



Australian Law Reform Commission

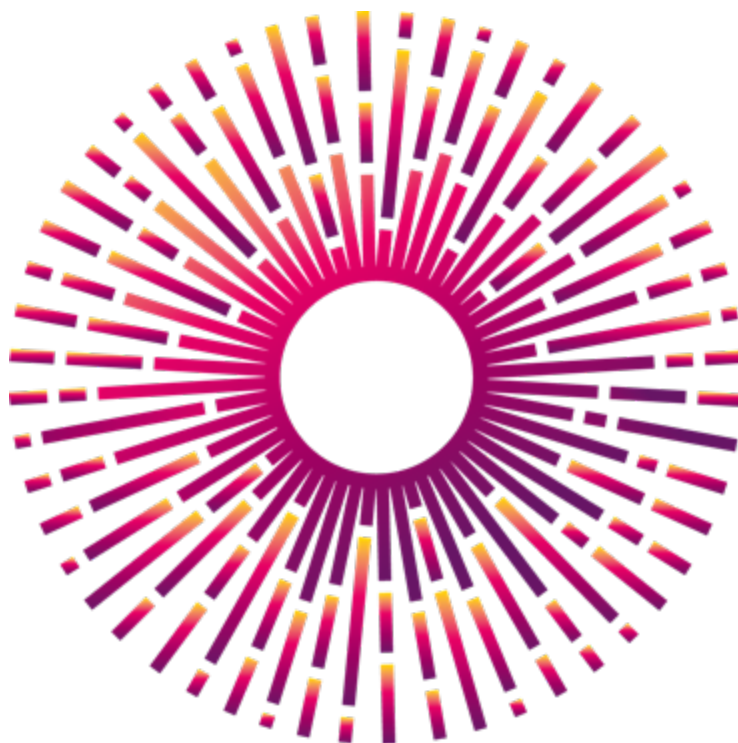
# Review of the family law system – Discussion Paper 86

Submission from the  
Australian Institute of Family Studies

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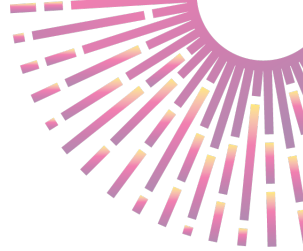
13 November 2018





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## Executive summary

Since its inception in 1980, research conducted by the Australian Institute of Family Studies has been central to the development and evaluation of key amendments of the *Family Law Act 1975* (Cth) (FLA). This submission presents findings from the Institute's research program relevant to the proposals and questions outlined by the Australian Law Reform Commission ('the Commission') in Discussion Paper 86.

### Improving education, community awareness and information about the family law system

Research undertaken by the Institute has identified a need to better support the Australian community to facilitate access to clear and up-to-date information about the family law system, together with timely access to advice and support services. In particular, data indicated a lack of awareness amongst separated parents of the family law system and the law governing the making of post-separation parenting and financial arrangements. Issues such as service fragmentation and a lack of information sharing between services interacting with separating families, compounded the limited community awareness and engagement with information sources and services, with research emphasising the importance of coordinated and collaborative service delivery to meet the varied and complex needs of families.

A lack of awareness about family law system processes and engagement with services was also evident in relation to children and young people. In particular, the Institute's *Children and Young People in Separated Families Study* (2018) raises the need for the family law system to adopt child-inclusive approaches that facilitate opportunities for the participation of children and young people in the decision-making that affects them.

These findings, together with findings from the *Evaluation of the 2006 family law reforms* (2009) and the *Evaluation of the 2012 family violence amendments* (2015), regarding the current access points for support seeking by both children/young people and adults, suggest that the services and universal systems nominated by the Commission are more likely to be effective means by which to promote the proposed "clear, consistent, legally sound and nationally endorsed" information package. Cooperative interactions between these services and family law system services will also benefit separating families by initiating or strengthening referral relationships between the family law system and the broader range of services accessed by these families.

### Improving access to family law services for advice and support and information sharing between services

The Institute's *Evaluation of the 2012 family violence amendments* (2015), *Evaluation of the 2006 family law reforms* (2009) and the *Domestic and Family Violence and Parenting Study* (2017), have established that multiple and complex co-occurring issues characterise substantial proportions of separating families. Data from the *Domestic and Family Violence and Parenting Study* also highlight inconsistent access to therapeutic services in this context, as well as an inconsistent focus on recovery in both the child protection and family law system services space for these families, with this study, and the *Children and Young People Study* (2018), also providing insight into the difficulties associated with the access to services and supports by children and young people.

Reflecting on the data from this research, it was recommended that consideration be given to the expansion of existing multi-disciplinary service models by advancing coordinated and



collaborative service delivery in order to meet the needs of contemporary separating families. The Families Hubs proposed by the Commission, together with legislative amendments intended to authorise and facilitate the disclosure of information between relevant agencies and the development and implementation of a national information sharing framework, provide opportunities to address the current fragmented nature of the systems and services relevant to separating families. In doing so, a holistic approach to service provision is envisaged in the Institute's submission – that is, trauma-informed service provision that is whole-of-family in its focus and directed at supporting families to address their underlying issues via access to timely and effective support services and dispute resolution options, with a particular emphasis on securing the safety and best interests of children.

### Enhancing children and young people's participation in the family law system

The Commission's proposal for the inclusion of an express right in the FLA on the part of affected children to participate in legal proceedings or FDR by being afforded the opportunity to express their views about the arrangements under consideration, is consistent with the findings of a body of Australian and international research that includes the Institute's *Children and Young People in Separated Families Study* (2018) and *Independent Children's Lawyers Study* (2014).

These and other research studies suggest that rather than shielding children and young people from their parents' litigation or dispute resolution process, priority must be accorded to identifying safe and effective means by which to facilitate their agency where they have the capacity and a preference to participate in decision making affecting them. In relation to the participation options proposed by the Commission, while it will be important to ensure that a child or young person's participation does not jeopardise their safety or best interests, the opportunity to speak directly to decision-makers was one mode of participation nominated by the Commission that was also nominated by some young participants. For these children and young people, it was an option that ensured the ultimate decision maker could be appraised of their views and experiences and would, in turn, be able to make an informed decision as to the appropriate parenting arrangements.

As identified by the Commission, initial and ongoing risk assessments for children regarding their participation in family law proceedings or FDR, together with processes established to manage any identified risks, will be crucial in this context. Additionally, guidance for judicial officers where children seek to meet with them or to otherwise participate in proceedings would also support judicial officers to safely and effectively facilitate participation.

The *Children and Young People in Separated Families Study* (2018) illustrated young participants' inconsistent levels of engagement with family law system professionals which suggests a need for standardised approaches to providing opportunities for participation with a proper consideration of the child/young person's circumstances and needs. This gap may be addressed by the Commission's child advocate proposal if this option delivers a neutral third party by which children and young people are systematically provided with safe and effective opportunities to express their views, and to have these views inform the decision-making process. Nevertheless, careful consideration of the means by which to address children and young people's reported confusion about the roles and obligations of family law system professionals will be required if multiple professionals are to be responsible for their participation (including the child advocate and/or judicial decision-maker) and the representation of their best interests (including the separate representative) in the post-separation context. Consistency in approaches to engagement employed by these professionals



is also required. If the child advocate role is introduced, the results from the Institute's research with children and young people suggest that it will be imperative to ensure that the relevant professionals are appropriately trained, funded and supported to safely and effectively fulfil their participatory function.

The Commission's proposal to establish a Children and Young People's Advisory Board as a means by which children and young people may be collectively represented and participate in the development of family law system policy and practice, would also be consistent with the findings of the Institute's research with children and young people.

### Reducing harm via clarifying and expanding the current definition of family violence and amending provisions relating to unmeritorious proceedings

Data from the Institute's research programs support the Commission's proposals to update the legislative definition of family violence in s 4AB of the FLA, in particular, to clarify the list of examples of family violence to include specific reference to behaviours such as emotional and psychological abuse, the misuse of legal and other systems and processes and technology-facilitated abuse. Findings from the *Responding to Family Violence Study* forming part of the *Evaluation of the 2012 family violence amendments* (2015) provided insight into the professionals' positive assessments of the impact of these amendments on family law practice (2015), with parents also reporting slight increases in disclosures of family violence to family law system professionals in the post-reform context (*Experiences of Separated Parents Study*, 2015). On the other hand, the *Evaluation of the 2012 family violence amendments* (2015) data (among other research) also raises concern about the definition's focus on the elements of fear, coercion or control. These elements risk excluding people who have experienced behaviour considered to be family violence but who are otherwise unable to satisfy the court that the behaviour has controlled or coerced them or caused them to feel fearful. Forms of violence involving technology-facilitated abuse or the misuse of legal and other systems as a means of continuing the perpetration of violent or abusive behaviour may also not be identified in the decision-making process.

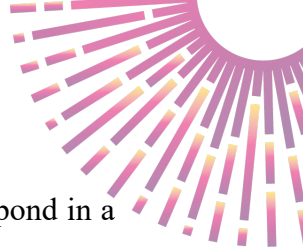
As with the 2012 amendments, it is essential for the definition of family violence to continue to be responsive to societal change as well as contemporary understandings and experiences of domestic and family violence. These findings, together with data from the *Domestic and Family Violence and Parenting Study* (2017) suggest that some violent or abusive behaviours may fall outside of the definition as currently expressed in s 4AB and that there is benefit in clarifying the definition to take into account the range of circumstances in which family violence can occur. Measures to rationalise the provisions relating to unmeritorious proceedings and to better identify behaviours associated with the use of proceedings and processes to continue the perpetration of family violence are supported by these data.

It is also observed that further research is required to examine the experiences of domestic and family violence on the part of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQ people in order to consider whether the definition can cater to their experiences and needs.

