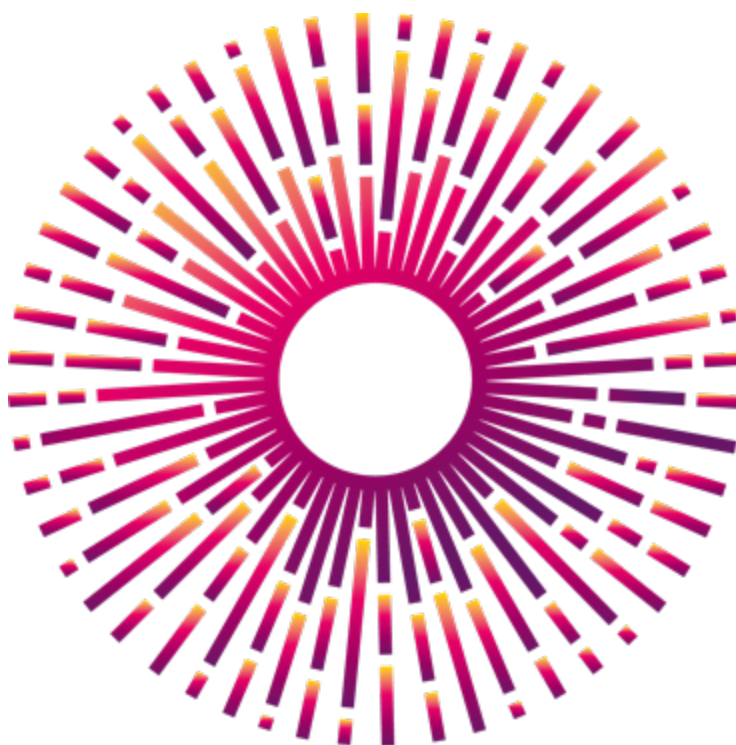




Submission to the Joint Select Committee on Australia's Family Law System

Australian Institute of Family Studies

January 2020





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Glossary

Term	Definition	Citation (if applicable)
AGD	Australian Attorney-General's Department	
AIFS	Australian Institute of Family Studies	
ALRC	Australian Law Reform Commission	
CYPSF	Children and Young People in Separated Families Study	Carson et al., 2018
DCFL	Direct Cross-examination in Family Law Study	Carson et al., 2018
DFVP	Domestic and Family Violence and Parenting Study	Kaspiew et al., 2017
DHS	Australian Government Department of Human Services	
ESPS	Evaluation of the 2012 family violence amendments - Experiences of Separated Parents Study	Kaspiew et al., 2015b
FDR	family dispute resolution	
FLA	<i>Family Law Act 1975</i> (Cth)	
GPPS	General Population of Parents Survey	Weston & Qu, 2009
GSFS	Grandparents in Separated Families Study	Qu et al., 2011
ICL	Independent Children's Lawyer Study	Kaspiew et al., 2014
LSSF	Longitudinal Study of Separated Families	Qu et al., 2014
RFV	Evaluation of the 2012 family violence amendments - Responding to Family Violence Study	Kaspiew et al., 2015a
SRSP	Surveys of Recently Separated Parents (2012, 2014)	See Kaspiew et al., 2015b



Part A. Executive summary

This submission presents findings relevant to the Terms of Reference set out by the Joint Select Committee on Australia's Family Law System on 18 September 2019.

Data from AIFS' many studies of the family law system is presented in detail below. They address nine of the 10 Terms of Reference and, in summary, demonstrate the need for a system that:

- is trauma-informed and child-inclusive
- provides effective client support and dispute resolution services
- is delivered by family law professionals with the requisite skills and expertise to secure the safety and best interests of children and their families.

The following summary sections are matched to their counterpart sections in Part B – Responses to the Terms of Reference.

1. Interaction and information-sharing between systems and jurisdictions

AIFS' research provides insight into the fragmented nature of the systems and services with which separating families interact, and the potential for this fragmentation to contribute to the ineffective identification of, and response to, risks of harm. The research highlights inconsistencies in service delivery and the potential for harm and dissatisfaction arising from the service responses in this context.

2. Court powers in relation to the provision of evidence

AIFS has examined professionals' views of the impact of legislative provisions for costs orders to be made for false statements in family law proceedings. Overall, our findings suggest a weak link between an explicit power to make costs orders for false statements and discouraging false claims.

In fact, our data show that under-disclosure of experiences of family violence and child abuse is a primary concern: over a third (38%) of parents do not disclose family violence and child safety concerns, even though some two-thirds of separated parents reported a history of emotional abuse and/or physical violence before/during separation.

3. Court reform: Capacity to deal with complex issues

AIFS' findings highlight the need for system professionals to improve how they screen for and assess family violence and child safety issues and manage those issues through family law pathways. They show that the system needs to build the capacity of family law professionals to deal with these issues.

The data reveal that separating families who use courts have high rates of complex issues such as family violence, safety concerns and mental ill-health, and that these complexities are compounded for a significant proportion of litigants who use courts on an unrepresented basis.

Our findings underline the importance of effective risk assessment and management practices. They show the need for family law professionals to be able to identify, assess and appropriately respond to multiple, co-occurring and complex risk factors in an effective, trauma-informed way.



4. Legal costs in property matters

The research shows that most separated parents have limited financial means, with one-third of separated parents reporting low to moderate asset levels (under \$140,000).

Of the three formal family law pathways (family dispute resolution (FDR), negotiations through lawyers, and litigation in the courts), FDR is the most cost-effective. However, the use of FDR to resolve property matters is uncommon for parents reporting low to moderate asset levels, who are more likely to use lawyers and courts; potentially dedicating a significant proportion of their assets' value to cover costs.

There is a need for low-cost family law services to help separating parents with limited financial means to resolve their disputes, so that their assets are not absorbed by legal costs. Potential measures to address this issue may include: the Attorney-General's Department-funded Lawyer-Assisted Property Mediation Trial, to be conducted by state and territory legal aid commissions; and the Small Claims Property Pilot currently underway in the Federal Circuit Court. AIFS' evaluations of both are due for completion in April 2022.

5. Family law support services and family dispute resolution (FDR)

Views of the family law system among separated parents are not particularly positive, especially where family violence and safety concerns are relevant. AIFS' research suggests the need to address the underlying issues and complex needs of families by facilitating access to effective support services and dispute resolution options that secure the safety and best interests of children. Our research indicates the need for the development of core and specialised competencies among family law professionals to meet vulnerable clients' needs.

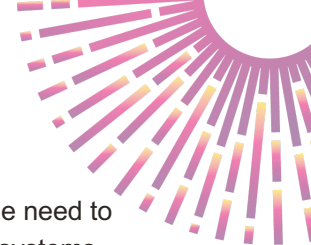
FDR is the most commonly used formal mechanism for resolution of parenting arrangements. AIFS' research indicates that, since the 2006 reforms, FDR has become an increasingly effective mechanism for resolving parenting arrangements. Of the three formal pathways – FDR, lawyers and courts – FDR elicits the most positive evaluations from parents. Between the three formal pathways, the system should, where safe and appropriate to do so, continue to facilitate families to access FDR and mediation options where support is required to resolve their post-separation arrangements.

6. Family law impacts on children and families

AIFS' research into the experiences of children and young people indicates that most who had engaged with family law system were dissatisfied with the court process and with their level of input into, and information about, the decision-making process and its outcomes. Most young participants indicated that they wanted family law system professionals to listen more effectively to their views and experiences. Importantly, some children and young people perceived a lack of action on the part of family law system professionals in response to safety concerns raised by them.

