friends", "discussions") as well as formal services such as counselling/mediation/FDR services, lawyers, courts and domestic violence services. Consistent with the insights presented in Chapter 2, the findings in this area demonstrate that a majority of parents made little or no use of services, and heavier reliance was more likely to be reported by parents with a history of family violence than by those who did not report such a history. Compared with parents who reported physical violence, those who reported emotional abuse in the absence of physical violence were slightly less likely to report using formal services, but overall, parents in these two groups were the most likely to report using formal services.

### 3.1.1 Services contacted at time of separation

In broad terms, the use of formal services for support in relation to separation issues continued to diminish overall in the post-reform period. Less use of services among parents not affected by family violence is largely responsible for this pattern as the extent and nature of service use among parents affected by family violence remained largely stable (ESPS report, Table 4.2). In relation to parents not affected by family violence, the proportion reporting use of no services rose from 21% in 2012 to 28% in 2014, with statistically significant falls in the use of counselling/mediation/FDR services (2012: 40% cf. 2014: 35%), lawyers (2012: 33% cf. 2014: 29%) and legal services (2012: 19% cf. 2014: 15%).

Considering the relative patterns of service use among parents who reported physical violence or emotional abuse alone, the former group used all services to a slightly greater extent than the latter group in both time frames (ESPS report, Table 4.3). In relation to the physical violence group, there was one statistically significant change in the services contacted after separation between 2012 and 2014: the proportions reporting contacting counselling/mediation/FDR services fell by 6 percentage points to 71% in 2014. Otherwise, changes were not statistically significant for the physical violence group, with 64% contacting lawyers, half contacting a legal service, 37% contacting courts and 29% contacting a domestic violence service.

The findings in relation to services contacted at the time of separation for the emotional abuse alone group showed no change: 65% contacted counselling/mediation/FDR services, 60% a lawyer, 40% a legal service, 26% courts and 12% a domestic violence service.

### 3.1.2 Sorting out arrangements after separation

The 2012 family violence amendments are associated with longer time frames for resolving parenting arrangements among parents affected by family violence, with parents in the 2014 cohort being less likely to have reported that they had "sorted out" arrangements than those in the 2012 cohort.

Compared to the 2012 cohort, the 2014 cohort of parents was a little less likely to report having sorted out parenting arrangements (2012: 74% cf. 2014: 71%) (ESPS report, Table 4.4). This statistically significant decrease was reflected in increased reports of being in the process of sorting things out (2012: 19% cf. 2014: 21%) and not having sorted matters out (2012: 7% cf. 2014: 8%). Compared to fathers, mothers in the 2014 cohort were a little more likely to have reported that parenting matters had been sorted out (fathers: 69% cf. mothers: 73%).

In both cohorts, mothers' and fathers' reports of the experience of physical violence before/during separation were associated with the poorest chances of having sorted out parenting arrangements at the time of the survey (fathers: 51–54% and mothers: 59–66%) (ESPS report, Table 4.5). Reports of emotional abuse alone were associated with better chances of having resolved parenting matters (fathers: 65–67% and mothers: 72–74%) and parenting was most likely to have been sorted out when no family violence had been reported (fathers: 81–85% and mothers: 87%). The reverse pattern could be observed for the categories of "in the process

of sorting out” and “nothing sorted out”: physical violence was associated with the highest percentages of “being in the process” and “nothing sorted out”, followed in decreasing order by emotional abuse alone and no violence.

### 3.1.3 Main pathways for sorting out parenting arrangements

As noted earlier, the ESPS asked parents to nominate the “main pathway” they used to resolve parenting arrangements. The available options included two “self-help” options: “discussions” and “just happened”. The former implies a greater degree of communication and agreement and the latter suggests a more passive process of disengagement. Overall, the patterns of results in various areas suggest that “discussions” is associated with positive relationship dynamics to a greater extent than “just happened”. The other response options referred to formal services, two of which are based on agreement by negotiation: counselling/mediation/FDR and lawyers. The third, courts, involves an imposed decision, although it is also possible that this route was nominated by parents who resolved their arrangements by agreement, with a trial imminent or in progress. Most parents reported resolving their parenting arrangements without formal assistance, and diminishing minorities used each increasingly formal pathway of counselling/mediation/FDR, lawyers and courts. These pathways were more likely to be nominated by parents affected by family violence (physical violence to a greater extent than emotional abuse alone), and these patterns show very limited change between the pre- and post-reform period.

Where parenting arrangements had been sorted out, the main pathway towards this was seen by both cohorts to be “discussions with the other parent” in almost seven out of ten cases (ESPS report, Table 4.8). “Nothing specific, just happened” and counselling/mediation/FDR each accounted for a further one in ten responses. Main pathways for the remaining cases were made up of lawyers (6%) and courts (3%). In the 2014 cohort, fathers were a little more likely to nominate “discussions with the other parent” and mothers a little more likely to nominate, “nothing specific, just happened”. Both these categories are, of course, personal constructions. It is possible that they may reflect a modest gender difference in the threshold for defining communications as “discussions” rather than “just happened” (ESPS report, Table 4.8).

The capacity to sort out parenting arrangements via the “self-help” routes of “discussions” or “nothing specific, just happened” is linked to the experience of violence before/during the separation. Where no violence had occurred, only about 10 per cent of parents who had sorted out these arrangements nominated professional help as their main pathway, with counselling/mediation/FDR services accounting for most of these, followed by lawyers and then courts (ESPS report, Table 4.9).

Where emotional abuse alone had occurred before/during the separation, the “self-help” main pathways accounted for roughly three-quarters of the arrangements that had been sorted out, with the remainder needing the assistance of counselling/mediation/FDR services, lawyers and courts in decreasing order. Where physical violence had occurred, the “self-help” main pathways accounted for a little less than two-thirds of the arrangements that had been sorted out, with the remainder needing the assistance of counselling/mediation/FDR services, lawyers and courts, again in decreasing order.<sup>15</sup> Among these parents, there were limited statistically significant differences in the main pathways used between cohorts. The only areas where subtle but statistically significant changes were evident were in relation to a small shift towards more parents in the emotional abuse alone group indicating that they used counselling/mediation/FDR (2012: 10% cf. 2014: 13%), and fewer using courts (2012: 4% cf. 2014: 3%) (ESPS report, Table 4.9).

For parents who had not concluded parenting arrangements at the time of the 2014 survey, there were no statistically significant differences between cohorts in these parents’ nominations of main pathways (ESPS report, Table 4.10).

<sup>15</sup> These findings are consistent with the insights from the *Responding to Family Violence* report (Kaspiew, Carson, Coulson et al., 2014), which stated that “the presence of [family violence and child safety concerns] does not automatically lead to the issue of a certificate, and the proportions of professionals indicating that FDR is provided in such circumstances has remained relatively stable over time” (p. 131).

### 3.1.4 Pathways to sorting out parenting arrangements in the context of fear, coercion and control

Among parents who experienced family violence before/during separation, the proportions of those who reported that the family violence caused them to feel fearful, coerced *and* controlled, was far higher among those who used formal pathways to sort out parenting arrangements. Moreover, across all pathways, significantly higher proportions of mothers (between 71% for FDR and 86% for courts) than fathers (between 48% for FDR and 55% for courts) reported having experienced fear, coercion *and* control, while significantly more fathers than mothers reported experiencing none, one or two of these (ESPS report, Figure 4.4). Among court users, for example, 20% of fathers reported family violence and no fear, coercion or control, compared with 1% of mothers. Disparities were not as marked but still statistically significant in other pathways between mothers and fathers; of parents who nominated lawyers as their main pathway for reaching parenting arrangements, 4% of fathers and no mothers reported that none of these conditions were present.

These gender differences were also present among parents' experiences of fear, coercion and control *since* separation in the use of particular pathways, though not as pronounced as the differences that occurred in their experiences before/during separation. Statistically significant differences were evident between mothers and fathers who reported all three conditions and were using FDR (mothers: 55% cf. fathers: 45%) and lawyers (mothers: 59% cf. fathers: 44%) (ESPS report, Figure 4.5).

### 3.1.5 Family dispute resolution outcomes

The ESPS also examined the extent to which FDR resulted in agreements being reached. The findings suggest that the 2012 family violence amendments have supported agreement-making in FDR processes in general, not just for parents affected by family violence. For the samples of parents who reported using FDR, agreements were reached by a significantly larger proportion of the post-reform than pre-reform cohort, with 41% reporting reaching agreement in 2014, compared with 36% in 2012 (ESPS report, Table 4.12). An associated decrease was evident in the proportions of parents reporting that no agreement had been reached and no certificate issued (2012: 24% cf. 2014: 19%) and an increase in those whose FDR/mediation was still in progress (2012: 10% cf. 2014: 12%).

More detailed analysis of these issues according to whether parents had reported experiences of physical violence, emotional abuse or no violence in the survey shows that statistically significant shifts in this area were not confined to the groups affected by family violence (ESPS report, Table 4.13). For parents with no history of family violence, the proportion reporting reaching agreement in FDR rose by nine percentage points to 53% in 2014, with an associated decrease of eight percentage points in the proportion reporting that the process had resulted in neither an agreement nor a certificate being issued. The proportion of parents affected by physical violence who reported an agreement being reached rose by seven percentage points to 38% in 2014. The findings for the emotional abuse alone group were not as clear, although the findings suggest a shift in a positive, but not statistically significant, direction among those who had reached agreement, and small but statistically significant shifts in the proportions reporting no agreement and no certificate (down by four percentage points to 20%) and those where mediation was still in progress (up by three percentage points to 13%).

These findings, particularly for those parents not affected by family violence, are likely to be attributable to the addition to adviser's obligations introduced in 2012, which require advisers to inform parents that the most important consideration in making parenting arrangements are the child's best interests (s 60D(1)(a)). For the physical violence group, the additional obligation on advisers to inform parents that parenting arrangements should prioritise protection from harm when it is in conflict with the child's right to a meaningful relationship with both parents after separation was a likely influence on these findings. This is probably also true for the emotional abuse alone group, with an additional influence in this context being the widened definition of family violence (s 4AB).



## 3.2 Professional practices

Overall, the findings on service use dynamics, arising from data gathered for the RFV study from professionals across the system, is consistent with the patterns described in the preceding section. They indicate a continuing consolidation of the effects of the 2006 family law reforms, with only very subtle changes associated with the 2012 family violence amendments. The findings indicate that professional practices have remained consistent, with parents being encouraged to use family support services in addition to legal services. Clients with complex needs, including those arising from family violence and child abuse, commonly present to legal and relationship support services, including those that provide FDR, which continues to make service provision and clinical decision-making in relation to such clients a challenging area of practice.

### *Advice on the use of FDR*

Similar proportions of lawyers and non-legal professionals indicated changing their practice in this area, although changing was less common than not changing. Substantial minorities of both lawyers (39%) and non-legal professionals (36%) indicated in 2014 that they had changed the advice they gave clients on FDR (RFV report, Table 5.1). Much more dramatic changes had been evident among lawyers in 2008, reflecting the effects of the s 60I amendments to the FLA in 2006. Interestingly, the area where most change had occurred in the advice-giving practice of lawyers was in relation to the question of whether FDR should only be considered when levels of conflict were relatively low. The number of lawyers indicating that they provided this advice increased significantly between 2008 (14% choosing “almost always”) and 2014 (“33% choosing “almost always”), and lawyers were substantially more likely to provide this advice in 2014 compared with non-legal professionals (RFV report, Table 5.2). These findings suggest practice experience in the wake of the 2006 reforms may have made lawyers more cautious in this regard, but non-legal professionals may have greater confidence in their own ability to manage conflict.

### *Understanding FLA s 60I*

The evidence from the RFV study on the question of the understanding among different stakeholder groups of the exceptions to s 60I (the requirement to attend FDR with exceptions prior to lodging a parenting application in court) indicates that most professionals believed other professionals understood these exceptions quite well (RFV report, Figures 5.2 and 5.3). This finding has strengthened only marginally over time. In relation to parents, most professionals believed the s 60I exceptions were not well understood by most family law system clients, though there was a subtle indication that a limited amount of improvement may have occurred over time.

### *Referrals*

Regardless of levels of understanding of the exceptions of to s 60I, particularly those in relation to family violence and child abuse, it is clear from the RFV and ESPS findings that parents affected by these issues continue to present to FDR services and that FDR services are provided when these issues are present, though to a lesser extent in relation to child abuse compared to family violence. The presence of these issues does not automatically lead to the issue of a certificate, and the proportions of professionals indicating that FDR is provided in such circumstances has remained relatively stable over time (RFV report, Table 5.4).

Findings on referrals establish that both lawyers and non-legal professionals refer their clients to family violence support services on a regular basis, and that practices in this regard are relatively consistent between the two groups, though lawyers were slightly more likely to indicate that they made such referrals in a higher number of cases (16% nominated “three-quarters or more”, compared to 12% of non-legal professionals) (RFV report, Figure 5.5). Non-legal professionals also reported referring clients to lawyers to a substantial degree (47% nominating “about three-quarters or more”). Referrals by lawyers to FRCs and relationship support services also increased (RFV report, Figures 5.5 and 5.6).

### 3.3 Formalising parenting arrangements

The FLA supports two different legal categories of parenting arrangements: parenting plans and court orders. There are three different circumstances in which courts may make parenting orders. First, there may be a judicial determination after a trial instigated by a party lodging an application for final orders. Second, a court may be asked to endorse orders that reflect an agreement reached after a party has instigated litigation through lodging an application for final orders, but the matter is resolved prior to or during trial. Third, parties may reach an agreement and seek to have it made into legally binding consent orders through dedicated processes available in the Family Court of Australia and the Family Court of Western Australia. Consent orders are made in the Federal Circuit Court, but these are instigated using the form for an application for final orders.

Consent orders are one mechanism by which parents may seek to have parenting agreements formalised. Entering into a parenting plan is the other. In either of these instances, the agreement may be the result of reaching agreement themselves without assistance from professionals or reaching an agreement with the assistance of FDR or lawyer-led negotiation.

In relation to consent orders, these are legally binding and enforceable orders of the court. As with orders made by judicial determination, in making consent orders the court must regard the best interests of the child as the paramount consideration (FLA s 60CA). Courts are not obliged, however, to apply the s 60CC(2) and (3) considerations (s 60CC(5)) when making a consent order, but they may choose to do so. Orders made by judicial determination and consent orders may be enforced through the processes set out in Division 13A of Part VII.

A parenting plan is a less formal arrangement that is not enforceable through court processes (s 63B, note). Where agreements are written down, they may legally be considered parenting plans where they:

- (a) are in writing;
- (b) are made between the parents of a child;
  - (ba) are signed by the parents of child;
  - (bb) are dated; and
- (c) deal with one or more of these matters:
  - who the child lives with;
  - who they spend time with;
  - allocation of parental responsibility for a child;
  - consultation about decision making where parenting is shared;
  - the maintenance of a child;
  - dispute resolution mechanism;
  - changes in the arrangements dealt with in the plan; and
  - any other aspect of the care, welfare and development of the child (s 63V(1), s 63C(2)).

Parenting plans may be revoked or varied by subsequent written agreements (s 63G), and parenting plans made after a court order override that order: (s 64D). An agreement made between parents is not considered a valid parenting plan unless it is made “free from threat, duress or coercion” (s 63C(1A)).

The ESPS findings show that arrangements involving some level of formality (signified by being in written down or made into consent orders) were considerably more common among parents who reported a history of family violence than those who did not.

In 2014, 41% of parents who had sorted out their parenting arrangements indicated their agreement had been written down, which was stable from 2012 levels. Of these, 38% also indicated they had sought court endorsement for the agreement, a statistically significant decline of four percentage points from the 2012 proportion (ESPS report, Table 4.7). Parents who reported a history of family violence were more likely than parents without such a history to report having written agreements (ESPS report, Figure 4.1). Where no history of violence was reported, almost a third of the parents indicated having written agreements. Where physical

violence had been reported, almost twice as many parents (about half) reported having written agreements. Where emotional abuse alone was reported, about four to five in ten parents reported having written agreements.

## 3.4 Court use dynamics

The findings discussed so far indicate little change in the overall patterns in service use dynamics after the 2012 family violence amendments, with the main change evident indicating that the reforms have supported agreement making in FDR for parents, whether affected by family violence or not. The discussion in this section provides further insight into these issues, and starts with an overview of patterns in court filings, followed by a discussion of findings on pathways to court.

### 3.4.1 Overview of court filings

Overall, the administrative data provided by the three courts (FCoA, FCC and FCoWA) suggests that there have been minimal effects on court filings thus far in the wake of the 2012 family violence amendments. There have been small increases in applications for final orders and consent orders, but the analysis suggests that this is likely to be due to dynamics related to property matters rather than children's matters. As explained in the CO report, filings in property-related matters have increased steadily since the FCoA and the FCC gained jurisdiction over financial matters involving separated de facto couples in 2009 (Kaspiew, Moloney et al., 2014; CO report, Chapters 1 and 2).

In 2013–14, 14,826 final applications for matters involving children (i.e., children-only and children-plus-property applications) were lodged across the three courts, with this figure reflecting an increase of 442 from the previous financial year. Most of this shift was associated with filings in the children-plus-property category (CO report, Figure 2.1).

As explained in Chapter 1, the FCoA and the FCoWA have dedicated forms and processes for making consent orders in circumstances where agreement has been reached, litigation is not contemplated and the parties wish to make their agreements legally binding. Such applications have increased in these two courts since 2011–12, particularly in the FCoA. In that court, the total number of applications for consent orders in 2013–14 had risen by 2,493 (to 12,986) since 2011–12. The increase in the FCoWA for the same period was more modest by comparison—an increase of 182 to 2,504. Reflecting a similar trend as the applications for final orders, much of this increase appeared to be associated with property matters (CO report, Figure 2.5).

### 3.4.2 Pathways to court

As noted, 14,826 applications for parenting orders were lodged nationally in the 2013–14 financial year. For cases that followed a non-FDR pathway, the administrative data indicate that the “certificate” route (where parties attended FDR but were issued with an s 60I certificate) was more common than the “exception” route (where it was determined that parties were not required to attempt FDR). In 2013–14, there were 5,461 exception-based applications, compared with 6,549 certificate-based applications.<sup>16</sup> Subtle changes are evident in this area, with small reversals in pre-reform trends toward increases in exception-based applications and decreases in certificate-based applications (CO report, Figures 2.7 and 2.8).

From a systemic perspective, these data establish the extent to which the client bases of the courts and the family relationship sectors overlap. They show that 44% of the applications for final orders in children's matters involved families who had also engaged with FDR services. This engagement at minimum would have extended to intake and assessment services for the purpose of assessing suitability for FDR, and for some families may reflect more substantive interactions leading to the issue of a certificate. It is likely that a range of dynamics are at play in this context, including situations in which one member of a former couple refuses to respond to contact from an FDR provider where the other parent has attempted to instigate an FDR

<sup>16</sup> Limitations in the availability of these data mean that these figures do not total 14,826.

process. In this context, it is worth noting that although only one in ten parents reported FDR as being the “main pathway” for reaching parenting agreements (ESPS report, Table 4.8), over a third reported that FDR was attempted by one parent (Table 4.11). Of the group that report attempting FDR, about a quarter indicated that the process resulted in a certificate being issued (Table 4.12).

Data from the RFV study also shed some light on the extent to which certificates were issued under FLA s 60I(8) because of concerns about family violence and child abuse, and the extent to which this occurred prior to or during FDR (RFV report, Figure 5.4). Two-thirds of the sample of FDR practitioners responding to the survey estimated they issued certificates in up to about a quarter of cases. Asked more specifically to indicate “the proportion of these cases where the s 60I certificate was issued ... because I did not consider it would be appropriate to conduct FDR because of family violence and/or child abuse”, 58% of practitioners indicated this was relevant in up to about a quarter of cases, and 18% indicated this for half their cases.

A majority (56%) of participants estimated that they discontinued FDR and issued a certificate due to the emergence of concerns about family violence and child safety after commencing in up to a quarter of cases, which was a smaller proportion than those who issued a certificate at the outset (66%), but not a rare occurrence (RFV report, Figure 5.4).

The extent of the overlap between the client bases of courts and services indicated by these data raise several important issues in relation to the operation of the system and the interests of the families who move from services to courts. For some families, engagement with services prior to court may have positive implications in terms of obtaining support, information and referrals. However, depending on the circumstances of the family, it could also reflect a cumbersome progression through two separate systems, delays in resolving the underlying issues and the necessity of discussing their circumstances with multiple professionals. For families affected by family violence and child safety concerns (and by definition many parents who receive certificates are), this situation could potentially be quite detrimental, particularly in the absence of warm referrals and ongoing support. Systemically, this raises questions about the extent to which the progression from services to courts for these parents represents an efficient deployment of resources. It also reinforces the need for continuing consideration of information sharing between the two systems; depending on the extent of engagement underlying the issuing of a certificate, a significant amount of intake and assessment activity may have occurred before the parent starts to engage with the court system, yet this activity may not be visible in courts beyond the existence of the certificate.

### *Court applications: Duration and instigation*

The Court File Analysis findings of the CO Project highlight two areas where changes have occurred since the 2012 family violence amendments. The most significant is in relation to the length of time it takes for a matter to be resolved. Consistent with the findings in relation to parenting arrangements for families affected by family violence and child abuse generally increases in resolution time frames were notable for both judicial determination cases and cases that settled prior to or during trial (CO report, section 3.1.2). For both these samples, resolution time frames doubled overall (CO report, Table 3.4). Although issues other than the 2012 family violence amendments, such as court resourcing and the sampling method applied may be relevant in this context (CO report, section 5.3), these data are also consistent with a range of concerns raised by professionals in the RFV study. Comments from participants, particularly those associated with legal and court-based practice, raised a range of concerns about the ability of the family law system to deal with the increased need for scrutiny of matters involving family violence and child safety concerns from a forensic and evidentiary perspective in a timely and effective way (RFV report, Chapters 4, 6 and 8). These issues are discussed further in the next section.

The second area where change is evident is in relation to mothers and fathers being applicants (who initiate proceedings) or respondents. Although the demographic profiles of the samples from the pre- and post-reform periods were relatively stable, the proportion of applicants who were fathers increased to a statistically significant extent in the post-reform period (2012: 44% cf. 2014: 50%). There was a concomitant increase in the proportion of mothers as respondents in the pre- and post-reform period (2012: 45% cf. 2014: 52%) (CO report, Table 3.1).

## *Longer resolution time frames: Concerns of professionals*

As discussed, the evidence in this chapter indicates that the 2012 family violence amendments have been associated with longer resolution time frames for parents in general and for those who use courts, particularly those who initiate litigation. This evidence is consistent with the concerns raised by family law system professionals in the RFV study about the resource implications of the need for greater scrutiny of family violence and child safety concerns in the family law system. The specific issues raised in that study included longer court processes and delays in getting to court; the implications of the need for greater specificity about family violence and child abuse from an evidentiary, personal and cost perspective; and the perceived increased level of notifications to child protection services. There were also concerns about family consultants having to conduct more complex assessments without additional resources, and delays in obtaining reports from single expert witnesses because of insufficient numbers of appropriately qualified professionals.

### 3.5 Summary

Overall, the evidence from the Evaluation of the 2012 Family Violence Amendments indicates the continuing consolidation of the aims of the 2006 family law reforms in terms of encouragement to use non-legal mechanisms for the resolution of parenting disputes. In both 2012 and 2014, around half of the sample reported contacting FDR providers and lawyers at the time of separation and around one in five contacted courts. This translated into substantially fewer parents overall using these pathways as the “main pathway” for making parenting arrangements in either time frame. For the group that had sorted out arrangements in 2014, around 10% used FDR/mediation in both time frames, around 6% used lawyers and 3% used courts (ESPS report, Table 4.8). The findings of the 2014 survey show that the use of formal pathways rather than “discussions” or “just happened” was strongly associated with the experience of family violence and that parents, especially mothers, who also reported experiencing the conditions of fear, coercion and control as a result were most likely to be using family law services.