### Simplifying and clarifying family law legislation

Data from the *Experiences of Separated Parents Study* component of the *Evaluation of the 2012 family violence amendments* (2015) and the *Children and Young People in Separated Families Study* (2018), regarding participants' lack of clarity about family law system processes, support the revision of the FLA with a view to enabling simpler, clearer and more user-friendly





legislative provisions and family law court forms that support court personnel to respond in a timely way to concerns relating to the safety of families.

On the basis of data from the *Evaluation of the 2012 family violence amendments* (2015) suggesting that despite the 2012 amendments (and the introduction of s 60CC(2A) in particular) priority was not regarded as being consistently and sufficiently accorded to the protection of children from harm primary consideration, it is observed that there is significant merit in the Commission's proposal to simplify and clarify the framework for judicial decision-making about parenting arrangements to emphasise the focus on protection from harm and to assist judicial officers and parties in formulating safe parenting arrangements.

The Commission's proposal to amend the legislative provisions relating to property division to account for the effect of family violence on a party's contribution and future needs is also supported by data from the *Evaluation of the 2006 family law reforms* (2009). Although these findings from this research are indicative of the relationship between family violence and property division, targeted research in this area is deficient. Accordingly, consistent with the Commission's proposal, it is also noted that further research is required to provide a current evidence base to support relevant policy and legislative development in this area.

In relation to the Commission's proposal to streamline legislative provisions establishing the Family Court of Australia and the Australian Institute of Family Studies, the Institute recommends consideration be given to whether the retention of ss 114A-114M in the *Family Law Act 1975* (Cth), together with provisions relevant to the Family Court of Australia and the proposed amendment of s 115 with respect to the establishment of the proposed Family Law Commission, would ensure ready accessibility to provisions relevant to these important institutions. In relation specifically to the Institute and the proposed Family Law Commission, their retention and inclusion in the FLA respectively may better encourage priority to be accorded to the evidence-based monitoring and review of the family law system.

### Developing non-adversarial approaches to dispute resolution and reshaping the existing adjudication landscape

While FDR has become an important pathway for separating and separated parents to resolve their parenting matters, the use for FDR to resolve property/financial matters has been uncommon. The data from Wave 3 of the Institute's *Longitudinal Study of Separated Families* identified that even among separated parents with very modest asset pools to divide (less than \$40,000), the use of courts or lawyers was more common than mediation or FDR services. These findings are consistent with the Commission's proposals in relation to expanding FDR services to property and financial matters. Forthcoming analysis of these data suggest that those who are more disadvantaged with respect to education and socio-economic status are less likely to make use of FDR, which highlights the importance of promoting accessibility of FDR to this group.

In relation to the proposals to provide safe and effective adjudication pathways and processes for parties, AIFS research supports the implementation of measures which establish appropriate triage processes within the court system, enhance initial and ongoing risk assessment and case management of matters, and promote the safety and security of parties.

### Ensuring a skilled and supported workforce within the family law system

Based on data from the *Evaluation of the 2012 family violence amendments* (2015) and the *Children and Young People in Separated Families Study* (2018), the Institute reiterates the need for a family law system which is aware of, and responsive to, the complex needs of families,

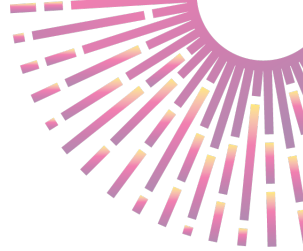


including the complex dynamics of family violence. Data derived from Institute research suggests the need for a system that is trauma-informed, holistic and child-inclusive in its approach in light of these complex needs of clients in family law matters. This involves ensuring that support is provided to facilitate the development of core and specialised competencies among family law professionals to meet their client's needs. It is noted that the Commission's proposal for a workforce capability plan and the development of professional competencies including professionals' understanding of family violence, child abuse and the impact of trauma on adults and children, as well as the ability to identify and respond to risk appropriately, may assist in identifying and facilitating the core and specialised training needs of professionals and ensuring consistency in service delivery.

### Strengthening system oversight and reform evaluation

The Institute observes that according priority to the monitoring of the family law system via the Commission's proposal to establish an independent statutory body ('the Family Law Commission') tasked with this function and with the authority to initiate reviews and nominate research projects identified as imperative through this role, is an approach that is likely to facilitate the undertaking of necessary research in a timely manner.

The Institute also acknowledges the importance of the Commission's recommendation that an evaluation program be built into the current reform agenda. The research imperative continues in the context of the proposed wide-reaching reforms, with the evaluation of the impact of any reforms critical to the ongoing improvement of family law service provision directed at securing the wellbeing of children and their families. Expanding the existing rigorous evidence base will inform the ongoing development of the Australian family law system over the short and longer term.



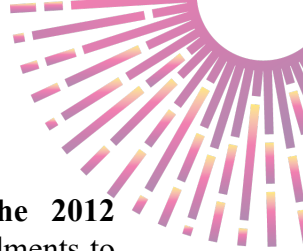
## Introduction

This submission is made in response to the Discussion Paper 86 entitled *Review of the Family Law System* released by the Australian Law Reform Commission on 2 October 2018 ('the Discussion Paper'). Since its inception in 1980, research conducted by the Australian Institute of Family Studies ('the Institute') has been central to the development and evaluation of key amendments of the *Family Law Act 1975* (Cth). In this submission, the authors will address selected proposals and questions raised in the Discussion Paper primarily by drawing on relevant findings from Institute research. This research includes the Institute's seminal evaluations commissioned by the Australian Government – Attorney-General's Department ('AGD') in relation to each set of major reforms to the *Family Law Act 1975* (Cth) ('FLA') introduced in 2006 and 2012. This submission is additional to the Institute's submission to the Issues Paper 48 ('Submission 206').

An outline of the Institute's research projects referred to in this submission is provided below:

1. **Children and Young People in Separated Families (2018) (Children and Young People Study):** 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 parents of these children ( $n = 47$ ). 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. **Direct Cross-Examination in Family Law Matters (2018) (Direct Cross-examination Study):** Commissioned by the AGD, this project was designed to explore the extent to which direct cross-examination was a feature of matters involving self-represented litigants in families characterised by alleged or substantiated family violence, and the factual and legal context characterising these family law matters. The study involved analysis of quantitative and qualitative data relevant to direct cross-examination involving self-represented litigants in family law matters, derived from court files and audio and transcripts of proceedings, collected from the Family Court of Australia ('FCoA') and the Federal Circuit Court of Australia ('FCCoA'), together with analysis of relevant unreported judgments of the Family Court of Western Australia ('FCoWA').
3. *Domestic and Family Violence and Parenting: Mixed-Method Insights into Impact and Support Needs. Final Report* (2017) **(Domestic and Family Violence and Parenting Study):** This project was commissioned by the Australian National Research Organisation for Women's Safety 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 the following datasets: *Growing Up in Australia: The Longitudinal Study of Australian Children* ('LSAC'), the *Survey of Recently Separated Parents 2012* ('SRSP 2012') the *Longitudinal Study of Separated Families* ('LSSF') (see sections 4 and 5, below, respectively); and responses to semi-structured interviews with 50 participants.





4. *Evaluation of the 2012 Family Violence Amendments (Evaluation of the 2012 amendments)*: The Evaluation research program examined the effects of amendments to the *Family Law Act 1975* (Cth) (FLA) that were intended to improve the family law system's responses to matters involving family violence and safety concerns. It comprised the following studies:
  - a. *Responding to Family Violence: A Survey of Family law Practices and Experiences (Responding to Family Violence Study)* was a survey of family law practices and experiences, 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 (Experiences of Separated Parents Study)*, which comprised 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 and post-reform data.
  - c. **Court Outcomes Project** 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; and
    - iii. a systematic analysis of published appeal and first instance judgments applying the provisions introduced by the 2012 family violence amendments.
5. *Evaluation of the 2006 family law reforms (Evaluation of the 2006 family law reforms)*, including Wave 1 of *The Longitudinal Study of Separated Families (LSSF)* (2009, 2010, 2014): involves three survey waves of up to 10,000 parents covering a five-year period after separation (see Qu et al. (2014) *Post-Separation Parenting, Property and Relationship Dynamics After five Years*. Canberra: Attorney-General's Department).<sup>1</sup>
6. *Independent Children's Lawyers Study (ICL Study)*: This study investigated the extent to which having an ICL involved in family law proceedings improved outcomes for the child. Commissioned by the AGD, the study involved a mixed methods approach via four main studies:
  - a. online surveys of professionals – ICLs ( $n = 149$ ), judicial officers ( $n = 54$ ) and other legal ( $n = 192$ ) and non-legal professionals ( $n = 113$ ) across all Australian states and territories;
  - b. semi-structured interviews with parents ( $n = 24$ ) and children/young people aged between 10 and 17 years ( $n = 10$ ) who had been involved in a family law matter in which an ICL had been appointed and which had been finalised in 2011 or 2012;
  - c. semi-structured interviews with ICLs ( $n = 20$ ); and

<sup>1</sup> 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 LSSF wave.



- d. request for information from legal aid commissions (including policy, procedural and budget information), together with semi-structured interviews with one representative from each jurisdiction's commission and with representatives from departments responsible for child protection in each jurisdiction.

