Responding to family violence
A survey of family law practices and experiences

Rae Kaspiew, Rachel Carson, Melissa Coulson, Jessie Dunstan and Sharnee Moore
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This report presents the findings of Responding to Family Violence: A Survey of Family Law Practices and Experiences (Survey of Practices). This study is the first component of a three-part research program, the Evaluation of the 2012 Family Violence Amendments, that examines the effects of amendments to the Family Law Act 1975 (Cth) (FLA) that came into operation on 7 June 2012. These reforms were intended to improve the way in which concerns about family violence, child abuse and child safety are dealt with in parenting matters across the family law system. The Evaluation of the 2012 Family Violence Amendments was commissioned and is funded by the Attorney-General’s Department (AGD). The key goal of the research is to examine the extent to which the aims of the 2012 family violence amendments are being realised. These aims include improving the family law system’s ability to identify family violence and child safety concerns and to support parenting arrangements that prioritise the protection of children from harm over their right to enjoy a meaningful relationship with each parent where these aims are in conflict.

The views and experiences of professionals working across the family law system were examined on the basis of quantitative and qualitative data from judicial officers and registrars, lawyers and non-legal family law professionals (e.g., family consultants and family dispute resolution practitioners). Telephone interviews were also undertaken with parents who used family law system services in the period of approximately 12 months preceding August 2014 to examine their experiences of these services. Overall, 653 professionals across the various groupings contributed to the data collection, together with 2,473 parents (a sub-sample derived from the first half of the fieldwork period for the Survey of Recently Separated Parents 2014, \( n = 3,428 \)) who reported using family law system services in the relevant period.

Background

The Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) was introduced to improve the family law system’s response to family violence. In particular, it aims to better support the disclosure of concerns about family violence, child abuse and child safety by parents engaged in the family law system and to encourage professionals to respond to these disclosures in a manner that prioritises protection from harm. These family violence reforms respond to the findings and recommendations of three reports (Parliament of the Commonwealth of Australia. House of Representatives, 2011 p. 1), namely the Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009), the Family Courts Violence Review (Chisholm, 2009) and Improving Responses to Family Violence in the Family Law System (Family Law Council, 2009).\(^a\)

The main elements of the 2012 family violence reforms involved:

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

The AVERT Family Violence: Collaborative Responses in the Family Law System (AGD, 2010) and the DOORS Detection of Overall Risk Screen (McIntosh & Ralfs, 2012) were two further initiatives implemented in recent years with the intention of improving practices in relation to identifying, assessing and responding to risks and harm factors in the family law system context.

The research

The findings presented in this report are based on data collected in two studies:

- The **multidisciplinary surveys** of judicial officers and registrars (n = 37); lawyers (barristers and solicitors) (n = 322) and non-legal family law system professionals (n = 294) were predominantly administered online. Participants were recruited with the assistance of the Family Court of Australia (FCoA); the Federal Circuit Court of Australia (FCC); the Family Court of Western Australia (FCoWA); National Legal Aid; the Family Law Section of the Law Council of Australia; state, territory and regional law associations and bar associations; the Women’s Legal Services in each state and territory; Family Relationship Services Australia; and the Australian Psychological Society Family Law and Psychology Interest Group.
- **Telephone interviews** were conducted with parents who comprised a sub-sample of parents participating in the Experiences With Services module of the Surveys of Recently Separated

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\[^b\]\( s 60D(2) \) of the FLA provides that an adviser is: (a) a legal practitioner; or (b) a family counsellor; or (c) a family dispute resolution practitioner; or (d) a family consultant.

\[^c\]\( At the time of administering the surveys for this RFV study and writing the RFV report, the amendments to the Federal Circuit Court Rules providing for the Notice of Risk to replace the prescribed Form 4 Notice in matters issued in all Federal Circuit Court registries were yet to come into operation. The Notice of Risk form was effective on a national basis from 12 January 2015. See Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014 (registered 22 October 2014). \)
Executive summary

Parents (SRSP) 2014. This group reported on their use of family law system services in the 12 months or so prior to August 2014 (n = 2,473).

Some of the findings are based on comparisons of responses to questions that were asked in both the Survey of Practices and some previous surveys conducted as part of the Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009), supporting analysis of whether views on particular issues relating to the family law system’s response to family violence and child safety concerns have changed as a result of the reforms.

Main findings

Reforms are a step in the right direction

The findings of this study indicate that the family violence reforms are a step in the right direction in the context of a reform agenda that seeks to prioritise protection from harm in the family law system. Overall, most aspects of the reforms have the support of a majority of professionals across the system.

Of the three groups surveyed, support was greatest among non-legal professionals, though most aspects were supported by majorities of participants across the groups. In relation to a question about whether the family law system “needed the family violence reforms”, 77% of all participants agreed that it did and only 16% disagreed. There were marked differences between the groups on the extent of endorsement of this proposition, with non-legal professionals being most positive (88%) and judicial officers and registrars having lower affirmative ratings (57%).

The responses of lawyers participating in the 2014 survey also reflected a greater level of support for the 2012 family violence reforms when compared with the level of support for the 2006 family law reforms by lawyers participating in the earlier 2008 Family Lawyers Survey (FLS). In 2008, just over 70% of the lawyers disagreed with the proposition that the “family law system needs the current [2006] reform package”.

In relation to the balance between protecting children from harm and supporting their right to have a meaningful relationship with both parents after separation, a larger majority of professionals agreed that the system placed “adequate priority” on having a meaningful relationship (87%) compared with protecting children from harm (67%). In relation to protection from harm, levels of endorsement among lawyers (the only group for whom comparison data are available) were higher in 2014 than in 2008 (68% cf. 55%). At the same time, agreement in relation to having a meaningful relationship increased slightly over the same period (89% cf. 86%). These findings suggest that improvement in relation to protecting children from harm has not come at the expense of supporting meaningful relationships where this is in a child’s best interest.

Data from lawyers also indicate that compared with the 2006 reforms, the 2012 family violence reforms were less likely to be seen to be associated with an increase in litigation, less likely to result in shared parenting arrangements in high-conflict circumstances, and more likely to be of benefit to most children. The comparison between lawyers’ responses in 2008 and 2014 indicate that the 2012 family violence reforms were an improvement from the perspective of this group, suggesting that the 2012 family violence reforms are more consistent with lawyers’ understanding of children’s developmental needs than the 2006 reforms. However, the response patterns to the question of whether the “current framework makes it easy to reach arrangements that are developmentally appropriate” suggest this issue continues to be problematic. Across all professional groups, marginally more professionals disagreed than agreed with the proposition (44% cf. 43%). The group that works most closely with the framework in day-to-day practice, judicial officers and registrars, were least likely to be positive in relation to this proposition (27% agreed).

Shifts were also identified in relation to lawyers’ advice-giving practices about fathers seeing children, about allegations of family violence and about parenting disputes. The most substantial change was evident in relation to advice about family violence, with 64% of this participant group indicating in 2014 that they had changed their advice about allegations of family violence, compared with 47% in 2008, and with 59% of lawyers also indicating that they had changed their advice about child abuse allegations since the 2012 family violence reforms.
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Support found for specific legislative amendments

Consistently positive findings also emerged in relation to the introduction of FLA s 60CC(2A) and the amended definitions of family violence and abuse. A substantial majority of professional participants agreed that FLA s 60CC(2A) was helpful (86% agreeing cf. 11% disagreeing). A question probing whether this made a difference at a practical level attracted a lower level of endorsement: 70% of the sample agreed that “protection from harm is accorded greater weight when relevant”.

The new definitions of family violence and child abuse also attracted the support of majorities of participants in each professional group. A majority (73%) of the aggregate sample agreed that the new definitions supported the making of parenting arrangements that were safer for parents and children, with limited differences between the professional groups evident on this question. However, lower rates of affirmative responses were provided by professional participants in relation to whether the new definitions were associated with an improvement in the family law system’s ability to identify, assess and respond to non-physical forms of family violence, with 37% of the aggregate sample indicating that the identification, assessment of and response to the these forms of harm had improved since the family violence reforms.

Further insight into the definitional issues was provided by the qualitative data, with comments from each professional group indicating that the amended definitions facilitated their work with clients in relation to the behaviours that might constitute family violence or abuse, although other responses to survey questions concerning the definitions and improved understandings among various stakeholders suggest improvement is still required in this regard. More specifically, the qualitative data reflected a range of views about whether the new definition in s 4AB operated in practice to broaden or narrow the range of behaviour that might qualify as family violence, with some participating professionals lauding its acknowledgement of less overt forms of family violence but others expressing concern that the breadth of the current definition now reduced the focus on identifying violence that was considered to be of a more serious nature.

In relation to the repeal of provisions of the FLA that were regarded as discouraging disclosure of concerns about family violence and child safety, the data suggest that, in general, participants did not associate the repeal of s 117AB costs provision with an increase in disclosures of family violence or child abuse, or an increase in the making of false allegations in this regard. Of note, disagreement with a negative effect was most evident among judicial professionals, the participant group most likely to have insight into the making of false allegations in the context of court proceedings. Overall, a similar lack of effect was suggested in relation to the repeal of the s 60CC(3) “friendly parent” criterion, although non-legal professionals were more likely to report that this amendment gave rise to a change in behaviour.

Although the survey findings indicate that a majority of professionals endorse the direction of the reforms, including the expanded definitions, a minority of professionals (more so lawyers than any other group) believed the reforms had led to more false or exaggerated claims of family violence or abuse. Concerns of this nature are not new in the family law system.

Improvement required in the identification, assessment and response to family violence and child abuse

Findings in relation to day-to-day practice across the system in identifying/screening, assessing and responding appropriately to concerns about family violence and child abuse suggest practice in this area continues to evolve, with room for further improvement.

More professionals in the aggregate sample disagreed than agreed with the proposition that the legal system had been able to screen adequately for family violence and child abuse (46% vs 43%). Similarly, a greater proportion of the aggregate sample disagreed than agreed with the proposition that the legal system had been able to deal adequately with cases involving allegations of family violence and child abuse (49% vs 41%). Differences among professionals were important in this context, with non-legal professionals being less confident than lawyers, and judicial officers/registrars responding most positively in this regard. Lawyers and non-legal professionals demonstrated higher levels of confidence in their own sector’s capacity in
these areas, and less confidence in the capacity of the other sectors: lawyers were less positive about Family Relationship Centres (FRCs), and non-legal professionals were less positive about lawyers.

Comparative data from lawyers participating in the FLS 2008 for the Evaluation of the 2006 Family Law Reforms indicate a slight improvement over time in these areas, with slightly higher affirmative responses from lawyers in 2014 when reflecting on whether the legal system has been able to screen for and deal adequately with cases involving allegations of family violence and child abuse. However, in both surveys, majorities of the sample returned negative responses, underlining the point that practice in this regard still has some way to go.

More specifically, the data relating to changes in professional practices in the period of time since the inception of the family violence reforms indicated that judicial and legal participants were in strong agreement that courts now more actively enquired about the existence of child abuse and family violence, while non-legal professionals were less positive on this front. However, when participants reflected on their own practice approaches, they were more likely to indicate that these practices had not changed since the introduction of the family violence reforms, with a greater proportion of non-legal professionals than lawyers reporting that they regularly asked their clients directly about family violence, risk of family violence, child abuse or child safety concerns. Professionals’ self-assessments showed that a majority of lawyers and non-legal professionals were confident in their capacity to screen for family violence, with a substantially higher proportion of positive responses coming from lawyers participating in the Survey of Practices than those participating in the FLS 2008. A majority of judicial officers and registrars also reflected positively on their own capacity to assess allegations of family violence and abuse.

The findings from the parents’ module support the assessment of a need for further improvement in the identification of family violence. Substantial minorities (29–46%) of parents who experienced physical violence indicated that they had not been asked about this by the primary services (i.e., family dispute resolution [FDR], FRCs, lawyers, legal services and courts), and majorities (53%) who had experienced emotional abuse and used lawyers and courts indicated they had not been asked about emotional abuse. Parents who experienced emotional abuse were most likely to report being asked about this during FDR (69%) and at FRCs (77%). Substantial minorities of parents who had experienced physical violence reported not disclosing this to the primary service (between 31% and 35%), and majorities (55–77%) who had experienced emotional abuse reported not disclosing this to the primary service. Overall, parents were less likely to report disclosing family violence to lawyers than at FDR, courts and FRCs. Women were most likely to report disclosing to family violence services (too few men had accessed these services to support analysis).

Mixed views of screening and assessment tools

Findings relating to screening and assessment tools indicate that while professionals generally used a broad range of screening and assessment tools, DOORS was not widely used at the time of the survey. Most lawyers and non-legal professionals reported that they rarely or never used this tool (51%, lawyers; 69%, non-legal professionals). Qualitative data on this issue provided detailed insight into professionals’ reflections and experiences of DOORS, and while there were a number of positive responses, particularly from non-legal professionals, concerns were raised about the accessibility of training sessions, and there were mixed views on the DOORS approach to screening and assessment and its workability in everyday practice. Some participants emphasised the utility of the client interview process and the significance of professional skill, knowledge and experience in identifying risks and harm factors in this context.

Data relating to evidence-gathering practices aimed at facilitating the assessment of and response to risks and harm factors indicated that judicial participants reflected more positively than lawyers on the utility and effectiveness of the Form 4 Notice. The open-ended responses of most lawyers reflecting on the Form 4 Notice as it stood at the time of the survey were negative in nature. The quantitative data on this issue indicated that a majority of the participating lawyers disagreed that when they filed a Form 4 Notice it was effective in yielding appropriate responses; that is, safer parenting arrangements for parents and children in cases involving
these risks and harm factors. Open-ended survey responses from some participants also pointed to the repetitive and cumbersome nature of the Form 4 Notice, and the limited effects that the filing of the Notice was perceived to have on the responses of courts, responding parties and prescribed child welfare authorities to secure safer outcomes for children and family members.

Further data on the evidence-gathering practices of lawyers after the family violence reforms indicate increases in applications for subpoena documents from child protection services and police for a majority of participating lawyers, with substantial proportions of judicial participants also providing affirmative views with respect to the effects of the reforms on a broad range of evidence-gathering tasks undertaken by lawyers. Data on professional practices when preparing court documentation since the family violence reforms also indicated an increase in the details provided of family violence, the exposure of children to family violence and of child abuse and child safety concerns in affidavit material and in the family reports and memoranda of family consultants and single experts.

Perceptions that some parenting arrangements have changed

Almost half of the aggregate sample of professional participants (49%) reported that the family violence reforms had resulted in more arrangements for supervised or neutral venue changeovers. While affirmative responses were largely consistent across each participant category, responses from judicial officers, registrars and lawyers reflected higher levels of disagreement than non-legal professionals on this proposition. A smaller proportion of the aggregate sample of participants (44%) agreed that the family violence reforms resulted in more supervised time arrangements, with greater consistency emerging in the affirmative responses of lawyers and non-legal professionals. In contrast, only 21% of the aggregate sample of participants agreed that the reforms had resulted in more arrangements for no parenting time, with a substantially greater proportion disagreeing. Interestingly, judicial officers, registrars and lawyers reflected lower levels of agreement than non-legal professionals on this question. A notable finding, however, was that a majority of participating lawyers (60%) agreed that to a greater degree courts now prioritised safety from family violence and child abuse at the interim hearing stage.

Service use and advice provided by professionals have shifted

The 2014 survey data, together with comparison data from the Survey of Family Relationship Services (FRS) Staff 2009, indicate that substantial proportions of service caseloads involved clients with high levels of conflict and complex needs, including those arising from family violence and child abuse. There was a slightly higher tendency to nominate larger proportions of clients as being characterised by high conflict in 2014 and for whom FDR was identified as inappropriate due to child abuse or neglect or due to family violence.

Substantial minorities of both lawyers (39%) and non-legal professionals (36%) indicated in 2014 that they had changed the advice that they gave clients on the use of FDR. In particular, there was a substantial increase in the proportion of lawyers who agreed that FDR should “almost always” be considered when levels of conflict were relatively low (2008: 14%; 2014: 33%).

The data from this study indicate that most professionals believe other professionals understand the exceptions to s 60I quite well. This finding has strengthened only marginally over time. However, in relation to parents, most professionals believe the s 60I exceptions are not well understood by most family law system clients, though a limited amount of improvement may have occurred over time. Regardless of levels of understanding of these exceptions, particularly those in relation to family violence and child abuse, it is clear that parents affected by these issues continue to present for and receive FDR services. This occurred to a lesser extent in relation to child abuse compared to family violence. The presence of these issues does not automatically lead to the issue of a certificate, and the proportions of professionals indicating that FDR is provided in such circumstances has remained relatively stable over time.
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The data also indicate that both lawyers and non-legal professionals refer their clients to family violence support services on a regular basis, although lawyers were slightly more likely to report making such referrals in a higher number of cases (16% nominated “three-quarters or more” compared to 12% of non-legal professionals). Non-legal professionals also reported referring clients to lawyers to a substantial degree (47% nominating “about three-quarters or more”) and referrals by lawyers to FRCs and relationship support services have also increased.

Most parents were satisfied with services

Overall, three in four parents interviewed accessed at least one service in relation to their separation. Lawyers were the most commonly used service by both mothers and fathers in this sample, followed by FDR and FRCs. The majority of parents reported that they accessed the service via informal pathways—predominantly self-referrals (43%), with formal referrals provided most commonly from lawyers (12%). Higher proportions of parents who had experienced family violence reported that they accessed the service by a referral from another service.

Although parents who had experienced family violence were more likely to report dissatisfaction with a service than parents who had not experienced family violence, majorities of parents reported being satisfied with the service that they were questioned about, even when they had reported a history of family violence before or during separation. There was, however, considerable variance in the rates of reported dissatisfaction according to gender, the service used and whether the participant had experienced physical hurt or emotional abuse alone.

Fathers were less likely than mothers to be satisfied with their experiences with FDR, FRCs, lawyers and courts, with the widest discrepancy evident in relation to courts (34% of fathers dissatisfied cf. 20% of mothers). Courts were more likely to elicit dissatisfaction responses where parents had reported emotional abuse (34%) than where they had reported physical hurt (24%). Conversely, parents reporting physical violence were more likely to be dissatisfied with FDR (36%) than those reporting emotional abuse alone (30%). Of those who used lawyers, 23% reported physical violence and dissatisfaction and 20% reported emotional abuse and dissatisfaction.

The vast majority of parents agreed that the service that they accessed understood family violence, children's developmental needs, and what provides the best outcome for children. Most parents also agreed that they were treated fairly and with respect by the service they accessed and that the overall quality of the service was high. More specifically, most parents reported that the service that they accessed provided them with helpful advice and effective assistance, although this was slightly higher among mothers than fathers, and higher among parents who had not experienced family violence when compared with parents who had. Most parents reported that the service that they had accessed enabled them to get the help that they needed (68% of mothers; 55% of fathers), but higher proportions of parents who had not experienced family violence reported this to be the case. When asked whether the service they accessed enabled them to make appropriate parenting arrangements, the majority of parents reported that this occurred, with the exception of fathers who had accessed a lawyer (48%) and mothers who had accessed the courts (41%) or a domestic and family violence service (29%).

Most services asked parents about family violence

Approximately three in five parents reported that the service that they accessed asked them about their experiences of family violence, with higher proportions of mothers and parents who had experienced physical violence reporting this to be the case. When experiences with specific services were examined, the majority of parents reported that they were asked about family violence, with the exception of fathers who accessed a lawyer, where just over one in three reported that this occurred. Similar patterns were seen with regard to services asking parents whether they held safety concerns for themselves or their children.

Among all parents who accessed a service, around one in three fathers and almost half of mothers reported that they disclosed family violence and/or safety concerns to the service that they accessed. Disclosure of both of these issues was higher among parents who had experienced physical violence from the other parent at any time (64% disclosed family violence
and 60% raised safety concerns). Higher proportions of parents who had experienced physical violence raised either issue, compared with parents who had experienced emotional abuse alone.

Services have some influence on parents’ decision making

Approximately two-thirds of the parents who reported accessing a service indicated that the service influenced the decisions that they made about parenting arrangements during negotiations. The most common decision parents made after accessing a service was to agree to a shared-care arrangement (21%), while around 5% of parents decided to oppose shared care after accessing the relevant service. Of note, more than half of the parents who had not experienced family violence before or during separation (54%) indicated that the service made no difference to the decision that they made about parenting arrangements. A higher proportion of parents who had experienced physical violence before or during separation decided to seek more time with their children as a result of accessing the service (15%), compared with parents who had experienced emotional abuse alone (13%) or no family violence (6%).

More generally, one in five parents who experienced physical violence before or during separation decided to take steps to protect themselves and/or their children after accessing the relevant service. Similar patterns emerged among parents who had experienced family violence since separation. Interestingly, one in five parents who reported experiencing physical violence before/during separation reported that accessing the service influenced their decision to agree to shared-care arrangements, and 7% reported that it influenced their decision to oppose it. Some aspects of these findings appear counterintuitive, and the Survey of Recently Separated Parents 2014 will support a better understanding of these decision-making patterns. Where parents reported that access to a service made no difference to decisions they made about parenting arrangements, the highest proportion emerged among parents who accessed a lawyer or legal service (52% of mothers; 47% of fathers).

Reforms have positive, negative and unintended consequences

Positive consequences of the family violence reforms nominated in the open-ended answers of each professional participant group included the introduction of the broader definition of family violence and the introduction of s 60CC(2A) as a means of clarifying the priority to be accorded to the “protection from harm” primary consideration when determining parenting orders. Other positive consequences identified included the greater awareness of family violence as an issue among professionals, litigants and the broader community, together with improved understandings of the nature and effects of family violence. Improvements in the identification/screening and assessment of, and response to, family violence by family law professionals, were also nominated as positive consequences by each professional group, together with the increase in focus on protecting children from risks or harm factors.

Negative consequences of the family violence reforms nominated by professional participants included the absence of substantive changes to the levels of understanding or attitudes to family violence or in the responses or court outcomes in cases. More specifically, a lack of change in the interpretation of disclosures of family violence and in the understanding of the nature and detrimental effects of family violence were also identified as negative consequences. Increases in the costs, delays and hostility associated with litigation in parenting cases, together with increases in the complexity of matters and of paperwork were also factors identified in this regard. Other nominated negative consequences related to concerns about the lack of resources to enable prescribed child welfare authorities or courts to adequately respond in cases involving risks or harm factors. In addition, concerns of an evidentiary nature were also raised by some professionals, including arguments that it had become easier to make false, exaggerated or irrelevant allegations, or that there had been an increase in the making of such allegations. Concerns about false allegations are longstanding in the family law system.

Professional participants also described unintended consequences of the family violence reforms as relating to the increase in the workload of courts and prescribed child welfare authorities, an
increase in hostility and litigation between parties, and increases in costs, delays and paperwork. Other nominated unintended consequences included the continued downplaying of family violence and concerns about the potential for the family law process to be used by perpetrators to continue their abusive behaviour or to deny their violent behaviour.

Summary

Majorities of professionals working in the family law system support the direction of the 2012 family violence reforms. Professionals from a non-legal disciplinary background were most likely to endorse the reforms, but majorities of judicial officers/registrars and lawyers were also positive about the reforms. The wider definitions of family violence and child abuse attracted support from most professionals, as did the clarification in s 60CC(2A) that protection from harm is to be accorded greater weight when relevant than a child’s right to meaningful involvement with both parents after separation.

Professionals reported placing greater focus on identifying matters where family violence, child abuse or child safety concerns are relevant, but screening is not applied uniformly and substantial minorities of parents report not being asked and not disclosing concerns about these issues. Practice in screening for and assessing family violence and child abuse requires further refinement. At this stage, there is evidence of limited take-up of the DOORS risk assessment tool in the family law system and some participants held concerns about the implications of its use in legal settings.
This report sets out the findings of Responding to Family Violence: A Survey of Family Law Practices and Experiences (Survey of Practices). This study is the first of a three-part research program, the Evaluation of the 2012 Family Violence Amendments, which examines the effects of amendments to the Family Law Act 1975 (Cth) (FLA) that came into operation in June 2012. The Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth) made a series of changes intended to improve the way in which concerns about family violence and child safety are dealt with in parenting matters across the family law system. The Evaluation of the 2012 Family Violence Amendments is funded by the Attorney-General’s Department (AGD).

The Survey of Practices has two elements:

■ an online survey examining the views and experiences of professionals working across the family law system (including in the Family Court of Australia (FCoA), the Family Court of Western Australia (FCoWA) and the Federal Circuit Court (FCC)) some 18 months after the family violence reforms came into effect on 7 June 2012; and

■ telephone interviews examining the experiences of parents who used family law system services in the 12 months or so prior to August 2014.

The two further components of the Evaluation of the 2012 Family Violence Amendments focus on the experiences of families (the Surveys of Recently Separated Parents [SRSP]) and the effects of the family violence reforms on decisions and orders in family law court proceedings, whether determined by agreement or judicial decision (the Court Outcomes project).

The SRSP 2014 is based on a methodology that compares the pre- and post-reform experiences of two comparable samples of separated parents. The pre-reform survey data collection examined the experiences of parents who had separated between 31 July 2010 and 31 December 2011 (SRSP 2012). As such, their experiences reflect the way in which the system operated in the two years or so prior to the 2012 family violence reforms becoming effective. The post-reform survey data collection took place from 7 August to 30 September 2014 and involved a sample of parents whose separations took place between 1 July 2012 and 31 December 2013 (SRSP 2014). Their experiences reflect the operation of the family law system some 12 to 18 months after the 2012 family violence reforms became effective.

The parent data reported in this Responding to Family Violence report are derived from the SRSP 2014. The Experiences With Children survey module of SRSP 2014, which collected detailed information about parents’ experiences with family law services, was included in this study in order to triangulate the data obtained from professionals through the online survey. This module was applied to a sub-sample of 3,428 SRSP 2014 parents, and an interim dataset based on this sub-sample was generated and analysed for inclusion in this report (n = 2,473). A further report based on analysis comparing the findings of the complete SRSP 2014 dataset with the findings of the SRSP 2012 will be provided to AGD at the end of May 2015.

The third component of the Evaluation of the 2012 Family Violence Amendments is the Court Outcomes project, which examines the operation of the family violence reforms on the basis of an analysis of published judgments, the patterns evident in court orders concerning parental responsibility and parenting time, and administrative data on court filings. The Court Outcomes project report is due to be provided to AGD on 30 June 2015.
This report on the findings of the Survey of Practices provides insight into the effects of the reforms as one part of the overall evaluation strategy. The data therefore support findings about the perceptions and practices of professionals across the system, together with parents’ experiences in using the system. Some aspects of the conclusions reached on the basis of these findings may be strengthened, revised or weakened in light of the findings generated in the other two elements of the Evaluation of the 2012 Family Violence Amendments research program.

1.1 Background

1.1.1 Policy setting

The 2012 family violence reforms were intended to improve the family law system’s response to family violence in light of the findings or recommendations of three reports (Parliament of the Commonwealth of Australia, 2011), namely the Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009), the Family Courts Violence Review (Chisholm, 2009) and Improving Responses to Family Violence in the Family Law System (Family Law Council, 2009). The 2012 family violence reforms are also consistent with wider policy agendas, supported by Commonwealth, state and territory governments, in relation to family violence and child abuse. In the context of family violence, the National Plan to Reduce Violence Against Women and their Children (Council of Australian Governments [COAG], 2009) guides the actions of governments at all levels to reduce the occurrence of and improve responses to family violence. In relation to child protection, the National Framework for Protecting Australia’s Children (COAG, 2009) articulates a national agenda to reduce the prevalence of, and support better responses to, child abuse and neglect.

A range of intersecting strategies and frameworks outside of the federal family law system are also relevant to the way in which issues of family violence and child abuse are dealt with from a systemic perspective and may influence the trajectories of separated families for whom these issues are relevant. For example, in recent years family violence reforms in Victoria have resulted in more reports about family violence to police, substantially more family violence protection orders being issued and more children being named as protected persons on these orders (Sentencing Advisory Council, 2013). Another example in relation to child abuse and neglect, the Keep Them Safe strategy in NSW, supports a greater focus on early intervention and at the same time has increased the mandatory reporting threshold from a child being seen as being “at risk of harm” to being “at risk of significant harm” (KTS Evaluation Steering Committee, 2013).

Each of these strategies, and others introduced in these spheres at state and territory level, may have changed the dynamics surrounding the experiences of families affected by family violence and child abuse. Potentially, this could also change the dynamics surrounding the engagement, potential engagement or non-engagement of such families with the family law system, in parallel with the 2012 family violence reforms being implemented. In Victoria, there is more likelihood that a victim of family violence may have a family violence protection order and also to have a child named on that order (Sentencing Advisory Council, 2013). From a family law perspective, this may mean that issues relating to family violence have been documented and addressed, and may influence decisions about parenting arrangements. In NSW, there is less likelihood that a notification about a child may have been made to the prescribed child welfare authority (KTS Evaluation Steering Committee, 2013). This may also have changed the dynamics from a family law perspective, meaning a lower chance of engagement with the prescribed child welfare authority among children at risk. Therefore, while the focus of this research is on the federal family law system, it is important to note that developments in intersecting policy settings and agencies may also be relevant to the subject matter considered in this research program.

1.1.2 Empirical evidence

The Evaluation of the 2006 Family Law Reforms report (Kaspiew et al., 2009) highlighted the extent to which family violence\(^1\) and safety concerns\(^2\) are prevalent among separated families,\(^2\) Parents were asked whether they had concerns for themselves and/or their child as a result of ongoing contact with the other parent.

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1. A broad definition encompassing physical hurt and emotional abuse is applied.
2. Parents were asked whether they had concerns for themselves and/or their child as a result of ongoing contact with the other parent.
and a need for the family law system to find more effective ways of dealing with these issues. This was evidenced in several different ways in the Evaluation of the 2006 Family Law Reforms, including in the findings of Wave 1 of the Longitudinal Study of Separated Families (LSSF; Kaspiew et al., 2009, pp. 232, 364). The report showed that a history of family violence is more common than not among separated parents and that most parents who reported experiencing physical hurt at the hands of their former partner also reported that the children had witnessed this (p. 26). Subsequently, another survey using a comparable methodology and based on a different annual cohort of separated parents (SRSP 2012; De Maio, Kaspiew, Smart, Dunstan, & Moore, 2013) found similar patterns in the reported prevalence of family violence and ongoing safety concerns, suggesting that the patterns evident among the two survey cohorts (LSSF and SRSP 2012) may be a fairly consistent feature for each annual cohort of separated parents.3

The findings relating to the experience of family violence and safety concerns in LSSF and SRSP 2012 include the following:

- 20% of SRSP 2012 and 21% of LSSF Wave 3 parents reported experiencing physical hurt before/during separation;
- 44% of SRSP 2012 and 38% of LSSF Wave 3 parents reported experiencing emotional abuse before/during separation (De Maio et al., 2013, Table 2.4);
- the parent being interviewed reported safety concerns for themselves and/or their child as a result of ongoing contact with the other parent in 17% of SRSP 2012 cases and 20% of LSSF Wave 1 cases (Kaspiew et al., 2009, p. 28); and
- 72% of mothers and 63% of fathers in LSSF Wave 1 (Kaspiew et al., 2009, p. 26) and 72% of mothers and 62% of fathers in SRSP 2012 (De Maio et al., 2013, Figure 3.90) reported that their child had witnessed physical hurt inflicted before or during separation.

Findings from Wave 3 of the LSSF have demonstrated that family violence is sustained for five years after separation for a sizeable minority of separated parents. Only one-quarter of the parents in the continuing LSSF sample reported not experiencing physical or emotional abuse before, during or after separation. More commonly, physical or emotional abuse was reported in at least one of these time frames in at least one wave, though physical hurt was much less likely to be reported in the post-separation period. A quarter of parents reported experiencing emotional and/or physical hurt in all three survey waves. One in five reported experiencing physical and/or emotional abuse in Waves 1 and 2 of the survey (Qu, Weston, Moloney, Kaspiew, & Dunstan, 2014, Table 3.6).

LSSF has also shown that concerns for the safety of the parent and/or children as a result of ongoing contact with the other parent are pertinent for between 15% and 18% of parents in each survey wave (Qu et al., 2014, Table 3.7) and were sustained across the three survey waves for about 5% of separated parents (Qu et al., 2014, Table 3.8).

LSSF Wave 3 data have also demonstrated that a group of “high complexity” parents who had reported reaching agreement over parenting arrangements in Wave 1 through family dispute resolution (FDR) were much more likely to report instability in parenting arrangements in the two further survey waves than parents who were in a “moderately” complex group or had no indicators of complexity. The “high complexity” group was also substantially more likely to report continued experiences with family violence and concerns over safety in the five-year period. In this analysis, the complexity classifications are based on the presence of one or more of these three indicators: family violence before or during separation, safety concerns, and inter-parental relationships described as “full of conflict” or “fearful". The high complexity group had two of these indicators, the moderate complexity group had one, and the comparison group none of these indicators (Qu et al., 2014, pp. 61–62).

The 2012 family violence reforms were intended to improve the family law system’s ability to provide effective assistance for families with these kinds of issues (Parliament of the Commonwealth of Australia, House of Representatives, 2011). They were intended to support disclosure of concerns about family violence and safety by parents and to encourage responses by professionals that prioritise safety. Central elements were the widening of the definition

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3 The findings that emerge from SRSP 2014 in this regard will shed further light on the validity of this hypothesis. The small differences in reported rates of family violence and safety concerns in the two surveys are likely to be the result of slightly different sampling strategies being applied (see De Maio et al., 2013, footnote 12).
of “family violence” and recognition of the exposure of children to family violence as a form of child abuse where it results in the child sustaining psychological harm. In addition to the empirical evidence provided by the Evaluation of the 2006 Family Law Reforms and other reports (Bagshaw et al., 2010; Cashmore et al., 2010; McIntosh, Smyth, Kelaher, Wells, & Long, 2010), as noted earlier, the reforms were shaped by other pieces of analysis: the Family Courts Violence Review by Professor Richard Chisholm (2009), the Family Law Council (2009) report, Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues, and the Australian and NSW Law Reform Commissions’ (2010) report, Family Violence: A National Legal Response.

1.1.3 The 2012 family violence reforms and other initiatives

The amendments introduced a considerable number of changes to the Family Law Act 1975 (Cth) (FLA) while leaving intact provisions that support shared parenting after separation. In seeking to achieve the objective of placing greater emphasis on protection from harm in making post-separation parenting arrangements, the main elements of the Act:

- introducing wider definitions of “family violence” and “abuse” (s 4AB and s 4(1));
- clarifying that in determining the best interests of the child, greater weight is to be given to the protection of children from harm where this conflicts with the benefit to the child of having a meaningful relationship with each parent after separation (s 60CC(2A));
- strengthening the emphasis placed on protecting children from harm by imposing obligations on advisers4 to inform parents/parties that post-separation decision making about parenting should reflect this priority and that they should regard the best interests of the child as the paramount consideration (s 60D);
- imposing a legislative obligation on an “interested person” (including parties to proceedings and Independent Children’s Lawyers [ICLs]) to file a Form 4 Notice/Notice of Risk5 when making an allegation of family violence or risk of family violence (s 67ZBA);
- when making an allegation that a child has been abused or is at risk of being abused, extending the obligation to file a Form 4 Notice/Notice of Risk to “interested persons” (including ICLs) as well as parties to proceedings (s 67Z);
- imposing obligations on parties to proceedings to inform the courts about whether the child in the matter or another child in the family has been the subject of the attention of prescribed child welfare authorities (s 60CI);
- imposing a duty on the court to actively enquire about whether the party considers that the child has been, or is at risk of being, subjected to, or exposed to family violence, child abuse or neglect (s 69ZQC(1)(aa)(i)), and about whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence (s 69ZQC(1)(aa)(ii));
- setting out the court’s obligation to take prompt action in relation to a Form 4 Notice/Notice of Risk filed in relation to allegations of child abuse or family violence (s 67ZBB);
- amending the additional best interests consideration relating to family violence orders (s 60CC(3)(k)); and
- amending and repealing provisions that might have discouraged disclosure of concerns about child abuse and family violence.

In pursuing the aim of achieving safer post-separation parenting arrangements, the family violence reforms set out to influence the behaviour of separated parents and the practices of professionals across the family law system, including those working in family relationship

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

5 At the time of administering the surveys for this RFV study and writing the RFV report, the amendments to the Federal Circuit Court Rules providing for the Notice of Risk to replace the prescribed Form 4 Notice in matters issued in all Federal Circuit Court registries were yet to come into operation. The Notice of Risk form was effective on a national basis from 12 January 2015. See Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014 (registered 22 October 2014).
counselling services and Family Relationship Centres (FRCs), lawyers and courts. Broadly, they are intended to support parents to disclose concerns about family violence and child safety, to encourage professionals to elicit such concerns and to ensure that outcomes prioritise a child's need to be protected from harm when this principle is in conflict with their right to maintain a meaningful relationship with each parent after separation.

Two further initiatives have also been implemented in recent years to improve practices in relation to family violence in the family law system. The first of these was the roll-out of a national family violence training package, AVERT Family Violence Collaborative Responses in the Family Law System (AGD, 2010). This is a free package intended for use across the family law system to improve understanding of family violence. The second is the DOORS Detection of Overall Risk Screen (McIntosh & Ralfs, 2012), which is a screening tool for identifying and assessing risk from family violence, poor mental health, substance addiction and other problematic issues, again for use across the family law system. This package includes a screening questionnaire together with further materials that can be used to support a more in-depth assessment of a family's circumstances if required.6

1.2 Methodology

1.2.1 Aim and research questions

The aim of the Survey of Practices was to examine how the practices of professionals across the system had changed in response to the 2012 family violence reforms, in addition to examining professionals' attitudes to key aspects of the family law system. An online survey was available for completion between December 2013 and late February 2014, with a different version being made available for each of the different professional groups. Each professional group was asked questions pertaining to their general views on core issues, their own practices and their views of and experiences with the practices of other professionals. In order to examine professional practices from the perspective of parents, a module dealing in some detail with service use was included in the first phases of data collection for the SRSP 2014. The discussion in this report is based on the Survey of Practices data and the Experiences With Services module in the SRSP 2014.

In addition, some critical aspects of the reforms are assessed by comparing responses to questions that were asked in the Survey of Practices and the surveys of professionals (the Family Lawyers Survey 2006, 2008 [FLS 2006, 2008] and the Online Survey of FRS Staff (FRSP Services) 2009) that were conducted as part of the Institute's Evaluation of the 2006 Family Law Reforms. A number of identical or near-identical questions dealing with key issues were asked in these previous surveys and the Survey of Practices. Sample sizes and practitioner profiles are similar in the samples for the Family Lawyers Survey 2008 and the lawyer sample for the Survey of Practices (see further 1.2.3), supporting the comparison of response patterns and providing insight into the differences in attitudes and practices between 2008–09 and 2013–14.

The research questions for the Evaluation of the 2012 Family Violence Amendments reflect the aims of the amendments. They encompass a series of broad-level research questions, together with a series of more specific research questions shaping each of the separate studies contributing to the evaluation.

The broad-level research questions are:

1. To what extent have patterns in arrangements for post-separation parenting changed since the introduction of the family violence amendments, and to what extent is this consistent with the intent of the reforms?
2. Are more parents disclosing concerns about family violence and child safety to family law system professionals?
3. Are there any changes in the patterns of service use following the family violence amendments?

6 See <www.familylawdoors.com.au>. Note that a validation study has been conducted but was not publicly available at the time of publication.
4. What is the size and nature of any changes in the following areas and to what extent are any such changes consistent with the intent of the reforms:

– practices among the following groups of professionals:
  o advisors (within the meaning of FLA s 63DA(5) [legal practitioners, family counsellors, family dispute resolution practitioners and family consultants]);
  o professionals associated with courts, including judges;
– court-endorsed outcomes (consent orders) and court-ordered outcomes (judicially determined orders); and
– court-based practices, as reflected in the manner in which practitioners and judges fulfil their obligations under the Family Law Act 1975 (Cth)?

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

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

In the Survey of Practices, different versions of the survey were available to each of the professional groups to reflect their different practice contexts. In addition to some common questions in each survey, the following emphases were adopted for the different professional groups:

- **legal practitioners**: questions concerning the extent to which lawyers have changed the advice they give to clients as a result of the family violence amendments; changes to the nature of the advice given to parents; lawyers' perceptions of the effects the amendments have had on parents' decisions about parenting arrangements; services and system pathways and lawyers perceptions about changes to other aspects of practice (for example, the effects of the wider definition of family violence and the dynamics around both disclosure of safety concerns and negotiation of parenting agreements);

- **judicial officers and registrars**: questions about issues such as the workability of the legislation; the effects of the family violence reforms on parties' litigation strategies and the nature of factual issues and evidence adduced in cases that proceed to court; perspectives on changes in court practice (for example, around s 60K notices (see now s67Z, s67ZBA and s67ZBB) and the provisions imposing obligations on the court to enquire about family violence; and

- **non-legal professionals** (including FDR practitioners, staff in FRCs and other family and post-separation support services): questions concerning the extent to which professionals have changed the advice they give to clients as a result of the family violence reforms; changes to the nature of the advice given to parents; perceptions of the effects the amendments have had on parents' decisions about parenting arrangements; services and system pathways and perceptions about changes to other aspects of practice (for example, the effects of the wider definition of family violence and the dynamics around the disclosure of both family violence and safety concerns).

### 1.2.2 Recruitment and survey content

**Survey of Practices 2014**

Invitations to participate in the survey were circulated via various organisations, including the FCoA, the FCC, the FCoWA, the Family Law Section of the Law Council of Australia, National Legal Aid, state and territory law societies and bar associations, state and territory Women's Legal Services, National Association of Community Legal Centres, Family Relationship Services Australia, and the Australian Psychological Society’s Family Law and Psychology Interest Group. These invitations asked those who were interested in participating in the study to follow a link to the online survey. The surveys were available for completion from 9 December 2013 for lawyers and non-legal professionals, and 18 December 2013 for judicial officers and registrars, with all three surveys closing on 28 February 2014.

In addition to demographic and professional background questions, each survey used structured questions to collect quantitative data about the effects of the 2012 family violence
reforms. Survey questions covered each professional group’s views on various aspects of the family violence reforms and their experiences. As noted in the previous section, these questions included questions about changes to practices and outcomes as a result of these reforms—together with self-assessments of their current practice approaches. Each professional group was also provided with the opportunity to answer open-ended questions regarding various issues, including their observations of changes in the ways in which family law professionals have identified, assessed and responded to family violence issues since the family violence reforms, and their views of the range of consequences of the family violence reforms—positive, negative and unintended consequences of the family violence reforms. These qualitative data complemented the insights generated through the structured survey questions. The draft survey instruments were developed by members of the Evaluation Research Team at AIFS. The surveys were programmed in LimeSurvey, and were piloted with the assistance of 17 AIFS researchers (including 15 researchers outside of the Survey of Practices Team) and three external pilot testers (a practising lawyer, a former judicial officer and a practising family consultant). AGD also reviewed each survey instrument. Following this pilot and review process, the survey instruments were updated to incorporate the feedback provided.

**Experiences With Services module (SRSP 2014)**

The parent component of the Survey of Practices study was carried out as a nested survey within the SRSP 2014, a national study of over 6,000 parents of children aged under 18 years who (a) separated between 1 July 2010 and 31 December 2012; (b) registered with the Department of Human Services—Child Support (DHS-CS) during 2013; and (c) were still separated from the other parent at the time of interviewing.

The sample for the SRSP 2014 was drawn from the DHS-CS database, which has been previously identified as the most comprehensive source for a representative sample of recently separated parents in Australia (e.g., De Maio et al., 2013; Kaspiew et al., 2009; Qu et al., 2014).

Data collection was undertaken between 7 August and 30 September 2014, comprising a 35-minute computer-assisted-telephone-interview (CATI). Sample stratification was carried out by the month of registration within the extraction period, by state/territory of the child support payer’s residence, and within month and state/territory by gender of payer. A total of 28,513 records were selected to be contacted for inclusion in the SRSP 2014.

The Survey of Practices was included as the Experiences With Services module asked of all parents interviewed in the first half of the fieldwork period for SRSP 2014, which resulted in a total of 3,428 completed interviews. The distribution by state and gender of the responding sample appears in Table 1.1.

<table>
<thead>
<tr>
<th>State</th>
<th>Fathers (%)</th>
<th>Mothers (%)</th>
<th>All parents (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>27.1</td>
<td>26.0</td>
<td>26.5</td>
</tr>
<tr>
<td>Vic.</td>
<td>21.1</td>
<td>23.1</td>
<td>22.2</td>
</tr>
<tr>
<td>QLD</td>
<td>25.1</td>
<td>26.0</td>
<td>25.6</td>
</tr>
<tr>
<td>SA</td>
<td>10.1</td>
<td>10.8</td>
<td>10.4</td>
</tr>
<tr>
<td>WA</td>
<td>9.4</td>
<td>7.7</td>
<td>8.5</td>
</tr>
<tr>
<td>Tas.</td>
<td>3.3</td>
<td>2.4</td>
<td>2.8</td>
</tr>
<tr>
<td>NT</td>
<td>1.9</td>
<td>2.4</td>
<td>2.2</td>
</tr>
<tr>
<td>ACT</td>
<td>2.1</td>
<td>1.6</td>
<td>1.8</td>
</tr>
<tr>
<td>Total (n)</td>
<td>1,626</td>
<td>1,802</td>
<td>3,428</td>
</tr>
</tbody>
</table>

Note: Percentages may not total exactly 100.0% due to rounding.

The data presented in this report are unweighted and no direct tests of statistical significance were conducted, therefore any differences in the reported data should be interpreted with these two factors in mind.
Chapter 1

1.2.3 Sample profiles

Survey of Practices 2014

At the completion of the data collection period, the following responses had been received:

- **Survey 1: Judicial officers and registrars**—A total of 42 responses were received from across all Australian states and territories. Of these, 33 responses were submitted as complete and an additional four contained enough data to be included in the analyses, giving a total of 37 responses analysed for judicial officers and registrars. The remaining five responses were not included in the analyses as they were empty (i.e., the survey was initiated, but no responses were entered). The useable responses were received from judicial officers and registrars from the FCC ($n = 15$), the FCoA ($n = 13$), and the FCoWA ($n = 9$).

- **Survey 2: Lawyers**—A total of 442 responses were received from across all Australian states and territories. There were 242 responses submitted as complete and a further 74 responses contained enough data to be included in the analyses. The responses from six lawyers who had inadvertently completed the survey for non-legal professionals were added to the lawyers survey data, for items that were identical across the two surveys. Therefore, 322 responses were included in the data analysis for the survey of lawyers. The remaining 126 responses were excluded from the survey as 58 of these did not contain sufficient data to be included in the analyses and 68 did not contain any responses. The useable responses were received from 273 solicitors, 38 barristers, and 11 respondents who did not submit details of their profession. The lawyers included private practitioners ($n = 208$), lawyers practising at community legal centres ($n = 50$), lawyers employed by legal aid commissions ($n = 34$), and other legal services and centres and government ($n = 11$), with two respondents selecting the answer option “cannot say”, and a further 17 not responding to this question.

- **Survey 3: Non-legal professionals**—A total of 570 responses were received from across all Australian states and territories. Of these, 222 surveys were submitted as complete, with an additional 72 responses containing sufficient data to be included in the analyses, giving a total of 294 responses analysed for the non-legal professionals survey. There were 276 responses excluded from the non-legal professionals survey analysis—111 were empty responses, 90 responses did not contain sufficient data to be included in the analyses, 56 responses were completed by someone who stated that they were not a non-legal professional (e.g., a parent, a university student), 10 responses contained inconsistent answers in the demographic section, thus calling into question the accuracy of their responses, six responses were completed by lawyers (these were added to the lawyers survey analysis, as detailed above), two responses were duplicate responses, and one response was based on personal experience of family law only, and not on experience in a professional capacity. Respondents included mediators/FDR practitioners ($n = 78$), counsellors ($n = 40$), family consultants ($n = 33$), domestic violence (DV)/family violence (FV) professionals ($n = 24$), post-separation services managers ($n = 22$), service-level coordinators and service managers ($n = 22$), other practitioners ($n = 12$), psychiatrists and psychologists ($n = 9$), intake workers and assessment workers ($n = 9$), single expert witnesses ($n = 7$), educators ($n = 7$), Children’s Contact Service professionals ($n = 5$), community development workers ($n = 4$), and other professionals such as Men and Family Relationships professionals, managers, and case managers ($n = 15$), with seven respondents not answering to this question.

It is important to note that while a respondent may have submitted a survey as “complete”, this does not necessarily mean that they responded to all questions, as no questions were compulsory. Accordingly, the total number of responses to each question varies. In relation to some questions, primarily those requiring a level of direct experience in a particular area—for example, whether the reforms had resulted in fewer shared care outcomes where there had been high conflict—substantial minorities of participants nominated “cannot say” or “not applicable” responses. Such response patterns suggest that where participants were unable to formulate an experience-based response, those options were chosen rather than responses that would require participants to guess or hypothesise. The survey questions and response options were designed to accommodate this, in recognition of the varied nature of professionals involved in the survey.
**Family Lawyers Survey 2008**

Data from the FLS 2008 were compared with responses for identical or equivalent questions asked of the sample of lawyers participating in the Survey of Practices. The FLS 2008 received responses from 319 family lawyers, of whom 289 were solicitors and 30 were barristers. The majority of these lawyers were working in private practice (n = 264), with 36 lawyers working in a legal aid commission, 16 lawyers working in a community legal aid centre, and 3 lawyers stating that they “cannot say”.

**Evaluation of the 2006 Family Law Reforms 2009**

Data from the surveys of Family Relationship Services Program (FRSP) staff and Family Relationship Advice Line (FRAL) staff, which comprised part of the Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009), were compared with responses to identical or equivalent questions asked of the sample of non-legal professionals from the Survey of Practices. There were 854 responses to the FRSP and FRAL surveys. Respondents included counsellors (n = 221), mediators/FDR practitioners (n = 185), intake/assessment workers (n = 56), educators (n = 36), other administration staff (including data entry; n = 29), reception staff (n = 26), other practitioners (n = 19), and community development workers (n = 18), with 183 respondents selecting “other” when asked what their primary role/occupation is in the organisation.

**Experiences With Services module (SRSP 2014)**

The pattern of service use of this purposive sample of parents is not representative of service use patterns among separated parents generally, due to the focus of the Survey of Practices and the sampling strategy applied to meet its aims.

Of all the services each parent accessed, the survey instrument was programmed to randomly select one service about which parents were to be interviewed. Table 1.2 shows the distribution of the family law services in the Experiences With Services module. The table indicates that the highest response rates were recorded in relation to lawyers/legal services (aggregate: 44%; mothers: 41%; fathers: 47%). Response rates of note were also recorded in relation to family dispute resolution/mediation (aggregate: 18%; mothers: 22%; fathers: 15%), courts (aggregate: 9%; mothers: 8%; fathers: 9%), FRCs (aggregate: 6%; mothers: 7%; fathers: 6%) and family relationship counselling services (aggregate: 6%; mothers: 7%; fathers: 6%).