The concerns of children and young people highlight the need for child-centred and child-inclusive approaches, so that the system facilitates safe post-separation decision-making.

AIFS' research also identifies challenges within the family law system for self-represented litigants and families characterised by family violence and safety concerns. The research makes clear that service providers, including judicial officers, lawyers and non-legal professionals, must have the skills, experience and specialist expertise to engage with these families and to undertake safe and appropriate decision-making.



AIFS' research identifies tensions emerging between the need for procedural fairness and the need to protect parties from harm, including in relation to experiences suggestive of post-separation systems misuse involving the use of administrative and legal systems or services or other agencies (including family law services) to further perpetuate abuse. This research provides insight into the disappointment that separated parents reported when reflecting on their engagement with services and the court system where these services or the courts were unable to prevent their misuse; they also described how the nature of the legal process itself may be traumatising.

These findings suggest the need for a more comprehensive analysis of systems abuse as a form of family violence and greater awareness of the possibility that services, systems and processes may be misused by perpetrators of family violence to perpetuate dynamics of abuse and control.

7. Grandparent carers

The dynamics of post-separation relationships between grandparents, grandchildren and parents of grandchildren can be complex. The 2006 family law reforms enshrined in the Act (s 60(B)(2)(b)) the right of the child to spend time with people who play a significant role in their care, welfare and development, including grandparents and relatives. However, AIFS has found that some grandparents are still engaged the legal system in order to spend time with their grandchildren after parental separation.

8. Improving performance of family law system professionals

AIFS' data shows that there is a need to build the capacity of family law system professionals to identify, assess and respond to family violence and child safety concerns. We see improvements since the 2012 reforms in the system's capacity to screen for and deal with family violence and child abuse, however almost half of participating family law professionals post-reform reported that the legal system still did not have sufficient capacity in this regard.

9. Family law and child support systems: Interactions

While our research shows that child support payments were most often made in full and on time, payee parents who reported experiencing family violence reported lower proportions of compliance. Father payers were also considerably more likely than mother payees to report that payments were made in full and on time. Most parents reported that their child support amount was very or somewhat fair, with father payers the most likely of all groups to report this.



Part B. Responses to the Terms of Reference

Introduction

This submission presents findings relevant to the Terms of Reference set out by the Joint Select Committee on Australia's Family Law System on 18 September 2019.

Since its inception in 1980, the Australian Institute of Family Studies' (AIFS) research has informed key amendments to the *Family Law Act 1975* (Cth) (FLA). AIFS' many studies of the family law system include extensive evaluations commissioned by the Australian Attorney-General's Department (AGD) for the major reforms to the FLA of 2006 and 2012. The findings from these studies, which address nine of the 10 Terms of Reference, are presented below. In summary, these findings demonstrate the need for a system that:

- is trauma-informed and child-inclusive
- provides effective client support and dispute resolution services
- is delivered by family law professionals with the requisite skills and expertise to secure the safety and best interests of children and their families.

Relevant AIFS research

The following is a list of AIFS research projects referred to in this submission.

1. **Children and Young People in Separated Families: Family Law System Experiences and Needs (CYPSP; 2018):** This qualitative study was commissioned by the AGD and involved in-depth, semi-structured interviews conducted with 61 children and young people aged between 10 and 17 years of age, supplemented by interviews with the parents. The aim of this research was to investigate the experiences and needs of children and young people whose parents had separated and had accessed the family law system. The study focused on children and young people's experiences of these services and how the family law system may better meet their needs.
2. **Domestic and Family Violence and Parenting: Mixed-Method Insights into Impact and Support Needs, Final Report (DFVP; 2017):** This project was commissioned by the Australian National Research Organisation for Women's Safety (ANROWS) and conducted with researchers at the University of Melbourne and La Trobe University. It was designed to explore the impact of parenting and service engagement and experience in the context of domestic and family violence. The project comprised: a systematic literature review; analysis of responses to semi-structured interviews with 50 participants; and analysis of three datasets – *Growing Up in Australia: The Longitudinal Study of Australian Children* (LSAC), the Survey of Recently Separated Parents 2012 (SRSP 2012), and the Longitudinal Study of Separated Families (LSSF).
3. **Evaluation of the 2012 Family Violence Amendments (2015):** The evaluation research program examined the effects of amendments to the FLA that were intended to improve the family law system's responses to matters involving family violence and safety concerns. It comprised the following studies:
 - a. **Responding to Family Violence: A Survey of Family law Practices and Experiences (RFVP):** Survey of family law professionals, primarily based on online surveys completed by judicial officers and registrars ($n = 37$), legal professionals ($n = 322$) and non-legal professionals ($n = 294$) across the family law system.



- b. **Experiences of Separated Parents Study (ESPS):** Study comprising two cross-sectional quantitative Surveys of Recently Separated Parents (SRSP), conducted in 2012 and 2014: SRSP 2012 ($n = 6,119$) and SRSP 2014 ($n = 6,079$). These surveys allowed a comparison between the pre-reform (2012) and post-reform (2014) data.
- c. **Court Outcomes Project:** Study involving:
 - i. an analysis of quantitative data from court files in matters resolved prior to the 2012 family violence amendments ($n = 895$) and in matters resolved post-2012 family violence amendments ($n = 997$)
 - ii. an examination of patterns in court filings based on administrative data from each of the three family law courts for each financial year from 2009/10 to 2013/14
 - iii. a systematic analysis of published appeal and first instance judgments applying the provisions introduced by the 2012 family violence amendments.
- 4. **Evaluation of the 2006 Family Law Reforms:** Evaluation that included the Longitudinal Study of Separated Families (LSSF; Qu et al., 2014), with three survey waves (2009, 2010, 2014) of up to 10,000 parents covering a five-year period after separation.¹

Brief mention is also made of the following AIFS' reports:

- *Direct cross-examination in family law matters* (DCFL; Carson et al., 2018)
- *Independent Children's Lawyers Study – Final report* (ICL; Kaspiew et al., 2014)
- *Working Together to Care for Kids: A survey of foster and relative/kinship carers* (Qu, Lahaussé, & Carson, 2018)
- *Evaluation of the Co-Located Child Protection Practitioner Initiative* (Wall et al., 2015).

Specific responses: Terms of Reference

The remainder of this submission contains specific responses to each of the Terms of Reference.

1. Interaction and information-sharing between systems and jurisdictions

Terms of Reference

(a) Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including:

- i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders and
- ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings.

¹ The first two waves of the LSSF were commissioned by the Australian Government, Attorney-General's Department (AGD) and the then Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), now called the Department of Social Services (DSS), while AGD commissioned the third wave.



AIFS' Evaluation of the 2012 Family Violence Amendments (Kaspiew et al., 2015c) includes data relevant to the interaction between the family law system, state and territory child protection and family and domestic violence jurisdictions. The data provide insight into the extent of these interactions and the need for information sharing and coordinated, trauma-informed service delivery to address service fragmentation and to respond to the varied and complex needs of client families.

In relation to personal protection orders, findings from the Experiences of Separated Parents Study (ESPS; Kaspiew et al., 2015b), a component of the evaluation, show that in the majority of cases where family violence occurs, separated parents do not obtain personal protection orders from state or territory magistrates courts (Kaspiew et al., 2015b, Figure 3.22). More specifically, where family violence commenced after separation, 1% of mothers and no fathers reported obtaining a personal protection order (*ibid.*, Figure 3.22, based on data from the SRSP 2014). Parents who experience family violence are most likely to obtain personal protection orders when the family violence has been sustained, occurring before, during and after separation (30% of mothers and 10% of fathers) (*ibid.*, Figure 3.22, based on data from the SRSP 2014).