Brief mention is also made of AIFS research entitled:

- Kaspiew, R., & Qu, L. (2016). Property Division After Separation: Recent Research Evidence. *Australian Journal of Family Law*, 30(3), 1–20.
- McDonald, P (ed). (1986). *Settling Up – Property and Income Distribution on Divorce in Australia*, Prentice Hall – Australia.
- Funder, K., Harrison, M., & Weston, R. (1993). *Settling Down – Pathways of Parents After Divorce*. Monograph No. 13. Australian Institute of Family Studies, Melbourne.
- Fehlberg, B., Funder, K., Sheehan, G & Smyth, B. (1997). *Australian Divorce Transitions Project Series – Adult Data*. Australian Institute of Family Studies, Melbourne.
- Fehlberg, B., & Millward, C. (2014). Family violence and financial outcomes after parental separation. In A. Hayes and D. Higgins (Eds). *Families, policy and the law: Selected essays on contemporary issues for Australia* (pp. 235-243). Melbourne: Australian Institute of Family Studies.
- Smyth, B & Weston, R. (2000). *Australian Divorce Transitions Project Series*. Australian Institute of Family Studies, Melbourne.
- Wall, L., Scott, D., Kaspiew, R., Carson, R., Quadara, A., Perriman, A., & Higgins, D. (2015). *Evaluation of the Co-Located Child Protection Practitioner Initiative*. Melbourne: Australian Institute of Family Studies (Unpublished).
- Kaspiew, R., De Maio, J., Deblaquiere, J., & Horsfall, B. (2012). *Evaluation of a Pilot of Legally Assisted and Supported Family Dispute Resolution in Family Violence Cases*. Melbourne: Australian Institute of Family Studies.
- Moloney, L., Kaspiew, R., De Maio, J., Deblaquiere, J., & Horsfall, B. (2011). *Evaluation of the Family Relationship Centre Legal Assistance Partnerships*. Melbourne: Australian Institute of Family Studies.
- Lodge, J., & Alexander, M. (2010) Views of adolescents in separated families - A study of adolescents' experiences after the 2006 reforms to the family law system. Melbourne: Australian Institute of Family Studies.



## Education, awareness and information (Chapter 2)

The Commission in their Discussion Paper proposes that the Australian Government develop a national education and awareness campaign to enhance community understanding of the family law system (Proposal 2-1), including about the duties and responsibilities of parents, and the importance of taking a child-centred approach to post-separation parenting that prioritises children's safety and best interests. More specifically, the Commission proposes the development of a family law system information package (Proposals 2-5 to 2-8) that includes practical information to assist people, including children and young people, to understand and navigate the family law system. The proposed package is to include information about the range of legal and support services available to adults and children and the avenues to access these services, as well as information regarding the forums and processes available to resolve post-separation arrangements. Additionally, the Commission proposes that the Commonwealth, state and territory governments work together to support the development of referral relationships to family law services from universal services such as schools, childcare and health services, as well as from services accessed by families who have experienced family violence including police and child protection agencies (Proposal 2-4).

Research undertaken by the Institute has identified a need to better support the Australian community, including children and young people, to access clear and up-to-date information about the family law system, together with timely access to advice and support services. Although professionals participating in the *Responding to Family Violence Study* component of the Institute's *Evaluation of the 2012 family violence amendments* (2015) reflected on the educative value of the FLA provisions (specifically the amendments highlighting family violence and child safety concerns as an integral consideration in the making of parenting arrangements), data from the *Experiences of Separated Families Study* component of this Evaluation indicated a lack of awareness on the part of participating parents ( $n=12,198$ ) about the family law system and the law governing the making of post-separation parenting and financial arrangements. The vast majority of parents were unaware of the 2012 family violence amendments (ESPS, 2015, Table 6.5 – 2014: 96%; 2012: 98%), and these reforms were associated with only modest increases in the proportions of parents disclosing family violence and/or safety concerns to professionals (ESPS, 2015), with this reticence perhaps in part relating to a lack of awareness of the provisions of the FLA and operation of the family law system. Indeed, a notable feature of the data from parents regarding their views of the effectiveness of the family law system was the high level of “don't know” responses (24-48%: ESPS, 2015, Table B1) signifying a lack of awareness about the system's operation as well as a lack of engagement with the system. Data from the *Experiences of Separated Parents Study* also indicated only modest, positive shifts in parents' reports regarding the making of parenting arrangements post-separation subsequent to the reforms (ESPS, 2015), with professionals in the *Responding to Family Violence Study* also reporting that the reforms had limited effect (RFV Study, 2015).

In addition to the issues associated with awareness, it is also worth noting that the *Experiences of Separated Parents Study* demonstrated that a substantial proportion of separating parents do not access services and supports when resolving their post-separation arrangements, with informal support from family being the most common source of support reported (ESPS, 2015 Table 4.1 – 64%-65%) and with those not accessing services being identified as lower in their socio-economic status than those accessing services (ESPS, 2015).



This apparent lack of awareness and engagement with services on the part of parents was echoed in the data from children and young people participating in the Institute's *Children and Young People Study* and in the *ICL Study*. As noted in the Institute's Submission 206 in response to the Commission's Issues Paper 48, young participants emphasised their need for greater access to information about family law system processes, information about the progress of their particular case and information regarding the potential for them to participate in the decision-making process. Young participants in both the *Children and Young People Study* and the *ICL Study* also identified the importance of accessing services to support their post-separation adjustment and to facilitate their participation in the decision-making process. This participation was identified by some young participants as pivotal to ensuring that safe parenting arrangements were made (Children and Young People Study, 2018; ICL Study, 2014). These findings will be considered in further detail in the section 'Children in the Family Law System' below.

The Commission's proposal for the development of a "clear, consistent, legally sound and nationally endorsed" information package may address the concerns highlighted in the research detailed above, particularly if the package receives broad promotion through universal services interacting with children and adult family members (including the education and health systems), as well as via services likely to be the first point of contact in cases characterised by domestic and family violence such as the police and domestic and family violence services. Children and young people participating in the *Children and Young People Study* (2018) indicated that they readily sought support outside of the family law system including from health and educational professionals. A majority of young participants described receiving support from mental health professionals and almost half described receiving support from their school teachers or school counsellors (Children and Young People Study, 2018). The positive reflections of these participants and their readiness to access these universally available services in the post-separation context, is indicative of the positioning of these services as effective means by which to provide information and to facilitate referral pathways to family law system services. Similarly, parents participating in the *Experiences of Separated Parents Study* who reported disclosing family violence indicated that they primarily did so to health system professionals and first point of contact services that were nominated by the Commission as appropriate to promote the information package (ESPS, 2015, Table 5.1).

Together, these findings regarding the current access points for support seeking by both children/young people and adults suggest that the services and universal systems nominated by the Commission are more likely to be effective means by which to promote the proposed information package. Cooperative interactions between these services and family law system services will also benefit separating families by initiating or strengthening referral relationships between the family law system and the broader range of services accessed by these families. The development and strengthening of referral relationships will be considered further in the following section in the context of a discussion of the proposed Families Hubs.

## Getting advice and support (Chapter 4) and Information Sharing (Chapter 11)

In addition to the proposals made in relation to education, awareness and access to information, the Commission proposes the expansion of the Family Advocacy and Support Service (subject to a positive evaluation), and for the Australian Government to work with the state and territory governments to establish community-based Families Hubs aimed at providing "separating



families with a visible entry point for accessing a range of legal and support services” (Proposal 4-1). The Commission also proposes that staff from a range of relevant services be accessible to families on-site at the Families Hubs, including staff from specialised services for children and young people (Proposal 4-3).

As outlined in the Institute’s Submission 206, data from successive research programs including the Institute’s *Evaluations of the 2012 family violence amendments* (2015) and the *Evaluation of the 2006 family law reforms* (2009) respectively, together with the *Domestic and Family Violence and Parenting Study* (DFVP, 2017) have demonstrated the multiple and complex co-occurring issues that characterise substantial proportions of separating families. The *Domestic and Family Violence and Parenting Study* also highlighted inconsistent access to therapeutic services in this context, as well as an inconsistent focus on recovery in both the child protection and family law system service space for these families (AIFS Submission 206, p. 7-8). In relation to children and young people, the Institute’s Submission 206 also provided insight into the difficulties associated with access to services and supports by children and young people as they emerged in both the *Children and Young People Study* (2018) and the *Domestic and Family Violence and Parenting Study* (2017). Reflecting on the data from this research, it was recommended that consideration be given to the expansion of existing multi-disciplinary service models by advancing coordinated and collaborative service delivery in order to meet the needs of contemporary separating families. Many young participants in the *Children and Young People Study* indicated that they were unsure as to how to access services (Children and Young People Study, 2018). The Commission’s proposals for the availability of information about family law processes and legal and support services in a range of age-appropriate and culturally appropriate forms (Proposal 7-1), and for the Families Hubs to include out-posted staff from specialised services for children and young people, (Proposal 7-2), are proposals directed at addressing the gaps in accessible information as identified by our young participants.

Additionally, as also noted in the Institute’s Submission 206, participants in the qualitative component of the *Domestic and Family Violence and Parenting Study* reported being passed from agency to agency without a coherent or helpful solution being offered to resolve their concerns (DFVP, 2017). Most participating women reported “fragmented” engagement with services, agencies and professionals and the lack of any one service or agency that was equipped to meet their needs arising from family violence. In some instances, this resulted in contradictory approaches between different services (see, eg, DFVP, 2017, p. 179).

The Families Hubs proposed by the Commission provide opportunities to address the current fragmented nature of the systems and services relevant to separating families. In doing so, a holistic approach to service provision is envisaged in the Institute’s submission – that is, trauma-informed service provision that is whole-of-family in its focus and directed at supporting families to address their underlying issues via access to timely and effective support services and dispute resolution options, with a particular emphasis on securing the safety and best interests of children.

In addition, the Commission proposes that state and territory legislation, including legislation relating to family violence and child protection, be amended to authorise and facilitate the disclosure of information between relevant agencies (Proposal 11-1). The Commission also proposes that the Australian government work with state and territory governments to develop and implement a national information sharing framework “to guide the sharing of information about the safety, welfare and wellbeing of families and children between the family law, family violence and child protection systems” (Proposal 11-2). These proposals address concerns





raised by the Institute in Submission 206, and the authors of the current Institute submission reiterate the previously stated importance of adopting measures to address issues associated with information sharing arising from the fragmented nature of the systems and services working with separating families.

## Children in the family law system (Chapter 7)

In relation to children and young people, the Commission in their Discussion Paper proposes legislative amendment to enshrine the express right of children to be provided with the opportunity (so far as practicable) to express their views in legal proceedings or in family dispute resolution ('FDR') (Proposals 7-3 and 7-4). The Commission indicates that this opportunity should be accommodated in a range of ways, including, via a report prepared by the children's advocate, a meeting with a decision maker supported by a children's advocate and by directly appearing in the decision-making forum, supported by a children's advocate (Proposal 7-11).