<table>
<thead>
<tr>
<th>Family law services</th>
<th>Mothers (%)</th>
<th>Fathers (%)</th>
<th>All parents (%)</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family dispute resolution (FDR)/mediation</td>
<td>21.8</td>
<td>15.0</td>
<td>18.2</td>
<td>451</td>
</tr>
<tr>
<td>Lawyers/legal service</td>
<td>40.8</td>
<td>46.5</td>
<td>43.8</td>
<td>1,083</td>
</tr>
<tr>
<td>Court</td>
<td>8.3</td>
<td>9.0</td>
<td>8.7</td>
<td>215</td>
</tr>
<tr>
<td>FRC</td>
<td>11.9</td>
<td>10.4</td>
<td>11.1</td>
<td>274</td>
</tr>
<tr>
<td>Family relationship counselling service</td>
<td>6.7</td>
<td>6.2</td>
<td>6.4</td>
<td>159</td>
</tr>
<tr>
<td>Domestic/family violence (DFV) service</td>
<td>0.9</td>
<td>5.6</td>
<td>3.4</td>
<td>84</td>
</tr>
<tr>
<td>Men and family relationship counselling service</td>
<td>1.4</td>
<td>0.1</td>
<td>0.7</td>
<td>18</td>
</tr>
<tr>
<td>Mensline</td>
<td>2.5</td>
<td>0.1</td>
<td>1.3</td>
<td>31</td>
</tr>
<tr>
<td>Family Relationships Advice Line (FRAL)</td>
<td>0.7</td>
<td>2.2</td>
<td>1.5</td>
<td>37</td>
</tr>
<tr>
<td>Parenting Orders Program (POP)</td>
<td>0.3</td>
<td>0.7</td>
<td>0.5</td>
<td>12</td>
</tr>
<tr>
<td>Post Separation Cooperative Parenting Program (PSCPP)</td>
<td>1.0</td>
<td>0.8</td>
<td>0.9</td>
<td>22</td>
</tr>
<tr>
<td>Supporting Children After Separation Program (SCASP)</td>
<td>1.8</td>
<td>1.5</td>
<td>1.6</td>
<td>40</td>
</tr>
<tr>
<td>Children’s Contact Service (CCS)</td>
<td>0.3</td>
<td>0.5</td>
<td>0.4</td>
<td>11</td>
</tr>
<tr>
<td>Independent Children’s Lawyer (ICL)</td>
<td>0.3</td>
<td>0.5</td>
<td>0.4</td>
<td>10</td>
</tr>
<tr>
<td>Family consultant (FC)/single expert witness (SEW)</td>
<td>1.3</td>
<td>0.9</td>
<td>1.1</td>
<td>26</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
<td><strong>100.0</strong></td>
<td><strong>2,473</strong></td>
</tr>
</tbody>
</table>
Table 1.3 shows a summary of the key demographic characteristics for the parents interviewed as part of the Experiences With Services module. Notably, the sample included a relatively even distribution of participants by gender (fathers: 47%; mothers: 53%), with 89% of participating fathers and 7% of participating mothers reporting that they were Child Support payers, and 11% of participating fathers and 92% of participating mothers reporting that they were Child Support payees. Most participants reported that they had been legally married to the focus (other) parent (fathers: 72%; mothers: 68%), with 26% of fathers and 30% of mothers indicating that they had lived in a de facto relationship with the focus parent.

<table>
<thead>
<tr>
<th></th>
<th>Fathers</th>
<th>Mothers</th>
<th>All parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean age (years)</td>
<td>40</td>
<td>36</td>
<td>38</td>
</tr>
<tr>
<td>Age categories</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18–24 years</td>
<td>3.6</td>
<td>9.7</td>
<td>6.8</td>
</tr>
<tr>
<td>25–34 years</td>
<td>23.6</td>
<td>31.5</td>
<td>27.8</td>
</tr>
<tr>
<td>35–44 years</td>
<td>44.1</td>
<td>42.1</td>
<td>43.0</td>
</tr>
<tr>
<td>45+ years</td>
<td>28.7</td>
<td>16.7</td>
<td>22.4</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pay child support</td>
<td>88.6</td>
<td>7.2</td>
<td>45.5</td>
</tr>
<tr>
<td>Receive child support</td>
<td>11.0</td>
<td>92.3</td>
<td>54.1</td>
</tr>
<tr>
<td>Pay &amp; receive child support</td>
<td>0.4</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>Highest level of education</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 11 or less</td>
<td>26.6</td>
<td>21.7</td>
<td>24.0</td>
</tr>
<tr>
<td>Year 12</td>
<td>18.8</td>
<td>21.3</td>
<td>20.1</td>
</tr>
<tr>
<td>Trade/certificate/diploma</td>
<td>31.3</td>
<td>32.1</td>
<td>31.7</td>
</tr>
<tr>
<td>Bachelor degree or higher</td>
<td>23.3</td>
<td>24.9</td>
<td>24.1</td>
</tr>
<tr>
<td>Marital status when separated</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legally married</td>
<td>72.3</td>
<td>67.8</td>
<td>70.0</td>
</tr>
<tr>
<td>Not married, but living together</td>
<td>26.3</td>
<td>30.2</td>
<td>28.4</td>
</tr>
<tr>
<td>Had previously lived together</td>
<td>0.7</td>
<td>1.7</td>
<td>1.2</td>
</tr>
<tr>
<td>Never lived with other parent</td>
<td>0.3</td>
<td>0.2</td>
<td>0.3</td>
</tr>
<tr>
<td>Never in a relationship with other parent</td>
<td>0.3</td>
<td>0.1</td>
<td>0.2</td>
</tr>
<tr>
<td>Income</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal income (mean $)</td>
<td>62,458</td>
<td>38,445</td>
<td>49,832</td>
</tr>
<tr>
<td>Household income (mean $)</td>
<td>68,216</td>
<td>41,944</td>
<td>54,401</td>
</tr>
<tr>
<td>Total (n)</td>
<td>1,626</td>
<td>1,802</td>
<td>3,428</td>
</tr>
</tbody>
</table>

Note: Percentages may not total exactly 100.0% due to rounding.

**Ethical considerations**

The AIFS Human Research Ethics Committee provided ethical review and approval of the Survey of Practices and SRSP 2014 studies. The research and ethics committees of the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia also approved the Survey of Practices professional surveys, thereby authorising court staff to participate.
The nature of the study—involving both professional participants working in high-risk family law cases with complex family dynamics, and parent/carer participants presenting with past and/or current risk issues—raised significant ethical complexities for the research team, including:

- the need to ensure that data from a potentially vulnerable population, who may have experienced significant levels of trauma, were collected sensitively, and without causing further trauma;
- the need to be vigilant about the possibility that information disclosed in the Experiences With Services module interviews may trigger a reporting obligation if a participant or their child was revealed to have been abused, subjected to or exposed to family violence, or be at current risk of harm or abuse; and
- the need to maintain the anonymity of professional and parent/carer participants and to report data in a way that meant no participant who provided information on a confidential basis could be identified.

Several strategies were adopted in order to address these complexities.

First, the Evaluation Research Team comprised researchers with substantial experience in pertinent areas, including three researchers with legal qualifications and a history of family law research. Members of the Evaluation Research Team also have experience working with vulnerable participants on subjects such as family violence, sexual violence and child abuse. Also, the external data collection for the Experiences With Services module was contracted to the same third-party fieldwork agency (with the same management team) that had previously been retained to undertake the data collection for SRSP 2012. Thorough training was provided to CATI interviewers, including training to deal with participant distress and handling disclosures of harm and safety concerns. In addition, prompts were programmed at particular points in the survey to remind interviewers to offer interview participants referral numbers for relevant support services. Of those participants offered these referrals in the Experiences With Services module (65% of all interviews), 69% accepted referral numbers during the interview or by follow-up phone call, email or postal delivery.

Second, an intensive level of supervision and debriefing occurred as data collection proceeded, particularly during the data collection for the Experiences With Services module. Detailed duty of care protocols (devised in accordance with the AIFS Child Safety Policy and based on those employed in SRSP 2012) were put in place to facilitate appropriate responses in cases arising in the Experiences With Services module that involved the disclosure of information that potentially triggered a reporting obligation. Although the duty of care protocols were applied to participants in all states and territories, given the specific mandatory reporting requirements in the Northern Territory, only a select team of experienced interviewers conducted interviews with these participants. The Northern Territory survey also included a more specific introduction script that informed potential participants of the mandatory reporting requirements in the Northern Territory, only a select team of experienced interviewers conducted interviews with these participants. The Northern Territory survey also included a more specific introduction script that informed potential participants of the mandatory reporting obligations, whereby any disclosures by participants to interviewers of immediate “threats or serious risk of family violence or cases of child abuse” may be required to be reported to the relevant authorities. Participants were also informed that they could refrain from answering any questions that they did not wish to answer. Only five reports were made to the relevant state or territory authorities (with four reports made to the relevant prescribed child welfare authority and one report to the family violence unit of the relevant police department), with these reports being made by senior research staff at the fieldwork agency, in consultation with AIFS.

Finally, in order to maintain confidentiality, significant care was taken to ensure that the data were reported in a way that maintained the anonymity of the informant.

1.3 Summary: Multiple perspectives and change over time

The methodology for this study has several important features. First, through building on the insights generated in previous data collections, the data allow comparisons of attitudes and practices prior to and after the implementation of the 2012 family violence reforms in important areas. They also shed light on the continuing evolution of some key aspects of the 2006
family law reforms and the effects of the 2012 family violence reforms in these areas. Second, comparison of responses among the different professional groups involved in the Survey of Practices 2014 supports an understanding of similarities and differences in core areas between professionals from different disciplines with different roles in the system. The data therefore provide a multi-layered perspective on how the 2012 family violence reforms are operating in different parts of the system. Third, the survey data illuminate the extent to which there are variations in particular views, practices and attitudes across the system, and within and between professional groups. Finally, the inclusion of data from parents on their experience with service use from the interim dataset for the SRSP 2014 provide a client perspective that is important in understanding the implications of the 2012 family violence reforms for families.

These features mean that the Survey of Practices makes an important contribution to the overall program of research for the Evaluation of the 2012 Family Violence Amendments. Through its focus on professionals’ attitudes and practices, and parent experiences with using family law services, the study will support the interpretation of the findings of the two other elements of this evaluation program: the SRSP 2012 and 2014, and the Court Outcomes project. On their own, the findings reported here provide critical insight into how the reforms have influenced practice in relation to family violence in the family law system. Firm conclusions on the effects of the reforms on outcomes for children and parents affected by family violence and child abuse should only be drawn on the basis of the evidence from the completed research program.
This chapter begins the discussion of the substantive findings of the Survey of Practices. It starts with a discussion of response patterns to some broad questions in the Survey of Practices relating to core elements of the reforms, including the way in which the balance is struck between the aims of ensuring children have a meaningful relationship with both parents after separation and ensuring they are protected from harm from exposure to family violence, child abuse or neglect (see Box 1 for relevant legislative provisions). It then discusses survey responses on other aspects of the changes, including participant perceptions about whether the changes have benefitted children and whether the participants have changed the advice they give parents. In all of these areas, the discussion is based on aggregate responses for 2014, comparison of 2008–09 and 2014 responses (where 2008–09 data are available), and differences in response patterns among professional groups where these are noteworthy.

Overall, the general patterns in findings suggest a positive response to the 2012 family violence reforms, with practitioner responses indicating that protection from harm is given greater weight now than it was previously, and that advice-giving practices have shifted in a direction consistent with the intent of the reforms to better identify families where this is an issue. At the same time, the responses do not suggest that any less weight is placed on maintaining relationships with parents and children after separation where this is appropriate.

Box 1: Family Law Act 1975: s 60CC

How a court determines what is in a child’s best interests

Determining child’s best interests

(1) Subject to subsection (5), in determining what is in the child’s best interests, the court must consider the matters set out in subsections (2) and (3).

Primary considerations

(2) The primary considerations are:

(a) the benefit to the child of having a meaningful relationship with both of the child’s parents; and
(b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

(2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).
2.1 Meaningful relationships and protection from harm

This section examines participant views on the balance between what have been referred to as the “twin pillars” of Part VII—the need to protect the child from harm and their right to maintain a meaningful relationship with both parents. It also sets out participant attitudes to the “tie-breaker” (Rhoades, Sheehan, & Dewar, 2013) provision, s 60CC(2A), that specifies greater weight is to be placed on protection from harm.

2.1.1 “Adequate priority” on meaningful relationships and protection from harm?

Table 2.1 depicts the pattern of responses to two propositions that refer to two critical and interlinked issues: the extent to which the family law system gives "adequate priority" to a child’s right to meaningful involvement with both parents, and the need to protect children and other family members from harm from family violence, child abuse or neglect. Concern about the family law system’s capacity to support an appropriate balance being struck in the effectuation of these aims has been a central aspect of the 2012 family violence reforms, as discussed in Chapter 1.

Table 2.1: Agreement that adequate priority is given to children’s meaningful relationships and protection from harm, by professional group, 2014

<table>
<thead>
<tr>
<th>Professional Group</th>
<th>Child’s right to meaningful involvement with both parents</th>
<th>Protecting children/family members from harm</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Strongly agree</td>
<td>Mostly agree</td>
</tr>
<tr>
<td>Judicial officers</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Lawyers</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Non-legal</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Aggregated</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>15</td>
<td>41.7</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>21</td>
<td>58.3</td>
</tr>
<tr>
<td>Mostly/strongly disagree</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Cannot say/not applicable</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Note: Judicial officers/registrars were asked in 2014, lawyers were asked in 2014 and 2008 and non-legal professionals were asked in 2009 and 2014: "To what extent do you agree or disagree that the following statements describe your view? The child’s right to meaningful involvement with both parents is given adequate priority in the system” and “The need to protect children and other family members from harm from family violence and child abuse is given adequate priority in the system”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

The findings presented in Tables 2.1 to 2.4 are shown broken down by sample groups (see Chapter 1) as well as the entire sample. Taking the responses of the sample as a whole, the findings indicate that a majority provided affirmative responses to each statement, though a greater majority endorsed the proposition that “the child’s right to a meaningful involvement with each parent is given adequate priority in the system”. This proposition was endorsed by 87% of the sample, compared with 67% agreeing with the statement that the “need to protect children and other family members from harm from family violence and abuse is given adequate priority in the system”. The child’s right to meaningful involvement with both parents was endorsed by 67% of the sample.

priority in the system”. A much greater proportion (32%) of the sample also provided negative responses to the protection from harm statement, compared with 13% for the meaningful relationship statement. Non-committal responses (cannot say, not applicable) were uncommon in relation to each of these statements.

The two sample groups that are most likely to yield highly reliable results because of large sample sizes are the lawyers and non-legal professionals, and their responses in relation to these propositions are broadly consistent.

**2.1.2 Has anything shifted? Comparison between 2008–09 and 2014 responses**

Comparison of the responses of lawyers in 2008 and 2014 and non-legal professionals in 2009 and 2014 to these propositions provides some insight into the extent to which the family violence reforms can be seen to be associated with changed views among these professionals.

From the perspective of lawyers, the results depicted in Table 2.2 suggest a shift has occurred, with greater proportions endorsing the proposition in relation to protection from harm in 2014 compared with 2008. Notably, the relative proportions providing an affirmative response in relation to each aim have increased—marginally in relation to meaningful relationship (89% cf. 86%) and substantially in relation to protection from harm (68% cf. 55%). However, consistent with the results reported in the preceding section, affirmative responses for protection from harm sit 20 percentage points below those for meaningful relationships, suggesting that parity between these principles remains some way off (if indeed parity reflects optimum operation when the intent of the legislature was for greater emphasis to be placed on protection from harm). The absence of any reduction, and indeed a marginal increase, in affirmative responses in relation to meaningful relationships suggests that any change in relation to protection from harm has not come at the expense of meaningful relationships.

<table>
<thead>
<tr>
<th>Table 2.2: Lawyers who strongly or mostly agree that meaningful relationships and protection from harm are given adequate priority, 2008 and 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>FLS 2008</td>
</tr>
<tr>
<td>No.</td>
</tr>
<tr>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>The child’s right to meaningful involvement with both parents is given adequate priority in the system</td>
</tr>
<tr>
<td>The need to protect children and other family members from harm from family violence and child abuse is given adequate priority in the system</td>
</tr>
<tr>
<td>Total respondents</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked in 2008 and 2014: “To what extent do you agree or disagree that the following statements describe your view? The child’s right to meaningful involvement with both parents is given adequate priority in the system” and “The need to protect children and other family members from harm from family violence and child abuse is given adequate priority in the system”. *This item was answered by 320 respondents. Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

Table 2.3 (on page 16) depicts the responses of non-legal professionals to the two propositions in 2009 and 2014. The rates of agreement with each proposition increased between 2009 and 2014, in relation to meaningful relationships (by four percentage points) and slightly more substantially in relation to protection from harm (by six percentage points).

Notably, the agreement rates with both of these propositions in both time frames were lower for non-legal professionals than for lawyers, and the shift between 2009 and 2014 for the protection from harm statement was much less substantial for this group. As with lawyers, the discrepancy between rates of endorsement for the two propositions sits at 20 percentage points.
Chapter 2

Table 2.3: Non-legal professionals who strongly or mostly agree that meaningful relationships and protection from harm are given adequate priority, 2009 and 2014

<table>
<thead>
<tr>
<th></th>
<th>FRSP 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>The child’s right to meaningful involvement with both parents is given adequate priority in the system</td>
<td>677</td>
<td>79.2</td>
</tr>
<tr>
<td>The need to protect children and other family members from harm from family violence and child abuse is given adequate priority in the system</td>
<td>482</td>
<td>56.4</td>
</tr>
<tr>
<td>Total respondents</td>
<td>855</td>
<td></td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009 and 2014: “To what extent do you agree or disagree that the following statements describe your view? The child’s right to meaningful involvement with both parents is given adequate priority in the system” and “The need to protect children and other family members from harm from family violence and child abuse is given adequate priority in the system.” This item was answered by 289 respondents. Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen.

Sources: Survey of FRS Staff (FRSP Services), Wave 2, 2009; Survey of Practices 2014

2.1.3 Views on FLA s 60CC(2A)

A further significant aspect of the 2012 family violence reforms was the enactment of s 60CC(2A), the provision intended to provide a clear statement that greater emphasis should be placed on the protection from harm principle when it conflicts with the meaningful relationship principle in any particular case. Two questions were asked to support an assessment of this provision. One tapped attitudes by asking participants to indicate their level of agreement with the statement that “it is helpful to have s 60CC(2A) to make it clear that protection from harm is more important than the benefit to a child of a meaningful relationship” (Table 2.4). The other question tapped effects by seeking endorsement or non-endorsement of the proposition that “the protection from harm consideration is accorded greater weight when relevant” (Table 2.4).

Table 2.4: Participants who strongly or mostly agree that s 60CC(2A) is helpful and that protection from harm is accorded greater weight, by professional group, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>It is helpful to have s 60CC(2A) of the FLA to make it clear that protection from harm is more important than the benefit to the child of a meaningful relationship</td>
<td>31</td>
<td>83.8</td>
<td>269</td>
<td>84.4</td>
</tr>
<tr>
<td>The “protection from harm” consideration is accorded greater weight when relevant</td>
<td>35</td>
<td>94.6</td>
<td>208</td>
<td>66.7</td>
</tr>
<tr>
<td>Total respondents</td>
<td>37</td>
<td></td>
<td>319</td>
<td></td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “To what extent do you agree or disagree that the following statements describe your views about the family violence reforms: It is helpful to have s 60CC(2A) of the FLA to make it clear that protection from harm is more important than the benefit to the child of a meaningful relationship”, and “To what extent do you agree or disagree that the following statements describe your view? The ‘protection from harm’ consideration is accorded greater weight when relevant?”. 312 respondents answered this question. 349 respondents answered this question. Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen.

Source: Survey of Practices 2014

The attitudinal question attracted a greater level of endorsement than the effects question. The vast majority of the aggregate sample (86%) affirmed the helpfulness of s 60CC(2A), with only 11% providing negative responses (data not shown). Affirmative responses were evenly divided between the “strongly agree” and “mostly agree” response options: 44% and 45% respectively (data not shown). Only small differences between professional groups were evident in relation to the attitudinal question.
In contrast, the effects-related question elicited a less decisively positive set of responses. A smaller majority of the aggregate sample provided affirmative responses overall (70%) and the affirmation was more likely to be less strongly expressed (48% mostly agree cf. 22% strongly agree). A greater proportion of the sample (23%) expressed disagreement (data not shown). A programming error meant that non-legal professionals were not asked this question, so these findings are only relevant for the views of judicial officers/registrars and lawyers. Between these two groups, the response patterns show a substantial difference. Lawyers were much less likely than judicial officers/registrars to agree that protection from harm was accorded greater weight when relevant, with just over a quarter of the lawyer sample returning negative responses, compared with 3% of the judicial officer sample (data not shown).

2.1.4 Qualitative responses

As noted in the methodology in Chapter 1, participants in the professional surveys had the opportunity to provide further open-ended comments on their views in a range of areas. The questions associated with these responses covered the consequences of the family violence reforms, their approach to decision making since the introduction of the reforms, and any changes to the ways in which family law professionals screen/identify, assess and respond to family violence issues as a result of the reforms. The responses to these questions raised a variety of different issues, highlighting a spectrum of views and experiences. Where relevant, discussion in this report draws on the qualitative data to support the interpretation and understanding of the quantitative response patterns.

Overall themes

The discussion highlights four main threads in the qualitative responses that are relevant throughout this report. One thread reflects views endorsing the necessity for the 2012 family violence reforms and explicitly recognises or implies that practices needed improvement. The second thread is based on a view that practices in relation to family violence and child abuse concerns prior to the reforms were already effective, with the reforms supporting this pre-existing direction. The third thread endorses the necessity for the reforms but indicates that they have had limited influence on practices. There are two sets of concerns raised in connection with the perception of these limited effects: the first relates to resourcing issues, while the second suggests that there remains a lack of awareness among professionals about family violence and child abuse, despite the reforms. The fourth thread reflects a more negative view of the reforms, suggesting that they were unwarranted and may have had negative consequences. Considered in light of the pattern of quantitative responses—which are largely positive about the direction established by the 2012 family violence reforms—it would appear that the first three threads reflect the thinking among a majority of family law system professionals and the fourth thread reflects a minority view.

The helpfulness of FLA s 60CC(2A)

The data in the preceding section show that a large majority of the professionals surveyed were positive about the “helpfulness” of s 60CC(2A), and a smaller majority were supportive of the view that it was accorded greater weight when relevant. Qualitative data provide further understanding of the views and experiences behind these responses, both the majority positive responses and the minority negative responses.

Insights of judicial officers/registrars

Some judicial participants identified FLA s 60CC(2A) as influencing their approach to decision making in cases involving family violence. The following response, for example, indicated that this provision was particularly helpful in decision making at interim hearings:

The risk of family violence must be given a greater priority. This is helpful because allegations of family violence are almost always disputed. Decisions about disputed fact cannot be made in interim hearings so being required to greater consideration to risk of
harm means weight can be given to the allegations without having to make a finding of fact. (JO68, judge, FCC)

Other judicial participants indicated that, in practical terms, FLA s 60CC(2A) simply reflected the prevailing approach to decision making in cases where children are in need of protection from harm:

In terms of practice, the changes did not otherwise make a big difference as the need to protect from harm has always had greater weight in practice than the weight accorded to the benefit of a meaningful relationship where the two considerations pulled in different directions. (JO70, judge, FCC)

As discussed in Chapter 8, the greater weight now accorded to the protection from harm primary consideration (FLA s 60CC(2)(b)) and the statutory recognition of the priority to be given to this consideration over the meaningful relationship primary consideration (FLA s 60CC(2)(a)), were identified by numerous judicial participants as positive consequences of the family violence reforms.

**Insights of lawyers**

Many participating lawyers were supportive of the introduction of FLA s 60CC(2A). Some reflected positively on the legislative support provided by s 60CC(2A) and the clarification of the greater weight to be accorded to the protection from harm primary consideration:

Courts now have clear legislative power to frame orders to protect parties and children from family violence. (L131, lawyer)

s 60CC(2A) is particularly helpful in clarifying weight to be attributed to the factors in s 60CC(2) best interests. (L369, lawyer)

The introduction of s 60CC(2A) was identified by some lawyers as providing legislative authority to seek parenting arrangements that accommodated the protection of children from harm:

It is helpful for the court to have the s 60CC(2A) provision, so the priority to protect is mandatory. Courts would have protected children in any event, but by not having it in black and white it has been difficult to convince perpetrators that their “rights” must be subservient. (L372, lawyer)

At least I can now fight tooth and nail in respect to s 60CC(2A), even if I am treated oppressively because of it. (L280, lawyer)

Lawyers and FDR practitioners having statutory backing for what they have been saying in the past to clients. (L20, lawyer)

Having a legislative recognition that family violence is a serious issue, and that it should be accorded significant weight when considering what are the appropriate parenting arrangements for children. (L43, lawyer)

[A positive consequence is] the ability to argue that the protection of a child from abuse or harm is the paramount consideration. (L112, lawyer)

Other lawyers identified the introduction of s 60CC(2A) as positively affecting the decision-making process, which in turn led to outcomes that were directed at better protecting children from harm:

[A positive consequence is] an appropriate re-prioritisation of family violence and its effects. The reforms have gone some way to address the potential for interim parenting orders to be less responsive than necessary to family violence, with time arrangements being only properly co-ordinated when final orders are made after issues are tested. (L258, lawyer)

It has made a huge difference having the requirement to consider family violence as the most important criteria. (L148, lawyer)

[A positive consequence is] the court providing better protection with … s 60CC(2A). (L227, lawyer)
The only positive consequence is giving priority to protection from harm over meaningful relationship. That has made a difference to court decisions and to encouraging victims to tell the court about violence. (L64, lawyer)

As noted in the quote directly above, FLA s 60CC(2A) was described by some lawyers as not only making a difference to court outcomes in children’s cases, but it was also described as providing parties with reassurance to disclose family violence and to seek safe parenting arrangements:

Parties can be made aware that family violence has been elevated as an issue in the eyes of the court. (L113, lawyer)

The main positive about the reforms is we can now make it clear that safety is the paramount consideration in making arrangements for the children. We can advise clients that where there are safety concerns they do not have to make the children available to the other party. There was previously a difficulty in trying to balance the considerations of meaningful relationship with safety. (L498, lawyer)

Consistent with the responses of some judicial participants, some lawyers identified FLA s 60CC(2A) as reflecting the prevailing approach to the interpretation of the two primary considerations outlined in s 60CC(2):

The only bit that has made a change is the clarification that risk has a higher priority over meaningful relationship and quite frankly most judges and family lawyers were already taking that approach anyway prior to the reforms. (L336, lawyer)

For those that did not clearly understand the 2006 reforms and the aims … of the reforms, the amendments spell it out in clear language. (L228, lawyer)

Other lawyers considered the introduction of FLA s 60CC(2A) to be unnecessary or were ambivalent about the effects of the reforms:

Prior to the reforms, I did not perceive it to be an issue that the legal system prioritised the “meaningful relationship” over protection from harm. I felt the court did a perfectly good job of balancing those competing considerations on a case-by-case basis in its discretion. (L255, lawyer)

People are at least considering the impact of family violence, and judges are at least supposed to prioritise safety over relationship. (L139, lawyer)

A number of lawyers were of the view that FLA s 60CC(2A) had in practice failed to accord any greater priority to the protection from harm consideration:

The “meaningful relationship” provisions are still overshadowing the need to protect children. (L280, lawyer)

The need to protect children from harm and exposure to family violence is given a lower priority than the notion of children having a close and meaningful relationship with both parents. Expressions of concern by mothers are too often dismissed in favour of spending time orders regarded as necessary for the close and meaningful relationship. Mothers are concerned about the negative judgement of them that follows their expression of a desire for none/minimal contact with a partner who has a history of violence against women. Judges are too dismissive of a parent’s expressed concerns about family violence. (L382, lawyer)

Single expert witnesses and judicial officers still prioritise shared care above children’s safety. (L46, lawyer)

I think the most positive outcome is the change in law that children being safe is a priority over them seeing a parent. In saying that I think the family court is still pretty relaxed about allowing children to spend time with parents who are violent, have drug and alcohol issues, etc. (L161, lawyer)

I don’t think that the legal profession understands the significance of the changes to the legislation in the re-prioritising of the risks of family violence over and above the question of a meaningful relationship. Often in mediation conferences, there is greater
attention to resolving the matters to appease both parties rather than properly addressing
the issues of family violence. Often the family violence issues are avoided given that the
FDRP [family dispute resolution practitioner] would have to terminate the conference
once raised therefore preventing a carefully weighed assessment of family violence and
the risks thereafter. (L339, lawyer)

Concerns raised by participants relating to the denial, minimisation or misapprehension of
family violence will be considered further in Chapters 4 and 6 in the context of the discussion
of the practices of family law professionals in screening/identifying, assessing and responding
to harm and risk of harm.

2.2 Attitudes to the necessity for and symbolism of
the 2012 family violence reforms

Further examination of attitudes to the reforms among professionals across the system was
based on responses to two questions that respectively sought views on whether the family
law system “needed the family violence reforms” and whether they were “mainly a symbolic
gesture”.

Consistent with the suggestions in the preceding sections of largely positive attitudes among
professionals to the family violence reforms, the responses to these two questions suggest
substantial support among most professionals. In relation to the proposition that “the family law
system needed the family violence reforms”, affirmative responses were made by 77% of the
sample, with 42% strongly agreeing (Table 2.5). Only 16% of the overall sample offered negative
responses.

| Table 2.5: Agreement that the family law system needed the family violence reforms, by professional group, 2014 |
|-------------------------------------------------|-----------------|-----------------|-----------------|-----------------|
| Judicial officers | Lawyers | Non-legal | Aggregated |
| No. | % | No. | % | No. | % | No. | % |
| Strongly agree | 6 | 16.2 | 111 | 34.6 | 154 | 52.6 | 271 | 41.6 |
| Mostly agree | 15 | 40.5 | 114 | 35.5 | 103 | 35.2 | 232 | 35.6 |
| Mostly/strongly disagree | 12 | 32.4 | 68 | 21.2 | 24 | 8.2 | 104 | 16.0 |
| Cannot say | 4 | 10.8 | 28 | 8.7 | 12 | 4.1 | 44 | 6.8 |
| Total | 37 | 100.0 | 321 | 100.0 | 293 | 100.0 | 651 | 100.0 |

Notes: Professors were asked: “To what extent do you agree or disagree that the following statements describe your views about
the family violence reforms: The family law system needed the family violence reforms”. Percentages may not total 100.0%
due to rounding.

Source: Survey of Practices 2014

Differences between professional groups in response to this question are noteworthy. Overall,
non-legal professionals were most likely to support the need for the reforms (88%). In contrast,
lower proportions of lawyers (70%) and judicial officers/registrars (57%) were positive. Although
the smaller sample size for judicial officers/registrars ($n = 37$) means that these findings should
be interpreted conservatively, they are consistent with a view already noted by some judicial
participants (and lawyers) that family violence was already being dealt with effectively prior to
the reforms.

In relation to the lawyers’ responses, the pattern of results to a similar question that was evident
in the benchmarking 2006 Family Lawyers Survey in relation to the 2006 family law reforms, is
close to the inverse of these results. In the 2006 survey, participants were asked to indicate the
extent of their agreement with the proposition that “the family law system needed the current
reform package”. Negative responses were offered by 70% of male and 77% of female lawyers,
with positive responses coming from 27% male lawyers and 20% of female lawyers (data not shown).
Overview of the effects of the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)

A further indication of lawyers’ attitudes to the 2012 family violence reforms is indicated by responses regarding whether the changes were mainly a symbolic gesture (Table 2.6). While there exists some ambiguity in the way the term “symbolic” might be interpreted, given the context and our comparison with FLS 2008, we consider that the most likely interpretation applied by participants would be “not substantive in nature”. Overall, more survey participants disagreed that the changes were mainly a symbolic gesture (57%) than agreed (33%). The professional groups most likely to disagree were judicial officers/registrars (76%), followed by non-legal professionals (62%).

A majority of lawyers reported that the changes were more than simply symbolic, with 51% disagreeing with the proposition and 39% agreeing. In comparison with an element of the 2006 family law reforms—"promoting less adversarial ways of resolving disputes over children"—the 2012 family violence reforms were less likely to be seen as symbolic by lawyers. Just over half (52%) of the 2008 lawyer participants affirmed the symbolism of the 2006 aims in relation to less adversarialism (data not shown), compared with the 39% already reported in relation to the 2012 family violence reforms.

Table 2.6: Agreement that the family violence reforms are mainly a symbolic gesture, by professional group, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>1</td>
<td>2.7</td>
<td>38</td>
<td>11.9</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>6</td>
<td>16.2</td>
<td>86</td>
<td>26.9</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>21</td>
<td>56.8</td>
<td>113</td>
<td>35.3</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>7</td>
<td>18.9</td>
<td>50</td>
<td>15.6</td>
</tr>
<tr>
<td>Cannot say</td>
<td>2</td>
<td>5.4</td>
<td>33</td>
<td>10.3</td>
</tr>
<tr>
<td>Total</td>
<td>37</td>
<td>100.0</td>
<td>320</td>
<td>100.0</td>
</tr>
</tbody>
</table>

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 family violence reforms are mainly a symbolic gesture”.

Source: Survey of Practices 2014

2.3 Perceptions in relation to the effects of the reforms

This section examines perceptions about the broader effects of the family violence reforms. The relevant survey questions concerned levels of litigation, whether children in “high conflict” families are more likely to be in shared parenting arrangements, whether the reforms had benefitted children, and the extent to which the Part VII framework supports developmentally appropriate parenting arrangements. The first part of the discussion compares 2008 and 2014 lawyer responses. This is followed by an examination of group responses, including differences between groups.

2.3.1 Broad effects of reforms: Comparison between 2008 and 2014 responses

In both the FLS 2008 and the Survey of Practices 2014 surveys, views on several issues relating to making parenting arrangements were examined. These included levels of litigation, whether the changes had benefitted children “in most cases” and the extent to which the framework (a) supported developmentally appropriate arrangements, and (b) resulted in children in high conflict families being in shared care arrangements. Each of these statements was amended slightly to reflect the context (i.e., the term ‘family violence reforms’ was used in 2014 and “legislative reforms” in 2008), but the core content was the same. Overall, the response patterns
in the respective time periods suggest a range of positive findings in relation to the 2012 family violence reforms (see Table 2.7), namely that:

- there was less indication in 2014 that the family violence reforms had resulted in more litigation (24% affirming) compared with the 2006 legislative reforms in 2008 (46% affirming);
- nearly half the lawyers in the 2014 sample agreed that the family violence reforms had benefitted children in most cases, compared with 30% in relation to the 2006 legislative reforms in 2008;
- there was more support (by 17 percentage points) for the proposition that the “current framework makes it easy to assist parents to reach developmentally appropriate parenting arrangements” in 2014 compared with 2008; and
- lawyers in the 2014 sample were substantially more likely (by 27% percentage points; data not shown) to disagree that the reforms had resulted in more children in shared care arrangements where there was high conflict.

### Table 2.7: Lawyers who strongly or mostly agreed regarding the effects of the 2006 and 2012 family law reforms, 2008 and 2014

<table>
<thead>
<tr>
<th></th>
<th>FLS 2008</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>The family violence reforms have resulted in more litigation about parenting issues</td>
<td>146</td>
<td>45.8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>76</td>
<td>23.8</td>
</tr>
<tr>
<td>The family violence reforms have benefitted children in most cases</td>
<td>94</td>
<td>29.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>152</td>
<td>48.3</td>
</tr>
<tr>
<td>The current framework makes it easy to assist parents to reach arrangements that are developmentally appropriate for their children</td>
<td>65</td>
<td>20.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>118</td>
<td>37.0</td>
</tr>
<tr>
<td>The family violence reforms have resulted in fewer children in shared care arrangements where there is high conflict</td>
<td>51</td>
<td>16.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>136</td>
<td>42.5</td>
</tr>
<tr>
<td>Total respondents</td>
<td>319</td>
<td>321</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Based on your experience since the family violence reforms, do you agree or disagree with the following statements: “The family violence reforms have resulted in more litigation about parenting issues”; “The family violence reforms have benefitted children in most cases”; “The current framework makes it easy to assist parents reach arrangements that are developmentally appropriate for their children”; and “The family violence reforms have resulted in fewer arrangements involving shared care (i.e., arrangements within the range of 35–65% night split) where there is high conflict”. Proportion of “cannot say” responses ranged from 5% to 16% (2008). This item was answered by 319 respondents. Indicates items where 25% or more respondents selected “cannot say”. This item was answered by 315 respondents. The full question asked in 2014 was: “The family violence reforms have resulted in fewer children in shared care arrangements (i.e., arrangements within the range of 35–65% night split) where there is high conflict”. The question asked in 2008 was: “The legislative reforms have resulted in more children in shared care arrangements where there is high conflict”, so results reported here are for those who responded “strongly disagree” or “mostly disagree”. This item was answered by 320 respondents. Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

### 2.3.2 Broad effects of reforms: 2014 group responses

The pattern of responses for all professionals in the 2014 survey is broadly similar to the pattern evident for the 2014 lawyer group (Figure 2.1 on page 23). On the basis of the aggregate sample, most professionals (37%) said that the family violence reforms had not resulted in more litigation about parenting matters, with 24% saying they had. A significant feature of the response patterns in relation to this question was “cannot say” responses, suggesting the participants were conservative in commenting on issues outside of their direct experience. The largest group nominating this response was non-legal professionals (52%), consistent with their mostly non-legal practice context. Just over a quarter (28%) of lawyers and 43% of judicial participants said they could not say. The differences in response patterns between the groups mostly reflect the extent of the “cannot say” responses.
Overview of the effects of the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)

In relation to the statement that the “family violence reforms have benefitted children in most cases”, Figure 2.2 demonstrates that the most common response among each professional group was endorsement, amounting to 49% across the aggregate sample. On an aggregate basis, the proportion disagreeing was 28%, with lawyers being most likely to disagree (32%) and judicial officers/registrars least likely to disagree (20%). “Cannot say” responses were nominated by around one-fifth of judicial officers/registrars (22%) and lawyers (20%). Just over a quarter of non-legal professionals returned “cannot say” responses.

Figure 2.1: Agreement that the family violence reforms have resulted in more litigation about parenting issues, by professional group, 2014

Figure 2.2: Agreement that the family violence reforms have benefitted children in most cases, by professional group, 2014

Notes: Professionals were asked: “Based on your experience since the family violence reforms, do you agree or disagree with the following statements: The family violence reforms have resulted in more litigation about parenting issues”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
The question concerning agreement with the proposition that the “current framework makes it easy to assist parents to reach arrangements that are developmentally appropriate”, raises a range of issues wider than the effects of the 2012 family violence reforms (Figure 2.3). As the comparison between lawyers’ responses in 2008 and 2014 indicates, the 2012 changes are an improvement from the perspective of this group, suggesting that the 2012 changes are more consistent with lawyers’ understanding of developmental needs than the 2006 changes. More broadly, however, the response patterns to this question indicate that across the sample, marginally more professionals disagree with the proposition than agree (44% cf. 43%). The strongest levels of disagreement are evident among the professionals who work most closely with the legislative framework in day-to-day practice: judicial officers/registrars. Of this group, just 27% mostly agreed that the framework supported developmentally appropriate arrangements, with none strongly agreeing. In contrast, a majority (51%) disagreed with the proposition, with nearly 11% disagreeing strongly. Nearly half (49%) the lawyer participants disagreed (including 14% strongly disagreeing), while 37% endorsed the proposition. The group that works least directly with the legislative framework—non-legal professionals—were most likely to endorse the proposition (51%), but a substantial minority (38%) also returned negative responses.

![Figure 2.3: Agreement that the current framework supports developmentally appropriate parenting arrangements, by professional group, 2014](image)

Notes: Professionals were asked: “Based on your experience since the family violence reforms, do you agree or disagree with the following statement: The current framework makes it easy to assist parents reach arrangements that are developmentally appropriate for their children”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Noting the mostly negative views expressed, these response patterns also indicate some variety in views on the extent to which the Part VII supports developmentally appropriate arrangements, within and between the professional groups involved in the survey. These differences are likely to reflect a range of issues, including personal disposition and disciplinary background. Previous research has demonstrated substantial differences in the ways in which legal and non-legal personnel use (and in some cases avoid using) the legislative framework in their practice (Rhoades, 2014; Rhoades, Lewers, Dewar, & Holland, 2014). Negative responses from a majority of the group responsible for interpreting and applying the Part VII framework on a day-to-day basis—judicial officers/registrars—suggest the presence of significant concerns that have not been resolved by the 2012 family violence reforms. Such concerns are consistent with a range of issues raised prior to the 2012 family violence reforms by practitioners and academics (Chisholm, 2009; Kaspiew et al., 2009) and that have continued to be of concern since (Chisholm, 2014; Rhoades, 2014). These issues include the complexity of the legislation
and the way in which some provisions—such as the equal shared parenting presumption—are seen to divert focus away from children’s needs.

Two further questions relating to shared care arrangements (i.e., arrangements with a 35–65% night split) asked respondents to indicate agreement with propositions about whether the reforms have led to (a) fewer shared care arrangements overall, and (b) fewer shared care arrangements where there has been high conflict (Figure 2.4). The latter question was also asked in 2008, and the findings based on lawyers’ responses are also reported. They indicate lawyers thought fewer arrangements for shared care were made in circumstances of high conflict between parents after the 2012 family violence reforms (Figure 2.4). Taken together, the responses to the two questions are most notable for the high proportion of “cannot say” responses, again suggesting a conservative approach among most participants to commenting on matters outside their direct experience. On an aggregate basis, 39% of the sample returned “cannot say” responses to the unqualified statement and 35% to the qualified statement.

Finally, responses to a further question on the extent to which the 2012 family violence reforms have produced a shift in the outcomes of cases involving family violence indicate a majority view that they have not, with the largest aggregate response being positive in relation to the negatively worded question (46%), against a negative aggregate response of 33% (Figure 2.5 on page 26). “Cannot say” responses were made by about one-fifth (21%) of the total sample, with non-legal professionals being the most likely group to nominate this response (26%) and lawyers the least likely (17%). Apart from this, variations in response patterns in the distribution of positive and negative responses were not particularly notable, with the range of positive responses falling between 44% (non-legal professionals) and 49% (lawyers), and negative responses between 35% (lawyers) and 30% (non-legal professionals). Notably, no judicial participants strongly disagreed with the proposition.
2.4 Advice on family violence and child abuse

This section examines the extent to which the 2012 family violence reforms may have been associated with a shift in the advice provided to clients by lawyers and non-legal professionals in relation to family violence, child abuse and parenting arrangements more generally. The first section is based on a comparison of 2008 and 2014 survey responses in relation to advice about family violence and parenting arrangements. The second sets out findings on advice in relation to child abuse, which was only examined in 2014. A comparison between the responses of lawyers and non-legal professionals on changes in advice-giving practice is the focus of the third section.

There are several aspects of the 2012 family violence reforms that may have bearing on the findings discussed in this section. In addition to the s 60CC changes outlined at the outset, other significant amendments include:

- the broader definitions of family violence (FLA s 4AB) and child abuse (FLA s 4) (examined in more depth in Chapter 3);
- the obligation imposed on advisors (including lawyers and dispute resolution practitioners) to advise parents/parties that protection from harm should be prioritised over the child’s right to a meaningful relationship (s 60D(1), s 63DA(2)); and
- the repeal of provisions seen to discourage the disclosure of family violence and child abuse concerns (see further Chapter 3).

2.4.1 Legal advice: Comparison of 2008 and 2014 lawyers’ responses

A significant aspect of legal practice examined in both the 2008 and 2014 surveys concerned changes in advice-giving patterns. Three areas were covered: fathers seeing children, allegations of family violence, and outcomes of parenting disputes (Table 2.8). These questions concerned
the participant’s own advice-giving behaviour and thus are a better indication of how the family violence reforms have changed practice than the more general questions assessing overall impressions discussed in the preceding section. A feature of the responses in 2008 was a notable change in advice-giving patterns in relation to all areas (except family violence) in response to the 2006 family law reforms. Substantial majorities (85–90%) of the sample in each of the two other areas indicated they had changed the advice they gave, in comparison with only 47% in relation to allegations of family violence (Table 2.8). In contrast, a change in advice provided about family violence is most strongly evident in 2014, with 64% of the sample saying they had changed their advice in this respect. The other area where changes were strongly apparent was in relation to outcomes of parenting disputes, with 56% of the sample indicating changed advice-giving on this point.

Table 2.8: Lawyers’ agreement that advice-giving regarding fathers, family violence and outcomes of parenting disputes has changed, 2008 and 2014

<table>
<thead>
<tr>
<th></th>
<th>FLS 2008</th>
<th></th>
<th>Survey of Practices 2014</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Fathers seeing children</td>
<td>286</td>
<td>89.7</td>
<td>109</td>
<td>41.8</td>
</tr>
<tr>
<td>Allegations of family violence</td>
<td>150</td>
<td>47.0</td>
<td>167</td>
<td>64.0</td>
</tr>
<tr>
<td>Outcomes of parenting disputes</td>
<td>271</td>
<td>85.0</td>
<td>147</td>
<td>56.3</td>
</tr>
<tr>
<td>Total respondents</td>
<td>319</td>
<td></td>
<td>261</td>
<td></td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked in 2008 and 2014: “Because of the family violence reforms, I have changed the advice I give to clients about: Fathers seeing children; Allegations of family violence; and Outcomes of parenting disputes”. Proportion of “cannot say” responses: 3–5% (2009) and 5–8% (2014). Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

Figure 2.6 sets out findings on another aspect of advice-giving practice, namely advice concerning shared parenting and cooperation. It depicts the extent to which lawyers and non-legal professionals indicated providing this advice in 2014, compared with lawyers’ responses from 2008. The question was: “How often (if at all) have you explained to clients involved in parenting disputes that ‘substantial sharing of parenting responsibilities after separation requires high levels of capacity to cooperate?’ ” (Figure 2.1). Overall, the data suggest that in 2014, the practices of lawyers and non-legal professionals on this point were largely consistent with each other. Minor differences in response patterns between the two groups are evident, with more lawyers indicating they gave this advice “almost always” compared with non-legal professionals (75% vs 70%).

Very small shifts in response patterns are evident between 2008 and 2014, with vast majorities in each survey (88% and 93% respectively) indicating they “often” or “almost always” advised clients regarding the need to cooperate.

2.4.2 Advice on child abuse allegations: 2014 responses

An additional question on advice-giving about child abuse was asked in 2014 because of the emphasis on protecting children from harm in the 2012 family violence reforms. Legal and non-legal professionals were asked to provide a response to this statement: “Because of the family violence reforms, I have changed the advice I give to clients about: allegations of child abuse”. A majority of lawyers (59%) and half the non-legal professionals (50%) indicated their advice-giving practice had changed in this area (Table 2.9 on page 28). Sizeable minorities (35% of lawyers and 41% of non-legal professionals) said their practice had not changed. For some, this may suggest a perception that their pre-amendment approach to this issue was already consistent with the direction of the reforms and change was unnecessary.
Chapter 2

Table 2.9: Agreement that the family violence reforms has changed advice given to clients about allegations of child abuse, lawyers and non-legal professionals, 2014

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th></th>
<th></th>
<th>Aggregated</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Yes</td>
<td>154</td>
<td>59.0</td>
<td>114</td>
<td>49.6</td>
<td>268</td>
</tr>
<tr>
<td>No</td>
<td>92</td>
<td>35.3</td>
<td>94</td>
<td>40.9</td>
<td>186</td>
</tr>
<tr>
<td>Not applicable</td>
<td>–</td>
<td>–</td>
<td>19</td>
<td>8.3</td>
<td>19</td>
</tr>
<tr>
<td>Cannot say</td>
<td>15</td>
<td>5.8</td>
<td>3</td>
<td>1.3</td>
<td>18</td>
</tr>
<tr>
<td>Total</td>
<td>261</td>
<td>100.0</td>
<td>230</td>
<td>100.0</td>
<td>491</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Because of the family violence reforms, I have changed the advice I give to clients about allegations of child abuse”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

2.4.3 Advice-giving practices: Comparisons between professional groups

Table 2.10 (on page 29) shows responses by lawyers and non-legal professionals in relation to the same set of questions about advice-giving approaches, offering a cross-professional comparison. No pre-amendment data are available for non-legal professionals for these questions. In relation to all questions, non-legal professionals were less likely than lawyers to indicate changing their advice after the 2012 family violence reforms. As with lawyers, the area of most substantial change was in relation to allegations of family violence. The two areas where the greatest difference is apparent between lawyers and non-legal professionals is in relation
Overview of the effects of the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)

Responding to family violence: A survey of family law practices and experiences

Overall these patterns suggest some variation across disciplines and between professionals in the areas where the 2012 family violence reforms have prompted changes in practice. The responses of lawyers and non-legal professionals suggest most change has occurred in relation to allegations of family violence and child abuse, though legal practice has changed more than non-legal practice. This may reflect a greater focus among social scientists on these issues prior to the reforms, but it may also result from the fact that legal practice is prescribed by legislative dictates to a greater extent than non-legal practice.

Table 2.10: Agreement that advice-giving practices have changed since the 2012 family violence reforms, lawyers and non-legal professionals, 2014

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Fathers seeing children</td>
<td>109</td>
<td>41.8</td>
<td>84</td>
</tr>
<tr>
<td>Allegations of family violence</td>
<td>167</td>
<td>64.0</td>
<td>131</td>
</tr>
<tr>
<td>Allegations of child abuse</td>
<td>154</td>
<td>59.0</td>
<td>114</td>
</tr>
<tr>
<td>Outcomes of parenting disputes</td>
<td>147</td>
<td>56.3</td>
<td>100</td>
</tr>
<tr>
<td>Total respondents</td>
<td>261</td>
<td></td>
<td>233</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: "Because of the family violence reforms, I have changed the advice I give to clients about: Fathers seeing children; Allegations of family violence; Allegations of child abuse; and Outcomes of parenting disputes". Proportion of "cannot say" response: 4–8% for lawyers; 1–6% for non-legal professionals. *This item was answered by 230 respondents. **This item was answered by 491 respondents. Percentages do not sum to 100% as not all response categories are presented and multiple responses could be chosen.

Source: Survey of Practices 2014

2.5 Summary

This chapter has examined findings on some broad issues relating to the 2012 family violence reforms, with a particular emphasis on gaining understanding of professionals’ attitudes to some specific aspects of the amendments, and the effects they are starting to have. The availability of comparison data from the 2008 (and in some cases the 2006) Family Lawyers Surveys and the 2009 Family Relationship Services Staff (FRSP) Survey from the Evaluation of the 2006 Family Law Reforms research program has permitted comparison of pre- and post-amendment attitudes, experiences and responses in some key areas, shedding light on the effects of the 2012 changes.

Overall, the findings presented in this chapter indicate that the reforms are a step in the right direction in the context of a reform agenda intended to prioritise protection from harm in the family law system. In relation to the overarching objective of placing greater weight on “protection from harm” where it stands in conflict with supporting a meaningful relationship with each parent after separation, the findings indicate that a larger proportion of family law system professionals believe it has been given “adequate priority” since the reforms, but this proportion is substantially lower than those who believe adequate priority has been accorded to the child’s right to a meaningful relationship.