The 2012 legislative amendments appear to have supported the use of agreement-based pathways, with evidence of a shift toward more agreements being reached through “discussions” or in FDR for all parents using these pathways, even those parents not affected by family violence or child safety concerns. These shifts are most likely to be associated with s 60D(1)(b)(iii) (parenting arrangements should prioritise protection from harm) for parents affected by family violence or child safety concerns, and s 60D(1)(a) (parenting arrangements should be in a child’s best interests) for parents not affected by these concerns.

On a less positive note, the 2012 family violence amendments were also associated with longer resolution time frames for sorting out parenting arrangements among parents who were affected by a history of family violence. Each of the studies in the evaluation research program supported this finding, including the RFV study, which reported a range of concerns expressed by professionals about the extent to which the family law system was equipped to deal with the greater level of scrutiny of family violence and child abuse concerns required by the 2012 family violence amendments. Evidence in support of this concern has also emerged from both the ESPS and the CO Project. Among the ESPS participants, the proportion reporting that parenting arrangements had been sorted at the time of the survey dropped from 74% in 2012 to 71% in 2014 (ESPS report, Table 4.4). This study yielded evidence of longer resolution time frames for parents affected by a history of physical violence in particular, with a less significant increase evident among parents with a history of emotional abuse alone. Parents who were still in the process of sorting out their arrangements at the time of the survey were slightly more likely in 2014 than in 2012 to report relying on lawyers (2012: 15% cf. 2014: 17%) and courts (2012: 14% cf. 2014: 17%), but these shifts did not reach statistically significant levels (ESPS report, Table 4.10).

The 2012 family violence amendments were also associated with longer resolution time frames for litigated matters, with the CO Project showing that times frames for the resolution of matters resolved by judicial determination or consent prior to or during trial had doubled on average, from around four to eight months (CO report, Table 3.4). Influences other than the 2012 family violence amendments—such as court resourcing and the sampling method applied—cannot

be discounted in considering these data; however, the views of professionals indicate that they were in part linked to the need for a greater level of scrutiny of family violence and child abuse necessitated by the reforms.

There is little indication that the 2012 family violence amendments have at this stage had an effect on the number of court applications involving final applications in children's matters. In the 2013–14 financial year, 14,826 such applications were lodged nationally (in the FCoA, FCC and FCoWA), reflecting an increase of 442 on the previous year. This increase appears likely to have been driven more by dynamics associated with property matters, as it mostly occurred in the children-plus-property (rather than property-only) filings (CO report, Figure 2.1).

The post-amendment evidence shows minimal shifts in how matters reach court under the operation of s 60I, which requires parents to attempt to resolve children's matters through FDR, with certain exceptions. In 2013–14, there were 6,549 certificate-based applications (CO report, Figure 2.7), indicating that these parents had at least been assessed for FDR, compared with 5,461 exception-based applications (CO report, Figure 2.8), indicating that parents were lodging court applications pursuant to the exceptions to s 60I, which refer to matters such as urgency and the presence of concerns about family violence and child abuse. In the ESPS, over a third of parents reported that at least one parent attempted FDR (ESPS report, Table 4.11), compared to the finding that one in ten indicated that FDR was their main pathway for resolving parenting arrangements (ESPS report, Table 4.8).

Findings from the RFV study showed that it was not uncommon for FDR to be discontinued after concerns about family violence and child safety emerged during the process. The evaluation evidence does not necessarily indicate that the dynamics in this context have changed since the 2014 family violence amendments, but they do highlight two important issues: there are overlaps between the client bases of FDR practitioners, lawyers and courts and that effective identification and assessment processes play a critical role in assisting parents to identify appropriate pathways.



# 4

## Identification and assessment of family violence and child abuse concerns: Professional practices and parents' experiences

This chapter sets out the evaluation findings on whether the 2012 family violence amendments have supported increased disclosure of family violence and child abuse concerns to family law system professionals (Research Question 2). In addition, it examines the related question of how screening and identification are approached in various parts of the system.

The elements of the reforms intended to support more disclosure and better identification and assessment are those that:

- repealed provisions that might have discouraged disclosure of concerns about child abuse and family violence;
- imposed obligations on parties to proceedings to inform the courts about whether the child in the matter or another child in the family has been the subject of the attention of child protection authorities (s 60CI); and
- imposed a duty on the court to actively enquire about the existence of risk of family violence, child abuse or neglect (s 69ZQ(1)(aa)).

Other elements of the reforms, including the provision in s 60CC(2A) requiring greater weight to be placed on protection from harm when it conflicts with a child's right to a meaningful relationship with both parents, are also likely to have supported these measures through focusing the attention of professionals on the need to consider whether these issues are relevant in any particular case. The widened definitions of family violence (s 4AB and s 4) may also mean that a greater range of behaviours are canvassed in professionals' questioning and parents' disclosures. Also of relevance to the findings discussed are the DOORS family violence screening and assessment tool and AVERT family violence training package.

The most important points evidenced in this chapter are:

- Across the family law system, there has been a heightened emphasis on identifying concerns about family violence and safety concerns since the reforms, particularly among lawyers and in courts.
- Parents self-select into disclosing family violence based on their view of the behaviour, the consequences of disclosure and its implications for parenting arrangements.
- Very modest increases in the proportions of parents disclosing family violence and/or safety concerns to professionals have occurred since the reforms. The most notable increases in disclosure are evident among fathers using lawyers.
- Overall, there has been no indication of an increase since the reforms in the extent to which parents are satisfied with professionals' responses to disclosure of concerns about family violence and safety concerns.
- Professionals indicated that the screening and assessment of family violence and safety concerns remains challenging, particularly from the perspective of assessing how such concerns are pertinent to ongoing parenting arrangements.
- The number of Form 4 Notices/Notices of Risk filed more than doubled in the post-reform period, and family law system professionals are concerned about the pressure placed on state/territory child protection systems as a result, as well as delays in the resolution of matters where such notices are filed.

## 4.1 Complex families, pathways and practice models

In the context of this discussion of screening, assessment and disclosure, the findings on the issues associated with the parents who use FDR/mediation, lawyers and courts as their main pathway for resolving parenting disputes (set out in section 2.3.3) have particular significance, since they highlight the extent to which families with complex features, including features that may be associated with risk, are present in the caseloads of each pathway. The extent to which effective screening and assessment processes are applied in each pathway is therefore of considerable significance, as the evidence shows that the client base of lawyers and particularly courts are more likely to have greater levels of complexity (such as having multiple problems) than those who resolve parenting arrangements in other ways.

As a result of the necessity to conduct assessments in relation to whether FDR is appropriate (FLA s 60(D)(8)(aa)), screening and assessment should be an inherent part of the FDR process. Where parenting matters are resolved through the use of lawyers, screening and assessment processes depend on the practices of the particular practitioners involved. In addition, these are applied in a practice context where parties' instructions bind the approaches of practitioners (except in certain narrow circumstances)<sup>17</sup> in an environment shaped by client–solicitor privilege. Where parenting matters are resolved in courts (prior to, during or after trial), screening depends not only on the approaches of lawyers (apart from those parents who are self-represented), but also on the screening approaches and assessment methods adopted by other practitioners, including ICLs, family consultants and single expert witnesses.

## 4.2 Parents' experiences

The ESPS examined the core reform aim of supporting disclosure at a number of levels. Most broadly, parents who reported a history of family violence in the survey were asked whether they had disclosed this history to a range of services and professionals. Reasons for not disclosing were also examined. More specifically, the survey examined whether parents had been asked about a history of family violence or the presence of child safety concerns during their engagement with family law services specifically.

### 4.2.1 Reporting family violence

In order to gain insight into the extent to which experiences of family violence may have been discussed with services and professionals, ESPS participants who reported an experience of family violence (physical violence or emotional abuse, before/during or since separation) were asked whether they had disclosed the experience to 14 different services and professionals. Overall, 53% of parents in 2012 and 56% in 2014 reported disclosing family violence to at least one service, and this increased slightly in the 2014 survey. Mothers were more likely to report violence than fathers (2014—mothers: 63% cf. fathers: 49%) and the relative proportions of men and women reporting disclosure remained similar. Notably, just over four in ten parents had not disclosed family violence to any service in 2014. Physical violence was more likely to be reported than emotional abuse alone, and the most common service reported to was police (25% in 2014) (ESPS report, Figure 5.1, Table 5.1).

Data on the reasons parents did not disclose family violence to any service demonstrate that a considerable minority (2012: 43% and 2014: 38%) did not feel it was serious enough to report (ESPS report, Table 5.2). Almost another quarter indicated they felt they could deal with the issue themselves. These findings suggest that parents self-select into disclosing, and that this is not an inevitable response where family violence is experienced. It also means that a history of family violence is not documented or corroborated for a substantial number of people who experience it. This may or may not have implications for the parents who self-select into not disclosing for reasons that may be regarded as relatively benign, bearing in mind that even these reasons can't necessarily be taken to imply that the family violence is at the lower end of

<sup>17</sup> See Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, R9.

the spectrum of severity (see Chapter 2). For parents who do not report for reasons suggestive of very difficult circumstances, such as fear of the focus parent (2014—mothers: 5% cf. fathers: 2%), the implications are even more concerning, since the difficulty of establishing a relevant history for the purposes of engagement with the family law system after separation may mean that experiences in this range are not given the attention that they warrant. It also means that people who need help and assistance may not get it.

## 4.2.2 Being asked about family violence and child safety by FDR services, lawyers and courts

Parents' reports on whether they were asked by family law system professionals about family violence and/or child safety indicate an increased emphasis on screening, in keeping with the intent of the 2012 family violence amendments. Statistically significant increases were evident in the proportions of parents (all parents, not just those who reported a history of family violence or child safety concerns in the survey) who reported using a formal pathway to resolve their parenting arrangements and being asked about family violence and safety concerns, particularly for those using lawyers and courts. In relation to courts, for example, the proportion of parents reporting that they were asked about both family violence and child safety rose from 50% in 2012 to 61% in 2014 (ESPS report, Figure 5.2). Nevertheless, a substantial minority of court users (2012: 33% and 2014: 31%) reported that they had not been asked about either concern, indicating that the implementation of consistent screening approaches has some way to go. The implications of this finding are particularly concerning in light of the findings discussed in Chapter 2 in relation to the complex characteristics (including experiencing family violence and safety concerns) of the parents who use FDR, lawyers and courts. Parents with multiple and complex issues were concentrated in the lawyer and courts pathways, particularly the latter. These findings suggest a need for further improvement in screening across the board, but particularly for lawyers and courts.

## 4.2.3 Disclosing family violence and child safety to FDR services, lawyers and courts

Moving from the question of being asked (the focus being on professional behaviour) to the issue of disclosing (the focus being on the parents' behaviours), the ESPS findings demonstrate a small increase in the number of parents who reported disclosing each type of concern across each pathway from 2012 to 2014 (ESPS report, Table 5.5). Further specific discussion of the extent to which family violence and child safety concerns are raised in court proceedings, based on the File Analysis in the CO Project, is set out in section 4.4.3.

Increases in disclosure rates between the two cohorts were generally evident (ESPS report, Figure 5.3), but there were some differences according to pathway, gender and whether family violence or safety concerns were disclosed (ESPS report, Tables 5.5–5.9). The ESPS asked all parents who had used one of the three formal pathways for making parenting arrangements about disclosure (not just those who had reported family violence and/or child safety concerns) in order to capture whether parents were aware of any disclosures made by the other parent. Overall, the findings show a statistically significant increase from 2012 to 2014 in disclosure by participants in relation to both family violence and safety concerns (by 3 percentage points to 38% for each) (ESPS report, Table 5.5). Disclosure of family violence was up 4 percentage points to 32% in 2014 where the main pathway was FDR/mediation, and it was up 6 percentage points to 49% when the pathway was lawyers (ESPS report, Table 5.6). This was largely accounted for by increases in disclosures by fathers (ESPS report, Table 5.7). Compared to the 2012 cohort, greater proportions of fathers in 2014 reported disclosing safety concerns in FDR/mediation (up by 5 percentage points to 25%), and a significantly greater proportion of fathers disclosed these concerns to lawyers (up 13 percentage points to 45%) (ESPS report Table 5.9). The increases in the proportions of mothers reporting disclosing safety concerns were greatest where lawyers were the main pathway (up by 8 percentage points to 61% not significant, ESPS report, Table 5.9). The data for mothers disclosing safety concerns when courts were the main pathway

show an increase of 6 percentage points (to 71%), whereas for fathers there was a decrease of 5 percentage points (down to 51%), but these changes are not statistically significant.

Notably, parents did not commonly report that the other parent disclosed either of these concerns, and reports of disclosure by both parents were also rare.

Analysis focusing more specifically on parents who experienced family violence or held safety concerns, and who had contact with family law professionals shows small overall increases in the proportions of parents indicating they had disclosed these concerns to professionals (ESPS report, Figures 5.3 and 5.4). In each of these areas, the increases in disclosure were very modest overall: around 3 percentage points for each type of concern, with 45% of parents in 2014 saying they had disclosed family violence and 74% safety concerns. For both types of concerns, mothers were more likely to disclose than fathers to a statistically significant extent. With regard to safety concerns, the proportion of mothers who reported these concerns to professionals increased significantly between 2012 (73%) and 2014 (79%).

## *Non-disclosure*

For parents who held either or both family violence/safety concerns, non-disclosure overall dropped by a statistically significant three percentage points between the surveys. In 2014, 38% of parents reported holding either or both of these concerns and not disclosing them to professionals (ESPS report, Table 5.10). The pathway with the highest level of non-disclosure was FDR, with 46% of parents in both periods indicating that they had a history of family violence and/or safety concerns and did not reveal them. Lawyers were the pathway with the greatest degree of change (but not to a statistically significant extent) (2012: 34% cf. 2014: 28%). Findings were largely stable for courts, with about 22% of parents not disclosing concerns in both periods.

The findings set out in this section indicate that there has been an increased emphasis on screening in the family law system since the 2012 reforms, but that substantial minorities of parents reported not being asked about family violence and/or child safety concerns, and a smaller but still significant minority held concerns but did not disclose them. The most change in relation to increased screening processes was evident among lawyers. Concerns were most likely to be held and not disclosed by parents who used FDR, suggesting that to some extent, these concerns may have been less significant, given the earlier discussion on parents who self-select into reporting and the reasons they do not report. It cannot be assumed that this is uniformly the case, however, as it is also clear that concerns remain unreported for reasons that cannot necessarily be assumed to be benign, and in some cases are clearly of concern, particularly where fear motivates non-disclosure.

A notable aspect of these findings is the fact that greater proportions of parents reported disclosing safety concerns compared with family violence (ESPS report, Figures 5.3 and 5.4). This suggests that concerns of this nature, which reflect parents' *current* circumstances, are of more concern to them than a history of family violence.

### 4.2.4 Consequences of disclosing family violence and safety concerns

This section sets out findings from the ESPS on the consequences that follow from parents reporting family violence and safety concerns. They suggest that in this area, there has been little change; if anything, the evidence is suggestive of a move in a negative rather than positive direction. It is important to emphasise the tentative nature of any conclusions that may be drawn, given the absence of statistically significant changes and small sample sizes in some areas, especially groups who used courts.

One way in which responses to disclosures of family violence and/or safety concerns were assessed was through a series of questions on disclosure asking parents to nominate how the professional or service responded in relation to each of their issues. The possible response options were: the concerns were taken seriously and dealt with appropriately, the concerns

were acknowledged but not considered relevant, the concerns were ignored or not taken seriously at all, and “something else”.

The pattern of responses of fathers and mothers in relation to responses to disclosures about family violence and safety concerns in 2012 and 2014 suggest little improvement as a result of the 2012 family violence reforms in relation to parents’ perceptions of professionals’ responses to their disclosures (ESPS report, Table 5.11). Notably, around half of the parents reported that their disclosures of both family violence and safety concerns were taken seriously in both time frames. Mothers were more likely to consider this was the case compared with fathers, to a statistically significant extent (e.g., in 2014, family violence—mothers: 58% cf. fathers: 41%; safety concerns—mothers: 55% cf. fathers: 38%), while fathers were around twice as likely as mothers to indicate their concerns were ignored or not taken seriously (e.g., in 2014, family violence—mothers: 7% cf. fathers: 17%; safety concerns—mothers: 10% cf. fathers: 19%).

### *Parent views of professionals’ responses to disclosures of family violence, by main pathway*

An analysis of parents’ accounts of professionals’ responses to disclosures of family violence (ESPS report, Figure 5.5), broken down according to the main pathways used shows parents using FDR and courts were most likely to indicate a decrease in the extent to which concerns “were taken seriously and dealt with appropriately” (FDR/mediation—2012: 58% to 2014: 50%; courts—2012: 40% to 2014: 30%), with the decrease for courts being statistically significant (ESPS report, Figure 5.5).

Considering patterns of positive responses from professionals in each pathway according to parent gender, the data show statistically differences between mothers and fathers in both cohorts, but no significant changes between time frames. There were also significant differences between mothers and fathers who used FDR/mediation and lawyers. Mothers were significantly more likely than fathers to report that FDR professionals (2012—mothers: 65% cf. fathers: 44%) and lawyers (2012—mothers: 61% cf. fathers: 29%; 2014—mothers: 61% cf. 37%) took their disclosures seriously (ESPS report, Table 5.12).

### *Parent views of professionals’ responses to disclosures of safety concerns, by main pathway*

Disclosure of safety concerns was associated with non-significant decreases between 2012 and 2014 in parents considering that professional responses were positive across all three pathways, particularly in relation to lawyers (2012: 54% cf. 2014: 45%) (ESPS report, Figure 5.6). Proportions nominating positive responses from FDR/mediation and courts also fell (FDR/mediation—2012: 48% to 2014: 45%; courts—2012: 37% to 2014: 32%). These changes are mostly accounted for by increases in the “acknowledged but not considered relevant” response option rather than the “ignored or not taken seriously” response option.

Positive responses among both fathers and mothers dropped between cohorts across all three pathways (ESPS report, Table 5.13), though not to a significant extent. Decreases among fathers were particularly marked for FDR/mediation (from 39% to 33%) and lawyers (from 44% to 33%). Among mothers, the biggest drop in positive responses was for courts (from 41% to 33%) and lawyers (from 61% to 56%). Significantly more mothers than fathers reported positive responses from lawyers in the 2014 cohort (mothers: 56% cf. fathers: 33%).

### *Outcomes from disclosure of family violence and safety concerns*

The findings on disclosures and satisfaction with professionals’ responses to them raise questions about differences in the way in which family violence and safety concerns are regarded by both parents and professionals. Where parents experienced these issues, they were significantly more likely to report safety concerns than family violence, yet professionals were generally less likely to respond in ways that parents considered appropriate.

Findings on the actions taken as a result of disclosure of family violence concerns were largely stable between the two cohorts, though there was a statistically significant increase in the



number of parents reporting referrals to relevant support services (up to 36%), and this overtook “nothing happened” as the most common response in 2014 (ESPS report, Table 5.14). There were also small, non-significant increases in the proportions of parents reporting responses that support safety, such as obtaining personal protection orders and implementing safety plans.

Examination of the dynamics concerning parenting arrangements where family violence or safety concerns are disclosed suggest limited change in this area, with similar response patterns evident among both cohorts of fathers and mothers (ESPS report, Figures 5.7 and 5.8).

### Professional practices and children's exposure to family violence

Insight into professionals' identification of and response to children's exposure to family violence emerged in the RFV study, with participants asked to reflect on their own current practices as family law system professionals in areas including the exposure of children to family violence. All professional participants (judicial officers, lawyers and non-legal professionals) were asked to consider whether, they had changed their approach to seeking information from parties on issues including children's exposure to family violence since the 2012 family violence amendments, and lawyers and non-legal participants were asked whether they had changed their approach to providing advice on these issues (RFV report, Table 4.7). Non-legal professionals had the highest level of affirmative responses (45%), followed by judicial officers and registrars (44%) and lawyers (42%).

Majorities of non-legal professionals (90%) and lawyers (76%), lawyers reported that they “almost always” specifically asked their clients about the exposure of children to family violence (RFV report, Table 4.8).

A majority (57%) of the aggregate sample of judicial and legal professionals participating in the RFV study also indicated that there was “almost always” or “often” more detail on the exposure of children to family violence issues in affidavit material since the family violence reforms (RFV report, Figure 6.4). A further 30% of the aggregate sample reported that this was “sometimes” their experience. This finding is consistent with some commentators' expectations that a positive outcome of the family violence reforms would be greater attention to detail in evidence provided to the court of children's exposure to family violence (e.g., Parkinson, 2012). A greater proportion of lawyers (24%) selected “almost always”, compared to 17% of judicial officers/registrars, and 39% of the judicial sample chose “often”, as opposed to 33% of the lawyer sample (data not shown).

Data from the Court Files Study component of the Court Outcomes Project suggests that the concerns about children being exposed to family violence were raised more frequently after the reforms though not to a statistically significant extent (Table 3.12). Consistent with the response patterns identified in the RFV regarding affidavit material, the Court Files Study data indicate that the proportion of matters where concerns about children witnessing family violence were raised increased from 48% pre-reform to 58% post-reform.

## 4.3 Identification and assessment: Practitioner views

Consistent with the parent data discussed in the preceding sections, professionals' views gathered in the 2014 RFV study generally suggest that improvement in the screening and assessment of family violence and child abuse has occurred since the 2012 family violence reforms, but the approaches require further refinement (RFV report, Chapter 4). The RFV study examined professionals' views of their own practices and those of other professionals in the family law system. Experiences with the DOORs screening tool were also examined. Overall, differences in views between professional groups were particularly apparent in relation to identification and assessment, with legal and non-legal professionals each more confident in their own abilities in this regard and less confident in the abilities of professionals in the other disciplines. However, some findings suggest that there is currently less polarisation in attitudes in this area than there was after the 2006 reforms, indicating inter-professional confidence has risen to a limited extent.



### 4.3.1 Assessments of efficacy in screening and assessments

The RFV study findings demonstrated a divergence between the reflections of judicial participants and other groups on the capacity of the legal system, lawyers and FRCs to screen adequately for family violence and child abuse since the introduction of the family violence reforms.

In order to gain an overall assessment, all professional participant groups were asked to reflect on the period of time since the introduction of the 2012 reforms and to indicate their level of agreement with the statement that “the legal system has been able to screen adequately for family violence and child abuse” (RFV report, Table 4.1). The responses indicate that while a substantial proportion (43%) of the aggregate sample of professional participants provided affirmative responses to the proposition, 46% mostly or strongly disagreed. The vast majority (65%) of participating judicial officers and registrars mostly or strongly agreed with the proposition, compared with substantially smaller proportions of lawyers (46%) and non-legal professionals (38%). In fact, non-legal professionals reported the highest level of disagreement, with 48% of professionals in this category strongly (16%) or mostly disagreeing (32%). While a smaller proportion of lawyers strongly disagreed (13%), a slightly greater proportion mostly disagreed with the proposition (34%).

More specifically, questions inviting professionals’ reflections on the capacities of lawyers and FRCs to screen adequately for family violence and child abuse generally showed, on an aggregate basis, stronger confidence in FRCs (agree: 43% cf. disagree: 27%) than lawyers (agree: 33% cf. disagree: 42%) (RFV report, Tables 4.3 and 4.4). Lawyers and non-legal professionals were more confident in their own abilities and less confident in each others’ abilities. However, non-legal professionals were significantly less confident in lawyers’ abilities (agree: 14% cf. disagree: 53%) than lawyers were in FRC abilities (agree: 28% cf. disagree 37%). A majority of judicial officers and registrars also reflected positively on improvements in their own capacity to assess allegations of family violence and abuse (RFV report, Figure 4.3).