The inclusion of an express right in the FLA on the part of affected children to participate in legal proceedings or FDR by being afforded the opportunity to express their views about the arrangements under determination, is a proposal consistent with the findings of a body of Australian and international research that includes the Institute's *Children and Young People Study* (2018) and *ICL Study* (2014). As articulated in the Institute's Submission 206, a majority of children and young people participating in the *Children and Young People Study* (2018) wanted professionals to listen more effectively to their views and experiences. Young participants sought access to safe and effective options to participate in the decision-making process. In relation to the participation options proposed by the Commission, while it will be important to ensure that a child or young person's participation in either of the forms noted above does not jeopardise their safety or best interests, the opportunity to speak directly to decision-makers was one mode of participation nominated by the Commission that was also nominated by some young participants. For these children and young people, it was an option that ensured the ultimate decision-maker could be apprised of their views and experiences and would, in turn, be able to make an informed decision as to the appropriate parenting arrangements (for eg., *Children and Young People Study*, 2018, p. 93). Together with previous research (see e.g. Fernando & Ross, 2018; Qu & Weston, 2015; Kaspiew et al, 2014; Lodge & Alexander, 2010; Parkinson & Cashmore, 2008 and Tisdall, 2016), the *Children and Young People Study* (2018) and the *ICL Study* (2014) suggest that rather than shielding children and young people from their parents' litigation or dispute resolution process, priority must be accorded to identifying safe and effective means by which to facilitate their agency where they have the capacity and a preference to participate in decision-making affecting them.

As noted in the Institute's Submission 206, while acknowledging concerns about involving children and young people in their parents' disputes, these concerns must be considered in light of circumstances where they are, or have already been, exposed to their parents' conflict or violent and abusive behaviour. Listening to the voices of children and young people has been identified as particularly critical in these circumstances, not only because this participation is central to meeting obligations pursuant to the UN Convention on the Rights of the Child but because it is important from an evidentiary perspective and consistent with the expressed views of participating children and young people in cases characterised by family violence or conflict (*Children and Young People Study*, 2018). The current challenge for the family law system is to identify the means by which the agency and participatory rights of the given child may be





realised in a way that is responsive to their particular needs and without exposure to harm. Key among these concerns is ensuring that children and young people are not re-traumatised by their participation, noting the potential for harm to arise, for example:

- by continuing exposure to parental conflict;
- arising from the multiple interviews effect;
- by enabling parents to involve their children in the misuse of legal processes;
- where a disaffected parent retaliates against their child for their expressed views, (see also Domestic and Family Violence and Parenting Study, 2017).

As identified by the Commission, initial and ongoing risk assessments for children regarding their participation in family law proceedings or FDR, together with processes established to manage any identified risks (Proposal 7-6), will be crucial in this context. Additionally, guidance for judicial officers where children seek to meet with them or to otherwise participate in proceedings (Proposal 7-12) would also support judicial officers to safely and effectively facilitate participation.

As foreshadowed above, the Commission also proposes the introduction of a children's advocate, who is identified as "a social science professional with training and expertise in child development and working with children... (whose) role should be to:

- explain to the child their options for making their views heard;
- support the child to understand their options and express their views;
- ensure that the child's views are communicated to the decision maker; and
- keep the child informed of the progress of a matter and to explain any outcomes and decisions made in a developmentally appropriate way" (Proposal 7-8).

Where children are not able to be supported to express a view, the Commission proposes that the children's advocate support the child's participation to the greatest extent possible and advocate for the child's interests based on an assessment of what would best promote the child's safety and developmental needs (Proposal 7-9). In relation to the existing role of the independent children's lawyer ('ICL'), the Commission proposes that the FLA make provision for the appointment of a separate legal representative for children involved in family law proceedings, in appropriate circumstances, whose role will be to gather evidence relevant to an assessment of a child's safety and best interests and to act as an 'honest broker' and assist in managing the litigation (Proposal 7-10).

As outlined in the Institute's Submission 206, most children and young people who reported engaging with family law system professionals in the *Children and Young People Study* (2018), reported feeling negatively towards the court process, the family consultant/family report writer and the ICL, and dissatisfied with either their level of input to, or awareness of, the decision-making process or the final parenting arrangements (Children and Young People study, 2018). Children and young people participating in the *ICL Study* (2014) reported similar reflections in relation to the ICLs in their cases (ICL Study, 2014). While some participants described their engagement with these family law system professionals as facilitating their participation in decision-making about parenting arrangements, the responses of a substantial proportion of children and young people with experiences of the family law system suggested that the approaches adopted by the service professionals with whom they interacted operated in a way that limited their practical impact or effectively marginalised their involvement in decision-making about parenting arrangements (Children and Young People study, 2018). Children and young people's reports of inconsistent levels of engagement with family law system



professionals suggest a need for standardised approaches to providing opportunities for participation, with a proper consideration of the child/young person's circumstances and needs.

These gaps may be addressed by the Commission's child advocate proposal if this option delivers a neutral third party by which children and young people are systematically provided with safe and effective opportunities to express their views and to have these views inform the decision-making process (Children and Young People study, 2018). Of note, however, is that for many of the children and young people interviewed for the *Children and Young People Study* and the *ICL Study*, their experiences with family law professionals were characterised by frustration and confusion, including about the role of the various professionals in their particular case and of the options for communicating their views. Careful consideration of the means of addressing this confusion regarding the roles and obligations of family law system professionals will be required if multiple professionals are to be responsible for the child/young person's participation (including the child advocate and/or judicial decision-maker) and the representation of their best interests (including the separate representative) in the post-separation context. Consistency in approaches employed by these professionals in relation to their engagement with children and young people is also required. If the child advocate role is introduced, the results from the Institute's research with children and young people suggest that it will be imperative to ensure that the relevant professional is appropriately trained, funded and supported to:

- provide the space for children and young people to speak in the context of the decision-making process;
- to listen effectively to their views and experiences and to ensure that their views are accurately heard by the decision-maker/s;
- develop trust and rapport with the children and young people (including via qualities such as patience, empathy and respect);
- engage in open communication by providing independent information relevant to the decision-making process in the relevant children and young people's cases and keep them informed about the nature and progress of the decision-making process and regarding other relevant issues affecting them; and
- prioritise the needs, safety and best interests of children and young people by acting protectively and addressing and responding to their concerns.

As observed in the Institute's Submission 206, these data from children and young people in the Institute's research indicate that further training and development of skills and mechanisms to facilitate safe participation are required. Concerns were raised by participants in the *Children and Young People Study* about their engagement with legal and social science professionals alike. To address these concerns, there is a need for improved communication with children and young people, and the consideration of measures that respond appropriately to their views and concerns. An expansion of the opportunities and means of participation available to children and young people in the family law system, supported by a child-centred, child-inclusive approach that is multi-disciplinary in nature, should be informed by more specific research to identify improved practice approaches for listening to and communicating the views of children and young people in separated families.

More broadly, the Commission proposes the establishment of a Children and Young People's Advisory Board for the family law system to provide advice about children's experiences of the family law system to inform policy and practice development (Proposal 7-13). This means by which children and young people may be represented via a direct voice and to collectively



participate in the development of family law system policy and practice, would also be consistent with the findings of the Institute's research with children and young people.

## Reducing harm (Chapter 8)

### **Proposed amendments of FLA provisions - definition of family violence**

The Commission proposes to update the legislative definition of 'family violence' in s 4AB of the FLA, in particular, to include specific references to behaviours such as emotional and psychological abuse, the misuse of legal and other systems and processes and technology-facilitated abuse, and to clarify that the definition of 'abuse' includes direct or indirect exposure to family violence (Proposals 8-1 and 8-3). The Commission queries the strengths and limitations of the current definition and significant insights on this point are available from the findings of the Institute's *Evaluation of the 2012 Family Violence Amendments* (2015) and are described below. The Commission also identifies a pressing need for the commissioning of further research examining the experiences of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQ people in relation to family violence to consider whether the definition can cater to their experiences and needs (Proposal 8-2).

Amendments made to the *FLA* in 2012 introduced a wider definition of family violence that included a non-exhaustive list of examples of family violence. The amended definition covered "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful" (s 4AB(1)), and recognised and defined the exposure of children to family violence in s 4AB(3). The amendments also widened the definition of abuse to include exposure to family violence (where it causes the child to suffer serious psychological harm (s 4(1))). Findings from the *Evaluation of the 2012 family violence amendments* (2015) provided insight into the impact of these amendments on family law practice and the strengths and limitations of the amended definitions from the perspectives of professionals. The *Responding to Family Violence Study* (2015) component of this Evaluation explored judicial, legal and non-legal professionals' views of the definitions and overall, most participants in this study reported positively in this regard. Almost three-quarters (73%) of participating professionals mostly or strongly agreed that the amended definitions supported safer parenting arrangements, with few differences between professional groups (RFV Study, 2015, Table 3.1, Table 1 below). Many professionals also considered the definition to appropriately reflect social understandings of behaviours that constitute family violence.