In relation to the s 60CC(2A), which specifies that protection from harm is to be given greater weight than the child’s right to a meaningful relationship with both parents after separation, the vast majority of all respondents thought it was helpful (86% agreeing cf. 11% disagreeing). However, views were less positive on the question of whether “protection from harm is accorded greater weight when relevant”: 70% of the sample agreed that this was the case, compared with 23% disagreeing.

The findings also reveal a greater level of support among family lawyers for the 2012 family violence reforms than the 2006 family law reforms. Lawyers participating in 2014 were substantially more likely than those participating in 2006 to agree that the family law system needed the reforms and less likely to see them as a symbolic gesture. The largely positive
attitudes manifested by lawyers are consistent with the attitudes expressed by other professional groups in the 2014 data collection, although judicial officers were less likely to endorse the need for the reforms than other groups. Majorities of professionals in each group considered the 2012 family violence reforms were needed (on an aggregate basis, 77% agreed and 16% disagreed), but there were marked differences among the groups on the extent of endorsement. Endorsement was strongest among non-legal professionals (88%) and weakest among judicial participants (57%).

Compared with the 2006 reforms, the 2012 family violence reforms were seen by lawyers as less likely to be associated with an increase in litigation, more likely to be of benefit to most children and less likely to result in children being in shared parenting arrangements when there was high conflict. Professionals’ responses suggest the reforms have improved support for parenting arrangements that are developmentally appropriate, but fewer professionals overall agreed with the statement that the “current framework makes it easy to reach arrangements that are developmentally appropriate for children” (43%). Notably, the group that works most directly with the legal framework in day-to-day practice, judicial officers and registrars, expressed the lowest level of agreement with this proposition (27%).

Data from lawyers’ responses suggest that advice-giving practice in relation to three interconnected issues—fathers seeing children, allegations of family violence, and outcomes of parenting disputes—have shifted, with the greatest change being evident in relation to family violence (in 2014, 64% indicated they had changed their advice, compared with 47% in 2008). A majority of lawyers indicated they had changed their advice on child abuse allegations also (yes: 59% cf. no: 35%).
This chapter sets out the findings from the Survey of Practices 2014 on two further elements of the legislative reforms: the amended definitions of family violence (s 4AB) and child abuse (s 4) and the removal of provisions perceived to inhibit disclosure of concerns about these issues. One provision that was removed was s 60CC(3), which required courts to have regard to the extent to which one parent has facilitated the child’s relationship with the other parent. The other was s 117AB, which provided courts with the power to make a costs order against a party found to have “knowingly made a false statement in proceedings”.

Discussion based on responses to quantitative survey questions is supplemented by more detailed qualitative insights into professionals’ views on each of these issues.

The data reported in this chapter indicate that most of the professionals involved in the survey consider the new definitions support safer parenting arrangements for parents and children. On the question of whether the system’s response to non-physical forms of family violence has improved, response patterns suggest a limited shift in this regard. In relation to the effects of the provisions considered to potentially inhibit disclosures of family violence and child abuse, the data indicate that these changes are most likely to be seen as being positive (i.e., resulting in more disclosure of family violence and child abuse) by non-legal professionals and less likely to be associated with being either positive or negative (false, frivolous of vexatious allegations) by lawyers and judges.

3.1 Amended definitions of family violence and child abuse

This section focuses on professionals’ views on the new definitions of family violence (s 4AB) and child abuse (s 4) (see Box 2 on page 13). It begins by presenting findings on two survey questions concerning whether these definitions support safer parenting arrangements and whether non-physical forms of family violence are now identified and dealt with more effectively. Qualitative insights that shed further light on the variety of views on the new definitions are then discussed.

3.1.1 New definitions: Quantitative insights

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

The new definition provisions also explicitly recognise and define the exposure of children to family violence, where it causes serious psychological harm, as a form of child abuse (s 4). The definition of “abuse” in FLA s 4 previously referred to state and territory laws in relation
Box 2: New family violence and child abuse definitions in the *Family Law Act 1975* (Cth)

**s 4AB**

(1) For the purposes of this Act, *family violence* means 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.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):
   - an assault; or
   - a sexual assault or other sexually abusive behaviour; or
   - stalking; or
   - repeated derogatory taunts; or
   - intentionally damaging or destroying property; or
   - intentionally causing death or injury to an animal; or
   - unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
   - unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
   - preventing the family member from making or keeping connections with his or her family, friends or culture; or
   - unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty.

(3) For the purposes of this Act, a child is *exposed* to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to):
   - overhearing threats of death or personal injury by a member of the child’s family towards another member of the child’s family; or
   - seeing or hearing an assault of a member of the child’s family by another member of the child’s family; or
   - comforting or providing assistance to a member of the child’s family who has been assaulted by another member of the child’s family; or
   - cleaning up a site after a member of the child’s family has intentionally damaged property of another member of the child’s family; or
   - being present when police or ambulance officers attend an incident involving the assault of a member of the child’s family by another member of the child’s family.

**s 4(1)**

*abuse*, in relation to a child, means:

- an assault, including a sexual assault, of the child; or
- a person (the *first person*) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- serious neglect of the child.
to assault and sexual assault, and this reference was omitted from the new definition. New elements include causing serious psychological harm, including but not limited to, exposing the child to family violence and “serious neglect” of the child. The extent to which these aspects of the changes have resulted in greater attention being paid to the exposure of children to family violence in legal practice and court proceedings is discussed in Chapters 4 and 6.

The new definitions, particularly s 4AB, were the subject of significant debate in Parliament and other forums in the period prior to the enactment of the legislation. Some commentators suggested the definition was too wide\(^8\) while others raised concerns that some aspects of the wording could result in an overly narrow application, in part because of the use of the terms “fear”, “coercion” and “control” (Rathus, 2013). The analysis of published judgments as part of the Court Outcomes project will examine how the definitions are being applied by judicial officers. Table 3.1 sets out participants’ views on the question of whether the new definitions support safer parenting arrangements for parents and children. Overall, most participants provided positive responses to this question, with 73% mostly or strongly agreeing. Affirmation was strongest among non-legal professionals (75%) and lowest among lawyers (70%), although the differences are modest. Overall, differences in the distribution of positive and negative responses between the professional groups were similar. Notably, 14% of judicial officers nominated the “cannot say” option.

![Table 3.1: Agreement that the new definitions of family violence and abuse support safer parenting arrangements, by professional groups, 2014](image)

<table>
<thead>
<tr>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
<td>7</td>
<td>18.9</td>
<td>47</td>
<td>14.7</td>
<td>58</td>
<td>19.9</td>
<td>112</td>
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<tr>
<td>Mostly agree</td>
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<td>178</td>
<td>55.6</td>
<td>162</td>
<td>55.5</td>
<td>360</td>
</tr>
<tr>
<td>Mostly/strongly disagree</td>
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<td>13.5</td>
<td>73</td>
<td>22.8</td>
<td>59</td>
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<td>137</td>
</tr>
<tr>
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<td>13.5</td>
<td>22</td>
<td>6.9</td>
<td>13</td>
<td>4.5</td>
<td>40</td>
</tr>
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<td>Total</td>
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<td>100.0</td>
<td>320</td>
<td>100.0</td>
<td>292</td>
<td>100.0</td>
<td>649</td>
</tr>
</tbody>
</table>

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

The survey examined the extent to which any changes in practice in relation to non-physical violence had occurred since the reforms. Participants were asked to indicate the strength of their agreement or disagreement with the proposition that “the identification, assessment of, and response to, non-physical forms of family violence by the family law system has not improved since the family violence reforms”. Overall, the response pattern suggests less of a shift in this regard, with 37% of the total sample supporting a view that practice has improved and 48% indicating it hasn’t (Table 3.2 on page 34). Notably, the distribution of positive, negative and “cannot say” responses among lawyers and non-legal professionals was very similar. Among judicial officers/registrars, however, a higher proportion detected improvement (43%), compared to just over a third of the lawyers and non-legal professionals. They were also most likely to return “cannot say” responses, with 30% selecting this option, compared with about 15% of lawyers and non-legal professionals. The interpretation of these responses raises some ambiguity as, consistent with other areas, some of the professionals may have considered that this area had already been handled well before the reforms.

3.1.2 New definitions: Qualitative insights

Qualitative comments regarding the new definitions of family violence and child abuse reflected a varied range of views and some differing interpretations of the definitions themselves. Many comments were positive about the new definitions, particularly the recognition of non-physical

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\(^8\) Arguments of this nature are summarised in the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions].
forms of violence. Others, however, suggested it had “widened the net”, capturing a range of
behaviours that shouldn’t necessarily be considered relevant to parenting matters. A sub-theme
in this regard concerned the extent to which the family law system was equipped to distinguish
between serious and less serious forms of family violence in terms of knowledge (training and
experience) and resources. Responses along these lines suggest a varied range of approaches
and understandings of the types of behaviours that amount to family violence and the point
at which such behaviours reach a level of gravity warranting the attention of the family law
system. Implicit in some comments, and explicit in others, were understandings (and concerns
for some participants) linked to theories about typologies of violence that have arisen from the
work of researchers and clinicians such as Janet Johnston and colleagues and Michael Johnson
and colleagues.9 Some responses also questioned whether the new definitions do, in practice,
amount to a wider approach to family violence. In this context, the qualifying words “coercion”,
“control” and “fear” were raised as potentially limiting the interpretation of the definition.

Judicial officers/registars

Participating judicial officers and registrars provided their views and experiences of the amended
definitions of family violence in FLA s 4AB and, to a lesser extent, of abuse in relation to a child
in FLA s 4. These participants answered open-ended survey questions about the consequences
of the family violence reforms, and/or questions seeking comment on any changes to the ways
in which family law professionals screen/identify, assess and respond to family violence issues
as a result of the reforms.

Judicial officers were positive about the expansion of the definition to include a broader range
of violent and abusive behaviour:

The change to the definition of family violence to include coercive and controlling
behaviour and to the definition of child abuse to add exposure to family violence were
both very helpful in assisting courts and family law professionals to deal with difficult
cases involving behaviour which may not have come within previous definitions. (JO70,
judge, FCC)

A legislatively mandated requirement to consider a broad and far more appropriate
definition of FV (JO54, judge, FCC)

The broader definition of family violence in FLA s 4AB was identified by some judicial
participants as encouraging greater awareness of, and focus on, family violence by family law
professionals and the wider community alike:

The broader more descriptive definition helps practitioners focus on/explore the issue
more fully with clients. (JO50, judge, FCC)

9 For a discussion of this work see Wangmann, 2011 and Altobelli, 2009.
The broader definition was also described as leading to more evidence to be adduced in the context of this greater awareness of and focus on family violence. For example:

The reforms have meant a greater awareness of family violence issues as legal issues and that has meant more evidence of that violence (in its expanded definition form) has been adduced. (JO44, judge, FCC)

On the other hand, some judicial officers and registrars expressed concern at the expansion of the definition of family violence. While acknowledging the assistance of definitions, one judicial officer expressed concern about emphasising the coercive and controlling component of the definition, and the potential to incorrectly classify behaviour:

I am concerned that through the good intentions of expanding the definition section in the FLA we may have inadvertently emphasised coercive and controlling behaviour as a precondition or common factor. Whilst a helpful tool in understanding violence and helping to educate litigants, practitioners and the courts, I am concerned that the use of the typologies may lead to wrong or unhelpful classification. (JO46, judge, FCC)

Another judicial officer expressed concern that the broadening of the definition could lead to perpetrators raising allegations of family violence in response to the allegations made against them:

[It provides the] opportunity for [the] physical violence perpetrator to allege “family violence” from other parent under much wider definitions in response to allegations against them. (JO60, magistrate, FCoWA)

Some judicial participants suggested that the widening of the definition could lead to the minimising of all violent behaviour or to overwhelming pressures on statutory child protection agencies:

Some practitioners take the view that the non-physical definitions have gone too far and therefore can tend to minimise all violence. I don’t know the answer to that dilemma! (JO44, judge, FCC)

The definitions are very wide … This has led to pressures on the state welfare agencies seeking to process increased Form 4s. (JO39, registrar, FCoA)

As foreshadowed in this last comment, judicial participants also identified problems with understanding the amended definition of family violence:

The definition is complicated so difficult for the non-lawyer to understand. (JO68, judge, FCC)

Another judicial officer questioned whether it had in fact broadened the range of cases covered:

I am unconvinced that the definition has widened the scope for cases to fall within it. The biggest problem is still the state of the evidence. There is little attempt being made to focus on proving objectively these facts … I am still a little uncertain as to whether anything can be concluded yet but I am wondering whether the widening of the definition is indeed what has happened. For example, the word “serious” now appears in the definition. Has that limited the definition on the basis that serious in the context of other words used such as “coercion” may mean that a lot of cases fall outside the definition. (JO36, judge, FCoA)

This judicial officer also questioned the utility of the definition in practice:

I wonder whether it might be more sensible to go back to the starting point. Is it necessary to have a definition? Most complicated dysfunctional family cases involving children do not need the focus of a definition; they need a solution for children whose lives will rarely be improved by orders because they still live in that dysfunctional world. The need for a definition has been exacerbated by the legislature having attempted to define best interests. If … s 60CA stood alone and the current 60CC provisions were mission statements or objects and principles, it might be a lot more sensible. (JO36, judge, FCoA)
Lawyers

Like the responses of judicial officers/registrars, those from lawyers concerning the new definition reflected a range of views, concerns and interpretations. Many positive responses referred to the fact that the new s 4 and s 4AB definitions made it easier to work with clients to develop understanding of the behaviours that amount to family violence and abuse. Other comments suggested very mixed views on the workability of the definitions.

Positive effects arising from the more “nuanced definition of family violence” (L286) were described by numerous lawyers to stem from the breadth of behaviour captured within the scope of the definition:

- The expansion of the definition is the most important factor … financial and other social controls and psychological abuses are now properly recognised. (L341, lawyer)
- I believe the new definition captures more cases of family violence and allows for a recognition of the myriad of coercive and controlling behaviours which constitute family violence. The non-exhaustive list of examples in the definition is useful. (L498, lawyer)
- Consideration is given to a broader range of conduct which might be regarded as violent and which in any event is adverse to children’s interests. (L241, lawyer)
- Broader definition of family violence, more in line with current thinking about family and domestic violence. (L30, lawyer)
- [A positive outcome is] the ability to use an expanded definition of family violence and abuse. (L112, lawyer)

This broader definition in FLA s 4AB was in turn identified by some participating lawyers as leading to improved awareness of the effects of family violence, together with improved practices in identifying, assessing and responding to these risks and harm factors on the part of family lawyers. For example:

- Lawyers are using the broader definition of family violence, which takes into account a range of controlling and coercive behaviours. Legal professionals are becoming more aware of how family violence can affect children. I believe lawyers are more likely to ask questions about family violence and explore its implications. The changes have placed responsibility on legal professionals to take family violence into account when giving advice and this has in turn led to better arrangements being made for children. (L498, lawyer)
- I think the expansion of the definition assists lawyers in taking instructions from their clients. (L406, lawyer)
- Clarification and extension of what is domestic violence. There is more of a chance that lawyers will include domestic violence issues in the affidavits, which can lead to a stronger protection for the children in the long term. (L500, lawyer)

Consistent with the responses of judicial participants, some participating lawyers also identified the significance of the expanded definition introduced by FLA s 4AB in promoting greater understanding (in both the community and among family law professionals) of the behaviour that may be said to constitute family violence, with this greater understanding supporting disclosures:

- The identification of family violence to include the non-physical, coercive, controlling and economic violence has assisted clients significantly to disclose. It is necessary to identify to clients the types of violence as the public do not widely know about this identification and types of violence. Clients are relieved to know that they can be heard on these matters and that it does constitute violence. The judiciary now know what it is. (L82, lawyer)
- You can tell clients that the court prioritises protecting the child and explain to clients the expanded definition of family violence, which may encourage them to seek assistance. (L97, lawyer)
Family violence is much more on the agenda. The improved definition has lead to increased/increasing understanding. It can be raised with more confidence, although how raising it is dealt with is not yet a certainty. (L505, lawyer)

A broader definition of family violence creates a better understanding of all the different behaviours that can constitute family violence. (L334, lawyer)

[Positive consequences are the] greater willingness of victims of family violence to raise the family violence in proceedings and [the] greater comfort that their experiences will satisfy the definition at law. [The] ability to rebut the presumption of ESPR in more matters [and] a more consistent message between legal services and community/support services about what constitutes family violence. (L272, lawyer)

Other participating lawyers emphasised the importance of the legislative definition in assisting with greater community awareness more generally:

It is beneficial for the public to have a definition of FV in black and white. (L372, lawyer)

In contrast, some lawyers described their disapproval of the expanded definition introduced by FLA s 4AB. For some, this disapproval was based on the view that the breadth of the definition had the effect of downplaying or trivialising violence, that it was difficult to apply, or that it had lost its meaning:

The definition of “violence” has been widened. But instead of calling it “violence” some professionals now call it “family conflict”, which trivialises violence. Just because BOTH parents were violent to each other, it then becomes “family conflict”. But it's still violence. (L303, lawyer)

DV has been trivialised, as the definition is so wide as to apply to a lot of situations where it is (near) impossible to work out who is the aggressor and who is the victim. Consequently, the court simply cannot consider properly all allegations. (L487, lawyer)

Because the definition is so wide it has lost its meaning and impact. (L470, lawyer)

A broad definition of family violence can be difficult to work with. (L286, lawyer)

The amended definition was identified as giving rise to a lack of differentiation between forms of violence, which in turn had led to a failure to respond to violence described as being of a “serious or sustained” nature:

The widening of the definition of DV has not assisted. The very serious and sustained type of violence is not distinguished from the less serious situational violence that often occurs when couples are separating. Professionals tend to therefore lump all types of violence into the same category. This leaves victims (and their children) of serious sustained violence often inadequately unprotected as they typically require far more protection than victims of situational violence. (L187, lawyer)

The definition of family violence is too wide, not giving proper attention to true family violence when children are being truly put at risk either personally or psychologically. (L38, lawyer)

Concerns raised by some participants that suggested a proliferation in false, exaggerated or irrelevant allegations will be considered further in Chapter 8 in the context of a more focused discussion on the evidentiary issues raised by participating legal professionals.

Non-legal professionals

Positive reflections arising from this broader definition of family violence arose in the comments of numerous non-legal professionals. Consistent with the comments of some judicial and legal professionals, these participants supported the clarity or breadth of the revised definition, and the way in which it captured “the less visible components of family violence”:

Practitioners who work in the field are invited to give greater consideration to the less visible components of family violence that have similar and greater impacts for victims. Children are potentially seen as having greater levels of vulnerability in these proceedings.
and therefore their safety given higher priority. (NL186, D/FV service, service level coordinator/service manager)

There is clearer specific information on what constitutes violence. (NL395, FCC, family consultant)

[A positive consequence is that they are] helping people in general to have a clearer understanding of what constitutes family violence. (NL493, FRC, mediator/FDR practitioner)

[Positive consequences are the] adequate definitions of the nature and types of family violence, written in “plain” (non-legal) language, which means non-legal professionals and lay people alike can read and understand the meaning of such raising awareness in the community/society at large about family violence and the various type of such. (NL596, FRC, mediator/FDR practitioner)

The new increased definitions of what constitutes family violence more adequately include verbal and emotional abuse and as such better protect children—or at least raise the issues for all those who make decisions on behalf of children (parents, lawyers, courts, practitioners, support services and child protection services). (NL430, family relationships counselling service, service level coordinator/service manager)

Indeed, the amended definition was identified by some non-legal professionals as reflecting both the reality of the lived experience of family violence and the available social science research:

The reforms’ new broader definitions are better covering what is happening in the community. (NL37, FRC, mediator/FDR practitioner)

Expanding the definition of DV to include a broad range of behaviours—is in line with social science. (NL97, D/FV service, D/FV professional)

The removal of restrictions or limitations arising from definitions of family violence also received positive comments:

The reforms provide more inclusion of aspects of violence that in the past may have been excluded. (NL395, FCC, family consultant)

[Positive consequences are the] expanded definitions that don’t limit what family violence may consist of. (NL67, FRC post-separation services manager)

In particular, the availability of a clear legislative definition that enshrined current practice knowledge in law, was identified by one non-legal professional as facilitating the identification of, and appropriate response to, family violence:

Having what we have long known professionally enshrined in the legislation enables us to very clearly name the issues as they are, and to focus on the impact on children, and thus give the court evidence which increases the courts’ ability to act protectively towards children. (NL14, FCC, family consultant)

[A positive consequence was] the recognition that violence should be more widely defined and recognised and given greater consideration legally than previously. (NL556, post-separation services manager)

It certainly promotes a greater capacity for the identification of different types of violence for the benefit of all family members involved. (NL412, FDR service, mediator/FDR practitioner)

[Positive consequences are the] greater awareness of the new definition of FV and the requirement to follow-up/take action when issues are disclosed. (NL415, FDR service, mediator/FDR practitioner)

The educative function arising from the breadth of definitions was highlighted by some non-legal professionals, with one describing the amended definition of family violence as both challenging perceptions of what constitutes family violence and providing a “platform” to discuss the broader effects of family violence and respond appropriately where identified:
Broader definitions allow practitioners in the sector to challenge people's perceptions of what FV is and gives a good platform to discuss impact of FV on children especially where children are not ‘directly’ exposed to FV, i.e., arguments while they are sleeping, impact of conflict levels between parents on children. Clearer definition on when mandated to report serious psychological harm is a wonderful addition. Gives more leverage when reporting suspected child abuse to DHS. (NL614, FDR service, post-separation services manager)

Clearer definition of family violence, which reinforces the practitioners' information provided for parents. (NL636, FRC, mediator/FDR practitioner)

Provides a high profile for family violence when talking to clients, which all helps in working towards “zero tolerance” and clients’ understanding of what family violence is; in particular, emotional abuse. (NL416, FRC, mediator/FDR practitioner)

It’s now easier to be clear with clients about the legality of family violence and the boundaries they need to be aware of. (NL187, FRC, mediator/FDR practitioner)

Again, consistent with the responses of judicial and legal participants, some non-legal professionals also identified the significance of the expanded definition in promoting greater understanding (both in the community and among family law professionals) of the behaviour that may be said to constitute family violence, with this greater understanding supporting the disclosure of family violence:

More inclusive of different forms of abuse and helping clients to understand that what they have been living was in fact abuse. Therefore, helping clients to seek appropriate help to reconcile these issues. (NL51, FRC mediator/FDR practitioner)

The fact that there are explanations of what constitutes a child being exposed to family or domestic violence [that] have been included with the changes has been extremely helpful in raising awareness with mothers specifically. It often opens their eyes to the fact that while her child/children may not be physically assaulted by the other party, they are still experiencing [family and domestic violence]. (NL137, no service or position specified)

[The family violence reforms have] raised awareness and provided a more inclusive and clear definition of FV. (NL13, FCoA, family consultant)

Some non-legal professionals also emphasised the benefit arising from the amended legislative definition of family violence in assisting with the encouragement of not only awareness of what may constitute family violence but also awareness of the significance of protecting children from harm arising in the context of family violence. One non-legal professional referred to the amended definitions of both family violence and child abuse in this context:

Greater awareness across the family law sector of the importance of protecting children from harm, assisted by the broader definition of family violence and including neglect and exposure to family violence as child abuse. (NL18, FCoWA, family consultant)

Other non-legal professionals were critical in their reflections on the amended definition of family violence in FLA s 4AB. For a small number of non-legal professionals, the definition was identified as unduly restrictive in nature:

The typologies of family violence are not true and [are] unhelpful. (NL492, D/FV service, D/FV professional)

### 3.1.3 Using the new definitions as an educative tool

Table 3.3 sets out the views of different professionals on the extent to which the new definitions of family violence and abuse have supported improved understanding among family law system professionals and clients. Considering the aggregated responses, the two professional groups most seen to demonstrate an improved understanding are FDR practitioners and Independent Children’s Lawyers (ICLs), with about 60% of responses across the board agreeing that the new definitions have improved understandings. The new definitions were seen to have less of an educative effect for parents, particularly fathers, with 42% of the sample suggesting improved

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understandings among mothers but substantially fewer (about one-quarter) agreeing the same had occurred among fathers.

### Table 3.3: Professionals strongly or mostly agreeing that new definitions of family violence and abuse have improved understandings of family violence, by associated group, 2014

<table>
<thead>
<tr>
<th>Professional Group</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
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<td>Judicial officers</td>
<td>27</td>
<td>77.1</td>
<td>191</td>
<td>67.5</td>
<td>133</td>
<td>51.0</td>
<td>351</td>
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<tr>
<td>Other lawyers</td>
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<td>65.7</td>
<td>187</td>
<td>65.9</td>
<td>83</td>
<td>31.9</td>
<td>293</td>
<td>50.6</td>
</tr>
<tr>
<td>Judicial officers and/or registrars</td>
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<td>77.1</td>
<td>190</td>
<td>67.4</td>
<td>108</td>
<td>41.7</td>
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<td>56.4</td>
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<td>Family consultants and/or single expert witnesses</td>
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<td>67.7</td>
<td>176</td>
<td>62.2</td>
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<td>FDR practitioners</td>
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<td>61.8</td>
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<td>FRC staff</td>
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<td>Children’s contact service staff</td>
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<td>Mothers</td>
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<td>Other parties</td>
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<td>16.8</td>
<td>41</td>
<td>16.1</td>
<td>91</td>
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<tr>
<td>Total respondents</td>
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<td>284</td>
<td></td>
<td>263</td>
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</table>

**Notes:** Professionals were asked: “To what extent do you agree or disagree that the changes to the definitions of family violence and abuse have resulted in improved understandings of what constitutes family violence by the following professionals [listed]”. “Cannot say” responses range was 10–68%. * The number of responses to individual questions varied—judicial officers/registrars: n = 34–35, lawyers: n = 280–284, non-legal professionals: n = 255–263; aggregated professionals: n = 542–581. Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen.

**Source:** Survey of Practices 2014

### 3.2 Effects of the repeal of provisions seen to discourage disclosure

The 2012 family violence reforms also involved the repeal of provisions that were seen to have the potential to discourage people from raising concerns about family violence and child abuse. These provisions were: s 117AB, which explicitly supported a court’s power to make costs orders where a party was found to have knowingly made a false statement in proceedings; and s 60CC(3), which directed the court’s attention to the extent to which one parent had facilitated the involvement of the other parent in the child’s life.

Views on the effects of the repeal of s 117AB were examined by asking two differently framed questions (Figure 3.1 on page 41). The first tested views on whether the repeal of s 117AB had a positive effect through “encouraging disclosure of concerns of violence or child abuse that are genuinely held and/or likely to be true”. The second tested views on whether the repeal of s 117AB had a negative effect through “encouraging false allegations of violence or child abuse”. Overall, the response patterns suggest views consistent with a relatively weak association between the repeal of s 117AB and either a positive or negative effect. Although response patterns to the two questions differ to some extent, and “cannot say” responses are high for both, a noteworthy feature is a marked tendency to disavow any negative effect of the change, particularly among judicial officers and registrars, which is the group most likely to have direct experience in this regard.

10 The court retains this power under FLA s 117(2).
Consistent with previous findings (Kaspiew et al., 2009, p. 249) suggesting that professionals did not view s 117AB as a significant disincentive to raising concerns, just over a quarter of professionals in the Survey of Practices 2014 indicated that the repeal of s 117AB had encouraged increased disclosure of “allegations likely to be true” (Figure 3.1). “Cannot say” responses were selected by substantial minorities in each sample (between 46% for non-legal professionals and 37% for lawyers). The group most likely to hold views suggesting the repeal had a positive effect were non-legal professionals (32%), although nearly half (46%) made “cannot say” responses. Differences between judicial and legal professionals (judicial officers and registrars and lawyers) and non-legal professionals are marked, with lawyers and judicial officers/registrars, especially, less likely to respond that there has been a positive effect. These response patterns seem particularly likely to reflect different practice experiences, with judicial officers’ and lawyers’ responses suggesting a weak direct effect between the change and patterns in behaviour in contexts where the law has direct influence. In contrast, in the area where the law has less direct influence and more influence based on what is perceived might or could happen—that is, in negotiations not associated with a process of litigation—the views of non-legal professionals are considerably more consistent with a positive effect.

The response patterns in relation to the question examining a possible negative effect of the repeal of s 117AB—a perceived increase in false allegations—suggest a stronger association between the change and the absence of such an effect. Even in the context of substantial minorities across the groups nominating a “cannot say” response (48% of non-legal professionals, 39% of judicial officers/registrars and 36% of lawyers), responses consistent with the occurrence of a negative effect were made by just under 20% of lawyers and non-legal professionals and by no judicial officers or registrars. In contrast, responses inconsistent with the occurrence of a negative effect were made by a majority of judicial officers/registrars (61%), just under half of the lawyer group (45%) and nearly two-thirds of non-legal professionals.

Notes: Professionals were asked: “To what extent do you agree or disagree that the following statements describe your view: That the repeal of provisions relating to the making of an adverse costs order has encouraged the (a) disclosure of allegations of violence or child abuse that are genuinely held and/or likely to be true, and (b) false allegations of violence or child abuse”. Judicial officers/registrars: n = 36–37; Lawyers: n = 319–320; non-legal professionals: n = 290–292.

Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Figure 3.1: Agreement that the repeal of s 117AB has affected disclosure of allegations of violence or child abuse, by professional groups, 2014

11 In 2008, 13% of the sample agreed with the proposition that “the prospect of an adverse costs order has discouraged allegations of violence or child abuse that are genuinely held and/or likely to be true.”
3.2.1 The repeal of s 117AB: Qualitative insights

Only a small number of participating lawyers specifically commented on the repeal of provisions seen to discourage the disclosure of family violence, child abuse and child safety concerns, with fewer still specifically discussing the effects of the repeal of FLA s 117AB. While one of these participating lawyers (L501) described the removal of this provision as a positive change, other comments from participating lawyers described the repeal as a retrograde step:

[The family violence reforms are] good in theory, however [they] are used as a sword instead of a shield and need serious reforms. Certainly, bringing back costs orders for false allegations is a must … costs are rarely ordered anyway in the Family Law Courts. (L422, lawyer)

[The family violence reforms] can be used as a weapon in that one parent may make baseless allegations, or greatly exaggerate their concerns, in the knowledge that the court will likely take a fairly conservative approach to parenting arrangements until all of the evidence has been considered. The fact that the allegations can be made with the knowledge that there are no costs consequences, and that the court will only order a change of residence in extreme cases, means that even if the allegations are not substantiated there is no real consequence for the accusing party. The frustration is that by the time the allegations are investigated by the court the children may have had many months of having to see the other parent in an artificial environment such as a contact centre. (L113, lawyer)

As noted above, concerns raised by participants that suggested a proliferation in false, exaggerated or irrelevant allegations will be considered further in Chapter 8 in the context of a more focused discussion on the evidentiary issues raised by participating professionals.

3.2.2 The repeal of s 60CC(3): Quantitative insights

In relation to the other potential disincentive to raising concerns about family violence and child abuse—the so-called “friendly parent” criterion, FLA s 60CC(3)—the aggregate response pattern is consistent with a weak association between the repeal of this provision and an effect consistent with the intention of the reforms to encourage the disclosure of concerns about family violence and child safety (a positive effect). Like s 117AB and disclosure, however, differences in response patterns between professional groups suggest that a positive effect is more likely to be perceived by those not concerned with the direct application of the law. Participants were asked to indicate agreement or disagreement with the proposition that “the removal of the consideration relating to facilitating the other parent’s relationship with the child has made no difference to whether people are willing to disclose concerns about family violence or child abuse/child safety” (Table 3.4).

<table>
<thead>
<tr>
<th>Table 3.4: Agreement that disclosure has not been affected by the removal of s 60CC(3), by professional groups, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial officers</td>
</tr>
<tr>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
</tr>
<tr>
<td>Mostly agree</td>
</tr>
<tr>
<td>Mostly/strongly disagree</td>
</tr>
<tr>
<td>Cannot say/not applicable</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “To what extent do you agree or disagree that the following statements describe your view? The removal of the consideration relating to facilitating the other parent’s relationship with the child has made no difference to whether people are willing to disclose concerns about family violence or child abuse/child safety”. “Not applicable” responses were not available to be selected by judicial officers/registrars and lawyers but were made by 1.7% of non-legal professionals. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
Non-legal professionals made the highest proportion of responses consistent with a positive effect (26% mostly or strongly disagreeing), but even in this group a higher proportion (36%) of responses suggested the absence of any effect (mostly or strongly agree), and just over one-third (37%) indicated they could not say. Among lawyers, the disparity between the proportions supporting a positive effect (22%) and no effect (52%) was even greater, with the lowest proportion of “cannot say” responses being among this group (27%). Judicial officers/registrars were the least likely of all to nominate responses consistent with a positive effect (11%) and most likely to nominate responses consistent with no effect (57%). Nearly one-third (32%) of this group indicated they could not say.

3.2.3 The repeal of s 60CC(3): Qualitative insights

**Judicial officers/registrars**

Few judicial participants specifically commented on the repeal of provisions seen to discourage the disclosure of family violence, child abuse and child safety concerns, and where these comments were provided, they were made specifically in relation to the repeal of the so-called “friendly parent” criterion previously included in the list of additional considerations in FFA s 60CC(3). One judicial officer in particular described a positive effect arising from the repeal of this additional consideration as reducing the need for parties to raise “every allegation and complaint they can think of” in order to justify their position on parenting time in the way that they may have if the “friendly parent” criterion remained in place:

> While some in the field worry about the reforms “inviting” parties to make allegations in an effort to undermine the other party's relationship with the children, in my professional opinion this has always been a vastly overstated concern and is no more likely to occur now than previously. If anything, it is possible that the reforms, particularly removal of the so-called “friendly parent” provisions, may mean parents feel less need to throw every allegation and complaint they can think of, which they previously felt they needed to do, to justify their opposition to the children spending time with the alleged abusive parent. (JO50, judge, FCC)

On the other hand, another judicial officer challenged the need to remove this “friendly parent” criterion considering that it had not operated in a manner to discourage the disclosure of family violence, child abuse and child safety concerns:

> I don't think the “friendly parent” provisions operated at all in the way advocates of their abolition advocated. I became persuaded that lawyers really were telling people that, which is very disappointing. In my view, violence, child abuse and associated issues are always been taken seriously by the court. (JO70, judge, FCC)

**Lawyers**

A small number of participating lawyers commented on the repeal of the so-called “friendly parent” criterion. Once again, while some of these participants described the removal of this provision as a positive step (L501; L61), other comments from participating lawyers considered the repeal to be a retrograde step:

> It was a backward and very unnecessary step to remove the obligation to facilitate a relationship with the other parent from the legislation. I know of no examples of where this prevented any of my clients, or those at my firm, from reporting family violence. The removal of the facilitation of a relationship principle signals to parents that this is not an important responsibility that they have to their children. (L120, lawyer)

> Removing the consideration about whether the parents are willing to encourage and facilitate a relationship with the other parent implies to parents that they don't need to worry about that anymore. There is an increased focus on the family violence rather than how to move on and create arrangements that are safe but allow the children to develop a relationship with the other parent. (L49, lawyer)
Chapter 3

Non-legal professionals

A small number of participating non-legal professionals specifically commented on the repeal of provisions seen to discourage the disclosure of family violence, child abuse and child safety concerns, which appeared to be references to the repeal of FLA s 117AB or to the “friendly parent” criterion.

In relation to the “friendly parent” criterion, some non-legal participants described its removal as having a positive effect:

The removal of the “friendly parent” provisions allows victims to be less fearful of disclosing family violence. (NL97, D/FV service, D/FV professional)

One family consultant reflected positively on the “exorcising of the friendly parent aspect of the legislation”. (NL129, FCC, family consultant)

Other non-legal professionals reflected more broadly on the effects of the family violence reforms in “allowing parents to act protectively without fear of penalty” (NL122, FDR service, mediator/FDR practitioner) or described the family violence reforms as representing “a step towards the greater protection of children and less hostility to women who raise the allegations” (NL38, FDR service, mediator/FDR practitioner).

On the other hand, some comments from participating non-legal professionals described the negative effects of the family violence reforms as giving rise to a system whereby there is “little or no consequence” to the making of false or frivolous allegations:

The “risk based” system has opened up the door to abuse by parents making allegations of family violence with little or no consequence if they lie but very damaging consequences to the other parent’s attachment and relationship with their child. (NL20, FDR service, mediator/FDR practitioner)

Concerns raised by participants that suggested a proliferation in false, exaggerated or irrelevant allegations will be considered in greater detail in Chapter 8 in the context of a discussion focusing on the evidentiary issues raised by participating legal professionals.

3.3 Summary

This chapter has examined the professionals’ views of and experiences with two elements of the 2012 family violence reforms: the new definitions of family violence and child abuse, and the repeal of provisions seen to discourage disclosure of concerns about these issues.

Overall, the findings in this chapter are consistent with the themes that started to emerge in Chapter 2. In relation to the definitions, the response patterns among professionals indicate that a majority of participants in each professional group are supportive of the direction of this aspect of the reforms. On an aggregate basis, most professionals (73%) in the sample agreed that the new definitions supported safer parenting arrangements for parents and children. This was an area where few substantial differences between the professional groups surveyed were evident.

Views on whether the new definitions were associated with an improvement in the family law system’s ability to identify, assess and respond to non-physical forms of family violence were less positive, with 37% of the total sample agreeing that this was the case. The group that works most closely with the legislative definitions in day-to-day practice—judicial officers/registrars—were most likely to indicate a positive effect.

Qualitative data provide further insight on the range of views on the family violence and child abuse definitions. Professionals from each group made comments indicating that the new definitions supported professionals’ work with clients about the behaviours that amount to family violence and child abuse, but it is also notable that the responses to a survey question about the definitions and improved understandings among different stakeholders strongly indicate that this is where most improvement is required.

The qualitative comments on the definitions also highlight differing views among professionals about whether the s 4AB definition does indeed capture a wider range of behaviours than the
previous definition or whether in practice its scope is restricted by the qualifying terms referring to coercion, control and fear. Contradictory interpretations in this regard are suggested by the comments, with some professionals suggesting the definitions capture behaviour that should not be of concern in making parenting arrangements, diverting attention and resources away from scrutinising violence at the more serious end of the spectrum. Concerns about resources were raised in a number of comments, which suggests that the need to apply greater scrutiny to concerns about family violence and child abuse was placing a strain on the family law system. On the other hand, many comments endorsed the usefulness of the new definitions in several ways: raising awareness among professionals and parents, supporting better screening and identification for lawyers, and providing more useful definitions for courts. The qualitative comments underline the variety of views and approaches to family violence among professionals.

In relation to the two changes implemented to address perceptions about disincentives to raising concerns about family violence and child abuse, the findings suggest that these changes in practice may be most notable “in law’s shadow”. The findings on the effects of the repeal of s 117AB suggest that this step is not associated with either a negative effect (an increase in “false” allegations of family violence and child abuse) or a positive effect (an increase in disclosure of concerns about family violence and child abuse). Responses consistent with a positive effect were strongest among non-legal professionals, and responses inconsistent with a negative effect were strongest among judicial officers and registrars. It is notable that disavowal of a negative effect was strongest among the group most likely to have direct insight into “false” allegations in court proceedings: judicial officers.

Findings on the repeal of s 60CC(3)—the “friendly parent” criterion—suggest that non-legal professionals perceived the greatest effects of this change of the three groups surveyed. However, responses overall are more indicative of a lack of effect from this change, or a reticence to express a view. Few of the qualitative comments addressed this aspect of the reforms, but those that did raise concerns suggested that this change would mean that family violence would attract too great an emphasis compared with the child’s right to a relationship with both parents. This suggests that these concerns are held by professionals who are less likely to support the overall direction of the reforms.

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12 This term was coined by Mnookin and Kornhouser (1979). It refers to the ways in which legal principles may influence negotiation and agreement that takes place outside of court contexts, including in alternative dispute resolution processes. For discussion of the concept in relation to Australia’s family law system see: Kaspiew, Gray, Qu, and Weston (2011).
This chapter sets out the findings from the Survey of Practices relevant to the identification and assessment of family violence, child abuse and child safety concerns. It begins with a discussion of participants’ reflections on the family law system’s capacity to identify or screen for family violence and child abuse. It then considers participants’ views of the extent of any effects that the 2012 family violence reforms may have had on the capacity of professionals to identify (or screen for) and then assess family violence and/or child abuse/child safety concerns. The discussion then focuses more specifically on changes in the screening and assessment practices of professionals since the family violence reforms, followed by professionals’ assessments of their own capacities in these regards. To conclude, the chapter examines insights from the participants’ open-ended survey responses about any changes to the ways in which family law professionals identify and assess family violence as a result of the family violence reforms, before a summary of the patterns emerging from the data discussed in this chapter.

4.1 The capacity of the family law system to identify and assess family violence, child abuse and child safety concerns

As discussed in Chapter 1, the family violence reforms set out to support parents to disclose concerns about family violence (and risk of family violence), child abuse and child safety, and to encourage practices that lead to the identification and assessment of, and response to, these concerns by professionals across the family law system.

This section first considers the views of participating professionals regarding the capacity of the family law system to adequately screen for family violence and child abuse. After setting out the general reflections of participant groups on this issue, the discussion considers participants’ more specific views of the effects of the 2012 family violence reforms on professionals’ capacities to both identify or screen for and then assess family violence and/or child abuse/child safety concerns.

4.1.1 The family law system’s overall capacity to screen for family violence and child abuse

All professional participant groups were asked to reflect on the period of time since the introduction of the 2012 reforms and to consider the capacity of the legal system, lawyers and FRCs to screen adequately for family violence and child abuse in this post-reform context.

Table 4.1 (on page 47) indicates that while a substantial proportion (43%) of the aggregate sample of professional participants provided affirmative responses to the proposition that the legal system has been able to screen adequately for family violence and child abuse, 46% of the aggregate sample disagreed with this proposition (mostly disagreed: 32%; strongly disagreed: 14%). Looking more specifically at the responses of each professional group, the vast majority (65%) of participating judicial officers and registrars mostly or strongly agreed that the legal
system has been able to screen adequately for family violence and child abuse, compared with substantially smaller proportions of lawyers (46%) and non-legal professionals (38%). In fact, non-legal professionals reported the highest level of disagreement, with 48% of professionals in this category strongly (16%) or mostly disagreeing (32%) that the legal system has been able to screen adequately for family violence and child abuse. While a smaller proportion of lawyers strongly disagreed (13%), a slightly greater proportion mostly disagreed with the proposition (34%).

Table 4.1: Agreement that since the 2012 reforms, the legal system has had the capacity to screen adequately for family violence and child abuse, by professional group, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>1</td>
<td>2.7</td>
<td>7</td>
<td>2.2</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>23</td>
<td>62.2</td>
<td>140</td>
<td>43.8</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>7</td>
<td>18.9</td>
<td>110</td>
<td>34.4</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>1</td>
<td>2.7</td>
<td>42</td>
<td>13.1</td>
</tr>
<tr>
<td>Cannot say</td>
<td>5</td>
<td>13.5</td>
<td>21</td>
<td>6.6</td>
</tr>
<tr>
<td>Total</td>
<td>37</td>
<td>100.0</td>
<td>320</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? The legal system has been able to screen adequately for family violence and child abuse”.

Source: Survey of Practices 2014

Comparative data from the Institute’s Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009) highlight that there were slightly higher proportions of affirmative responses in the 2014 participating lawyer sample on this question of the legal system’s ability to screen adequately for family violence and child abuse, when compared with the 2008 Family Lawyers Survey. Table 4.2 indicates that 46% of the 2014 lawyer sample mostly or strongly agreed, as compared to 43% of the participants in the 2008 FLS sample. Slightly lower proportions of the 2014 lawyer sample indicated that they mostly disagreed (34%) than in the 2008 FLS sample (36%) with almost equivalent levels of strongly disagree responses (2008: 13.5%; 2014: 13.1%). Similar proportions of participants in each sample were unable to express a view on this proposition.

Table 4.2: Comparative agreement by lawyers that the legal system has the capacity to screen adequately for family violence and child abuse, 2008 and 2014

<table>
<thead>
<tr>
<th></th>
<th>FLS 2008</th>
<th>%</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>8</td>
<td>2.5</td>
<td>7</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>130</td>
<td>40.8</td>
<td>140</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>115</td>
<td>36.1</td>
<td>110</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>43</td>
<td>13.5</td>
<td>42</td>
</tr>
<tr>
<td>Can’t say</td>
<td>23</td>
<td>7.2</td>
<td>21</td>
</tr>
<tr>
<td>Total</td>
<td>319</td>
<td>100</td>
<td>320</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked in 2008: “Thinking about the period since the 2006 reforms, to what extent do you agree or disagree that the following statements describe your view? The legal system has been able to screen adequately for family violence and child abuse”. Lawyers were asked in 2014: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? The legal system has been able to screen adequately for family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

When reflecting on the capacity of lawyers to screen adequately for family violence and child abuse since the enactment of the family violence reforms, the majority of participating lawyers reported in the affirmative, with 51% mostly or strongly agreeing with the proposition (Table 4.3 on page 48). These views contrast with the assessments of participating non-legal professionals, with only 14% mostly or strongly agreeing and a majority (53%) mostly or
strongly disagreeing that lawyers have been able to screen adequately for family violence and child abuse. While 24% of judicial officers and registrars reported that they mostly agreed that lawyers have been able to screen adequately for family violence and child abuse, the views of judicial participants were less clear on this question, with the majority of these participants unable to express a view on this proposition (54%).

Table 4.3: Agreement that since the 2012 reforms, lawyers have had the capacity to screen adequately for family violence and child abuse, by professional groups, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. %</td>
<td>No. %</td>
<td>No. %</td>
<td>No. %</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>0 0.0</td>
<td>9 2.8</td>
<td>5 1.7</td>
<td>14 2.2</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>9 24.3</td>
<td>156 48.6</td>
<td>35 12.0</td>
<td>200 30.8</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>7 18.9</td>
<td>83 25.9</td>
<td>108 37.1</td>
<td>198 30.5</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>1 2.7</td>
<td>26 8.1</td>
<td>45 15.5</td>
<td>72 11.1</td>
</tr>
<tr>
<td>Cannot say</td>
<td>20 54.1</td>
<td>47 14.6</td>
<td>98 33.7</td>
<td>165 25.4</td>
</tr>
<tr>
<td>Total</td>
<td>37 100.0</td>
<td>321 100.0</td>
<td>291 100.0</td>
<td>649 100.0</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? Lawyers have been able to screen adequately for family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

With FRCs as the first port of call for many separating families, the reflections on their capacities to screen adequately for family violence and child abuse are of particular importance. Table 4.4 indicates that the vast majority of non-legal professionals (62%) reported in the affirmative, with only 19% mostly or strongly disagreeing (with this category of participants including professionals working in FRCs: n = 2). Positive, albeit less decisive responses, were provided by participating judicial officers and registrars (mostly agree: 22%) and lawyers (mostly agree: 26%), although a greater proportion of lawyers reported that they strongly (13%) or mostly (23%) disagreed with the proposition. Notably, 76% of the judicial officers and registrars and 36% of lawyers were unable to express a view, which suggests that there remains a significant level of uncertainty among these participants about the operation of FRCs.

Table 4.4: Agreement that since the 2012 reforms, FRCs have had the capacity to screen adequately for family violence and child abuse, by professional groups, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. %</td>
<td>No. %</td>
<td>No. %</td>
<td>No. %</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>0 0.0</td>
<td>7 2.2</td>
<td>47 16.2</td>
<td>54 8.3</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>8 21.6</td>
<td>82 25.6</td>
<td>134 46.1</td>
<td>224 34.5</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>0 0.0</td>
<td>74 23.1</td>
<td>36 12.4</td>
<td>110 16.9</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>1 2.7</td>
<td>43 13.4</td>
<td>20 6.9</td>
<td>64 9.9</td>
</tr>
<tr>
<td>Cannot say</td>
<td>28 75.7</td>
<td>115 35.8</td>
<td>54 18.6</td>
<td>197 30.4</td>
</tr>
<tr>
<td>Total</td>
<td>37 100.0</td>
<td>321 100.0</td>
<td>291 100.0</td>
<td>649 100.0</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? Family Relationship Centres have been able to screen adequately for family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

On this question of the screening capacities of FRCs, the comparative data available from the Institute’s Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009) highlights slightly higher proportions of strong disagreement in the 2014 participating lawyer sample as compared to the proportions of negative responses emerging from the 2008 FLS data. Table 4.5 (on page 49) indicates that 23% of the 2014 lawyer sample mostly disagreed and 13% strongly disagreed that FRCs had been able to screen adequately for family violence and child abuse, as compared to the 12% of the participants in the 2008 FLS sample who reported that they strongly
disagreed and the 24% of that sample indicating that they mostly disagreed. Slightly higher proportions of participants in the 2014 sample indicated that they mostly or strongly agreed when compared with the 2008 sample (2008: 25%; 2014: 28%). On the other hand, slightly higher proportions of participants in the 2008 sample (40%) than in the 2014 sample (36%) were unable to express a view on this proposition.

Table 4.5: Comparative agreement by lawyers that FRCs have the capacity to screen adequately for family violence and child abuse, 2008 and 2014

<table>
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<tr>
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<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
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<td>Strongly agree</td>
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<td>Mostly agree</td>
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<td>24.5</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>77</td>
<td>24.1</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>37</td>
<td>11.6</td>
</tr>
<tr>
<td>Can’t say</td>
<td>126</td>
<td>39.5</td>
</tr>
<tr>
<td>Total</td>
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</tr>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>7</td>
<td>2.2</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>82</td>
<td>25.6</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>74</td>
<td>23.1</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>43</td>
<td>13.4</td>
</tr>
<tr>
<td>Can’t say</td>
<td>115</td>
<td>35.8</td>
</tr>
<tr>
<td>Total</td>
<td>321</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked in 2008: “Based on your experiences in the last two years, do you agree or disagree with the following statements: The Family Relationship Centres have been able to screen adequately for family violence and child abuse”. Lawyers were asked in 2014: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? Family Relationship Centres have been able to screen adequately for family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

4.1.2 The capacity of specific professional groups to screen for family violence and/or child abuse/child safety concerns

The discussion in the previous section examined professionals’ general reflections on the capacity of the legal system, lawyers and FRCs to screen adequately for family violence and child abuse in the period of time since the family violence reforms were introduced. Participating professionals were also asked to consider, more specifically, whether these reforms had given rise to improvements in the screening capacities of judicial officers/registrars, ICLs, non-ICL lawyers, family consultants/single experts and FDR practitioners. It is these more specific findings that are considered in this section.

Figure 4.1 (on page 50) outlines the responses provided by judicial and legal participants in relation to each category of family law professional. Overall, approximately two-thirds of judicial respondents (66%) and three-quarters of lawyers (75%) indicated that the family violence reforms had led to some improvement in screening for family violence and/or child abuse/child safety concerns by judicial officers and registrars. More specifically, almost one-half (47%) of participating judicial officers and registrars reported that the family violence reforms had almost always (25%) or often (22%) led to an improvement in screening by their judicial colleagues. Participating lawyers also reported similar levels of confidence in the improvement of the screening capacities of judicial officers and registrars (almost always or often: 46%).