Analysis of data obtained from the Court File Study component of the evaluation (Kaspiew et al., 2015d), shows that 28% of the 2014 post-reform sample had a personal protection order presented as evidence in cases with allegations of family violence or child abuse (*ibid.*, Table 3.17). This had increased from 17% before the 2012 reforms (*ibid.*, Table 3.19), indicating an increase in information in the family law court files about personal protection orders. In 77% of cases with a personal protection order, mothers were the protected persons; fathers were the protected persons in 11% of cases. Children were named on the orders in about a third of cases (*ibid.*, Table 3.21).

Court files in the 2014 post-reform sample included information about child protection engagement in 13% of files, compared with 7% in the pre-reform sample. In 21% of cases, the notifications were substantiated, in 53% of cases they were not substantiated (*ibid.*, Table 3.23). This indicates that more information about child protection engagement was being provided to the courts following the 2012 reforms.

1.1. Impact of fragmentation

AIFS' research also provides insight into the fragmented nature of the systems and services with which separating families interact across the family law and child protection systems and the family and domestic violence jurisdictions, and the potential for this fragmentation to contribute to ineffective identification of, and responses to, risks of harm.

The qualitative component of the DFVP study (Kaspiew et al., 2017) highlighted participating mothers' dissatisfaction with service responses to the risks and harm associated with family violence. This dissatisfaction often related to their engagement with multiple services, agencies and professionals. Some participants in the qualitative component of this study reported being passed from agency to agency without a coherent or helpful solution being offered to resolve their concerns. This was particularly so when professionals lacked the expertise to respond appropriately to family violence and child safety issues.

Participants in the DFVP study also reported inconsistencies in service delivery across jurisdictions, including those involving the granting of inconsistent family violence and parenting orders (*ibid.*, p. 179). Such inconsistencies were frustrating and confusing for participants, as were efforts by perpetrators to exploit these system and service overlaps.

Measures directed at improving collaboration and information sharing between the family law and child protection systems include the expansion of the Co-located Child Protection Practitioner Initiative, which was identified in the AIFS evaluation of the initiative as a highly valuable program (Wall et al.,



2015; Porter, 2019). The National Domestic Violence Order Scheme may also improve interaction and information sharing by enabling all domestic violence orders issued in any Australian state or territory from 25 November 2017 to be automatically recognised and enforceable across Australia (AGD, 2019).

2. Court powers in relation to the provision of evidence

Terms of Reference

(b) The appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders.

2.1. Legislative provisions for costs orders

In its evaluations of the 2006 family law reforms and the 2012 family violence amendments, AIFS examined professionals' views of the impact of legislative provisions for costs orders to be made for false statements in family law proceedings. The findings suggest a weak association between explicit provisions for costs order and the discouragement of false statements.

The survey of family lawyers forming part of AIFS' evaluation of the 2006 family law reforms (Kaspiew et al., 2009, Figure 10.7), asked about the impact of FLA s 117AB, which explicitly articulated the court's power to make costs orders against a party found to have made a false statement in proceedings. It found:

- only 10% of the post-reform sample agreed that s 117AB had discouraged false claims of family violence or child abuse
- 14% of the post-reform sample agreed that s 117AB had discouraged genuinely held or true claims of family violence being made.

The survey of family law system professionals for the Responding to Family Violence (RFV) – Survey of Practices component of the 2015 AIFS evaluation (Kaspiew et al., 2015a, Figure 3.1) asked about the impact of the repeal of FLA s 117AB. It found:

- 40% of the samples disagreed that the repeal of s 117AB had encouraged false allegations of family violence and/or child abuse
- 31% of the sample disagreed that the repeal had encouraged the disclosure of family violence or child abuse allegations that were genuinely held or likely to be true.

Although substantial minorities of the sample were unable to report on the effect of the repeal of s 117AB, a noteworthy feature of the data was a marked tendency for participating professionals, particularly judicial officers and registrars, and to a lesser extent lawyers, to disavow any negative effect of the repeal. This is significant because these are the professional groups most likely to have direct experience of the repeal.



Overall, the findings on this point suggest a weak link between an explicit power to make costs orders for false statements in relation to either discouraging false claims or discouraging true claims.

In fact, the data show that under-disclosure of experiences of family violence and child abuse are a primary concern. Over a third (38%) of parents do not disclose family violence and child safety concerns (Kaspiew et al., 2015b, Table 5.10), even though some two-thirds of separated parents reported a history of emotional abuse and/or physical violence before/during separation (ibid., Table 3.4).

2.2. Reporting and disclosure

Evidence from AIFS' evaluation of the 2012 family violence amendments (Kaspiew et al., 2015c) indicates that a substantial proportion (around 40%) of the participants experiencing family violence do not report this violence to police or other agencies and do not disclose family violence or child safety concerns when engaging with the family law system.

Findings from the evaluation's ESPS (Kaspiew et al., 2015b) show that family violence is often not reported to police or other agencies and professionals, with just over half (56%) of separated parents in the 2014 post-reform survey who had reported experiencing family violence indicating they had reported it (ibid., Table 5.1). This means that a significant proportion of parents who have experienced family violence may not be able to corroborate it in the context of family law proceedings because they have not previously disclosed it to any person or agency.

A substantial proportion (between 22% and 37%) of study participants indicated that when interacting with family law system professionals to make parenting arrangements, they were not asked about family violence and child safety concerns (Kaspiew et al., 2015b, Table 5.4).

Of particular significance and as noted above, the study also found that in 38% of cases family violence and child safety concerns are not disclosed to family law system professionals (ibid., Table 5.10), even though some two-thirds of separated parents reported a history of emotional abuse and/or physical violence before/during separation (ibid., Table 3.4).

Where non-disclosure occurs and/or where evidence corroborating family violence and child safety concerns are not available to be put before the court, it increases the risk of unsafe parenting arrangements being made.

For many years there have been concerns about the making of false statements in the family law system. However, AIFS' analysis of the RFV study found that judicial participants did not commonly raise these concerns, and that non-legal professionals were less likely to raise them than lawyers. The largest group of lawyers raising concerns were from Queensland, followed by New South Wales, and they were most likely to be raised by lawyers in private practice. These lawyers were more likely to report that they had not undertaken family violence professional development or screening programs (Kaspiew et al., 2015c, p 67–70), which indicates a need for family law professionals to receive training and professional development in identifying, assessing and responding appropriately to family violence and abuse.



3. Court reform: Capacity to deal with complex issues

Terms of Reference

(c) Beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court.

Findings from AIFS' research highlight the need for effective risk assessment and management in court pathways, and the need for family law system professionals to have expertise and experience in family violence and child safety.

It is notable that only a small minority (3%) of separating parents use the courts as their main pathway for making parenting arrangements. This compares with 6% who use lawyers, 10% who use FDR and 69% who work out parenting arrangements between themselves (Kaspiew et al., 2015b, Table 4.8). Typically, formal family law pathways – FDR, lawyers and courts, but particularly courts – are used by parents affected by multiple complex issues, which means that the resolution of their parenting arrangements is itself complex (Kaspiew et al., 2015c, Table 2.2).

Data from the ESPS component of the Evaluation of the 2012 Family Violence Amendments were analysed to assess the extent to which parents who reported experiencing a range of problems indicative of complexity used one of the formal pathways for resolving their parenting arrangements.