**Table 1: Agreement that the new definitions of family violence and abuse support safer parenting arrangements, by professional group (RFV Study, 2014)**

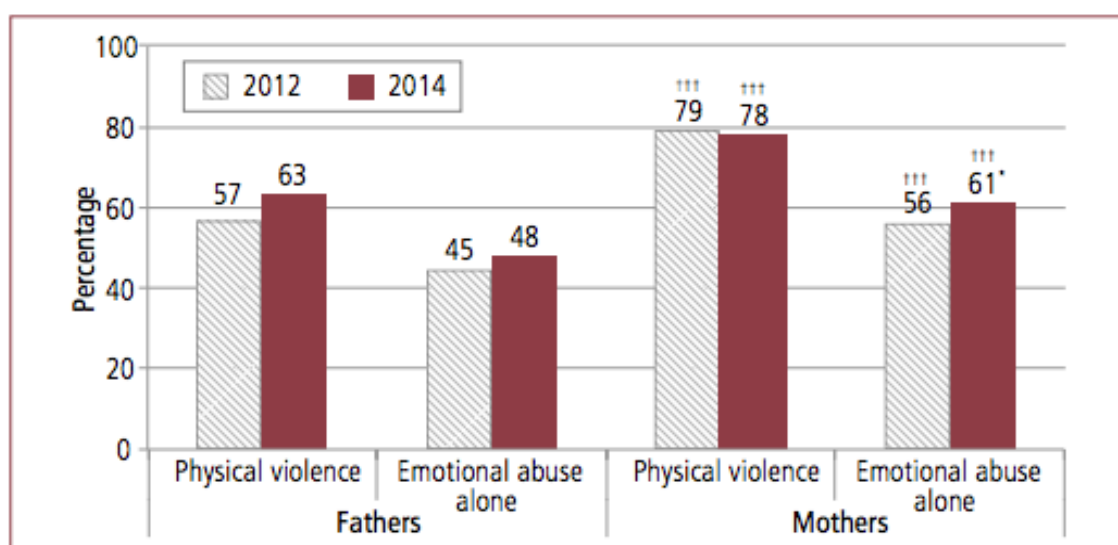
|                          | Judicial officers |       | Lawyers |       | Non-legal |       | Aggregated |       |
|--------------------------|-------------------|-------|---------|-------|-----------|-------|------------|-------|
|                          | No.               | %     | No.     | %     | No.       | %     | No.        | %     |
| Strongly agree           | 7                 | 18.9  | 47      | 14.7  | 58        | 19.9  | 112        | 17.3  |
| Mostly agree             | 20                | 54.1  | 178     | 55.6  | 162       | 55.5  | 360        | 55.5  |
| Mostly/strongly disagree | 5                 | 13.5  | 73      | 22.8  | 59        | 20.2  | 137        | 21.1  |
| Cannot say               | 5                 | 13.5  | 22      | 6.9   | 13        | 4.5   | 40         | 6.2   |
| Total                    | 37                | 100.0 | 320     | 100.0 | 292       | 100.0 | 649        | 100.0 |

Notes: Professionals were asked: "To what extent do you agree or disagree that the following statements describe your views about the family violence reforms: The new definitions of family violence and abuse support parenting arrangements that are safer for parents and children". Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

As noted in the first substantive section of this submission, participating parents were slightly more likely to report disclosures of family violence (specifically emotional abuse) to family law professionals post-reform. (ESPS, 2015, Figure 5.1, Figure 1 below). The data also revealed that parents who experienced emotional alone were less likely than those who experienced physical hurt to make a disclosure. Yet, children whose parents reported experience of physical hurt or emotional abuse alone fared less well compared to children whose parents experienced neither (ESPS, 2015, Kaspiw et al., 2009). Clarifying the legislative definition of abuse as recommended by the Commission (Proposal 8-1) would also ensure that children are protected from the negative effects of direct and indirect exposure to family violence (DFVP, 2015; LSSF data from the Evaluation of the 2006 family law reforms, 2009).

**Figure 2: Agreement that the new definitions of family violence and abuse support safer parenting arrangements, by professional group (RFV Study, 2014)**



Notes: Data have been weighted. Statistically significant differences between 2012 and 2014 within a given population are noted: \*  $p < .05$ ; \*\*  $p < .01$ ; \*\*\*  $p < .001$ . Statistically significant differences between mothers and fathers within a given population (years) are noted: †  $p < .05$ ; ††  $p < .01$ ; †††  $p < .001$ .



More broadly however, when professional participants in the *Responding to Family Violence Study* (2015) were asked to consider the extent to which they agreed with the statement that “the identification, assessment of, and response to, non-physical forms of family violence by the family law system ha(d) *not* improved since the family violence reforms”, almost half (48%) indicated that practice has not improved. Just over one-third (37%) supported a view that practice had improved, noting that the interpretation of these responses suggests some ambiguity as some professionals may have considered that this area had already been handled well before the reforms (RFV Study, 2015, Table 3.2).

The Commission in their Discussion Paper drew attention to the breadth of views amongst professionals regarding the interpretation and scope of the amended definition of family violence. Qualitative data from professionals in the *Responding to Family Violence Study* (2015) regarding the amended definitions also reflected these mixed views. Some professionals argued that the definition now captured behaviours that did not necessarily warrant the attention of the family law system or that the widened definition could minimise the focus on more serious and sustained forms of violence.

On the other hand, some professionals in the *Responding to Family Violence Study* raised concerns that the inclusion of the qualifying words ‘fear’, ‘coercion’ and ‘control’ in the definition, in effect, may result in a narrowing of the scope of the definition. The Published Judgments component of the *Court Outcomes Project* (2015) also reflected on the application of the definition of family violence by judicial officers, with insight provided into the interpretation of these qualifying words. It was observed that in some cases, judicial officers paid close attention to whether the elements of fear, coercion or control had been established. For example, in one judgment in the sample, *Carra v Schultz* [2012] FMCAfam 930, behaviour which fell within one of the examples accompanying the definition was not considered to be family violence as it was determined that the relevant behaviours had not resulted in fear, coercion or control. The court in this case noted that, absent any evidence that the father was coerced, controlled or felt fearful, “the withholding of time or communication with a child does not, without more, constitute family violence” (*Carra v Schultz* [2012] FMCAfam 930 [7]; Court Outcomes Study, 2015, p. 71).

The definition’s focus on the elements of fear, coercion or control has been observed to give rise to the risk of excluding people who have experienced behaviour considered to be family violence but who are otherwise unable to satisfy the court that the behaviour has controlled or coerced them or caused them to feel fearful (See further for eg., Rathus, 2013). Relevantly, the *Experiences of Separated Parents Study* (2015) explored the extent to which the behaviours involving family violence were associated with fear, coercion and control. In both the periods before or during separation and the period since separation, participating mothers were more likely to report feeling fearful, coerced or controlled than fathers although this was reduced in the period since separation. The *Experiences of Separated Parents Study* (2015) data also indicated that feeling fearful, coerced or controlled was more commonly reported by parents who had experienced physical abuse as opposed to emotional abuse (see further ESPS, 2015, Tables 3.9 and 3.10). Together these findings suggest that some violent or abusive behaviours may fall outside of the definition as currently expressed in s 4AB and that there is benefit in clarifying the definition to take into account the range of circumstances in which family violence can occur.

The *Domestic and Family Violence and Parenting Study* (2015, see, in particular, Table 4.8) also drew attention to a range of ways in which perpetrators of family violence may abuse and





harass their partners before, during and after separation. A variety of behaviours were described by participants (n=50) in the qualitative component of the study that extended beyond ‘control and coercive behaviour’ (pre-separation: n=37, post-separation: n=16), which included: monitoring whereabouts and circulating defamatory comments to family members, friends or publicly with intent to harm, shame, belittle or humiliate (through, for example, social media) (DFVP Study, 2017, Table 4.8). The interviews with participants also revealed a range of effects that such behaviours had on the participants, including anxiety, depression and anger (DFVP Study, 2017 p. 157). In addition, more than half of the 50 participants (n=29) reported experiences indicative of post-separation “systems abuse” by their former partner using systems, services or agencies to further perpetuate abuse or control (for example, through repeated or protracted litigation, non-compliance with family law orders, the making of vexatious and false claims to authorities, or cross-examination about rape and sexual practices during proceedings). As observed in the Institute’s Submission 206, these findings suggested the potential for a reference to systems abuse in the FLA definition of family violence to contribute to greater awareness and recognition of such forms of abuse.

As with the 2012 amendments, it is essential for the definition of family violence to continue to be responsive to societal change as well as contemporary understandings and experiences of family violence. As observed in the Commission’s Discussion Paper, use of technology to perpetuate abuse and harassment is not specifically articulated in the s 4AB definition of family violence (see also Douglas & Burdon, 2018; SmartSafe, 2015; UN, 2015). In the *Experiences of Separated Parents Study*, it was observed that in the 2012 and 2014 cohorts, the percentage of participants who reported experiencing defamatory comments with the intent to shame, belittle or humiliate (for example, through social media) and/or monitoring of whereabouts was high for both mothers and fathers (ESPS Study, 2015, Figure 3.2). As with the observations made in relation to the misuse of legal and other systems and processes directly above, whether such behaviour is covered by the current definition may also be dependent on evidence adduced by the victim of family violence to satisfy the criteria of fear, coercion or control. The inclusion of additional and more specific examples assists in the clarification of behaviour falling within the scope of the definition, and that are relevant for parties/interested persons to disclose and for family law professionals to take into account. These examples may include the proposed: “using electronic or other means to distribute words or images that cause harm or distress” or “non-consensual surveillance of a family member by electronic or other means” (Discussion Paper, p. 189).

As noted above in the “Education, awareness and information” section, a positive effect of the s 4AB definition as identified by some professionals in the *Responding to Family Violence Study* was that a broader definition of family violence had the potential to promote greater awareness and understanding of the dynamics and complexities of family violence amongst family law professionals and the broader community, which may in turn result in improved practices in screening, assessing and responding to family violence (RFV Study, 2015, p. 36).

The definition of family violence in s 4AB may also be considered in the broader context of national system-wide reforms aimed at addressing violence against women and children and raising awareness of the varied forms domestic and family violence can take (see, eg, the National Plan to Reduce Violence Against Women and their Children). The Third Action Plan 2016-2019 also specifically notes the need for responses to the increased practice of distribution of intimate material through the use of technology without consent (also known as ‘revenge pornography’) and recognises such behaviour as a form of sexual violence.

Together, these considerations highlight the importance of a definition that is wide enough to encompass societal changes (such as an increased use of technology) as well as the varied





experiences and effects of domestic and family violence. It is also observed that further research to examine the experiences of domestic and family violence on the part of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds and LGBTIQ people is critical to the consideration of whether the definition can cater to their experiences and needs.