In relation to the screening capacities of ICLs, Figure 4.1 indicates that lawyers were the most positive of each of the surveyed professional groups, with 41% of participating lawyers indicating that the family violence reforms had almost always (16%) or often (25%) led to an improvement in screening for these risks or harm factors by ICLs. What emerges as particularly notable in these data is that one-half of participating judicial officers and registrars reported that they were unable to say whether the family violence reforms had led to an improvement in ICLs’ screening capacities, although 22% reported that they considered that these reforms had almost always or often led to such improvements, with a further 22% observing that this was sometimes so.
The lowest levels of affirmative responses were made in relation to improvements in the screening capacities of non-ICL lawyers. Lawyers were once again the most positively responding participant group, with Figure 4.1 showing that 37% of participating lawyers indicated that this was often or almost always the case. A substantial minority (17%) of lawyers responded in the negative. Again, judicial respondents were, in large part, unable to express a view on this proposition (46%), although almost one-half of the judicial sample (43%) did report that they sometimes (29%) or often (14%) experienced an improvement in non-ICL lawyers’ screening capacities.

In relation to non-legal professionals, family consultants and single expert witnesses in particular, Figure 4.1 indicates that lawyers were once again positive in their reflections, with 42% indicating that they often (28%) or almost always (14%) experienced the family violence reforms as leading to an improvement in screening. Judicial officers and registrars were also particularly positive in their reflections, with 39% responding that they had almost always or often experienced an improvement.

The vast majority (75%) of participating judicial officers and registrars were unable to express a view on whether the family violence reforms had led to an improvement in screening by FDR practitioners, although lawyers were able to provide significant insight in relation to this question. Over one-third of participating lawyers indicated that in their experience, the family violence reforms had often or almost always led to an improvement in screening by FDR practitioners. These data are particularly important in the context of previous research and analysis, including that of Kaspiew et al. (2009), the Australian and NSW Law Reform Commissions (2010) and Bagshaw et al. (2010) that have raised concerns about the effectiveness of screening and assessment practices in the FDR context. In particular, there were indications that FDR was proceeding with families for whom it was inappropriate, including in cases involving family
violence, child abuse and/or child safety concerns. The Productivity Commission (2014) noted these screening issues and that measures such as screening tools and further training “will go some way to improving the delivery of FDR by Family Support Program funded providers [such as FRCs] in matters involving family violence” (p. 857–859). However, in the absence of further funding for the Coordinated Family Dispute Resolution pilot evaluated by the Institute (Kaspiew et al., 2012), the Productivity Commission also observed that “bigger questions remain about: how to ensure best practice FDR for cases involving family violence; the level of funding required to support this; and which service providers, or combinations of providers, should be funded” (p. 859).

Due to the length of the 2014 non-legal professional survey and the absence of this question in the 2009 Survey of Family Relationship Services Staff (FRSP services) (thereby eliminating any requirement to maintain consistent wording), participants in this category were simply asked to answer this question about improvements in professionals’ screening capacities in the affirmative or negative. Figure 4.2 indicates that while 27% of non-legal professionals agreed that the family violence reforms had led to an improvement in screening by judicial officers and registrars, a substantial proportion (53%) were unable to answer this question, with the remaining 20% reporting that they did not consider that there had been an improvement in judicial screening capacities. Similarly, 28% of participating non-legal professionals provided affirmative responses when reflecting on whether the family violence reforms had led to an improvement in screening by ICLs. Again, a substantial proportion (54%) of this respondent group was unable to express a view on this proposition. Non-legal professionals were least positive in their reflections on improvements in the screening capacity of non-ICL lawyers, with 32% answering in the negative, although again, 53% reported that they were unable to answer this question.

For further discussion of this issue, see also Batagol and Brown (2011); Elizabeth, Tolmie, and Gavey (2011); Field (2006); Trinder, Firth, and Jenks (2010); and, more recently, Kaspiew, De Maio, Deblaquiere, and Horsfall (2012); Carson, Fehlberg, and Millward (2013); and Sifris and Parker (2014).
Chapter 4

Figure 4.2 demonstrates that the highest proportion of affirmative responses was provided by participating non-legal professionals (62%) when they reflected on whether the family violence reforms had led to an improvement in screening by FDR practitioners. Of note, mediators and FDR practitioners constituted 29% of the non-legal professional participant sample for this item. A substantial proportion (37%) of these non-legal professionals (including 81% \( n = 30 \) of family consultants and single experts) also responded in the affirmative about family consultants’ and single experts’ capacities.

4.1.3 The capacity of specific professional groups to assess family violence, and/or child abuse/child safety concerns

The discussion in this next section will consider whether the family violence reforms were regarded as leading to improvements in the capacities of family law professionals to assess risks or harm factors once they had been identified.

Figure 4.3 outlines the responses provided by judicial and legal participants in relation to each category of family law professional. It indicates that the highest positive ratings were related to the capacities of judicial officers and registrars, with substantial proportions of judicial participants (47%) and lawyers (44%) reporting that the family violence reforms had almost always or often led to an improvement in the assessment of family violence and/or child abuse/child safety concerns by judicial decision makers. Of note, these responses are somewhat less positive than those reported in the previous section in relation to judicial screening capacities. Further, close to one-third of participating lawyers (29%) responded that they only sometimes experienced this to be the case, although a smaller proportion of lawyers than judicial participants (14% cf. 17% of judicial officers and registrars) indicated that the reforms had rarely or never led to an improvement in judicial assessments.

![Figure 4.3: Legal professionals’ views on the extent of improvement in the assessment of family violence and/or child abuse/safety concerns, by professional groups, 2014](image)

**Notes:** Professionals were asked: “In your experience, have the family violence reforms led to an improvement in the assessment of family violence and/or child abuse/child safety concerns by: [each professional group]”. Judicial officers/registrars: \( n = 35–36 \); Lawyers: \( n = 264–267 \). FC = family consultants; SEW = single expert witnesses. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
Responding to family violence: A survey of family law practices and experiences

Identifying and assessing harm and risk of harm

Consistent with response patterns of judicial and legal participants in the previous section, Figure 4.3 also depicts lawyers as the category of participants reporting most positively with respect to improvements in ICLs’ assessments of family violence and/or child abuse/child safety concerns (almost always or often: 40%), with one-third of participating judicial officers and registrars also reporting that the reforms often or almost always led to an improvement in assessments by ICLs. A greater proportion of lawyers (14%) when compared to judicial officers/registrars (11%) did, however, report that the family violence reforms had rarely or never led to an improvement in assessments by ICLs, although more than one-third of judicial participants reported that they were unable to answer this question.

Figure 4.3 indicates that lawyers were again the professional group responding most positively when reflecting on whether the family violence reforms had led to improvements in non-ICL lawyers’ assessments of family violence and/or child abuse/child safety concerns. One-third of participating lawyers indicated that this was often or almost always the case. A smaller proportion (18%) of lawyers indicated that the reforms had rarely or never led to an improvement in assessments compared to their responses regarding improvements in non-ICL lawyers’ screening for these risks or harm factors. Judicial participants indicated in greater proportions that, in their experience, there had often (20%) or sometimes (26%) been improvements in non-ICL lawyers’ assessment capacities.

Once again, consistent with the response patterns emerging in the data relating to improvements in screening by family consultants and single experts, Figure 4.3 indicates that judicial officers were also positive in their reflections on improvements in assessments of family violence and/or child abuse/child safety concerns by family consultants and single experts. Almost one-half of judicial participants (47%) indicated that in their experience, the family violence reforms had almost always (19%) or often (28%) led to an improvement in assessments made by family consultants and single experts. Over one-third of participating lawyers (38%) reported that the reforms had almost always or often led to an improvement in assessments made by family consultants and single experts.

The vast majority of participating judicial officers/registrars were again unable to express a view on whether there had been improvements in assessments made by FDR practitioners (75%), although lawyers were able to provide substantial insight into this question. One-third of participating lawyers indicated that, in their experience, the family violence reforms had often or almost always led to an improvement in assessments by FDR practitioners, with 27% indicating that the reforms had sometimes led to an improvement.

In contrast with these reported perceptions of judicial participants and lawyers, Figure 4.4 (on page 54) indicates that non-legal professionals remained, in large part, unable to say whether there had been any improvement as a result of the family violence reforms in the assessments of family violence and/or child abuse/child safety concerns by judicial officers/registrars or lawyers. However, one-quarter of the non-legal participants (25%) responded in the affirmative in relation to the assessment capacities of judicial officers/registrars, and almost one-third answered in the affirmative with respect to ICLs. In contrast, almost one-third of the non-legal sample responded in the negative when reflecting on improvements in non-ICL lawyers’ capacities in this regard. Indeed, non-ICL lawyers received the lowest positive rating from non-legal participants (14%).

Figure 4.4 also shows that once again, non-legal professionals were the most positive in their reflections on improvements in the assessment capacities of family consultants, single experts and FDR practitioners. In relation to family consultants and single experts, over one-third (38%) of the sample answered in the affirmative, with family consultants and single experts constituting 15% of the sample for this item \(n = 37\). The highest proportion of affirmative responses (63%) was provided in relation to FDR practitioners, with mediators and FDR practitioners constituting 29% of the non-legal professional participant sample for this item \(n = 71\).
4.2 Changes to the identification and assessment practices of family law professionals

The discussion in this section will now focus more specifically on participants’ observations of any changes in the professional practices and tasks employed in the screening and assessment of family violence, child abuse and child safety concerns since the inception of the family violence reforms. It will then consider professionals’ assessments of their own capacities in these regards.

4.2.1 General reflections on changes to identification practices

The family violence reforms introduced a duty upon the court to ask the parties in proceedings for parenting orders:

- whether they consider that the relevant child has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence (FLA s 69ZQ(1)(aa)(i)); and
- whether the party considers that he or she or another party to the proceedings, has been, or is at risk of being, subjected to family violence (FLA s 69ZQ(1)(aa)(ii)).

In order to consider the effects of this amendment, participants in each professional group were asked for their views on whether courts more actively enquired about the existence of the risk of child abuse or family violence as a result of the family violence reforms. Table 4.6 (on page 55) indicates that almost two-thirds of the aggregate sample of participants provided affirmative responses to this proposition, with 19% indicating that they strongly agree and 46% mostly agreeing in this regard. More specifically, participating judicial officers overwhelmingly agreed (89%) that since the family violence reforms, courts more actively enquired about the existence of risk of child abuse and family violence, with only 3% indicating that they disagreed.
Lawyers also answered firmly in the affirmative on this issue (70%), although interestingly 23% mostly or strongly disagreed. Non-legal professionals were least positive on this question, with just over one-half indicating that courts more actively enquired about the existence of risk of child abuse and family violence, and 26% of participating non-legal professionals indicating that they mostly or strongly disagreed.

| Table 4.6: Agreement that as a result of reforms, courts more actively enquire about the existence of risk of child abuse and family violence, by professional groups, 2014 |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| Judicial officers | Lawyers | Non-legal | Aggregated |
| Strongly agree | 12 | 69 | 43 | 124 |
| Mostly agree | 21 | 156 | 119 | 296 |
| Mostly disagree | 0 | 59 | 49 | 108 |
| Strongly disagree | 1 | 16 | 26 | 43 |
| Cannot say | 3 | 20 | 55 | 78 |
| Not applicable | – | – | 0 | 0 |
| Total | 37 | 320 | 292 | 649 |

Notes: Professionals were asked: “To what extent do you agree or disagree that the following statements describe your view? As a result of the family violence reforms, courts more actively enquire about the existence of risk of child abuse and family violence”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Participating professionals were also asked to reflect on their own current practices as family law system professionals in the areas of child abuse and/or child safety, family violence and the exposure of children to family violence, and to consider whether they had changed their approach to seeking information from parties (all professional participants) and to providing advice (lawyers and non-legal participants) since the family violence reforms. Table 4.7 indicates that less than one-half of the aggregate sample of participants responded affirmatively to this proposition, and 49% answered in the negative. Non-legal professionals had the highest level of affirmative responses (45%), followed by judicial officers and registrars (44%) and lawyers (42%).

| Table 4.7: Whether professionals have changed their approach to seeking information from parties and providing advice since the reforms, by professional groups, 2014 |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| Judicial officers | Lawyers | Non-legal | Aggregated |
| Yes, changed | 15 | 110 | 107 | 232 |
| No, not changed | 15 | 132 | 114 | 261 |
| Cannot say | 4 | 19 | 16 | 39 |
| Total | 34 | 261 | 237 | 532 |

Notes: Judicial officers/registrars were asked: “Thinking about your current practice in the areas of child abuse/or child safety, family violence and the exposure of children to family violence, have you changed your approach to seeking information from parties since the family violence reforms?” Lawyers and non-legal professionals were asked: “Thinking about your current practice in the areas of child abuse/or child safety, family violence and the exposure of children to family violence, have you changed your approach to seeking information from parties and providing advice since the family violence reforms?” Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Together, these findings suggest that while the majority of participant groups considered that the courts now actively enquired about the risk of child abuse and family violence, the self-assessments of changes in the approaches from each participant category were more mixed in nature, with an equal number of judicial officers answering in the affirmative and negative, and slightly greater proportions of lawyers and non-legal professionals answering in the negative rather than in the affirmative.
4.2.2 Changes in identification and assessment practices aimed at eliciting disclosures

The survey of professionals also included questions focusing specifically on professional practices aimed at eliciting disclosures of family violence/risk of family violence and child abuse/child safety concerns. These questions were included with a view to gaining more detailed insight into practices employed to screen for these risks and harm factors.

**Judicial officers/registrars**

Judicial officers and registrars were asked about how often (if at all) in the 18-month period preceding the survey, they were required to remind counsel or self-represented litigants of the obligation in family law matters arising under FLA s 60CH and s 60CI to disclose to the court where a child had been the subject of attention from child protection authorities.\(^\text{14}\)

As Figure 4.5 indicates, in the 18-month period preceding the survey, most participating judicial officers reported that where counsel was involved in a matter, they rarely or never (53%) or sometimes (31%) were required to provide a reminder of this obligation, with 11% indicating that they were often or almost always required to do so. In contrast, more than one-third of judicial officers/registrars reported that they were often or almost always required to remind self-represented litigants of the obligation to disclose relevant attention from child protection authorities. A further 31% of judicial participants indicated that they were sometimes required to remind self-represented litigants of this obligation.

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\(^{14}\) This obligation arises from FLA s 60CH and s 60CI, which provide that parties to proceedings are obliged to inform the court where a relevant child is under the care of a person pursuant to a child welfare law (FLA s 60CH(1)), and where a relevant child is or has been the subject of a notification or report to a prescribed state or territory child welfare authority or where an investigation, enquiry or assessment by such an agency has been undertaken, where that notification, report, investigation, enquiry or assessment relates to abuse, or an allegation, suspicion or risk of abuse (FLA s 60CI(1)).
In addition to the obligation relating to the involvement of child welfare authorities, FLA s 60CF provides that if a party to proceedings is aware that a family violence order applies to the child or to a member of the child’s family, then they must inform the court of the family violence order (s 60CF(1)). Where a party is alleging that a relevant child has been abused or is at risk of abuse or that there has been family violence or there is a risk of family violence, FLA s 67Z and s 67ZBA respectively also require notification to the court and relevant parties of these allegations. In light of these obligations, judicial officers and registrars were also asked about how often (if at all), in the 18-month period preceding the survey, they were required to remind counsel or self-represented litigants of the need to disclose concerns of child abuse and family violence in family law proceedings. Consistent with the pattern observable in relation to attention from child protection authorities, Figure 4.5 also indicates that where counsel was involved in a matter, the majority of participating judicial officers reported that they rarely or never (53%) or sometimes (33%) were required to provide a reminder of this need to disclose, with only 8% indicating that they were often required to do so.

In contrast, more than one-third (36%) of judicial officers/registrars reported that they were often required to remind self-represented litigants of this need to disclose concerns about child abuse and family violence. A further 36% of this participant category indicated that they were sometimes required, with just over one-quarter of participating judicial officers/registrars indicated that they were rarely or never required to remind self-represented litigants of this need to disclose.

**Lawyers and non-legal professionals**

Following on from the data depicted in Figure 4.5, lawyers and non-legal professionals were also asked to reflect on the 18-month period preceding the survey and to consider how often, if at all, they had explained to clients the obligation to disclose to the court where a child had been the subject of attention from child protection authorities, as described in FLA s 60CH and s 60CI. Figure 4.6 (on page 58) indicates the vast majority of participating lawyers (82%) reported that they almost always (59%) or often (22%) explained this obligation to their clients, with a further 12% indicating that they sometimes did so. The responses were more evenly spread across response options for non-legal professionals, with just over one-third (36%) of these participants reporting that they almost always explained this obligation to clients, and a further 16% stating that they often did so. A similar proportion (15%) indicated that they explained this obligation to clients sometimes, and 19% indicated that they rarely or never did so. Importantly, 14% of participating non-legal professionals indicated that this explanation was not applicable to them.

Lawyers and non-legal professionals were also asked to consider how often, if at all, in the 18-month period preceding the survey, they had explained to clients involved in parenting disputes that concerns about family violence and child abuse should be raised with family law system professionals. Figure 4.6 indicates that the vast majority of participating lawyers (88%) indicated that they almost always (66%) or often (22%) explained this to their clients, with a further 7% indicating that they sometimes did so. Similar response patterns emerged for non-legal professionals, with 78% of these participants reporting that they almost always (58%) or often explained this to clients. A further 13% indicated that they sometimes did so.

**4.2.3 Identification and assessment practices directed at eliciting disclosures**

Participating lawyers and non-legal professionals were also asked detailed survey questions about the more specific enquiries that they made of their clients with a view to eliciting disclosures where relevant. These questions related to the regularity with which practitioners specifically asked their clients about:

- family violence;
- exposure of children to family violence;
- child abuse and/or child safety; and
- whether child protection authorities are or have been involved with their family.
Table 4.8 indicates that well over three-quarters of the aggregate sample of participants (85%) indicated that they almost always specifically asked their clients about family violence, with a further 10% (data not shown) of the sample reporting that they often did so. A greater proportion of the participating non-legal professionals (90%) than participating lawyers (80%) reported that they almost always specifically asked their clients about family violence.

Table 4.8: Frequency of lawyers and non-legal professionals almost always specifically asking their clients about issues relevant to family law cases, 2014

<table>
<thead>
<tr>
<th>Issue</th>
<th>Lawyers (%)</th>
<th>Non-legal (%)</th>
<th>Aggregated (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Family violence</td>
<td>80.0</td>
<td>90.2</td>
<td>84.8</td>
</tr>
<tr>
<td>Exposure of children to family violence</td>
<td>76.2</td>
<td>90.2</td>
<td>82.8</td>
</tr>
<tr>
<td>Child abuse and/or child safety</td>
<td>72.7</td>
<td>88.1</td>
<td>80.0</td>
</tr>
<tr>
<td>Involvement of child protection authorities</td>
<td>64.9</td>
<td>79.9</td>
<td>72.0</td>
</tr>
</tbody>
</table>

Notes: Lawyers and non-legal professionals were asked: “Please indicate how often you specifically ask your clients about: Family violence; exposure of children to family violence; child abuse and/or child safety: and whether child protection authorities are or have been involved with the family”. Lawyers: n = 256–260; Non-legal professionals: n = 234–235; Aggregated professionals: n = 493–495. Percentages do not total 100.0% due to rounding.

Source: Survey of Practices 2014

Table 4.8 also indicates that, consistent with the response patterns relating to asking clients about family violence, well over three-quarters of the aggregate sample of participants (83%) indicated that they almost always specifically asked their clients about the exposure of children to family violence. A further 12% of the sample reported that they often did so (data not shown). On this question, once again, a greater proportion of the participating non-legal professionals (90%) than lawyers (76%) reported that they almost always specifically asked their clients about the exposure of children to family violence.

Similarly, Table 4.8 indicates that more than three-quarters of the aggregate sample of participants (80%) indicated that they almost always specifically asked their clients about child abuse and/
or child safety. A further 13% of the sample reported that they often did so (data not shown). Also consistent with the pattern emerging so far in this section, a greater proportion of the participating non-legal professionals (88%) than participating lawyers (73%) once again reported that they almost always specifically asked their clients about child abuse and/or child safety.

While consistent with the response patterns emerging from the other questions examined in this section so far, Table 4.8 shows that fewer, albeit almost three-quarters, of the aggregate sample of participants (72%) indicated that they almost always specifically asked their clients about whether child protection authorities were or had been involved with their family. A further 18% of the sample reported that they often did so (data not shown). A substantially greater proportion of the participating non-legal professionals (80%) than lawyers (65%) reported that they almost always specifically asked their clients about whether child protection authorities were or had been involved with their family.

4.2.4 Screening and assessment tools

**Family Law Detection of Overall Risk Screen**

Robinson and Moloney (2010) observed that the differing definitions of family violence employed by professionals in the legal and non-legal spheres, together with the differing assumptions about and emphases on violence, present a complex backdrop to the screening and assessment practices of family support services (p. 2). The variability of understandings or definitions of family violence in the post-separation services sector, together with the variety of available screening tools and the differing ways in which they may be applied, have led some commentators to call for the focus to be on the “development of tools that are useful for the expressed purposes” rather than engaging in the illusive “search for abstract and perfect measures of things well defined” (Rodgers, 2011, p. 6.). While a screening and assessment tool has been identified as one of several tools in the armoury of professionals working in the field (Breckenridge & Ralfs, 2006), the guidance provided by these tools and by the statutory definitions of family violence and abuse reflect an attempt to address the complications arising in the screening and assessment process.

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

Table 4.9 indicates that a substantial proportion of the aggregate sample of participants indicated that they rarely or never used DOORS (59%). Only 7% of the aggregate sample indicated that they almost always (3%) or often (4%) used DOORS, with 5% of the sample reporting that they sometimes used the tool. Importantly, more than two-thirds of non-legal professionals (69%) and just over half of lawyers (51%) indicated that they rarely or never used DOORS, although a greater proportion of lawyers (35%) than non-legal professionals (21%) stated that they were unable to report on their use of this tool.

<p>| Table 4.9: Use of the DOORS tool, lawyers and non-legal professionals, 2014 |
|-----------------|-----------------|-----------------|
|                  | Lawyers         | Non-legal       | Aggregated     |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost always</td>
<td>5</td>
<td>1.9</td>
<td>12</td>
<td>5.1</td>
<td>17</td>
</tr>
<tr>
<td>Often</td>
<td>14</td>
<td>5.4</td>
<td>5</td>
<td>2.1</td>
<td>19</td>
</tr>
<tr>
<td>Sometimes</td>
<td>17</td>
<td>6.6</td>
<td>8</td>
<td>3.4</td>
<td>25</td>
</tr>
<tr>
<td>Rarely/never</td>
<td>132</td>
<td>51.0</td>
<td>162</td>
<td>68.6</td>
<td>294</td>
</tr>
<tr>
<td>Cannot say</td>
<td>91</td>
<td>35.1</td>
<td>49</td>
<td>20.8</td>
<td>140</td>
</tr>
<tr>
<td>Total</td>
<td>259</td>
<td>100.0</td>
<td>236</td>
<td>100.0</td>
<td>495</td>
</tr>
</tbody>
</table>

Notes: Lawyers and non-legal professionals were asked: "Are you using the Family Law Detection of Overall Risk Screen (DOORS) tool?" Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
Lawyers and non-legal professionals who did report on their use of DOORS were asked about their practice in implementing this tool. Table 4.10 indicates that the majority of the aggregate sample of participants (62%) indicated a preference for directly asking their clients DOOR2 questions, with a slightly greater proportion of lawyers than non-legal professionals (63% and 58% respectively) preferring to use DOORS in this way. Notably, DOOR2 of the DOORS tool enables the DOOR1 questions to be administered by the practitioner. A slightly greater proportion of non-legal professionals than lawyers (25% and 19% respectively) preferred to have clients complete a paper version of DOOR1.

Table 4.10: Usual practice in implementing the DOORS tool, lawyers and non-legal professionals, 2014

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Clients complete DOOR1 online</td>
<td>2</td>
<td>3.7</td>
<td>2</td>
</tr>
<tr>
<td>Clients complete paper version of DOOR1</td>
<td>10</td>
<td>18.5</td>
<td>6</td>
</tr>
<tr>
<td>I ask clients DOOR2 questions myself</td>
<td>34</td>
<td>63.0</td>
<td>14</td>
</tr>
<tr>
<td>Another employee at my service asks clients the DOOR2 questions</td>
<td>8</td>
<td>14.8</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>54</td>
<td>100.0</td>
<td>24</td>
</tr>
</tbody>
</table>

Notes: Lawyers and non-legal professionals were asked: “When you do use DOORS, what is your usual practice in implementing this tool? I ask clients to complete the DOOR1 questionnaire online; I ask clients to fill in a paper version of the DOOR1 questionnaire before I see them; I ask clients the DOOR2 questions myself; Another employee at my service asks the clients the DOOR2 questions.” Percentages do not total 100.0% due to rounding.

Source: Survey of Practices 2014

All professional participants were asked to provide any comment in relation to DOORS via an open-ended response. The discussion below reflects the range of these responses that emerged in each of the participant categories.

**Judicial officers/registrars**

Some of the responding judicial participants (e.g., JO39, FCoA, registrar; JO50, FCC, judge; JO57, FCoA, registrar) described DOORS as a “useful tool” or a tool that could be of assistance. One judicial officer was particularly supportive when reflecting on the DOORS tool:

> I would love it if there were sufficient resources to enable every family to go through a DOORS screening process as part of dealing with their family law issues. (JO70, FCC, judge)

Other judicial officers and registrars expressed concern with aspects of the DOORS tool related to difficulties in its application and were critical of the design and content of the tool, together with the training exercises upon roll out:

> There were concerns that it may be difficult to adapt to a busy practice. (JO49, FCC, judge)

> I consider DOORS a flawed and dangerous tool. Any screening tool must be applied competently and insightfully. The training exercises on roll out were appalling and suggest the receptionist has a client complete it. Worst practice and in the wrong hands dangerous. In the best hands, little if any improvement on how things would be competently done. Simplistic and fraught with danger. (JO54, FCC, judge)

As indicated in the response of the following judicial officer, some participants were of the view that screening tools were not necessarily assisting in the development of skilled practitioners, and that it was the professional skill and capacity of the family lawyer that was better able to screen for violence when engaging with their client in their interview and supporting them “through the process of disclosure”:

> Obviously all practitioners working in the family law field should be well versed in identifying risk of harm to clients or their children. It is fair to say that lawyers are
probably the least trained in this regard. Experienced family lawyers are very good; those who “dabble” can be woeful. While screening tools such as DOORS can assist, they can also lead to a dumbing down and a handing over of professional responsibility to the assessment tool rather than developing any appropriate professional capacity. As I understand it, DOORS is a self-assessment tool that clients complete in the first instance before then meeting with the relevant worker. It is well understood that many clients are unable or unwilling to identify as victims of abuse/violence, however a skilled practitioner (whether lawyer/FDR/counsellor) is able to identify risk through an interview/s process, rather than simply relying on a screening tool. It also allows the professional to then engage with and support the client through the process of disclosure, which can be very traumatic for some clients. (JO50, FCC, judge)

At a more elementary level, some judicial participants described how they were unaware of DOORS and, as the discussion in the next sections will show, this lack of awareness was also a feature of the qualitative responses from lawyers and non-legal professionals on this question:

I have no information about it. I do not know what it does. That, it seems to me, is a gap in the dissemination of information. (JO46, FCC, judge)

Lawyers

Consistent with the reflections of some judicial participants, there were also some lawyers (e.g., L349, L90) who described DOORS as a “useful”, “helpful” or “comprehensive” tool:

[DOORS] is very helpful for those practitioners who perhaps were unaware of how to or did not previously screen for family violence. It is helpful for the resources it can direct a client to for assistance. (L82, lawyer)

The [DOORS] questions work for me. (L366, lawyer)

[DOORS is] comprehensive, a very good framework. (L402, lawyer)

Other lawyers were more mixed in their reflections on DOORS, and while describing the tool as useful, they nominated impractical aspects and difficulties associated with the application of the tool in practice; for example:

[DOORS is a] useful resource in terms of best practice but the suggested implementation is not always practical and/or a process new clients are prepared to engage in. (L69, lawyer)

[DOORS] is too much like a research tool for use in everyday family law practice, although I think something like it would be a useful aid in discussions about the role of violence in particular families. It is probably more useful for solicitors who first see clients, but is also a useful framework in some cases for barristers. (L396, lawyer)

[DOORS] is a great resource but a little too time intensive. (L426, lawyer)

If people used [DOORS], it would add to the costs of access to justice by both private and publicly funded clients. Any tick-a-box tool is useful in an environment where there are inconsistent and/or low levels of skill and expertise and/or a revolving door of staff. (L480, lawyer)

There were numerous lawyers who responded negatively when commenting on DOORS, identifying a range of barriers to the effective operation of the tool in their practice.

Some lawyers described the difficulties associated with implementing DOORS with clients from an Aboriginal and Torres Strait Island or culturally and linguistically diverse background or with clients with low levels of literacy:

Given the nature of clients that we work with where sometimes English is not their first language or they face multiple and complex barriers, the DOORS assessment program is cumbersome and too long for many of our clients. (L18, lawyer)

[DOORS is] difficult to use with CALD or ATSI clients or clients with low level of numeracy and literacy. (L153, lawyer)
We experience difficulties, such as large numbers of clients with very poor literacy and a tendency not to use forms of technology which easily allow answering questionnaires online. Our clients frequently can’t—or won’t—read things sent to them, let alone have a go at filling them in. This is exacerbated in FV situations by the victim’s frequent reluctance to dredge up memories they have often tried to repress or forget or explain away. I find that gentle, sympathetic questioning in the context of explaining best interests considerations and why FV is important for the sake of the children has the best chance of getting a disclosure with sufficient detail to start considering whether it meets the definition and how it might be addressed. Even so, we know that some victims don’t disclose. (L410, lawyer)

As indicated in the response quoted directly above, some lawyers described multiple and complex barriers for clients that were exacerbated by their experiences of family violence:

[I am] yet to … implement … and understand how [DOORS] will be received by those clients who, being most at risk, are the least likely to fill in a form. (L35, lawyer)

Indeed, some lawyers (e.g., L410 and L35 above) described clients who were not comfortable filling in forms, while other lawyers considered forms to be an ineffective mechanism for communicating with their clients:

I tend to question clients orally. I practice in a country town and find clients [are] "turned off" by forms. (L325, lawyer)

I wonder at the merit of requesting a potential victim to "fill in a form". Most clients will tell me what I need to know without a form. (L85, lawyer)

I haven’t done the training or used [DOORS] at all. In my experience clients don’t tell you about family violence, you have to extract that information from them and a questionnaire is rarely going to succeed in getting the information I need to run their case properly. We don’t need yet another set of forms, we need resources to support the victims and to speed up the progress of cases through the court. We need more supervised contact centres. (L64, lawyer)

Despite the concerns raised by lawyers related to clients filling in forms, it is important to acknowledge that DOOR2 of the DOORS tool enables the DOOR1 questions to be administered by a practitioner with their client.

Numerous lawyers (e.g., L18, L63, L83, L280, L387, L501, L476) expressed concern about the length (and as a result, the cost) of DOORS, that it was not sufficiently “user friendly”, and/or that it was cumbersome and prescriptive in nature:

[DOORS is] too cumbersome and prescriptive of responses. (L360, lawyer)

I am concerned about using the DOORS … risk screening tool with my clients as it is very time consuming and costly for them, and particularly early on I do not feel that I have established the relationship with the client to send them off to do the DOORS test. (L395, lawyer)

As intimated in the comment quoted directly above, some lawyers were of the view that the development of trust between lawyer and client was required before detailed questioning of clients on risk issues:

Client trust is required before detailed questions. (L344, lawyer)

Usually divulging the most serious (risks/harm factors) requires several face-to-face meetings to build up trust that telling us will not make things worse. (L35, lawyer)

Most lawyers after the introductory evening felt they would never put their clients through it at the first/second interview stage. (L32, lawyer)

Indeed some lawyers were concerned that DOORS was too complex and that they were lacking in training to properly implement the tool or that it took them beyond the responsibilities of their role:

I have concerns that [DOORS] is too complex for lawyers to properly implement, it is costly for clients, for lawyers to implement and it can give a sense of confidence to
professionals that they can undertake risk assessment when really it is outside their professional capacity. It doesn’t clearly define when a professional should just screen for issues and make appropriate referrals and leaves the door open for confident professionals to actually think they are able to undertake risk assessment. This over-confidence or over-reach can be dangerous and lead to wrong assessment. Professionals should screen and then refer to the appropriate professional for risk assessment to be undertaken properly. (L61, lawyer)

[DOORS] is too complex and designed for professionals who already have specific training and an ability to make such assessments. Many lawyers are not able to make the connection between a client who is unable to give specifics or seems changeable to experiences of violence and perhaps suffering PTSD as a result. (L198, lawyer)

I do not find [DOORS] useful. I consider that such checklists, especially when self-administered or applied by a non-skilled staff member … have the potential to offer false security of screening. (L66, lawyer)

I do not agree with it as I feel it shifts responsibilities to lawyers that belong elsewhere. (L95, lawyer)

Other lawyers focused their criticism more on the capacity of the DOORS tool to effectively assist with the identification and assessment of risk:

I have undertaken risk assessment training here and overseas. I have provided risk assessment training. In my view the manner in which DOORS operates is a clumsy one, with the potential for not correctly identifying the risk factors involved. What is NOT adequately dealt with in DOORS is that the past is the best guide for the future, but the past is not a perfect guide, and acts can happen for which there is not a good predictor. I emphasise the need to take an holistic approach to issues to do with violence, neglect and abuse so that I undertake both risk assessment with clients (and have been doing so for many years) and safety planning. To raise the bar for other lawyers etc. in the system with their clients is a good thing. (L443, lawyers)

What DOORS suggests is that we may be able to uncover information that would otherwise remain hidden, and this is simply not possible beyond the standard candid and robust Q and A that any good lawyer should do with their client. It also has other implications for lawyers: what about my requisite fiduciary relationship of trust and confidence with my client? If I ask my client to tell me the truth in confidence I need to operate on the basis that what they say is true. If I can’t do that, the trust and confidence may be lost, in which case I must cease to act. Bottom line, these academic “systems” and templates are frankly silly because they can never achieve what they are espousing. (L408, lawyer)

One lawyer also expressed particular concern that opposition lawyers may seek production of the DOORS assessment into evidence, and lamented what was identified as a lack of consultation with the legal profession prior to the release of the tool:

I am especially concerned that sooner or later a lawyer will seek production of the DOORS report from the other side and that it may not be privileged. This could have potentially huge ramifications for the client, and does not appear to have been adequately addressed. The issue about loss of privilege, and professional indemnity issues for lawyers has been raised with me by a number of other family lawyers concerned about the proscriptive process involved with DOORS. It would appear that there has been little adequate consultation with the profession before DOORS was launched upon it. (L443, lawyer)

Again, at that more elementary level, there were also many lawyers responding to this question who either did not use DOORS or had not heard of it. For example:

Never heard of it. (L139, lawyer)

Don’t know what it is. (L156, lawyer)

Never heard of DOORS. Sorry, but marketing poor. (L229, lawyer)
It is not a tool that my organisation currently uses. (L349, lawyer)
I have never heard of this, and I am involved with community groups and have just completed my masters of applied law in family law. (L431, lawyer)
Have not encountered it. (L447, lawyer)
Don’t know anything about it. (L453, lawyer)

For some lawyers who reported that they were not using DOORS, this was due to the fact that they considered their knowledge and experience to have extended beyond this tool:

I did not do the training. I have done so much DV training over the last 20 years and run so many DV cases I really don’t need another “tick a box” tool. If I don’t know how to assess and screen DV by now then I am never going to learn. I am much more interested in training about the social science and the linked topics of substance abuse and mental health in conjunction with DV than another DV tool. (L336, lawyer)

For other lawyers, their responses indicated that their decision not to use DOORS was more related to the familiarity with alternative screening tools and this observation will be considered further in the next section.

**Non-legal professionals**

Non-legal professionals were markedly more positive in their open-ended responses relating to the DOORS tool than participating judicial officers and lawyers, with a greater number of comments of the following nature:

All services within my management will be using the DOORS tool when training [is] completed. The DOORS tool is user-friendly and can be adapted for many disciplines. It is a good tool. (NL, 494, Parenting Orders Program, post-separation services manager)

It is a very useful tool for systematic screening of risk that can be used in post-separation services. Its point of difference is that it is a self-report which can then be used by the practitioner to complement their own practitioner assessment of overall risk. (NL556, service not specified, post-separation services manager)

Feedback from colleagues who have attended the training has been extremely positive in identifying risks. (NL528, family relationships education and skills training service, educator)

The capacity for uniformity in the identification and assessment of family violence was highlighted as a positive by the following non-legal professionals:

It is good to have a standardised risk assessment tool to ensure all practitioners are screening appropriately for family violence. (NL96, FRC, mediator/FDR practitioner)

I think [DOORS] has the potential to make it easier for all people who work with violence to have the same ideas and processes and screening so we all respond and identify in the same way. (NL612, FRC, mediator/FDR practitioner)

It is a very positive step for this detailed and thorough risk assessment tool to be rolled out Australia-wide so that it is assured all at-risk parties are screened appropriately wherever they reside in this great country of ours. (NL566, family relationships education and skills training service, educator)

Other non-legal professionals were more mixed in their reflections on the DOORS tool and suggested that its take-up was reduced due to time and resource constraints, and that more training would need to be provided to family law professionals for its effective implementation:

[DOORS] looks like a very comprehensive tool and it is unfortunate that it is not being used by family consultants due to resource and time constraints. Family consultants who work in the courts deal with the most complex of all matters but sufficient resources have not been provided (due to government funding cuts). These resources issues require review because it is often very difficult to expect the family consultants to comprehensively assess the family violence issues within the limited time frames that they are allocated to do their job. (NL19, FCC, family consultant)
[DOORS] cannot be used with every client—it is very resource intensive. It can be a useful tool for professionals but more training and referral is required for professionals who have not worked with family violence—in both the support of victims and the challenging work with perpetrators. (NL381, FRC, service level coordinator/service manager)

On the other hand, a number of non-legal professionals identified issues associated with integrating DOORS into their existing practice approaches. This was particularly apparent in the responses of family consultants and single experts. For example:

- [DOORS] is too rigid and limited for the more comprehensive assessments needed in the family consultant role. (NL26, FCC, family consultant)
- [DOORS] has been assessed by the child dispute service as not always relevant to the clients who come to court. (NL56, FCoA, family consultant)
- [DOORS] has been evaluated as not suitable to my workplace. (NL485, FCC, family consultant)
- [DOORS is an] unsophisticated tool that does not encompass the breadth of cases and circumstances at the most difficult end of family law cases. (NL2, private practice, single expert)

Some non-legal professionals in the mediation and FDR context reported barriers to the application of DOORS in their workplaces based on its potential to compromise the practitioner’s neutrality or on the basis that it was not comprehensive (as noted directly above) or did not address the questions pertinent to the non-legal professional in the FDR context:

- It worries me that the DOORS screening tool has the capacity to draw the mediator out of the role of neutral facilitator and into the role of engaged counsellor. Dispute resolution is a pragmatic exercise not a counselling one. (NL116, FRC, mediator/FDR practitioner)
- I have only used it once in a CD tutorial and found the demonstration of the DOORS system to be a lot less involved and comprehensive than we already do at the FRC in screening/intake. (NL57, FRC, mediator/FDR practitioner)
- It is impersonal and onerous to implement and does not contribute to any evaluation as to the suitability to progress to mediation. (NL62, FRC, mediator/FDR practitioner)
- Our current screening tool is more than adequate and comprehensive and I prefer it to the DOORS tool. (NL121, FDR service, mediator/FDR practitioner)

Consistent with lawyers, client literacy levels and the knowledge and training of professionals using DOORS, were also identified by participating non-legal professionals as barriers to the effective operation of the DOORS tool:

- The parties I interview usually do not have the reading level to fully use DOORS—probably 1 in 10 would be able to fill out the forms. (NL4, private practice, psychiatrist/psychologist)
- Until it is approved and applied universally to all aspects of responses, it will continue to be a gamble whether a particular client is effectively understood and supported by its use, or let down because practitioners do not comprehend trauma, DV and family violence and child abuse issues. (NL514, other counselling or support service, no occupation specified)

Other participating non-legal professionals (consistent with some judicial and legal comments, noted by J050 and L410 above) emphasised that DOORS or other tools could not be regarded as an appropriate substitute for practitioner experience or skill:

- It is unrealistic to think that a family consultant would be able to use the DOORS tool when the time allocated to seeing clients is so limited. There are other tools around and most have similar content. I use a tool developed by the court but more importantly is the experience I have in this area. I hope the powers that be don’t think that by giving a person a tool they are an expert. (NL23, FCC, family consultant)
I prefer to see professionals well trained rather than using a bureaucratic device on each occasion. (NL6, other counselling or support service, psychiatrist/psychologist)

This emerging theme will be considered further in the next section in the context of a discussion of other nominated screening tools and practices.

Once again, at a more elementary level, numerous non-legal professionals (e.g., NL44, NL93, NL138, NL199) indicated that they were yet to undertake the training to use the DOORS tool or that they or their service did not use DOORS (e.g., NL487, NL78, NL535, NL201) or that they preferred to use an alternative screening and assessment tool, with responses in this latter category considered further in the next section.

**Other nominated screening tools and practices**

Participating lawyers were asked to nominate in open-ended responses the measures other than DOORS that they used to screen for family violence.

Most lawyers responding to this question reported engaging in interviews or discussions with their clients and listening to and observing their clients in this process. For example:

[The measures I use involve] asking questions and listening to answers. Getting the client to simply “tell their story”. (L43, lawyer)

I use narrative instruction and active listening. I look for signs of violence by reference to the accepted literature of the impact of violence. (L66, lawyer)

[I use a] thorough interview. Initial appointment questions about presence of protection orders, police involvement, child protection involvement, ex-partner's behaviour towards client and client's responses to that, questions surrounding types of violence experienced and whether any children were exposed to it. (L334, lawyer)

[I use] questioning I have developed over the years, observation of the whole person and their reaction to specific questions, their ability to answer and how they answer. (L82, lawyer)

The same [measures] I have used for years. I specifically ask them, face-to-face, about whether there has been family violence in each single parenting case. I check they actually know what is meant by family violence. I look for “warning signs” particularly in women, that they have been subjected to family violence. I explain why I need to know. I explain about the implications for the presumption. I ask direct and indirect questions. I look for risk factors. (L64, lawyer)

I ask open-ended questions about the issues relating to the parties and the children. I then move to asking direct questions. I will also ask what issues the other party will raise even if my client were to say the allegations were untrue. (L261, lawyer)

We use a screening question on our intake form. When talking with the client I ask open questions to begin with. If there are any disclosures of violence I follow that up. If there are not disclosures, but hints (e.g., the client’s actions to date, or their attitude to arrangements or the patterns of care don’t add up unless there is some violence), I ask a direct question about violence. When talking about mediation/FDR I describe the process and always ask clients whether they would feel able to freely make decisions in that process. (L121, lawyer)

Many lawyers spoke of their personal and professional skills and experience when discussing their screening measures, with these skills and experience shaping the nature and extent of the inquiry:

[I use] instinct and listening to what is not said. (L228, lawyer)

I rely on my experience in the family law area, and ask many questions calculated to obtain information about the family dynamic. (L214, lawyer)

I just ask questions which I have learnt over time [and] allow client's to feel comfortable to answer about family violence and child abuse. (L97, lawyer)
I am a family law solicitor with considerable experience, I know when clients are hiding something from me and I don’t need a checklist. If clients want to lie to me about their relationship, a checklist also doesn’t help me to get the truth out of them. At the end of the day, there is no answer for those matters where I suspect something is wrong, but I can’t get straight instructions about it. (L308, lawyer)

[I use] my personal intuition gained from years of experience in the family law industry. (L406, lawyer)

I use my common sense, together with my training and experience as a lawyer, and my life experience as a mature person who knows what it is like to be a spouse and a parent. But that is all. I cannot be expected to detect hidden information from a person if they choose to actively hide it. As I said above, a lawyer must start from a position of trusting and believing that what his or her client tells them is truthful. Of course challenging questions must be asked of clients, but beyond that, I can only act on the facts my client stands by. If I am not willing to do that because I have encountered evidence to the contrary of the facts my client is claiming, then I may be conflicted and would need to cease acting. This approach of trying to “engage” clients at some deeper level of meaning is fraught with dangers and I will not do it. I am a lawyer not a clairvoyant. (L408, lawyer)

Other lawyers describing their other screening measures nominated information from third parties, including using relevant professionals or documentary evidence in conjunction with discussions with clients or taking instructions from clients in co-joint meetings or with the assistance of advice from relevant experts:

[I use] open-ended questions, police reports and other evidence, just general good practice of focusing on child's needs and best interests. (L285, lawyer)

[I engage in] consultation with the client [and] professionals involved in the matter. (L56, lawyer)

[The other measures I use are:] 1. Experience. I look for behavioural clues to indicate possible DV history and I look for clues in documents without even consciously thinking about it. 2. Specific questions. I have a questionnaire that I fill in at the first appointment in every single parenting matter in which I ask specific “risk” and “DV” questions of the client (and look for clues that they are failing to disclose). 3. Documents. I issue subpoenas and read the material produced. (L336, lawyer)

Two lawyers specifically referred to their use of the provisions of the FLA as a measure to guide their screening for family violence:

I ask questions by following the relevant subsections and definitions within the legislation. (L110, lawyer)

[My screening measure involves] with every client, going through the s 60CC factors and talking about why they are important for children, including FV. Asking about involvement of police and child protection services. (L3410, lawyer)

Some lawyers (e.g., L198) indicated that their organisation had their own risk screening and assessment tools, while others (e.g., L152, L377, L280, L299) used their own list of questions prepared from a range of education tools. Other lawyers (e.g., L59, L63, L79, L98, L126, L297, L393, L419, L426, L470) nominated alternative screening tools, including the AVERT Family Violence—Collaborative Responses in the Family Law System, CRAF—Common Risk Assessment Framework and Legal Aid Best Practice Guidelines.

Similar to lawyers, participating non-legal professionals also described a variety of measures (other than DOORS) for screening for family violence, with these measures often involving the service’s own intake and assessment procedures and the review of information from third parties, including relevant professionals or documentary evidence, in conjunction with interviews with clients/parties. For example:

[I use] a process of semi-structured interviews with parents and children, and reviews of documents. (NL26, FCC, family consultant)
[I use] parents' interview, child interview, family observation, child protection reports, police reports. (NL28, FCC, family consultant)

[I use] clinical interview [and] selected psychometric tests. (NL8, private practice, psychiatrist/psychologist)

All clients requesting service at the FRC are required to complete an intake screening with an intake worker. This screening includes specific questions around family violence, child protection involvement, intervention orders and police involvement. Further assessments are made throughout the process. (NL355, FRC, mediator/FDR practitioner)

As an FDR practitioner/mediator, my screening is at a second stage, as all parents are interviewed by a Family Relationship Advisor [FRA], who screens for family violence and/or abuse. If there is any doubt about a case, then we also conduct pre-FDR sessions with parents (individually) to further pursue matters of violence/abuse and to determine whether FDR/mediation is suitable or a more appropriate referral needs to be made. The pre-FDR interviews sometimes include the FRA involved in the case, and the sessions are comprehensive regarding screening. (NL415, FDR service, mediator/FDR practitioner)

Alternative screening tools that were nominated included the AVERT Family Violence—Collaborative Responses in the Family Law System (e.g., NL83, NL299, NL632); SARA—Spouse Assault Risk Assessment (e.g., NL353); CRAF—Common Risk Assessment Framework (e.g., NL123, NL574, NL535, NL564, NL549); Family Safety Framework Risk Assessment (e.g., NL556, NL622); and Staying Home Leaving Violence (NL175), together with government guidelines (e.g., NL377, NL165).

Consistent with the lawyers who responded to this question, many non-legal professionals also described the importance of their interactions with clients/parties in the screening process. For example, one respondent described how they:

create an environment where clients feel safe to discuss violence openly (peer support group); allow clients to share their experience without judgment or interruption (psycho-therapeutic model); really listen to screen for participant attitudes, beliefs and principle based thought processes that underpin risk; ask specific questions about family violence, children's level of exposure, safety and child protection involvement history. (NL173, FRC, service level coordinator/service manager)

I find that engaging in general conversation elicits as much information in relation to family violence as DOORS does. (NL116 (FRC, mediator/FDR practitioner)

[I engage in an] unstructured interview with parents, interview with child's teachers, general practitioner or counselor [and] interview with child. (NL168, private practice, family consultant)

[I ask a series of questions about long-term family violence—[I] explain the definitions of family abuse, ask about the worst incident children have been exposed to, discuss whether the party feels they would be on an even playing field and be able to negotiate. (NL51, FRC, mediator/FDR practitioner)

[I engage in] in-depth discussion, rapport building, direct questioning. (NL183, FCC, family consultant)

Consistent with the observation of Breckenridge and Ralfs (2006; noted at the outset of 4.2.4), a key theme emerging from the qualitative data discussed in this section was that screening and assessment tools should be but one of a range of tools available to the family law professional. These data also emphasised that competent professionals with well-honed skills and experience in interviewing clients, are central to the screening and assessment process. Similarly, Robinson and Moloney (2010; referring to Kropp, 2008) indicated that, as well as accepted screening and assessment tools or guidelines, professionals require expertise and experience in interviewing clients who have experienced or perpetrated family violence, together with a knowledge base of the dynamics associated with family violence (p. 5). Indeed, Robinson and Moloney warn of the “considerable dangers associated with the use of a screening instrument in isolation from empathic engagement” between the professional and client (p. 5).
Identifying and assessing harm and risk of harm

The variety of screening and assessment tools, skills and practices identified in the discussion of the qualitative data in this section, reflect that risk assessment is an ongoing process, and a multifaceted interaction that does not end with the completion of a screening form (Laing, Humphreys, & Cavanagh, 2013, p. 49). It acknowledges that reliance on a screening tool alone may also lead to a failure to identify and assess risks or forms of harm falling outside the indicators of a specific screening tool (Humphreys, 2014), with too great a focus on formal tools or procedures potentially leading to complacency about false negative findings (Robinson & Moloney, 2010, p. 6). The use of typological understandings of family violence as a framework for screening and assessment tools, and the definition of family violence in FLA s 4AB, have also been the subject of criticism for their lack of clarity and their exclusionary effect (e.g., Rathus, 2013; Wangmann, 2011).

