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# Family Violence

## Parents' and Children's Experiences Before and After the 2006 Reforms

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### Introduction

The Family Law Amendment (Shared Parental Responsibility Act 2006 (Cth) (SPRA) implemented a number of significant changes to the Family Law Act 1975 (Cth) (FLA) and consequently to the Australian family law services system.<sup>1</sup> These changes were heralded as representing a “generational change” and “cultural shift” in family law, in particular to post-separation parenting arrangements.<sup>2</sup> In the reformed FLA, the best interests of the child remains the paramount consideration (ss60CA), but a range of provisions have been introduced which emphasise the need for both parents to be involved in their children's lives post separation (see for example ss61DA, 60B(1)(a) and 60CC(2)(a)). Simultaneously, greater emphasis has been placed on the need to protect children from all forms of harm (see for example ss60B(1)(b), 60CC(2)(b)).

In accordance with a general trend towards non-adversarial dispute resolution, the legislation encourages a co-operative approach to post-separation parenting arrangements. To this end, the federal government established a national network of Family Relationship Centres and expanded other existing family law socio-legal services. The legislation mandates that, subject to certain exceptions including instances of family violence and child abuse, parents should attend family dispute resolution and attempt to reach their own agreement on post-separation parenting arrangements without the necessity for a court order (s60I).

The 2006 legislation introduced what some might see as a stronger approach to family violence.

For example, the legislation contains definitions of family violence and child abuse that are designed to assist the court when issues of abuse and violence arise (s4). In addition, the legislation contains specific safeguards for adult and child victims of violence where there are reasonable grounds to believe that the child's parents or another person in the parents' household has engaged in child abuse or family violence.<sup>3</sup> However, questions have been raised about the efficacy of the protection for victims of family violence offered by the legislation, and about the capacity of the new services to protect victims of violence and abuse.<sup>4</sup>

With the change in government subsequent to the introduction of the legislation, the Commonwealth Attorney-General expanded the broad evaluation of the impact of legislation which has been undertaken by the Australian Institute of Family Studies<sup>5</sup> and authorised five further investigations of particular aspects of the legislation, with four of these relating to family violence, namely the Family Law Council inquiry,<sup>6</sup> the Chisholm inquiry,<sup>7</sup> the Australian and New South Wales Law Reform Commissions inquiry and the Family Law and Family Violence inquiry.<sup>8</sup> All except one of these enquiries, that of the Australian and New South Wales Law Reform Commissions, has been completed and this article presents selected findings of the *Bagshaw and Brown et al, Family Law and Family Violence in Australia: The Experiences and Views of Children and Adults from Families who separated post 1995 and post 2006* report.<sup>9</sup>

The aim of this study was to examine the impact of family violence which had occurred before, during and/or after parental relationship breakdown, on post-separation decision-making and arrangements as viewed by children and parents. More specifically, the brief was to discover parents' and children's perspectives on the effect that a history of or existence of violence within the relationship has on:

- 1 The decisions people make about accessing the courts and dispute resolution services.
- 2 The decisions people make while they are at court and at dispute resolution services.
- 3 Post-separation parenting arrangements.

Since the brief included consideration of the impact of the SPRA, the research sought views from parents and children from 1995 to the present time to make a comparison between the period prior to the introduction of the 2006 reforms and the period afterwards.

## Research design

The research design included a number of different data collection strategies aimed at gathering information first hand from parents and children who had experienced parental relationship breakdown, with and without family violence. "Family violence" was defined as domestic violence and or child abuse. The term "domestic violence" was defined to cover physical, sexual, psychological, financial and social abuse and control, and "child abuse" to cover physical, sexual and psychological abuse and neglect. The data collection strategies comprised:

- 1 A national online survey for parents;
- 2 A national online survey for children;
- 3 Two phone-ins for adult and child victims of family violence, one run from South Australia and one from Queensland; and
- 4 A call-back to a small sample of the online adult respondents who volunteered to be contacted.