### **Proposed amendments to the FLA - Unmeritorious proceedings**

The Commission's Proposals 8-4-8.5 suggest that the existing provisions in the FLA relating to unmeritorious proceedings be rationalised and that in considering whether proceedings should be deemed unmeritorious, the court *may* have regard to evidence of a history of family violence and in children's cases, but *must* consider the safety and best interests of the relevant child and the impact of the proceedings on the caregiver of the child. Together with Proposal 8-3, these proposals seek to better acknowledge and address family violence perpetuated through systems and processes and to ensure that courts are able to better account for the range of factors relevant to the assessment of the behaviour and conduct of parties to proceedings.

As described above, the use of repeated or protracted litigation was frequently raised by participants in the *Domestic and Family Violence and Parenting Study* (2015) as a form of post-separation systems abuse. The interview data revealed a range of tactics used by perpetrators to maintain abusive dynamics such as repeated or protracted litigation in multiple forums to exhaust the participant's resources, making vexatious and false claims to authorities, non-compliance with family law orders or direct cross-examination about violence, abuse and/or sexual practices during proceedings. The study drew attention to the need for greater understanding of such abusive behaviours and the negative impact on the women and children involved, particularly as a result of having ongoing contact with the perpetrator. For example, one participant in this study described her experience of the family law processes as an extension of the ex-partner's abuse, including her extensive cross-examination by the ex-partner about irrelevant sexual matters, an experience she described as being 'incredibly traumatising' (DFVP study, 2017, pp. 182–183).

More generally, participants in the *Domestic and Family Violence and Parenting Study* (2017) 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 experiences and the impact of trauma. Many participants also described the family law process itself as traumatising, from facing an uncertain court outcome to having their evidence tested in court and coming face-to-face with the perpetrator during court processes. Participants reiterated the need for a family law system which could meet the range of needs arising from family violence, including: the need for expertise in family violence and a trauma-informed practice which emphasises the protection and safety of parties.

In relation to the trauma associated with direct cross-examination, the *Direct Cross-examination Study* (2018) found that direct cross-examination was a feature of around seven in ten of the sampled cases (involving one or more self-represented litigants and alleged or substantiated claims of family violence). In a significant proportion of these cases, the allegations of family violence, abuse or risks to child safety were upheld in part or full (DCFL, 2018, Tables 4.3-4.5). The study also highlighted the potential traumatising effect of direct cross-examination in proceedings for victims of family violence. In a substantial proportion of cases involving direct cross-examination, the cross-examination appeared to give rise to distress or to an otherwise negative experience on the part of the party undertaking the cross-



examination or the party being cross-examined or both (DCFL, 2018; Submission 206, p. 20-21).

Measures to rationalise the provisions relating to unmeritorious proceedings and to better identify behaviours associated with the use of proceedings and processes to continue the perpetration of family violence are supported by these data.

## Simpler and clearer legislation (Chapter 3)

### Simpler and clearer legislation – General

The Commission proposes that the FLA and its subordinate legislation be comprehensively redrafted with the view to simplifying the legislation and supporting its readability (Proposal 3-1). The Commission also proposes a comprehensive review of the family law court forms to improve their useability and effectiveness (Proposal 3-2).

Data from the *Experiences of Separated Parents Study* (2015) and the *Children and Young People Study* (2018) regarding participants' lack of clarity about family law system process, support the revision of the FLA with a view to enabling simpler, clearer and more user-friendly legislative provisions (ESPS, 2015; Children and Young People Study, 2018). Data from the *Responding to Family Violence Study* (2015) regarding the utility of Form 4/Notices of Risk completed without the support of legal professionals, also support a review of court forms to ensure that they are clear and accessible to litigants, and that they support the provision of relevant and accurate information for courts, including information that supports court personnel to respond in a timely way to concerns safety of families.

It is also noted that the Commission proposes the removal of FLA provisions relating to the establishment of the Family Court of Australia and relating to the Australian Institute of Family Studies (ss 114A-114M) to separate legislation. The benefits associated with streamlining the FLA are acknowledged where such amendments support the accessibility and useability of the FLA on the part of families. The Institute recommends consideration be given to whether the retention of ss 114A-114M, together with provisions relevant to the Family Court of Australia and the proposed amendment of s 115 with respect to the establishment of the proposed Family Law Commission, would ensure ready accessibility to provisions relevant to these important institutions. In relation specifically to the Institute and the proposed Commission, their retention and inclusion in the FLA respectively may better encourage priority to be accorded to the evidence-based monitoring and review of the family law system.

In this regard it is noted that the provisions relating to the establishment of the Institute were key to the initial passage of the FLA and are reflective of the recognised need for a research body to undertake 'specialised research' into issues affecting families in Australia (Daily Hansard, House of Representatives, 28 November 1974, p. 4323), and which can monitor and review the effects of the FLA and ensure that the FLA is subject to "rigorous examination in the light of experience" (Daily Hansard, Senate, 27 November 1974, p. 2894 cited in Rosenbrock, 2001). As observed at the outset of this submission, since the Institute's inception, research conducted by the Institute has been central to the development and evaluation of key amendments of the FLA. For instance, the findings from the *Evaluation of the 2006 family law reforms* (2009), together with reports including from the Australian Law Reform Commission/NSW Law Reform Commission (2010) and the Family Law Council (2009), were instrumental in informing the introduction of amendments to the FLA in 2012 directed at improving the family law system's identification of, and response to, matters involving family violence and safety concerns. This research program was extended with the Institute's



*Evaluation of the 2012 family violence amendments* which has informed the current reform agenda, with the Institute's family law research expertise remaining pivotal to the ongoing development of the evidence base to inform policy, practice, family law system design and improvement into the future.

### **Simpler and clearer legislation - Parenting arrangements**

The Commission suggests a number of changes to Part VII of the FLA which currently provides a framework for the court in determining parenting arrangements. In particular, the Commission proposes that the current s 60B be replaced by a new principles section, which sets out key principles to assist with legislative interpretation and to clarify the values and objectives of the legislation (Proposals 3-4 and 3-5). Currently, Part VII provides that the "best interests" of the child must be the paramount consideration for the courts in making parenting orders. Proposal 3-4 suggests amending these provisions to emphasise the importance of safety to the child's best interests, namely through amendments which state that arrangements for children should be designed to advance the child's "safety and best interests" and that the arrangements should not expose children to abuse or family violence. Another proposed principle in Proposal 3-4 is that the benefit to the child in maintaining a relationship with people who are significant in their lives should be recognised "provided that maintaining a relationship does not expose them to abuse, family violence or harmful levels of continuing conflict". Proposal 3-5 further seeks to simplify the matters set out in the current s 60CC to focus on certain matters including "whether particular arrangements are safe for the child and the child's carers, including safety from family violence or abuse" and the benefit to the child of maintaining a relationship significant to them "where it is safe to do so".

There is significant merit in simplifying and clarifying the framework for judicial decision-making about parenting arrangements to emphasise the focus on protection from harm and to assist judicial officers and parties in formulating safe parenting arrangements. Despite the 2012 family violence amendments explicitly clarifying the priority to be accorded to the protection of children from harm over the benefit to the child of a meaningful relationship with parents (in s 60CC(2A)), professionals responses in the *Responding to Family Violence Study* (2015) indicated that notably fewer participating lawyers and non-legal professionals agreed that adequate priority was being accorded to this consideration as compared to the 'meaningful relationship' consideration (s 60CC(2)(a)), (RFV Study, 2015, Figure 1 – 68% of lawyers and 62% of non-legal professionals cf. 89% of lawyers and 83% of non-legal professionals). Analysis undertaken as part of the Published Judgments Study component of the *Evaluation of the 2012 family violence amendments - Court Outcomes Project* (Court Outcomes Project, 2015) identified varied approaches in relation to the application of s 60CC(2A). The approaches emerging from the judgments included the interpretation of s 60CC(2A) as shifting the balance but not altering the need to consider the evidence as a whole; the operation of s 60CC(2A) as a "tie-breaker" and the consideration of s 60CC(2A) in the context of applying the unacceptable risk test. Strickland and Murray (2014) note that the complexity of the Part VII framework in relation to parenting arrangements and the absence of guidance in the legislation for decision-making when an allegation of family violence is upheld, may undermine the protection of children and families from harm associated with family violence. Simple and clear provisions unequivocally articulating the paramount consideration of the best interests of the child as conceptualised by the priority to be accorded to child safety may better serve to protect children and young people when making arrangements in the post-separation context.



## **Simpler and Clearer Legislation - Family violence and property division**

The Commission proposes that the provisions relating to property division be amended to provide for the court to account for the effect of family violence on a party's contribution and the future needs (Proposal 3-11). This proposal is supported by existing research, including relevant research undertaken by the Institute. Consistent with the Commission's proposal, it is also noted that further research is required to provide a current evidence base to support relevant policy and legislative development.

The Institute's Submission 206 indicated that many separated parents experienced emotional abuse and/or physical hurt before or during separation. A large body of research has consistently identified gendered patterns in domestic and family violence, with women being far more likely than men to experience violence perpetrated by their current or former partner. The *Longitudinal Study of Separated Families* (LSSF, conducted in 2008, 2009 and 2012), with Wave 1 forming part of the *Evaluation of the 2006 family law reforms*, showed that although a small minority of parents reported experiencing physical hurt after separation with very few indicating this experience continuing some five years after separation, reports of emotional abuse did not diminish over time. Not surprisingly, parents who reported experiencing violence/abuse before or during separation were more likely than other parents to report that they experienced emotional abuse after separation (DFVP, 2017).