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

4.2.5 Evidence-gathering practices that facilitate the assessment of risks or harm factors by courts and lawyers

**Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence**

Judicial officers and registrars were asked for their perspectives on the effectiveness of the process of filing a Form 4 Notice of Child Abuse, Family Violence, or Risk Family Violence (“Form 4 Notice”), whereby interested persons (including parties to the proceedings or Independent Children’s Lawyers) are required to file (and serve) a Form 4 Notice where alleging child abuse or risk of child abuse (FLA s 67Z), or where alleging family violence or a risk of family violence as a consideration relevant to decision making about Part VII orders (FLA s 67ZBA). The Form 4 Notice is a prescribed form under the Family Law Rules 2004 that has been employed in both the Family Court of Australia and the Federal Circuit Court of Australia.15 This Form 4 Notice allows for the provision of a summary of the acts or omissions that are alleged to constitute abuse and/or family violence, the facts alleged to constitute any risk of abuse and/or family violence, and the identification of relevant affidavit evidence in this regard.

Of note, during the period of data collection for the Survey of Practices, the Federal Circuit Court of Australia conducted a pilot of a Notice of Risk form to be filed in all parenting proceedings issued in South Australia, with a view to comparing its operation to that of the Form 4 Notice as a means to “better facilitate the early identification of a range of risks in parenting matters … and to improve compliance with the legislative requirements”.16 The intention was that

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15 Note that for proceedings in the FCoWA, the relevant Form 4 Notice is titled Notice of Child Abuse or Family Violence (or Risk)—Form 4.

16 See Federal Circuit Court of Australia (2012; 2014, p. 2). The pilot of the Notice of Risk in parenting proceedings issued in South Australian Registries of the Federal Circuit Court of Australia commenced on 4 February 2013. The evaluation of this pilot concluded that “concerns about lack of compliance with legislative requirements for reporting or risk appear to be justified given the increased level of reporting and the absence of any evidence to suggest that the identified risk is unsupported by the facts” (FCCoA, 2014, p. 9). While the evaluation acknowledged the concerns of lawyers with respect to the imposition on their time when required to complete the form in cases where there were no allegations, “the majority of legal practitioners found the form easy to navigate and ticking the boxes marked ‘no’ should not be too time consuming” (p. 10). The compulsory Notice of Risk was identified as enhancing compliance and addressing the issue of under-reporting of risk of family violence and child abuse. The evaluation concluded that there are advantages to implementing this Notice of Risk form on a national basis (FCCoA, 2014). Following the evaluation, the Federal Circuit Court Rules were amended to provide for the new form of Notice of Risk to replace the currently prescribed Form 4 Notice on a national basis, effective from 12 January 2015. See Federal Circuit Court Amendment (2013 Measures No. 1) Rules 2014 (registered 22 October 2014).
Chapter 4

the Notice would operate as a “broad based initial risk screening device to assist the court to identify at the earliest opportunity those matters in which allegations of risk are made so that the alleged risks can be addressed in a timely fashion’ (FCCoA, 2014, p. 2). In addition to the requirement that the piloted Notice of Risk form be filed in all matters (so as to better address risks covered by s 67Z and s 67ZBA and the court’s compliance with s 69ZQ), the Notice of Risk in the pilot was a shorter form that included questions of a more specific nature, which were linked more directly to these legislative provisions (Appendix A: Notice of Risk (SA Pilot) and Form 4 Notice).

Although some of our study’s survey questions sought South Australian participants' views and experiences of this piloted Notice of Risk, an insufficient number of participants responded to these more specific questions and as such they are not separately reported herein. The discussion below therefore relates predominantly to the Form 4 Notice that was current and nationally applicable (save for South Australia) at the time of data collection.

In broad terms, the legal and judicial survey data together suggest that the Form 4 Notice was regarded as simple and easy to use and effective in its capacity to facilitate assessments respectively. Half the participating lawyers (50%) responded in the affirmative when asked whether the Form 4 Notice was simple and easy to use, though a substantial proportion answered in the negative (41%). A further 8% of legal participants were unable to express a view on this proposition (data not shown). In terms of the capacity of the Form 4 Notice to facilitate assessments, Table 4.11 indicates that a majority of judicial officers mostly or strongly agreed (73%) that when the Form 4 Notice was filed by a solicitor, the information included in the form assisted them to understand whether there were risks to parents or children in a case. This contrasted with their reported experiences with the Form 4s filed by self-represented litigants, with the majority of participating judicial officers and registrars mostly or strongly disagreeing (59%) that the information provided in these Form 4s helped them to understand whether there were risks to parents or children in a case. Nevertheless, a substantial proportion (38%) did indicate that they mostly or strongly agreed with the proposition.

| Table 4.11: Effectiveness of Form 4 Notice for screening and assessment, judicial officers and registrars |
|---------------------------------------------------|-----------------|-----------------|-----------------|-----------------|------------------|------------------|----------------|
| Form 4 Notice helps me understand whether there are risks to parents or children in a case | Strongly agree (%) | Mostly agree (%) | Mostly disagree (%) | Strongly disagree (%) | Cannot say (%) | Total (%) | Total (N) |
| When filed with the assistance of a solicitor | 12.1          | 60.6          | 18.2          | 6.1           | 3.0          | 100.0      | 33        |
| When filed by a self-represented litigant   | 6.3          | 31.3          | 50.0          | 9.4           | 3.1          | 100.0      | 32        |

Notes: Judicial officers/registrars were asked: “Please indicate the extent of your agreement with the following statements about the current Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence: When filed with the assistance of a solicitor, the information provided in a Form 4 Notice helps me understand whether there are risks to parents or children in a case; When filed by a self-represented litigant, the information provided in a Form 4 Notice helps me understand whether there are risks to parents or children in a case”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

On this issue, Strickland and Murray (2014), in their 2014 post-family violence reform study of the extent to which the reforms are meeting their objectives, suggested that the filing of Form 4 Notices “can assist in clarifying the issues in dispute and provide[s] a structure for their consideration” (p. 61).

Judicial officers, registrars and lawyers were also asked in open-ended survey questions for their views and experiences of the Form 4 Notice process. Those relevant to the screening and assessment process are discussed below.
Identifying and assessing harm and risk of harm

Judicial officers and registrars

While some judicial participants reflected positively on the Form 4 Notice, they also indicated that the affidavit material and expert reports were of greater benefit in terms of assessing concerns:

The history, scope and detail of violence is often better set out in affidavits and expert reports. The Form 4s are generally a warning to have a deeper look. (JO34, FCoA, judge)

Screening in an objective sense occurs too late. Form 4s are unreliable. Affidavit material is more useful. (JO62, FCC, judge)

As foreshadowed in the responses quoted above, some judicial officers and registrars reported that they did not find the Form 4 Notice to be a useful document in that it was not an effective screening mechanism:

[The] Form 4 is not a useful document—[There is] still underreporting as parties [are] not filing in appropriate cases … [There is the] problem then [of] getting early information from welfare agencies—no legal aid—limited family consultant resources available. (JO39, FCoA, registrar)

When reflecting on the Form 4 Notice, this judicial officer was critical of the fact that they were not filed in all matters:

Form 4s continue to be problematic. They cannot (save the FCC pilot in SA) be filed in all matters. They are only required when there are allegations. They are filed at best 20–25% of the time when they should be and about 20–25% of those filed do NOT allege abuse or FV within the definitions. (JO54, FCC, judge)

By way of contrast, the following registrar considered that the Notice serve as a “stand alone notification” in cases involving allegations of child abuse:

The Form 4 or similar document should be limited to allegations of child abuse so that it can be shown to be a stand-alone notification. It also needs to contain provision for dates the alleged abuse has taken place and if such an incident has already been referred to the relevant state welfare agency. Allegations of violence should be evidenced by the attachment of an intervention order in the Initiating Application and Response and details of the alleged violence is then provided in the affidavit in support. (JO57, FCoA, registrar)

Interestingly, in the open text responses regarding changes in the ways in which family law professionals identified, assessed and responded to family violence issues as a result of the family violence reforms, some judicial participants took the opportunity to show their support for the adoption of the new Notice of Risk form being piloted in South Australia. They did so on the basis that this revised and compulsory version of the Notice provided a more comprehensive screening and assessment tool:

The proposed new Notice of Risk in the FCCoA is an excellent initiative designed to alert both practitioners and unrepresented litigants to the issues identified in the expanded definition—and through it, as an early identification tool—the judges in the Circuit Court who deal with over 90% of interim/first court date applications. (JO56, FCC, judge)

[I am] conscious of the workload of welfare agencies and working locally to try and get some information sharing at an early date … [The] FCC [is] intending to introduce a Notice of Risk in all parenting proceedings to not only comply with the statutory notification requirements but also highlight other risks and hopefully aid case management. (JO39, FCoA, registrar)

As far a screening goes, it would be very useful to have a broad-based screening tool for all parenting matters that come before the courts. The Form 4 is pretty ineffectual, not least because it is mostly honoured in the breach. I am very much looking forward to the introduction in the FCC of the proposed new Notice of Risk which will provide a basic screening of all parenting matters for allegations of arising from family violence, child abuse, drug and alcohol abuse, mental illness, neglect and parental incapacity. It
Chapter 4

will allow a targeted assessment and response on day 1 in high volume lists. (JO70, FCC, judge)

The SA pilot is designed to trial a simpler, less cumbersome Notice of Risk, as the F4 is seen as too long and clunky. As the FCC also has affidavits filed in support of children’s applications, I tend to rely upon the affidavit rather than the Notice of Risk. It has been very effective in improving the information flow from Families SA, however, with excellent results. (JO50, FCC, judge)

Lawyers

While some lawyers (e.g., L66, L349, L349) identified the requirement to file a Form 4 Notice in “appropriate circumstances” as important, in contrast to the judicial officers, the responses of most lawyers reflecting on the Form 4 Notice as it stood at the time of the survey were negative in content.

Many of these lawyers providing open-ended responses were of the view that the Form 4 Notice was unnecessary, “superfluous”, that it was not a useful form or that it was a duplication of other documents filed in a case. For example:

[The Form 4 Notice is a] waste of time. (L50, lawyer)

[The Form 4 Notice] is often a duplication of affidavit evidence. There should be a tick a box on the front of an affidavit which requires parties to simply identify if any of their evidence contains allegations of family violence or child abuse. (L63, lawyer)

[The Form 4 Notice] largely duplicates the work you’ve done in the client’s affidavit. Could be shorter and more user-friendly. (L391, lawyer)

The form is cumbersome and requires a regurgitation of matters already covered in affidavits. We should simply annex the affidavit. (L402, lawyer)

Other lawyers (e.g., L404, L405, L391) also reported that the Form 4 Notice was not user-friendly or that it was too long, complicated, repetitive and required simplification and revision (e.g., L488, L470):

[The Form 4 Notice] is a bewildering nightmare of a form to complete. [It is] far too complicated. [It is] far too repetitive. The cross referencing to evidence is time-consuming and very expensive to clients and serves no purpose. It results in courts having less idea of the true particulars rather than serving its true purpose. (L122, lawyer)

The form is also repetitive in the sense that you fill out a separate section for risk. The form should be reviewed into a more simple format. (L227, lawyer)

Change it to a checklist and remove the temptation to duplicate affidavit material /quote paragraph numbers from other documents. If that means more documents need to be forward[ed] to child protection services assessing Form 4s, that’s better than having a confusing form. (L286, lawyer)

As foreshadowed in the comment of L122 above, some lawyers were critical of the Form 4 Notice on the basis that it was too time-consuming and that it added to litigation costs and delays:

I sometimes feel that it is just an aide memoir for the bench given that the expanded information is in the client’s affidavit material. I feel that busy practitioners would probably say that preparing the document is time-consuming and a cost impost to clients, which is somewhat of a duplication. (L104, lawyer)

I think it is convoluted and unnecessarily increases legal costs in circumstances where affidavits are filed that provide the same information. (L218, lawyer)

The Notices are just another form to fill in (and more costs for the unfortunate clients to pay) and make no difference to outcomes. That information should be already in the affidavit, which the court does read with far more attention. (L64, lawyer)

The form is costly to prepare with no obvious added benefit. It also appears to be a substitute for the court’s role. That is, if the purpose is to bring the issue to the court’s
attention, it seems superfluous to trace through the affidavits filed and “cherry-pick” the specific paragraphs so as to cross-reference them in the Form 4. (L258, lawyer)

The responses of lawyers in these open-ended responses also identified that there existed a reluctance on the part of some practitioners to file the Form 4 Notice, that they were poorly completed or that they were being misused by parties to gain advantage in the litigation process:

Solicitors complete it before I am briefed and become confused about which acts constitute variously child abuse, family violence and/or risk. There is really no need for such a long form with so many sections. It would be better to have a shorter form where all conduct is listed. Courts can readily determine which category conduct falls into anyway. This would also reduce the amount of paper the court has to look through at interim hearings and mentions when it is just trying to get across a matter. (L110, lawyer)

When the family violence reforms were introduced, I observed that some practitioners filing Form 4 notices for reasons more related to litigious advantage than a genuine desire to protect parties and children. I think that has been tempered somewhat by judicial “guidance”. Generally though, Form 4 notices have been beneficial especially since their effect is to better integrate the family law and child welfare systems. (L131, lawyer)

I am aware that there are some lawyers who may use the form as a tool to be listed quicker in the regional area. I will always warn my clients that Form 4s are not to be taken lightly and must be for genuine concerns, not “lashing out” at the other parent. (L500, lawyer)

The use and effectiveness of the Form 4 Notice will be discussed further in Chapter 6, where the capacity of the form to facilitate responses to family violence/risk of family violence and child abuse/risk of child abuse will be examined.

**Memoranda and family reports**

Insight into judicial practices relating to requests for memoranda of advice pursuant to FLA s 11E or s 11F or requests for section 62G family reports is provided in Table 4.12.

Almost half (44%) of responding judicial officers and registrars indicated that they did not seek s 11E advice as to the services (and service providers) appropriate to the needs of a relevant person in a family law matter. Of the remaining proportion of the sample, 22% indicated that they requested advice pursuant to s 11E in “less than a quarter” of the children’s matters before them, and a further 9% indicated that they did so in “about a quarter” of children’s matters. A greater proportion of judicial participants (21%) reported that they ordered parties to attend a child inclusive conference, child dispute resolution conference or child responsive program under s 11F (and therefore received s 11F memoranda of advice) in “more than three-quarters” or “about three-quarters” of children’s matters (Table 4.12). A further 15% reported that they did so in “about a half” of children’s matters and 12% reported that this was the case in “about a quarter” of children’s matters. A substantial proportion of judicial participants (39%) reported that they made these orders pursuant to s11F in “less than a quarter” (36%) or in “none” (3%) of children’s matters before them.

The data in Table 4.12 (on page 74) suggests a greater reliance on s 62G family reports, with 30% of judicial participants indicating that they requested s 62G family reports in “more than three-quarters” or in “about three-quarters” of children’s matters. A further 18% of the sample indicated that they requested s 62G family reports in “about a half” of children’s matters and 27% indicated that they did so in “about one-quarter” of these matters. Only 3% of the sample indicated that they did not make any such requests in their children’s cases, with a further 18% indicating that they requested a s 62G family report in “less than one-quarter” of their children’s matters.
### Evidence-gathering practices of lawyers that facilitate the assessment of risks or harm factors

Lawyers were also asked about the evidence-gathering practices that facilitated their assessment of family violence, child abuse and child safety concerns. Table 4.13 (on page 75) indicates that almost one-third of participating lawyers (31%) responded in the affirmative when asked whether they more frequently made applications for evidence relating to child abuse or family violence pursuant to FLA s 69ZW or s 202K of the *Family Court Act 1997* (WA) as a result of the family violence reforms. More than one-half of the sample (53%) indicated that as a result of the family violence reforms, they more frequently applied for and inspected subpoena documents from statutory child protection services. A similar proportion of the sample indicated that they also more frequently applied for and inspected subpoena documents from police (54%). In addition, 40% of the participating lawyers also indicated that as a result of the family violence reforms they more frequently made informal enquiries about the history of contact with statutory child protection services.

Judicial officers and registrars were also asked for their views about whether the family violence reforms had affected lawyers’ evidence-gathering practices, albeit with regard to a broader range of evidence-gathering tasks. The data in Table 4.14 (on page 75) show that substantial proportions of judicial officers provided affirmative views with respect to the various nominated evidence-gathering tasks, with requests for assessments of children and young people (e.g., medical, psychological or attachment assessments) being the exception to this affirmative response pattern, and with a higher level of disagreement reported in relation to applications for s 69ZW or s 202K information. More specifically, almost one-half of the judicial sample (45%) indicated that they mostly or strongly agreed that as a result of the family violence reforms, lawyers (including ICLs) were more likely to apply for a family report or single expert report. Similarly, 53% of the sample indicated a greater likelihood for lawyers to request assessments of parents and 47% reported that they strongly or mostly agreed that lawyers were more likely to

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**Table 4.12: Proportion of children’s matters where requests made for memoranda of advice or family reports**

<table>
<thead>
<tr>
<th>In approximately what proportion of children’s matters would you request:</th>
<th>None (%)</th>
<th>Less than a quarter (%)</th>
<th>About a quarter (%)</th>
<th>About a half (%)</th>
<th>About three-quarters (%)</th>
<th>More than three-quarters (%)</th>
<th>All (%)</th>
<th>Cannot say (%)</th>
<th>Total (%)</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advice from a family consultant under s 11E of the <em>Family Law Act 1975</em> (Cth)</td>
<td>43.8</td>
<td>21.9</td>
<td>9.4</td>
<td>6.3</td>
<td>6.3</td>
<td>0.0</td>
<td>6.3</td>
<td>100.0</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Memoranda of Advice—s 11F of the <em>Family Law Act 1975</em> (Cth)</td>
<td>3.0</td>
<td>36.4</td>
<td>12.1</td>
<td>15.2</td>
<td>3.0</td>
<td>18.2</td>
<td>6.1</td>
<td>6.1</td>
<td>100.0</td>
<td>33</td>
</tr>
<tr>
<td>A family report under s 62G of the <em>Family Law Act 1975</em> (Cth)</td>
<td>3.0</td>
<td>18.2</td>
<td>27.3</td>
<td>18.2</td>
<td>12.1</td>
<td>18.2</td>
<td>0.0</td>
<td>3.0</td>
<td>100.0</td>
<td>33</td>
</tr>
</tbody>
</table>

**Notes:** Judicial officers/registrars were asked: “In approximately what proportion of children’s matters would you request: Request advice from a family consultant under s 11E of the *Family Law Act 1975* (Cth); Order parties to attend a child inclusive conference, child dispute conference or child responsive program under s 11F of the *Family Law Act 1975* (Cth); Request a family report under s 62G of the *Family Law Act 1975* (Cth)”. Percentages may not total 100.0% due to rounding.

**Source:** Survey of Practices 2014

Interestingly, some judicial participants suggested in their open-ended responses that resource constraints were such that s 11F was less likely to be invoked:

If I have to order a child inclusive report or a full family report, I will order a full family report because of lack of resources to order both. I would only order a child inclusive report if I felt that it would avoid me having to order a further assessment—perhaps where there are older kids or where strong views but not where there are issues of conflict or violence. The resource issue is a big thing. (JO69, FCC, judge)

There are limited resources for s 11F child inclusive conferences. (JO40, FCC, judge)
seek criminal history checks of parents or other relevant persons (although almost one-third of the judicial sample disagreed with this latter proposition). Half of judicial participants reported that lawyers were more likely to enquire about the history of protective intervention orders against a parent or other relevant persons, although one-third of judicial participants mostly or strongly disagreed with this proposition. In relation to information available from statutory child protection services, more than one-third of the judicial participants (42%) considered that

Table 4.13: Lawyers’ views of the effects of the family violence reforms on their evidence-gathering practices, 2014

<table>
<thead>
<tr>
<th>As a result of the family violence reforms, I more frequently:</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Cannot say (%)</th>
<th>Total (%)</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make applications for evidence relating to child abuse or family violence pursuant to FLA s 69ZW or FCA s 202K</td>
<td>30.9</td>
<td>46.3</td>
<td>22.8</td>
<td>100.0</td>
<td>246</td>
</tr>
<tr>
<td>Apply for and inspect subpoena documents from statutory child protection services</td>
<td>52.6</td>
<td>33.2</td>
<td>14.2</td>
<td>100.0</td>
<td>247</td>
</tr>
<tr>
<td>Apply for and inspect subpoena documents from police</td>
<td>53.9</td>
<td>32.7</td>
<td>13.5</td>
<td>100.0</td>
<td>245</td>
</tr>
<tr>
<td>Make informal enquiries about history of contact with statutory child protection services</td>
<td>40.1</td>
<td>46.2</td>
<td>13.8</td>
<td>100.0</td>
<td>247</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked: “As a result of the family violence reforms, I more frequently: make applications for evidence relating to child abuse or family violence pursuant to FLA s 69ZW or FCA s 202K; apply for and inspect subpoena documents from statutory child protection services; apply for and inspect subpoena documents from police; make informal enquiries about history of contact with statutory child protection services”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Table 4.14: Judicial officers’/registrars’ perspectives on the effects of the family violence reforms on the evidence-gathering practices of lawyers, 2014

<table>
<thead>
<tr>
<th>As a result of the reforms, lawyers (inc. ICLs) are now more likely to:</th>
<th>Strongly agree (%)</th>
<th>Mostly agree (%)</th>
<th>Mostly disagree (%)</th>
<th>Strongly disagree (%)</th>
<th>Cannot say (%)</th>
<th>Total (%)</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apply for family report/single expert witness report</td>
<td>2.8</td>
<td>41.7</td>
<td>33.3</td>
<td>2.8</td>
<td>19.4</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Request assessments of the child/young person (e.g., medical assessment, psychological assessment, attachment assessment)</td>
<td>0.0</td>
<td>27.8</td>
<td>50.0</td>
<td>2.8</td>
<td>19.4</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Request assessments of parents (e.g., psychological assessment)</td>
<td>2.8</td>
<td>50.0</td>
<td>27.8</td>
<td>2.8</td>
<td>16.7</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Conduct criminal history checks of a parent, family member or other adult in contact with the child/young person</td>
<td>5.6</td>
<td>41.7</td>
<td>25.0</td>
<td>5.6</td>
<td>22.2</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Enquire about history of protective intervention orders against a parent or other person in contact with the child/young person (e.g., FVO, AVO, IVO, VRO)</td>
<td>5.6</td>
<td>44.4</td>
<td>25.0</td>
<td>8.3</td>
<td>16.7</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Make informal enquiries about history of contact with statutory child protection services</td>
<td>5.6</td>
<td>36.1</td>
<td>27.8</td>
<td>8.3</td>
<td>22.2</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Make formal applications for FLA s 69ZW (or FCA s 202K) information</td>
<td>5.7</td>
<td>34.3</td>
<td>34.3</td>
<td>11.4</td>
<td>14.3</td>
<td>100.0</td>
<td>35</td>
</tr>
</tbody>
</table>

Notes: Judicial officers and registrars were asked: “Please indicate the extent of your agreement or disagreement with the following propositions in relation to the practice of lawyers (including Independent Children’s Lawyers) in the period since the family violence reforms. As a result of the family violence reforms, legal practitioners, including Independent Children’s Lawyers are now more likely to: apply for family report/single expert witness report; request assessments of the child/young person (e.g., medical assessment, psychological assessment, attachment assessment); request assessments of parents (e.g., psychological assessment); conduct criminal history checks of a parent, family member or other adult in contact with the child/young person; enquire about history of protective intervention orders against a parent or other person in contact with the child/young person (e.g., FVO, AVO, IVO, VRO); make informal enquiries about history of contact with statutory child protection services; make formal applications for FLA s 69ZW (or FCA s 202K) information”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
lawyers were more likely to make informal enquiries about the history of contact with statutory child protection services, and while a similar level of agreement was reflected in the responses relating to applications for s 69ZW or s 202K information (40%), a greater proportion of these participating judicial officers and registrars reported that they mostly or strongly disagreed (46%) that lawyers were now more likely to make an application for s 69ZW or s 202K information.

Evidence-gathering practices of non-legal professionals that facilitate the assessment of risks or harm factors

Non-legal professionals were also asked about their evidence-gathering practices relevant to assessing risks or harm factors. In particular, this participant group was asked about the people with whom they liaised to gather relevant information. As Table 4.15 indicates, more than one-half (58%) of non-legal professionals stated that they almost always (31%) or often (28%) liaised with lawyers for the parents/carers, with a further 14% indicating that they sometimes did so. Almost all of non-legal professionals reported that they almost always (92%) or often (6%) liaised with parents/carers, and 86% indicated that they almost always (58%) or often (28%) liaised with ICLs. Most non-legal professionals almost always (72%) or often (19%) liaised with children/young people to gather relevant information, and over half (56%) of non-legal professionals indicated that they liaised with child protection authorities for this purpose (almost always, 25%; often, 31%).

Table 4.15: Information-gathering practices, non-legal professionals, 2014

<table>
<thead>
<tr>
<th>Persons with whom non-legal professionals liaise</th>
<th>Almost always (%)</th>
<th>Often (%)</th>
<th>Sometimes (%)</th>
<th>Rarely/never (%)</th>
<th>Not applicable (%)</th>
<th>Cannot say (%)</th>
<th>Total (%)</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers (for the parents/carers)</td>
<td>30.6</td>
<td>27.8</td>
<td>13.9</td>
<td>25.0</td>
<td>2.8</td>
<td>0.0</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Parents/carers</td>
<td>91.7</td>
<td>5.6</td>
<td>0.0</td>
<td>0.0</td>
<td>2.8</td>
<td>0.0</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>ICLs</td>
<td>58.3</td>
<td>27.8</td>
<td>5.6</td>
<td>8.3</td>
<td>0.0</td>
<td>0.0</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Children/young people</td>
<td>72.2</td>
<td>19.4</td>
<td>2.8</td>
<td>2.8</td>
<td>2.8</td>
<td>0.0</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Child protection authorities</td>
<td>25.0</td>
<td>30.6</td>
<td>27.8</td>
<td>11.1</td>
<td>5.6</td>
<td>0.0</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Other</td>
<td>18.5</td>
<td>14.8</td>
<td>11.1</td>
<td>14.8</td>
<td>33.3</td>
<td>7.4</td>
<td>100.0</td>
<td>27</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked: “With whom do you liaise to gather relevant information? Lawyers (for the parents/carers); parents/carers; independent children’s lawyer; children/young people; child protection authorities; other”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

More specifically, family consultants and single experts were asked to reflect on the evidence used in the preparation of their family reports and memoranda. The data in Table 4.16 (on page 77) show that the vast majority of this portion of the sample (95%) indicated that they almost always (92%) or often (3%) used court documentation filed by the parties in a case, including those documents filed by the ICL. A substantial proportion of the participating family consultants and single experts also indicated that they almost always (72%) or often (19%) used subpoenaed material (e.g., child protection files, medical records, criminal records) when undertaking their family reports or memoranda. A majority of these participants (83%) almost always (69%) or often (14%) used expert reports (e.g., medical assessments, psychological assessments and attachment assessments) when undertaking their family reports and memoranda. More than one-half (56%) of the sample indicated that they almost always (50%) or often (6%) used other sources of information to undertake family reports/memoranda.

Family consultants and single experts were also asked more generally whether they had changed their approach to making assessments in family law matters since the family violence reforms. Table 4.17 (on page 77) indicates that more than one-half of these participants (57%) responded in the negative, with nearly one-third (31%) answering in the affirmative.

Further qualitative insight was obtained on this issue from family consultants and single experts using open-ended responses. Responding professionals indicated that they now placed
greater focus on family violence and child abuse and its effects on children when undertaking their assessments (NL56) and that they had revised their screening and assessment practices, engaging in a more specific and detailed enquiry about a wider range of violence (e.g., NL21, NL23, NL129, NL395, NL484, NL485).

Table 4.16: Evidence-gathering practices for family reports and memoranda of family consultants and single experts, non-legal professionals, 2014

<table>
<thead>
<tr>
<th></th>
<th>Almost always (%)</th>
<th>Often (%)</th>
<th>Sometimes (%)</th>
<th>Rarely/never (%)</th>
<th>Not applicable (%)</th>
<th>Total (%)</th>
<th>Total (N)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court documentation filed by the parties in a case (including documents filed by the ICL)</td>
<td>91.7</td>
<td>2.8</td>
<td>0.0</td>
<td>2.8</td>
<td>2.8</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Subpoenaed material (e.g., child protection files, medical records, criminal records)</td>
<td>72.2</td>
<td>19.4</td>
<td>2.8</td>
<td>2.8</td>
<td>2.8</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Expert reports (e.g., medical assessments, psychological assessments and attachment assessments)</td>
<td>69.4</td>
<td>13.9</td>
<td>11.1</td>
<td>2.8</td>
<td>2.8</td>
<td>100.0</td>
<td>36</td>
</tr>
<tr>
<td>Other</td>
<td>50.0</td>
<td>5.6</td>
<td>11.1</td>
<td>27.8</td>
<td>5.6</td>
<td>100.0</td>
<td>18</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked: “What information do you use to undertake your family reports/memoranda? Court documentation filed by the parties in a case (including documents filed by the Independent Children’s Lawyer); subpoenaed material (e.g., child protection files, medical records, criminal records); expert reports (e.g., medical assessments, psychological assessments and attachment assessments); other”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Table 4.17: Whether family consultants and single experts have changed their approach to making assessments since the family violence reforms, non-legal professionals, 2014

<table>
<thead>
<tr>
<th></th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>11</td>
<td>31.4</td>
</tr>
<tr>
<td>No</td>
<td>20</td>
<td>57.1</td>
</tr>
<tr>
<td>Cannot say</td>
<td>4</td>
<td>11.4</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked: “Since the family violence reforms, have you changed your approach to making assessments in family law matters?” Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

4.2.6 Professionals’ assessments of their capacity to identify and assess family violence and abuse

Lawyers and non-legal professionals were asked to rate their own capacities to screen for the presence of family violence and abuse, and all participants in each professional category were asked to rate their own capacity to assess allegations of family violence and abuse. Table 4.18 (on page 78) indicates that more than three-quarters of the aggregate sample answered in the affirmative (85%) and rated their capacity as very high (42%) or high (43%) in this regard. Non-legal professionals were the category most confident in their capacity to screen for and assess allegations of family violence and abuse (95%), with more than one-half of the sample rating their capacities to do so as very high (58%) and more than one-third rating their capacities in this regard as high (37%). Approximately three-quarters of lawyers (78%) rated their capacity to screen for and assess allegations as very high (31%) or high (48%). Judicial officers’ and registrars’ responses reflected lower self-assessments, with only 12% rating their ability to assess
allegations as very high and 56% rating their ability to do so as high. Almost one-quarter of judicial participants rated their ability as moderate.

Comparative data were available with respect to lawyers’ self-assessments, with Table 4.18 indicating that a substantially higher proportion of lawyers in the 2014 sample compared to the FLS 2008 sample reported that their capacity to screen for the presence of family violence and abuse was very high (31% cf. 15%). Correspondingly, a lower proportion of 2014 lawyers than the 2008 sample rated themselves as having a high (48% cf. 56%) or moderate capacity (19% cf. 26%).

Table 4.18: Professionals’ assessments of their own capacity to screen for or assess the presence of family violence and abuse, 2008 and 2014

<table>
<thead>
<tr>
<th>Rating</th>
<th>Judicial officers 2014 (%)</th>
<th>Non-legal 2014 (%)</th>
<th>Lawyers 2014 (%)</th>
<th>Lawyers 2008 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very high</td>
<td>11.8</td>
<td>58.0</td>
<td>30.9</td>
<td>15.4</td>
</tr>
<tr>
<td>High</td>
<td>55.9</td>
<td>37.0</td>
<td>47.5</td>
<td>55.5</td>
</tr>
<tr>
<td>Moderate</td>
<td>23.5</td>
<td>4.6</td>
<td>18.5</td>
<td>26.3</td>
</tr>
<tr>
<td>Low/Very low</td>
<td>0.0</td>
<td>0.0</td>
<td>1.2</td>
<td>1.6</td>
</tr>
<tr>
<td>Can’t say</td>
<td>8.8</td>
<td>0.4</td>
<td>1.9</td>
<td>1.3</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Judicial officers and registrars were asked in 2014: “I would rate my capacity to assess allegations of family violence and abuse as: [Please choose one of the following answers] Very high; High; Moderate; Low; Very low; Cannot say.” Lawyers were asked in 2008 and 2014: “I would rate my capacity to screen for the presence of family violence and abuse as: [Please choose one of the following answers] Very high; High; Moderate; Low; Very low; Cannot say.” Non-legal professionals were asked in 2014: “I would rate my capacity to screen for the presence of family violence and abuse as: [Please choose one of the following answers] Very high; High; Moderate; Low; Very low; Cannot say.” Judicial officers/registrars: n = 34; Non-legal professionals: n = 238; Lawyers, 2014: n = 259; Lawyers, 2008: n = 319. Percentages may not total 100.0% due to rounding.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

More specific comparative data were available from the 2009 Survey of FRS Staff component of the Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009). Although the variations between the 2009 and 2014 self-assessments were less marked, higher proportions of the non-legal professional sample provided positive ratings of their capacities to screen for various risks and harm factors. Table 4.19 demonstrates that in the post-family violence reform context of 2014, 96% of non-legal professionals rated their capacity to identify child abuse or neglect as excellent (54%) or good (42%), compared to 89% of 2008 participants rating their capacity as excellent (47%) or good (42%).

Similarly, Table 4.19 shows that 98% of non-legal professionals in the 2014 sample rated their capacity to identify family violence as excellent (62%) or good (36%), compared to 91% of 2009 participants rating their capacity excellent (57%) or good (34%) in this regard.

Table 4.19: Proportion of non-legal professionals who assessed their own capacity to identify specific issues as excellent or good, 2009 and 2014

<table>
<thead>
<tr>
<th>Issue</th>
<th>Survey of FRS Staff 2009 (%)</th>
<th>Survey of Practices 2014 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child abuse and/or neglect</td>
<td>89.0</td>
<td>96.2</td>
</tr>
<tr>
<td>Family violence</td>
<td>91.3</td>
<td>98.3</td>
</tr>
<tr>
<td>Clients who are suicidal/risk of self-harm</td>
<td>85.4</td>
<td>93.1</td>
</tr>
<tr>
<td>Clients who may be at risk of harming others</td>
<td>80.9</td>
<td>87.1</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2014: “Please rate your ability to do the following in your work: Identify issues of child abuse and/or neglect”; “Identify issues of family violence”; “Identify circumstances where clients/callers may be suicidal or at immediate risk of self-harm”; and “Identify circumstances where clients may be at risk of harming others”. Non-legal professionals were asked in 2009: “Please rate your ability to do the following in your work for this service: Identify issues of child abuse and/or neglect”; “Identify issues of family violence”; “Identify circumstances where clients/callers may be suicidal or at immediate risk of self-harm”; and “Identify circumstances where clients may be at risk of harming others”. Percentages do not total 100% as not all response categories are presented and multiple responses could be chosen. Non-legal professionals, 2009: n = 853–855; Non-legal professionals, 2014: n 230–234.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014
Although a marginally smaller proportion of the 2014 non-legal professional sample assessed their capacity to identify circumstances where their clients or callers may be suicidal or at immediate risk of self harm as excellent (42%) compared to the 2009 non-legal professional cohort (46%), 52% of non-legal professionals in the 2014 sample rated their capacity as good as compared to 40% of 2009 participants.

Once again, a marginally smaller proportion of the 2014 non-legal professional sample assessed their capacity to identify circumstances where their clients may be at risk of harming others as excellent (35%) compared to the 2009 non-legal professional cohort (38%). In addition, 52% of non-legal professionals in the 2014 sample rated their capacity as good, compared to 43% of 2009 participants.

These data suggest a general trend of higher self-assessments by legal and non-legal professionals following the 2012 family violence reforms.

4.3 The effects of the family violence reforms on the identification and assessment of family violence: Qualitative insights

Judicial officers, registrars and lawyers were asked for their views in open-ended survey questions about any changes to the ways in which family law professionals screen/identify, assess and respond to family violence as a result of the family violence reforms. In this section, the survey responses relevant to the screening/identification and assessment of family violence will be considered, with the views about responses to family violence examined in Chapter 6.

4.3.1 Judicial officers/registrars

A number of judicial participants reflected positively on the effects of these family violence reforms in encouraging greater awareness of family violence among both lawyers and the community more generally, which in turn give rise to improvements in the identification and assessment of family violence in the family law context:

Screening and assessment processes have improved along with awareness in general terms. (JO29, FCoWA, magistrate)

The reforms have meant a greater awareness of family violence issues as legal issues and that has meant more evidence of that violence (in its expanded definition form) has been adduced. (JO44, FCC, judge)

There has been an increase in the initial reporting of family violence concerns by lawyers and parties—previously this was sometimes “glossed over” perhaps with a view to minimising areas of dispute … What the amendments have done is increase the reporting of violence in the initial applications/affidavits (by the lawyers drafting material or by the litigants themselves) resulting in those persons (family consultants, ICLs, etc.) being aware of this issue immediately instead of becoming aware of it in the course of their involvement with the family. (JO63, FCoA, registrar)

Some judicial participants observed that while reforms assisted in improving community awareness of the behaviour that might constitute family violence, which in turn assisted parents to disclose family violence, the practices of experienced family lawyers, family consultants and single experts, were identified by these participants as being less influenced by the reforms:

I think that specialists in the field (accredited specialists and experienced ICLs and family report writers and experts) were already identifying family violence and child safety concerns. The reforms have assisted mostly in assisting parties to understand the scope of what is meant by family violence, which in turn assists the professionals in getting the information from them, that is, in getting the disclosures. (JO69, FCC, judge)

Other judicial participants (e.g., JO39) were more mixed in their reflections, identifying the family violence reforms as a positive change, but also emphasising broader issues, such as
continued under-reporting and lack of resources, as factors influencing the effective screening for and assessment of family violence:

The same lack of resource pressures apply to family law professionals now as before. (JO49, FCC, judge)

Screening and assessment processes have improved along with awareness in general terms, however treatment programs and contact supervision services are grossly inadequate to meet the demand. There is a sense that we know that family violence is a damaging disease, with potentially lifetime implications for children. We can diagnose the problem, we with can give a prognosis but we have little by way of treatment/cure/protection to offer people. Police and child protection authorities have insufficient resources to respond and there is only “asprin and band aids” in the Family Court medicine kit. (JO29, FCoWA, magistrate)

Increasing reporting of risks and identification at an earlier date [is] clearly useful but with limited ICL resources, unlikely to have welfare intervention; courts left to make difficult determinations with limited resources; matters coming to the courts more complex with increasing risk factors. (JO39, FCoA, registrar)

The effects of the family violence reforms upon responses to family violence referred to in the statements quoted directly above will be considered in detail in Chapter 6.

Other judicial officers and registrars reported that they observed no change in practice with respect to the screening/identification and assessment of family violence as a result of the family violence reforms:

There does not seem to be any change in the practices of lawyers, courts and family consultants from that which existed before the reforms; apart from a requirement for assurances about violence when making consent parenting orders, which seem of limited value in assessing extant risks to children and acting upon any perceived risk. (JO40, FCC, judge)

The amendments largely codify what was the practice of competent family law practitioners, and for the competent practitioner have made little real difference, other than as to how case management is packaged. (JO52, FCoWA, judge)

Prior to the amendments most ICLs, judges and court staff prioritised violence and abuse over all else and were conscious of it and addressed it appropriately. The majority of lawyers on the other hand were and remain poor at addressing, advising or representing clients around these issues and the amendments have not significantly changed this. Mothers are, by and large, more insightful and responsive (and less self-righteously focused) than fathers and others. (JO54, FCC, judge)

Good lawyers including ICLs have always managed those difficult cases well and poor lawyers have not. I do not perceive a difference to the approach pre- and post-amendment in that regard. (JO70, FCC, judge)

In some instances, the responses of these participants (e.g., JO46) suggested that they were of the view that no change was required:

The family consultants, ICLs and other persons who normally work with the families and children (as opposed to act for them) have always taken family violence into account and made recommendations that consider the protection of children, in particular, from violence as being essential. The family violence amendments have not impacted on this at all—it was occurring. (JO63, FCoA, registrar)

4.3.2 Lawyers

Consistent with the reports of judicial participants, some lawyers reflected positively on the effects of the family violence reforms on screening and assessment practices:

[As a result of the family violence reforms, there is now] increased identification of family violence. (L61, lawyer)
[As a result of the family violence reforms, there is now] greater assessment of whether the behaviour alleged does constitute family violence. (L377, lawyer)

Lawyers are using the broader definition of family violence, which takes into account a range of controlling and coercive behaviours. Legal professionals are becoming more aware of how family violence can affect children. I believe lawyers are more likely to ask questions about family violence and explore its implications. (L498, lawyer)

Screening has always been dependent on one’s skill to elicit relevant information from a client in a safe, respectful manner, given that it may be that you are the first person that the client has actually spoken to about the family violence. My feeling is that experienced family lawyers screen around the expanded definitions of family violence very carefully. (L104, lawyer)

As indicated in the penultimate response quoted above, the amended definition of family violence in FLA s 4AB was specifically nominated by some lawyers as improving screening and assessment practices. Greater awareness of family violence more generally was also linked to improvements in screening and assessment practices as a result of the family violence reforms:

[As a result of the reforms, there is now] higher awareness of FV and generally better and more consistent screening. Generally more consistently raised with courts. Definitely has reduced tendency of some lawyers to discourage clients from raising FV issues for fear of being seen by the court as not supporting a relationship with the other parent. Courts are much more FV aware and taking FV more seriously. It is changing decisions both at interim and final stages. (L470, lawyer)

Also consistent with the reflections of judicial participants, some lawyers observed that the practices of experienced and competent practitioners were largely unchanged by the family violence reforms:

Little has changed for those who are experienced and competent. Perhaps there is greater focus for those who are inexperienced (and this specifically includes some judicial officers). (L138, lawyer)

Some private practitioners are able to access more training and anecdotally I hear that some are incorporating formal screening tools—but the really good practitioners have not been impacted by the reforms—they have always dug for family violence, tried to act or frame orders/agreements protectively and prioritised safety over relationships. (L347, lawyer)

The majority of cases in which family violence was a relevant issue were dealt with appropriately prior to the current amendments. There has been limited appreciable benefit since the amendments were enacted, although greater time is now spent on the question of family violence. (L55, lawyer)

No change. [The] reforms stated the obvious. (L383, lawyer)

Other lawyers who observed there was no change or limited change in practice with respect to the screening/identification and assessment of family violence as a result of the family violence reforms reflected negatively on this lack of change and the lack of identification and proper assessment of family violence issues:

It is not possible by legislation to fix the problem of judicial officers who believe that violence is rare or at the best will stop now that the relationship is over. I have found that there are very few judicial officers who truly believe what the statistics tell us to be the situation. (L321, lawyer)

Legal practitioners [are] using the changes to justify bad behaviour by abusive clients. (L79, lawyer)

Lawyers and judicial officers and registrars simply don’t understand family violence, especially where there is no evident physical harm. Most other non-legal professionals have much better understanding but once a person files in the court they are very marginalised in their influence on the court’s understanding. (L293, lawyer)
In contrast, some lawyers argued that the family violence reforms had encouraged false, exaggerated or irrelevant allegations that in turn posed challenges for screening and assessment of family violence in these circumstances. These participant comments will be considered in the broader discussion of observations of an evidentiary nature in Chapter 8.

More generally, some lawyers identified “inconsistency in the assessment of risk” (L311) and a lack of knowledge with respect to screening and assessing family violence issues, and more specifically, an absence among family law professionals of a nuanced appreciation of the nature and effects of family violence that in turn influenced screening and assessment practices. For example:

I think some practitioners would screen/identify, and assess family violence issues more than others. There continues to be a lack of knowledge among many solicitors on how to screen for these issues. (L388, lawyer)

There may be increased identification of family violence but there is a tendency to see “all violence” as the same and not to be able to properly screen for coercive and controlling violence, take into account issues about power and control and a tendency to try to mutualise violence between parties … There is also a tendency to compartmentalise abuse issues and to not see the crossover and inter-relationship between violence against women and violence against children. If the case involves direct abuse of children, then there is a tendency to forget perhaps about the violence against the mother and consider all these aspects of the family dynamics. (L61, lawyer)

Participating lawyers (e.g., L201, L422, L38, L393) also recommended further training for family law professionals, including judicial officers:

[There is a] lack of awareness of the changes and what they mean. Training [is] required to increase awareness. Training in screening techniques for lawyers and other professionals would be useful. (L314, lawyer)

I think there needs to be more education as to the impact of family violence on children both as primary and secondary victims as well as a far greater understanding as to why women don’t leave abusive relationships. Further, there also needs to be greater understanding of the non-physical components of family violence, as I think these are poorly understood. Economic abuse in particular is poorly understood. (L174, lawyer)

The lawyers need more training to understand the intention of the legislation. I believe that if they do not understand the legislation, they will not understand any of the changes. (L366, lawyer)

Not all judicial officers have had sufficient experience or training in children’s matters. Judicial officers still get appointed on connections rather than being the best person for the job, which is very frustrating and disappointing for those people who practice in this jurisdiction. (L357, lawyer)

Most open-ended responses from lawyers on this survey question, however, focused on changes in the ways in which family law professionals respond to family violence issues as a result of the family violence reforms. As noted above, these views are considered in detail in Chapter 6.

4.4 Summary

This chapter has examined findings from the Survey of Practices relevant to the identification, screening and assessment of family violence, child abuse and child safety concerns. This is an area where differences in views were apparent between professional groups when reflecting on some aspects of the family law system’s identification and assessment capacities.

The data in this chapter demonstrate a divergence between the reflections of judicial participants and other participant groups on the capacity of the legal system, lawyers and FRCs to screen adequately for family violence and child abuse since the introduction of the family violence reforms. While 65% of judicial participants considered that the legal system adequately screened for family violence and child abuse in the post-reform context, markedly lower levels of agreement were reported by lawyers (46%) and non-legal professionals (38%). A similar
response pattern emerged in relation to the assessments of lawyers and FRCs, with lawyers reflecting most positively on the capacity of their own profession to screen adequately for family violence and child abuse, and non-legal professionals reflecting most positively on the capacity of FRCs to screen adequately for family violence and child abuse. Of note, comparative data available from the Institute’s Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009) indicate a slight increase in positive reflections on the legal system’s capacity in this regard. This finding suggests an increase in inter-professional trust. A lack of trust has previously been identified as having a negative influence on effective inter-professional practice in the family law context (see, e.g., Kaspiew et al., 2012; Moloney et al., 2011; and Rhoades, Astor, Sanson, & O’Connor, 2008).

The discussion in this chapter also analysed more specific survey questions that canvassed any improvements in the capacities of judicial officers/registrars, ICLs, non-ICL lawyers, family consultants/single experts and FDR practitioners to screen for/identify and assess family violence, child abuse and child safety concerns as a result of the family violence reforms. The analysis of these data indicated that participating lawyers were the group that consistently responded most positively in relation to improvements in the capacities of each category of professional, with judicial and non-legal participants generally endorsing improvements in the capacities of various professionals where these participants were able to express views on the relevant propositions. Variations in these response patterns emerged, however, with respect to improvements in the screening and assessment capacities of non-legal professionals, with non-legal participants reporting the highest proportion of affirmative responses when reflecting on improvements in the capacity of family consultants and single experts to assess family violence, child abuse and child safety concerns, and in the capacity of FDR practitioners to screen for and assess family violence, child abuse and child safety concerns.

The analysis in this chapter also set out participants’ observations of changes arising since the inception of the family violence reforms to professional screening and assessment practices. In relation to changes with respect to court practices, judicial and legal participants were in strong agreement that courts more actively enquired about the existence of child abuse and family violence since the family violence reforms, while non-legal professionals were less positive on this front. However, when participants reflected on their own practice approaches, they were more likely to indicate that these practices had not changed since the introduction of the family violence reforms. As suggested by some open-ended survey responses, it may be that, faced with resource limitations, judicial decision makers are, for example, refraining from seeking a memorandum of advice from family consultants pursuant to FLA s 11F at an early or interim hearing stage, in order to ensure that sufficient resources are available for a s 62G Family Report. Early or interim decisions made in this context therefore would proceed in the absence of information that may facilitate the risk assessment process (Altobelli, 2014).

Substantial insight into current screening and assessment practices emerged in this chapter, with the answers to relevant survey questions suggesting that a greater proportion of non-legal professionals than lawyers regularly asked their clients directly about family violence, risk of family violence, child abuse or child safety concerns. Discussion of the data relating to screening and assessment tools also indicates that while professionals generally used a broad range of screening and assessment tools, DOORS was not widely used at the time of the survey. The qualitative data provided more detailed insight into professionals’ reflections on their screening measures, with open-ended responses emphasising the utility of the client interview process and the significance of professional skill, knowledge and experience in screening for risks and harm factors.

Evidence-gathering practices aimed at facilitating the assessment of these risks and harm factors were also examined, with judicial participants reflecting less negatively than lawyers on the utility and effectiveness of the Form 4 Notice, whereas the open-ended responses of most lawyers on the Form 4 Notice, as it stood at the time of the survey, were negative. Data on the evidence-gathering practices of lawyers after the family violence reforms indicate increases in applications for subpoena documents from child protection services and police for a majority of participating lawyers, with substantial proportions of judicial participants also providing affirmative views with respect to the effects of the reforms on a broad range of evidence-gathering tasks undertaken by lawyers.
Professionals’ self-assessments of their own capacity to identify and assess family violence and abuse showed that a majority of lawyers and non-legal professionals were confident in their capacity to screen for family violence, with a substantially higher proportion of positive responses from lawyers participating in the Survey of Practices than the lawyers participating in the 2008 Family Lawyers Survey for the Evaluation of the 2006 Family Law Reforms. A majority of judicial officers and registrars also reflected positively on their own capacity to assess allegations of family violence and abuse.

More generally, participants’ qualitative, open-ended survey responses about any changes as a result of the family violence reforms to the ways in which family law professionals identify and assess family violence, also indicated that while some judicial and legal participants observed change, other participants in these categories were mixed in their view on this question or reported that they had observed no change to the screening and assessment of family violence. The perspectives of both judicial officers and lawyers on this question also provided particular insight into impediments emerging in the screening and assessment process, with some participants reflecting negatively on the lack of improvement in the identification and assessment of family violence, which was exacerbated by a lack of court and child protection resources. The discussion of any changes in the ways in which family law professionals respond to family violence as a result of the family violence reforms will take place in Chapter 6.
This chapter examines whether or not the 2012 family violence reforms have had any effects on patterns in service use, on the basis of the experiences and practices of professionals. Unlike the 2006 amendments, which explicitly sought to encourage the use of family dispute resolution services through the establishment of FRCs and the introduction of FLA s 60I (see Box 3, and Box 4 on page 87), change in service use was not a direct aim of the 2012 family violence reforms. However, shifts in this regard may potentially be a result of the changes, given the amendments were aimed at supporting better identification of family violence and child abuse. The fulfilment (in whole or part) of this aim could potentially change patterns in service use, depending on two main, interrelated issues.