Children's input and participation in family law disputes is increasingly regarded as important.<sup>10</sup> Since the introduction of the Family Law Reform Act 1995 (Cth) and the SPRA there has been growing pressure on all socio-legal professionals to involve children in family law matters that affect them, yet children's views are often not sought by researchers or socio-legal professionals. A small number of studies have published findings of interviews with children regarding their parents' separation and divorce and reported that the children did have definite views about their "best interests", in particular when they were exposed to domestic violence or child abuse,<sup>11</sup> and that they wished to express these views.<sup>12</sup> As the current research focused explicitly on children's welfare it was decided that, with appropriate protections, it was important to include the voices of children in the study.

## Respondents

Some 1136 respondents, 90% adults and 10% children, replied to the survey and phone-ins, and the consistency of their responses suggested the strong reliability of the data. Some 82% of the women and some 56% of men reported that family violence was an issue in their partnership, either during the relationship or after separation. Given the focus on family violence and the empirical research showing that victims of family violence are more likely to be female partners and their children,<sup>13</sup> it

was not surprising that three times more adult females responded to the survey than adult males. However, given that there is a small proportion of men who are the victims of family violence,<sup>14</sup> the study was fortunate in attracting a large number of male respondents who were prepared to discuss their experiences. Despite the considerable consistency of views and experiences among all respondents, differences were noted in the way that women and men understood, described, and were affected by and perpetrated family violence.

## General findings

This study identified five distinct groups of adult respondents: those who did not use services of any kind subsequent to separation (7.4%); those who made arrangements themselves without professional support or intervention (10.1%); those who used services after 1995 but not after 2006 (23.5%); those who used services only after 2006 (29.4%); and those whose problems took them to services after 1995 and who were still using services after 2006, sometimes up to the present time (29.6%).

Respondents believed a history and/or existence of family violence affected decisions they made:

- about accessing the courts and dispute resolution services;
- when they were at courts and dispute resolution services; and
- about their post-separation parenting arrangements.

Respondents reported that the impact of family violence on decision-making was often unexpected, unsatisfactory and endless. Parents encountered what they felt was disbelief or disregard when they reported family violence to services. As a result, both women and men felt that the family law socio-legal services system was not designed to deal with problems of family violence. In particular, respondents reported that services did not offer sufficient or relevant intervention procedures. Data indicated that these experiences of frustration on the part of respondents may be attributable to the difficulties experienced in accessing services and/or to a lack of understanding of the family law system.<sup>15</sup> Respondents' frustration may also have resulted from a continuing fragmentation of family law services, whereby they did not see themselves as part of any system, tended not to link up formally with any other services and hence, did not always operate coherently.<sup>16</sup>

## The family violence reported

The findings supported the idea that separation can be a long process that begins before the actual physical separation occurs. Among the 82% of women who reported domestic violence and/or child abuse during their former partnership, the majority said that the violence was the prime reason for their separation. However among the 56% of men who reported violence, the majority saw it as the third most important reason for separation.

The respondents tended to describe family violence and child abuse as coexisting or as indistinguishable from each other because the perpetrator inflicted violence:

- on their partner in front of the children; or
- on the children in similar ways to that inflicted on the adult victim; or
- on both adult and child victims at the same time.

The abuse reported in this context was serious, not accidental and exceeding neglect. For example, the reports included head injuries and deliberate sedative overdoses requiring hospitalisation of pre-school children, and confirmed sexual abuse. Both

women and men found reporting child abuse after separation difficult because it was hard to provide evidence. Many reported that they were not believed by professionals in the family law context, even when they could substantiate the abuse.<sup>17</sup> For instance, there did not appear to be any definitions or guidelines as to what constitutes "reasonable grounds" to believe there has been family violence or child abuse; and for many parents in our study, and in others, it was not clear what evidence is required to substantiate family violence.<sup>18</sup> Non-physical forms of violence, including threats of physical violence, were harder to prove than physical forms and appeared to be more prevalent. Parents in this study found that, even when evidence of physical and sexual abuse or neglect had been provided, their children were still being sent into unsafe situations. A consistent finding was that women reported receiving advice from legal practitioners to withhold information about family violence and concerns for their children's safety because this would not be looked on favourably by the courts.<sup>19</sup> The advice was often based on the belief that such information would be likely to be considered by the court vexatious and make relevant

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s60CC(3)(c) of the FLA – the “friendly parent” provision. In line with the findings of Chisholm,<sup>20</sup> the data suggests that the friendly parent provision deterred victims in our study from disclosing family violence and or child abuse.