The pathways examined were: 'discussions', 'just happened', family dispute resolution (FDR), a lawyer (indicating lawyer led negotiation) and court. The issues relevant to complexity included a history of physical hurt by the former partner, emotional abuse by the former partner, safety concerns (for the adult responding to the survey and/or their child as a result of ongoing contact with the other partner), substance misuse, mental ill-health and problems with gambling, pornography or social media use.

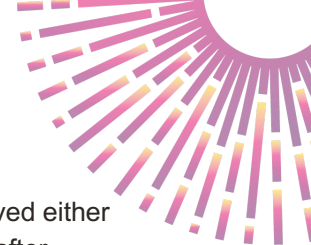
The use of formal family law pathways (FDR, lawyers and courts) was more common among the parents who reported high levels of pre-separation problems and complexity in their circumstances (Kaspiew et al., 2015c, Table 2.2). Parents who used the courts as their main pathway reported the most problems: 38% of the 2014 post-reform sample had four or more reported issues, compared with 27% of the parents who used lawyers, and 21% who used FDR.

In this post-reform sample, 46% of court users reported having current safety concerns, compared with 34% of parents who used lawyers and 26% of parents who used FDR.

The Court Files Study component of the Court Outcomes Project (Kaspiew et al., 2015d) reinforces the point that the courts are dealing with a substantial proportion of matters with significant risk. The data demonstrate that:

- more than one-third of cases in the 2014 post-reform sample² involved allegations of family violence and close to one-quarter of cases in this sample involved allegations of child abuse (ibid., Tables 3.11 and 3.12)

² Including matters resolved by judicial determination and by consent after proceedings were initiated.



- in the sub-samples where matters had commenced a litigation pathway and been resolved either by judicial determination or consent, 38% of judicial determination and 23% of consent after proceedings matters in the post-reform sample had allegations of both family violence and child abuse raised. Allegations of family violence alone were raised in 27% of judicial determinations and 29% of consent after proceedings matters (*ibid.*, Table 3.13)
- the proportion of matters filed in the Family Court and the Federal Circuit Court in which both allegations of family violence and child abuse were raised had approximately doubled in the 2014 post-reform sample as compared to the pre-reform sample, with this representing a statistically significant increase (*ibid.*, Table 3.10).

In the context of the substantial proportion of cases characterised by complex risk issues, the Court Files Study findings also highlight that substantial proportions of litigants are unrepresented (*ibid.*, Table 3.2). This lack of legal representation is notable, with the DFVP study (Kaspiew et al., 2017) indicating that women who had experienced family violence had significant difficulty reaching safe parenting arrangements unless they had access to, and funding for, legal professionals who were competent in family violence matters.

There is presently insufficient empirical data available relating to the types of matters dealt with in appeal cases, including: consideration of how many appeals involved family violence or child abuse allegations; other key risk factors such as drugs, alcohol or mental health concerns; the grounds for and classification of appeals; whether parties were represented or self-represented; and whether appeals were successful. Nevertheless, the complex factual and legal issues involved in family law matters highlight the need for all judicial officers presiding over them to be equipped to deal with them.

AIFS' research shows that the families that the families who use courts and lawyers, and to a slightly lesser extent FDR, have high concentrations of complex issues such as family violence, safety concerns and mental ill-health. These complexities are compounded for the significant proportion who use the courts on an unrepresented basis. This highlights the importance of effective risk assessment and management practices in all courts exercising family law jurisdiction. Family law professionals must be trained to deal with multiple, co-occurring and complex risk factors, characterising and responding to them in an effective and trauma-informed way.

4. Legal costs in property matters

Terms of Reference

(d) the financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given among other things to banning 'disappointment fees', and:

- i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and
- ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings.



AIFS' research (Kaspiew et al., 2015c; Qu et al., 2014) shows that most separated parents have limited financial means. This suggests a need for low-cost avenues for resolving parenting and property disputes, so that parents' modest asset pools are not absorbed by legal costs.

Of the three formal family law pathways – family dispute resolution (FDR), negotiations through lawyers and litigation in the courts – FDR is the most cost-effective. FDR is conducted by an independent practitioner, often on a no-cost or subsidised basis. While FDR has become an important pathway for separating parents to resolve their parenting matters, the use of FDR to resolve property matters has been uncommon. Indeed, LSSF study data (Qu et al., 2014; see Table 1 below) reveals that nearly three in 10 parents who reached property settlement did so through lawyers, and 7% of parents did so through the courts (ibid., p.98). In contrast, only 4% used mediation or FDR services.

Table 1: Main pathways for property division, LSSF Wave 3

Main pathway	Settled (%)	In process (%)	All (%)
Mediation or dispute resolution services	4.2	4.0	4.2
A lawyer	29.3	26.3	29.1
The courts	7.1	9.2	7.2
Discussions	39.3	44.8	39.5
Nothing specific, it just happened	18.8	15.4	18.6
Other	1.4	0.3	1.4
Total	100.0	100.0	100.0
No. of participants	6,900	312	7,212

Notes: Data have been weighted. Excludes a small number of parents who didn't know or refused to answer (0.5%). Percentages may not total 100% due to rounding.

Table 2 (below) shows that higher levels of net assets were associated with a higher use of formal pathways and a lower use of informal pathways. Parents with the highest value asset pools (\$500,000+) were most likely to nominate lawyers and courts and least likely to nominate discussions (though discussions represented the second most common pathway nominated by these parents). Lawyers were also nominated by substantial proportions of parents in the medium-high and medium asset pool ranges (\$140,000–\$499,000; 41–43%) and by those with assets amounting to \$40,000–\$139,000 (25%). The group most likely to nominate discussions as the main pathway for property division was the low asset group (<\$40,000). However, even among these parents, the use of courts (2%) or lawyers (7%) was more common than mediation or FDR services (1%) (ibid., 2014, p. 99). For the negative equity group, although interparental discussions formed the most common main pathway to settle the debt arrangements, over one-fifth reported lawyers as their main pathway.

Additional analysis by Qu (2019) suggests that those who are more disadvantaged are less likely to make use of FDR, which highlights the importance of promoting accessibility of FDR to this group.

The LSSF data shows that approximately one-third of separated parents had low to moderate levels of assets (under \$140,000). Although the LSSF study did not collect data on legal costs, it is likely that for the third of these parents who used formal family law pathways to resolve their property division, a significant proportion of their assets would have been used to cover legal costs. These findings suggest the need for low-cost family law services to help separating parents with low to moderate levels of assets to resolve their disputes.



Table 2: Main pathway for property division, by level of net assets at separation, parents who reached property settlements, LSSF Wave 3

Main pathway	Net assets at separation ***					
	Negative (in debt)	< \$40,000 (%)	\$40,000– 139,000 (%)	\$140,000– 299,000 (%)	\$300,000– 499,000 (%)	\$500,000+ (%)
Mediation or dispute resolution services	4.9	1.3	3.5	6.1	5.0	7.7
A lawyer	22.8	6.8	25.0	41.4	42.7	50.6
The courts	7.4	2.0	6.0	8.9	10.4	13.1
Discussions	43.8	49.9	45.8	35.1	34.5	25.1
Nothing specific, it just happened	17.1	37.9	18.3	8.0	7.0	2.9
Other	4.0	2.3	1.5	0.5	0.5	0.6
Total	100.0	100.0	100.0	100.0	100.0	100.0
No. of participants	119	1,163	1,270	1,160	1,180	1,271

Notes: Data have been weighted. Excludes a small number of parents who didn't know or refused to answer (0.5%). Percentages may not total 100% due to rounding. *** $p < .001$; statistically significant relationship emerged between main pathway used and level of net assets.