The RFV study also set out participants’ observations of changes to professional screening and assessment practices since the inception of the family violence reforms. Consistent with the findings on parents’ experiences in relation to changes to court practices (section 4.2.2), judicial and legal participants were in strong agreement that courts had more actively enquired about the existence of child abuse and family violence since the family violence reforms (RFV report, Table 4.6). A greater proportion of non-legal professionals than lawyers regularly asked their clients directly about family violence, risk of family violence, child abuse or child safety concerns.

### 4.3.2 Screening and assessment tools

#### *Family Law Detection of Overall Risk Screen (DOORS)*

Findings from the RFV study highlight considerable complexity in relation to the use of screening and assessment tools, including DOORS, which was made available to family law practitioners at around the same time as the legislative changes were being implemented. This complexity is reflected in the literature on screening and assessment, which acknowledges the challenges that arise in applying measures and definitions in the context of legal and non-legal practice models. Robinson and Moloney (2010, p. 2) observed that the differing definitions of family violence employed by professionals in the legal and non-legal spheres, together with the differing assumptions about and emphases on violence, present a complex backdrop to the screening and assessment practices of family support services. This variability, together with the variety of available screening tools and the differing ways in which they may be applied, have led some commentators to call for the focus to be on the “development of tools that are useful for the expressed purposes” rather than engaging in the illusive “search for abstract and perfect measures of things well defined” (Rodgers, 2011, p. 6.). While screening and assessment tools have been identified as one of several instruments in the armoury of professionals working in the field (Breckenridge & Ralfs, 2006), the guidance provided by these tools and by the statutory

definitions of family violence and abuse reflect an attempt to address the complications arising in the screening and assessment process.

It was against this backdrop that lawyers and non-legal professionals were asked about their use of tools aimed at assisting practitioners to identify/screen for and assess risks and harm factors. Particular focus was directed at examining their use of the DOORS tool, developed specifically for professionals working in the family law sector.

The data from participants in the RFV study suggest that DOORS had a mixed reception and limited influence. A substantial proportion of professionals, particularly lawyers, had not had exposure to DOORS, and among those who had, most lawyers (51%) and non-legal professionals (69%) indicated that they rarely or never used it (RFV report, Table 4.9).

These findings indicate that the training provided to familiarise professionals with DOORS has had limited reach. Further, participants expressed mixed views on the screening and assessment approach that DOORS represents (RFV report, 4.3). There were a number of positive responses, particularly from non-legal professionals, suggesting that the availability of this tool reflected an advance for the family law system's ability to respond to family violence, child safety and other issues related to risk. However, some professionals in this group also expressed concerns about the tool.

A fundamental aspect of the concerns raised by each of the professional groups in the RFV study related to the proceduralised nature of the DOORS approach, with many expressing the view that this kind of approach was no substitute for practice-based wisdom, careful questioning and personal engagement with clients, informed by highly developed professional judgement. Underlying this view was a concern that the application of the DOORS approach in the absence of carefully honed professional judgement would be inadequate.

Other concerns raised by professional participants in the RFV study related to the workability of the approach in day-to-day practice. The amount of time required to administer the two parts of DOORS was nominated as a concern, as was the way in which these were administered. An approach based on the completion of a questionnaire was seen by some participants as problematic for a number of reasons. These included the impersonal nature of the engagement with clients over difficult issues that this approach entails. There were also concerns raised by participants that this approach was not appropriate for clients with limited or no literacy in English, including clients from Aboriginal and Torres Strait Islander backgrounds and culturally and linguistically diverse communities. The comments from some participating family consultants indicated that it was not considered appropriate for practice in these contexts. It is important to acknowledge, however, that DOOR2 of the DOORS tool enables the DOOR1 questions to be administered by a practitioner. It should also be noted that in 2015, family consultants started trialling a family violence screening questionnaire that is an adaptation of the Mediators' Assessment of Safety Issues and Concerns, Practitioner Version 2 (Beck, Holtzworth-Munroe & Applegate, 2012, as cited in FCoA & FCC 2015).

Some participants in the RFV study raised more substantive concerns about the nature of legal practice and the ways in which a social-science-based screening approach fits within it. These comments go to the tension between the obligation as a legal practitioner to take client information at face value and follow client instructions, and the adoption of a method based on social science knowledge and practice. This was seen to raise a conflict with the lawyer's obligations in their "fiduciary relationship of trust and confidence" that necessitates acting on the basis that clients are telling the truth, because of the possibility that conflicting views could be formed when using the DOORS tool. A further emerging issue flagged by some participants was the admissibility of the results of the DOORS screening process in litigation, and the possibility that arguments could be successfully raised that this form of lawyer–client communication did not attract legal professional privilege. Related points that some participants raised were the extent to which the application or non-application of DOORS could have implications for claims about professional negligence against legal practitioners.

Consistent with the observation of Breckenridge and Ralfs (2006) noted earlier, a key theme emerging from the comments of participants in the RFV study was that screening and assessment tools should be but one of a range of strategies available to the family law professional. These data also emphasised that competent professionals with well-honed skills and experience in

interviewing clients are central to the screening and assessment process. Similarly, Robinson and Moloney (2010; referring to Kropp, 2008) indicated that, as well as accepted screening and assessment tools or guidelines, professionals require expertise and experience in interviewing clients who have experienced or perpetrated family violence, together with a knowledge base of the dynamics associated with family violence. Indeed Robinson and Moloney warned of the “considerable dangers associated with the use of a screening instrument in isolation from empathic engagement” between the professional and client (p. 5).

The variety of screening and assessment tools, skills and practices identified in this discussion of the qualitative data, reflect that risk assessment is an ongoing process, and a multifaceted interaction that does not end with the completion of a screening form (Laing, Humphreys, & Cavanagh, 2013, p. 49). Reliance on a screening tool alone may also lead to a failure to identify and assess risks or forms of harm falling outside the indicators of a specific screening tool (Humphreys, 2014), with too great a focus on formal tools or procedures potentially leading to complacency about false negative findings (Robinson & Moloney, 2010, p. 6). The influence of typological understandings of family violence as a framework for screening and assessment have also been the subject of criticism for their lack of clarity and exclusionary effects (e.g., Rathus, 2013; Wangman, 2011; Boxall, Rosevear, & Payne, 2015).

Robinson and Moloney (2010) nominated key dilemmas arising from evaluating screening and assessment tools that relate to how to determine whether the screening or assessment tool is “measuring what it is supposed to measure”, how to ensure consistent use and application of the tools, and how to measure their effectiveness (pp. 13–14). Although these uncertainties remain, ongoing training and, where possible, supervision of staff applying these tools, in conjunction with a broader range of screening and assessment practices, emerges as being indispensable from the perspective of many of the open-ended comments of professional participants in this study (see also Robinson & Moloney, 2010, p. 15).

## 4.4 Identification and assessment: Legal and court pathways

This section focuses specifically on matters that are resolved or determined using legal and court pathways. As noted in the preceding chapter, a substantial number of matters ( $n = 6,549$  in 2013–14 of a total of 14,826 applications for final orders, amounting to 44%) that proceed to court involve parents who have attended FDR and been issued with a certificate. The issue of a certificate reflects the application of screening and intake processes in relationship support and FDR services, and clinical judgement exercised by the professional, where both parties are willing to engage in FDR. Certificates may also be issued when one party refuses to engage with an FDR process instigated by the other party. However, there are currently no formal mechanisms that support the sharing of any of the information and assessment insights developed in these FDR processes when parents also engage with lawyers, legal services or courts. Information obtained in FDR-related services is subject to the confidentiality provisions of the FLA that prohibit information sharing except in certain circumstances involving risk (see FLA Part II, Division 3). This situation is currently the subject of significant analysis (ALRC & NSWLRC 2010, Chapter 22) and debate (Altobelli & Bryant, 2014) and case law is developing on the boundaries of confidentiality in intake and assessment processes, as distinct from family dispute resolution processes themselves (e.g., *Rastall v Ball* [2010] FMCA Fam 1290).

Where parents seek legal assistance (either without, before, after or in parallel with engagement with relationship support services), the legal practitioner may or may not, as discussed above, engage in their own process of identification and assessment of concerns related to family violence. This assessment may be informed by any screening process applied by the lawyer (see above), the conclusions the lawyer draws from that process, and the instructions obtained from the client. As the preceding discussion demonstrates, these processes raise complex issues in a legal practice model. Lawyers are bound to act on their clients’ instructions, both as to the facts of a matter and as to the position they wish to pursue in negotiation or litigation. The process of lawyers giving legal advice and clients receiving it is interactive and may be quite complex. In family law children’s matters, this process is dependent on the instructions the client provides as to the relevant factual issues in their case, the extent to which evidence is available to support

those instructions should litigation be instigated, and the lawyers' conclusions about their client's position based on their assessment of the facts and their view of the law. The client's response to the lawyer's assessment of the situation is a further dimension of this interactive process, and depending on the extent to which the lawyer's advice corresponds with their desired outcome, a client may accept a lawyer's advice, seek further advice or decide to represent themselves.

When an application for final orders is lodged and a matter commences a litigation pathway, the presence or absence of family violence and child safety issues become questions of fact to be considered in the context of an adversarial trial process. In addition to the evidence generated by the parties in support of their respective positions, there are two further main points in court processes where issues related to family violence and child safety concerns may be identified: in Notices of Risk (Form 4s in the FCoA), which the three courts require to be filed where allegations about these are raised and if a family consultant prepares a brief (under FLA s 11F) or full report (under FLA s 62G). In WA, family consultants are also able to obtain information from child protection and criminal justice systems about the engagement of parties and children with these systems so that the court is aware of these matters the first time an application is considered. This does not occur anywhere else in Australia as arrangements for access to such information is not in place, although there are pilot programs in NSW and Victoria supporting the provision of child protection information to family law courts (see Wall et al., 2015). A further way such information may be obtained by family law courts is through s 67ZW orders directed to child protection departments that request information about a family's engagement with child protection, or through subpoena, which may be directed to a range of agencies, including police and child protection. Where ICLs are involved in matter, they may also have a role in bringing such evidence before the court, independent of the parties to the case. This section sets out findings on Notices of Risk, family consultant reports and ICL involvement in children's matters to support an assessment of the extent and effect to which these other mechanisms for identifying and assessing family violence and safety concerns are applied in children's matters.

#### 4.4.1 Notices of Risk filed

As noted in Chapter 1, all three courts require forms to be completed in circumstances where allegations that raise concerns about risks in relation to family violence and child abuse (although from January 2015, the FCC requires these notices to be filed in all matters). Since the 2012 family violence amendments, the previous gradual upward trend in the number of Notices of Risk being filed has increased markedly. Excluding the Adelaide FCC registry (due to the effect of an Adelaide pilot initiative),<sup>18</sup> 4,437 Notices of Risk were filed in 2013–14, an increase from 4,064 in 2012–13, following a marked jump from 2,229 in 2011–12 (CO report, Figure 2.9).<sup>19</sup> Most of these changes occurred in the FCC, with the FCoA and FCoWA having much smaller increases.

Data collected since the implementation of the 2012 family violence amendments also indicate an increase in the proportion of Notices of Risk being referred to prescribed child welfare authorities. In the FCoA, 90% of notices filed were referred in 2013–14 (cf. 76% in 2012–13) (CO report, Figure 2.10). In the FCC (excluding Adelaide), 88% of notices filed were referred in 2013–14 (cf. 74% in 2012–13). These data do not shed light on action taken by child protection departments as a result of the notifications.

Given that the Notice of Risk is critical to the discharge of courts' obligations to inquire about family violence and child abuse and to parties' obligations to disclose these issues, the RFV study examined views on the notices in closed-response question format and also through open-ended questions. In broad terms, the legal and judicial survey data together suggest that the Notice of Risk was regarded as simple and easy to use, and effective in its capacity to facilitate assessments, although judicial officers were more positive about these questions than lawyers. Half the participating lawyers (50%) agreed that the Notice of Risk was simple and

<sup>18</sup> This pilot involved a requirement for all parenting applications to be accompanied by a Notice of Risk form. See Kaspiew, Carson, Qu et al. (2015), section 2.3 for more details.

<sup>19</sup> In the 2014–15 financial year, 12,483 Notices of Risk were lodged in the FCC, representing 71% of total applications for final orders involving children. In the FCoA in this period, 470 Notices of Risk were lodged, representing 16% of applications for final orders in matters involving children (FCoA & FCC, 2015).

easy to use, though a substantial proportion disagreed (41%). A further 8% of legal participants were unable to express a view on this proposition (RFV report, data not shown). In terms of the capacity of the Notice of Risk to facilitate assessments, a majority of judicial officers mostly or strongly agreed (73%) that when the Notice of Risk was filed by a solicitor, the information included in the form assisted them to understand whether there were risks to parents or children in that case (RFV report, Table 4.11). This contrasted with their reported experiences with the Notices of Risk filed by self-represented litigants, with the majority of participating judicial officers and registrars mostly or strongly disagreeing (59%) that the information provided in these Notices helped them to understand whether there were risks to parents or children. Nevertheless, a substantial proportion (38%) did indicate that they mostly or strongly agreed with the proposition.

Judicial officer participants made a range of comments in open-ended text boxes about the efficacy of the Notice of Risk. The comments indicate the Notice is seen as useful from the courts' perspective as a flag to draw attention to concerns that would be more fully detailed in affidavit material in the file. There were also concerns about the implications of circumstances in which they were not filed but should have been. In general, there was a view that processes are required to support the earlier identification of risks (not only in relation to family violence but also to issues such as mental health and substance abuse) rather than just relying on a Notice of Risk, given the unreliability and lack of timeliness with which they may be completed in some circumstances. As a mechanism to draw investigatory attention to a matter, Notices of Risk were seen as a necessary step, but there were also concerns about overloading child protection agencies. Some judges endorsed the strategy of requiring all matters to be filed with a Notice of Risk, as trialled in the Adelaide pilot, and the shorter form of the Notice involved in the pilot was seen as more usable. Despite the perceived advantages of the process pilot in Adelaide, there remained concerns that the existing processes for identifying and assessing risks remained insufficient due to lack of family consultant resources and lack of access to early information from child protection agencies.

In contrast to the positive views of judges, more lawyers were negative than positive about the question of whether the Notice of Risk supports the development of safer parenting arrangements for parents and children. A majority of lawyers (51%) disagreed that filing a Notice of Risk resulted in safer parenting arrangements for parents and children (RFV report Table 6.8). Over one-quarter of lawyers (29%) agreed with this proposition, with about one in five participants in the sample being unable to express a view in this regard.

Lawyers were also asked whether they perceived that courts take into account Notices of Risk (RFV report, Table 6.9). A slight majority of participating lawyers (51%) indicated that they did, but a substantial minority (36%) reported that they did *not*, with a further 13% of the sample being unable to express a view on this question

The open-ended responses of most lawyers reflecting on the Notice of Risk as it stood at the time of the survey were negative in nature. Concerns were raised about the costs to clients of legal fees for completing the form, and the extent to which the Notice of Risk and consequent referral process are effective means of dealing with concerns about family violence and child safety. Lawyers also noted that:

- the Notice of Risk may duplicate evidence in affidavits, the cost of which is charged to clients; and
- Notices of Risk are complex (as noted above; however, the FCC introduced a simplified version in January 2015).

## 4.4.2 Family consultants

As noted earlier, family consultants potentially play a critical role in assessing family dynamics, including the presence of factors that raise concerns about risk. This section examines family consultants involvement in litigated parenting matters (through provision of a brief memoranda under s 11F or a longer Family Reports under s 62G). It then presents findings on family violence identification and assessment by family consultants in litigated matters.



## *Brief s 11F memoranda*

In relation to s 11F memoranda, the number of these ordered decreased slightly following the implementation of the 2012 family violence amendments. Following a low of 3,367 in 2009–10 in the FCC and the FCoA, there was a consistent increase in family consultant memoranda ordered until 2012–13, when the number peaked at 4,618. For the most recent period, 2013–14, there was a small decline of 138 to 4,480 (CO report, Figure 2.12).

Insight into judicial practices relating to requests for memoranda of advice pursuant to FLA s 11E or s 11F or requests for s 62G family reports is provided in the RFV report. Almost half (44%) of responding judicial officers and registrars indicated that they did not seek s 11E advice as to the services (and service providers) appropriate to the needs of a relevant person in a family law matter. Of the remaining proportion of the sample, 22% indicated that they requested advice pursuant to s 11E in “less than a quarter” of the children’s matters before them, and a further 9% indicated that they did so in “about a quarter” of children’s matters (RFV report, Table 4.12).

A greater proportion of judicial participants (21%) reported that they ordered parties to attend a child-inclusive conference, child dispute resolution conference or child-responsive program under s 11F (and therefore received s 11F memoranda of advice) in “more than three-quarters” or “about three-quarters” of children’s matters (RFV report, Table 4.12). A further 15% reported that they did so in “about a half” of children’s matters and 12% reported that this was the case in “about a quarter” of children’s matters. A substantial proportion of judicial participants (39%) reported that they made these orders pursuant to s 11F in “less than a quarter” (36%) or in “none” (3%) of children’s matters before them.

Qualitative comments indicate judges are careful to ensure that the type of report (brief or full) they order is suited to the type of assessment they need access in any particular case, in light of limited resources.

## *Family Reports*

Family Reports are more commonly used than the briefer family consultant memoranda. The number of family consultant reports ordered across all three courts has been relatively steady since 2011–12, when 4,683 Family Reports were ordered (CO report, Figure 2.13). There was a slight increase in the most recent period (2013–14), to 4,661, arresting a small decline to 4,563 in 2012–13.

Survey data confirm a greater reliance on s 62G Family Reports and suggest variations in practices in this area among judicial officers. About 30% of judicial participants indicated that they requested s 62G family reports in “more than three-quarters” or in “about three-quarters” of children’s matters (RFV report, Table 4.12). A further 18% of the sample indicated that they requested s 62G family reports in “about a half” of children’s matters and 27% indicated that they did so in “about one-quarter” of these matters. Only 3% of the sample indicated that they had not made any such requests in their children’s cases, with a further 18% indicating that they requested a s 62G family report in “less than one-quarter” of their children’s matters.

The extent to which risk assessment practices are evident in Family Reports was examined in the Court Files Study of the CO Project. The analysis focused on three related issues. First, the extent to which Family Reports were present in files for matters in which allegations of family violence and/or child abuse were made. Second, the extent to which the Family Report explicitly indicated a risk assessment process had been undertaken. Third, the results of that risk assessment where this is explicitly referred to in the report on the file. In considering these data, it is important to bear in mind that practices in communicating the results of risk assessment may vary and may need to be handled very carefully, as Family Reports are documents that are made available to the parties.

The Court Files Study findings demonstrate that the extent to which Family Reports were available for matters involving family violence and/or child abuse allegations increased substantially after the reforms, rising from one-third to just over one-half of matters where these issues were raised (CO report, Table 3.16). An explicit indication that a risk assessment had been conducted was evident in the Family Reports in three in ten cases after the reforms, representing an increase of about 9 percentage points on the pre-reform position. About the same proportions of Family



Reports contained conclusions reflecting a presence of risk (28%) or absence of risk (29%). For a substantial proportion (43%), the Family Report writer was unable to form a view. The number of cases in which a risk assessment was conducted and information about the outcome of the assessment was included in the report was too small to sustain reliable analysis ( $n = 27$ ) in the pre-reform sample of files.

Data from RFV study also sheds light on the practices of family consultants and single expert witnesses (35 participants were from either of these groups). Responses to a question asking whether they had changed their approach to making assessments since the family violence reforms, indicate a mixed picture, with 57% of the group responding in the negative, and nearly one-third (31%) answering in the affirmative (RFV report, Table 4.17).

The open-ended survey responses of family consultants and single expert witnesses also provided further insight into this issue, indicating that a greater focus on family violence, including non-physical types, has been occurring since the reforms in some family consultants approaches.

Data from lawyers and judicial officers from the RFV study confirm a shift in practice among family consultants in this respect since the 2012 family violence reforms, though they also suggest that practice in this respect remains uneven. Lawyer participants in the survey were asked for their views on changes in the content of Family Reports and memoranda from family consultants and single expert witnesses in the period since the family violence reforms. Two-fifths of the aggregate sample (40%) thought that there were almost always or often changes to the content of reports and memoranda (RFV report, Figure 6.5). A further 36% reported that this was sometimes their experience. Judicial officers and registrars were more emphatic than lawyers in their affirmative responses, with 33% of the judicial sample reporting that more information was almost always included, and a further 17% reporting that this was often the case (data not shown).

Considering the more specific question of whether the long or short reports by family consultants had provided recommendations that addressed the implications of information about family violence, child abuse and child safety concerns since the family violence reforms, responses from judicial officers and lawyers indicate some unevenness in practice in this regard, consistent with the insights already referred to. Two-fifths of the aggregate sample of lawyers and judicial officers agreed that Family Reports or memoranda almost always or often provided such recommendations (RFV report, Figure 6.5). A further 34% reported that this was sometimes their experience, with 16% reporting that this was rarely or never the case. Once again, judicial officers and registrars were more emphatic than lawyers that since the reforms, family reports or memoranda almost always (36%) or often (25%) provided recommendations that addressed the implications of information about family violence, child abuse and child safety concerns. Nevertheless, 25% of lawyers answered often and 13% answered almost always in this regard (data not shown).

Some of the participating family consultants and single expert witnesses reported that since the family violence reforms, they considered that they had become more cautious in terms of the parenting orders that they recommended, and that there was a greater likelihood of recommending parenting arrangements that involved sole parental responsibility and no time or limited time with the other parent. Some comments indicated there was a greater emphasis on recommendations that emphasised the safety of children.

### 4.4.3 Family violence and child abuse evidence in court files

Findings from the File Analysis in the CO Project show that in keeping with the aim of encouraging parents to make concerns about family violence and child abuse known to professionals in the family law system, the extent to which these issues were raised in court matters increased, with the proportion of matters without such allegations falling from 71% to 59% (CO report, Table 3.10). The proportion of matters where child abuse concerns were raised increased from 11% to 22%, and the number of cases in which family violence allegations were raised increased from 26% to 36% for the total sample. For matters where litigation was commenced, the proportion of files not including any allegations of family violence or child abuse fell from 37% to 31% (judicial determination) and 46% to 39% (consent after proceedings) (CO report,

Table 3.13). In both these areas, the data suggest a slight increase in mutual allegations (i.e., where each party raises allegations against the other), but the dynamics behind this are unclear (CO report, Tables 3.11 and 3.12).

In relation to family violence, an increase in emotional and physical abuse allegations was evident, but the increase was greater for physical abuse (up 12 percentage points to 28%) than emotional abuse (up by 9 percentage points to 28%) (CO report, Table 3.12). This would tend to suggest that the measures supporting disclosure are the greater driver of this increase than the wider definition (s 4AB), which could be expected to support greater disclosure of emotional abuse than the previous definition.

The extent to which children were alleged to have been exposed to family violence increased (from 48% to 58%), but this was not statistically significant (CO report, Table 3.12). The rate of allegations that children were victims of family violence remained stable. These findings suggest that the recognition of children's exposure to family violence in s 4AB(3) has thus far had limited effects, although professional responses in the RFV report (text box, section 4.2.4) are consistent with the emergence of a greater emphasis on this issue.

An increase in the extent to which concerns were raised about both family violence and child abuse was particularly evident in the judicial determination sample, with an increase of 18 percentage points in the proportion of matters involving these kinds of allegations (CO report, Table 3.13).