The violence inflicted on women victims by male perpetrators was reported to occur during their relationship, and during and after separation. It included physical, sexual, emotional, psychological and verbal violence and social (isolating the victim), financial and oppressive control of many aspects of their lives. While men reported the same forms of violence, there were differences. Men reported less frequent violence, less physical and sexual violence and less severe harm. Men saw themselves as the victims of women’s emotional, psychological and verbal abuse. Some men interpreted their partners’ failure to function in a gendered stereotypic family role as being abusive to them in a way that women did not. Men also perceived responses from services as being abusive, whereas women did not. Each gender had different ways of understanding and defining violence, and attributed different causes to their former partner’s violence.

When partners separated, most adults and children reported that violence initially escalated. For some, the violence reduced over time; but for others it continued. Women reported “changeover” times as providing opportunities for further violence towards them including physical, sexual, psychological and emotional violence. At other times they experienced other forms of violence including stalking, harassment and threats to their own and their children’s safety. Many women reported being afraid of the perpetrator because of the ongoing threats and occurrences of violence, and because of the absence of protection for children when alone with a parent with a history of violence. Men did not report continuing violence after separation to the same extent, nor did they report fear of their ex-partner, fears for their children’s safety or feelings of powerlessness in the same way as women. Rather, after separation, men were more concerned about obstructions to access to their children and false allegations of family violence, and saw these as expressions of violence. They expressed frustration, and sometimes hopelessness, rather than fear.

The majority of children reported that experiences of family violence reduced for them after their parents separated, especially if the violence came from only one parent. However, 39% of children in the children’s survey said they did not

feel safe with their father after separation, and 10% said they did not feel safe with their mother. Furthermore, they reported feelings of hopelessness and powerlessness. They resented the lack of opportunity to express their views about their parents’ separation and post-separation parenting decisions, particularly about the arrangements made for their care.<sup>21</sup> For this group of children, decisions had been made mostly by courts.

### **Effect of history or existence of violence within the relationship on decisions about accessing the courts and dispute resolution services**

Comments made by respondents in the surveys, follow-up phone calls and phone-ins revealed that separating couples were unprepared for the difficulties encountered in using the services of the family law socio-legal system. As a result, they became increasingly frustrated and disillusioned. Many women (65%) had left the partnership because of family violence, hoping that by leaving they would gain protection for themselves and their children. They reported that their family violence allegations were not investigated fully and were often interpreted by service-providers as being false and/or tactical, rather than as a social problem requiring a protective response.<sup>22</sup> Some men also reported that when it was alleged that they were violent, their denials were not investigated or believed.

Some survey respondents, mostly women, had decided not to use any services at all because of their fears for their own and their children’s safety post-separation. They wanted to hide from their former partner to avoid any action that would lead to further violence, including seeking income support. They avoided formal services, including education, counselling and support and, from their comments, it became clear that the possibility of further violence was influencing their actions. These respondents represented 3.5% of the total respondents to the online survey for adults. However, we suspect that this group might be larger in reality because of their need for anonymity.

The vast majority of respondents (82.5%) who used services after separation started by using services outside the family law socio-legal service system and their satisfaction with those services was higher than with those services within the family law socio-legal service system, both before and after

2006. Most (78%) went first to friends and family and many received support from them, particularly if they had a friend who had knowledge of the area. Their comments indicate that there is high value placed on ongoing support and advice from family and friends. Some 58% approached general medical practitioners, and through them accessed counselling and other support services. Men and women then took divergent service pathways, with women mainly going to Centrelink for financial support and family relationship services for counselling, and men mainly going to the Child Support Agency over payment for children.

Compared to other studies<sup>23</sup> there was a high number of survey respondents (74%), both men and women, who reported they went to private legal practitioners, and feedback on this service was mixed. Courts were used as a later step and the report shows that the usage of court services dropped by 18% after 2006, concurrent with increased patronage of the new network of Family Relationship Centres. Nevertheless, in this study some 50% of the survey respondents still progressed to court.