Measures to address this issue may include: the Attorney-General's Department funded Lawyer-Assisted Property Mediation Trial, to be conducted by state and territory Legal Aid Commissions; and the Small Claims Property Pilot currently underway in the Federal Circuit Court. The trial and pilot aim to test simplified and quicker processes to resolve property/financial matters involving net property pools of up to \$500,000. The evaluations of both, which are being conducted by AIFS, are due for completion in April 2022.

5. Family law support services and family dispute resolution (FDR)

Terms of Reference

(e) the effectiveness of the delivery of family law support services and family dispute resolution processes

AIFS research, including the ESPS study (Kaspiew et al., 2015b), a component of the Evaluation of the 2012 Family Violence Amendments, demonstrated that most separating parents (81%)³ do not access formal services when resolving their post-separation arrangements (ibid., Table 4.8). As noted above, only 3% of participating parents reported using courts as their main pathway to resolving their parenting matters, while 6% reported using lawyers and 10% reported using FDR. Informal support from family

³ Who were surveyed on average 15 months after separation.



was the most common source of support reported (*ibid.*, Table 4.1; 64–65%). The data indicate that participants not accessing services had lower socio-economic status than those accessing services (*ibid.*).

Of the parents who made contact with counselling and FDR services at the time of separation (*ibid.*, Table 4.2, p. 64):

- two-thirds had reported physical hurt before/during separation in the SRSP survey
- nearly 60% reported experiences of emotional abuse alone before/during separation
- just over one-third of separated parents had not reported such experiences.

Despite various challenging issues including mental health or substance misuse before separation, separated parents who used FDR were typically able to reach an agreement. The data from the 2014 sample from ESPS (Kaspiew et al., 2015b) showed that around one-half of separated parents who used FDR were able to reach parenting arrangements. The data from this study and the LSSF study (Qu et al., 2014) also suggest that the practice of FDR in parenting matters appears to have become more effective, with reports of the use of FDR without achieving any clear outcomes (e.g. neither an agreement nor a certificate) having declined (Qu, 2019).

In relation to the use of FDR specifically, data from the ESPS indicates that:

- close to four in 10 separated parents attempted FDR for their children's parenting arrangements after separation (Kaspiew et al., 2015b, SRSP 2014)
- two-thirds of participating parents who attempted FDR reported that they accessed FDR at a Family Relationship Centre (Kaspiew et al., 2015b, SRSP 2014)
- parents who resolved their parenting arrangements via counselling, mediation or FDR gave more favourable assessments of the process and its outcomes than those who reached parenting arrangements through lawyers or the courts (Kaspiew et al., 2009; Qu et al., 2014)
- among parents resolving their parenting arrangements using formal pathways, the concentration of complex issues for was lower for parents using FDR than those using lawyers and courts, though it was still significant (Kaspiew et al., 2015b, Table 2.2; Qu, 2019; Kaspiew et al., 2015b).

The DFVP study (Kaspiew et al., 2017) also gives relevant insights. The qualitative component of that study involved in-depth interviews with women who had past or current experiences of family violence and had used services and agencies in the domestic violence, child protection and family law sectors. With few exceptions, the participants expressed negative views of their experiences with the family law system (*ibid.*). Most participants considered that their experiences of family violence were not accorded due weight by family law system professionals. Further, limited or superficial engagement with children also meant that the needs of their children (and any experiences of trauma) were not adequately recognised and responded to by service providers.

Previous research and analysis, including Kaspiew et al. (2009), the ALRC and NSW Law Reform Commission report (2010) and Bagshaw et al. (2010), raised concerns about the effectiveness of screening and assessment practices in the FDR context. However, more recent data from Kaspiew et al. (2015a) suggests there have been improvements in these practices, with over one-third of lawyers indicating that in their experience, the 2012 family violence reforms had led to an improvement in screening by FDR practitioners (*ibid.*, Figure 4.1).

While there were still indications that FDR was proceeding for some families for whom it was inappropriate, in matters involving family violence the data suggest that improved screening tools and training have led to improvements in the delivery of FDR by Family Support Program-funded providers (Productivity Commission, 2014, pp. 857–59).



In summary, while most separated parents resolve their parenting (and to a lesser extent property) matters between themselves with limited use of services, FDR has become the most commonly used formal mechanism for the resolution of parenting arrangements. The evidence indicates that, since the 2006 reforms, FDR has become an increasingly effective mechanism for resolving parenting arrangements. Of the three formal pathways (FDR, lawyers and courts), FDR elicits the most positive evaluations from parents, although among separated parents, views of the family law system in general are not particularly positive, especially where family violence and safety concerns are concerned.

AIFS' research suggests the need for a system that is trauma-informed, child-inclusive and holistic, and that facilitates access to support services and dispute resolution options that secure the safety and best interests of children as well as the safety of their parents.

6. Family law impacts on children and families

Terms of Reference

(f) the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings

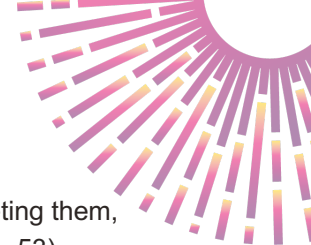
AIFS' research highlights a need for greater focus, in processes for making parenting arrangements and parenting arrangements, on child-centred and child-inclusive approaches that prioritise children's safety. It also indicates that self-represented litigants face particular challenges related to completing forms, understanding the law and legal processes, and participating in proceedings.

6.1. Children and young people

Research with children and young people, including AIFS' Children and Young People in Separated Families Study (CYPSPF; Carson et al., 2018) and the Independent Children's Lawyer Study (ICL; Kaspiew et al., 2014), highlights the need to accommodate a greater focus on child-centred and child-inclusive approaches so that the system facilitates safe post-separation decision-making.

Most children and young people who reported engaging with family law system professionals reported feeling negatively about the court process and dissatisfied with both their level of input into, and awareness of, the decision-making process and final parenting arrangements (Carson et al., 2018). More than three-quarters of participating children and young people indicated that they wanted their parents to listen to their perspectives (ibid. p. 29), and around two-thirds indicated that they wanted family law system professionals to listen more effectively to their views and experiences (ibid., p. 50).

While some study participants described their engagement with family law system professionals as facilitating their participation in decision-making, the responses of a substantial proportion indicated a lack of consultation by family law professionals. The data suggests that the approaches adopted by the service professionals limited these children and young people's practical impact and effectively marginalised their involvement in decision-making (ibid., p. 92). Children and young people participating in the earlier ICL study (2014) reported similar reflections. In both studies, children and young people were more likely to feel excluded from parenting arrangements made pursuant to family law proceedings if they were not afforded the opportunity to speak or meet with the legal professionals and court personnel involved in their cases.



Most participants who could recall accessing an independent children's lawyer reported meeting them, but half reported that the lawyer did not acknowledge their views (Carson et al., 2018, pp. 51–53).

While participating children and young people were more likely to recall engaging with family consultants/family report writers, half of those who could recall doing so indicated that their views were not acknowledged (ibid., pp. 53–57).

Only a small proportion of participants whose families accessed FDR could recall doing so, and one-quarter of these participants reported meeting the FDR practitioner or mediator, however each of these participants reported that their views had been acknowledged (ibid., p. 45).