The analysis of factual issues raised—reflecting the operation of s 60CC and some other issues (including concerns about substance misuse and mental ill health)—shows that material relevant to protective concerns was present on the court files to a greater extent after than before the reforms (CO report, Table 3.14). Twenty-two per cent of the total post-reform sample included material relevant to a need to protect children from abuse, compared with 11% pre-reform. Another area that received greater emphasis post-reform was the child's right to meaningful involvement with each parent after separation, with the proportion of files with such material rising from 7% to 11%.

## 4.5 Summary

Overall, the evidence considered in this chapter indicates that an increased emphasis on identifying family violence and child abuse concerns was evident across the system, particularly among lawyers and courts. However, the evidence also indicates that refinements in practice in this area are required and the development of effective screening approaches has some way to go. These findings are supported by data from all components of Evaluation of the 2012 Family Violence Amendments research program. The main legislative elements of relevance in this context are threefold: the obligations of professionals to ask about family violence and child safety concerns, the legislative encouragement for parents and others to disclose them, and the removal of legislative discouragement to revealing them (including the repeal of s 117AB, which referred to courts having the power to make costs orders where a party was found to have “knowingly made a false statement” in proceedings, and the repeal of the so-called “friendly parent” provision in s 60CC(3)(c)).

Statistically significant increases occurred in the proportions of parents who reported being asked about family violence and safety concerns when using a formal pathway as the main means of resolving their parenting arrangements. Increases were evident among parents who used the three formal pathways (FDR/mediation, lawyers and courts), but particularly evident for those using lawyers and courts, with increases between the 2012 and 2014 cohorts of about 10 percentage points. However, close to three in ten parents reported never being asked about either of these issues in each pathway, indicating that the implementation of consistent screening approaches has some way to go.

The findings also suggest small, statistically significant increases in the proportions of parents who disclosed concerns to services in the family law system, as well as to other services. A small but statistically significant increase in the proportion of parents who reported experiencing family violence before/during or since separation to one of a range of possible services and organisations (not confined to the family law system) is evident. In relation to family law services,

the overall increase in reporting family violence or safety concerns by only the participant after the reforms was 3%.

The reasons given as to why parents did not disclose family violence indicate that parents self-select into non-disclosure. Around four in ten parents indicated that the violence was not serious enough to report, and close to a quarter indicated they felt they could deal with the issue themselves. These findings mean that a history of family violence has not been documented or corroborated for a substantial number of people who experienced it. This may or may not have important implications for the parents who self-select into not reporting for reasons that may be regarded as relatively benign, bearing in mind that even these reasons cannot necessarily be taken to imply that the family violence was at the lower of the spectrum of severity (see Chapter 2). The implications of not reporting, and therefore not having any corroboration of the experience, are even more concerning for the parents who indicated that the reason for not reporting was fear. This reason was nominated by small minorities (2012: 2% and 2014: 3%), but by about three times as many mothers (5%) as fathers (2%) in 2014. The experiences of this group of parents are likely to be particularly severe, so the lack of access to assistance and the absence of a corroborating history suggest that some of the parents with the most serious family violence issues may also have the most difficulty having them addressed effectively.

The findings on the proportions of parents who reported disclosing family violence or safety concerns when using particular pathways demonstrates that increasing increments of parents reported disclosing each type of concern across each increasingly formal pathway in both 2012 and 2014. Thus, reports of disclosure of safety concerns or family violence were lowest for parents who used FDR and highest for parents who used courts. Consistent with this, the evidence from the File Analysis in the CO Project shows that allegations of family violence and child abuse were made in court proceedings to a greater extent after the reforms than before, with the proportions of matters without such allegations being raised falling from 71% to 59% of the total sample.

Professionals' self-assessments of their own capacity to identify and assess family violence and abuse showed that a majority of lawyers and non-legal professionals were confident in their capacity to screen for family violence, with a substantially higher proportion of positive responses from lawyers participating in the RFV survey than the lawyers participating in the 2008 Family Lawyers Survey for the Evaluation of the 2006 Family Law Reforms.

However, this confidence did not translate into high levels of confidence among professionals in relation to the system's general capacity to screen for family violence and child abuse. On an aggregate basis, more professionals in the sample disagreed (46%) than agreed (43%) with the proposition that the legal system had been able to screen adequately for family violence and child abuse. Differences among professionals were important in this context, with non-legal professionals being less confident than lawyers and judicial officers/registrar in this regard. The number of Notices of Risk being filed in court matters has increased substantially since the reforms, and family law system professionals are concerned about the burdens imposed on child protection systems as a result.

Methods and approaches used are a significant consideration when examining the issues associated with adequate screening. The data from participants in the current study suggest the DOORS screening tool—a practice strategy implemented to support better identification of family violence, child abuse and other risks—had a mixed reception and limited take-up. The evidence in this report suggests that a substantial proportion of professionals, particularly lawyers, reported that they had not had exposure to DOORS. Among those who reported that they had, only a small proportion reported using it in their day-to-day practice, with a majority of lawyers (51%) and non-legal professionals (69%) indicating that they rarely or never used it.

The discussion of screening and assessment for family violence, child abuse and other risk-related issues in Chapter 4 suggests that this is an area where improvements to practice remain a “work in progress”. In addition to a need for further training and a more focused examination of the implementation of the DOORS framework across the family law system, the question of the implications of the adoption of this approach in legal practice requires further consideration. In particular, there is a need for a detailed analysis of the effects of this approach in legal practice from the perspective of clients and professionals.

# 5

## Parenting arrangements

The intent of the 2012 family violence amendments was to support greater emphasis on protecting children from family violence and abuse in the development of parenting arrangements. These aims are reflected in the broader definitions of family violence and child abuse, including the provisions referring to the exposure of children to family violence, the measures intended to support disclosure of such concerns and the provisions that specify greater weight is to be accorded to protection from harm when it conflicts with the benefit to the child of having a meaningful relationship with each parent after separation.

At the same time, the FLA provisions supporting shared parenting, namely the presumption in favour of equal shared parental responsibility (s 61DA) and the provisions that oblige courts to consider making orders in favour of equal or substantial and significant time arrangements where orders for equal shared parental responsibility are made pursuant to the application of the presumption (s 65DAA), were unchanged by the reforms. One area where a shift in advisers' obligations<sup>21</sup> may have had an effect on dynamics in matters that are resolved by agreement and or negotiation other than those involving protective concerns is s 60D(1)(a). This section requires advisers to inform parents that they should regard the best interests of the child as the paramount consideration, and operates alongside (but comes earlier in Part VII than) a provision requiring advisers to inform parents that they may consider making arrangements for children to spend equal or substantial and significant time with each parent (s 63DA).

This chapter sets out the empirical findings on patterns in parenting arrangements from two elements of the evaluation research program: the ESPS, comprising the SRSP 2012 and 2014 datasets, and the data on parenting arrangements (parental responsibility and time) in court orders (made by consent and judicial determination) in files sampled for the Court Files Study in the CO Project. The focus of the discussion is the parenting arrangements applicable in circumstances where family violence or child safety concerns were relevant. This is supplemented by a discussion of data from the RFV study relating to the question of whether the family law system was considered by professionals to adequately deal with family violence and child safety concerns.

A critical point underlying the discussion in this chapter is that the effects of the legislative amendments would be reflected in the experiences of parents who interact with family law system services to varying extents, depending on the nature of the advice they receive from the service they use and the way in which they respond to this advice. As explained in the discussion in Chapter 2 focusing on service use patterns, parents with indicators of complexity engage with formal services for making parenting arrangements to a much greater extent than parents without these indicators. The development of parenting arrangements will be influenced by the extent to which these issues are disclosed by parents and identified by professionals, and the implications these issues are considered to have for the care arrangements that will best meet children's needs.

The main findings canvassed in this chapter are:

- Subtle changes in parenting arrangements have been evident since the 2012 family violence amendments.

<sup>21</sup> s 60D(2) of the *Family Law Act 1975* (Cth) provides that an adviser is (a) a legal practitioner; or (b) a family counsellor; or (c) a family dispute resolution practitioner; or (d) a family consultant.

- In the ESPS sample, the main shift involved more arrangements for children to have daytime contact (rather than overnight stays) with fathers where there were ongoing safety concerns.
- In relation to court orders, different patterns were evident according to whether a matter was resolved by judicial determination, by consent after proceedings were initiated or by application for consent orders presented to the court for endorsement as a consent matter from the outset. For judicial determination matters, there were fewer orders for shared parental responsibility, but the pattern in orders for care-time arrangements did not change significantly. For consent after proceedings matters, orders for parental responsibility did not change substantially, but there were significantly fewer shared care-time and more mother majority care-time arrangements. For consent matters endorsed by the court, the frequency of shared parental responsibility orders was also not significantly different, but shared care time was a little more frequent.
- At this stage, there is no evidence in either the ESPS samples or the Court Files Study samples of an increase in arrangements involving supervised contact, or changeover arrangements involving supervision or a public place.
- These findings are consistent with reservations expressed by professionals about the family law system's ability to deal adequately with matters involving family violence and safety concerns due to the forensic complexity such matters involve, resource pressures in the family law system and the intersection between the child protection system and the family law system.

## 5.1 Patterns in parenting arrangements

This section sets out findings on parenting arrangements and the extent to which any shifts are evident as result of the 2012 family violence amendments. The first part of the discussion focuses on the patterns evident among separated parents, generally on the basis of data from the 2012 and 2014 SRSP cohorts in the ESPS. The second examines patterns in court orders evident in the Court Files Study component of the CO Project.

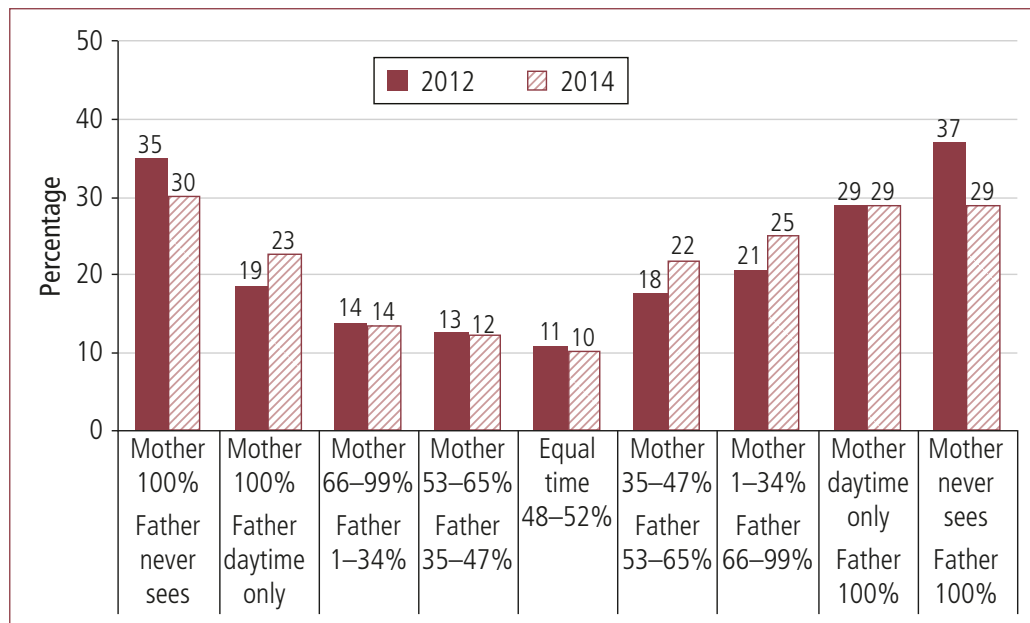
### 5.1.1 ESPS: Findings from the SRSP 2012 and 2014 cohorts

The ESPS findings indicate that mother majority care-time arrangements remained the most commonly reported parenting arrangement (2012: 50%; 2014: 46%), although such arrangements were reported at a statistically significant reduced rate in the 2014 cohort (ESPS report, Figure 2.3). Notably, one in five focus children in each cohort were reported to be in shared care-time arrangements (ESPS report, Figure 2.3), a proportion higher than that reported by parents in the LSSF Wave 1 (16%; Kaspiew et al., 2009, Table 6.1). The average age of children in the ESPS samples was older than that of the children in the LSSF Wave 1, which may provide some explanation for the higher rates of shared care-time arrangements in the 2012 and 2014 cohorts.

Among separated parents generally, the main shift has involved fewer arrangements for overnight stays with fathers for children in mother-majority care, and more arrangements involving daytime-contact only (ESPS report, Figure 2.3). For parents who reported holding safety concerns in the survey, the comparison of SRSP 2012 and 2014 data demonstrates there was an increase in parenting arrangements after the reforms where the focus child resided with the mother for 100% of nights and spent time with the father during the daytime only (2012: 19% and 2014: 23%), which fell just short of statistical significance (Figure 5.1 in this report; ESPS report, Figure 3.17). The remaining differences between cohorts were not statistically significant.

More specific analysis by parent gender indicates that in circumstances involving safety concerns, the most common response for mothers in both cohorts was to report care-time arrangements where children spent 100% of their time with the mother and no time with their father (2012: 33%; 2014: 32%) (ESPS report, Figure 3.18). The only area where statistically significant changes





Notes: Data have been weighted. In cases where both parents of a focus child participated (2012: n = 539; 2014: n = 523), data from one parent were randomly selected for inclusion. Statistically significant differences between 2012 and 2014 were not found.

**Figure 5.1: Care-time arrangements made in the presence of safety concerns associated with ongoing contact with focus parent, 2012 and 2014**

in mothers' and fathers' reports in each cohort were evident was in relation to mothers' reports of children spending 1–34% of their time with their fathers (2012: 18%; 2014: 15%).

ESPS data demonstrating the relationship between reports of care-time arrangements and the experience of family violence before/during separation indicate that experiences of physical violence were more likely to be reported in circumstances where either parent had majority or 100% care-time arrangements for the focus child, while emotional abuse alone or no violence were generally more likely to be reported where shared care-time arrangements were in place (see ESPS report, Figure 3.19). Where parents reported family violence in the before/during separation period, mothers' reports of physical violence were higher to a statistically significant extent where mother-majority time or mother 100% care-time arrangements had been made in both the 2012 and 2014 cohorts. Notably, mothers' reports of physical violence in the before/during separation period were also significantly higher where father-majority time or father 100% care-time arrangements had been made in both the 2012 and 2014 cohorts. On the other hand, mothers' reports of emotional abuse were significantly lower than fathers' where father majority time or father 100% care-time arrangements had been made.

In the context of reports of family violence in the period since separation, there was a statistically significant difference between mothers' and fathers' reports of physical violence where equal care-time arrangements had been made in the 2014 cohort (mothers: 9% cf. fathers: 4%) and a corresponding statistically significant difference in reports of no violence where equal care-time arrangements were made (mothers: 35% cf. fathers: 48%). Statistically significant differences also emerged between mothers' and fathers' reports in both the 2012 and 2014 cohorts, with higher reports of emotional abuse reported by mothers with majority care time (mothers: 51–54% cf. fathers: 44–46%) (ESPS report, Figure 3.20).

The ESPS datasets also allow insight into the relationship between the disclosure of family violence and safety concerns on care-time arrangements. Data from both cohorts regarding the distribution of care-time arrangements indicate that parents who disclosed experiencing family violence were generally more likely to report that there were no overnight stays with the other parent, compared to parents who did not disclose such experiences, and this difference was statistically significant (ESPS report, Figure 5.7).



More specific analysis of parents' perceptions of the extent to which their disclosure of family violence influenced parenting arrangements indicated that parents reporting care-time arrangements where the child never saw either the mother or father, or had daytime-only contact with the other parent, were more likely to report that their disclosure had "very much" influenced the care-time arrangements of their child, though differences were not statistically significant (ESPS report, Figure 5.9). Almost one-half (47%) of parents in 2012 reported that their disclosure of family violence had "very much" influenced arrangements where the child never saw or had daytime-only contact with their father. This proportion increased to 54% in 2014. As parents' care time increased towards more shared arrangements, their perceptions that disclosure of concerns influenced their parenting arrangements decreased, with only 22–24% of parents across both cohorts indicating that disclosure influenced their shared parenting arrangements "very much".

## 5.1.2 Court orders

Due to the way in which the legal aspects of parenthood are structured under the legislative framework, court orders in relation to parenting arrangements deal with two main issues: parental responsibility and care-time arrangements. Accordingly, this analysis sets out the patterns in orders for parental responsibility and care time evident before and after the 2012 family violence amendments. As foreshadowed in the introduction to this chapter, this analysis is based on data derived from three different file types included in the Court Files Study where:

- parents reached agreement and decided to have this agreement endorsed by a court to become a legally enforceable court order (see also Chapter 1) (consent without litigation);
- an application for final orders was made and the parties resolved the matter by agreement prior to or during trial (consent after proceedings); and
- an application for final orders was resolved by a court upon completion of a final hearing/trial (judicial determination). (The operation of the legislation is further examined in Chapter 6 through an analysis of published judgments.)

### *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 (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%.

### *Care-time arrangements*

In relation to care-time arrangements, there was some evidence in the Court Files Study of shifts in this area. For the overall sample, the proportion of children in shared time arrangements in matters where allegations of family violence and child abuse were raised decreased to a statistically significant extent from 19% to 11% (CO report, Table 3.29). Where either of these issues was raised, the proportion of children with shared care time fell marginally, from 17% to 15% and these arrangements were largely stable with children for whom neither of these issues had been raised, applying to just over one-fifth of the children in this group (CO report, Table 3.29). Orders involving no face-to-face time with one parent remained rare in both periods. Three per cent of children had orders for no face-to-face contact with fathers after the reforms, compared with 2% before the reforms. Fewer than 1% of children had orders for no face-to-face contact with mothers in both periods (CO report, Table 3.28).

The court file data also indicate that where allegations of both family violence and child abuse were made, there was minimal change in shared care-time outcomes in judicial determination files and a statistically significant reduction in judicial determination files for shared parental responsibility orders (down 22 percentage points to 32% in 2014; CO report, Table 3.33). Conversely, shared care-time orders in the consent after proceedings sample diminished by a statistically significant 13 percentage points to 12%, while shared parental responsibility orders rose by 5 percentage points to 88% (CO report, Table 3.33).

### *Supervision of care-time and supervised or public/neutral changeovers*

The Court Files Study data relating to orders for the supervision of parenting time across the pre- and post-reform court file samples indicate that the proportion of supervised care-time orders made remained unchanged (4% of files in both the pre- and post-reform samples) (CO report, Figure 3.2). These data also indicate that where supervised time was ordered, the supervision was required to be undertaken by a contact centre in approximately one-half of the relevant pre- and post-reform files (2%), with supervision by relatives, friends or partners or other arrangements comprising the remainder of the pre- and post-reform supervised time orders (Figure 3.3).<sup>22</sup>

Orders for supervised changeovers or orders providing for changeovers to take place at a specified location remained largely stable at 12% in the pre-reform sample and 14% post-reform (CO report, Figure 3.4). The majority of these orders required changeovers to take place in a neutral and public venue, increasing from 8% in the pre-reform sample to 9% post-reform, though orders for changeovers to take place at a police station decreased from 2% (pre-reform) to 1% (post-reform) (Figure 3.5).

The ESPS data indicate that 13% of parents in the 2012 cohort and 10% in the 2014 cohort reported that their parenting arrangements involved the supervision of the focus child's time with the parent who was not the primary carer (ESPS report, Table 2.7).<sup>23</sup> These data reflect a broader range of parenting arrangements (i.e., both informal and formal) than the Court Files Study data, and the decrease between the SRSP cohorts was not statistically significant. Parents in the ESPS reported that the supervision was undertaken by a relative in a substantial proportion of cases (41–42%) and by a children's contact service in 21–23% of cases. Just over a third of parents in each cohort (37%) reported "other" supervision arrangements (e.g., supervision by friends). Also similar to the Court Files Study data, 12–13% of the SRSP cohorts reported that there were arrangements for the changeovers to be supervised, with the majority supervised by a relative (51–52%), or by someone else (41%) or children's contact services (6%) (ESPS report, Table 2.6).

### 5.1.3 Summary

The discussion in the preceding section has established that subtle changes have occurred in patterns in parenting arrangements since the implementation of the 2012 family violence amendments. Among separated parents generally, the main shift has involved fewer arrangements for overnight stays with fathers for children in mother-majority care. Where safety concerns were raised, there was an increase that fell just short of statistical significance in parenting arrangements involving the focus child residing with the mother for 100% of nights and spending time with the father during the daytime only (2012: 19% cf. 2014: 23%; Figure 5.1 in this report; ESPS report, Figure 3.17). In matters resolved by judicial determination in the Court Files Study, the main changes saw a statistically significant reduction in shared parental responsibility orders. Conversely, where matters were resolved by consent after proceedings were initiated, shared care-time orders diminished by a statistically significant 13 percentage points, while shared parental responsibility orders rose by 5 percentage points.

<sup>22</sup> Note that graduated orders were also included in the data relating to supervised time arrangements in the pre-reform sample.

<sup>23</sup> Note that supervision of time in these data relates only to the supervision of daytime contact rather than overnight parenting time.

Combined, the evidence from all three components of the Evaluation of the 2012 Family Violence Amendments establish that the greater emphasis on identifying family violence and child safety concerns has underpinned shifts in parenting arrangements to a very modest, albeit positive, degree. The next section explores the dynamics underlying this situation on the basis of the views of professionals.

## 5.2 Dealing with family violence and child safety: Professionals' views

The question of whether the family law system deals adequately with family violence and child safety concerns was explored in the RFV study. This area of exploration extended beyond questions of screening and identification and encompassed views on the strengths and weaknesses in the family law system's capacity to respond to these issues when they arise in the context of developing parenting arrangements. As the data summarised in Chapter 7 of the RFV report established, the clients' experiences suggested limited shifts following the 2012 family violence amendments. There was variation in parents' responses in relation to whether the service had enabled them to get the help they needed and/or make appropriate parenting arrangements depending on whether they had experienced family violence or not (RFV report, section 7.5).

The RFV data established that this is an area where differences in views were particularly marked between legal and non-legal professionals. Responses to a survey question concerning the legal system's capacity to "deal adequately" with cases involving family violence and child abuse in the post-family violence reform context revealed substantial divergences between responding groups, with some indication of improvements in views among participant groups for whom data from earlier time frames is available. A substantial majority of judicial participants (84%) considered that the legal system dealt adequately with such cases, but markedly lower levels of agreement were recorded for lawyers (48%) and non-legal professionals (29%) (RFV report, Table 6.1). Notably, the agreement level among lawyers increased compared to responses to a similar question in the 2008 Family Lawyers Survey (43% cf. 48%), suggesting confidence has grown in the intervening period (Table 6.2).

The difference in responses between groups is also reflected in the findings on a more specific question about the capacity of different professionals and agencies in the family law system to deal with cases involving family violence and child abuse. For example, lawyers were the most positive on the capacity of their own profession to respond adequately in such cases, with 50% agreeing that lawyers were able to deal adequately with cases involving family violence and child abuse (RFV report, Table 6.3). By contrast, only 13% of non-legal professionals agreed that lawyers were able to deal adequately with cases involving family violence and child abuse, 52% disagreed and 35% indicated they could not say. The responses to a question about the capacity of FRCs to deal adequately with family violence and child abuse cases demonstrated a similar pattern. Non-legal professionals were substantially more positive (51% agreeing), and lawyers were substantially less positive (21%) (Table 6.4). Again, the RFV findings also reflect an improvement in lawyers' confidence in FRCs in this regard, with positive responses doubling from the results of the 2008 Family Lawyer's Survey (Table 6.5).