The first issue is the extent to which better identification and screening leads to changes in the advice being given to parents about their service use options, and the decisions made consequently (see Chapter 7). The second issue is the effects of the new definitions of family violence and child abuse and the prioritisation of the protection-from-harm principle in advice-giving practice and court decision making. Each of these factors has the potential to change the dynamics of service use, depending on the advice received by each party in a matter and the decisions they make as a result of receiving this advice. Other relevant factors that may influence such decisions—including the availability of resources to pursue a particular outcome or oppose the other party's desired outcome—may be influenced by a range of factors outside the scope of this research, including the availability of funds to obtain legal advice and pursue court action.

An important aspect of the practice environment considered in this chapter is the extent to which matters involving family violence and child safety concerns are dealt with in FDR, even though such matters may be exempted from this requirement under the legislation (FLA s 60I). The findings of the Longitudinal Study of Separated Families (LSSF; Qu et al., 2014) and Survey of Recently Separated Parents (SRSP) 2012 (De Maio et al., 2013) have established that FDR is not uncommonly applied in these circumstances. In the SRSP, for example, FDR was reported as the main pathway used for parenting arrangements by 15% of parents who reported

**Box 3: Family Law Act 1975 (Cth)**

s 60I

(7) Subject to subsection (9), a court exercising jurisdiction under this Act must not hear an application for a Part VII order in relation to a child unless the applicant files in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection (8). The certificate must be filed with the application for the Part VII order.

**Certificate by family dispute resolution practitioner**

(8) A family dispute resolution practitioner may give one of these kinds of certificates to a person:

(a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue

Box 3 continues on page 86
Box 3 continued from page 85

or issues that the order would deal with, but the person’s failure to do so was due to the refusal, or the failure, of the other party or parties to the proceedings to attend;

(a) a certificate to the effect that the person did not attend family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, because the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to conduct the proposed family dispute resolution;

(b) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, and that all attendees made a genuine effort to resolve the issue or issues;

(c) a certificate to the effect that the person attended family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the person, the other party or another of the parties did not make a genuine effort to resolve the issue or issues;

(d) a certificate to the effect that the person began attending family dispute resolution with the practitioner and the other party or parties to the proceedings in relation to the issue or issues that the order would deal with, but that the practitioner considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the family dispute resolution.

Note: When an applicant files one of these certificates under subsection (7), the court may take the kind of certificate into account in considering whether to make an order referring to parties to family dispute resolution (see section 13C) and in determining whether to award costs against a party (see section 117).

Exception

(9) Subsection (7) does not apply to an application for a Part VII order in relation to a child if:

(a) the applicant is applying for the order:
   (i) to be made with the consent of all the parties to the proceedings; or
   (ii) in response to an application that another party to the proceedings has made for a Part VII order; or

(b) the court is satisfied that there are reasonable grounds to believe that:
   (i) there has been abuse of the child by one of the parties to the proceedings; or
   (ii) there would be a risk of abuse of the child if there were to be a delay in applying for the order; or
   (iii) there has been family violence by one of the parties to the proceedings; or
   (iv) there is a risk of family violence by one of the parties to the proceedings; or

(c) all the following conditions are satisfied:
   (i) the application is made in relation to a particular issue;
   (ii) a Part VII order has been made in relation to that issue within the period of 12 months before the application is made;
   (iii) the application is made in relation to a contravention of the order by a person;
   (iv) the court is satisfied that there are reasonable grounds to believe that the person has behaved in a way that shows a serious disregard for his or her obligations under the order; or

(d) the application is made in circumstances of urgency; or

(e) one or more of the parties to the proceedings is unable to participate effectively in family dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason); or

(f) other circumstances specified in the regulations are satisfied.
physical hurt and 10% who reported experiencing other family violence (De Maio et al., 2013, section 4.2.3). Notwithstanding the exceptions set out in s 60I, these findings establish that there are a proportion of such matters in which parents agree to undertake FDR and professionals determine that it is appropriate to provide it.

The discussions in Chapter 2 of this report indicate that the nature of the advice professionals provide to parents has shifted, with a greater emphasis on protecting children from harm than before the 2012 family violence reforms. As Chapter 4 also indicates, there is increased emphasis on screening and assessment, though concerns about the efficacy of these processes are held by substantial proportions of professionals.

This chapter sets out the extent to which the evidence from the Survey of Practices suggests that changes in service use patterns have been a by-product of the 2012 family violence reforms. The first section discusses professionals’ perceptions of the proportion of cases in their caseloads involving complex issues such as family violence, child abuse and mental health or substance abuse problems. The second section examines the advice that is given by professionals about using FDR. Data that shed light on practices concerning the identification of matters that are not suitable for FDR are discussed in the third section. The fourth section considers the extent to which professionals report providing FDR in matters involving family violence and child abuse. The fifth section examines professionals’ accounts of their practice in referring clients to other services. Finally, the last section presents the views of professionals on the issues that motivate parents to seek changes in parenting arrangements, including the extent to which the 2012 family violence reforms are associated with a desire to revise existing arrangements on the basis of concerns about family violence and safety concerns.

The findings in this chapter confirm that matters involving complex issues, including family violence and child abuse, continue to make up a substantial proportion of the caseload.
of lawyers and non-legal professionals and are regularly dealt with in FDR, though this is more common in family violence than child abuse matters. Certificates are issued for a not insubstantial number of clients who are assessed for FDR, but some matters of this kind are still resolved in FDR. Professional practices in making referrals have shifted in a direction consistent with encouraging parents to use both legal and non-legal mechanisms for addressing parenting disputes and the issues that occur along with them.

## 5.1 Cases involving complex issues

This section discusses the nature of client circumstances as reported by non-legal professionals. The analysis first focuses on estimates of the proportion of clients characterised by high levels of conflict and complex needs, comparing these with data from the Survey of FRS Staff (FRSP Services) 2009 available in each area. The findings suggest that in each time frame, substantial proportions of the service caseloads were made up of these clients. The discussion then presents 2014 findings on estimates of the proportion of clients who have concerns about family violence and child abuse and neglect.

Figure 5.1 presents non-legal professionals’ responses regarding the proportion of separating or separated parents who come to the service experiencing high levels of conflict, comparing 2009 and 2014 findings. The distribution of responses across the options is largely similar overall, apart from the proportions indicating “about a half” of their clients experienced high levels of conflict. This option was nominated by 26% of participants in 2009 compared with 18% participants in 2014. Slightly more participants indicated in 2014 that about three-quarters or more of their clients were characterised by high conflict compared to 2009 (56% cf. 52% respectively), and the proportion of participants choosing the “all” option was three percentage points higher in 2014 than 2009 (9% cf. 6%, data not shown in Figure 5.1). These response patterns suggest similar views between the time frames, with a slightly higher tendency to nominate larger proportions of clients as being in high conflict in 2014, though the differences in sample size and composition between the two datasets may also account for some of these effects.

![Figure 5.1: Reasons for family law clients’ use of support services in children’s matters, as reported by non-legal professionals, 2009 and 2014](image)

### Notes
- Non-legal professionals were asked in 2009 and 2014: “In your view, what is the proportion of separating or separated parents who came to this/your service in relation to children’s matters [for each of the following reasons]: who are experiencing high levels of conflict (estimate only); who have complex needs (estimate only); for whom family dispute resolution is inappropriate due to child abuse or neglect (estimate only); for whom family dispute resolution is inappropriate due to family violence (estimate only).” 2009: n = 851–855; 2014: n = 233–235. Percentages may not total 100.0% due to rounding.

### Sources
- Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014
Consistent with the responses in relation to high conflict, the responses regarding clients with complex needs were largely similar between the two time periods (Figure 5.1). About half of the non-legal professionals reported that three-quarters or more of their clients had complex needs in both 2009 and 2014 (50% and 49% respectively). Again, the differences noted between the two time frames are minor and may be partly attributable to the different sample sizes.

Figure 5.1 also shows the estimates of the proportion of cases that are unsuitable for family dispute resolution due to the presence of concerns about family violence and child abuse and neglect. The findings indicate that these issues are relevant in a substantial proportion of cases, though family violence is more frequently identified than child abuse. In relation to each issue, the highest proportion of professionals nominated response options of up to about a quarter, though this was substantially higher for child abuse and neglect (70% in both 2009 and 2014) than for family violence (65% in 2009 and 59% in 2014). Similar patterns are evident in relation to the distributions of the other higher proportion estimates. In 2014, 18% of non-legal professionals identified family violence and 13% identified child abuse or neglect as issues present in about three-quarters or more of their cases, both substantially higher than in 2009 (8% and 4% respectively). One in five non-legal professionals reported that child abuse or neglect was an issue in half or more of their cases in 2014, compared to 9% in 2009, and almost one-third (32%) reported that family violence was an issue in 2014, compared to 19% in 2009. A corresponding decrease in the number of "cannot say" responses in relation to these two issues was also observed in 2014 compared to 2009 (from 21% and 17% respectively in 2009 to 10% for both issues in 2014). Taken as a whole, these data suggest an increasing professional awareness between 2009 and 2014 of the presence of family violence and child abuse or neglect in children’s cases.

5.2 Advice from legal and non-legal professionals on using FDR

Two questions examined changes in advice-giving practice about dispute resolution among lawyers and non-legal professionals. The first was general in nature and sought agreement or disagreement with the proposition that: “Because of the family violence reforms, I have changed the advice I give to clients about using FDR services”. The second was more specific and concerned how often in the past 18 months the participant had explained to clients involved in parenting disputes that “mediation and similar forms of family dispute resolution should generally be considered only when levels of conflict are relatively low”.

Table 5.1 shows that in relation to the more general proposition, both lawyers and non-legal professionals were a little more likely to provide negative than positive responses, with 54% of lawyers and 48% of non-legal professionals saying they had not changed their advice to clients. Similar proportions in each professional group said they had changed their advice: 39% of lawyers and 36% of non-legal professionals. Small proportions in each group made “cannot say” responses and one in ten non-legal professionals indicated the question was not applicable, suggesting they were in a role where providing such advice was not part of their responsibility.

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Yes</td>
<td>100</td>
<td>38.6</td>
<td>83</td>
</tr>
<tr>
<td>No</td>
<td>141</td>
<td>54.4</td>
<td>111</td>
</tr>
<tr>
<td>Not applicable</td>
<td>–</td>
<td>–</td>
<td>24</td>
</tr>
<tr>
<td>Cannot say</td>
<td>18</td>
<td>7.0</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>259</td>
<td>100.0</td>
<td>233</td>
</tr>
</tbody>
</table>

Notes: Lawyers and non-legal professionals were asked: “Because of the family violence reforms, I have changed the advice I give to clients about: Using FDR services”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
These findings raise two issues. First, they indicate variations in practice within each of the professional groups, with substantial minorities in each group indicating they had changed their advice. Second, the overall similarity between lawyer and non-legal response patterns suggest that change or lack of change in their practice in this context is not influenced strongly by disciplinary orientation. Rather, as with other areas of practice examined in this report, the responses are likely to be indicative to some extent of practitioner orientation prior to the 2012 family violence reforms.

In considering the responses of lawyers, in particular, it is likely that a number of factors may influence advice-giving practice, in addition to the consequences of better screening and identification of matters involving family violence. Other elements of legislation may also be relevant, including the expanded definition of family violence leading to an increase in the number of matters that can confidently be assessed as coming within the exceptions to FLA s 60I. Conversely, however, even in these circumstances, some lawyers may consider a referral to FDR a viable option for some clients because of the greater specificity in s 60CC about the weight to be accorded protection from harm and the obligations on FDR practitioners to prioritise protection from harm in their discussions with clients. This issue may also, however, be influential in lawyers not discouraging the use of a court pathway for clients affected by family violence.

Comparisons of lawyer responses in 2008 to a similar question about whether lawyers had changed the advice they gave to clients regarding “using FDR services” indicate that the 2006 changes had a much greater influence in this regard than the 2012 family violence reforms. In 2008, 85% of lawyers said they had changed their advice, compared with 39% in 2014, as reported above (data not shown). This difference is to be expected, in light of the focus in the 2006 reforms on encouraging the use of family dispute resolution, including through the introduction of s 60I.

Further insight into the nuances of advice-giving practice in relation to the use of FDR is provided by lawyers and non-legal professionals indicating how often in the past 18 months they had explained to clients that mediation should be “considered only when levels of conflict are relatively low” (Table 5.2). There are marked disciplinary differences in the response patterns to this question. Non-legal professionals were much more likely than lawyers to indicate that they did not give such advice: 32% giving this advice rarely or never, compared with 16% of lawyers. Consistent with this, lawyers were much more likely than non-legal professionals to indicate giving such advice almost always or often.

| Table 5.2: Frequency of lawyers and non-legal professionals explaining to clients that FDR should only be considered when conflict levels are low, 2008 and 2014 |
|---------------------------------|-----------------|-----------------|-----------------|
|                                | Lawyers         | Non-legal       |                  |
|                                | No. | %   | No. | %   | No. | %   |
| Almost always                  | 85  | 32.8 | 45  | 14.1 | 48  | 20.4 |
| Often                          | 74  | 28.6 | 79  | 24.8 | 37  | 15.7 |
| Sometimes                      | 53  | 20.5 | 94  | 29.5 | 56  | 23.8 |
| Rarely/never                   | 41  | 15.8 | 92  | 28.8 | 76  | 32.3 |
| Not applicable                 | –   | –   | –   | –   | 12  | 5.1  |
| Cannot say                     | 6   | 2.3 | 9   | 2.8 | 6   | 2.6  |
| Total                          | 259 | 100.0 | 319 | 100.0 | 235 | 100.0 |

Notes: Lawyers and non-legal professionals were asked in 2014: “Over the past 18 months, how often (if at all) have you explained to clients involved in parenting disputes that: Mediation and similar forms of family dispute resolution should generally be considered only when levels of conflict are relatively low”. Lawyers were asked in 2008: “Over the past 12 months, how often (if at all) have you explained to clients involved in parenting disputes that: Mediation and similar forms of family dispute resolution should generally be considered only when levels of conflict are relatively low”. Percentages may not total 100.0% due to rounding.

Sources: Survey of Practices 2014; Family Lawyers Survey 2008
Table 5.2 also compares lawyers’ responses in 2008 and 2014. The reference time frames in the questions were slightly different in each survey. The 2008 survey referred to the preceding 12 months and the 2014 survey referred to the preceding 18 months, as that was the time frame since the 2012 family violence reforms had become operative. The response patterns in the two surveys suggest an increased tendency to provide advice along these lines in the more recent time frame. More than two times as many 2014 legal participants indicated giving this advice almost always, compared with 2008 (33% cf. 14%). A similar trend was evident in relation to the “rarely or never” response, with half as many 2014 participants nominating this compared with 2008.

5.3 Identification of matters not suitable for FDR

This section focuses on the operation of FDR. It begins by setting out findings on particular professionals’ views on the extent to which the exceptions to the requirement to use FDR are understood in various parts of the system, including by clients. The analysis then shifts to a consideration of practice concerning the issuing of certificates under s 60I of the FLA.

5.3.1 Understanding of the exceptions to FLA s 60I

The level of understanding that various stakeholders bring to bear on the question of when matters may be exempt from FDR is an important element in understanding the underlying dynamics when FDR is applied in circumstances where concerns about family violence and child safety are relevant. The 2014 survey sought the views of lawyers and non-legal professionals about the extent to which the following groups understood the exceptions to s 60I: parents (before they see a lawyer), FDR practitioners, lawyers, registrars and judicial officers (lawyers only) and other family relationship service practitioners (non-legal professionals only). The aggregate findings indicate that most lawyers and non-legal professionals perceived a poor understanding of this question among parents and a sound understanding of this question among professional groups. On an aggregate basis, 76% of lawyers and non-legal professionals disagreed that parents understood the exceptions to s 60I before they saw a lawyer (data not shown). In contrast, in relation to each professional group mentioned, majorities indicated understanding of the s 60I exceptions. Although there were some variations in the extent to which the different professional groups perceived the extent of understanding among other professional groups, response patterns did not vary greatly in this regard. These data (together with the aggregate data) are presented in Appendix B.

Figures 5.2 and 5.3 (on page 92) show the responses of lawyers on these understandings of the exceptions to s 60I in 2014 and 2008. Overall, the levels of agreement and disagreement between the two time frames in relation to each of the relevant stakeholders are largely consistent. The area where greatest change is evident is the strength of agreement in relation to parents, with substantially fewer lawyers strongly disagreeing (48% in 2008 cf. 34% in 2014) and more disagreeing (37% in 2008 cf. 48% in 2014) that the exceptions to s 60I were well understood by parents. Interestingly, slightly larger proportions of lawyers disagreed that each of the other professional groups understood the exceptions well in 2014 compared with 2008. This appears to reflect both a slight diminution in the “cannot say” responses and a reduction in either of the two agreement responses. These shifts are, however, very small.

Table 5.3 (on page 93) sets out non-legal professionals’ estimates of the proportion of parents attending their service about children’s matters who misunderstand when they are required to attend family dispute resolution. Consistent with the discussion above, the findings demonstrate that this is not an uncommon occurrence, with only 5% of the sample saying that none of their clients misunderstood the requirement and 12% choosing the response “more than three-quarters” of their clients did not understand. The most common response chosen was “less than a quarter” (27%), followed by “about a half” (19%).
Chapter 5

Figure 5.2: Agreement by lawyers that parents and family law professionals understand the exceptions to the requirement to attend family dispute resolution, 2014

Notes: Lawyers were asked: “Please indicate your level of agreement with this statement in relation to the groups named in the table: The exceptions to the requirement to attend family dispute resolution are well-understood by [each group listed]: Parents (before they see a lawyer); family dispute resolution practitioners; lawyers; registrars; judicial officers”. Lawyers: n = 270–278.

Source: Survey of Practices 2014

Figure 5.3: Agreement by lawyers that parents and family law professionals understand the exceptions to the requirement to attend family dispute resolution, 2008

Notes: Lawyers were asked: “Please indicate your level of agreement with this statement in relation to the groups named in the table: The exceptions to the requirement to attend family dispute resolution are well-understood by [each group listed]: Parents (before they see a lawyer); family dispute resolution practitioners; lawyers; registrars; judicial officers”. Lawyers: n = 319.

Source: Family Lawyers Survey 2008
Table 5.3: Non-legal professionals’ assessment of frequency of parents’ misunderstanding when they are required to attend FDR, 2014

<table>
<thead>
<tr>
<th>Parents’ misunderstanding</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>12</td>
<td>5.1</td>
</tr>
<tr>
<td>Less than a quarter</td>
<td>64</td>
<td>27.4</td>
</tr>
<tr>
<td>About a quarter</td>
<td>29</td>
<td>12.4</td>
</tr>
<tr>
<td>About a half</td>
<td>45</td>
<td>19.2</td>
</tr>
<tr>
<td>About three-quarters</td>
<td>21</td>
<td>9.0</td>
</tr>
<tr>
<td>More than three-quarters</td>
<td>27</td>
<td>11.5</td>
</tr>
<tr>
<td>All</td>
<td>7</td>
<td>3.0</td>
</tr>
<tr>
<td>Not applicable</td>
<td>12</td>
<td>5.1</td>
</tr>
<tr>
<td>Cannot say</td>
<td>17</td>
<td>7.3</td>
</tr>
<tr>
<td>Total</td>
<td>234</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked: “What is the proportion of separating or separated parents who came to your service in relation to children’s matters: Who have some misunderstanding about when they are required to attend family dispute resolution?”

Source: Survey of Practices 2014

5.3.2 Practice in issuing certificates

This section reports on practices in issuing certificates under FLA s 60I(8) on the basis that the matter is unsuitable for FDR because of concerns about family violence and child abuse. Figure 5.4 sets out findings on the extent to which certificates are issued in general, and in two particular circumstances: when FDR does not commence because of family violence or child abuse, and when it is discontinued because of these issues. The responses to the general question (left-hand column) indicate that issuing a certificate is not uncommon, with two-thirds of the sample estimating they issued certificates in up to about a quarter of cases. Just over a quarter (29%) of the sample indicated that they issued certificates in less than a quarter of their cases (data not shown), and 16% said they did so in about half their cases.

![Figure 5.4: Non-legal professionals’ assessment of frequency of issuing s 60I certificates, in general and before or after FDR commences, 2014](chart)

Notes: Non-legal professionals were asked the following questions: “Please estimate the proportion of families in your caseload over the past 18 months where you have issued a s 60I certificate”. They were then asked: “Please estimate the proportion of these cases where the s 60I certificate was issued because: (a) a party did not attend FDR because I did not consider it would be appropriate to conduct FDR because of family violence and/or child abuse, or (b) the parties began FDR but part way through I decided it was not appropriate to continue because of family violence and/or child abuse”. Percentages may not total 100.0% due to rounding. Non-legal professionals: n = 87–94.

Source: Survey of Practices 2014
Responses to the more specific question of whether certificates had been issued before FDR commenced are depicted in the middle column of Figure 5.4. The question specifically linked this question to the preceding general one, asking FDR practitioners to nominate “the proportion of these cases where the s 60I certificate was issued … because I did not consider it would be appropriate to conduct FDR because of family violence and/or child abuse”. Again, this is not an uncommon reason for certificates to be issued, with 58% of practitioners indicating this was relevant in up to about a quarter of cases, and 18% indicating this for half their cases. A substantial minority (31%) indicated this was the case for less than a quarter of the matters in which certificates were issued (data not shown).

The right-hand column indicates that discontinuing FDR and issuing a certificate due to the emergence of concerns about family violence and child safety once the process has started is less common than issuing a certificate at the outset. Substantially more professionals had not discontinued FDR after it commenced (29% cf. 8% before FDR commenced), and fewer chose the options indicating greater frequency (e.g., 2% cf. 9% said “about three-quarters or more”). However, a majority (56%) of participants estimated this occurred in up to about a quarter of cases, indicating that is not a rare occurrence.

5.4 Providing FDR in complex cases

This section considers the extent to which professionals report that their services provide FDR in cases involving allegations of family violence and of child abuse and neglect (considered separately), and the extent to which any shifts in this regard are evident between 2009 and 2014. Table 5.4 demonstrates that FDR is much more likely to be provided in cases involving allegations of family violence than child abuse, but that a majority of professionals nonetheless report that FDR is provided in the latter circumstance. In relation to family violence, 83% of participants in 2014 indicated that their service provided FDR where these allegations were raised, compared with 55% in relation to allegations of child abuse and neglect. Responses in 2009 were largely consistent with those in 2014, with small increases in the proportions of professionals who indicated that their services provided FDR in both situations in 2014 compared with 2009.

### Table 5.4: Provision of FDR services where family violence or child abuse and neglect allegations have been raised, non-legal professionals, 2009 and 2014

<table>
<thead>
<tr>
<th>Provision of FDR services when:</th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Family violence allegations raised</td>
<td>279</td>
<td>81.3</td>
</tr>
<tr>
<td>Child abuse and neglect allegations raised</td>
<td>169</td>
<td>49.3</td>
</tr>
<tr>
<td>Total number of respondents</td>
<td>343</td>
<td></td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009 and 2014: “Does your service provide family dispute resolution services where: [family violence allegations have been raised/child abuse and neglect allegations] have been raised?”. Percentages do not sum to 100% as not all response categories are presented and multiple responses could be chosen. *This item was answered by 93 respondents. Cannot say and not answered/legible responses were: 0–12.9%.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014.

5.5 Referrals to other services

This section discusses findings on the question of referrals. It examines the extent to which lawyers and non-legal professionals refer clients to other services, namely FRCs, legal services, family violence support services and “other services such as counselling, anger management or parent education”. The first part of the discussion focuses on lawyers’ and non-legal professionals’ responses in 2014. The second part compares lawyer responses in 2008 and 2014.

In broad terms, the extent to which lawyers and non-legal professionals reported referring clients to other services shows subtle variations in patterns between the two groups when surveyed in 2014. The greatest area of divergence is in the extent to which lawyers reported referring clients to FRCs and non-legal professionals reported referring clients to lawyers. Non-
legal professionals reported making referrals to lawyers to a considerably greater extent than lawyers reported making referrals to FRCs (Figure 5.5). The majority of non-legal professionals chose the higher frequency options (about three-quarters or more: 47%; about a half: 18%) when asked to indicate how often they referred clients to lawyers. In contrast, the most common response option for lawyers in relation to making referrals to FRCs was “up to about a quarter” (44%), though a substantial minority (30%) reported that they referred about three-quarters or more of their clients, indicating such referrals are nonetheless common. These response patterns may reflect a mutual influence in practice since, to some extent, lawyers’ clients may already also be clients of FRCs, making a referral in this direction redundant.

In relation to making referrals to family violence support services, the data indicate that such referrals are commonly made by both lawyers and non-legal professionals, with 58% of each group indicating this occurred for up to about a quarter of clients. Lawyers’ responses suggest a slightly greater tendency to make these referrals, with a greater proportion (16%) nominating the highest percentile (about three-quarters or more), compared with 12% of non-legal professionals.

Again, patterns in relation to referrals to “other services such as counselling, anger management or parent education” are broadly similar between lawyers and non-legal professionals, although non-legal professionals reported making these referrals more often. They were less likely to nominate the lower frequency response (up to about a quarter: 36% non-legal professionals cf. 44% lawyers) and more likely to nominate the higher frequency responses.

A comparison of lawyers’ referral practices in 2008 and 2014 is set out in Figure 5.6 (on page 96). It demonstrates that lawyers indicated an increased tendency to refer clients to FRCs and other services between 2008 and 2014. In 2014, for example, 30% of the sample indicated referring about three-quarters or more of their clients to FRCs, compared with 20% in 2008. The increase in the proportion nominating this answer in 2014 has correspondingly led to fewer
responses in the lower frequency answers. For example, 13% of the sample nominated “about a half” in 2014, compared with 18% in 2008.

In relation to referrals to other services, the data suggest a marginally greater increase in this area compared with referrals to other services by lawyers. The proportion of lawyers nominating “up to about a quarter” dropped from 61% in 2008 to 44% in 2014, with corresponding increases in the proportions nominating the higher frequencies. In 2014, 27% of lawyers reported making referrals to family violence services for about three-quarters or more of their clients compared with 14% in 2008. “About a half” was nominated by 15% of the 2008 sample, compared with 19% of the 2014 sample.

### Figure 5.6: Frequency of lawyers referring family law clients to support services, 2008 and 2014

<table>
<thead>
<tr>
<th>Percentage</th>
<th>2008</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>FRCs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cannot say</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>About three-quarters or more</td>
<td>20</td>
<td>14</td>
</tr>
<tr>
<td>About a half</td>
<td>18</td>
<td>15</td>
</tr>
<tr>
<td>Up to about a quarter</td>
<td>48</td>
<td>61</td>
</tr>
<tr>
<td>None</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Other services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cannot say</td>
<td>44</td>
<td>19</td>
</tr>
<tr>
<td>About three-quarters or more</td>
<td>10</td>
<td>44</td>
</tr>
<tr>
<td>About a half</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Up to about a quarter</td>
<td>44</td>
<td>8</td>
</tr>
<tr>
<td>None</td>
<td>8</td>
<td>7</td>
</tr>
</tbody>
</table>

**Notes:** Lawyers were asked in 2008 and 2014: “Approximately what proportion of your family law clients do you refer to [each of the following services]: FRCs; community based or other relationship services—such as counselling, anger management or parent education”. Percentages may not total 100.0% due to rounding. 2008: n = 319; 2014: n = 251–253.

**Sources:** Survey of Practices 2014; Family Lawyers Survey 2008

### 5.6 Professionals’ views on parents’ motivations for changing parenting arrangements

The findings of the Longitudinal Study of Separated Families Wave 3 demonstrated that parenting arrangements are dynamic, with only 40% of those surveyed in Wave 3 indicating that the arrangements had stayed the same as they were in Wave 1 (Qu et al., 2014, Table 5.8). A range of factors may be linked with changes in arrangements, including issues arising from children’s needs as they develop, and from changes in parental circumstances, including employment and re-partnering. Qu et al. (2014) highlighted the extent to which parents affected by two or more indicators of complexity (interparental relationships that are full of conflict or fearful, a history of family violence, safety concerns arising from ongoing contact with the other parent) are associated with recurrent use of FDR (p. 62).

This section discusses the perspectives of non-legal professionals on the reasons why parents may seek to renegotiate parenting arrangements, including the extent to which such actions may be linked to concerns about family violence and child abuse in the post-2012 family violence reform environment. The responses of non-legal professionals (Figure 5.7) suggest that these concerns are not an uncommon reason for seeking to renegotiate arrangements.
This is not necessarily a by-product of the reforms, as LSSF Wave 3 findings indicate that these issues were associated with significant levels of change and renegotiation (Qu et al., 2014). Almost one in five non-legal professionals indicated that this motivation was relevant for about a quarter of their clients and 25% indicated it was relevant for about half or more of their clients.

In relation to concerns about family violence and abuse, no pre-reform data were available. However, in relation to other renegotiation motivations (changed needs of children and changed parental circumstances), data from surveys conducted with non-legal professionals in 2009 provide insight into the extent to which professional experience in these areas is consistent over time. Taking into account the smaller number of professionals involved in the 2014 survey (perhaps leading to more fluctuation in responses), data from the two time frames in both areas suggest relatively consistent patterns. In relation to children’s needs as a motivating factor in renegotiations (Figure 5.7), the most common response (27% in 2009 and 28% in 2014) estimated this was a factor for about a quarter of the parents. More professionals in 2014 provided higher estimates (e.g., half their clients: 26% in 2014; 18% in 2009).

In broad terms, response patterns in relation to changes in parental circumstances as a motivation for changes in parenting arrangements are broadly consistent between the two time frames, taking into account fluctuations that may be influenced by different sample sizes. This was a motivation estimated to be relevant for about half the client base by 27% of non-legal professionals in 2009 and 31% in 2014. The next most common proportion nominated was about a quarter, with 19% nominating this response in 2009 and 25% in 2014.

Notes: Non-legal professionals were asked in 2009 and 2014: “Of the clients who seek to renegotiate parenting arrangements, what proportion of parents want to renegotiate parenting arrangements: [for each of the following reasons]: because of concerns about family violence and abuse since the family violence amendments – estimate only; because their children’s needs have changed – estimate only; because of changes in parental circumstances – estimate only; for other reasons”. Percentages may not total 100.0% due to rounding. 2009: n = 854, except “for other reasons”: n = 603; 2014: n = 253, 254, 255 and 191 respectively.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

Figure 5.7: Frequency reported by non-legal professionals of clients seeking to renegotiate parenting arrangements, by reason for change, 2009 and 2014

LSSF is based on a sample of parents who separated in 2008. Data collection for the third wave took place in September and November 2012.
Chapter 5

5.7 Summary

This chapter has examined some of the dynamics relevant to service use in the post-2012 family violence reform environment to address the issue of whether shifts in service use are a by-product of the reforms. Several features of the 2012 family violence reforms could potentially be associated with shifts in service use, including the new definitions of family violence and child abuse, and the clarification of the priority to be accorded to protection from harm. The evidence considered in this chapter also sheds light on the continuing evolution of some aspects of the 2006 changes to the family law system, including the extent to which understanding of some important issues, such as the exceptions to the requirement to attempt FDR prior to lodging a court application, has strengthened. This discussion is based on professionals’ perspectives, and a number of the themes explored here will be further examined on the basis of the findings from the Surveys of Recently Separated Parents 2012 and 2014.

Overall, the findings presented in this chapter suggest that in terms of service use, the effects of the family violence reforms have been subtle rather than dramatic. In some areas, they suggest a consolidation of some of the directions of the 2006 family law reforms, including encouragement of the use of family support services in addition to legal services. They also confirm that clients with complex needs, including those arising from family violence and child abuse, commonly present to legal and relationship support services, including those that provide FDR. Service provision and clinical decision making in relation to such clients continue to be a challenging area of practice.

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

The evidence from this study on the question of the understanding among different stakeholder groups of the exceptions to s 60I indicates that most professionals believe other professionals understand these exceptions quite well. This finding has strengthened only marginally over time. In relation to parents, most professionals believe the s 60I exceptions are not well understood by most family law system clients, though there is a subtle indication that a limited amount of improvement may have occurred over time.

Regardless of levels of understanding of the exceptions of to s 60I, particularly those in relation to family violence and child abuse, it is clear that parents affected by these issues continue to present for FDR services and that FDR services are provided when these issues are present, though to a lesser extent in relation to child abuse compared to family violence. The presence of these issues does not automatically lead to the issue of a certificate, and the proportion of professionals indicating that FDR is provided in such circumstances has remained relatively stable over time. The implications of this finding from a systemic and individual perspective warrant further examination, and the findings of the SRSP 2012 and 2014 will be an important source of insight into the ramifications for families, augmenting the evidence already available from LSSF W5 (Qu et al., 2014).

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

There is some indication that the 2012 family violence reforms have given some parents affected by family violence and safety concerns increased scope to seek advice from non-legal professionals on changing parenting arrangements, but this motivation is perceived as being less common than seeking change for reasons related to children’s needs and parents’ circumstances.
Responding to harm and risk of harm

This chapter sets out the responses of family law system professionals to the risks and harm factors relating to family violence, child abuse and child safety concerns. It begins with a discussion of participants’ reflections on the family law system’s capacity to deal adequately with cases involving allegations of family violence and child abuse and whether the 2012 family violence reforms may have affected this capacity. The discussion then focuses more specifically on changes to response practices since the family violence reforms, and professionals’ assessments of their own capacities in this regard. This is followed by a discussion of participants’ qualitative responses about changes to the ways in which family law professionals respond to family violence as a result of the family violence reforms. The chapter concludes with a summary of the patterns emerging from the data.

6.1 Capacity to respond to family violence, child abuse and child safety concerns

As outlined in Chapter 1, the family violence reforms were intended to encourage effective responses by family law system professionals to family violence (and risk of family violence), child abuse and child safety concerns.

This section first considers the views of participating professionals regarding the capacity of the family law system to respond or deal adequately with allegations of family violence and child abuse. After setting out the general reflections of the participant groups on this issue, the discussion considers participants’ more specific views of the effects of the 2012 family violence reforms on professionals’ capacities to respond to family violence and/or child abuse/child safety concerns. In considering the issue of whether the family law system adequately responds to and deals with matters involving child safety and family violence, the discussion moves beyond the questions of screening and assessment that were discussed in Chapter 4, to an examination of views on adequate responses. This question has different dimensions, including whether the parenting arrangements made in this context respond appropriately to any issues in relation to family violence and child safety that might be identified. An additional element is the extent to which family law system mechanisms support parents to address and resolve issues of concern.

In this context, part of the backdrop to the issues considered in this chapter is an ongoing debate about whether the 2012 family violence reforms provide sufficient guidance in relation to the question of what considerations should inform the making of parenting arrangements when concerns about family violence and child safety are pertinent to families. The lack of specific guidance in the Part VII framework was highlighted by Professor Richard Chisholm in 2009 in his Family Courts Violence Review and has continued to be the subject of commentary and debate (e.g., Rhoades et al., 2014; Strickland & Murray, 2014). Recent research by Rhoades and colleagues (2014) on FLA Part VII has highlighted a range of concerns about the workability of the Part VII legislative framework, including the need for more guidance about what issues should be considered in making parenting arrangements when findings about family violence are made.
6.1.1 General reflections on family law system capacity

All professional participant groups were asked to reflect on the period of time since the introduction of the family violence reforms and to consider the capacity of the legal system, lawyers and FRCs to deal adequately with cases involving allegations of family violence and child abuse.

Table 6.1 indicates that while a substantial proportion (41%) of the aggregate sample of participants provided affirmative responses to the proposition that the legal system has been able to deal adequately with cases involving allegations of family violence and child abuse, 49% of the sample disagreed with this proposition (mostly disagreed: 32%; strongly disagreed: 17%). The vast majority of participating judicial officers and registrars (81%), and smaller proportions of lawyers (46%) and non-legal professionals (27%), mostly agreed with this proposition. Non-legal professionals reported the highest level of disagreement, with 37% and 19% of this participant category mostly or strongly disagreeing respectively.

Table 6.1: Agreement that legal system has been able to deal adequately with cases involving allegations of family violence and child abuse, by professional group, 2014

<table>
<thead>
<tr>
<th>Professional group</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judicial officers</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly agree</td>
<td>1</td>
<td>2.7</td>
<td>4</td>
<td>1.3</td>
<td>7</td>
<td>2.4</td>
<td>12</td>
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<tr>
<td>Mostly agree</td>
<td>30</td>
<td>81.1</td>
<td>148</td>
<td>46.3</td>
<td>78</td>
<td>26.8</td>
<td>256</td>
<td>39.5</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>4</td>
<td>10.8</td>
<td>99</td>
<td>30.9</td>
<td>107</td>
<td>36.8</td>
<td>210</td>
<td>32.4</td>
</tr>
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<td>0.0</td>
<td>52</td>
<td>16.3</td>
<td>56</td>
<td>19.2</td>
<td>108</td>
<td>16.7</td>
</tr>
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<td>100.0</td>
<td>291</td>
<td>100.0</td>
<td>648</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? The legal system has been able to deal adequately with cases involving allegations of family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

The observations made here in relation to the aggregate response patterns are consistent with the response patterns identified in Table 4.1 with respect to the legal system’s capacity to screen adequately for family violence and child abuse. Points of difference emerge, however, in relation to the higher proportions of affirmative responses from judicial officers and registrars and the higher proportions of negative responses from non-legal professionals.

Comparative data from the Institute’s Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009) show that there were slightly higher affirmative responses in the 2014 lawyer sample when compared with the FLS 2008 data. Table 6.2 (on page 102) shows that 48% of lawyers participating in the 2014 survey reported that they mostly or strongly agreed that the legal system had been able to deal adequately with cases involving allegations of family violence and child abuse as compared with 43% of the FLS 2008 sample. The same proportion of participating lawyers in the 2014 and 2008 samples strongly disagreed (16%) with the proposition that the legal system has been able to deal adequately with cases involving allegations of family violence and child abuse, although 51% of the 2008 sample compared to 47% of the 2014 sample responded negatively overall.

When reflecting on the capacity of lawyers to adequately deal with cases involving allegations of family violence and child abuse since the enactment of the family violence reforms, Table 6.3 (on page 102) demonstrates that half of the participating lawyers mostly or strongly agreed with the proposition. These views contrasted with non-legal professionals’ assessments of the capacity of lawyers to adequately deal with cases involving allegations of family violence and child abuse, with only 13% answering in the affirmative on this issue. While 31% of the judicial sample reported that they mostly agreed, a substantial proportion (19%) mostly disagreed and almost half of the sample were unable to express a view on this issue. These observations are
consistent with the response patterns identified in Table 4.3 with respect to the capacity of lawyers to adequately screen for family violence and child abuse.

Table 6.2: Comparison of agreement that the legal system has been able to deal adequately with cases involving allegations of family violence and child abuse, 2008 and 2014

<table>
<thead>
<tr>
<th></th>
<th>FLS 2008</th>
<th></th>
<th>Survey of Practices 2014</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>12</td>
<td>3.8</td>
<td>4</td>
<td>1.3</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>125</td>
<td>39.2</td>
<td>148</td>
<td>46.3</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>111</td>
<td>34.8</td>
<td>99</td>
<td>30.9</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>52</td>
<td>16.3</td>
<td>52</td>
<td>16.3</td>
</tr>
<tr>
<td>Cannot say</td>
<td>19</td>
<td>6.0</td>
<td>17</td>
<td>5.3</td>
</tr>
<tr>
<td>Total</td>
<td>319</td>
<td>100.0</td>
<td>320</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked in 2008: “Thinking about the period since the 2006 reforms, to what extent do you agree or disagree that the following statements describe your view? The legal system has been able to deal adequately with cases involving allegations of family violence and child abuse”. Lawyers were asked in 2014: “Thinking about the period since the family violence reforms, to what extent do you agree or disagree that the following statements describe your view? The legal system has been able to deal adequately with cases involving allegations of family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

Table 6.3: Agreement that lawyers are able to deal adequately with cases involving allegations of family violence and child abuse, by professional group, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>0</td>
<td>0.0</td>
<td>6</td>
<td>1.9</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>11</td>
<td>30.6</td>
<td>154</td>
<td>48.1</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>7</td>
<td>19.4</td>
<td>86</td>
<td>26.9</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>1</td>
<td>2.8</td>
<td>33</td>
<td>10.3</td>
</tr>
<tr>
<td>Cannot say</td>
<td>17</td>
<td>47.2</td>
<td>41</td>
<td>12.8</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
<td>100.0</td>
<td>320</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? Lawyers have been able to deal adequately with cases involving allegations of family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Table 6.4 (on page 103) indicates that a slight majority of non-legal professionals (51%) mostly or strongly agreed that FRCs had been able to adequately deal with cases involving allegations of family violence and child abuse in the period since the family violence reforms. One in five of the non-legal professional sample indicated that they mostly disagreed (20%) and a further 11% strongly disagreed with this proposition (with this category of participants including professionals working in FRCs: n = 11). Substantially fewer positive responses were provided by judicial participants (mostly agree: 11%) and lawyers (mostly or strongly agree: 21%), though the vast majority of the judicial sample (78%) and a substantial proportion of lawyers (34%) were unable to express a view on this proposition, which once again suggests that there remains a significant level of uncertainty among the judicial and legal participants about the operation of FRCs.

On this question, Table 6.5 (on page 103) also shows that lower levels of disagreement regarding the capacity of FRCs to deal adequately with cases involving allegations of family violence and child abuse arose in the 2014 lawyer sample (strongly disagree: 19%; mostly disagree: 26%) when compared with the 2008 FLS sample (strongly disagree: 21%; mostly disagree: 30%). A higher proportion of lawyers indicated in 2014 that they mostly or strongly agreed (21%), with this proposition, with similar proportions of participants in both samples indicating that they were unable to express a view on this issue.
Table 6.4: Agreement that FRCs are able to deal adequately with cases involving allegations of family violence and child abuse, by professional group, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Non-legal</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>0</td>
<td>0.0</td>
<td>7</td>
<td>2.2</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>4</td>
<td>10.8</td>
<td>61</td>
<td>19.1</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>3</td>
<td>8.1</td>
<td>83</td>
<td>26.0</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>1</td>
<td>2.7</td>
<td>59</td>
<td>18.5</td>
</tr>
<tr>
<td>Cannot say</td>
<td>29</td>
<td>78.4</td>
<td>109</td>
<td>34.2</td>
</tr>
<tr>
<td>Total</td>
<td>37</td>
<td>100.0</td>
<td>319</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Professionals were asked: “Thinking about the period since the family violence reforms were introduced, to what extent do you agree or disagree that the following statements describe your view? Family Relationship Centres have been able to deal adequately with cases involving allegations of family violence and child abuse”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014

Table 6.5: Comparison of agreement that FRCs are able to deal adequately with cases involving allegations of family violence and child abuse, 2008 and 2014

<table>
<thead>
<tr>
<th></th>
<th>FLS 2008</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>35</td>
<td>11.0</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>97</td>
<td>30.4</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>68</td>
<td>21.3</td>
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<tr>
<td>Cannot say</td>
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<td>37.0</td>
</tr>
<tr>
<td>Total</td>
<td>319</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked in 2008: “Thinking about the period since the 2006 reforms, to what extent do you agree or disagree that the following statements describe your view? Family Relationship Centres have been able to deal adequately with cases involving allegations of family violence and child abuse”. Lawyers were asked in 2014: “Thinking about the period since the family violence reforms, to what extent do you agree or disagree that the following statements describe your view? Family Relationship Centres have been able to deal adequately with cases involving allegations of family violence and child abuse”.

Sources: Family Lawyers Survey 2008; Survey of Practices 2014

6.1.2 The effects of the 2012 reforms on the family law system’s capacity to respond to family violence, child abuse and child safety concerns

The analysis in the previous section examined professionals’ general reflections on the capacity of the legal system, lawyers and FRCs to respond to family violence and/or child abuse/child safety concerns in the post-family violence reform context. Participating judicial officers and registrars, lawyers and non-legal professionals were also asked to consider more specifically whether the family violence reforms had given rise to improvements in the capacities of the various groups of family law professionals to respond to family violence and/or child abuse/child safety concerns. Consistent with the analysis in section 4.1.2, the capacities of judicial officers, registrars, ICLs, non-ICL lawyers, family consultants, single experts and FDR practitioners were canvassed in this regard and are examined below.

Figure 6.1 (on page 104) outlines the responses provided by judicial and legal participants in relation to each category of family law professional. Overall, two-thirds of judicial participants (66%) and three-quarters of participating lawyers (75%) indicated that there had been an improvement in responses by judicial officers/registrars. More specifically, almost one-half (46%) of participating judicial officers and registrars reported that the family violence reforms
had almost always (17%) or often (29%) led to an improvement in judicial responses to family violence and/or child abuse/child safety concerns. Similarly, 44% of participating lawyers reported that they almost always or often observed such improvement. These findings are consistent with the response patterns outlined earlier in section 4.1.2 of this report with respect to judicial and legal professionals’ perceptions of improvements in judicial officers/registrars’ screening for family violence and/or child abuse/child safety concerns.

In relation to improvements in ICLs’ responses to family violence and/or child abuse/child safety concerns, Figure 6.1 indicates that, consistent with the response patterns outlined in sections 4.1.2 (Figure 4.1) and 4.1.3 (Figure 4.3), lawyers were the most positive of each of the surveyed professional groups, with 37% indicating that the family violence reforms had almost always (12%) or often (25%) led to an improvement among ICLs. Just over one-third of participating lawyers (36%) reported that the family violence reforms had sometimes led to an improvement. Judicial officers and registrars responded more positively with regard to improvements in ICLs’ capacities to respond to family violence and/or child abuse/child safety concerns than they did when reflecting on ICLs’ screening capacities, but slightly less positively than in relation to their assessment capacities. While approximately one-quarter of judicial participants (26%) were unable express a view on improvements in ICL responses, more than one-quarter (29%) indicated that the family violence reforms had almost always or often led to an improvement in ICLs’ responses to these risks and harm factors.

Once again consistent with the response patterns emerging in the discussion of data presented in Figures 4.1 and 4.3, lawyers were the most positive group of participating professionals when questioned about whether there had been an improvement in their non-ICL colleagues’ responses to family violence and/or child abuse/child safety concerns. Figure 6.1 shows that 30% of participating lawyers indicated that this was often or almost always the case, and a further 46% reported that they sometimes experienced these improvements. A substantial proportion of the judicial sample were unable to express a view on this proposition (31%), although they were more likely to express a view about non-ICL lawyers’ responses as opposed to their screening capacities.
In relation to improvements in the responses of non-legal professionals to family violence and/or child abuse/child safety concerns, Figure 6.1 shows that judicial participants were the most positive in their reflections on improvements in the responses of family consultants and single experts, with 43% indicating that they had almost always (23%) or often (20%) experienced the family violence reforms as leading to an improvement. A further 23% of judicial participants indicated that this was sometimes the case. Participating lawyers were also positive, with more than one-third indicating that they had almost always (10%) or often (26%) experienced an improvement in the responses of family consultants and single experts, with a further substantial proportion (35%) considering this to sometimes be the case. Although positive, these responses are less emphatic than lawyers’ views on improvements in the capacities of family consultants and single experts to screen for family violence and/or child abuse/child safety concerns.

Figure 6.1 also indicates that the vast majority of judicial officers and registrars were unable to express a view on whether the family violence reforms had led to an improvement in responses by FDR practitioners (74%), although lawyers were able to provide significant insight into this question. Over one-quarter of participating lawyers indicated that in their experience, the family violence reforms had often (22%) or almost always (8%) led to an improvement in responses by FDR practitioners, and a further 32% indicated that the reforms had sometimes led to an improvement. Recent research by the Allen Consulting Group (2014) has identified that “continued and increased” collaboration between FRCs providing family dispute resolution and legal assistance services extending beyond the Legal Assistance Partnerships Program (see Moloney et al., 2011), may facilitate greater capacity to respond to families characterised by circumstances involving family violence (p.28). Further discussion of the protocols and procedures of non-legal professionals when providing services in the context of family violence and child safety concerns will be considered in section 6.2.2.

Due to the length of the 2014 non-legal professional survey and the absence of a question on this issue in the 2009 Survey of FRS Staff (FRSP Services) (thereby eliminating any requirement to maintain consistent wording), participants in this group were simply asked to answer this question in the affirmative or negative. Figure 6.2 (on page 106) indicates that while 28% of non-legal participants indicated that the family violence reforms had led to an improvement in responses by judicial officers and registrars, 24% answered in the negative and almost one-half were unable to express a view. Once again, these findings are consistent with the response patterns outlined earlier in sections 4.1.2 (Figure 4.2) and 4.1.3 (Figure 4.4) of this report with respect to improvements in judicial officers’ screening and assessment capacities respectively. Non-legal professionals agreed that ICLs had improved their capacity to respond to these risks and harm factors, in similar proportions (33%) to those who had identified improvements in ICLs’ screening and assessment capacities (see Figures 4.2 and 4.4), although 46% were unable to express a view on this proposition. Non-legal professionals were again least positive in their reflections on improvements in the responses of non-ICL lawyers, with 33% answering in the negative, although 52% reported that they were unable to answer this question.

Figure 6.2 demonstrates that, consistent with the responses relating to screening and assessment capacities, the highest proportion of affirmative responses (61%) were provided by participating non-legal professionals when reflecting on whether the family violence reforms had led to an improvement in the responses of FDR practitioners. Of note, mediators and FDR practitioners constituted 27% of the non-legal professional participant sample for this item. A substantial proportion (37%) of these non-legal professionals (with family consultants and single experts constituting 16% \[n = 38\] of the non-legal sample) also responded in the affirmative about the capacity of family consultants and single experts in this regard, although 41% indicated that they were unable to express a view on this proposition.

6.2 Response practices of family law professionals since the 2012 family violence reforms

The discussion in this section will now focus more specifically on participants’ observations of any changes in responses in terms of outcomes involving parenting arrangements made since the inception of the family violence reforms. It will then consider professionals’ self-assessments of their practices in responding to family violence, child abuse and child safety concerns.
6.2.1 General reflections on changes to parenting outcomes in the family law system arising from the family violence reforms

Each participant category was asked for their views on whether the family violence reforms had resulted in an increase in the following parenting arrangements (whether made by agreement between the parties or by way of judicial determination):

- supervised changeovers or for changeovers to take place at neutral venues;
- supervised time arrangements; or
- arrangements for no parenting time.

Figure 6.3 (on page 107) indicates that close to a majority of the aggregate sample of participants (49%) agreed that the family violence reforms resulted in more arrangements for supervised or neutral venue changeovers. A substantial proportion of the aggregate sample disagreed (24%), with over one-quarter of the sample (28%) reporting that they were unable to express a view on this proposition. While agreement was largely consistent across each participant category, 24% of the judicial participants and 30% of lawyers disagreed, compared to only 16% of non-legal professionals. A greater proportion of non-legal professionals were unable to express a view on this proposition (34%), compared to judicial officers (30%) and lawyers (21%).