Importantly a number of participants reported feeling distressed about a perceived lack of action on the part of family law system professionals in response to their concerns, particularly when they had raised safety concerns (ibid., pp. 59–61).

Children and young people said there was a lack of information provided to them about the nature and length of proceedings, when or how they would be able to share their views, and about potential and finalised outcomes (ibid., p. 95). For example, one young person explained that while he was aware of his parents' family law proceedings, he was of the understanding that the proceedings did not relate to him and was surprised when his father informed him that he was required to comply with the living arrangements made pursuant to this process (ibid., p. 64). Some participating children and young people in these circumstances described feeling as though they had been 'kept in the dark' about parenting arrangements made for them (ibid., p. 31).

To address these concerns, there is a need for improved communication with children and young people and for measures that will respond appropriately to their views and experiences. Children and young people should be afforded more meaningful opportunities to participate in the family law system. They should be supported through the process by a multi-disciplinary, child-centred, child-inclusive approach. The further development of these measures should be informed by specific research into what works.

Children and young people's reports of inconsistent levels of engagement with family law system professionals also suggest a need for standardised approaches to providing opportunities for participation, with a proper consideration of the child or young person's circumstances and needs.

6.2. Self-represented litigants

Self-represented litigants face a number of challenges in engaging with the family law system. Substantial proportions of self-represented litigants were identified in both the pre- and post-reform samples in Kaspiew et al. (2015c). Approximately one-fifth of applicants in the Court Outcomes Project – Court Files Study had no legal representation (Kaspiew et al., 2015c, Table 3.2). Despite the disparity in reported income, fathers were more likely to be self-represented than mothers, with more mothers than fathers having a private solicitor and publicly funded legal representation (ibid., Table 3.2. See also DCFL; Carson et al, 2018).

The DFVP study (Kaspiew et al., 2017) and the Direct Cross-examination in Family Law study (DCFL; Carson et al., 2018) provide insight into the challenges that, if addressed, may improve accessibility and support for people without legal representation to resolve their family law issues. These challenges include: correctly and adequately completing court forms; preparing affidavit material; and gathering, presenting and testing evidence (Kaspiew et al., 2015a, pp. 70, 73). Data collected from audio recordings of proceedings in the DCFL study identified that a substantial proportion of self-represented litigants experienced difficulties complying with the rules of cross-examination (Carson et al., 2018). A substantial proportion of judicial officers were engaged in varying levels of intervention to



prohibit or rephrase questions or to assume the role of posing questions during cross-examination (ibid., pp. 45–49, pp. 57–59). The data also illustrated that the challenges associated with conducting direct cross-examination or being directly cross-examined were compounded in circumstances characterised by family violence.

Despite Division 12A of the FLA providing for a less adversarial approach to apply in child-related proceedings, according procedural fairness in the conduct of litigation in the context of family violence gives rise to the risk of legal processes to be misused in order to perpetuate abuse. This risk is amplified for unrepresented parties who may agree to unsafe consent orders to avoid litigation.

6.3. Families characterised by family violence and safety concerns

The prevalence of matters involving allegations of family violence or safety concerns in family law proceedings highlights the need for awareness and understanding of issues for, and needs of, these families. Parties need to feel safe when participating in the court process, particularly in circumstances where they may come into contact with an alleged or substantiated perpetrator of family violence.

The findings of the DFVP study (Kaspiew et al., 2017) and the DCFL study (Carson et al., 2018) underline that judicial officers and court personnel engaged in family law matters must have the requisite skills, experience and specialist expertise to identify and accommodate the complex needs of families and to engage in safe and appropriate decision-making.

As noted above, data from the DFVP study provides particular insight into tensions emerging between procedural fairness and the protection of parties from harm (Kaspiew et al., 2017).

More than half of DFVP study participants (58%) reported experiences suggestive of post-separation systems abuse by their ex-partner. This involved the use of administrative and legal systems or services and other agencies (including family law services) to further perpetuate abuse (ibid., pp. 9, 11). Examples of the range of tactics used by perpetrators included: repeated litigation and mediation; cross-examination about rape and sexual practices during proceedings; disruption of family law proceedings; repeated breaches of personal protection orders; non-compliance with family law orders; and protracted family law proceedings intended to exhaust personal and financial resources (ibid., pp. 9, 147–57).

A number of the participants said they felt that family relationship services or the court system seemed unable to prevent these experiences. Some participants identified procedural steps such as providing addresses on court documents as having the potential to compromise a party's safety. And several participants described how the nature of the legal process itself may be traumatising due to the stress of having to repeat their stories and to come face-to-face with a perpetrator during court processes (ibid., pp. 177–78).

These findings suggest the need for a more comprehensive analysis of systems abuse as a form of family violence, and greater awareness of how services, systems and processes can be misused by perpetrators of family violence to perpetuate dynamics of abuse and control.

Additionally, close to one-fifth of the participants in the qualitative DFVP sample (ibid., pp. 11–12) described challenges in accessing counselling for their children during their engagement with the family law system due to:

- conditions prohibiting them from taking children to counselling in court orders
- fathers vetoing counselling



- following advice not to engage in counselling to avoid creating the wrong impression before the court
- not engaging in counselling to avoid therapeutic records being subpoenaed.

Participants in the qualitative component of the DFVP study made a number of suggestions as to how the family law system could better support victims of family violence, and these included parties and children being able to access therapeutic support without being concerned about records being subpoenaed (Kaspiew et al., 2017).

These findings may also be considered in the context of findings from the ESPS component of the Evaluation of the 2012 Family Violence Amendments (Kaspiew et al., 2015b), where a substantial proportion of participating parents reported negative attitudes towards the efficacy of the family law system and its ability to protect the safety of children and address issues of family violence. Forty-four per cent of parents with safety concerns for themselves and their child disagreed that the family law system protects the safety of children, while 34% of those who had concerns for the child alone disagreed (ibid., Figure 6.10). Minorities of parents who reported physical hurt (35%) and emotional abuse (32%) agreed with the proposition that the family law system addresses family violence (ibid., p. 117).

AIFS' data again highlights the need for a system that is trauma-informed and child-inclusive, that facilitates access to effective support services and dispute resolution options, and which is delivered by family law professionals with the requisite skills and expertise to secure the safety and best interests of children and parents.

7. Grandparent carers

Terms of Reference

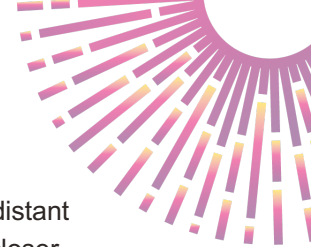
(g) any issues arising for grandparent carers in family law matters and family law court proceedings

The dynamics of post-separation relationships between grandparents, grandchildren and parents of grandchildren can be complex. The 2006 family law reforms recognised the right of the child to spend time with people who play a significant role in their care, welfare and development, such as grandparents and relatives (s 60(B)(2)(b)). However, AIFS research has found that some grandparents are still feeling the need to engage the legal system in order to spend time with their grandchildren after parental separation.

Insights into this issue are available from AIFS' 2009 Grandparents in Separated Families Study (GSFS; Qu et al., 2011) which involved surveys and focus groups and formed part of the Evaluation of the 2006 Family Law Reforms. Around 40% of grandparents interviewed for the GSFS indicated some awareness of 2006 reforms. Nevertheless, some grandparents who participated in focus groups reported they had to access the legal system in order to spend time with their grandchildren.

The Court Outcomes Project (Kaspiew et al., 2015d) of the Evaluation of the 2012 Family Violence Amendments indicates maternal and paternal grandparents accounted for a total of 2% of applications in the post-reform court file sample.