In addition to the divergence in views across disciplines indicated by these findings, an important insight from these data is that substantial proportions of professionals expressed significant doubt about the family law system's capacity to deal with family violence and child abuse cases. For all of these questions, negative responses were greater than positive responses on an aggregate basis. Nearly half (49%) of the RFV sample indicated that they did not believe the legal system dealt adequately with family violence and child abuse cases, and 41% agreed (RFV report, Table 6.1). In relation to whether lawyers had the capacity to deal adequately with family violence and child abuse, 43% of the sample indicated disagreement and 32% agreed (Table 6.3). For the same statement in relation to FRCs, 36% of the sample disagreed and 34% agreed, though "cannot say" responses were higher for FRCs (30%) than lawyers (25%) (Tables 6.3 and 6.4).

Qualitative responses to open-ended questions provide further insight into the views that underlie these response patterns. Some judicial and legal participants described positive changes that they had observed, while other participants in these categories were mixed in their view on this question or reported that they had observed no change in professionals' responses as a result of the reforms. Some lawyers expressed disappointment in the lack of change in effective responses to family violence, and in particular in making safer parenting arrangements.

Professionals' responses may be summarised as follows:

- Pressure has been placed on resources in the court system as a result of a greater number of allegations of family violence and child abuse being raised (especially in the responses of judicial officers).
- Practices pre-dating the reforms were adequate and did not need to change substantively.
- There is forensic uncertainty surrounding allegations of family violence and child safety concerns in circumstances where many concerns could not necessarily be substantiated to the level of certainty required for court proceedings in the context of denials or minimisation from the alleged perpetrator.
- There was disappointment with the lack of substantive effects that the family violence amendments had on outcomes for families and in relation to securing parenting arrangements that were more consistent with the best interests of children and that prioritised their protection from harm. There was concern about the lack of change in the practices of family consultants, single expert witnesses and courts.
- Professionals expressed the view that the family violence amendments were “symbolic” or “cosmetic”, and for some this was identified as merely increasing paperwork without resulting in any change in outcomes.

### 5.3 Summary

The discussion in this chapter has drawn together the findings relating to parenting arrangements from the ESPS (SRSP 2012 and 2014) and the Court Files Study component of the CO Project, together with insights from professionals from the RFV study.

The discussion first identified that subtle changes had occurred in patterns of parenting arrangements since the 2012 family violence amendments. The main shift identified in the ESPS data involved a substantial increase after the family violence amendments in parenting arrangements involving 100% mother care time where the child spends time with the father during the daytime only.

Data from the SRSP 2014 cohort regarding the distribution of care-time arrangements indicate that parents who disclosed experiencing family violence were more likely to have no overnight stays with the other parent compared to parents who did not disclose such experiences, and this difference was statistically significant (ESPS report, Figure 5.7). The data also indicate that as parents' care time increased towards more shared arrangements, their perceptions that disclosure of safety concerns influenced their parenting arrangements decreased. Together, these findings suggest that the greater emphasis on identifying family violence and child safety concerns has supported modest, positive shifts in the making of parenting arrangements in the post-reform period.

Overall, the patterns in orders for parental responsibility and care time reported in this chapter raise some interesting issues when considered against the objectives of the 2012 family violence amendments. The findings arising from Court Files Study that demonstrate the most direct application of the law in the context of matters that do not resolve—the judicial determination sample—show that orders for shared parental responsibility decreased after the reforms, but changes in patterns of care-time orders were almost negligible. Small and not statistically significant shifts away from shared care-time orders were evident in matters where family violence and/or child abuse allegations had been raised. These data suggest that after the reforms, courts were more likely to make decisions against shared parental responsibility pursuant to the non-application or rebuttal of the presumption and the application of the best interests discretion. This does not translate, however, into a substantial shift in approaches to care-time arrangements, with the aggregate-level data indicating little change. This suggests that

the 2012 family violence amendments have had limited effects on the overall pattern of judicial determination outcomes for care-time arrangements. This is despite the fact that evidence that raised protective concerns was provided more often after the reforms than it was before, and that cases in which such evidence was provided were less likely to be amenable to resolution without judicial determination than previously (CO report, Chapter 3).

In relation to consent after proceedings matters, analysis of the Court Files Study sample indicated that orders for parental responsibility did not change substantially after the 2012 family violence amendments, but orders for shared care time were less frequent to a statistically significant extent, and orders for mother-majority time were more frequent (CO report, Tables 3.33 and 3.31). Thus, the 2012 family violence amendments have not produced a substantial shift in shared parental responsibility arrangements, but shared care time is less common in these kinds of cases. It may be that the cases that settle in this way are more clear cut from a factual and evidentiary perspective than the cases that proceed to judicial determination, meaning that one party is in a substantially stronger bargaining position from a forensic perspective. However, the disjunction in the patterns between the two samples raises some intriguing questions about the operation of the legislative framework, particularly as factual issues raising protective concerns are more common in judicially determined matters than consent after proceedings matters. It should also be acknowledged, however, that to some extent, the greater prevalence of shared parental responsibility in the consent after proceedings file sample may reflect the bargaining dynamics and trade-offs pertinent to negotiation in these contexts.

For arrangements reached by consent without litigation, patterns in shared parental responsibility orders did not change, but patterns in shared care-time orders recorded a subtle increase.

Overall, the data from the ESPS and CO Project indicate subtle shifts have occurred in parenting arrangements since the 2012 family violence amendments. The absence of substantive changes in these datasets is consistent with the views expressed by professionals in the RFV study that they had significant reservations about the capacity of the legal system, lawyers and FRCs to deal adequately with cases involving family violence and child abuse concerns. These views are, in turn, consistent with the findings set out in Chapter 4 on the complexities that surround the identification and assessment of family violence and child safety concerns (section 4.3) and the intersection between the family law system and child protection system (section 4.4.1).

A range of issues underlie these responses. They include concern about level of resources that are required to apply forensic scrutiny to allegations of family and child abuse, the level of attention that is paid to assessing the implications of such allegations for parenting arrangements, and the intersection between the family law system and the child protection system. As discussed in Chapter 4 of the RFV report, the mechanism of referring Notices of Risk to child protection agencies is seen by many family law system professionals as an inadequate response to matters where protective concerns are raised, due to the burdens they impose on child protection systems.

A further significant point arises from the mutual lack of confidence between legal and non-legal professionals in each others' capacity to deal with cases involving family violence and child abuse. This suggests there may be, to some extent, material differences in the way in which each group of professionals approaches cases involving family violence and child abuse allegations. This potentially has significant implications, especially for the parents who move between each part of the system, some of whom may not experience complementary approaches to these issues. The following chapter focuses more closely on the application of specific aspects of the 2012 legislative amendments, including examining disciplinary differences in approaches to key issues, including the definition of family violence.



# 6 The operation of the legislative amendments

This chapter focuses on the effects of the 2012 legislative amendments on advice-giving and decision-making practice. The discussion combines insights from the RFV study and the analysis of published judgments. It includes a detailed examination of the new definitions of family violence and child abuse and the s 60CC2A provision that requires greater weight to be accorded to protection from harm if it conflicts with the child's right to a meaningful relationship with each parent.

The discussion in this section continues to highlight differences between and within professional groups in approaches to these key aspects of the amendments. This is evident in views on the new definition of family violence, the impact of s 60CC2A, advice-giving practices among legal and legal professionals, and approaches to the amendments in the overall Part VII framework.

Consistent with the insights presented in earlier parts of this report, it is clear that the aspects of the amendments considered in this section were considered to be positive developments by a majority of professionals within each group. However, at this stage, the extent to which they can be seen to be associated with changes in practice are limited.

The chapter begins with an explanation of the key elements of Part VII of the FLA, which guides decision making in children matters. It then sets out professionals' views on the new definition of family violence and s 60CC2A. Survey data on the extent to which legal and non-legal professionals have changed the advice they give parents is then considered. A summary of key aspects of the study of published judgments in the CO Project is then provided.

The main points arising from the findings set out in this chapter are:

- The new definition of family in s 4AB was supported by most participating professionals across the system and was seen to have an important educative function. The evidence suggests it has supported modest shifts in family law practice outside of court settings but appears to have a limited effect on litigated matters for a range of reasons, including differing interpretations of the definition applied in published judgments.
- The evidence from the ESPS study demonstrates that the conditions of fear, coercion and control are not uncommonly reported by parents as resulting from emotional abuse or physical violence, and that there are parents who report all three conditions. Parents who accessed lawyers and courts, especially mothers, reported experiencing fear, coercion and control in higher proportions than those who used other pathways. This is less likely to be a result of the new definition and more likely to be the result of the way parents with cases that have complex features (Chapter 2) are concentrated in legal and court pathways. This phenomenon was evident before the 2012 family violence amendments.
- As with the new s 4AB definition, the s 60CC(2A) provision that requires greater weight to be placed on protection from harm when this is in conflict with the child's right to a meaningful relationship with both parents after separation, has the support of a majority of professionals and is seen to have an important role when working with parents in relation to understanding children's best interests. However, professionals' views, the findings on parenting arrangements from the Court Files Study and the analysis of published judgments indicate it has had a limited effect in practice and that divergent interpretations are evident in published judgments.



## 6.1 The Part VII framework

The legal framework relevant to the resolution of parenting matters is substantively set out in Part VII of the FLA, although relevant definitions are also contained in s 4(1) (child abuse) and s 4AB (family violence). There are two sets of provisions that play a critical role in informing decision-making in children's matters. One set of provisions guides consideration of the factual issues relevant to the "best interests" principle, and the other set relates to parental responsibility and care time.

The best interests principle is at the core of both sets of provisions, but in different ways. The main provisions that guide judicial analysis of the best interests principle are the Objects and Principles (s 60B), which inform the application of the Part VII framework in a philosophical sense, the principle specifying that the child's best interests are paramount (s 60CA), and the s 60CC enumeration of primary and additional considerations that guide the exercise of the best interests discretion. The s 60CC(2) factors are the "primary considerations" relating to: (a) the benefit to the child of having a "meaningful relationship" with both parents, and (b) the need to protect the child from physical or psychological harm due to being subjected or exposed to abuse, neglect or family violence. Since the 2012 family violence amendments, the so-called "tie-breaker" provision (Rhoades, Lewers, Dewar, & Holland, 2014), s 60CC(2A), specifies that greater weight is to be given to the latter factor where a conflict occurs between the two primary considerations in any given case. The "additional" s 60CC(3) factors comprise 13 separate considerations, together with a "catch-all" consideration that allows the court to take into account "any other fact or circumstance". As part of the 2012 family violence amendments, these provisions were changed so that the court may consider and draw inferences from "any" family violence order (s 60CC(3)(k)), not just those made on a final or contested basis. A provision requiring courts to have regard to the extent to which one parent had facilitated the child's relationship with the other parent was also removed.

The presumption in favour of equal shared parental responsibility is at the core of the provisions related to parental responsibility and care time (s 61DA). The presumption in favour of equal shared parental responsibility is not applicable where there are reasonable grounds to consider that a party has engaged in family violence or child abuse (s 61DA(2)). The presumption is also rebuttable on grounds that its application would not be appropriate in the circumstances (s 61DA(3) or would not be in a child's best interests (s 61DA(4)). Where orders for equal shared parental responsibility are made pursuant to the presumption, courts are obligated to consider making orders for children to spend equal or substantial and significant time with each parent where this is held to be reasonably practicable and in a child's best interests (s 65DAA(1)).

In circumstances where the presumption is not applied or rebutted, decision-making in relation to parental responsibility and care time are determined by reference to the child's best interests (s 60CA), requiring consideration of the Objects, the Principles (s 60B) and s 60CC. Case law decided since the 2006 shared parenting amendments to the FLA has set out a decision-making pathway that requires orders for equal shared parental responsibility and equal shared time to be considered as part of the best interests assessment, regardless of whether the equal shared parental responsibility presumption is applied or not (*Goode v Goode* [2006] FamCA 1346). The High Court has reinforced the necessity for judges to adhere to the legislative decision-making pathway in s 65DAA in order for court orders to be predicated on a valid exercise of legislative power (*MRR v GR* [2010] 240 CLR 461).

In the context of the exercise of the best interests discretion (s 60CA), concerns about family violence and child abuse may be relevant at several different points. The significance and effects of findings in relation to family violence and child abuse remain subject to discretionary treatment in decision-making, albeit in the context of the implementation of the s 60CC(2A) provision.

In addition to the protection-from-harm consideration in s 60CC(2)(b), two other provisions in s 60CC draw the court's attention to family violence. One raises as a consideration "any family violence involving the child or a member of the child's family" (s 60CC(3)(j)). The other, as noted earlier, requires the court to consider any family violence order. Where findings are made about these issues, they may result in the non-application or rebuttal of the s 61DA presumption and, depending on the severity of them and the significance placed on them in the context of

other factors in the exercise of judicial discretion, they may influence the orders for parental responsibility and care time in a variety of different ways, as explained further in Chapter 5. The patterns in orders for parental responsibility and care time described in Chapter 5 reflect the exercise of this discretion in relation to the judicial determination sample.

In relation to matters determined by consent, application of the s 60CC “primary” and “additional considerations” is discretionary (s 60CC(5)), although such orders remain subject to the paramourncy of the best interests principle.

Previous research established that most court orders (whether made by consent or judicial determination) provided for shared parental responsibility after the 2006 family law reforms (Kaspiew et al., 2009). Although shared care time is considerably less common in court-determined arrangements than shared parental responsibility, research has also demonstrated that orders involving minimal or no time with one parent are made only where the evidence in support of such an outcome is strong (Kaspiew, 2005; Moloney et al., 2007), illustrating the longstanding approach that children benefit from involvement with both parents except in cases where dysfunction, including from family violence and child abuse, warrants an outcome inconsistent with this view.

In considering the findings set out in this report, it is important to appreciate that they reflect a legal environment in which there has been limited appellate authority on the interpretation and application of the 2012 family amendments. The discretionary nature of decision-making at first instance is evident in the way the new provisions are applied and interpreted in the context of a legislative framework in which discretion determines how particular facts and circumstances will influence the end result.

It should also be noted that the legislative pathway set out in Part VII has been described in judicial comment (*Marvel v Marvel* [2010] FamCAFC 101, 87; *Zabini vZabini* [2010] FamCA 10), practitioner comment (O’Brien, 2010) and academic analysis (Fehlberg, Kaspiew, Millbank, Kelly, & Behrens, 2014) as complex, convoluted and not readily understood, especially by lay people.

## 6.2 The new definition of family violence (s 4AB) and child abuse (s 4(1))

The definitions of family violence and child abuse were widened as part of the 2012 family violence reforms in response to recommendations from the ALRC and NSWLRC (2010) and the Family Law Council (2009). In relation to family violence (s 4AB), noteworthy features of the new definition include the fact that the primary statement (s 4AB(1)) encompasses non-physical abuse, and the relevant behaviour needs to result in fear, coercion or control in order to come within scope. The non-exhaustive list of examples (s 4AB(2)) includes a range of behaviours, including repeated derogatory taunts, economic abuse, and social and cultural isolation.

The new definition provisions also explicitly recognise and define the exposure of children to family violence (where it causes serious psychological harm) as a form of child abuse (s 4AB(3), s 4(1)). The definition of “abuse” in FLA s 4(1) previously referred to state and territory laws in relation to assault and sexual assault, and among other changes, this reference was omitted from the new definition. In addition to the inclusion of serious psychological harm, new elements included, but were not limited to, exposing the child to family violence, and “serious neglect” of the child. The extent to which these aspects of the changes have resulted in greater attention being paid to the exposure of children to family violence in legal practice and court proceedings is discussed in section 4.2.4.

### 6.2.1 Emerging findings

On the basis of the evaluation findings already considered in this report, three main points may be made about the definition of family violence at the outset of the discussion in this chapter. First, in relation to the references to fear, coercion and control in the primary clause of the definition, the ESPS data indicate that these conditions are not uncommonly associated with

experiences of family violence, and with physical violence to a greater extent than emotional abuse (ESPS report, Tables 3.11 and 3.12). They also vary significantly in frequency (Figure 3.15) and effects (Figure 3.16), particularly when experiences of fathers and mothers are compared, with mothers being significantly more likely to report experiencing these conditions to a greater level of intensity than fathers before/during separation. Parents who accessed lawyers and courts, especially mothers, reported experiencing fear, coercion and control in higher proportions than those who used other pathways (ESPS report, Figures 4.4 and 4.5).

Second, the evaluation findings summarised so far in this report have highlighted one area of subtle change—FDR/mediation—that has emerged as a result of the new definition of family violence, mainly in the quantitative data comparing the experiences of parents affected by emotional abuse with those affected by physical violence only. There was a small increase in the use of FDR/mediation (and away from courts) for parents affected by emotional abuse (ESPS report, Table 4.9) and some indication of agreements being reached for these parents in this pathway to a greater extent than previously (ESPS report, Table 4.13).

Third, consistent with the greater emphasis on identifying concerns about family violence (discussed in Chapter 4), particularly for lawyers and courts, the extent to which allegations of family violence and child abuse are raised in material court files has increased. However, the overall analysis of the File Analysis data in the CO Project demonstrates that this increase was evident in relation to physical violence to the same extent as emotional abuse, suggesting that the measures supporting identification are perhaps a more significant influence in this regard than the new definition.

## 6.2.2 Professionals' views

The discussion now turns to a summary of professionals' views on the new definitions of family violence and child abuse. In the RFV survey, three closed-response questions elicited attitudes to the new definitions, and participants also had the opportunity to comment on the definitions in an open-ended text box. The first closed-response question asked participants to indicate their level of agreement with the statement that: "The new definitions of family violence and abuse support parenting arrangements that are safer for parents and children". Majorities of professionals agreed that the new definitions support safer parenting arrangements (73% on aggregate), with few substantial differences between the professional groups (RFV report, Table 3.1).

The second closed-response question sought views on whether the 2012 family violence amendments were associated with an improvement in the family law system's ability to identify, assess and respond to non-physical forms of family violence. Responses to this question were substantially less positive, with 37% of the total sample agreeing that this was the case (RFV report, Table 3.2).<sup>24</sup> The group that works most closely with the legislative definitions in day-to-day practice—judicial officers/registrars—was most likely to indicate a positive effect (43%), compared with just over a third of lawyers and non-legal professionals. The interpretation of these responses raises some ambiguity as some of the professionals may have considered that this area had already been handled well before the reforms.

Qualitative data provide further insight on the range of views on the family violence and child abuse definitions (RFV report, section 3.1.2). Professionals from each group made comments indicating that the new definitions supported professionals' work with clients, but it is also notable that the responses to the survey questions about the definitions and improved understandings among different stakeholders indicate that minorities of professionals considered the new definition had improved understanding of family violence among mothers (42%), and to an even lesser extent fathers (27%) (RFV report, Table 3.3).

The qualitative comments on the definitions also highlight differing views among professionals about the operation of the s 4AB definition. Many comments were positive about the new

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<sup>24</sup> In the survey, this was a negatively worded proposition. Professionals were asked to indicate the extent of their agreement with the proposition that: "Identification, assessment of and response to non-physical forms of family violence has not improved since the 2012 reforms". Disagreement with the proposition is therefore consistent with a positive effect and agreement with a negative effect. The summary here simplifies the discussion by referring to responses consistent with a positive effect.

definitions, particularly the recognition of non-physical forms of violence. Others, however, suggested it had “widened the net”, capturing a range of behaviours that shouldn’t necessarily be considered relevant to parenting matters. A sub-theme in this regard concerned the extent to which the family law system was equipped to distinguish between serious and less serious forms of family violence in terms of knowledge (training and experience) and resources. Responses along these lines suggest a varied range of approaches and understandings of the types of behaviours that amount to family violence and the point at which such behaviours reach a level of gravity warranting the attention of the family law system. Implicit in some comments, and explicit in others, were understandings (and, for some, concerns) linked to theories about typologies of violence that have arisen from the work of researchers and clinicians such as Janet Johnston and colleagues (Johnston & Campbell, 1993) and Michael Johnson (Johnson, 2008).<sup>25</sup> Some responses also questioned whether the new definitions do, in practice, amount to a wider approach to family violence. In this context, the qualifying words “fear”, “coercion” and “control” were raised as potentially limiting the interpretation of the definition.

### 6.3 Greater weight on protection from harm?

Another important aspect of the 2012 family violence amendments was legislative clarification that protection from harm should be given greater weight when in conflict with the child’s right to a meaningful relationship with each parent after separation. The amendments specify that this factor should be given greater weight in court-based decision making (s 60CC(2A)) and in situations where advisors within the meaning specified in the FLA (s 63DA(5) and s 60D(2))<sup>26</sup> are assisting parents to agree on parenting arrangements (s 60D(1)). In each of these contexts, the best interests of the child remain the paramount consideration (s 60CA, s 60D(1)(a)), with this principle being reinforced in relation to advisors’ obligations in the 2012 family violence amendments.

The views of professionals on two issues concerning s 60CC(2A) were sought in the RFV survey: first, whether the provision was helpful, and second, whether “protection from harm is given greater weight when relevant”. Response patterns indicate that the vast majority (86%) of all professional participants thought that s 60CC(2A) was helpful, and variations between professional groups were minimal (RFV report, Table 2.4). Indications of some limitations in the provision’s influence on practice were evident, with 70% agreeing that “protection from harm is accorded greater weight when relevant”, compared with 23% disagreeing (data not shown).

A further indication of such limitations is evident in a comparison of survey responses to two questions asking participants for their view on whether “adequate priority” was placed on “protection from harm” and on “meaningful relationship”. The rate of endorsement in relation to meaningful relationship was 20 percentage points greater than that for protection from harm (87% cf. 67%) (RFV report, Table 2.1).

#### 6.3.1 Advice-giving practice

A further area of questioning in the RFV study was aimed at understanding the extent to which the 2012 family violence amendments were associated with shifts in the nature of the advice that practitioners provided to parents. The views reflected in the responses are likely to reflect a combination of factors, including lawyers’ and non-legal professionals’ understanding of the implications of the s 60D(1) advisers’ obligations (in relation to the paramountcy of the children’s best interests, and giving greater weight to protection from harm). The advice of legal practitioners is also likely to be informed by their assessment of likely outcomes in court. The four areas of advice examined were whether participants had changed their approach in giving advice on:

- fathers seeing children;
- allegations of family violence;
- allegations of child abuse; and

<sup>25</sup> For a discussion of this work, see Wangmann (2011) and Altobelli (2009).

<sup>26</sup> A legal practitioner, family counsellor, family dispute resolution practitioner or family consultant.

- outcomes of parenting disputes.

The response options were yes, no, not applicable, cannot say. In relation to all questions, non-legal professionals were less likely than lawyers to indicate that they had changed their advice since the 2012 family violence reforms. The area where the greatest change was evident was in relation to family violence, with majorities of lawyers (64%) and non-legal professionals (56%) indicating they had changed their advice (RFV report, Table 2.10). A majority of lawyers (59%) and 50% of non-legal professionals indicated they had changed their advice about child abuse. These changes are likely to reflect the effects of the new definitions, together with the influences of the provisions specifying greater weight is to be given protection from harm. They may also reflect the influence of the measures encouraging disclosure of concerns, including the repeal of s 117AB (which obligated the court to make a costs order against a party found to have knowingly made a false statement in proceedings) and the so-called “friendly parent” criterion, particularly for lawyers.

In comparison with these shifts, changes in the two other areas were more modest. In relation to father’s seeing children, 39% of the sample indicated changing their advice, with lawyers (42%) being slightly more likely to indicate changing than non-legal professionals (36%) (RFV report Table 2.10). In relation to outcomes of parenting disputes, half of the sample overall indicated changing their advice (lawyers: 56% cf. non-legal professionals: 43%).