Figure 6.3 also indicates that 44% of the aggregate sample of participants agreed that the family violence reforms had resulted in more supervised time arrangements. Consistent with the responses relating to changeover arrangements, a substantial proportion (26%) disagreed with this proposition, with almost one-third of the sample (30%) being unable to express a view on this proposition. There were, once again, consistent levels of agreement of lawyers and non-legal professionals on this question, with 44% of lawyers and 46% of non-legal professionals agreeing that the family violence reforms had resulted in more supervised time arrangements.
However, only 24% of judicial officers and registrars agreed with the proposition. Similar levels of disagreement emerged among judicial and legal participants on this issue, with just under one-third of both the judicial and legal sample mostly or strongly disagreeing that the family violence reforms had resulted in more supervised time arrangements. Interestingly, a higher proportion of the judicial sample (43%) compared to the non-legal (36%) or legal sample (23%) were unable to express a view on this proposition.

Each of the professional participant groups were also asked for their views on whether the family violence reforms had resulted in more arrangements for no parenting time. Figure 6.3 indicates that in contrast to participants’ perceptions of changes in relation to parenting arrangements involving supervision or changeover at a neutral venue, only 21% of the aggregate sample of participants agreed that the family violence reforms had resulted in more arrangements for no parenting time. A greater proportion (41%) of the aggregate sample disagreed, with over one-third of the sample (38%) reporting that they were unable to express a view on this proposition. While levels of agreement were largely consistent across each participant category, judicial officers and registrars were less likely to agree, with only 17% mostly agreeing and none strongly agreeing. Both judicial and legal participants indicated higher levels of disagreement (47% and 46% respectively), compared with 34% of non-legal professionals disagreeing. Importantly, almost one-half of the non-legal professionals (45%) were unable express a view on this issue, compared with 30% of judicial officers/registrars and 32% of lawyers.

![Figure 6.3: Agreement that the family violence reforms have resulted in changed parenting arrangements, by professional group, 2014](image)

Notes: Professionals were asked: “Based on your experiences since the family violence reforms, do you agree or disagree with the following statements: The family violence reforms have resulted in more arrangements for changeovers that are supervised or at a neutral place; The family violence reforms have resulted in more supervised time arrangements; The family violence reforms have resulted in more arrangements for no parenting time with one parent.” Percentages may not total 100.0% due to rounding. Judicial officers/registrars: n = 36–37; Lawyers: n = 320–321; Non-legal professionals: n = 289–292; Aggregated professionals: n = 646–650.

Source: Survey of Practices 2014

More specifically, participating lawyers were also asked whether they perceived courts to be prioritising safety from family violence and child abuse when making interim orders to a greater degree than they did prior to the family violence reforms. Table 6.6 (on page 108) indicates that a majority of the lawyers (60%) agreed that this was so. A substantial minority of the sample (29%) disagreed with this proposition. Only 12% of participating lawyers were unable to express a view on this issue.
Table 6.6: Agreement by lawyers that since the family violence reforms courts have prioritised safety to a greater degree when making interim orders, 2014

<table>
<thead>
<tr>
<th>Agreement by Lawyers</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
<td>38</td>
<td>14.1</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>123</td>
<td>45.7</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>55</td>
<td>20.5</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>22</td>
<td>8.2</td>
</tr>
<tr>
<td>Cannot say</td>
<td>31</td>
<td>11.5</td>
</tr>
<tr>
<td>Total</td>
<td>269</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Lawyers were asked: “In your experience, do courts now prioritise safety from family violence and/or child abuse when making interim orders to a greater degree than before the family violence reforms?”

Sources: Survey of Practices 2014

On this issue, judicial officers and registrars were also asked to provide open-ended responses regarding their approach to making interim orders in children’s matters since the family violence reforms.

Some judicial participants (e.g., JO43, JO68) reported that family violence was now considered at an earlier stage than prior to the reforms; for example:

The reforms have certainly moved the question of family violence up the scale, albeit that it has always been a focus, but it is much better understood by the parties (generally the victim), the profession and the experts—this in turn means a better informed court.

(JO34, FCoA, judge)

There were some judicial participants who reported that they were now more likely to act protectively at the interim hearing stage:

I feel there is stronger legislative support to prioritise safety over [the] “right to parental relationship” within the amendments, which I appreciate. Accordingly, I am probably more robust when assessing risk during interim hearings. That is, even though I am unable to make any findings at that stage of the court process, I may be less inclined to order any time with the alleged abusive parent, even supervised time, which was often the compromise position in the past, even though I was well aware of the risks associated even with supervised time, depending on the nature of the alleged past abuse.

(JO50, FCC, judge)

[I am] more inclined to be protective of the children having regard to the expanded definition especially coercive and controlling violence and all its various forms, e.g., financial, use of motor vehicle, occupation of premises and restriction as to work, and require such matters to be addressed by injunctive orders. (JO43, FCC, judge)

I will often delay making orders about time, which are not agreed until after the Case Assessment Conference with the consultant and considering their memorandum. (JO58, FCoWA, magistrate)

Other judicial participants reported that their approach remained as it was prior to the family violence reforms:

I consider that I was alert to the serious issue of family violence and the attendant risks to children prior to the amendments. (JO46, FCC, judge)

Best practice prior to and following the amendments is identical. (JO54, FCC, judge)

The responses from judicial participants suggest that although their general approach remained unchanged, they were engaging in more overt enquiries about the risks:

I don’t think my general approach has changed as I have always been of the view that greater weight must be given to protection from harm if the primary considerations in s 60CC(2) might suggest different outcomes. I do ask about risk issues more overtly now. (JO70, FCC, judge)
6.2.2 Responses of family law system professionals to harm or risk of harm

Judicial officers/registrars and lawyers

Participating judicial officers, registrars and lawyers were asked to reflect on professional practices when responding to identified harm or risk of harm. The relevant survey questions focused on practices relating to the use and effectiveness of the Form 4 Notice; practices relating to the preparation and presentation of affidavit material, family reports and memoranda; practices in relation to submissions made by lawyers; recommendations made by family consultants and single experts; and judicial practices in response to the filing of Form 4 Notices. Each will be considered in turn below.

Use and effectiveness of Form 4 Notice

As discussed in Chapter 4 at section 4.2.5, at the time of data collection, interested persons (including parties to the proceedings or ICLs) were required to file (and serve) a Form 4 Notice where alleging child abuse or risk of child abuse (FLA s 67Z) or where alleging family violence or risk of family violence as a consideration relevant to decision making about Part VII orders (FLA s 67ZBA). This Form 4 Notice allowed for the provision of a summary of the acts or omissions that were alleged to constitute abuse and/or family violence, the facts alleged to constitute any risk of these forms of harm, and the identification of relevant affidavit evidence in this regard. This section examines professional practices relating to the use and effectiveness of Form 4 Notices in responding to family violence, child abuse and child safety concerns.

Judicial survey participants were asked for their views on whether Form 4 Notices were (since the family violence reforms) filed in all litigated parenting matters, and lawyers were asked whether they now filed Form 4 Notices in all litigated parenting matters. Table 6.7 indicates that a majority of the aggregate sample (56%) disagreed, with higher levels of disagreement reflected in the judicial sample (64%), although a slightly higher proportion of lawyers (34%) than judicial officers (30%) reported that they strongly disagreed.

Table 6.7: Agreement that Form 4 Notices are now filed in all litigated parenting matters, as reported by judicial officers/registrars and lawyers, 2014

<table>
<thead>
<tr>
<th></th>
<th>Judicial officers</th>
<th>Lawyers</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>3</td>
<td>9.1</td>
<td>29</td>
</tr>
<tr>
<td>Mostly agree</td>
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<td>49</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>11</td>
<td>33.3</td>
<td>54</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>10</td>
<td>30.3</td>
<td>83</td>
</tr>
<tr>
<td>Cannot say</td>
<td>2</td>
<td>6.1</td>
<td>32</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>100.0</td>
<td>247</td>
</tr>
</tbody>
</table>

Notes: Judicial officers and registrars were asked: “Please indicate the extent of your agreement with the following statements about the current Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence: Form 4 Notices are now filed in all litigated parenting matters”. Lawyers were asked: “Please indicate the extent of your agreement with the following statements about the current Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence: I file a Form 4 Notice in all my litigated parenting matters”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
Of relevance to this issue is Strickland and Murray’s 2014 post-family violence reform study of the extent to which the reforms are meeting their objectives. Their report indicated a “marked increase” in filings of Form 4 Notices, by reference to FCoA and FCCoA court filings data from the financial years of 2007–08 and 2012–13 (p. 59–60). Strickland and Murray suggested that this increase “may be attributable to greater awareness of the family law reforms generally and the need to file the Form 4 specifically, and in the Form 4 being the mechanism through which the prompt action requirements in s 67ZBB of the Act become operative” (p. 60). Resourcing was identified as an issue in the context of increases in filings of Form 4s and the “prompt action” requirements triggered as a result (p. 72). Strickland and Murray found that while Form 4s were effective in adding the required information, the time taken to respond and the number of cases that required such a response gave rise to substantial issues in practice (p. 73). These issues will be considered further below in the context of the qualitative data from judicial and legal participants in our study.

On the question of the effectiveness of responses, Table 6.8 indicates that a majority of lawyers (51%) disagreed that filing a Form 4 Notice resulted in safer parenting arrangements for parents and children. Over one-quarter of lawyers (29%) agreed with this proposition, with about one in five participants in the sample being unable to express a view in this regard.

| Table 6.8: Agreement by lawyers that filing a Form 4 Notice results in safer parenting arrangements for parents and children, 2014 |
|-----------------|-------|
| No.             | %     |
| Strongly agree  | 12    | 4.8  |
| Mostly agree    | 59    | 23.7 |
| Mostly disagree | 67    | 26.9 |
| Strongly disagree | 59   | 23.7 |
| Cannot say      | 52    | 20.9 |
| Total           | 249   | 100.0|

Notes: Lawyers were asked: “Please indicate the extent of your agreement with the following statements about the current Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence: Filing a Form 4 Notice results in safer parenting arrangements for parents and children”.
Source: Survey of Practices 2014

Lawyers were also asked whether they perceived courts to take notice of Form 4 Notices. Table 6.9 shows that a slight majority of participating lawyers (51%) indicated that they thought that courts do take notice of Form 4 Notices. A substantial minority (36%) reported that they thought that courts do not take any notice of Form 4 Notices, with a further 13% of the sample being unable to express a view on this question.

| Table 6.9: Agreement by lawyers that courts do not take any notice of Form 4 Notices, 2014 |
|-----------------|-------|
| No.             | %     |
| Strongly agree  | 30    | 12.2 |
| Mostly agree    | 58    | 23.5 |
| Mostly disagree | 82    | 33.2 |
| Strongly disagree | 45   | 18.2 |
| Cannot say      | 32    | 13.0 |
| Total           | 247   | 100.0|

Notes: Lawyers were asked: “Please indicate the extent of your agreement with the following statements about the current Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence: Courts do not take any notice of Form 4 Notices”. Percentages may not total 100.0% due to rounding.
Source: Survey of Practices 2014

Judicial and legal participants were also asked to comment more generally on the current Form 4 Notice in open-ended survey responses. A small number of judicial participants raised concerns about the capacity of prescribed child welfare authorities to effectively respond to Form 4 Notices:
The definitions are very wide and [the] gulf between “notifiable” risks in the FLA and those at the state protection level—wider. [This] has led to pressures on the state welfare agencies seeking to process increased Form 4s. [The] agency staff have no understanding of the FLA requirements. [They are] unable to respond in a timely manner to requests for information. [The] states are ill prepared—misunderstandings. [The] definitions are very difficult for litigants and others to understand. In some registries (i.e., Dandenong, Parramatta) most parenting matters would include some risks. [It is] difficult to prioritise and get timely information—sheer volume. (JO39, FCoA, registrar)

Judicial perspectives on this issue are considered further in section 6.3.1.

Numerous lawyers expressed frustration at the lack of effect they observed from the filing of a Form 4 Notice, in relation to both the response of the court to Form 4 Notices and in relation to the effects of the Notice on the parenting arrangements made:

I file the Form 4 as required. In my experience the Form 4 has not resulted in safer parenting arrangements. (L187, lawyer)

[The Form 4 Notice] makes little difference to the progress of the matter. (L192, lawyer)

I have NEVER had one dealt with in an open manner, with a clear outcome, or a communicated outcome. I file them as we are obliged to do so (when criteria met). This does not mean that I believe they have any use. I do not want my client criticised for not doing so when they meet the criteria for a Form 4 to be filed. Once filed, never heard of again. I have also seen a lot of vague, poorly completed ones and the Form 4 process abused. However, I have not seen the outcome of a Form 4 so, who cares what they contain—a judicial officer? Clearly not in my experience. (L82, lawyer)

The judicial reaction to them is so varied in all but very clear cases of abuse that it’s often risky filing one. (L32, lawyer)

The Notices don’t mean that court cases are dealt with faster because the court has no more resources. (L64, lawyer)

Usually they are dismissed the first time at court where one is filed. I have also applied to legal aid to complete a form but legal aid was refused. In another matter the other side was ordered to file one but did not. (L85, lawyer)

It is a shocker of a form. I find that if I need to involve [child protection authority] or my client deals with [child protection authority] direct. The Form 4 is part of the problem about information overload that statutory authorities have to deal with—as the Carmody inquiry identified in Qld. (L443, lawyer)

Consistent with judicial participants, the response quoted directly above indicates that some lawyers (e.g., L135) were also cognisant of the effect that the increase in filing Form 4 Notices had upon prescribed child welfare authorities, with other lawyers expressing disappointment in the response of such authorities where Form 4 Notices had been filed:

[The child protection authority] often only provide a one or two line response letter, which is very unhelpful. (L181, lawyer)

I do not believe that there is any greater attention paid to a case where a Form 4 is filed. The [child protection authority] continue to be habitually unresponsive. (L205, lawyer)

I have acted for parents for 20 years. I have had ONE SINGLE CASE in that 20 year period where [child protection authority] responded to a Notice of Risk. And that was six months after I had filed it and the court had already made orders to protect the child. (L64, lawyer)

The state prescribed authority rarely takes any notice of them in my experience. In the rare cases where the state has been required to participate, the ICL has had to chase them up, or a separate order has been made in cases where the court was of the view that the prescribed authority should voice an opinion or consider intervening. (L261, lawyer)
Affidavit material

Judicial and legal participants were asked to reflect on the effects of the family violence reforms on the preparation and presentation of other court documentation. In particular, they were asked to reflect on whether, in their experience, they considered there to be more detail on a range of specified issues in affidavit material since the family violence reforms were introduced.

The data presented in Figure 6.4 show that a majority of the aggregate sample (57%) agreed that since the reforms, there was almost always or often more detail on family violence issues in affidavit material. A further 29% of the aggregate sample reported that this was sometimes their experience. This finding is consistent with the expectation of some commentators that a positive outcome of the family violence reforms would be a greater attention to detail when presenting evidence of family violence before the court (e.g., Parkinson, 2012, p. 16). Interestingly, a greater proportion of lawyers (24%) selected almost always compared to their judicial counterparts (14%), with 44% of the judicial participants, as opposed to 33% of the lawyers, reporting that there was often more detail on family violence issues in the affidavit material (data not shown).

Similarly, Figure 6.4 also indicates that a majority of the aggregate sample (57%) responded that there was almost always or often more detail on the exposure of children to family violence issues in affidavit material since the family violence reforms. A further 30% of the aggregate sample reported that this was sometimes their experience. This finding is also consistent with some commentators’ expectations that a positive outcome of the family violence reforms would be a greater attention to detail in evidence provided to the court of children’s exposure to family violence (e.g., Parkinson, 2012, p. 16–17). Once again, a greater proportion of lawyers (24%) selected “almost always”, compared to 17% of judicial officers/registrars, and 39% of the judicial sample chose “often”, as opposed to 33% of the lawyer sample (data not shown).

The same response pattern is identified in relation to the detail regarding child abuse or child safety concerns in affidavit material. Once again, Figure 6.4 shows that a majority of the aggregate sample (56%) reported that there was almost always or often more detail included. Again, a further 30% of the aggregate sample reported that this was sometimes their experience. Similar
proportions of judicial officers/registrars and lawyers indicated that this was almost always (22% and 24% respectively) or often (31% and 33%) the case (data not shown).

**Family reports and memoranda**

Legal participants were also asked for their views on changes in the content of family reports and memoranda from family consultants and single expert witnesses in the period since the family violence reforms. Figure 6.5 indicates that over one-third of the aggregate sample (40%) thought that there were almost always or often changes to the content of reports and memoranda. A further 36% reported that this was sometimes their experience. Judicial officers and registrars were more emphatic than lawyers in their affirmative responses, with 33% of the judicial sample reporting that more information was almost always included, with a further 17% reporting that this was often the case (data not shown).

Figure 6.5 indicates that 41% of the aggregate sample agreed that family reports or memoranda almost always or often provided recommendations that addressed the implications of information about family violence, child abuse and child safety concerns since the family violence reforms. A further 34% reported that this was sometimes their experience, with 16% reporting that this was rarely or never the case. Once again, judicial officers and registrars were more emphatic than lawyers that since the reforms, family reports or memoranda almost always (36%) or often (25%) provided recommendations that addressed the implications of information about family violence, child abuse and child safety concerns. Nevertheless, 25% of lawyers answered often and 13% answered almost always in this regard (data not shown).

![Figure 6.5: Legal professionals’ reports on frequency of changes in information and recommendations addressing concerns in family reports/memoranda, 2014](image)

Notes: Professionals were asked: “Since the family violence reforms, have the family reports/memoranda of family consultants and single expert witnesses provided the following: More information about family violence and/or child abuse/child safety concerns; and: Recommendations that address the implications of information about family violence and/or child abuse/safety concerns for parenting arrangements”. Percentages may not sum 100.0% due to rounding. Judicial officers/registrars: n = 36; Lawyers: n = 262–263; Aggregated professionals: n = 298–299.

Source: Survey of Practices 2014

In addition, family consultants and single experts were specifically questioned about whether they had changed their approach to making recommendations in family law matters since the introduction of the family violence reforms. More than one-half of the participating sample (57%) said they had not changed, while 31% indicated that they had (data not shown). A further 11% said they were unable to express a view on this issue (data not shown).
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The open-ended survey responses of family consultants and single experts also provided further insight into this issue. Some family consultants reflected on the greater emphasis that they placed on the discussion of the evidence of risks or harm and the effects of this evidence on their recommendations in their reports:

[Since the family violence reforms, I have provided] more definitive reported evidence and recommendations; more emphasis on emotional abuse, undermining other parent’s relationship with child. (NL183, FCC, family consultant)

[Since the family violence reforms, I have been] more explicitly describing the patterns of violence. (NL24, FCC, family consultant)

Some of participating family consultants and single experts reported that since the family violence reforms, they considered that they had become more cautious in terms of the parenting orders that they recommended, and that there was a greater likelihood of recommending parenting arrangements that involved no time or limited time with a parent:

There would be now more instances where I would recommend sole parental responsibility and no or limited time in my family reports. (NL19, FCC, family consultant)

[I would now make] more recommendations for no time with a violent/abusive parent. (NL56, FCoA, family consultant)

[I have] been more prepared to advocate for higher safety for children and more often recommendations for no contact between speculated or admitted offending parent and child/ren. NL129, FCC, family consultant)

The greatest change is probably around the issue of parental responsibility and being more thoughtful as to what I recommend. (NL21, FCoA, family consultant)

I am more mindful of [family violence] when making recommendations regarding shared care. (NL315, private practice, single expert)

Interestingly, one family consultant indicated that they were now more likely to refrain from making specific recommendations:

[There is now] greater likelihood of a recommendation of judicial determination of the matter, because my role does not have the capacity to make findings of fact when the accounts of the parents conflict regarding family violence. (NL485, FCoA, family consultant)

Submissions or requests made by lawyers

Legal participants were asked for their views on submissions or requests made by lawyers in response to risks or harm factors. Table 6.10 indicates that slightly more than one-quarter of the legal sample (27%) said that as a result of the family violence reforms, they more frequently advocated for statutory child protection services to intervene in proceedings. However, a majority of participating lawyers (54%) said they had not and 20% indicated that they were not able to express a view on this question.

| Table 6.10: Whether lawyers reported advocating more frequently for statutory child protection services to intervene in proceedings since the family violence reforms, 2014 |
|---|---|
| No. | % |
| Yes | 65 | 26.6 |
| No | 131 | 53.7 |
| Cannot say | 48 | 19.7 |
| Total | 244 | 100.0 |

Notes: Lawyers were asked: “As a result of the family violence reforms, I more frequently: Advocate for statutory child protection services to intervene in proceedings”.

Source: Survey of Practices 2014
Table 6.11 indicates that 31% of participating lawyers reported that they more frequently advocated for statutory child protection services to take action or to provide support for the child or another family member, although a majority reported that they had not done so (53%) and 17% were unable to express a view on this issue.

| Table 6.11: Whether lawyers reported advocating more frequently for statutory child protection services to take action/provide support since the family violence reforms, 2014 |
|---|---|
| No. | % |
| Yes | 75 | 30.7 |
| No | 128 | 52.5 |
| Cannot say | 41 | 16.8 |
| Total | 244 | 100.0 |

Notes: Lawyers were asked: “As a result of the family violence reforms, I more frequently: Advocate for statutory child protection services to take action/provide support for the child or other family member”.

Source: Survey of Practices 2014

Judicial officers and registrars were asked for their views on whether lawyers (including ICLs) were, as a result of the family violence reforms, more likely to advocate for statutory child protection services to take action or to provide support for the child or young person. As Table 6.12 shows, a majority of judicial officers (56%) either mostly or strongly disagreed with this proposition, with a further 17% indicating that they were unable to express a view in this regard.

| Table 6.12: Judicial officers'/registrars’ agreement that lawyers have been more likely to advocate for statutory child protection services to take action/provide support since the family violence reforms, 2014 |
|---|---|
| No. | % |
| Strongly agree | 1 | 2.8 |
| Mostly agree | 9 | 25.0 |
| Mostly disagree | 16 | 44.4 |
| Strongly disagree | 4 | 11.1 |
| Cannot say | 6 | 16.7 |
| Total | 36 | 100.0 |

Notes: Judicial officers/registrars were asked: “Please indicate the extent of your agreement or disagreement with the following propositions in relation to the practice of lawyers (including Independent Children’s Lawyers) in the period since the family violence reforms. As a result of the family violence reforms, legal practitioners, including Independent Children’s Lawyers, are now more likely to: Advocate for statutory child protection services to take action/provide support for the child/young person”.

Source: Survey of Practices 2014

Table 6.13 presents lawyers’ responses to the proposition that, as a result of the family violence reforms, they made more frequent requests to the court to make evidence processes less traumatic for victims of family violence. A majority of participating lawyers (56%) responded that they had not, with a further 21% indicating that they were unable to express a view in this regard.

| Table 6.13: Whether lawyers reported making more requests to the court to make evidence processes less traumatic for victims of family violence since the family violence reforms, 2014 |
|---|---|
| No. | % |
| Yes | 55 | 22.6 |
| No | 136 | 56.0 |
| Cannot say | 52 | 21.4 |
| Total | 243 | 100.0 |

Notes: Lawyers were asked: “As a result of the family violence reforms, I more frequently: Make a request to the court to make evidence processes less traumatic for victims of family violence”.

Sources: Survey of Practices 2014
Judicial officers and registrars were also asked for their views on whether, as a result of the family violence reforms, lawyers (including ICLs) were more likely to request that processes for leading evidence and for undertaking cross-examination be conducted in a way that minimises trauma for people who had experienced family violence and abuse. As Table 6.14 shows, only 14% of the judicial participants agreed with this proposition, with 67% disagreeing and a further 19% unable to express a view on this question.

Table 6.14: Judicial officers’/registrars’ agreement that lawyers have been more likely to make requests to the court to make evidence processes less traumatic for victims of family violence since the family violence reforms, 2014

<table>
<thead>
<tr>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
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</tr>
<tr>
<td>Mostly agree</td>
<td>5</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>15</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>9</td>
</tr>
<tr>
<td>Cannot say</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>36</td>
</tr>
</tbody>
</table>

Notes: Judicial officers and registrars were asked: “Please indicate the extent of your agreement or disagreement with the following propositions in relation to the practice of lawyers (including Independent Children’s Lawyers) in the period since the family violence reforms. As a result of the family violence reforms, legal practitioners, including Independent Children’s Lawyers, are now more likely to: Request that processes for leading evidence and conducting cross-examination be conducted in a way that minimises trauma for people who have experienced family violence and abuse”.

Source: Survey of Practices 2014

Judicial practices

As a follow-up to the questions asked about lawyers’ practices, judicial officers and registrars were asked for their views on the proportion of children’s matters where they would conduct proceedings in a way that minimised trauma to people who had experienced family violence, especially in relation to evidence being led and to the conduct of cross-examination. Table 6.15 shows that while slightly more than one-quarter of participants were unable to express a view on this question, 27% of judicial participants reported that they conducted about three-quarters or more of children’s matters in this manner. A further 12% reported that they did so in about one-half of their children’s matters, and 27% reported that they did so in up to about one-quarter. Only 6% of the judicial sample reported that they did not conduct proceedings in such a way.

Table 6.15: Judicial practices in proceedings involving children’s matters, frequency reported by judicial officers and registrars, 2014

<table>
<thead>
<tr>
<th>Conduct proceedings to minimise trauma</th>
<th>Order to attend child-oriented program</th>
<th>Order to attend relationship service</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>None</td>
<td>2</td>
<td>6.1</td>
</tr>
<tr>
<td>Up to about one-quarter</td>
<td>9</td>
<td>27.3</td>
</tr>
<tr>
<td>About a half</td>
<td>4</td>
<td>12.1</td>
</tr>
<tr>
<td>About three-quarters or more</td>
<td>9</td>
<td>27.3</td>
</tr>
<tr>
<td>Cannot say</td>
<td>9</td>
<td>27.3</td>
</tr>
<tr>
<td>Total</td>
<td>33</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Judicial officers and registrars were asked: “In approximately what proportion of children’s matters would you: Conduct proceedings in a way that minimises trauma to people who have experienced family violence, especially in relation to evidence being led and the conduct of cross-examination; Order parties to attend a child inclusive conference, child dispute conference or child responsive program under s 11F of the Family Law Act 1975 (Cth); and Order parties to attend a community based relationship service—such as counselling, anger management or parent education (e.g., Parenting Orders Program and Post Separation Cooperative Parenting Program)”. Percentages may not total 100.0% due to rounding.

Source: Survey of Practices 2014
Table 6.15 also presents the reported proportions of cases in which judicial participants would order parties to attend a child-inclusive conference, a child dispute conference or a child-responsive program pursuant to FLA s 11F. Almost one-half of the sample (49%) reported that they did so in up to about one-quarter of their children’s matters. A further 15% reported that they made these FLA s 11F orders in about one-half of these matters, and 27% reported that they did so in about three-quarters or more of these matters.

In addition, Table 6.15 presents the reported proportions of cases in which judicial officers would order parties to attend community-based relationship services, such as counselling, anger management or parent education programs (e.g., Parenting Orders Program or the Post Separation Cooperative Parenting Program). Just over one-third of the sample (36%) reported that they did so in up to about one-quarter of their children’s matters. A further 24% reported that they made these orders in about one-half of these matters and 33% reported that they did so in about three-quarters or more of these matters.

Non-legal professionals

Non-legal professionals were asked to reflect on their responses to risks or harm factors, with specific questions for this participant group focusing on the nature and effectiveness of protocols and procedures in place for dealing with family violence, child abuse and child safety concerns and the services provided in the context of these risks and harm factors.

Protocols and procedures for dealing with child abuse and neglect

Table 6.16 indicates that the vast majority of participants (96%) in both the 2009 Survey of FRS Staff and in the 2014 post-family violence reform sample reported that they had protocols or procedures in place to deal with child abuse and neglect. Table 6.17 (on page 118) presents participants’ views on whether the protocols or procedures were appropriate for dealing with child abuse and neglect to safeguard the families using their service. Similar proportions of participants in both samples reported that they strongly agreed (2009: 60%; 2014: 58%) with this proposition or that they agreed/mostly agreed (2009: 38%; 2014: 35%) with this proposition.

Table 6.16 indicates that the vast majority of non-legal professionals in both the 2009 sample (94%) and the 2014 sample (96%) reported that they had protocols or procedures in place for dealing with disclosures of family violence. Table 6.17 also presents participants’ views on whether the protocols or procedures in place were appropriate for dealing with family violence to safeguard the families using their service. Similar proportions of participants in both samples reported that they strongly agreed (60%) with this proposition or that they agreed/mostly agreed (2009: 38%; 2014: 34%) with this proposition.

### Table 6.16: Existence of protocols and procedures in services for dealing with child safety and family violence concerns, as reported by non-legal professionals, 2009 and 2014

<table>
<thead>
<tr>
<th>Protocols and procedures for dealing with child abuse and/or child neglect</th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Yes</td>
<td>822</td>
<td>96.3</td>
</tr>
<tr>
<td>No</td>
<td>5</td>
<td>0.6</td>
</tr>
<tr>
<td>Can’t say/not applicable</td>
<td>27</td>
<td>3.2</td>
</tr>
<tr>
<td>Total</td>
<td>854</td>
<td>100.0</td>
</tr>
<tr>
<td>Protocols and procedures for dealing with child abuse and/or child neglect</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>801</td>
<td>93.7</td>
</tr>
<tr>
<td>No</td>
<td>15</td>
<td>1.8</td>
</tr>
<tr>
<td>Can’t say/not applicable</td>
<td>39</td>
<td>4.5</td>
</tr>
<tr>
<td>Total</td>
<td>855</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009 and 2014: “Do you have protocols and procedures for dealing with child abuse and/or neglect?”, and “Do you have protocols and procedures for dealing with disclosures of family violence?”. Percentages may not total 100.0% due to rounding.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014
Table 6.17: Appropriateness of service protocols and procedures for safeguarding families with child safety and family violence concerns, non-legal professionals’ reports, 2009 and 2014

<table>
<thead>
<tr>
<th>Protocols and procedures are appropriate for dealing with child abuse and child neglect</th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>491</td>
<td>59.7</td>
</tr>
<tr>
<td>Agree (2009) &amp; Mostly agree (2014)</td>
<td>309</td>
<td>37.6</td>
</tr>
<tr>
<td>Disagree/strongly disagree (2009) &amp; Mostly/strongly disagree (2014)</td>
<td>13</td>
<td>1.6</td>
</tr>
<tr>
<td>Can’t say/not applicable</td>
<td>9</td>
<td>1.1</td>
</tr>
<tr>
<td>Total</td>
<td>822</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Protocols and procedures are appropriate for dealing with family violence</th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>481</td>
<td>60.0</td>
</tr>
<tr>
<td>Agree (2009) &amp; Mostly agree (2014)</td>
<td>303</td>
<td>37.8</td>
</tr>
<tr>
<td>Disagree/strongly disagree (2009) &amp; Mostly/strongly disagree (2014)</td>
<td>11</td>
<td>1.4</td>
</tr>
<tr>
<td>Can’t say/not applicable</td>
<td>7</td>
<td>0.9</td>
</tr>
<tr>
<td>Total</td>
<td>802</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: “Please indicate the extent to which you agree or disagree with the following statements: The service has appropriate protocols and procedures in place for dealing with child abuse and neglect that safeguards the families that use this service” and “The service has appropriate protocols and procedures in place for dealing with family violence that safeguards the families that use this service”. Non-legal professionals were asked in 2014: “Please indicate the extent to which you agree or disagree with the following statements: The service has appropriate protocols and procedures in place for dealing with child abuse and neglect that safeguard families that use this service” and “The service has appropriate protocols and procedures in place for dealing with family violence that safeguard families that use this service”. Percentages may not total 100.0% due to rounding.

Sources: Survey of FRS Staff (FRS Services) 2009; Survey of Practices 2014

Services provided in the context of family violence, child abuse and child safety concerns

As noted at section 5.4, non-legal professionals working in the family dispute resolution context were asked whether FDR services were provided in cases where child abuse and neglect allegations had been raised. The findings discussed in that section are again relevant in the context of professionals’ responses to family violence, child abuse and child safety concerns. As Table 5.4 indicated, while in the 2009 sample participants were relatively evenly split, a greater proportion of participants in the 2014 sample (55%) indicated that FDR services were provided in cases involving allegations of child abuse and neglect. Non-legal professionals were also asked for their views on whether FDR services were provided in cases where family violence allegations had been raised. As Table 5.4 indicated, similar proportions in both the 2009 and 2014 samples (81% and 83% respectively) confirmed that FDR services were provided in cases involving allegations of family violence. These responses, which are consistent with earlier research indicating that FDR services are commonly provided in the context of allegations of family violence (e.g., Kaspiew et al., 2009), confirm the relevance of observations noted at section 6.1.2 in relation to the potential benefits of continued and increased collaboration between FDR and other services to facilitate greater capacity to respond when working with families in these circumstances (Allen Consulting Group, 2014).

Practices relating to notifications

Non-legal professionals were asked for their views on their practices relating to required notifications in cases involving family violence or in circumstances involving disclosures of child abuse and/or child neglect.
Table 6.18 indicates that a greater proportion of participants in the 2014 sample (77%) compared to the 2009 sample (65%) reported that they strongly agreed with the proposition that they knew who to contact when safety concerns relating to family violence for clients or their children were identified. The vast majority of the remaining participants responded that they agreed/mostly agreed (2009: 29%; 2014: 21%) with this proposition.

<table>
<thead>
<tr>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>555</td>
</tr>
<tr>
<td>Agree</td>
<td>245</td>
</tr>
<tr>
<td>Disagree</td>
<td>9</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>0</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>8</td>
</tr>
<tr>
<td>Not applicable</td>
<td>21</td>
</tr>
<tr>
<td>Not answered/illegible</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>853</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: “Please indicate the extent to which you agree or disagree with the following statements: I know who to contact when safety concerns relating to family violence for clients or their children are identified”. Non-legal professionals were asked in 2014: “Please indicate the extent to which you agree or disagree with the following statements: I know who to contact when safety concerns relating to family violence for clients/callers or their children are identified”. Percentages may not total 100.0% due to rounding.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

Similarly, Table 6.19 indicates that a greater proportion of participants in the 2014 sample (86%) confirmed that they were legally mandated to report disclosures of child abuse and/or neglect, compared to 80% of the 2009 sample. The vast majority of the remaining participants indicated that mandatory reporting requirements did not apply to them (2009: 15%; 2014: 12%).

<table>
<thead>
<tr>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Yes</td>
<td>683</td>
</tr>
<tr>
<td>No, I do deal directly with clients but mandatory reporting does not apply to me</td>
<td>126</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>13</td>
</tr>
<tr>
<td>Not relevant, I don’t deal directly with clients</td>
<td>33</td>
</tr>
<tr>
<td>Total</td>
<td>855</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009 and 2014: “It is a mandatory legal requirement for me to report disclosures of child abuse and/or neglect”. Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

Non-legal professionals assessments of their capacity to respond

Non-legal professionals were asked to rate their own capacity in various respects to respond to family violence, child abuse and child safety concerns. Non-legal participants were consistently positive regarding their capacities in this regard.

Table 6.20 (on page 120) shows that 33% of the 2009 sample and 40% of the 2014 sample rated their capacity to work with families where children have experienced child abuse and/or neglect as excellent. Comparable proportions reported their capacity as good (2009: 39%; 2014: 39%) or average (2009: 10%; 2014: 9%).
Table 6.20: Non-legal professionals’ self-assessments of their work with families where children have experienced child abuse and/or neglect, 2009 and 2014

<table>
<thead>
<tr>
<th></th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Excellent</td>
<td>282</td>
<td>33.0</td>
</tr>
<tr>
<td>Good</td>
<td>333</td>
<td>39.0</td>
</tr>
<tr>
<td>Average</td>
<td>89</td>
<td>10.4</td>
</tr>
<tr>
<td>Poor</td>
<td>7</td>
<td>0.8</td>
</tr>
<tr>
<td>Very poor</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>20</td>
<td>2.3</td>
</tr>
<tr>
<td>Not applicable</td>
<td>122</td>
<td>14.3</td>
</tr>
<tr>
<td>Not answered/illegal</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total</td>
<td>855</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: “Rate your ability to do the following in your work for this service: Work with families where children have experienced child abuse and/or neglect”. Non-legal professionals were asked in 2014: “Please rate your ability to do the following in your work: Work with families where children have experienced child abuse and/or neglect”. Percentages may not total 100.0% due to rounding.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

Similarly, Table 6.21 shows that 33% of the 2009 sample and 37% of the 2014 sample rated their capacity to work with families where children were at risk of child abuse and/or neglect as excellent. Similar proportions of each of these samples reported their capacity as good (2009: 38%; 2014: 41%) or average (2009: 10%; 2014: 9%).

Table 6.21: Non-legal professionals’ self-assessments of their work with families where children are at risk of child abuse and/or neglect, 2009 and 2014

<table>
<thead>
<tr>
<th></th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Excellent</td>
<td>281</td>
<td>32.9</td>
</tr>
<tr>
<td>Good</td>
<td>325</td>
<td>38.0</td>
</tr>
<tr>
<td>Average</td>
<td>84</td>
<td>9.8</td>
</tr>
<tr>
<td>Poor</td>
<td>9</td>
<td>1.1</td>
</tr>
<tr>
<td>Very poor</td>
<td>4</td>
<td>0.5</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>22</td>
<td>2.6</td>
</tr>
<tr>
<td>Not applicable</td>
<td>117</td>
<td>13.7</td>
</tr>
<tr>
<td>Not answered/illegal</td>
<td>13</td>
<td>1.5</td>
</tr>
<tr>
<td>Total</td>
<td>855</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: “Rate your ability to do the following in your work for this service: Work with families where children are at risk of child abuse and/or neglect”. Non-legal professionals were asked in 2014: “Please rate your ability to do the following in your work: Work with families where children are at risk of child abuse and/or neglect”. Percentages may not total 100.0% due to rounding.

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

However, the data presented in Table 6.22 (on page 121) indicate slightly less confidence on the part of the 2014 sample in relation to their capacity to work with clients who have had allegations of child abuse and/or neglect made against them (albeit slightly greater than in 2009), with 34% of the 2014 sample and 32% of the 2009 sample rating their capacity to work with these clients as excellent. A greater proportion of the 2014 sample reported their capacity as good when compared with the 2009 sample (2009: 38%; 2014: 44%), with similar proportions of participants in each sample reporting their capacity in this regard to be average (2009: 13%; 2014: 12%).
In relation to non-legal professionals’ assessments of their capacities in responding to families characterised by family violence or risk of family violence, the data represented in Table 6.23 indicates that a higher level of confidence was reported by both the 2009 and 2014 samples when compared with the self-assessments of non-legal professionals in cases where families were characterised by issues relating to child abuse or child safety concerns. Almost one-half of the 2009 sample (49%) and 54% of the 2014 sample rated their capacity to work with clients who had experienced family violence as excellent. A slightly greater proportion of the 2014 sample reported their capacity as good when compared with the 2009 sample (2009: 35%; 2014: 38%), with similar proportions of participants in each sample reporting their capacity in this regard to be average (2009: 5%; 2014: 3%).

Table 6.23: Non-legal professionals’ self-assessments of their work with clients/callers who have experienced family violence, 2009 and 2014

<table>
<thead>
<tr>
<th></th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Excellent</td>
<td>414</td>
<td>48.5</td>
</tr>
<tr>
<td>Good</td>
<td>300</td>
<td>35.1</td>
</tr>
<tr>
<td>Average</td>
<td>42</td>
<td>4.9</td>
</tr>
<tr>
<td>Poor</td>
<td>4</td>
<td>0.5</td>
</tr>
<tr>
<td>Very poor</td>
<td>2</td>
<td>0.2</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>9</td>
<td>1.1</td>
</tr>
<tr>
<td>Not applicable</td>
<td>83</td>
<td>9.7</td>
</tr>
<tr>
<td>Not answer /illegible</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total</td>
<td>854</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: “Rate your ability to do the following in your work for this service: Work with clients who have experienced family violence”. Non-legal professionals were asked in 2014: “Please rate your ability to do the following in your work: Work with clients/callers who have experienced family violence”. Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

Table 6.24 (on page 122) reflects similarly high levels of confidence in the reports of both the 2009 and 2014 samples in their self-assessments of their capacity to work in cases where clients were at risk of experiencing family violence. Almost one-half of the 2009 sample (47%) and 50% of the 2014 sample rated their capacity as excellent. A greater proportion of the 2014 sample
reported their capacity as good when compared with the 2009 sample (2009: 34%; 2014: 40%), with similar proportions of participants in each sample reporting their capacity in this regard to be average (2009: 6%; 2014: 4%).

### Table 6.24: Non-legal professionals’ self-assessments of their work with clients/callers who are at risk of experiencing family violence, 2009 and 2014

<table>
<thead>
<tr>
<th></th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Excellent</td>
<td>400</td>
<td>46.9</td>
</tr>
<tr>
<td>Good</td>
<td>293</td>
<td>34.4</td>
</tr>
<tr>
<td>Average</td>
<td>48</td>
<td>5.6</td>
</tr>
<tr>
<td>Poor</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>Very poor</td>
<td>1</td>
<td>0.1</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>11</td>
<td>1.3</td>
</tr>
<tr>
<td>Not applicable</td>
<td>85</td>
<td>10.0</td>
</tr>
<tr>
<td>Not answered/illegible</td>
<td>12</td>
<td>1.4</td>
</tr>
<tr>
<td>Total</td>
<td>853</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: "Rate your ability to do the following in your work for this service: Work with clients who are at risk of experiencing family violence." Non-legal professionals were asked in 2014: "Please rate your ability to do the following in your work: Work with clients/callers who are at risk of experiencing family violence."

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014

The data represented in Table 6.25 indicate less confidence on the part of non-legal professionals when reflecting on their capacity to work with clients who have had allegations of family violence made against them, with 40% of the 2009 sample and 39% of the 2014 sample rating their capacity to work with these clients as excellent. A greater proportion of the 2014 sample reported their capacity as good when compared with the 2009 sample (2009: 38%; 2014: 45%), with slightly more participants in the 2009 sample reporting their capacity in this regard to be average than those participants in the 2014 sample (2009: 10%; 2014: 7%).

### Table 6.25: Non-legal professionals’ self-assessments of their work with clients/callers who have had allegations of family violence made against them, 2009 and 2014

<table>
<thead>
<tr>
<th></th>
<th>Survey of FRS Staff 2009</th>
<th>Survey of Practices 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Excellent</td>
<td>342</td>
<td>40.1</td>
</tr>
<tr>
<td>Good</td>
<td>321</td>
<td>37.6</td>
</tr>
<tr>
<td>Average</td>
<td>83</td>
<td>9.7</td>
</tr>
<tr>
<td>Poor</td>
<td>6</td>
<td>0.7</td>
</tr>
<tr>
<td>Very poor</td>
<td>1</td>
<td>0.1</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>12</td>
<td>1.4</td>
</tr>
<tr>
<td>Not applicable</td>
<td>89</td>
<td>10.4</td>
</tr>
<tr>
<td>Not answered/illegible</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Total</td>
<td>854</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Notes: Non-legal professionals were asked in 2009: "Rate your ability to do the following in your work for this service. Work with clients who have had allegations of family violence made against them." Non-legal professionals were asked in 2014: "Please rate your ability to do the following in your work: Work with clients/callers who have had allegations of family violence made against them."

Sources: Survey of FRS Staff (FRSP Services) 2009; Survey of Practices 2014
6.3 Effects of the family violence reforms on family law professionals’ response to family violence: Qualitative insights

Judicial officers, registrars and lawyers were asked for their views in open-ended survey questions about any changes to the way in which family law professionals screen/identify, assess and respond to family violence as a result of the family violence reforms. In this section, the comments relevant to professionals’ responses to family violence will be canvassed.

6.3.1 Judicial officers/registrars

A number of judicial participants (e.g., JO63, JO39, JO57) described an increase in the reporting of family violence in family law proceedings as a result of the family violence reforms; however, significant resourcing issues were identified in this context, with observations made by some judicial participants (JO29; JO39; JO57; JO63) about the difficulties for prescribed child welfare authorities to respond in a timely manner to the resultant increase in notifications. On this issue, the comments of JO39 noted earlier in sections 4.2.5 and 6.2.2 are of particular relevance as they describe the pressures on prescribed child welfare authorities arising from increased Form 4 filings, and this participant is quoted at greater length below:

The difficulty is getting information on child abuse from prescribed welfare agencies before the FCC at an early date—the change in the definition has resulted in more Form 4s which adds to their administrative load—they cannot respond in a timely fashion. FCC judges [are] impeded as [there is] no legal aid funding … no timely responses from welfare agencies—large numbers of SRLs [Self Represented Litigants]—[and] limited family consultant resources—[The FCC is] doing what they can by seeking to introduce a Notice of Risk in ALL PARENTING matters—[There is] still underreporting of risk and [the] Notice of Risk should address this—but [I am] conscious of the workload of welfare agencies and [of] working locally to try and get some information sharing at an early date … State agencies do not have the resources to respond in a timely manner to Form 4s—courts [are] issuing more s 69ZW—[there is a] wonderful pilot in Vic. with a co-located [child protection] officer making real efforts to facilitate exchange—Judges have agreed on common form orders and only request … intervention when no viable carer. [The] FCC [is] doing what it can to get information earlier. (JO39, FCoA, registrar)

As noted earlier at 4.3.1, JO29 (FCoWA, magistrate) also observed that “police and child protection authorities have insufficient resources to respond and there is only ‘aspirin and band aids’ in the family court medicine kit”. Two registrars of the Family Court of Australia also made the following observations:

The child protection authorities (state-based) now receive many more Notices of Abuse than they did previously. All must be assessed and this is taking valuable resources and time for child safety officers and the state governments do not have the resources to manage this significant increase in workload. (JO63, FCoA, registrar)

In addition, the number of Form 4s now being filed are creating a significant burden on the local department as many do not meet the requirements under the state legislation to investigate. If the numbers increase much further there is a risk that the Form will simply be treated as an administrative process receiving a very limited response, if any, from the department thereby negating the benefits of the Form 4. (JO57, FCoA, registrar)

This resourcing issue was also identified as affecting the responses available to the courts:

It is all very well to place onerous obligations on courts and others—but when there are no resources to assist the court once risks have been identified—that is the difficulty. [It is] rare for welfare agencies to intervene … Increasing reporting of risks and identification at an early date [is] clearly useful, but limited ICL resources, unlikely to have welfare intervention … [The] courts [are] left to make difficult determinations with
limited resources. Matters coming to the courts are more complex with increasing risk factors. (JO39, FCoA, registrar)

Insights from lawyers’ open-ended responses relevant to this issue are discussed at 6.3.2 below.

Finally in relation to the judicial sample, numerous participants in this category also reported that there had been no changes to the ways in which family law professionals responded to family violence. For example:

The amendments largely codify what was the practice of competent family law practitioners, and for the competent practitioner have made little real difference, other than as to how case management is packaged. (JO52, FCoWA, judge)

### 6.3.2 Lawyers

Consistent with judicial participant comments noted at the outset of 6.3.1, a number of lawyers reported changes in professionals’ responses to family violence as a result of the family violence reforms. These lawyers reported an increase in the reporting of family violence in family law proceedings and in the detail in affidavit material, together with an increase in referrals to relevant services. For example:

Notices of abuse are more detailed, affidavits are more detailed and early warm referrals to related agencies are on the increase, from my perspective. (L104, lawyer)

Some lawyers also described the effects of the family violence reforms on making safer arrangements for children and on raising family violence in the litigation process:

The changes have placed responsibility on legal professionals to take family violence into account when giving advice and this has in turn led to better arrangements being made for children. (L498, lawyer)

The reforms have been an opportunity to put family violence more confidently on the table, and in my experience it has probably meant less litigation about time with children where there is family violence. But the extent to which it is being taken seriously or even talked about is patchy. (L505, lawyer)

Other lawyers reported that the effect was particularly apparent where there existed clear and independent evidence of the relevant family violence, although it was acknowledged that this was not the norm in the majority of cases. For example:

The impact of the changes is strong when there is clear independent evidence of violence. However the impact is more difficult to identify in the majority of cases where the allegations of violence [is] denied or minimised by the other party. Most cases do not ever go to a hearing where the allegations are tested, and so the issue is about negotiating appropriate arrangements that are as safe as they can be in the context of contested allegations. I don’t think that the changes have made much difference to this majority of cases. (L121, lawyer)

The issue is evidence—family violence is easier to screen/identify, but still difficult to prove/substantiate. (L425, lawyer)

Unless there is clear evidence of physical violence it is sometimes not taken seriously. Claims of emotional and psychological abuse, unless severe and supported by something like notes from a counsellor/mental health professional, are sometimes dismissed with little investigation. (L113, lawyer)

Indeed, many lawyers expressed disappointment in the lack of substantive effect that the family violence reforms had on outcomes for families and in relation to securing parenting arrangements that were more consistent with the best interests of children and that prioritised their protection from harm. Some lawyers directed their criticism towards the responses of courts in these circumstances:

The reforms provided a guideline for lawyers to bring to the attention of the judiciary circumstances in the lives of a client that would constitute an incidence of family violence. However, in my experience, even where those incidents were embodied in
affidavit evidence, little more than lip service was given to the significance of the impact on a child of family violence when it came down to practical arrangements for parenting. Initially, the reforms were very exciting. It is now just another disappointment along the road to seeking protection from the victims and witnesses of family violence. (L205, lawyer)

The need to protect children from harm and exposure to family violence is given a lower priority than the notion of children having a close and meaningful relationship with both parents. Expressions of concern by mothers are too often dismissed in favour of spending time orders regarded as necessary for the close and meaningful relationship. Mothers are concerned about the negative judgement of them that follows their expression of a desire for none/minimal contact with a partner who has a history of violence against women. Judges are too dismissive of a parent’s expressed concerns about family violence. (L382, lawyer)

The reforms and thus courts (in the absence of strong and usually independent evidence) fail to adopt a precautionary approach to FV at the interim stage and give little weight to child attachment issues; the court will say those issues are for trial. Therefore the child-centred parent is often best advised to avoid, or at least delay, legal proceedings and rely on FDR. (L344, lawyer)

Of relevance to the question of changes in professionals’ responses to risks and harm factors, as discussed in detail at 6.2.2, some lawyers were critical of, and expressed their frustration with, what they described as the delayed or no response of courts and prescribed child welfare authorities to the filing of Form 4 Notices. However, there were a small number of these lawyers (L135 and L443) who, similar to the judicial responses discussed at 6.3.1, acknowledged the effects of the lack of resources on the capacity of child welfare authorities to respond.