### Effect of history or existence of family violence within a relationship on decisions made while at courts or at dispute resolution services

After consulting friends and family, the group who used services moved early to use solicitors, but many were unhappy with their responses – they reported that many family lawyers did not believe their reports of family violence, or did not take appropriate action where they did. Only a minority of women (some 34%) and men (some 19%) felt that their reports of violence were believed. Respondents had not expected this, nor had they anticipated that that they might need to provide objective evidence of the violence. Many statements were made about solicitors' perceived lack of empathy, suggesting that there was a difference of views between solicitor and client as to the purpose of the legal advice. The most frequently occurring difficulties were with the way that solicitors' advice after 2006 began to interact negatively with the respondents' hopes of overcoming violence. Often solicitors advised them that unproven allegations of

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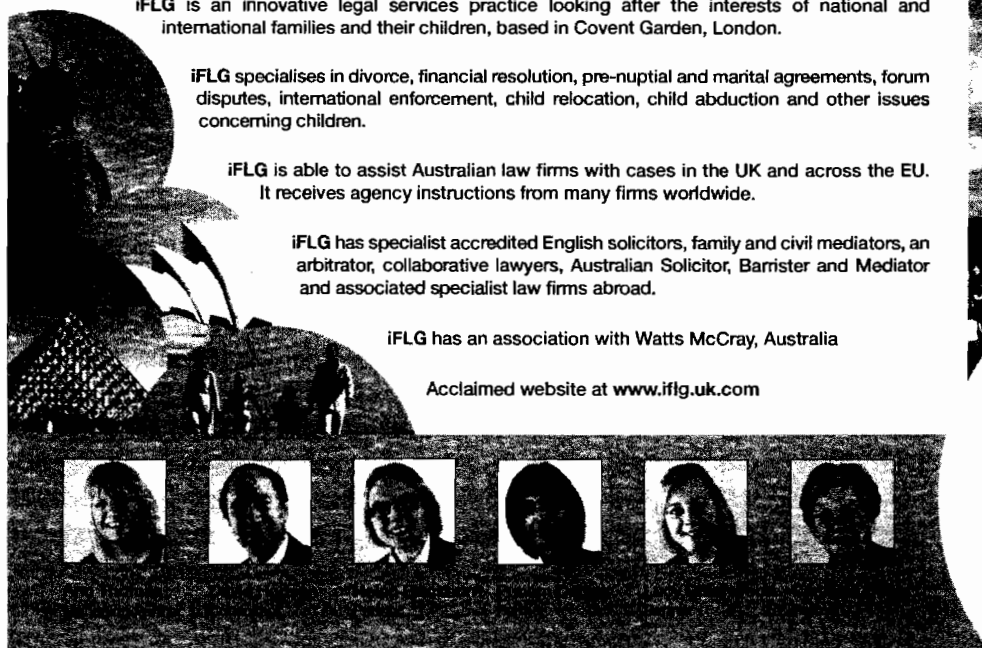


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violence may cause courts to regard them poorly; and that their request to limit contact with the perpetrator, or for supervised contact, might result in the children being ordered to live with the perpetrator. Chisholm has coined the phrase the "victim's dilemma" to describe this scenario.<sup>24</sup> Some parents reported that their solicitors advised them to consider "equal time with each parent" and "equal shared care" (although it was unclear whether respondents misunderstood the advice they were given by their solicitor under section 63DA(2) or whether the advice was incorrect). Chisholm encapsulated the general confusion regarding the law saying: "[M]any people continue to misunderstand the 2006 provisions as creating a right to equal time, or a presumption favouring equal time".<sup>25</sup> Solicitors also advised of penalties for false allegations of violence, and of policies seeking to steer people away from courts. As a result, courts were imagined as potentially coercive spaces where decisions might be imposed that might have dire consequences for parents and or their children.

The majority of adult respondents were dissatisfied with the services they used. Only 46% were satisfied with services assisting them with children's matters, 50% were satisfied with services assisting them with property and finance matters, and 48% with services assisting with family violence. These percentages are lower than the ratings for overall quality of post-separation family services made by clients in the AIFS report, which ranged from 68% to 84%.<sup>26</sup> Women were more satisfied than men, and both groups showed little change in their satisfaction/dissatisfaction from before and after the new legislation. Commonly they reported feeling fearful, coerced and upset that their concerns about their own safety, and the safety of their children, were being ignored or disregarded. The impact of family violence on the victims, women in particular, included high levels of fear, great anxiety, considerable anger, depression and mental illness that resulted from the violence. It is likely that these effects, if unrecognised by their solicitors, increased the dissonance between the respondents and their solicitors.