Overall, these patterns suggest some variation across disciplines and between professionals, with legal practice changing more than non-legal practice, and most change has occurred in relation to allegations of family violence and child abuse. This may reflect a greater focus among social scientists on these issues prior to the reforms, but it may also result from the fact that legal practice is prescribed by legislative dictates to a greater extent than non-legal practice.

## 6.4 Application of the legislation: Published judgments

This section provides a brief summary of the more extensive examination of the application of the legislative provisions that form a key part of the 2012 family violence amendments set out in the CO report. The focus of the discussion is the application of the new s 4AB definition of family violence, including recognition of children’s exposure to family violence and s 60CC(2A), which accords greater weight to the protection from harm principle where it conflicts with the child’s right to a meaningful relationship with both parents. The discussion integrates examination of the application of these provisions with an analysis that also considers court approaches to these provisions in the context of the overall decision-making framework in Part VII of the FLA.

In considering the effects of the amendments to Part VII—specifically the new s 4AB definition and s 60CC(2A)—it is important to understand that the broader legislative framework, as explained in section 6.1, remains substantively unchanged by the 2012 amendments. Decision making remains subject to the best interests assessment (s 60CA), guided by consideration of facts relevant to s 60CC(2), s 60CC(2A) and s 60CC(3), and the presumption of equal shared parental responsibility (s 61DA) and associated time provisions (s 65DAA). As the analysis summarised below and set out in Chapter 4 of the CO report demonstrates, the constellation of facts and evidence in any given case will determine how particular provisions are applied in that context.

Expert commentary considering the potential and early effects of the 2012 family violence amendments reflects different views of each of these elements. Some commentary suggested that a narrow interpretation of the definition was emerging (Rathus, 2013; Alexander 2014). On the other hand, Steven Strickland (writing extra-judicially) and Kristen Murray concluded that their analysis of the cases showed “judicial officers are alive to the complexities associated with the aetiology, nature, cause and effects of family violence, particularly with respect to its impact on children” (Strickland & Murray, 2014, p. 63).

Uncertainty about the interpretation and application of s 60CC(2A) has similarly emerged in expert analysis. Three areas of uncertainty of particular relevance to the discussion of published



judgments in the next section have been highlighted in these analyses. The first is how “harm” is conceptualised in decision making, and the type and extent of harm that needs to be established before the application of s 60CC(2A) will justify a finding that the need to protect a child from harm will result in orders elevating that consideration above the child’s right to a meaningful relationship with each parent after separation (Fehlberg et al., 2014; Rhoades, Sheehan, & Dewar, 2013). The second is the extent to which the application of s 60CC(2A) will alter outcomes in the context of the overall Part VII decision-making framework (Strickland & Murray, 2014). The third is the question of whether the relevance of the unacceptable risk test, enunciated by the High Court in *M v M* (1988) 166 CLR 69, has been changed by s 60CC(2A) (Parkinson, 2015; Young, Dhillon, & Groves, 2014).

Overall, the Published Judgments analysis reinforces the point that the constellation of facts and evidence in any given case will determine how particular provisions are applied in the context of that case. The issues relevant to parenting order outcomes highlighted in the analysis were the nature and severity of family violence, the nature of the child’s relationship with each parent, and the conclusion formed by the court about whether the family violence was of a level of severity sufficient to justify orders ceasing or restricting parent–child relationships in the context of the behaviour of each parent. In some cases, close attention was paid to the s 4AB definition, including whether fear, coercion, and control have been established, but this was not always the case. On the one hand, it is clear that courts were not infrequently presented with cases in which the evidence clearly established a relevant and severe history of family violence justifying orders limiting or ceasing contact with the perpetrator (e.g., *Oakes [2014] FamCA 18*). On the other hand, other judgments demonstrate that in some circumstances the court’s analysis of relevant facts and evidence did not lead to a finding of family violence, or even if it did, this did not always result in the non-application or rebuttal of the presumption of equal shared parental responsibility (e.g., *Weber v Lipson [2014] FamCA 390*, *Phitzner v Hollas [2014] FamCA 344*).

The Published Judgments study considered varying approaches emerging in relation to the application of s 60CC(2A), which explicitly prioritises the primary consideration in s 60CC(2)(b), which relates to “the need to protect children from physical or psychological harm arising from being subjected to, or exposed to abuse, neglect or family violence”. The approaches emerging in the analysed judgments included the interpretation of s 60CC(2A) as shifting the balance but not altering the need to consider the evidence as a whole; the operation of s 60CC(2A) as a “tie-breaker” and the consideration of s 60CC(2A) in the context of applying the unacceptable risk test.

A further approach emerging involved judgments reflecting the application of a combination of these approaches to the interpretation and application of s 60CC(2A). In relation to the first-mentioned approach, in *Kusic v Short [2012] FamCA 816* and *McAllister [2012] FMCAfam 863*, the courts respectively reflected an approach that identified s 60CC(2A) as shifting the balance by according priority to s 60CC(2)(b), but as not altering the need to look to the evidence as a whole and to the totality of relevant factors. The application of this approach was such that while priority was to be accorded to protection from harm arising from family violence, the fact that family violence had been established or that serious allegations of family violence had been made would not necessarily prevent the making of orders to facilitate a meaningful parent–child relationship. The judgments in *Shivas v Darby [2014] FamCA 1149* and *Kapoor v Shah [2013] FMCAfam 256* provided examples of s 60CC(2A) operating as a tie-breaker in the context of an application of the best interests consideration by the court. In these cases, the priority accorded to the protection from harm primary consideration over the meaningful relationship primary consideration tipped the balance in favour of orders that were viewed as the safe course of action.

The court’s decision in *Cantere v Wilton-Stote [2015] FCCA 549* provides an example of the consideration of the s 60CC(2A) in the context of an application of the unacceptable risk test. In this case, the unacceptable risk of sexual abuse informed the priority accorded to the protection from harm consideration. The judgment analysis also identified cases such as *Merrick v James [2014] FamCA 387* and *Lowrie v Bagley [2013] FamCA 487*, where a combination of approaches were reflected in the decisions, including the consideration of evidence relevant to s 60CC(2)(b) through the prism of the unacceptable risk test, together with employing the language



associated with the requirement to accord greater weight to the protection from harm primary consideration as a result of s 60CC(2A).

In some judgments, the motivation behind a parent's behaviour in raising concerns about family violence and child abuse received significant scrutiny in court decision making, and a variety of approaches, including changing the parent with whom a child spends most time, were applied in situations in which the court concluded that such concerns were unreasonably raised. Both the Published Judgment analysis and the Court Files Study establish that the extent to which issues relating to one parent's support of the other parent's relationship with the child continued to receive scrutiny in the post-reform environment. The Published Judgments study demonstrates that the circumstances in which these arguments were raised were varied, and included situations in which they operated to challenge the reasonableness of a parent's behaviour in raising protective concerns (e.g., *Phitzner v Hollas* [2014] FamCA 344) and cases where denigration of a non-abusive parent occurred against a background of family violence perpetrated by the denigrating parent (e.g., *Kappas v Drakos* [2015] FCCA 147). The analysis reinforces the point that family law matters frequently raise very complex factual and evidential issues that present real challenges when litigated in an adversarial context.

## 6.5 Summary

This chapter has focused on the application of the legislative amendments that were intended to produce shifts in approaches to making parenting arrangements that were part of the 2012 family violence amendments. The emerging influence of the measures designed to support better identification and assessment of family violence and child abuse concerns that were examined in Chapter 4 suggested greater emphasis on identification and assessment, with significant practice challenges remaining. As the evidence set out in Chapter 5 indicates, at this stage indications of changes in patterns in parenting arrangements are modest. The focus of the discussion in this chapter has been on the impact of s 4AB and s 60CC(2A) in particular. From the perspective of professionals, each of the legislative changes dealt with in this chapter attracted majority support across the sample and majority support within each of the professional groups involved in the survey. Consistent with the different views set out in the earlier part of the chapter, the Published Judgment analysis indicates a range of approaches have been used in the application and interpretation of s 4AB and s 60CC(2A).

Most professionals were supportive of the new s 4AB definition, with few differences among groups. It was clear the definition was seen as having an important educative function, but evidence suggests it has had a limited effect on outcomes. The salience of differing views among professionals as to whether in operation it does indeed capture a wider range of behaviours than the previous definition, or whether in practice its scope is restricted by the qualifying terms referring to coercion, control and fear, are supported by the Published Judgments analysis, which has highlighted a range of approaches.

There was very strong support among all professionals for the assistance provided by s 60CC(2A). This provision was seen to be critical by those giving advice—both where advice is provided to parents (lawyers and non-legal professionals) and where decisions are made (judicial officers/registrars)—as it was seen to support being able to provide clearer, firmer guidance to parents and was also seen to have an educative function. Despite the strong support for the educative and symbolic role of the provision, the evidence tends to suggest limited effects in practice. This is evident in modest shifts in parenting arrangements, particularly those reflected in court orders, with no shifts in relation to orders for no contact, supervised contact or supervised changeovers at this stage in the implementation of the reforms. The variations in approach highlighted in the Published Judgments study reinforces the point made in the analysis of Strickland and Murray (2014) that the “importance attributed to meaningful relationships has not necessarily abated as a consequences of the elevation of safety as a primary consideration, as perhaps might have been expected” (p. 80).

# 7

## Positive, negative and unintended consequences of the family violence amendments

This chapter sets out the evaluation findings on positive, negative and unintended consequences of the 2012 family violence amendments. The analysis starts with an examination of parents' views of the family law system and their experiences with particular pathways to consider whether the reforms have improved or decreased satisfaction with the family law system. Following these broad insights, the views of professionals on positive, negative and unintended consequences are explored, and the extent to which these views are consistent with the evaluation findings overall are considered.

Six of the findings set out in preceding chapters are of particular relevance to the following discussion:

- the reforms have supported the development of parenting arrangements in agreement-based pathways in general, not just for parents affected by family violence and child abuse concerns;
- the reforms have been associated with more protracted time frames for resolving parenting arrangements in both court and non-court based contexts;
- refinement of practice approaches to identifying and assessing concerns about family violence and child abuse remains a work in progress, though there is evidence of significantly greater emphasis on screening for family violence and, to a lesser extent, safety concerns;
- the evidence suggests the reforms are associated with incremental changes in parenting arrangements where there are concerns about family violence and safety concerns;
- parents disclose safety concerns to a greater extent than family violence but tend to be less satisfied with professionals' responses to safety concerns than family violence; and
- professionals' views and experiences indicate broad support for the reforms, but they also provide indications of limited effects occurring within the evaluation period, consistent with findings in other areas of the evaluation.

Overall, the evidence presented in this chapter demonstrates that:

- Parents' views of the family law system have improved subtly overall, especially for those affected by emotional abuse, and to a lesser extent physical violence. The disparity in satisfaction between fathers and mothers (with mothers being more satisfied than fathers on most measures) has not widened.
- In comparison with the indications of improvement among parents affected by family violence, there is evidence of limited and mixed experiences for parents affected by safety concerns.
- Satisfaction among parents using pathways involving agreement—discussions and FDR—has increased since the reforms, and not just for parents affected by family violence.
- Many professionals see the positive feature of the reforms as being the raising of awareness of family violence and child abuse among professionals and parents.
- However, there are concerns about the system's ability to deal with the forensic complexity that increased emphasis on screening has created for the assessment of family violence and abuse concerns.

## 7.1 Parents' views and experiences

### 7.1.1 Overall views

In order to gain an overall perspective on how parents view the family law system, they were asked in the ESPS surveys (SRSP 2012 and 2014) to indicate how much they agreed or disagreed that the family law system effectively:

- addresses family violence issues;
- meets the needs of mothers;
- meets the needs of children;
- protects children's safety; and
- helps parents find the best outcomes for their children.

The analysis assessed patterns among different groups:

- mothers, fathers, parents who held various types of safety concerns (for themselves, for the child, for both themselves and the child);
- parents who reported history of physical violence (mothers and fathers separately); and
- parents who reported a history of emotional abuse (mothers and fathers separately).

The results of the analyses are reported in Chapter 6 of the ESPS report and broad findings are recapped here.

A notable feature was the high level of “don't know” responses (24–48%, depending on the question), reflecting the fact that many parents have little engagement with the system (ESPS report, Table B.4). Where assessments were offered, the overall patterns of results suggest small but statistically significant shifts in a direction consistent with the intention of reforms. Statements relating to whether the family law system meets the needs of mothers, fathers and children generally attracted a slightly higher level of endorsement among all parents in 2014, suggesting that the aims of the 2012 reforms to improve responses to family violence and safety concerns have not produced negative shifts in other areas of the system. The improvements generally reflect greater levels of agreement from parents who reported experiencing physical violence or emotional abuse before/during separation in the survey, as this summary highlights:

- *Meets the needs of mothers*—Agreement increased overall from 50% (2012) to 54% (2014) (ESPS report, Table B.4). Among parents who experienced family violence before/during separation, the “no violence” group remained stable (50%), and statistically significant increases occurred in the physical violence group (from 47% to 53%) and the emotional abuse alone group (from 52% to 57%) (ESPS report, Figure 6.3). From the perspective of gender, agreement with this statement increased from 61% to 64% among fathers and from 40% to 45% among mothers (ESPS report, Table B.4).
- *Meets the needs of fathers*—Agreement increased overall from 29% to 33% (ESPS report, Table B.4). Among parents who experienced family violence before/during separation, statistically significant increases were found for both the emotional abuse alone group (from 26% to 32%) and the physical violence group (32% to 35%) (ESPS report, Figure 6.5). From the perspective of gender, agreement increased from 21% to 24% among fathers and from 37% to 43% among mothers (ESPS report, Table B.4).
- *Meets the needs of children*—Agreement increased overall from 44% to 47% (ESPS report, Table B.4). Among parents who experienced family violence before/during separation, statistically significant increases occurred in the emotional abuse alone group (from 43% to 48%) (ESPS report, Figure 6.7). From the perspective of gender, agreement increased from 45% to 47% among fathers and from 44% to 47% among mothers (ESPS report, Table B.4).

The statement concerning family violence also attracted greater levels of endorsement generally (2012: 28% to 2014: 32%) (ESPS report, Table B.4). The proportions of parents agreeing increased substantially among those who had experienced violence since separation (physical violence—2012: 29% cf. 2014: 36%; emotional abuse alone—2012: 27% cf. 2014: 33%) but remained stable among those who had not experienced violence (ESPS report, Table B.5).

Responses to the question about whether the family law system protects the safety of children, while slightly more positive in 2014 (51%) compared with 2012 (49%), did not reach a level of statistical significance for the aggregate sample (ESPS report, Table B.4). The proportion of parents agreeing with the statement increased to a statistically significant extent for the emotional abuse alone group (up by 4% to 53%) (ESPS report, Figure 6.9). In relation to the different safety concerns groups, the pattern was mixed. Agreement increased (though not significantly) among the two groups that had safety concerns involving children (i.e., for self and child—2012: 30% to 2014: 35%; for child only—2012: 35% to 2014: 39%), but decreased for parents whose concerns related to their own safety (ESPS report, Figure 6.10). This latter group had the highest level of agreement in both periods among parents with safety concerns (2012: 53% and 2014: 50%). The group that recorded the greatest increase in the proportion of positive responses was the group that did not have contact with the other parent, for whom agreement rose from 40% to 49% (though this was not statistically significant). Overall, these results tend to suggest a weaker positive effect and continuing mixed experiences of the elements of the 2012 family violence reforms for parents concerned with child and parent safety.

At the same time as highlighting some small but positive shifts consistent with the direction of the reforms, these data continue to reinforce the point that improving responses to families affected by complex issues, including family violence and to a greater extent safety concerns, remains a “work in progress”. Negative responses remain high to a varying extent among parents who reported family violence or safety concerns in the survey. In relation to the family violence statement, three in ten parents who reported physical violence disagreed with the statement that the family law system addresses family violence issues, as did two in ten of the emotional abuse alone group (ESPS report, Figure 6.1). Levels of disagreement with the statement that the family law system protects the safety of children were even higher among some groups with safety concerns: more than two in five parents with concerns for themselves and their child disagreed, and around one in three of those who had concerns for the child only disagreed (ESPS report, Figure 6.10). In most areas, endorsement rates among groups affected by these issues remained lower than endorsement rates among the other groups overall. Patterns of responses among those with concerns for self and child, and with concerns for the child only provide further evidence of the point illustrated in earlier chapters of this report that suggest the system has particular shortcomings in this area.

### 7.1.2 Parents’ views of the effectiveness of different pathways

In addition to questions seeking general assessments of the family law system, parents’ views were sought of their nominated main pathway for reaching parenting arrangements (i.e., FDR/mediation, lawyers, courts, discussions). The assessment was based on responses to questions concerning: (a) the extent to which parents agreed the process worked for them, the other parent and the child; (b) whether they and the other parent had an adequate opportunity to put their side forward; (c) whether the result was what was expected; and (d) whether the needs of the child were adequately considered. The pathways where statistically significant positive changes were apparent were for discussions and, to a more limited extent, FDR. For other pathways, results were mixed and not statistically significant.

Considering the levels of satisfaction expressed for each pathway, it is clear that discussions consistently attracted the highest level of endorsement in both time frames for all statements, with positive responses of between 88% and 98% in 2014, depending on the proposition parents were responding to (ESPS report, Table 6.1). For the other three pathways, satisfaction was generally next highest for FDR/mediation, followed by lawyers and then courts. As discussed in Chapter 2, as the formality of these three pathways increases, clients tend to have increasingly complex and multiple problems (i.e., clients using the least formal pathway, FDR/mediation, tend to have the least complex problems, while those using the most formal pathway, courts, have the most complex problems).

Consistent with the discussion in Chapter 3, the positive findings for discussions, and to a lesser extent FDR, support the view that the family violence reforms have supported the resolution of parenting arrangements in agreement-based pathways, whether or not parents have been

affected by family violence or safety concerns. Some statistically significant improvements between 2012 and 2014 are evident in a largely positive pattern of results for these pathways (ESPS report, Table 6.1). For example, the strongest positive indications are evident in relation to discussions, with 89% of the sample in 2014 endorsing the statement that “the process worked for you”, compared with 84% in 2012. Endorsement of this statement among those who used discussions as their main pathway also increased among parents affected by emotional abuse alone (ESPS report, Table 6.2), as well as among those who either did not have safety concerns or who did not have contact with the other parent (ESPS report, Table 6.3, 2012: 85% cf. 2014: 89%). For FDR/mediation, endorsement of the statement that “the result was what I expected” rose significantly, from 73% in 2012 to 77% in 2014 (ESPS report, Table 6.1).

The aspects of the 2012 family violence amendments most likely to be associated with these changes are the introduction of the requirement for advisers to tell parents that parenting arrangements should be in the child's best interests (s 60D(1)(a)), the wider definition of family violence (s 4AB) and the s 60CC(2A) “tie-breaker” provisions requiring greater weight to be accorded to protection from harm (Rhoades, 2014).

Apart from these positive indications, the analysis of responses to these questions did not yield other indications of statistically significant changes. The non-significant changes that were evident showed no consistent pattern in either positive or negative directions.

## 7.2 Positive consequences of the reforms

The discussion in this section examines professionals' views on the positive consequences of the reforms. The evidence set out here extends the discussion in Chapter 4 (identification), Chapter 5 (parenting arrangements) and Chapter 6 (various aspects of the legislative changes) by considering further the features of the family law system that contribute to positive developments

Positive consequences nominated by each professional participant group included the following:

- The introduction of the broader definition of family violence and of s 60CC(2A) was reported as clarifying the priority to be accorded to “protection from harm” when determining parenting orders. Having statutory support for sound practice in emphasising protection from harm when working with parents was a valued aspect of the reforms. Confidence that advice in relation to protecting children had a statutory base was seen as being critical in supporting good practice across practice settings, including family dispute resolution.
- There was greater awareness of family violence among professionals, litigants and the broader community, together with improved understandings of the nature and effects of family violence.
- Improvements in the identification and assessment of, and response to, family violence by family law professionals were also nominated, together with the increase in focus on protecting children from risks or harm factors, and greater awareness of the need for risk management in working with clients affected by these issues.
- The educative value of the reforms in highlighting family violence and child safety issues as an integral consideration in making parenting arrangements was endorsed by participants across professional groups.

## 7.3 Negative consequences of the reforms

This section sets out the qualitative responses of professionals in the RFV study regarding any negative consequences of the reforms. It should be noted that many participants, particularly non-legal professionals, responded that they had no concerns about negative consequences. Across the three professional groups involved, three themes emerged: (a) the family law system's ability to deal with the consequences of the increased number of parents raising concerns about family violence and child abuse in parenting matters, including the system's ability to separate out urgent and serious cases, and to deal with them expeditiously; (b) the limited effects on improving responses to family violence and child safety concerns, including a lack of resources and a lack of understanding of these issues among family law system professionals; and (c)



allegations of family violence and child abuse that were perceived to be false, frivolous or raised spuriously to gain strategic advantage in disputes over parenting arrangements.

Each of these themes was reflected to a varying extent in comments from participants in each professional group, but the second theme was particularly prevalent among non-legal professionals, although also commonly raised by lawyers. Conversely, the third theme was raised more by lawyers than by non-legal professionals. The first theme was most prominent in the answers of the limited number of judicial officers/registrars who provided comments on this issue.

### 7.3.1 Systemic pressures

A substantial number of comments about the negative consequences of the reforms raised concerns about emerging pressures on the family law system (RFV report, section 8.2), which are consistent with the findings set out in Chapter 3 on the longer time frames for resolving parenting disputes generally and in courts, and in Chapter 4 on the complexity of screening and assessment in the family law system. A varied range of issues were mentioned, including longer court processes and delays in getting to court, the implications of the need for greater specificity about family violence and child abuse from an evidentiary, personal and cost perspective, and the increased level of notification to child protection services, which was also considered in Chapter 4.

Themes raised were:

- The prioritisation of matters involving family violence and child abuse means longer time frames for having matters not involving these issues listed for hearing. This raised concerns that when time frames for engagement with FDR intake and assessment processes were factored in, delays of five or so months might be involved before first hearings.
- Courts have limited powers to make orders addressing the behaviour underlying safety concerns, with child protection agencies being seen as reluctant to become involved in family court matters.

### 7.3.2 Limited effects of the reforms

Some participants ( $n = 149$ ) suggested that the changes had had limited effects (RFV report, section 8.2.2). Lawyers were most likely to make such comments ( $n = 99$ ), followed by non-legal professionals ( $n = 42$ ) and judicial officers/registrars ( $n = 8$ ). In addition to the systemic and resource pressures outlined above, a range of issues was referred to in these kinds of comments. These included “tokenistic” responses by some agencies and professionals in the family law system, and a lack of change in ongoing problems with limited awareness about the nature and implications of family violence and child safety issues among some professionals. Some participants saw the complexity of Part VII of the *Family Law Act 1975* (see also Chapter 6) and the complexity of the family system itself as hampering the capacity of the legislative amendments to bring about substantive change (see also Chapters 3 and 4). These themes were most common in the observations about negative consequences made by non-legal professionals and were also frequently raised by lawyers.

Some lawyers and non-legal professionals were more specific in their descriptions of a lack of change, indicating that the reforms had not made an appreciable difference to responses or court outcomes in cases involving risks or harm to children, or had not made a substantive change to the levels of understanding or attitudes to family violence, particularly in the legal parts of the system. Some comments in this vein raised the interplay between the family violence provisions and the presumption of equal shared parent responsibility (FLA s 61DA), suggesting that the shared parenting philosophy embedded in the presumption remained dominant. Criticism in this respect was not limited to the responses of courts. Similar observations were made with respect to family consultants, single expert witnesses, lawyers and FDR practitioners.