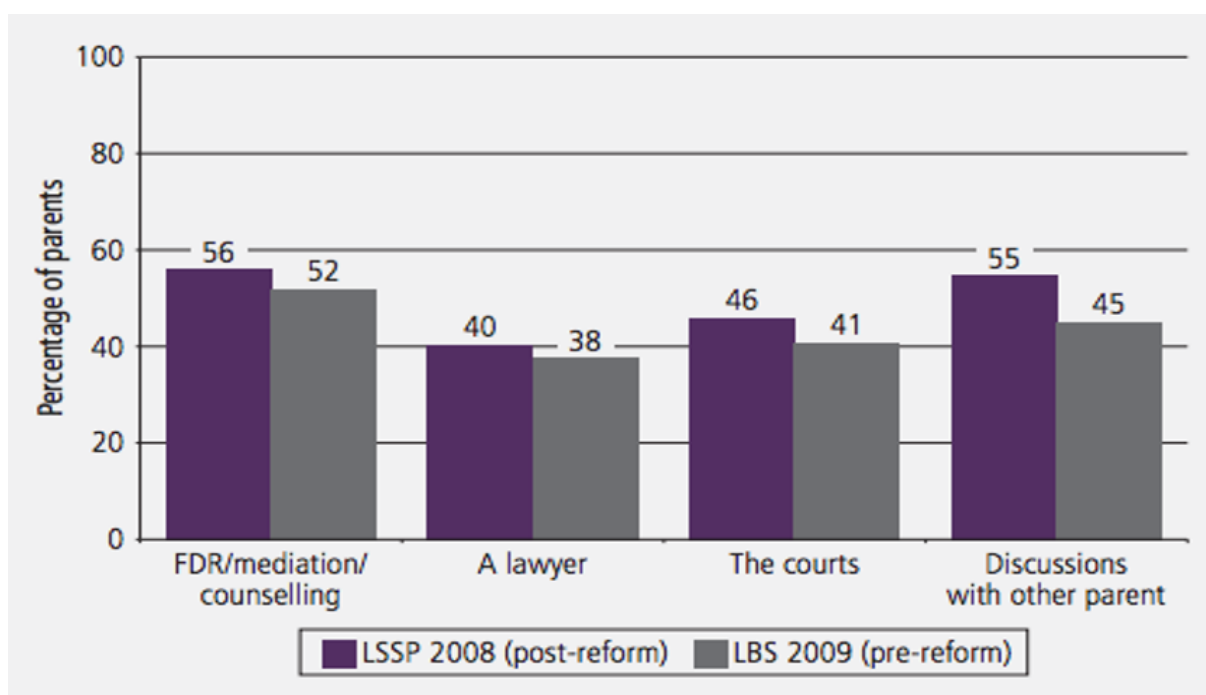
Analysis of data from the General Population of Parents Survey (GPPS; Weston & Qu, 2009), conducted in 2009, revealed that non-resident fathers were more likely than resident fathers and



mothers to report that the relationship between their own parents and children had become distant because of separation. Most parents (66%) who believed that the relationship had become closer since separation also believed that the change had beneficial effects on the children. The study identified a widely held view that it is important to maintain relationships with grandparents. Nine in ten fathers and mothers in the GPPS agreed that it is important for children to maintain the same level of contact with grandparents on both sides after parental separation.

In Wave 1 of the LSSF study (2008; Qu et al., 2011), around half of fathers and mothers indicated that time with grandparents had been taken into account when sorting out parenting arrangements (see also Weston & Qu, 2009). This had improved since the pre-reform period. This finding was least pronounced when lawyers were chosen as the main pathway for resolving parenting matters (see Figure 1).

Figure 1: Parents indicating that time spent with grandparents was taken into account when deciding parenting arrangements for focus child, by main pathways, parent reports



Source: Grandparenting and the 2006 family law reforms Qu et al., 2011, Figure 2.

The significant role of grandparents as carers is also highlighted in AIFS' Working Together to Care for Kids study (Qu et al., 2018), which identified that:

- among relative/kinship carers, a majority (66%) were grandparents to the child in their care. Nearly one-fifth of relative/kinship carers were aged 65 years or older
- grandparents were more likely than other relative/kinship carers to report being approached by a department or agency to be a carer of the child (56% vs 46%)
- only grandparents reported that the study child was in their care as a result of a court order (this was reported by no other relative/kinship carers).

These data show that while there is a widely held view that the maintenance of children's relationships with grandparents is important, and grandparents often assume a main caring role when parents are unable to, some grandparents still engaged the legal system in order to spend time with their grandchildren after parental separation.



8. Improving performance of family law system professionals

Terms of Reference

(h) any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners.

AIFS' data shows that there is a need to build the capacity of family law system professionals to identify, assess and respond to family violence and child safety concerns.

In the RFV study component (Kaspiew et al., 2015a) of the Evaluation of the 2012 Family Violence Amendments, concerns were raised by professionals about the family law system's capacity to screen for risk and respond to family violence and child abuse. Almost half of participating professionals did not agree that the legal system had the capacity to screen adequately for family violence and child abuse, or to deal adequately with these cases (ibid., Table 4.1 and 6.1).

Comparison of data from the evaluation of the 2006 family law reforms and the evaluation of the 2012 family violence amendments identified:

- improvements in perceptions of the legal system's capacity to screen adequately for family violence and child abuse and to deal adequately with these cases (ibid., Table 4.2; Table 6.2)
- improvements in professionals' perceptions of screening and assessment capacities, particularly professionals' self-assessments of their own capacity to identify and assess family violence and child abuse.

However, in the qualitative component of the RFV study, judicial and legal participants raised concerns about ongoing resource limitations impacting on the ability of family law professionals to effectively screen for and/or address family violence issues. Family law professionals more generally expressed a desire for improved training and professional development to facilitate screening, assessment and responses for families characterised by these issues (ibid., pp. 79–84, 123–27).

Findings from the ESPS component of the 2012 evaluation (Kaspiew et al., 2015b) have also identified the need for family law professionals to improve how they screen for, assess and respond to disclosures of family violence and safety concerns. While there was a greater emphasis after the 2012 amendments on identifying concerns about family violence and child abuse, close to three in 10 parents reported never being asked about either of these issues when using FDR/mediation, lawyers or courts (ibid., Table 5.4). Further, in both the 2012 and 2014 surveys in the Experiences of Separated Parents Study, approximately half of participants reported that disclosures of family violence and/or safety concerns were taken seriously and dealt with appropriately (ibid., Table 5.11).

As noted above, participants in the DFVP study (Kaspiew et al., 2017) also expressed negative views about their engagement with the family law system and its response to family violence. Most participants described experiences with family law professionals across the system who lacked sufficient expertise in family violence and did not place sufficient weight on their clients' experiences and the impact of trauma.



In relation to children and young people, our research identifies a need for family law professionals to develop skills to engage appropriately and effectively with children and young people. Participants in the CYPSP study (Carson et al., 2018) reflected on the need for safe and effective ways for children and young people to participate in decisions that affecting them. They identified the behaviours and characteristics that children and young people valued in their interactions with family law system professionals. In particular, participants identified the following (*ibid.*, p. 86):

- effective listening to children and young people; providing them with a space to speak
- acting protectively; addressing and responding to children and young people's safety concerns
- building a relationship of trust through qualities such as patience, empathy and respect
- providing information; keeping children and young people informed about issues affecting them.