The majority of survey respondents who accessed services after the 2006 reforms, as well as some who had accessed services from 1995, used the new network of Family Relationship Centres. There too they felt that reports of family violence were not addressed appropriately, including in the educational programs preceding family dispute resolution (mediation). There were major criticisms

about the way family violence was addressed in family dispute resolution. Only 10% of the survey respondents who disclosed family violence were given a certificate exempting them from family dispute resolution. Some thought they should have been exempted before dispute resolution began, or during the process. Respondents were surprised that family dispute resolution practitioners (mediators) did not effectively counteract the power imbalances between the partners.

Some 40% of survey respondents with experiences of past or current family violence, and who used a Family Relationship Centre, did not disclose the violence. Of those, some were happy with the outcomes; but others who did not disclose the violence believed the centres should have detected it and proceeded differently. In summary, complaints about family dispute resolution practitioners included:

- their lack of understanding of the nature and effects of family violence; and
- their inability to counter the greater power of ex-partners who were violent.

Once in court, almost all respondents experienced some common problems. They felt their experiences of violence were disbelieved, ignored, minimised, or sometimes accepted but put to one side in the ultimate decision. Some complained that their solicitors did not present evidence of violence. Many complained about court-appointed experts (family consultants, mainly psychologists and psychiatrists) who wrote reports without expert understanding of family violence and/or who did not investigate the allegations or denials of violence. Some claimed that the time allocated to making assessments of family violence for family reports was too short. Judges were criticised for not taking reports of violence into account in their decisions, especially with regard to overnight contact for young children, and for ignoring child protection and police reports and State-based domestic violence orders.

Children were critical of the lack of any opportunity to present their views to the courts, and criticised judges for their distance from them and from the children's views and experiences. Many responses from children indicated that they thought the existence of family violence should substantially restrict their parenting time with the perpetrator, an approach reflecting a child protection approach. They reported that the courts' emphasis on children having contact with a violent parent was inappropriate and unsafe.

### Effect of history or existence of violence within a relationship on post-separation parenting arrangements

Most respondents (68.7% of women and 52.2% of men) were critical of the inability to achieve suitable and safe arrangements for themselves and their children after separation. This was a recurring theme in the comments. The parents blamed service providers' disbelief and ignorance of family violence, and also the slow and belated investigations, for potentially poor outcomes.

The lack of safe arrangements for children was a factor driving the survey group who had been accessing services for the longest period of all, from 1995 to after 2006. They reported the most severe violence of all three groups, which contributed to their ongoing struggle within the system. The other group most affected was the post-2006 group. They reported being coerced by the combined pressure from legal advisers and family dispute resolution practitioners to agree to arrangements that were unsafe or inadequate for their children, including shared parenting, overnight or unsupervised contact, or any contact. For 54% of women and 47% of men in the post-2006 group, the co-existence of family violence, mental illness and substance abuse presented especially challenging problems that they said were not recognised. They believed that parents with this constellation of problems needed special assessment in terms of their parenting capacity.

### The critical nature of the responses

Most of the commentary from respondents was critical of services, whether or not the respondents were satisfied with the service outcomes. It was of concern that those satisfied with services fell frequently below 50%, and those dissatisfied with services rose frequently to above 50%.

One possible reason why respondents in this study were so critical of family law services and their inability to assist with family violence is that those most dissatisfied with the services were attracted to the study. However, the high levels of criticism may have arisen from other factors. Respondents in this study reported their satisfaction levels for services such as lawyers, courts (including State courts), the police and State child protection services. For many women, it appeared that dissatisfaction with the services related to their experience of family violence being ignored, minimised or suppressed, especially by lawyers and judges who

assisted with making decisions over the care of children after separation. Men's dissatisfaction centred upon delays and a lack of resources which prolonged their separation from their children. Both men and women complained that their concerns about family violence were not taken seriously or were not effectively acted upon, especially by members of the State police

### Conclusions

The respondents in this study proposed many changes to the family law socio-legal services system in their telephone and survey input.<sup>27</sup> Nevertheless, and despite such proposals, the problem remains that the family law socio-legal service system has not sought to place adult and child safety after parental separation above all other principles, and unless it can move to do this family violence will remain an unresolved, serious problem for families who seek separation as a way of ending family violence, or who experience family violence as a result of separation.