A theme present to a lesser extent in the answers of judicial officers/registrars and lawyers was quite prominent in the responses of non-legal professionals: the potential for the effects of the reforms to be undermined by insufficient expertise about family violence among family law system professionals. Some non-legal professionals reported that a negative consequence was



that the family violence reforms were not sufficiently effective in practice, as they had not given rise to improvements in the proper identification, assessment and response to risks and harm factors (see also Chapters 4 and 5). Some of these professionals identified a lack of change in the interpretation of disclosures of family violence and in the understanding of the nature and detrimental effects of family violence.

### 7.3.3 False allegations and complex litigation dynamics

Further comments about negative consequences underline the forensic complexities that dealing with family violence and child abuse concerns raise in practice, and which are implicit in many of the comments in the preceding sections. Some of these comments raised concerns that the 2012 family violence reforms encourages false or exaggerated claims in relation to family violence and, to a lesser extent, child abuse (RFV report, section 8.2.3). Some also reflected a view that concerns about family violence and child abuse were being raised spuriously as a means of defeating the other parents' desire to maintain a relationship or spend substantial time with the children. Several of the participants conveyed the view that intervention orders were being obtained under state and territory family violence systems to gain tactical advantage in family law proceedings. Other comments suggested that, in some instances, the family violence reforms had enabled perpetrators of family violence to use the system to continue to harass their former partners to a greater extent than previously. These comments are set out at some length in the RFV report, in section 8.2.3. The analysis in this section draws on the evaluation evidence and other research to consider the implications of these concerns now that objective quantitative data from parents and court files are available.

#### *False and frivolous allegations*

In order to gain a better understanding of the context in which concerns about false, exaggerated and frivolous claims about family violence were expressed by professionals, comments raising these issues were coded and analysed to provide insight into the characteristics of the participants raising them. The coding was based on comments that raised these issues explicitly or by implication. The extent to which judicial participants raised these concerns was very limited (see below), so this process was not applied to judicial officers or registrars. In relation to lawyers, the coding shows that explicit comments of this nature were made by 46 lawyers, and implicit references occurred in the comments of 16 lawyers. The largest group of lawyers raising such concerns were from Queensland, followed by NSW and Victoria. The concerns were most likely to be raised by lawyers in private practice, and the lawyers making them were more likely to report not having undertaken training in AVERT, DOORS or other family violence professional development programs.

Such concerns were raised by non-legal professionals to a lesser extent than lawyers. Thirty-four non-legal professionals made explicit comments and six made implicit references. Unlike lawyers, these participants were most likely to be from NSW, followed by Victoria and then Queensland. Of the different types of non-legal professionals participating, the comments were most likely to be made by FDR practitioners/mediators and family consultants.

In addition to levels of training, there are two other issues relevant in considering these views: broader community attitudes, and the practice environment following the reforms. Longstanding community attitudes to family violence and post-separation parenting disputes demonstrate a lack of understanding of the prevalence of family violence and the dynamics that surround separation, with evidence of a persistent belief among sections of the community that women make false allegations about family violence for tactical reasons in family law disputes. The most recent National Community Attitudes Towards Violence Against Women Survey (VicHealth, 2014) demonstrates that just over half of those surveyed in a nationally representative community sample agreed with the statement that "women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case", and that this proportion remained consistent between 2009 (51%) and 2013 (53%). As members of the community themselves, it would not be surprising if some practitioners in the family law system also held this belief, particularly if they have not undertaken specialist family violence training. Concerns of this nature have been associated with the family law system for many years (e.g., see the

*Family Law Amendment (Shared Parental Responsibility) Bill 2005: Explanatory Statement, 2005).*

The second issue of relevance, particularly in relation to false and frivolous allegations, concerns the practice context in which these views arise, as evidenced in this report and in greater depth in the other reports that are part of the Evaluation of the 2012 Family Violence Amendments. As discussed in Chapter 2, family violence is common and varies in its nature, intensity, effects and duration. The discussion in Chapter 2 indicates that the experience is particularly gendered at the more severe end of spectrum, but from an empirical perspective, the dynamics of gender, defence and aggression require further examination. In addition, the circumstances of parents who use formal services are characterised by significantly complex features, with a concentration of multiple problems particularly evident among those who use lawyers and, to an even greater extent, courts. Against this background, assessing family violence and other dynamics across the system will raise significant practice challenges, as described in Chapter 4. Furthermore, although disclosure of family violence and safety concerns has risen to a modest extent overall (Chapter 4), a greater emphasis on identifying family violence and safety concerns, particularly in lawyer and court pathways, has resulted in more parents disclosing such concerns. Thus, professionals in these pathways may be becoming aware of family violence and child safety issues to a greater extent than before the reforms. In this context, assessing the implications of such disclosures raises complex issues, especially in an environment where not all professionals have access to effective tools and appropriate training, as evidenced in Chapter 4. It should also be borne in mind, however, that parents self-select into disclosure based on their view of the implications of their experience, its relevance to parenting arrangements and the consequences of disclosure. In many instances this self-selection may reflect a benign set of circumstances, but in others—such as where fear, shame or embarrassment are relevant—lack of disclosure may be a problem.

A further point to be made about these concerns relates to the repeal of provisions relating to costs orders for false statements (s 117AB) and what is known as “the friendly parent criterion” that was formerly part of s 60CC(3), which were implemented to address perceptions about disincentives to raising concerns about family violence and child abuse. The findings about these changes are inconsistent with a negative effect (RFV report, sections 3.2.1 and 3.2.3). Professionals’ views of the effects of the repeal of s 117AB suggest that this step is not associated with either a negative effect (an increase in “false” allegations of family violence and child abuse) or a positive effect (an increase in disclosure of concerns about family violence and child abuse). Responses consistent with a positive effect were strongest among non-legal professionals, and responses inconsistent with a negative effect were strongest among judicial officers and registrars. It is notable that disavowal of a negative effect was strongest among the group most likely to have direct insight into “false” allegations in court proceedings: judicial officers. The analysis of published judgments demonstrates that allegations of family violence and child abuse remain subject to rigorous scrutiny in court proceedings and that both denials and allegations of doubtful credibility are noted in published judgments.

Findings from the RFV study on the repeal of the “friendly parent” criterion in s 60CC(3) suggest that non-legal professionals were more likely than the other two groups surveyed to indicate a view consistent with the repeal supporting increased disclosure of concerns. The findings from the CO Project indicate issues concerning the attitude of one parent to the child’s relationship with the other were raised more often in court proceedings after the reforms, s 60CC(3) (CO report, Table 3.15). The study of published judgments also indicated that scrutiny is applied to whether parents’ actions in relation to the other parents’ relationship with the child are reasonable (CO report section 4.5.3).

### *Complex litigation dynamics*

The other theme in comments about negative consequences concerns the misuse of legal mechanisms. One set of concerns raises these issues in relation to intervention order systems and the other in relation to the family law system itself. The issues raised in comments about the reforms being associated with further abuse of victims of family violence were varied, and encompassed concerns about legal aid funding, trauma being caused by court processes, the exacerbation of violent and controlling behaviour and use of the legal system to perpetuate

abuse and control. Concerns of this nature have been evident for many years, with a range of studies and analyses highlighting the potential for legal systems and processes to be used as a means of perpetuating harassment, including through litigation over parenting arrangements and other separation-related matters (e.g., ALRC, 1995; Cameron, 2014; Hunter, 1999; Kaye, Stubbs & Tolmie, 2003a, 2003b; Laing, 2010; Patrick, Cook & McKenzie, 2008). Such dynamics are also acknowledged in some court decisions (e.g., *Cannon and Acres* [2014] FamCA 104).

In relation to the view that intervention orders are being obtained for tactical reasons, there are some complex dimensions to this question. To some extent, this view is consistent with the kinds of concerns addressed in the discussion on false and frivolous allegations and attitudes to family violence. There is a view that has been evident among some family law practitioners for many years that intervention orders are taken out for tactical reasons when family law proceedings are afoot or contemplated, rather than because protection is needed. It should be noted that concerns of these kinds pre-date the 2012 family violence reforms (see Kaspiew et al., 2009; Parkinson, Cashmore, & Single, 2011). Notably, the analysis in the ESPS study of the extent to which parents reported taking out personal protection orders shows minimal change since the 2012 family violence amendments. There are two areas where statistically significant change has occurred, and these are not consistent with the view that the use of personal protection orders for tactical reasons has increased since the reforms. The biggest change has occurred in relation to mothers who experienced family violence since separation: in 2014, 99% reported not having a personal protection order, compared with 90% in 2012 (ESPS report, Figure 3.22). For mothers who experienced family violence before/during and since separation, there was a 2 percentage point increase (to 4% overall) in the proportion of mothers who reported obtaining personal protection orders before and since separation. This indicates an increased reliance on personal protection orders for a small proportion of mothers who experienced sustained family violence. The analysis does not show any statistically significant increases in fathers who reported taking out personal protection orders (ESPS report, Figure 3.22).

There is, however, another dimension to this issue. Two studies have raised concern about the phenomenon of what are known as “mutual applications”, where each member of a former couple applies for an intervention order against the other, suggesting tactical use of these systems occurs in this context to some extent (Douglas & Fitzgerald, 2013; Wangmann, 2011), including in the context of negotiating post-separation parenting arrangements. These studies, together with other analyses (e.g., ALRC & NSWLRC, 2010), indicate that some complex dynamics surround intervention orders. There is, however, limited empirical evidence that supports detailed understanding of the issues that are relevant in this context. A more specialised methodology than the one applied in the Evaluation of the 2012 Family Violence Amendments would be required to understand these dynamics, and this aspect of the interface between the family law system and state/territory family violence systems.<sup>27</sup>

Considering the use of intervention order systems more broadly, a range of empirical studies highlight positive and negative experiences among women who seek protection from the legal system in this way (George & Harris, 2014; Jordan & Phillips, 2013; Laing, 2013). A 2013 qualitative study by Lesley Laing examined the experiences of women who used the family law system and the protection order system in NSW. Laing noted that even though they had experienced severe violence, these women “reported that they encountered scepticism in both systems that their allegations of domestic violence were tactics to gain advantage in their family law matter” (p. 8), and that as a result of the interaction between the two systems, their ability to gain protection through legal means was eroded. A similar concern is raised in the commentary in the VicHealth (2014) report on its survey of attitudes to violence against women, which notes “if the view that false allegations are commonplace is reflected in the responses of people from whom women seek help, there may be serious consequences for the safety of women and their children” (p. 61).

The further theme relating to the misuse of legal mechanisms raises the possibility that family law proceedings are being used to perpetuate dynamics of abuse and control. This concern

<sup>27</sup> The extent to which personal protection orders were referred to in family law court files was examined in the Court Files Study (CO report, section 3.3.3). These data reflect the effects of FLA s 60CC(3)(k), which require courts to have regard to *any* personal protection orders rather than just those made on a final or contested basis.

is consistent with some themes that have been raised—both recently and less recently—in reports touching on the abuse of legal processes and family violence (e.g., Cameron, 2014; Kaye et al., 2003a, 2003b; Laing, 2010; Patrick et al., 2008), and such concerns pre-date the reforms. Again, the evaluation evidence does not address this concern directly, and a more specialised methodology would be required to do this; however, there are findings in some areas suggesting that a possible acceleration in such a dynamic since the reforms cannot be discounted. First, in the post-reform cohort of the File Analysis study in the CO Project (CO report, Table 3.1), fathers were applicants to a greater extent after the reforms than before. This was the only area where statistically significant change was evident in the court cohort profiles. This may be consistent with a statistically significant increase in the proportion of fathers in the ESPS reporting they had attempted to stop or limit contact between the child and the other parent after the reforms (28% cf. 36% of those who reported safety concerns; ESPS report, Figure 3.13). There was no increase in mothers reporting this.

In this context, further relevant findings in relation to fathers disclosing safety concerns show that they disclosed safety concerns to lawyers to a statistically greater extent following the reforms (from 32% to 45%; ESPS report, Table 5.9) and that there was no significant change in the extent to which fathers considered that lawyers responded appropriately to these disclosures (ESPS report, Table 5.13). Given that these data refer to findings in relation to fathers who reported safety concerns in the SRSP surveys, they are not capable of addressing the question of whether or not the disclosure or reporting of such concerns was unreasonable. However, other findings in the ESPS report suggest particularly complex dynamics surround fathers who disclose safety concerns to professionals, with mothers' reports of safety concern disclosure being more likely to result in limitations on the other parent's time with the child, and fathers' disclosure of safety concerns being likely to result in a reduction in their own time with the child (ESPS report, Table 5.14; SRSP 2012 report, Table 5.4). These patterns have not changed to a statistically significant extent since the reforms, with 13% of fathers in 2014 (16% in 2012) reporting that their own time with the child was reduced on the disclosure of safety concerns, compared with 2% of mothers (3% in 2012). A reduction in the other parent's time with the child on the disclosure of safety concerns was reported in 2014 by 8% of fathers (cf. 11% in 2012) and 28% of mothers in both 2012 and 2014.

The second finding of relevance to the question of parenting proceedings dynamics concerns mutual allegations (i.e., where each parent makes allegations against the other). These were also evident to a greater extent post-reform than pre-reform in the Court Files Study of the CO Project. This was to a statistically significant extent in relation to family violence, and to a non-statistically significant extent in relation to child abuse (CO report, Tables 3.11 and 3.12). In the absence of other evidence, no assumptions can be made about the implications of these findings, though some of the professionals' comments noted earlier suggest some cause for concern may be emerging. These findings also exemplify the forensic challenges raised in assessing concerns about family violence and child safety canvassed in Chapter 4.

## 7.4 Summary

The findings summarised in this chapter indicate that reforms have not, in general, worsened parents' experiences with the family law system, and that the forensic complexity involved in assessing family violence and child abuse concerns pose challenges for professionals.

From the perspective of gender, positive views in most areas on measures of efficacy increased incrementally among both mothers and fathers between the SRSP 2012 and 2014 cohorts of the ESPS. Fathers in both cohorts were less satisfied with the family law system than mothers, but this disparity had not widened. This aspect of the data suggests no generalisations can be made about whether the 2012 family violence amendments favoured fathers or mothers.

In relation to the experiences of parents reporting family violence, the data suggest a marginal improvement in the views of parents affected by family violence, although this is true to a greater or lesser extent according to the measure and whether the family violence involved physical violence or emotional abuse alone. Differences among these groups are evident in different areas, suggesting an uneven effect of the reforms, consistent with findings reported in relation to service responses to disclosure of family violence and child safety concerns

(Chapter 5). Less positive findings emerged in relation to safety concerns, with the experience of parents with safety concerns for themselves or their child (or both) in some areas changing little if at all, and there is some indication of a negative shift for some sub-groups. These findings suggest a particularly mixed set of views and experiences among these parents.

Mixed and uneven experiences were also reflected in data relating to nominated pathways. In relation to pathways involving lawyers and courts, there were no clear or consistent statistically significant findings. Consistent with the findings in Chapter 3, there is evidence that the reforms have supported the resolution of parenting matters in agreement-based pathways, specifically “discussions” and FDR/mediation.

The discussion based on professionals’ views of positive, negative and unintended consequences of the reforms augment the insights presented in earlier chapters of this report. Once again, a variety of views was evident among professionals, not all of whom considered the reforms necessary or desirable. In terms of positive responses, the main themes raised in comments on positive effects concerned the educative function of the reforms in raising awareness of family violence and child abuse concerns as being relevant to child wellbeing in making parenting arrangements, and statutory support for identifying and considering concerns about family violence and child abuse when working with parents to develop parenting arrangements.

In terms of negative consequences, systemic pressures such as those canvassed in Chapters 3 and 4 were raised by some professionals. There was concern about the capacity of the family law system to deal with the increased requirement for scrutiny of parenting matters where concerns about family violence and child abuse are raised.

Concern about the limited effects of the reforms was a significant theme in the comments of many participants ( $n = 149$ ). Not only were systemic pressures raised in this context, but concerns about tokenism on the part of some organisations and agencies were also raised. Among the issues canvassed in responses suggesting disappointment in the limited effects of the reforms were the complexity of the legislation, the complexity of the family system and the lack of effective education and training in the areas of family violence and child abuse.

A further set of responses raised concerns about false or frivolous allegations of family violence and child abuse being raised. Such concerns are not new in the family law system.



# 8

## Have the reforms made any difference? Summary and conclusion

This chapter draws together the threads of the discussion set out in the preceding chapters to address the research questions that have guided this Evaluation of the 2012 Family Violence Amendments. The findings are based on insights drawn from the three components of the evaluation: the Experiences of Separated Parents Studies, the Responding to Family Violence Study 2014 and the Court Outcomes Project. Overall, the conclusions are based on data from 12,198 parents (pre-reform:  $n = 6,119$ , post-reform:  $n = 6,079$ ) (ESPS), 653 family law system professionals (RFV) and 1,892 family law court files (pre-reform:  $n = 895$ , post-reform:  $n = 997$ ) (Court Files Study of the CO Project). Additional insights were derived from the additional components of the CO Project, namely, the administrative data supplied by the family law courts and an analysis of published judgments, together with data in some areas from comparable earlier studies that contributed to the AIFS Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009).

In considering the findings set out below, it is important to reiterate that the evaluation research program reflects practice some two years after the reforms were implemented. This is a comparatively short period of time for change to unfold, and the evidence of limited effects in some areas—such as patterns in parenting arrangements—in the context of more significant changes in other areas—such as screening—suggests that further effects of the reforms have yet to emerge. This point is particularly pertinent given the insights into practice challenges canvassed throughout the report, but particularly in Chapter 4 (on identification), in relation to dealing with a phenomenon as complex and variable as family violence, as the evidence in Chapter 2 establishes.

### 8.1 Aims of the reforms

In broad terms, there were two elements to the aims of the 2012 family violence reforms, as reflected in the amendments made to the *Family Law Act 1975* (Cth) by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth). The first element was a concern to support the identification and disclosure of concerns about family violence and child abuse across the family law system. The second element was to provide legislative support for parenting arrangements that protect children “from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence”. An aspect of the reforms that was intended to support both these aims was the introduction of a changed definition of family violence (s 4AB), which explicitly recognises a range of behaviours as family violence where they induce fear, coercion and control (including emotional and financial abuse). Importantly, the new definition also recognises the exposure of children to family violence (s 4AB(3) and (4)) as a form of abuse where it results in “serious psychological harm” (s 4(1)).

### 8.2 Characteristics of separated families

The data collected from comparable samples of separated parents provided by three waves of the LSSF research program and the cross-sectional ESPS (which comprised the Survey of Recently Separated Parents 2012 and 2014 cohorts) indicate that each cohort of separated parents



(represented in three samples, applying comparable methodologies and sampling strategies) had similar patterns of family violence, safety concerns and other indications of complexity. The reports by these parents reflect a spectrum of severity of family violence and establish that this is a complex and dynamic issue. For some parents, such a history of violence does not preclude the subsequent development of functional post-separation relationships (described as friendly or cooperative). For others, however, clearly negative (fearful, lots of conflict) or ambiguous (distant) relationships are the sequelae to such a history. For many separated parents, the experience of family violence extends well beyond the post-separation period, with LSSF Wave 3 findings showing that 45% of participants reported experiencing family violence before/during and since separation and 15% experiencing family violence (primarily emotional abuse) after separation only (Qu et al., 2014, Table 3.6).

Of particular significance for the issues under examination in the Evaluation of the 2012 Family Violence Amendments is the prevalence of complex issues among separated parents, including family violence, mental ill health and substance misuse. Some two-thirds of separated parents reported a history of emotional abuse and/or physical violence before/during separation, and this continued for a slightly lower proportion after separation. The longer term insight from LSSF Wave 3 suggests that problematic dynamics were sustained across waves for some 25% of separated parents five years after their separation (Qu et al., 2014, Table 3.6).<sup>28</sup> Concerns for the safety of themselves and/or their children were pertinent for nearly one in twenty parents. Again, a longer term perspective suggests that for a core group of about five per cent of the cohort represented in the LSSF study, safety concerns (suggestive of sustained and entrenched difficulty) were maintained over a five-year period (Qu et al., 2014, Table 3.8).

The empirical evidence also establishes that the phenomenon of family violence varies widely in form, frequency and intensity. The prevalence of physical hurt diminishes after separation, as does the prevalence of emotional abuse alone, though to a much less significant extent. Importantly, a detailed examination of the frequency of multiple forms of abuse reveal similar patterns between each cohort in the ESPS surveys, suggesting consistency in these patterns among the population of recently separated parents. The three datasets show that both men and women reported experiencing family violence, but an important limitation in the data in considering the implications of this is the lack of evidence about the dynamics of aggression and defence that are relevant to understanding the significance of the experience. The analysis of pre-separation intensity reports among the ESPS cohorts shows that at the two higher ranges of the five possible ranges, women substantially outnumber men as victims, with a ratio of around two to one at the highest range. Women were also more likely to report more effects than men and were also significantly more likely than men to report that the experience induced feelings of fear both before/during and since separation, as well as being more likely to report feelings of coercion and control before/during separation than men.

Safety concerns were found to be similarly dynamic. The LSSF Wave 3 data show that the proportion holding safety concerns was fairly stable from wave to wave, but within this proportion were parents for whom concerns had arisen newly between waves, and others for whom they had dissipated between waves (Qu et al., 2014, Table 3.8). As noted, across the three LSSF waves, concerns persisted for a core group of nearly five per cent of participants. For the majority of parents in the LSSF and ESPS holding safety concerns (detailed in Chapter 2, Table 2.1), these concerns arose from issues such as emotional abuse or anger issues, mental health concerns, violent or dangerous behaviour or substance misuse.

The LSSF and ESPS data indicate that most separated parents made little or no use of family law system services. Those who did were also those affected by the complex characteristics such as those just summarised, including family violence, safety concerns, substance misuse, mental ill health, problematic social media use, pornography use (prior to separation) and safety concerns (after separation). Such characteristics were evident in the client bases of the three types of services used to develop parenting arrangements—FDR/mediation, lawyers and courts—but were evident to a greater extent among parents who used lawyers, compared with those who used FDR/mediation, and were evident among court users to the greatest extent of all. In 2014,

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<sup>28</sup> The percentage quoted reflects participants' reports of physical hurt and/or emotional abuse in all LSSF survey waves (Waves 1–3).

nearly four in ten court users had four or more of these issues, compared with nearly three in ten who used lawyers, and two in ten who used FDR/mediation (see Chapter 2, Table 2.2).

## 8.3 Responses to the research questions

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### 1. To what extent have patterns in arrangements for post-separation parenting changed since the introduction of the family violence amendments, and to what extent is this consistent with the intent of the reforms?

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The evidence in Chapter 5 establishes that subtle changes have occurred in patterns of parenting arrangements since the 2012 family violence amendments. For separated parents holding safety concerns, the main shift indicated in the ESPS data involved a statistically significant increase after the reforms in parenting arrangements involving 100% mother care time, where the child spends time with the father during the daytime only. In addition to the measures to support screening and disclosure, the elements of the 2012 family violence amendments that are likely to influence outcomes in these areas are the new definitions of family violence and abuse (s 4AB and s 4(1)); provisions encouraging greater emphasis to be placed on protecting children from harm where this principle conflicts with the child's right to a meaningful relationship with each parent after separation (s 60CC(2A)); and the advisers' obligations to inform children that parenting arrangements should be in children's best interests (s 60D(b)(iii)).