It has been well documented that family violence has serious adverse effects on a victim's physical and emotional health (e.g., Access Economics, 2004; Evans, 2007). For example, eight in ten parents in the 2012 sample forming part of the *Evaluation of the 2012 family violence amendments - Experiences of Separated Parents Study* (ESPS, 2015) who reported physical hurt before separation, reported having suffered specific injuries as a result of this violent behaviour (e.g., bruises, scratches, cuts, bone fractures) (First reported in De Maio et al. 2013). An earlier Australian study conducted by Evans (2007) involving interviews with 134 women who had separated from an abusive partner also reported a range of health-related effects, in particular ongoing psychological damage, such as long-term depression and post-traumatic stress disorder). Other research indicates that the trauma, safety concerns and other psychological impacts of family violence have negative consequences on women's employment, as reflected lost days of work, job loss, and reduced productivity (see Lodge, Moloney & Robinson, 2011). There is also evidence that family violence is a key reason for homelessness among women and their children, with concerns about their own and their children's safety requiring these women to leave their home (Tually et al., 2008).

As noted in the Institute's Submission 206, the *LSSF Wave 3* data showed that, compared with other separated parents, those who reported that they had been victims of violence/abuse before or during separation were more likely to report that they had received a lower share of the asset pool in their property settlement and to have experienced financial hardship, even after five years of separation (Kaspiew & Qu, 2016). Their sense of injustice about their property division was evident in the data. Fehlberg and Millward (2014) conducted a three-wave qualitative study of 40 mothers and 20 fathers between 2009–2011 which concluded that in that study, "family violence was often relevant to disputes and to disadvantageous processes and outcomes for both finances and parenting (property and child support) matters, and could add to financial difficulties for primary carers and children" (p. 242).

Although these findings are indicative of the relationship between family violence and property division, research in this area is deficient. As discussed further below, the *LSSF* research was based on one cohort of separated parents. These parents had at least one child under the age of





18 years when they were first interviewed (in 2008 – on average, after 15 months of separation). The sample did not include separated parents with older children and former partners who did not have any children born of the relationship. To our knowledge there is no recent Australian research (based on nationally representative samples) examining the relationship between property division and violence/abuse experienced among these populations. Fehlberg and Millward observe that their study, “and the paucity of previous research in Australia and internationally, suggests that more work needs to be done with larger, representative samples as a first step in encouraging law reforms and policies that reflect a more holistic understanding of the relevance of family violence to post-separation disputes” (2014, p. 242).

### **Further research on property and financial matters after separation**

More generally the Commission proposes that “The Attorney-General’s Department (Cth) should commission further research on property and financial matters after separation, including property adjustment after separation, spousal maintenance, and the economic wellbeing of former partners and their children after separation” (Proposal 3-12).

While research has continued to show that women, especially those with the primary care of children, tend to be considerably worse off financially than men after separation, there is a strong need for up-to-date Australian research on post-separation financial arrangements, based on a representative sample. The following discussion outlines significant studies which have examined post-separation financial arrangements in Australia since the introduction of the FLA in 1975.

It is now over three decades since the first detailed study on the economic consequences of divorce (*Settling Up*) was undertaken by the Institute (1984) (McDonald, 1986). This study was based a sample of 825 Victorian participants whose divorce had been finalised in the Melbourne Registry of the Family Court of Australia. The sample comprised three groups: two “younger” sub-groups who had divorced, respectively in 1981 and 1983, with two dependent children, and whose marriages had lasted between 5 and 14 years; and an “older” sub-group who had divorced in 1981 after a marriage of 15 or more years and where the wife was aged 45–59 years at the time of separation. The survey collected detailed data on a range of issues including pre-separation and current personal and household income, wealth, housing and employment (including employment history), child “custody”, “access” and “maintenance” and spousal maintenance, and family composition. Among other issues, *Settling Up* examined the extent to which various factors influenced property settlement and household income.

A similar study (the *Australian Divorce Transitions Project: ADTP*) was conducted in 1997 in the context of the rising employment rate of mothers and the introduction of the Child Support Scheme (Smyth & Weston, 2000). The ADTP comprised two samples of divorcees who had separated after January 1988: 513 parents who had a child born of the relationship and who was under 18 years at the time of separation; and 137 women and men from long-term marriages had had been married for at least 15 years and where the wife was 45–65 years old at the time of separation. This study indicated that several outcomes associated with divorce had changed little. Examples include the findings that single mothers and older women living alone tend to have relatively high rates of poverty (Smyth & Weston, 2000); the person who initiated the decision to separate was the most likely to leave the house and those who left the house tended to receive a lower share of the property; and superannuation was taken into account in property matters in only a minority of cases (Dewar, Sheehan & Hughes, 1999).



Following the amendments to FLA that enabled superannuation to be divided upon relationship break down, the *Superannuation and Divorce Survey* (SDS) was conducted in the early 2000s (Sheehan, Chrzanowski & Dewar, 2008). It focused on 660 divorced men and women who had separated after June 2001 — that is, after the *Family Law Legislation Amendment (Superannuation) Act 2001* (Cth) had been implemented. Sheehan and colleagues found that, while the vast majority of respondents had considered superannuation in negotiating their property settlements, fewer than one-fifth had included their superannuation in the asset pool for division. Those who did not seek legal advice were less likely than other couples take superannuation into account.

Wave 3 of the Institute's *LSSF* (conducted in 2012) represents the most recent large-scale Australian study which derived information on post-separation financial arrangements. *LSSF* Wave 3 is based on the reports of over 8,000 separated parents with a child under 18 years old at the time of their separation. As discussed above, the study provided some insight into property division among such parents. For example, the superannuation of at least one parent had been taken into account in the property division of around one in three of these parents, and the parents who had experienced family violence were disadvantaged in their property settlement (Qu, Weston, Moloney, Kaspiew & Dunstan, 2014). However, it is again important to note that these results apply solely to a cohort of parents with at least one child born of the relationship who was under 18 years old at the time of their separation. When interviewed, virtually all these parents were under 55 years old and had lived together for an average of ten years. Missing from the study are separated parents who did not have a child together, and separated couples from longer term relationships (most of whom would have had a child together). In the latter cases, a substantial proportion of mothers would have experienced interrupted workforce participation and/or periods of part-time paid work, so it is critical to also consider the effects of separation upon these people also.

Various policy, legislative and social changes have occurred over recent decades that may well affect property distribution and financial circumstances after separation. For example: employment rates of women have continued to increase; single mothers on welfare are now moved from a pension to the lower paid Newstart once their youngest child turns 8 years of age; the proportion of couples who have a child when in a de facto marriage has increased; and the proportion of people with superannuation has increased dramatically. Such changes may affect the economic circumstances of separated couples and the ways in which property is divided upon separation. A comprehensive understanding of the impacts of such changes on property distribution and post-separation economic circumstances requires an up-to-date, large-scale and holistic Australian study of the economic consequences of relationship separation (including property and income distribution). Such a study would include separated people who differ in terms of such factors as age, educational attainment level, employment history, and parenting status.

## Dispute resolution (Chapter 5) and Reshaping the adjudication landscape (Chapter 6)

The Commission in its Discussion Paper outlines a range of proposals relating to non-adversarial approaches to dispute resolution and changes that may be made to improve the existing adjudication framework.





Chapter 5 broadly concerns proposals to improve the availability and use of family dispute resolution. Following the establishment of new and expanded family relationship services under the 2006 family law reforms, the data of *Evaluation of the 2006 family law reforms* (2009) and the *Evaluation of the 2012 family violence amendments* (2015) via the *LSSF* and *Experiences of Separated Parents Study* respectively, identify an increase in the use of FDR over the first few years of the implementation of the 2006 family law reforms, with this use of FDR remaining stable in the two later cohorts (Qu, forthcoming). The 2014 sample from the *Experiences of Separated Parents Study* (2015) suggested that close to four in ten separated parents attempted FDR for their children's parenting arrangements after separation. Family Relationship Centres ('FRC') are currently the key providers of FDR, with two-thirds of participating parents who attempted FDR reporting that they went to a FRC. Of the separated parents who reached parenting arrangements with the assistance of the family law system, FDR was used more commonly when compared with lawyers and the courts (Kaspiew et al, 2009; Qu et al, 2014).

The use of FDR was closely linked with experience of toxic issues (family violence, mental health or substance misuse) before or during separation and poor quality of inter-parental relationship and having safety concerns (Qu, forthcoming; ESPS, 2015). For example, the data of SRSP 2014 revealed that two-thirds of separated parents who reported experience of physical hurt before separation and nearly 60% of separated parents who reported experience of emotional abuse alone before/during separation contacted counselling or FDR services at the time of separation, compared to just over one-third of separated parents without any such experience (ESPS, 2015, Table 4.2, p. 64). Despite various challenging issues (e.g., mental health or substance misuse before separation), separated parents who used FDR were typically able to reach an agreement, with positive outcomes increasing over time. The data from the 2014 sample from *Experiences of Separated Parents Study* (2015) 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* 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, forthcoming). It is also important to note that parents who resolved their parenting arrangements via counselling, mediation or FDR provided more favourable assessments of the process and parenting arrangement outcomes than those who reaching parenting arrangements through lawyers or the courts (Kaspiew et al, 2009; Qu et al, 2014).

While FDR has become an important pathway for separating and separated parents to resolve their parenting matters, the use for FDR to resolve property/financial matters has been uncommon. Indeed, the *LSSF* data reveals that nearly three in ten parents who reached property settlement through lawyers and 7% of parents who reached property division through the courts (Qu et al, 2014, p.98). In contrast, only 4% used mediation or FDR services. It is worth noting that even among separated parents with very modest asset pools to divide (less than \$40,000) and who were least likely to afford legal services, the use of courts (2%) or lawyers (7%) was more common than mediation or FDR services (1%) (Qu et al, 2014, p. 99). These findings are consistent with the Commission's proposals in relation to expanding FDR services to property and financial matters (e.g., Proposal 5-2). The analysis by Qu (forthcoming), however, suggests that those who are more disadvantaged with respect to education and socio-economic status are less likely to make use of FDR, which highlights the importance of promoting accessibility of FDR to this group.