### NOTES

- 1 All references to legislation in this article are to the Family Law Act 1975(Cth).
- 2 Family Law Amendment Shared Parental Responsibility) Bill 2005 Explanatory Memorandum p1.
- 3 See for example s61DA(2) relating to the presumption in favour equal shared parental responsibility and ss60I(9) and 60(J) in connection with mandatory attendance at family dispute resolution.
- 4 See for example Patrick Parkinson, "Decision Making About the Best Interests of the Child: The Impact of the Two Tiers," *Australian Journal of Family Law* 20, no. 2 (2006); Domestic Violence and Incest Resource Centre, "Behind Closed Doors. Family Dispute Resolution and Family Violence. Discussion Paper.," (Melbourne2007).
- 5 Rae Kaspiew, Matthew Gray *et al*, "Evaluation of the 2006 Family Law Reforms," ed. A.I.F.S (Commonwealth Attorney-General and Department of Families, Housing, Community Services and Indigenous Affairs, 2009).
- 6 Family Law Council, "Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues," (Canberra: Australian Government Attorney-General's Department, 2009).
- 7 Richard Chisholm, "Family Courts Violence Review: A Report by Professor Richard Chisholm," (Canberra: Australian Government Attorney-General's Department, 2009).
- 8 Dale Bagshaw, Thea Brown *et al*, "Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006," (Australian Government Attorney-General's Department, 2010).



- 9 The two-volume report of this research can be viewed at: <[http://www.ag.gov.au/www/agd/agd.nsf/Page/Families\\_Family\\_RelationshipServicesOverviewofPrograms\\_ResearchProjectsonSharedCareParentingandFamilyViolence](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_Family_RelationshipServicesOverviewofPrograms_ResearchProjectsonSharedCareParentingandFamilyViolence)> at 6 August 2010.
- 10 J Cashmore and P Parkinson, "Children's Participation in Family Law Disputes: The Views of Children, Parents, Lawyers and Counsellors," *Family Matters* 82(2009).
- 11 Dale Bagshaw, Karolyne Quinn, and Birte Schmidt, *Children and Families in Transition. Towards a Child-Centred Integrated Model of Practice*. (Magill: University of South Australia, Document Services., 2006).
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- 13 S Egger, "Preview of Violence in Australia," (Canberra: Australian Institute of Criminology, 1995). D Bagshaw and D Chung, "Gender Politics and Research: Male and Female Violence in Intimate Relationships," *Women Against Violence: An Australian Feminist Journal*, no. 8 (2000a).
- 14 S Walby and J Allen, "Domestic Violence, Sexual Assault and Stalking: Proceedings from the British Crime Survey," (London: Home Office Research Study 276, Home Office Research Development and Statistics Directorate, 2004), 58.
- 15 Bagshaw, Brown *et al*, "Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006." p 58.
- 16 Family Law Pathways Advisory Group, "Out of the Maze: Pathways to the Future for Families Experiencing Separation," (Canberra: Family Law Pathways Advisory Group, Commonwealth Department of the Attorney-General, Family and Community Services, 2001). p9,11.
- 17 Bagshaw, Brown *et al*, "Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006." p 84-5.
- 18 T Brown and R Alexander, *Child Abuse and Family Law. Understanding the Issues Facing Human Service and Legal Professionals*. (Crows Nest: Allen & Unwin, 2007).
- 19 Bagshaw, Brown *et al*, "Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006." p 72.
- 20 Chisholm, "Family Courts Violence Review: A Report by Professor Richard Chisholm."
- 21 Bagshaw, Brown *et al*, "Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006." p 152,177.
- 22 Ibid p 80-81.
- 23 See for example Becky Batagol and Thea Brown, *Use of Law in Family Mediation in Australia* (Sydney, NSW: Federation Press, Forthcoming 2010).
- 24 Chisholm, "Family Courts Violence Review: A Report by Professor Richard Chisholm." p 27.
- 25 Ibid p 125.
- 26 Kaspiew, Gray *et al*, "Evaluation of the 2006 Family Law Reforms." p 60.
- 27 Bagshaw, Brown *et al*, "Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families Who Separated Post-1995 and Post-2006."

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