These data also indicate that a need for further training and development of skills and mechanisms to facilitate safe and effective participation. There is a need for:

- improved communication with children and young people, and consideration of measures that respond appropriately to their views and concerns
- giving children and young people better opportunities to participate in the family law system
- conducting more specific research to identify opportunities in practice for listening to and communicating the views of children and young people in separated families
- developing a multi-disciplinary, child-centred, child-inclusive approach.

9. Family law and child support systems: Interactions

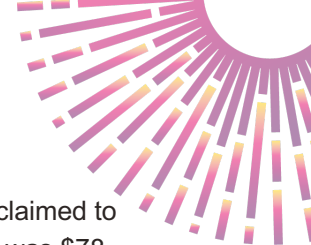
Terms of Reference

(i) any improvements to the interaction between the family law system and the child support system.

AIFS' research shows that most child support payments were made in full and on time, however payee parents who reported experiencing family violence reported lower levels of compliance. Father payers were also considerably more likely than mother payees to report that payments were made in full and on time. Most parents reported that their child support amount was very or somewhat fair, with father payers the most likely of all groups to report this.

The AIFS' Family Pathways Suite provides some insight into the interaction between the family law and child support systems. The LSSF (Qu et al., 2014) and ESPS (Kaspiew et al., 2015b) studies examined parents' child support experiences and family law system experiences. Most parents participating in the LSSF and ESPS studies reported the existence of a child support requirement, with the majority of fathers being liable to pay some amount of child support and the majority of mothers being assessed to receive child support (Kaspiew et al., 2015b, p. 180).

The LSSF and ESPS data show that payments were most often made in full and on time (full compliance). However, the LSSF data indicate that payees were less likely than payers to report full compliance. Additionally, fewer parents reported full compliance in Waves 2 and 3 (2009 and 2012) than in Wave 1 (2008). The use of Child Support Collect rather private collect increased progressively across the survey waves (Qu et al., 2014, p. 123). In Wave 3 of the LSSF, the total average that father



payers claimed to be paying was \$131 per week, whereas the total average mother payees claimed to be receiving was \$111 per week. The total average that mother payers claimed to be paying was \$78 whereas the total average father payees claimed to be receiving was \$61 per week (Qu et al., 2014, p. 120).

Data from the LSSF and ESPS indicate that payee parents who reported experiencing family violence either before, during or since separation reported lower proportions of full compliance with the child support assessment by payer parents (Kaspiew et al., 2015b, p. 182). While payment compliance reported by payers participating in the LSSF generally did not vary according to whether they had experienced violence or abuse, mother and father payees who experienced violence or abuse were less likely to report receiving their child support in full and on time (Qu et al., 2014, pp. 127–28).

Across all care-time arrangements, father payers participating in the LSSF were considerably more likely than mother payees to report that payments were made in full and on time. While the proportion of fathers reporting full compliance varied little according to their care-time arrangements with their children, the reports of mother payees suggest that fathers who never saw their children were considerably less likely than other fathers to fully comply with their liability (ibid., pp. 125–27).

Interestingly, variations were identified in the pre- and post-reform ESPS with regard to parents' engagement with, and experience of, the Department of Human Services (DHS) Child Support Program, and this may reflect DHS initiatives implemented in the post-reform period. While most participants reported using the direct transfer between parents as the method to transfer child support payments, there was a small but statistically significant increase in fathers using the DHS Child Support transfer method.

Of particular relevance to this Term of Reference, descriptions of the fairness of payments by reference to the parenting arrangements in place indicate:

- most parents in the LSSF⁴ and in the ESPS (Kaspiew et al., 2015b, p. 182) reported that their child support amount was very fair or somewhat fair
- father payers were the most likely of all groups, in all LSSF survey waves, to report that the current amount of child support was somewhat or very fair for them.

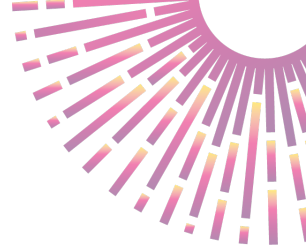
The proportion of payers that provided favourable evaluations of fairness decreased with each LSSF survey wave, in both the LSSF (Qu et al., 2014, p. 129) and the ESPS surveys (Kaspiew et al., 2015b, p. 182).

Additional insight from the LSSF (Qu et al., 2014, pp. 130–33) into the perspectives of parents with regard to their child support liability indicate that:

- a substantial minority of father payers and mother payees indicated that there was resentment with respect to paying either because the payer had no say in how the child support was spent or because of the amount of time that the payer spent with the child
- just under half of father and mother payees reported that they believed that their former partners would prefer not to pay child support in order to make their life difficult. The data also revealed a propensity to hold this view correlating with the quality with the post-separation relationship.

Nevertheless, there was substantial agreement from payers with respect to the affordability of payments, although nearly half of father payers and nearly one-third of mother payers reported that the amount that they were paying was more than their children needed (with a similar proportion of payees indicating that they believed that their former partner held this view) (see Qu et al., 2014, p. 132, Figure 7.11 and Figure 7.12).

⁴ With one exception: mother payers in Wave 3 (Qu et al., 2014, p. 129).



10. Pre-nuptial agreements

Terms of Reference

(j) the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes

AIFS does not have empirical research on this issue and is therefore unable to make a submission in relation to it.



Part C. Summary

This submission has presented findings from the AIFS research program, including extensive evaluations commissioned by the AGD for the major reforms to the FLA of 2006 and 2012. It finds:

- The systems and services with which separated families interact are fragmented. However, since the 2012 family violence amendments to the FLA there has been an increase in the information on family law court files about state and territory based personal protection orders⁵, and in evidence from state and territory child protection services. This indicates that more information state and territory based personal protection orders, as well as evidence about engagement with state and territory child protection services is being reported to the courts since the amendments.
- There is a weak link between legislative provisions for costs orders to be made for false statements in family law proceedings and either discouraging false claims or true statements. AIFS data shows that under-disclosure of family violence and child safety concerns is a primary concern. It does not show that provision for cost orders will improve the situation.
- There is a need for improved risk assessment and management in formal pathways. Family law professionals must receive appropriate training and have expertise and experience in issues of family violence and child safety. The research shows that separating families who use formal family law services as their main pathway have high concentrations of complex issues such as family violence, safety concerns, and mental ill-health. It shows that family law professionals require additional capacity to help them identify, assess and respond to these concerns.
- There is a need for low-cost family law services to help separating parents with low to moderate levels of assets to resolve their disputes so that their modest asset pools are not absorbed by legal costs.
- Parents' views of the family law system in general are not particularly positive, especially where family violence and safety concerns are relevant. Of the three formal pathways for making parenting arrangements, FDR elicits the most positive evaluations from parents. Since the 2006 reforms it has become an increasingly effective mechanism for resolving post-separation parenting arrangements.
- The system needs a greater focus on child-centred and child inclusive decision-making approaches, and to address children and young people's expressed safety concerns.
- The system needs to address the challenges experienced by self-represented litigants and families characterised by family violence and safety concerns, so that it facilitates safe post-separation decision-making.
- While there is a widely held view that it is important for children's relationships with grandparents to be maintained, and some grandparents assume a main caring role when parents are unable to, some grandparents still need to engage the legal system in order to spend time with their grandchildren.
- Child support payments are most often made in full and on time, and most parents report that their the child support amount is fair – with father payers the most likely of all groups to report their child support amount to be very fair or somewhat fair.

⁵ Though in most cases involving family violence, separated parents do not obtain personal protection orders from state/territory magistrates courts.



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