The Commission's proposal 5-10 suggests the development of effective guidelines for the delivery of legally assisted dispute resolution. Submission 206 outlined the findings from the Institute's research (Kaspiew et al., 2012; Moloney et al., 2011) which identified the benefits



of holistic, non-adversarial and multidisciplinary models of service delivery resolution and noted that measures such as legally assisted dispute resolution had “considerable potential if well-targeted and supported by clear protocols” (Moloney et al., 2011; Submission 206, p. 18).

Chapter 6 of the Discussion Paper concerns proposals to provide safe, effective and responsive adjudication pathways and processes for parties. Proposals 6-1 and 6-2 refer to measures to establish a triage process to direct matters to alternative dispute resolution processes or pathways within the court, and improve initial and ongoing risk assessment and case management of matters. Proposal 6-7 raises for consideration the establishment of a specialist family violence list for the hearing of high risk family violence matters and ensuring that professionals working within this list have specialist family violence expertise.

These proposals are consistent with the concerns raised by family law professionals about the family law system’s capacity to screen for, assess and respond to family violence and child safety concerns (RFV Study, 2015, Table 4.1; see further, Submission 206, p. 29-30). In particular, we note the data which suggests that a high proportion of matters proceeding to the family courts involve allegations of family violence or child abuse (2014: 41% – Court Outcomes Project, 2015). The prevalence of matters involving allegations of family violence or safety concerns among the court cases suggests the need for broader awareness and understanding around issues associated with family violence, extending beyond cases categorised as high risk matters (see further “A skilled and supported workforce” section). Furthermore, Proposal 6-12, which focuses on ensuring that court premises are accessible and safe, is a crucial component of ensuring that parties feel secure and protected in their engagements in court and particularly in circumstances where they may be coming into contact with an alleged or substantiated perpetrator of family violence (DFVP, 2017; DCFL, 2018).

The Commission’s proposal 6-8 suggests co-locating family law registries in local court registries (including local courts in rural, regional and remote locations). As discussed in Submission 206, AIFS research has identified the need for multi-disciplinary service models which are responsive to the complex, co-occurring needs of separating families (see further “Getting advice and support and “Information sharing” sections). The expansion of the Co-Located Child Protection Practitioner Initiative is an example of a measure between the family law and child protection system which supports such collaboration and information sharing (Wall et al., 2015).

Proposals 6-9, 6-10 and 6-11 concern the development of a post-order parenting support service to assist parties to implement parenting orders and manage their co-parenting relationship. Data from the Institute’s research detailed above in relation to the discussion relating to getting advice and support, is consistent with the need for measures supporting families in an ongoing and holistic way post-separation (Children and Young People Study, 2015).

## A skilled and supported workforce (Chapter 10)

Proposals 10-1 and 10-2 relate to the development of a workforce capability plan for the family law system and to the identification and development of the core competencies relevant to the role of each professional group in the family law system. In particular, the Commission notes the importance of professionals, developing amongst other competencies, an understanding of family violence, child abuse and the impact of trauma on adults and children as well as the ability to identify and respond to risk appropriately (Proposal 10-3). Specifically, Proposals 10-6 and 10-8 address the need for awareness, experience and expertise in relation to family violence for legal practitioners and judicial officers.



As outlined in the Institute's Submission 206 and as discussed above, data derived from Institute research suggests the need for a system that is trauma-informed, holistic and child-inclusive in its approach in light of the complex needs of clients in family law proceedings. It is noted that having a workforce capability plan may assist in identifying the core and specialised training needs of professionals and ensuring consistency in service delivery.

Findings from the *Experiences of Separated Parents Study* (2015) have identified the need for improvement in relation to the screening of family violence and risk amongst family law professionals as well as improvements in professionals' responses to disclosures of family violence and safety concerns (see Submission 206, p. 29). It was noted in Submission 206 that while there was a greater emphasis among professionals on identifying concerns about family violence and child abuse following the 2012 amendments, close to three in ten parents reported never being asked about either of these issues when using FDR/mediation, lawyers or courts (ESPS, 2015). Further, in both the 2012 and 2014 surveys in the *Experiences of Separated Parents Study*, approximately half of the participants reported that disclosures of family violence and/or safety concerns were taken seriously and dealt with appropriately (ESPS, 2015, Table 5.11).

From the perspective of family law professionals, although the data suggested that professional practices were improving consistent with the intention of the family violence reforms, concerns were raised about the system's general capacity and the resources available to screen for, assess and respond to family violence and child safety concerns (RFV study, Table 4.1). Participants in the *Domestic and Family Violence and Parenting Study* (2017) also described negative experiences with family law professionals who lacked sufficient expertise in family violence and did not place sufficient weight on their experiences and the impact of trauma, and emphasised the need for professionals to have expertise in family violence and trauma-informed practice (see further, Submission 206, p. 30).

In response to the Commission's Question 10-1 regarding whether there are any additional core competencies to be considered in the workforce capability plan, AIFS' research emphasises the need for family law professionals to develop an understanding of child-inclusive practice and to develop particular skills to engage appropriately and effectively with children and young people. Participants in the *Children and Young People Study* (2018) identified the behaviours and characteristics that children and young people valued in their actions with family law professionals. In particular, participants identified the following as key components (also noted above) of effective engagement by service professionals:

- effective listening and providing them with a space to speak;
- acting protectively and addressing and responding to their concerns;
- building a relationship of trust (which includes embodying qualities such as patience, empathy and respect); and
- providing information and keeping children and young people informed about issues affecting them.

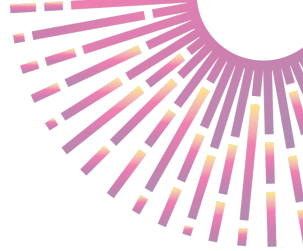
Those findings suggested that support is required to facilitate the development of these characteristics and skills amongst family law professionals to ensure that the child or young person's needs are being met by the family law system in the post-separation context.



## System oversight and reform evaluation (Chapter 12)

The Commission proposes the establishment of a new, independent statutory body, the Family Law Commission, to oversee the family law system with, a view to ensuring that “the family law system operates effectively in accordance with the objectives of the FLA, and to promote public confidence in the family law system”. More specifically, the Commission’s proposed responsibilities include: the management of the accreditation of professionals and agencies across the system (including oversight of the training requirements) and resolving complaints about family law system professionals (Proposal 12-2); the provision of guidelines to support family law system professionals in understanding their legislative responsibilities (Proposal 12-4); undertaking inquiries of its own motion or at the request of the government to improve the operation of the family law system (Proposal 12-3); making recommendations about research and family law proposals with a view to improving the family law system in terms of meeting the legislative requirements and public health goals (Proposal 12-6); and raising public awareness of the roles and responsibilities family law system professionals (Proposal 12-1).

The Institute observes that according priority to the monitoring of the family law system and providing an independent statutory body tasked with this function, and with the authority to nominate research projects identified as imperative through this role, is an approach that is likely to facilitate the undertaking of necessary research in a timely manner. Australian research, including the extensive body of work undertaken by the Institute, in large part commissioned by the Australian Government – Attorney-General’s Department, has played an important role in informing the Family Law reform agenda to date. This family law research includes early research by the Institute - *Settling Up: Property and income distribution on divorce in Australia* (McDonald, 1986) and *Settling Down: Pathways of parents after divorce* (Funder, Harrison and Weston, 1993) studies, the *Australian Divorce Transition Project*, through to more recent research including the *Evaluation of the 2006 family law reforms* (Kaspiew et al, 2009) and the *Evaluation of the 2012 family violence amendments* (Kaspiew et al, 2015), together with additional waves of the *Longitudinal Study of Separated Families* (Qu et al, 2014), the ICL Study (Kaspiew et al, 2014), the *Children and Young People in Separated Families Study* (Carson et al, 2018) and the *Direct Cross-Examination in Family Law Matters Study* (Carson et al, 2018). The research imperative continues in the context of the proposed wide-reaching reforms, with the evaluation of the impact of any reforms critical to the ongoing improvement of family law service provision directed at securing the wellbeing of children and their families. Expanding the existing rigorous evidence-base will inform the ongoing development of the Australian family law system over the short and longer term. To this end, the Institute acknowledges the importance of the Commission’s recommendation that an evaluation program be built into the current reform agenda. The Institute is also encouraged by the Commission’s proposal that the work of the Family Law Commission be informed by the proposed Children and Young People’s Advisory Board outlined in Proposal 7-13 (Proposal 12-1), providing an avenue for the collective views and experiences of children and young people to be directly heard, considered and reflected in the Family Law Commission’s operation and practice.



## Conclusion

This submission has presented findings from the Institute's research program which highlight:

- the challenges associated with a lack of understanding amongst adults, children and young people of the family law system, legislation and processes, together with fragmented, inconsistent or limited engagement with services;
- the barriers to the safe and effective participation of children and young people in the family law system;
- the gaps in the family law system's identification and response to family violence, abuse and safety concerns;
- issues around the ability of family law professionals to effectively screen for, assess and respond to the complex needs of clients; and
- the need for further research to, for instance, understand the experiences of family violence within different communities and consider issues relevant to post-separation property and financial matters.

In particular, this submission has identified the need for the family law system to:

- facilitate access to clear and up-to-date information about the family law system for adults and children/young people, together with timely access to advice or support services and dispute resolution options;
- facilitate coordinated and collaborative service delivery and non-adversarial approaches to dispute resolution to meet the varied and complex needs of families;
- adopt child-inclusive approaches that provide opportunities for children and young people to participate in decision-making that affects them;
- adopt responses to family violence which are responsive to contemporary understandings and experiences of family violence, both in the context of determining parenting arrangements and property/financial settlements;
- simplify and clarify the framework for judicial decision-making about parenting arrangements to emphasise the focus on protection from harm;
- facilitate the development of core and specialised competencies among family law professionals such as an understanding of family violence, child abuse and trauma along with the ability to identify and respond to risk appropriately and engage effectively with children/young people; and
- accord sufficient priority to the ongoing monitoring and evaluation of the family law system and any reforms to ensure evidence-based policy and legislative development.





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