Insight into the relationship between the disclosure of family violence and safety concerns on care-time arrangements provided by the ESPS data shows that parents who disclosed experiencing family violence were more likely to have care time involving little or no contact with a father compared to parents who did not disclose such experiences. These data also indicate that as parents' care time increased towards more shared arrangements, their perceptions that disclosure of concerns influenced their parenting arrangements decreased. Together, these findings suggest that the greater emphasis on identifying family violence and child safety concerns has supported modest, positive shifts in the making of parenting arrangements in the post-reform period. There was, however, a reduction in reports of parenting arrangements involving supervision between the 2012 and 2014 SRSP cohorts, together with a decline in parents holding safety concerns reporting that the focus child lived with one parent for 100% of their time and spent no time with the other parent.

For parenting arrangements reflected in court orders, the findings in Chapter 5 evidence subtle shifts that vary according to whether the orders reflect arrangements that are determined judicially, settled by agreement after proceedings have been initiated, or presented to court for endorsement as consent orders. Court orders in parenting matters are based on orders relating to parental responsibility and the distribution of the child's time between parents (care time). The findings arising from the court files in the Court Files Study that demonstrate the most direct effect of the law—the judicial determination sample—show that orders for shared parental responsibility decreased after the reforms (from 51% to 40%), but that changes in patterns of care-time orders were almost negligible (CO report, Tables 3.25 and 3.30).

In relation to consent after proceedings matters, analysis of the Court Files Study sample indicate that orders for parental responsibility were no less common after the reforms, but orders for shared care time were less frequent to a statistically significant extent (CO report, Tables 3.25 and 3.31). Orders for children to spend a majority of their time with their mothers were more frequent to a statistically significant extent. Thus, the 2012 family violence amendments have not produced a shift in parental responsibility arrangements, but shared care time is less common in these kinds of cases. It may be that the cases that settle in this way are more clear cut from a factual and evidentiary perspective than the cases that proceed to judicial determination, meaning that one party is in a substantially stronger bargaining position from a forensic perspective.

For arrangements reached by consent without litigation, patterns in shared parental responsibility orders did not change substantially, and patterns in shared care-time orders recorded a non-significant increase (CO report, Tables 3.25 and 3.32).

While the Court Files Study data across the pre- and post-reform court file samples indicate that the proportion of supervised parenting time orders remained stable (4% of files in both the pre- and post-reform samples) (CO report, Figure 3.2), orders for supervised changeover or orders providing for changeover to take place at a specified location increased from 12% in the pre-reform sample to 14% post-reform (CO report, Figures 3.2–3.5). Orders involving arrangements for no face-to-face time with one or other parent were rare in both periods and no statistically significant change was evident. Orders involving no face-to-face time with fathers were made for 2% of children pre-reform and 3% of children post-reform (CO report, Table 3.28). There was no change in relation to mothers with no face-to-face time, which was near to 0% in both periods.

Overall, the data from ESPS and CO Project indicate subtle shifts have occurred in parenting arrangements since the 2012 family violence amendments. The absence of substantive changes in these datasets is consistent with the views expressed by professionals in the RFV study that are indicative of significant reservations among family law system professionals about the capacity of the legal system, lawyers and FRCs to deal adequately with cases involving family violence and child abuse concerns.

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## 2. Are more parents disclosing concerns about family violence and child safety to family law system professionals?

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The evidence from all three components of the evaluation research program demonstrates that there is an increased emphasis on identifying family violence and safety concerns across the family law system, particularly among lawyers and courts (Chapter 4). However, the evidence also indicates that refinements in practice in this area are required and the development of effective screening approaches has some way to go. The main legislative elements of relevance in this context are threefold: the obligations of judicial officers to ask about family violence and child safety concerns (s 69ZQ(1aa)), the legislative encouragement for parents and others to disclose them (e.g., s 67ZBA, s 67Z and s 60CI), and the removal of legislative discouragement to revealing them (the repeal of s 117AB, which referred to courts having the power to make costs orders where a party was found to have “knowingly made a false statement” in proceedings, and the repeal of the so-called “friendly parent” provision in s 60CC(3)(c)).

### Parents and disclosure

The discussion in Chapter 5 identified that statistically significant increases were evident in the proportions of parents who reported being asked about family violence and safety concerns when using a formal pathway as the main means of resolving their parenting arrangements (ESPS report, Figure 5.2). Increases were evident among parents who used the three formal pathways (FDR/mediation, lawyers and courts), but particularly evident for those using lawyers and courts, with increases between the 2012 and 2014 cohorts of about 10 percentage points in the proportions reporting being asked about family violence and safety concerns. However, close to three in ten parents reported never being asked about either of these issues in each pathway, indicating that the implementation of consistent screening approaches has some way to go.

The findings also suggest small increases in the proportions of parents who disclosed concerns. A small but statistically significant increase in the proportion of parents who reported experiencing family violence before/during or since separation to one of a range of possible services and organisations (not confined to the family law system) is evident (2012: 53% cf. 2014: 56%) (ESPS report, Table 5.1). Mothers were more likely to report violence than fathers (mothers: 63% cf. fathers: 49% in 2014), and the relative proportions of men and women reporting disclosure remained similar. Notably, just over four in ten parents did not report family violence to any service in 2014. Physical violence was more likely to be reported than emotional abuse, and the most common service reported to was police (25% in 2014).

In relation to family law services specifically, the proportion of parents who reported disclosing family violence or safety concerns increased by about three percentage points between 2012 and 2014, with the change reaching a level of statistical significance largely accounted for by increases in reports by fathers (ESPS report, Table 5.5). These figures relate to the parents who

reported using a formal main pathway for reaching parenting arrangements (FDR/mediation, lawyers and courts) or seeking advice from one of these services. In 2014, 35% of fathers (cf. 32% in 2012) reported experiencing family violence in the survey and disclosing this to family law system professionals (ESPS report, Figure 5.3). For mothers, these proportions were 54% in 2014 and 51% in 2012. In relation to safety concerns, the proportion of fathers who reported concerns in the survey and disclosed them to family law system professionals was 69% in 2014 (ESPS report, Figure 5.4). For mothers, there was a statistically significant increase in disclosure of safety concerns (by six percentage points) to 79% in 2014.

Patterns in parents' reports of disclosure suggest that safety concerns are of greater salience to parents than family violence, but professionals' responses to safety concerns appear to be less satisfactory from parents' perspectives than their response to family violence. Substantial minorities of parents still reported not disclosing either kind of concern, but this was more marked for family violence than safety concerns.

## Changes in disclosure across different pathways

The findings on the proportions of parents who reported disclosing family violence or safety concerns when using particular pathways demonstrates that increasing increments of parents reported disclosing each type of concern across each pathway in both 2012 and 2014. Thus, reports of disclosure of safety concerns or family violence were lowest for parents who used FDR and highest for parents who used courts. Consistent with this, the evidence from the Court Files Study in the CO Project discussed in Chapter 4 shows that allegations of family violence and child abuse were made in court proceedings to a greater extent after the reforms than before, with the proportion of matters without such allegations being raised falling from 71% to 59% (ESPS report, Table 3.10).

Professionals' self-assessments of their own capacity to identify and assess family violence and abuse show that a majority of lawyers and non-legal professionals were confident in their capacity to screen for family violence, with a substantially higher proportion of positive responses from lawyers participating in the RFV study than the lawyers participating in the 2008 Family Lawyers Survey for the Evaluation of the 2006 Family Law Reforms. A majority of judicial officers and registrars also reflected positively on their own capacity to assess allegations of family violence and abuse.

However, this confidence did not translate into high levels of confidence among professionals in relation to the system's general capacity to screen for family violence and child abuse. The findings in Chapter 4 show that on an aggregate basis, more professionals in the sample disagreed (46%) than agreed (43%) with the proposition that the legal system had been able to screen adequately for family violence and child abuse (RFV report, Table 4.1). Differences among professionals were important in this context, with non-legal professionals being less confident than lawyers and judicial officers/registrars in this regard. The 2008 and 2014 comparative data from lawyers suggest an incremental improvement in this area, with total agreement rates of 46% in 2014, compared with 43% in 2008 (RFV report, Table 4.2).

In relation to adequate screening, the data from participants in the RFV study suggest the DOORS screening tool—a practice strategy implemented to support better identification of family violence, child abuse and other risks—had a mixed reception and limited effects. A fundamental aspect of the concerns raised by each professional group related to the proceduralised nature of the DOORS approach, with numerous participants expressing the view that this kind of approach was no substitute for practice-based wisdom, careful questioning and personal engagement with clients, informed by highly developed professional judgement. It is important to acknowledge, however, that DOOR2 of the DOORS tool enables the DOOR1 questions to be administered by a practitioner. There are emerging concerns about the implications of a social-science-based screening approach in legal practice, including the tension between information obtained through screening methods that may be inconsistent with client instructions, and the admissibility of such information in court proceedings.

In relation to court-based practice specifically, a number of findings set out in Chapter 4 evidence a greater emphasis on identifying family violence, child abuse and other risks in court-based practice, and this is an area where practice is continuing to evolve. During the period

of this evaluation, the FCC trialled a pilot program in its Adelaide Registry requiring Notices of Risk to be filed in all parenting matters (with parties required to indicate positively on the form where no risk was alleged). Outside of this trial, the evaluation evidence indicates that Notices of Risks have been filed in substantially more cases following the reforms. The effects on child protection agencies of this increase was an issue outside of the direct scope of the evaluation, but the evidence shows that the issues arising from this situation are causing concern across the family law system.

The data from the Court Files Study also indicate that there is a greater emphasis on identifying concerns about family violence and child abuse in matters that proceed to court, with evidence of more discussion of risk assessment in family reports (CO report, Table 3.16), and more evidence about family violence and child abuse on court files. One specific area where change is particularly marked is in relation to the proportion of cases where evidence concerning engagement with state child protection agencies is on the file: this increased from 7% pre-reform to 13% post-reform (CO report, Table 3.22). As with referrals to child protection agencies, professionals across the family law system expressed concern about the level of resources required to support thorough assessments of concerns about risk, family violence and child protection. There was evidence of cautious use among judges of family consultant resources in this context, and careful thought being paid to the cases in which such resources were most needed.

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### 3. Are there any changes in the patterns of service use following the family violence amendments?

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The evidence from the Evaluation of the 2012 Family Violence Amendments indicates a continuing consolidation of the aims of the 2006 family law reforms in terms of encouragement to use non-legal mechanisms for the resolution of parenting disputes. Unlike the 2006 amendments, which explicitly sought to encourage the use of FDR services through the establishment of FRCs and the introduction of FLA s 60I, change in service use was not a direct aim of the 2012 family violence reforms. However, shifts in use may potentially be a result of the changes for two main reasons. First, the wider definition of family violence may have increased the scope for people to be exempt from FDR. Second, the clarification that protection from harm should be given greater emphasis if it conflicts with the benefit to the child of a meaningful relationship with both parents (s 60CC(2A) and s 60D(1)(b)(iii)) might have change parents' decision-making dynamics about pursuing court action.

Chapter 3 indicates that in the ESPS samples in both cohorts, around half of the sample reported contacting FDR providers and lawyers at the time of separation, and around one in five contacted courts (ESPS report, Table 4.1). This translated into substantially fewer parents overall using these pathways as the "main pathway" for making parenting arrangements. For the group that had sorted out arrangements in 2014, around 10% used FDR/mediation in both time frames, around 6% used lawyers and 3% used courts (ESPS report, Table 4.8). The findings of the ESPS show that the use of formal pathways rather than "discussions" or "just happened" is strongly associated with the experience of family violence. While these findings were largely consistent between cohorts, there were small but statistically significant increases in the use of FDR as the main pathway by parents who experienced emotional abuse before/during separation, and a reduction in the use of courts for this group (ESPS report, Table 4.9). For parents not affected by family violence at all, the use of lawyers recorded a statistically significant decline (ESPS report, Table 4.9). A higher proportion of parents, especially mothers, who used family law services as their main pathway reported experiencing fear, coercion and control, compared to those not using formal pathways (ESPS report, Figure 4.4).

The evaluation evidence indicates that the 2012 legislative amendments have supported agreement making in agreement-based pathways, with evidence of a shift towards more agreements being reached through "discussions" or in FDR for all parents using these pathways, even those parents not affected by family violence or child safety concerns. These shifts are most likely to be associated with s 60D(1)(b)(iii) (prioritising protection from harm) for parents affected by family violence or child safety concerns, and s 60D(1)(a) (child's best interests) for parents not affected by these concerns.



On a less positive note, the 2012 family violence amendments have also been associated with longer resolution time frames for sorting out parenting arrangements among parents who are affected by a history of family violence. Each of studies in the evaluation research program supports this finding, including the RFV study, which reported a range of concerns expressed by professionals about the extent to which the family law system was equipped to deal with the greater level of scrutiny of family violence and child abuse concerns required by the 2012 amendments. Evidence in support of this concern has also emerged from both the ESPS and the Court Files Study. Among the ESPS sample, the proportion of parents reporting that their parenting arrangements had been sorted at the time of the survey dropped significantly, from 74% to 71% (ESPS report, Table 4.4). Time frames were longer particularly for parents affected by a history of physical violence, with a less significant increase evident among parents with a history of emotional abuse in the absence of physical violence (though for these sub-groups the changes were not statistically significant) (ESPS report, Table 4.5). There was a trend towards an increasing number of parents who had not sorted their arrangements at the time of the surveys reporting that they relied on lawyers, but these shifts did not reach statistically significant levels.

The 2012 family violence amendments have also been associated with longer resolution time frames for litigated matters, with the Court Files Study data showing that times frames for the resolution of matters resolved by judicial determination or consent prior to or during trial had doubled, on average, from four to eight months (CO report, Table 3.4). Influences other than the 2012 family violence amendments—such as court resourcing and the sampling method applied—cannot be discounted in considering these data; however, the views of professionals indicate that they are at least in part linked to the need for a greater level of scrutiny of family violence and child abuse necessitated by the reforms.

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#### 4. How have professional practices and approaches changed?

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The evaluation indicates that professional practices on the whole have changed in a direction consistent with the intention of the reforms, with a greater emphasis on identifying and assessing concerns about family violence and child abuse. Overall, the RFV study showed that the direction of the reforms had the support of a majority of professionals across the family law system, but greater proportions of non-legal professionals were positive about key aspects of the reforms than lawyers or judicial officers. It is clear that attitudes and approaches to the reforms differed among and within the professionals groups, and in each group there was a minority of professionals who considered that family law system responses to family violence and child abuse concerns were effective before the reforms and remained so afterwards.

Responses in key areas (discussed in Chapter 4) also indicate that while in-principle support for the reforms was strong, there was less confidence that changes in practice had occurred in key areas, including approaches to identification and responses to matters involving family violence and child safety concerns. It is also evident that there were disciplinary divergences in approaches between legal and non-legal professionals and that views and approaches also varied within each of these groups. There is some indication of a continuing lack of confidence by each discipline of the other disciplines' capacity to respond appropriately to concerns about family violence and child abuse, but the extent to which this is evident has narrowed in comparison with the findings evident in the Evaluation of 2006 Family Law Reforms. Across the system, a range of concerns were associated with views about the limited effects of the reforms, including the level of resources required to assess family violence and child abuse concerns, a need for improvements in training and practice tools, and the complexity of the system, including overlaps with and inconsistencies between state and territory child protection and family violence responses.

Lawyers and non-legal professionals participating in the RFV survey were asked whether they had changed the advice that they give to parents in four areas: fathers seeing children, allegations of family violence, allegations of child abuse, and outcomes of parenting disputes as a result of the reforms. Responses indicate these practices have shifted in a direction consistent with the intention of the reforms, though this is evident in legal practice to a greater extent than non-legal practice (RFV report, Table 2.10). For lawyers, the greatest change evident was in relation to family violence (in 2014, 64% indicated they had changed their advice, compared



with 47% in 2008). A majority of lawyers indicated they had changed their advice on child abuse allegations also (59% in 2014 changed: RFV report, Table 2.8).

The Published Judgments study component of the CO Project demonstrated that the effects of s 60CC(2A) varied according to the way in which the court analysed the facts in the case at hand and applied its discretion in the context of the Part VII decision-making framework overall. In some contexts, it appeared to operate as a tie-breaker, leading to the prioritisation of protection from harm, in some cases it supported an unacceptable risk analysis, and in other cases it tipped the balance in favour of an outcome restricting or ceasing contact between a child a parent.

Overall, the analysis suggests that a range of considerations influence judicial decision making in matters involving family violence and child abuse concerns in the context of the overall decision-making framework set out in Part VII of the FLA. It highlights the point that judicial determinations involving orders for sole parental responsibility and limited or no care time arise in cases where a very severe history of family violence is established and the behaviour of one parent is clearly deficient compared to the behaviour of the other. In cases where courts are persuaded that the situation, including the behaviour of each parent, is less clear cut than this, particularly where the parents' motivation for raising allegations of family violence or child abuse comes into question, then care-time decisions are likely to favour arrangements that maintain relationships with both parents.

Although the inclusion of s 60CC(2A) was intended to provide a means of resolving the tension between the two primary considerations, the analysis suggests this provision has had limited effects for several reasons, especially where courts are persuaded that there is ambiguity associated with the allegations of family violence or child abuse or in the way in which one parent has behaved in relation to the other parent's relationship with the child. Further, the analysis shows that courts remain concerned to ensure that, wherever possible, children's relationships with both parents are maintained after separation, except in cases where the evidence is unambiguously in favour of an outcome inconsistent with this approach. In circumstances where this is not the case, particularly where courts conclude the evidence establishes a positive relationship exists between the child and parent whose role is under question, the conceptualisation of harm as arising from the cessation of a child's relationship with one parent continues to underpin views of best interests outcomes as requiring the maintenance of the parent-child relationship in all but the most clear-cut cases.

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## 5. Does the evidence suggest that the legislative changes have influenced the patterns apparent in questions 1–4 above?

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The three components of the Evaluation of the 2012 Family Violence Amendments together provide a means of assessing the extent to which core findings are associated with the legislative amendments. However, the limited reliance that separating couples have on formal services should be kept in mind when interpreting these data. A further point is that the evaluation evidence suggests that change, limited change or lack of change reflects an interplay between the legislative amendments and practice approaches, which vary in different parts of the system, between disciplines and among professionals. In the areas considered in this chapter so far, the evidence suggests modest, mixed or limited effects. There are clearly areas where practice is developing in response to the legislative amendments; for example, in the refinement and development of identification approaches in court and non-court based practice (Chapter 4). Similarly, the evaluation evidence indicates that the new definitions of family violence (s 4AB) and child abuse (s 4(1)), and s 60CC(2A), greater emphasis on protection from harm) are having an educative effect, but at this stage they appear to have had limited effects in relation to parenting arrangement outcomes. An indication of limitations in the achievement of this principle in practice is evident in the comparison of RFV responses to whether "adequate priority" was placed on "protection from harm" and "meaningful relationship". The rate of endorsement in relation to the meaningful relationship factor (87%) was twenty percentage points greater than that for protection from harm (67%) (RFV report, Table 2.1).

In relation to the evaluation evidence in relation to increased screening and disclosure of family violence and safety concerns, the effects of the legislative reforms is particularly difficult to disentangle from the implementation of the AVERT Training package and DOORS. The findings

indicate that both of these elements are relevant to varying extents in different parts of the system. In relation to legal and court processes, the obligations imposed on parties to disclose and on courts to inquire about family violence and child abuse issues are both relevant, as are the repeal of the provisions considered to inhibit disclosure (s 117AB and s 60CC(3)). In relation to the latter elements of the reforms, the following findings suggest the obligations and the practice measures are the greater influence on increased screening and disclosure:

- There is a relatively weak association between increased disclosures and the repeal of s 117AB, which explicitly supported a court's power to make costs orders where a party was found to have knowingly made a false statement in proceedings (RFV report, Figure 3.1).
- There is a weak association between the repeal of s 60CC(3) and an effect consistent with the intention of the reforms to encourage the disclosure of concerns about family violence and child safety (a positive effect) (RFV report, Table 3.4).

In relation to both of these changes, however, differences in response patterns between professional groups suggest that a positive effect is more likely to be perceived by those not concerned with the direct application of the law (i.e., non-legal professionals), and responses overall are more indicative of a lack of effect from these changes, or a reticence to express a view (RFV report, Figure 6.13 and Table 3.1). Moreover, the findings of the Court Files Study and the Published Judgments analysis indicate that the extent to which one parent has supported the other parent's relationship with the child remains a significant issue in litigation, and the frequency with which this issue is raised has increased since the reforms.

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## 6. Have the family violence amendments had any unintended consequences, positive or negative?

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The evidence in Chapter 7 canvassed the extent to which the evaluation evidence indicates the 2012 family violence amendments are associated with positive, negative or unintended consequences. It drew on data from the ESPS to assess whether parents' views and experiences of the family law system had improved or worsened since the reforms, and also considered professionals' views on this question. The findings confirm that the reforms have not, in general, worsened parents' experiences with the family law system, and that the forensic complexity involved in assessing family violence and child abuse concerns pose challenges for professionals.

From the perspective of gender, positive views in most areas on measures of efficacy increased incrementally among both mothers and fathers between the 2012 and 2014 ESPS cohorts. Fathers in both cohorts were less satisfied with the family law system than mothers, but the extent of this difference remained similar. The data support the conclusion that no generalisations can be made about whether the 2012 family violence amendments favoured fathers or mothers.

In relation to the experiences of parents who reported family violence in the survey, the data suggest a marginal improvement in the views of parents affected by family violence, though this was true to a greater or lesser extent according to the measure and whether the experience involved was physical hurt or emotional abuse alone. Differences among these groups are evident in different areas, suggesting an uneven effect of the reforms, consistent with findings reported in relation to service responses to disclosure of family violence and child safety concerns (Chapter 5). Less positive findings emerged in relation to safety concerns, with the experience of parents with safety concerns for themselves or their child (or both) in some areas changing little if at all, and there is some indication of a negative shift for some sub-groups. These findings suggest a particularly mixed set of views and experiences among these parents.

In terms of negative consequences, systemic pressures such as those canvassed in Chapters 3 and 4 were raised by some professionals. There was concern about the capacity of the family law system to deal with the increased requirement for scrutiny of parenting matters where concerns about family violence and child abuse are raised. A further set of responses raised concerns about false or frivolous allegations of family violence and child abuse being raised. Such concerns are not new in the family law system.

Concern about the limited effects of the reforms was a significant theme in the comments of many participants. Not only were systemic pressures raised in this context, but other issues

canvassed were the complexity of the legislation, the complexity of the family law system, and a need for more effective education and training in the areas of family violence and child abuse.

## 8.4 Summary

In broad terms, the 2012 family violence amendments were perceived positively by a majority of professionals across the system, although stronger support was evident among non-legal professionals than it was among lawyers and judicial officers. One of the core positive findings (presented in Chapter 3) indicates that the reforms have supported agreement making in non-legal contexts, with the data indicating that the “discussions” and “FDR/mediation” pathways have become more effective mechanisms for negotiating parenting arrangements since the reforms, not just for parents affected by family violence and child abuse concerns. This is most likely to reflect the implementation of s 60D(1), which requires advisers to inform parents that children’s best interests are the most important consideration in making parenting arrangements, as well as that protection from harm should be prioritised over the benefit to the child of a meaningful relationship with each parent after separation. The evidence presented in Chapter 4 indicates that there has been a greater emphasis on screening for family violence and child abuse concerns across the system, but particularly among lawyers and courts. This, however, has not translated into more parents considering that their concerns about both of these issues (especially safety concerns) have been dealt with appropriately after the reforms. In relation to parenting arrangements, the evidence presented in Chapter 5 indicates subtle shifts in a direction consistent with the reforms in both the ESPS samples and court orders reflecting judicial determination or agreement. Overall, the evidence indicates that the 2012 family violence amendments have had greater influence on identification and screening practices than they have had on patterns in parenting arrangements. Practice continues to evolve and it is likely that greater effects of the reforms will unfold over time.

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