Some participating lawyers did not reserve their criticism for the courts or child protection system but also described their disappointment at the responses of family consultants/single experts and of lawyers or with the family law system as a whole:

There is still a tendency to minimise violence experienced by women and children, especially by family consultants. This is despite extensive histories reported by women of the violence and its impacts and information provided regarding fear by children of the violent parent. This often strongly affects the outcome of parenting orders where, despite the changes to the FLA, children and women continue to be placed in situations which place them at risk. (L501, lawyer)

There is a significant disconnect between what lawyers and family report writers say and what they do. While everyone in the family court system … pays lip service to the idea that exposure to violence is bad for children, they take no discernible steps to prevent it. Unless a child has suffered significant physical injury at the hands of a parent, there is almost never any consideration given to the effects of other types of family violence on the child or children. (L396, lawyer)

Respondent lawyers [are] often dismissive of family violence concerns and constantly rubbish on about family violence being raised as an issue to stop one parent from having a relationship with the child. (L79, lawyer)

Single expert witnesses and judicial officers still prioritise shared care above children’s safety. (L46, lawyer)

Lawyers acting for the alleged perpetrators rarely acknowledge the violence or volunteer to attend programs and usually adopt a very adversarial approach. There also seems to be a lack of understanding of the dynamics of violence and the affects on parenting and the continued exposure of the mother (usually) to abuse at changeovers, which is witnessed by the children. (L198, lawyer)

I don’t think that the legal profession understands the significance of the changes to the legislation in the re-prioritising of the risks of family violence over and above the question of a meaningful relationship. Often in mediation conferences, there is greater attention to resolving the matters to appease both parties rather than properly addressing the issues of family violence. Often the family violence issues are avoided given that the FDR
practitioner would have to terminate the conference once raised therefore preventing a carefully weighed assessment of family violence and the risks thereafter. (L339, lawyer)

A number of lawyers providing a response on this issue described the effects of the reforms as “symbolic”, “cosmetic” and as merely increasing paperwork without any change in outcomes, or in some instances, as giving rise to detrimental outcomes. For example:

Everyone now spends more time in filling out paperwork (Notices of Risk, etc.) but this has not helped at all with actually protecting children from violence and may in fact have made it worse as resources are being diverted into paperwork. (L64, lawyer)

There are a lot more Notices of Risk of Child Abuse filed, but I query whether this is an improvement. Sometimes, they are purely filed to facilitate legal aid being granted and they can delay the making of interim parenting orders before some FCC judges. (L135, lawyer)

It's mostly cosmetic and just involves filing another form. (L50, lawyer)

[There is] little difference apart from the extra forms required to be completed. (L120, lawyer)

There appears to be greater use of the “risk” form when filing parenting proceedings where family violence is an issue, but there doesn’t seem to be any actual change in the outcomes or the approaches of parties/their solicitors following the reforms. (L391, lawyer)

The reforms have meant longer affidavits, more subpoenas, longer court delays, longer investigations and less agreement between parents. (L336, lawyer)

6.4 Summary

This chapter has examined findings from the Survey of Practices relevant to the responses of family law professionals in cases involving family violence, child abuse and child safety concerns.

Consistent with the findings reported in Chapter 4, the data in this chapter demonstrate a divergence between the reflections of judicial participants, lawyers and non-legal professional groups on the capacity of the legal system, lawyers and FRCs to deal adequately with cases involving allegations of family violence and child abuse in the post-family violence reform context. While a substantial majority of judicial participants (84%) considered that the legal system dealt adequately with such cases, markedly lower levels of agreement were reported by lawyers (48%) and non-legal professionals (29%). A similar response pattern also emerged in relation to the assessments of lawyers and FRCs, with lawyers being the most positive on the capacity of their own profession to respond adequately in such cases, and non-legal professionals being the most positive on the capacity of FRCs to respond adequately. Of note, comparative data available from the Institute’s Evaluation of the 2006 Family Law Reforms (Kaspiew et al., 2009) indicate an increase in positive reflections on the legal system’s capacity in this regard.

The discussion in this chapter also analysed data from more specific survey questions that canvassed any improvements in the capacities of judicial officers, registrars, ICLs, non-ICL lawyers, family consultants, single experts and FDR practitioners to respond to family violence, and/or child abuse/child safety concerns as a result of the family violence reforms. The analysis of these data indicate that, consistent with the response patterns outlined in Chapter 4, participating lawyers were the group that consistently responded most positively in relation to improvements in the capacities of each category of professional, with judicial and non-legal participants generally endorsing improvements in the capacities of various professionals where they were able to express views on the relevant propositions. Variations in this response pattern emerged, however, with respect to improvements in the capacity of FDR practitioners to respond to family violence and/or child abuse/child safety concerns, with non-legal professionals being more positive than other participant groups in this regard.

The analysis in this chapter also considered participants’ observations of any changes in responses to family violence, child abuse and child safety concerns since the inception of
the family violence reforms. The data demonstrate that in relation to parenting arrangements involving supervised changeover, changeover at a neutral venue and supervised time, close to a majority of the aggregated sample confirmed that the family violence reforms had resulted in more of these arrangements, although lower proportions of participants reported an increase in arrangements for no parenting time. A majority of participating lawyers (60%) also agreed that courts now prioritised safety to a greater degree when making interim orders.

Significant insight into professional practices in responding to risks and harm factors also emerged in this chapter. A majority of the participating lawyers disagreed that their filing of Form 4 Notices was effective in yielding appropriate responses; that is, responses involving safer parenting arrangements for parents and children in cases involving these risks and harm factors. Open-ended survey data from some participants also pointed to the repetitive and cumbersome nature of the Form 4 Notice, and the limited effect that the filing of the Notice was perceived to have on the responses of courts, responding parties and prescribed child welfare authorities to secure safer outcomes for children and family members.

Quantitative and qualitative data also provided insight into the effects of the family violence reforms on professional practices in the preparation of court documentation in responding to family violence, child abuse and child safety concerns. For example, judicial and legal participants reported an increase in the details provided of family violence, the exposure of children to family violence and child abuse and child safety concerns in affidavit material since the family violence reforms, with increases also identified in relation to the information about family violence, child abuse and child safety concerns contained in the family reports and memoranda of family consultants and single experts, and in their recommendations to address the implications of this information.

More generally, participants’ open-ended survey responses about any changes to the ways in which family law professionals responded to family violence as a result of the family violence reforms, also indicated that while some judicial and legal participants described changes that they had observed, other participants in these categories were mixed in their view on this question or reported that they had observed no change in professionals’ responses as a result of the reforms. Lawyers’ open-ended responses provided particular insight into the disappointment experienced by those participants who observed a lack of effects arising from the reforms in terms of effective responses to family violence, and in particular on the making of safer parenting arrangements.

Comments made by judicial and legal participants in relation to resourcing issues and the difficulties arising for prescribed child welfare authorities to respond in a timely manner to requests for information and to Form 4 Notices, may be alleviated to some degree by increased collaboration and information exchange (Productivity Commission, 2014). Of note, terms of reference were issued by Attorney-General Brandis in October 2014 to the Family Law Council for advice to be provided on matters including the “opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services … and between the family law system and other relevant support services such as child protection” (Family Law Council, 2014). The Family Law Council is due to report to the Attorney-General on this reference by December 2015.
This chapter examines parents’ experiences of using family law services after the 2012 family violence reforms. The evidence presented in this chapter augments the insights derived from the Survey of Practices by examining professional practices from the perspective of clients. The methodology for this aspect of the Survey of Practices was described in Chapter 1. To recap briefly, the findings discussed are based on data derived from telephone interviews with 2,473 separated parents. These interviews were part of the data collection for the Survey of Recently Separated Parents 2014. In the first part of the fieldwork, parents were asked whether they had used any family law services in relation to their separation. Those who had used particular services were asked a detailed series of questions about their experiences with those services. The selection of parents and services was based on random allocation.

This chapter begins with an overview of the pattern of service use evident among this sample of parents. The sections that follow examine parents’ experiences with specific services. The areas examined cover a range of issues, including referral pathways, decisions made about parenting arrangements after accessing the service, satisfaction with that service and whether they were asked about or disclosed family violence to that service.

The analysis in this chapter depicts response patterns analysed according to parent gender and whether or not the participant had experienced family violence from the other parent before, during or since the separation. This is explained further above Table 7.2.

Specific services that are the main focus of this chapter are family dispute resolution practitioners, FRCs, lawyers/legal services, courts and domestic/family violence services.

### 7.1 Parents’ use of family law services

Of the parents interviewed, 77% had accessed at least one service during or since their separation, with both fathers and mothers accessing an average of three services (Table 7.1 on page 129). Among the 77% of parents who had contact with at least one service, the vast majority of both mothers and fathers had accessed a lawyer (83% and 80% respectively). The other services commonly used were dispute resolution/mediation (fathers, 59%; mothers, 49%), FRCs (fathers, 50%; mothers, 43%) and the courts (fathers, 31%; mothers, 28%).

Consistent with the purpose of the programs, a higher proportion of fathers than mothers accessed a men and family relationship counselling service or Mensline (6% and 13%, compared...
Parents’ experiences

with 1% of mothers), while just less than one in five mothers accessed a domestic or family violence service (19%, compared with 5% of fathers).

Relatively similar proportions of mothers and fathers reported accessing more specific separation services and programs, such as the Post Separation Cooperative Parenting Program (PSCPP) (4–5%), Supporting Children After Separation Program (SCASP) (6%), Parenting Orders Program (POP) (3–4%) or a family consultant/single expert witness (FC/SEW) (5–6%).

<table>
<thead>
<tr>
<th>Table 7.1: Family law services/programs accessed by parents, by gender</th>
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<tbody>
<tr>
<td>Service accessed</td>
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<tr>
<td>Number of services accessed</td>
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<tr>
<td>1 service</td>
</tr>
<tr>
<td>2 services</td>
</tr>
<tr>
<td>3 services</td>
</tr>
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</tr>
<tr>
<td>5 services</td>
</tr>
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<td>6+ services</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Average number of services accessed</td>
</tr>
<tr>
<td>Total (n)</td>
</tr>
</tbody>
</table>

Specific services accessed

<table>
<thead>
<tr>
<th>Service accessed</th>
<th>Fathers (%)</th>
<th>Mothers (%)</th>
<th>All parents (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least one service</td>
<td>76.0</td>
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<td>76.6</td>
</tr>
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<td>Family dispute resolution (FDR)/mediation</td>
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</tr>
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<td>Supporting Children After Separation Program (SCASP)</td>
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<td>Family consultant (FC)/single expert witness (SEW)</td>
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<td>Other service</td>
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</table>

Notes: Although these response options were recorded, they were not included in the subsequent service-related questions as they were not considered to fall within the parameters of the survey (i.e., specific family law related services). Percentages may not total exactly 100.0% due to rounding.

Source: Experiences With Services module (SRSP 2014)

Earlier in the survey, parents had been asked a series of questions relating to family violence they might have experienced from the other parent either before/during or since separation. The questions included a list of items that constituted emotional abuse, followed by whether the other parent had physically hurt them or tried to force them into unwanted sexual activity. The analysis in this section focuses on:

- parents who reported physical hurt and unwanted sexual activity (attempts to force) before or during separation and after separation;
- parents who reported being subjected to emotional abuse alone before or during separation and after separation; and
- parents who reported no violence.

A clear theme emerged in patterns of parents’ contact with services in relation to their reports of experiencing family violence before/during separation. For all services, higher proportions of parents who reported accessing each service had experienced family violence, compared with parents who had not experienced any family violence (Table 7.2). The results showed that parents who had experienced family violence before/during separation tended to access more services than parents who had not experienced any family violence in this period. That is, parents who had experienced physical violence before/during separation accessed an average of four services in relation to their separation, those who had experienced emotional abuse alone accessed an average of three services, while parents who had not experienced any family violence accessed an average of one service.

| Table 7.2: Family law services/programs accessed by parents, by experiences of family violence before/during separation |
|---------------------------------------------------|-----------------|-----------------|-----------------|
| Services                                          | Physical violence (%) | Emotional abuse alone (%) | No violence (%) |
| No. of services accessed                          | No services     | 1 service        | 2 services      | 3 services      | 4 services      | 5 services      | 6+ services     |
|                                                   | 9.4             | 10.4             | 13.0            | 12.9            | 10.9            | 13.5            | 29.9            |
|                                                   | 15.9            | 18.9             | 14.5            | 13.7            | 14.2            | 8.5             | 14.4            |
|                                                   | 43.2            | 23.1             | 13.2            | 8.6             | 5.9             | 2.9             | 3.2             |
| Total (n)                                         | 100.0           | 100.0            | 100.0           |                 |                 |                 |                 |
| Average number of services                       | 4.2             | 2.9              | 1.4             |                 |                 |                 |                 |
| Total (n)                                         | 1,626           | 1,802            | 3,428           |                 |                 |                 |                 |
| Specific services accessed                       |                  |                  |                 |                 |                 |                 |                 |
| At least one service                             |                  |                  |                 |                 |                 |                 |                 |
| Family dispute resolution (FDR)/mediation        | 90.6            | 62.6             | 86.6            | 44.8            | 55.0            | 30.5            | 55.0            |
| Lawyers/legal service                            | 84.1            | 55.1             | 84.5            | 27.7            | 47.7            | 25.1            | 33.2            |
| Court                                            | 56.9            | 39.8             | 72.1            | 14.2            | 32.2            | 16.6            |                  |
| FRCs                                             |                  |                  |                 |                 |                 |                 |                  |
| Family relationship counselling service           | 30.5            | 25.1             | 16.6            |                 |                 |                 |                  |
| Domestic/family violence (DFV) service            | 28.9            | 7.5              | 1.1             |                 |                 |                 |                  |
| Men and family relationship counselling service   | 4.4             | 3.3              | 1.7             |                 |                 |                 |                  |
| Mensline                                         | 8.7             | 6.5              | 3.5             |                 |                 |                 |                  |
| Family Relationships Advice Line (FRAL)           | 16.0            | 8.2              | 4.7             |                 |                 |                 |                  |
| Parenting Orders Program (POP)                    | 6.1             | 3.3              | 1.1             |                 |                 |                 |                  |
| Post Separation Cooperative Parenting Program (PSCPP) | 7.2          | 4.8              | 1.8             |                 |                 |                 |                  |
| Supporting Children After Separation Program (SCASP) | 9.6          | 5.5              | 3.4             |                 |                 |                 |                  |
| Children’s Contact Service (CCS)                 | 6.4             | 2.3              | 0.3             |                 |                 |                 |                  |
| Independent Children’s Lawyer (ICL)              | 8.2             | 2.6              | 0.5             |                 |                 |                 |                  |
| Family consultant (FC)/single expert witness (SEW)| 10.8           | 3.7              | 0.9             |                 |                 |                 |                  |
| Psychologist/psychiatrist a                       | 51.5            | 40.4             | 29.7            |                 |                 |                 |                  |
| Other service a                                   | 21.6            | 18.5             | 15.2            |                 |                 |                 |                  |

Notes: Percentages may not total exactly 100.0% due to rounding.
Source: Experiences With Services module (SRSP 2014)
Further, almost one in three parents who experienced physical violence before/during separation accessed six or more services (30%), compared with 14% of parents who had experienced emotional abuse alone, and 3% of parents who had not experienced family violence.

Forty-five per cent of parents who had experienced physical violence (with or without emotional abuse) before/during separation had accessed the court, followed by 28% of parents who had experienced emotional abuse and 14% who had not experienced any family violence.

Among parents who had experienced some form of family violence, more than three times the number of parents who had experienced physical violence accessed a domestic or family violence service, than those who had experienced emotional abuse alone (29% and 8% respectively). Similarly, almost four times the number of parents who had experienced physical violence accessed a family consultant or single expert witness, compared with those who had experienced emotional abuse alone (11% and 4% respectively).

The pattern that emerged when analysing parents’ access to services by their experiences of family violence since separation was similar to that which emerged when analysing the data according to their experiences before/during separation (i.e., higher service use for those experiencing violence), though with higher proportions among those who had experienced family violence since separation, compared with those who had experienced family violence before/during separation (Table 7.3 on page 132).

For example, 67% of parents who experienced physical violence since separation, and 59% of parents who experienced emotional abuse alone, accessed FDR, compared with 63% and 55% respectively of those who experienced these types of family violence before/during separation.

Similarly, the pattern in the number of services parents accessed by their experiences of family violence since separation, was in line with parents’ reports of family violence before/during separation, with higher proportions of parents who had experienced family violence having accessed multiple services, compared with parents who had not experienced family violence. Conversely, nearly half the parents (43%) who had not experienced any family violence since separation reported not having accessed any services in relation to their separation, compared with those who had experienced some form of family violence. This compares with 9% of parents who had experienced physical violence and 12% of parents who had experienced emotional abuse since separation, not having accessed any services.

Analyses from this point forward are based only on responses from parents who accessed specific family law services. That is, of the 3,428 parents asked about their contact with services for the purposes of the Parents’ Experiences of Services module of the SRSP 2014, 2,473 reported having accessed a service.23 A sample profile, including a summary of key demographic characteristics and the distribution of service use appears in Chapter 1 at section 1.2.3.

7.2 Parents’ pathways to accessing family law services

Parents were asked how they came to access the relevant service, with response options including referral from a legal or non-legal professional, referral from a friend or relative, or that they located the service themselves. Parents could name more than one pathway, and could specify other reasons why they accessed the service, such as for financial reasons or convenience. Table 7.4 (on page 133) shows that the most common pathway for parents was to find and contact the service themselves (43%), followed by family or friends (16%). Lawyers were the most common professionals named by parents to have referred them to a service (12%).

The most notable gender difference in pathways to services was that a higher proportion of fathers than mothers reported that their former partner had organised for them to attend the service (13% compared with 7%, respectively).

23 As noted under Table 7.1, this sample excludes parents who only reported accessing a “psychologist/psychiatrist” or “other service” (n = 153).
While self-referral was the most commonly named pathway to accessing services overall, variation emerged in the patterns of referral when examined by parents’ experiences of family violence.

Figure 7.1 (on page 133) shows that a higher proportion of parents who had not experienced family violence before/during separation self-referred (49%), compared with parents who had experienced emotional abuse alone (42%) or physical violence (38%).

Conversely, higher proportions of parents who had experienced family violence before/during separation were referred to the service by a lawyer or the police.

Very similar patterns emerged when examining parents’ pathways to services by experiences of family violence since separation (data not shown).

<table>
<thead>
<tr>
<th>Table 7.3: Family law services/programs accessed by parents, by experiences of family violence since separation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services</td>
</tr>
<tr>
<td>No services</td>
</tr>
<tr>
<td>1 service</td>
</tr>
<tr>
<td>2 services</td>
</tr>
<tr>
<td>3 services</td>
</tr>
<tr>
<td>4 services</td>
</tr>
<tr>
<td>5 services</td>
</tr>
<tr>
<td>6+ services</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

Average number of services | 4.3 | 3.5 | 3.5 |

Total (n) | 1,626 | 1,802 | 3,428 |

Notes: Percentages may not total exactly 100.0% due to rounding.
Source: Experiences With Services module (SRSP 2014)
<table>
<thead>
<tr>
<th>Pathway</th>
<th>Fathers (%)</th>
<th>Mothers (%)</th>
<th>All parents (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-referral</td>
<td>42.6</td>
<td>42.4</td>
<td>42.5</td>
</tr>
<tr>
<td>Friend or relative</td>
<td>15.3</td>
<td>17.1</td>
<td>16.2</td>
</tr>
<tr>
<td>Other parent organised</td>
<td>12.9</td>
<td>7.0</td>
<td>9.8</td>
</tr>
<tr>
<td>Lawyer</td>
<td>12.0</td>
<td>12.7</td>
<td>12.3</td>
</tr>
<tr>
<td>Referral by other service</td>
<td>5.7</td>
<td>8.6</td>
<td>7.2</td>
</tr>
<tr>
<td>Referred by police</td>
<td>0.7</td>
<td>3.3</td>
<td>2.1</td>
</tr>
<tr>
<td>Appointed by court</td>
<td>1.9</td>
<td>2.2</td>
<td>2.0</td>
</tr>
<tr>
<td>Financial reasons</td>
<td>2.0</td>
<td>2.2</td>
<td>2.1</td>
</tr>
<tr>
<td>Other pathway</td>
<td>9.3</td>
<td>9.4</td>
<td>9.3</td>
</tr>
<tr>
<td>Don’t know</td>
<td>3.1</td>
<td>2.7</td>
<td>2.9</td>
</tr>
<tr>
<td>Total (N)</td>
<td>1,179</td>
<td>1,294</td>
<td>2,473</td>
</tr>
</tbody>
</table>

Notes: All parents who accessed a service (n = 2,473). More than one response was allowed, therefore percentages do not total 100%.

Source: Experiences With Services module (SRSP 2014)
Chapter 7

7.3 Influence of services on parents’ decision making

When parents were asked whether accessing the service had made any difference to decisions they made about parenting arrangements for their child/children, around two-thirds of parents reported that it had. The list of examples in Table 7.5 was read out and parents could select more than one response, as most of them were not mutually exclusive.

Table 7.5: Influence of services on parents’ decisions about parenting arrangements, by gender

<table>
<thead>
<tr>
<th>Decision after accessing service</th>
<th>Fathers (%)</th>
<th>Mothers (%)</th>
<th>All parents (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreed to a shared-care arrangement</td>
<td>21.3</td>
<td>20.1</td>
<td>20.7</td>
</tr>
<tr>
<td>Agreed to less time with child</td>
<td>10.8</td>
<td>5.3</td>
<td>7.9</td>
</tr>
<tr>
<td>Opposed a shared-care arrangement</td>
<td>3.0</td>
<td>5.8</td>
<td>4.5</td>
</tr>
<tr>
<td>Sought more time with child</td>
<td>17.6</td>
<td>6.6</td>
<td>11.9</td>
</tr>
<tr>
<td>Sought supervised time between other parent and child</td>
<td>2.0</td>
<td>4.6</td>
<td>3.4</td>
</tr>
<tr>
<td>Sought supervised changeover</td>
<td>2.1</td>
<td>2.7</td>
<td>2.4</td>
</tr>
<tr>
<td>Sought no parenting time for other parent</td>
<td>1.0</td>
<td>1.9</td>
<td>1.5</td>
</tr>
<tr>
<td>Took steps to protect self/child</td>
<td>6.9</td>
<td>14.5</td>
<td>10.8</td>
</tr>
<tr>
<td>Took steps to change own behaviour</td>
<td>7.6</td>
<td>8.3</td>
<td>7.9</td>
</tr>
<tr>
<td>Other decision</td>
<td>7.7</td>
<td>9.7</td>
<td>8.8</td>
</tr>
<tr>
<td>Had very limited contact with this service (avoid)</td>
<td>5.7</td>
<td>6.3</td>
<td>6.0</td>
</tr>
<tr>
<td>No decisions</td>
<td>43.7</td>
<td>45.0</td>
<td>44.4</td>
</tr>
<tr>
<td>Don’t know</td>
<td>2.5</td>
<td>3.2</td>
<td>2.8</td>
</tr>
<tr>
<td>Refused</td>
<td>0.9</td>
<td>0.2</td>
<td>0.5</td>
</tr>
<tr>
<td>Total (N)</td>
<td>1,179</td>
<td>1,294</td>
<td>2,473</td>
</tr>
</tbody>
</table>

Notes: * In response to interviewer feedback after the pilot survey fieldwork, this response was added to the questionnaire (though not read out to the participants) to be used where a parent felt their contact with the service in question was too limited to provide any further information of value. In these cases, any decisions that the service did influence were recorded, after which these parents were only asked one further question about the service, regarding their overall satisfaction with it (see section 7.4). This approach was taken as part of quality assurance measures to ensure that the data collected best reflected the views of parents about their experiences of the service. All parents who accessed a service (n = 2,473). More than one response was allowed, therefore percentages do not total 100%.

Source: Experiences With Services module (SRSP 2014)

It is worth noting that the decisions reported by parents that are represented in the figures and tables throughout this section do not necessarily represent the ultimate outcome of parenting negotiations. That is, some aspects of the data might appear counter-intuitive, but these situations are complex, and the analyses presented in the forthcoming SRSP 2014 report will support a better understanding of these patterns.

One in five parents (21%) decided to agree to a shared-care arrangement24 and around 5% of parents decided to oppose shared care. A higher proportion of fathers than mothers decided to seek more time with their child (18%, compared with 7% of mothers) as a result of accessing the service. Conversely, a higher proportion of mothers decided to take steps to protect themselves and/or their child after accessing the service (15% compared with 7% of fathers).

A number of differences were evident in the analyses undertaken of the decisions parents reported making after accessing the service, according to whether they also reported experiencing family violence (Figure 7.2 on page 135). More than half the parents who had not experienced any family violence before/during separation (54%) reported that the service made no difference to decisions they made about parenting arrangements.

24 “Shared care” is defined as a child spending 35–65% of nights with each parent.
One in five parents who reported experiencing physical violence before/during separation, reported that accessing the service influenced their decision to agree to shared-care arrangements for their children, whereas 7% reported the service influenced their decision to oppose it. A higher proportion of parents who experienced physical violence decided to seek more time with their children as a result of accessing the service (15%), compared with parents who experienced emotional abuse alone or no family violence (13% and 6%, respectively). Further, one in five parents who experienced physical violence before/during separation decided to take steps to protect themselves and/or their children, after accessing the service.

Figure 7.2: Parenting decisions made as a result of accessing the service, by experiences of family violence before/during separation

Notes: All parents who accessed a service (n = 2,473)
Source: Experiences With Services module (SRSP 2014)

Figure 7.3 (on page 136) shows that a similar pattern emerged among parents who had experienced family violence since separation as with those who had experienced family violence before/during separation.

A higher proportion of parents who had experienced family violence (physical and emotional) since separation reported that accessing the service influenced their decision to seek restrictions on their children’s contact with the other parent (such as supervised contact, supervised changeover arrangements or no parenting time), compared with parents who had not experienced family violence since separation.

Further, a higher proportion (24%) of parents who had experienced physical violence since separation decided to take steps to protect themselves and/or their children, compared with 11% of parents who had experienced emotional abuse alone and 5% of parents who had not reported experiences of family violence in this time period.
Figure 7.4 (on page 137) examines the influence of particular services on fathers’ and mothers’ decisions about parenting arrangements. The figure shows that, with the exception of mothers’ reports about lawyers, more than half the parents who accessed these services indicated that accessing the service made a difference to their decisions about parenting arrangements.

In some instances, decisions made as a result of accessing services varied by gender. For example, a higher proportion of fathers than mothers who accessed these particular services, decided to seek more time with their child as a result. Conversely, a higher proportion of fathers also decided to agree to less time with their children.

A higher proportion of mothers than fathers reported that accessing these services influenced their decision to take steps to protect themselves and/or their children (15–18% of mothers across these services, excluding those who accessed a domestic or family violence service, compared with 5–14% of fathers). Further, a higher proportion of mothers than fathers reported that these services influenced their decision to oppose a shared-care arrangement (4–9%, compared with 2–5% of fathers).
Parents’ experiences

When asked about their overall satisfaction or dissatisfaction with the service that they had accessed, more than two-thirds of parents reported that they were satisfied (Figure 7.5 on page 138). Overall satisfaction appeared to be marginally higher among mothers, and overall dissatisfaction was slightly higher among fathers.

Figure 7.6 (on page 138) shows that when analysed by experiences of family violence in the two time periods (before/during and since separation), parents who had experienced family violence reported slightly lower proportions of “satisfaction” with the service that they had accessed, compared with parents who had not experienced family violence in that time period. Further, almost one in three parents who had experienced physical violence since separation reported that they were dissatisfied with the service that they accessed (31% compared with 25% in the non-violence group).

Notes: All parents who accessed a service (n = 2,473). Results are not shown where population is N < 50. FC = focus (other) parent.

Source: Experiences With Services module (SRSP 2014)

Figure 7.4: Parenting decisions made as a result of accessing the service, by specific services

7.4 Parents’ satisfaction with family law services

The specific question was “Overall, how satisfied or dissatisfied were you with the service or assistance you received from the <service type>?”

It is important to note that an individual parent may have experienced no family violence in one time period, but experienced family violence in the other time period. Further analysis is required to clarify which parents had experienced family violence at any time and those who had not experienced any family violence either before/during or since separation.
24% of parents who had experienced emotional abuse alone and 18% of parents who had not experienced any family violence since separation).

Parents’ satisfaction with particular services is examined in Figure 7.7 (on page 139) and shows that a higher proportion of mothers than fathers reported that they were satisfied with these particular services. For example, 74% of mothers reported they were either somewhat or very satisfied with the service or assistance they received from the court, compared with 59% of fathers.

The highest proportion of fathers who reported they were satisfied with the service or assistance that they had received had accessed a lawyer (76%), followed by 62% of fathers who accessed FDR, mediation or an FRC.
Mothers’ satisfaction with these specific services followed a similar pattern to fathers, with the exception that the highest proportion of mothers who reported they were satisfied had accessed a domestic or family violence service (85%), whereas the sample of fathers who accessed this service was too small to include in this analysis.

As seen earlier in Figure 7.5, parents’ relative ambivalence with the service or the assistance that they received from a service (in that they felt neither somewhat satisfied nor somewhat dissatisfied) was relatively small (3% of all parents); however, this was highest among fathers and mothers who accessed a court (7% and 6% respectively).

Figures 7.8 and 7.9 (on page 140) show parents’ satisfaction and dissatisfaction with the service or the assistance that they received, by their experiences of family violence before/during and since separation. For the vast majority of these services, the highest proportion of parents reporting that they were “satisfied” had not experienced family violence within each period. For example, 84% of parents who had not experienced family violence before/during separation, and had accessed a lawyer, were satisfied with the service or assistance that they had received. Similarly, 81% of parents who had accessed a lawyer and had not experienced family violence since separation reported they were satisfied.

However, among parents who had experienced some form of family violence, reported satisfaction and dissatisfaction appeared to vary somewhat by the different services. For example, parents who accessed FDR, mediation or a lawyer and had experienced physical violence before/during separation, reported higher proportions of dissatisfaction with the service or assistance that they had received than parents who had experienced emotional abuse alone. This pattern was also evident among those who had experienced physical violence since separation.

Conversely, parents who accessed the courts or family relationship services and who had experienced emotional abuse alone before/during separation, reported higher proportions of dissatisfaction than those who had experienced physical violence.
As noted in Table 7.5, where parents had accessed services, but reported that their contact with the randomly selected service was too minimal to proceed with answering the service-specific questions, their satisfaction with the service was the last question they were asked about this service. This occurred in 348 instances. The next sections on parents' experiences are based on the remaining sample of 2,125 parents.
7.5 Parents’ experiences when using family law services

Parents were asked a series of statements about their experiences with the service that they had accessed and the sorts of assistance they might have received. Figure 7.10 shows the proportion of all parents who accessed a service and reported that the service provided these specific types of assistance (e.g., responded “yes” when asked whether the service provided helpful advice).27

![Figure 7.10: Parents’ agreement with statements about experiences with service, by gender](image)

The results show the vast majority of parents reported that the service they accessed provided helpful advice (85%) and effective assistance (74%), though a higher proportion of mothers than fathers indicated this had occurred. For example, almost nine in ten mothers reported that they had received helpful advice, compared with eight in ten fathers.

More than two in three mothers (68%) and just over half the fathers (55%) reported that the service had enabled them and their children to get the help they needed.

Around half of the parents who accessed a service reported that the assistance from that service had enabled them to make appropriate parenting arrangements with the other parent. A similar proportion reported that they were referred to relevant support services.

When examining these statements about the service received by parents’ experiences of family violence (Figure 7.11 on page 142), the results show a majority of parents reported that the service had provided helpful advice and effective assistance, though the proportions were slightly higher among parents who had not experienced family violence than among those who had.

Notes: All parents who accessed a service (n = 2,125). Analysis excludes "don’t know" or "refused" responses. Analysis also excludes parents who felt this statement didn’t apply to them (referred to services: 14%; enabled to make arrangements: 24%; enabled to get help: 16%; effective assistance: 8%; helpful advice: 7%).

Source: Experiences With Services module (SRSP 2014)

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27 Parents were informed prior to the statements being read out, that if they felt the statement was not relevant to their circumstances, they could respond with “not applicable”; “Don’t know” and “refused” could also be selected. The analyses shown in this report excludes “not applicable”, “don’t know” and “refused” so that the results show only the distribution of “yes” responses as a proportion of responses where the statement was relevant to the parent’s individual circumstances.
Variation in parents’ responses by their experiences of family violence was more apparent with regard to whether the service had enabled them to get the help they needed and/or make appropriate parenting arrangements. For example, while 59% of parents who had experienced no family violence before/during separation reported that the service had enabled them to make appropriate parenting arrangements, this was the case for only 51% of parents who had experienced emotional abuse alone and 41% of parents who had experienced physical violence.

A higher proportion of parents who had experienced physical violence before/during separation (55%) reported that the service had referred them on to relevant support services, compared with those who had experienced emotional abuse alone (49%) and those who had not experienced family violence (50%).

There was very little variation in parents’ responses by their experiences of family violence before/during separation, compared with family violence since separation, thus results for the latter time period have not been included in this report.

Parents’ experiences with services appeared to vary somewhat by the type of service they accessed, as shown in Figures 7.12 to 7.16. As with previous charts, the results are only presented for the main services accessed by parents: family dispute resolution/mediation, lawyers/legal services, the courts, FRCs, and domestic/family violence services (for mothers only, due to the small population of fathers who accessed this service type).

With regard to the service providing helpful advice, the proportions of fathers and mothers who agreed that this happened were relatively high and similar within almost all service types, though slightly higher among mothers than fathers (Figure 7.12 on page 143). For example, 92% of mothers who accessed a lawyer or legal service reported they provided helpful advice, compared to 87% of fathers. Similarly, 87% of mothers and 84% of fathers reported the FRC they accessed provided them with helpful advice.
The greatest difference in fathers’ and mothers’ responses was seen among parents who accessed a court, where 71% of mothers reported that they had been provided with helpful advice, compared with only 56% of fathers.

Ninety-four per cent of mothers who had accessed a domestic or family violence service reported that they had been provided with helpful advice.

Compared with the statement about helpful advice, slightly lower proportions of both fathers and mothers reported that the service they accessed provided them with effective assistance, with the exception of parents who accessed a court, where 60% of fathers and 76% of mothers reported they were provided with effective assistance (Figure 7.13).
When asked whether the service enabled them and their children to get the help they needed, parents’ responses appeared to vary by both gender and service type (Figure 7.14).

![Service enabled parent (and their children) to get the help they needed, by gender and specific services](image)

**Notes:** All parents who accessed a service (n = 2,125). Analysis excludes "don’t know" or "refused" responses. Analysis also excludes parents who felt this statement didn’t apply to them (16%). Results are not shown where population is N < 50.

Source: Experiences With Services module (SRSP 2014)

Among mothers, the highest proportion by service type to report that the service enabled them to obtain the help that they needed were those who had accessed a domestic or family violence service (78%), followed by those who had accessed a family relationship service (72%).

Among fathers, the highest proportion by service type to report that the service had enabled them to obtain the help that they needed were those who had accessed a lawyer/legal service (62%), followed by a family relationship service (54%), while just less than half the fathers who had accessed FDR reported that they had been able to obtain help (49%).

Parents who accessed the courts reported noticeably lower agreement with this statement, with 55% of mothers and 44% of fathers reporting that the courts had enabled them and their children to obtain the help that they needed.

As shown in Figure 7.15 (on page 145), a higher proportion of fathers than mothers who accessed the court system, reported that it enabled both parents to make appropriate parenting arrangements (53%, compared with 41% of mothers).

Among parents who accessed family dispute resolution or mediation, just less than three in five reported that the service referred them to relevant support services (57%), though this was higher than was reported by parents who accessed lawyers/legal services (41% of fathers and 45% of mothers) and those who accessed the court (35% of fathers and mothers) (Figure 7.16 on page 145). Among mothers who accessed a domestic or family violence service, 77% were referred to relevant support services.

### 7.5.1 Disclosures of family violence and safety concerns

Parents were questioned about whether the service that they accessed had asked them about their experiences of family violence and if they had any safety concerns for themselves or their children in relation to contact with the other parent. Figure 7.17 (on page 146) shows that overall, around three in five parents reported being asked about both of these issues, though a higher proportion of mothers reported this than fathers. That is, 65% of mothers were asked whether they had experienced family violence, compared with 53% of fathers, and 67% of mothers were asked about safety concerns, compared with 55% of fathers.
Parents’ experiences

Figure 7.15: Service enabled both parents to make appropriate parenting arrangements, by gender and specific services

Notes: All parents who accessed a service (n = 2,125). Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (24%). Results are not shown where population is N < 50.
Source: Experiences With Services module (SRSP 2014)

Figure 7.16: Referred parent to relevant support services, by gender and specific services

Notes: All parents who accessed a service (n = 2,125). Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (14%). Results are not shown where population is N < 50.
Source: Experiences With Services module (SRSP 2014)

Figure 7.18 (on page 146) shows that a higher proportion of parents who had experienced family violence reported being asked about whether they had experienced family violence or had safety concerns, compared with parents who had not experienced family violence.

Responses to a question about whether specific services asked parents about family violence and/or safety concerns are shown in Figure 7.19 (on page 147). The majority of fathers and mothers who accessed family dispute resolution or FRCs reported that the service asked them about family violence. Among parents who accessed a lawyer or legal service, just over half of mothers (54%) and just over a third of fathers (36%) reported having been asked about family violence.
The pattern that emerged in parents’ reports of being asked about safety concerns by services was fairly similar to reports about being asked about family violence (Figure 7.20 on page 147). Higher proportions of parents who accessed FDR or FRCs reported being asked about safety concerns, compared with parents who accessed lawyers/legal services or courts. Further, a higher proportion of mothers who accessed lawyers/legal services or courts reported being asked about safety concerns (58% and 60%, respectively), compared with fathers (43% and 41%, respectively).
Parents’ reports about specific services asking them about family violence and safety concerns shown in Figure 7.21 (on page 148) demonstrate that among parents who accessed legal professionals (i.e., lawyers, legal services or courts), a higher proportion of parents who experienced physical violence at any time were asked about family violence and safety concerns, compared with those who experienced emotional abuse alone or no family violence.

Among parents who accessed FRCs, 77% of those who reported experiences of emotional abuse alone were asked about family violence and 81% were asked about safety concerns, both higher proportions than parents who experienced physical violence (69% and 66%, respectively).
Parents were also asked whether they raised or disclosed family violence or safety concerns to the service (regardless of whether they were asked about these issues by the service). Results for all parents are presented in Figure 7.22 and show that a similar proportion of mothers disclosed family violence as safety concerns for themselves and/or their children (47% and 48%, respectively). This was also the case among fathers, where around a third of fathers disclosed family violence and/or safety concerns to the service (32% and 35%, respectively).

Notes: All parents who accessed a service (n = 2,125). Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (family violence: 20%; safety concerns: 19%).

Source: Experiences With Services module (SRSP 2014)
Parents’ experiences

Figure 7.23 describes the proportion of parents who disclosed family violence or safety concerns to the service, by their reported experiences of family violence. It is important to note that for this and subsequent figures in this section, the measure of family violence used for analyses was different to the previous figures in this section. That is, “physical violence” refers to the parent having reported experiences of physical violence (including sexual violence, with or without emotional abuse) at any time (as opposed to separating out experiences before/during and since separation). Parents who had not experienced physical violence at any time, but experienced one or more forms of emotional abuse at any time, were coded under “emotional abuse alone” and those who had not reported any experiences of family violence were coded as “no violence at any time”.

The results show that almost two in three parents who had experienced physical violence disclosed family violence to the service (64%). This compares with just less than one in three parents who had experienced emotional abuse alone (31%).

The pattern of parents’ disclosure of safety concerns by their experiences of family violence appeared similar to the disclosure of family violence, where 60% of parents who had experienced physical violence disclosed safety concerns for themselves and/or their children to the service. Further, 37% of parents who had experienced emotional abuse alone disclosed safety concerns to the service. Around one in ten parents who did not report in the survey any experiences of physical violence or emotional abuse from the other parent, responded that they disclosed family violence or safety concerns to the service.28

When examining parents’ disclosure of family violence and safety concerns by experiences of family violence, more than half of all parents who experienced physical violence at any time reported disclosing family violence to the service they accessed (Figure 7.24 on page 150). The highest reports of disclosure to professionals among parents who had experienced physical violence were among those who accessed domestic or family violence services (91% raised family violence and 87% raised safety concerns), followed by parents who accessed the courts (69% raised family violence and 63% raised safety concerns), FRCs (65% raised family violence and 63% raised safety concerns) and FDR (65% and 54%, respectively).

28 It is not clear how this arose, however there are at least two possibilities. First, they may have disclosed family violence experienced by someone other than themselves and second, they may have disclosed family violence perpetrated by someone other than the focus parent.
Among parents who had experienced emotional abuse alone, the highest reports of disclosure were by parents who accessed FRCs (45% raised family violence and 46% raised safety concerns). Around one in four parents who accessed FDR, lawyers or courts and experienced emotional abuse alone, raised this with the service.

Parents who disclosed experiences of family violence and/or safety concerns to the service were asked whether they felt the service took their disclosure seriously. The data from these responses were complex and not necessarily intuitive, showing notable variation from similar questions asked of parents as part of the SRSP 2014 survey, and has therefore been omitted from this report. They will be presented in the forthcoming report on the SRSP 2014, the data from which will support a better understanding of these patterns.

Factors parents’ perceived would have better enabled disclosure of family violence and safety concerns

Parents who had experienced family violence and/or had safety concerns for themselves or their children but had not disclosed this to the family law service that they accessed, were asked what the service could have done to better enable disclosure. The interviewers recorded parents’ responses verbatim. Table 7.6 (on page 151) shows a breakdown of the parents who were asked this question. Forty-six per cent of the parents who had not disclosed were fathers and 54% were mothers. On average, parents who had not disclosed had accessed an average of four services since the separation.

Among mothers who had not disclosed issues of risk to the service, more than half had experienced physical violence from the other parent at some time (either before, during or since the separation). This proportion was slightly lower among fathers (47%). Twenty-four per cent of fathers and 30% of mothers who had not disclosed issues to the service they accessed, held safety concerns for themselves or their child in relation to contact with the other parent. Further, 1 in 5 fathers and 1 in 4 mothers who had not disclosed held both safety concerns and had experienced some form of family violence from the other parent.
Parents’ experiences

<table>
<thead>
<tr>
<th>Table 7.6: Characteristics of parents who had not disclosed safety concerns or family violence experiences to the service they accessed, by gender</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parents who had not disclosed issues</td>
</tr>
<tr>
<td>Average number of services accessed</td>
</tr>
<tr>
<td>All parents who had not disclosed</td>
</tr>
<tr>
<td>And had experienced physical violence any time</td>
</tr>
<tr>
<td>And had safety concerns for self or child</td>
</tr>
<tr>
<td>And had safety concerns &amp; experienced FV</td>
</tr>
<tr>
<td>Total (n)</td>
</tr>
</tbody>
</table>

Source: Experiences With Services module (SRSP 2014)

Thematic analysis was undertaken of the verbatim responses to this question and several themes emerged.

Nothing more could have been done

A substantial proportion of respondents indicated that there was nothing more that the service could have done to enable disclosure.

Not the main focus of accessing the service

A smaller proportion indicated that they did not disclose DFV because it was not the main focus of their reason for accessing the service.

[I] didn’t want to talk about it any more than I had to.

It wasn’t my biggest concern because it wasn’t directed at my kids, it was directed at me.

Would have disclosed had they been asked

Another substantial proportion of participating parents indicated that they may have disclosed their experience of DFV to the service if it had been asked about or discussed in a different manner. Within this group, there were participants who stated that the service would have enabled their disclosure if they had asked about it, indicating that this did not always occur:

They could have asked about it.

It wasn’t raised at all.

Professionals’ approach to eliciting disclosure

In addition, a larger number of parents indicated that if DFV had been asked about differently, it might have better enabled disclosure. Some respondents indicated that if the service had discussed or asked about DFV with more nuance it may have enabled disclosure. For some respondents, more extensive questioning was identified as something that could have potentially enabled disclosure:

Asking more questions, more thorough questions. [They] didn’t say that it’s not just physical, [but] also mental and economic violence that they are asking about.

For others, the focus of their response was the subtlety with which DFV was asked about:

Questioning about it differently, not so directly.

Some respondents also indicated that providing referrals or information about DFV services, or the use of screening tools (such as questionnaires) might have enabled disclosure.
Better identifying and addressing safety or confidentiality concerns

A relatively small proportion of respondents explicitly stated that they had confidentiality and/or safety concerns that inhibited them from disclosing DFV. Most respondents who had explicit safety and/or confidentiality concerns were accessing lawyers/legal services or court services. For instance, speaking of their experience of accessing a lawyer or legal service, one parent stated:

> I felt like I was in danger from [the other parent] if I didn’t sign the forms, and I didn’t know how they could protect me. That’s not their job, so I was forced to sign the forms.

Individual consultations/assessments

Further, there were a slightly larger number of parents who indicated that they would have preferred to have had individual assessments rather than meetings in conjunction with their former partner. Some parents indicated that this was a barrier to disclosure, but did not explicitly raise safety concerns as a result:

> It wasn’t one-on-one, so everyone is sitting round a table talking and I didn’t feel comfortable.

Others, however, described situations that clearly put them at risk:

> I think I would’ve preferred seeing someone female. We had a joint session where [the other parent] was present and became very angry, and the two mediators had to calm him down. I think at that point there should have been some follow up with me privately and there wasn’t.

Most of the responses that indicated that one-on-one consultations might have enabled disclosure of family violence or safety concerns were in relation to accessing Family Relationships Advice Line (FRAL), FDR and mediation, and Post Separation Cooperative Parenting Program (PSCPP) services.

7.6 Actions taken by specific services

This section examines parents’ reports of whether particular actions took place that were specific to certain types of services, such as legal and non-legal practitioners. As with the previous sections, not all parents who accessed each service were asked about the service, as it would place too much burden on participants. Rather, from all the services accessed by each parent, one service was randomly selected as the service in question. Further, as with the previous sections, parents were advised that if a question or statement didn’t apply to them, they could select “not applicable”. Analysis of the results excluded responses of “not applicable” “don’t know” and those who refused to answer (i.e., results presented here show the number of “yes” responses as a proportion of all “yes” and “no” responses only). For these reasons, the population sizes for some less commonly used services or sub-groups within questions were too small to report; therefore results where the population was less than 50 have been omitted. The data are presented by parent gender, by experiences of family violence and, where possible, by specific services (e.g., for FDR-related questions, parents who accessed an FDR practitioner, family relationship counselling service or FRC were asked these questions).

Family relationship and dispute resolution support services

This first section examines responses from parents who were asked about family relationship and dispute resolution support services (hereafter “primary non-legal professionals”).

The specific statements that were asked of parents who accessed these services were as follows:

- The service provided mediation or dispute resolution in a safe environment.
- They suggested shuttle mediation or dispute resolution.
- An FLA s 60I certificate was granted to enable me to make an application to the court.

29 Where the specific “service” in question was itself “FDR or mediation”, it is worth noting that 61% of these parents accessed it at an FRC, 34% accessed it “somewhere else” and 5% did not know where they attended FDR.
Figure 7.25 shows that almost all parents who attended dispute resolution or mediation reported that it was provided in a safe environment.

Shuttle mediation/FDR involves the parties remaining in separate rooms for the mediation/FDR session, with the mediator or FDR practitioner moving between the two parties in their separate rooms during the negotiations. Reports of services suggesting shuttle mediation/FDR to parents appeared to have varied by whether parents were answering specifically about an FDR practitioner or about a relationship support service more generally. That is, a slightly higher proportion of fathers than mothers who accessed an FDR practitioner reported that shuttle mediation was suggested to them (53% compared with 47%, respectively) (Figure 7.26). Conversely, higher proportions of mothers who accessed an FRC (68%) or family relationship counselling service (60%) reported that shuttle mediation was suggested (compared with 57% and 53% of fathers, respectively).

Notes: Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (13%). FDR: n = 370; FRCs: n = 219; Family relationship counselling services: n = 127.

Source: Experiences With Services module (SRSP 2014)
Figure 7.27 shows that among fathers, a higher proportion of those answering with reference to an FDR practitioner specifically, reported that an s 60I certificate was issued (48%, compared with 39% and 35% of fathers who accessed services at an FRC or family relationship counselling service, respectively). Just over half of the mothers who accessed an FRC reported that an s 60I certificate was issued (compared with 38% who accessed FDR specifically, and 32% who accessed FRCs).

Examine parents’ responses to actions taken by primary non-legal professionals by parents’ experiences of family violence at any time, Figure 7.28 (on page 155) shows that parents’ perceptions of whether FDR was provided in a safe environment did not differ greatly by their experiences of family violence (between 89–92% of all parents reporting this occurred). Similarly, reports that shuttle mediation was suggested did not differ greatly by parents’ experiences of family violence; with 49–59% of parents reporting this occurred. However, differences were seen in the issuing of s 60I certificates, both by gender and by family violence experiences. For example, 52% of fathers and 44% of mothers who had experienced physical violence, and 44% of fathers and 41% of mothers who had experienced emotional abuse, reported that an s 60I certificate was issued. This compares with 23% of parents who reported that they had not experienced family violence.

Figure 7.29 (on page 155) examines parents’ responses by only those who answered questions about FDR practitioners specifically (rather than FRCs or family relationship counselling services). The results show that compared with the overall results in Figure 7.28, slightly lower proportions of parents who experienced family violence had shuttle mediation suggested to them, and slightly fewer mothers who experienced family violence had an s 60I certificate issued, compared not only to the overall figure for mothers, but also compared with fathers. For example, 39% of mothers who accessed FDR and experienced physical violence (cf. to 53% of fathers) and 41% who experienced emotional abuse alone were issued with an s 60I certificate (cf. to 49% of fathers).

It is worth noting that these data examine only the responding parents’ experiences of family violence, and it is possible that the cases in the “no violence” category might have involved other issues of risk or harm.
Family law professionals can sometimes help parents to develop a safety plan to keep parents and children safe from harm during and after separation. Safety plans are personalised plans that specify the ways in which a person may stay safe while remaining in their relationship with their spouse or de facto partner, while in the process of leaving this relationship and/or in the post-separation context. Among parents who accessed a lawyer or legal service, 13% of mothers and 5% of fathers said the professional had helped them to develop a safety plan, and two in three parents who accessed a domestic or family violence service reported that this occurred...
When examined by parents’ experiences of family violence, results show that 32% of mothers who had experienced physical violence, and 13% who had experienced emotional abuse alone, were assisted with a safety plan. This compares with 13% of fathers who had experienced physical violence and 6% who had experienced emotional abuse.

Figure 7.30 shows the proportion of parents who were assisted to develop a safety plan, separated out by their experience of family violence and what service they accessed. The results showed that among parents who had accessed a lawyer or legal service, one in ten fathers and one in five mothers who had experienced physical violence were assisted by the legal professional to develop a safety plan. These proportions were notably lower among fathers and mothers who had experienced emotional abuse alone. Among parents who had accessed a domestic or family violence service, the majority of parents who had experienced physical violence were assisted to develop a safety plan (69%).
Lawyers/legal services

Statements that applied primarily to lawyers and legal services included:

- The service sought interim or final parenting orders or arrangements that accommodated my and my child’s safety.

- The service advised me to get a protection order (such as a DVO or AVO).

- I was exempted from pre-filing dispute resolution.31

The results in Figure 7.32 show that close to one in three parents who had accessed a lawyer or legal service, reported that the professional sought interim or final parenting orders that accommodated their or their children’s safety. This proportion was highest among mothers who had experienced physical violence (38%), compared to fathers who had experienced physical violence (31%) and parents who had experienced emotional abuse alone or no family violence.

As shown in Figure 7.33 (on page 158), a higher proportion of mothers than fathers who had accessed a lawyer or legal service were advised to seek a protection order. Both mothers and fathers who had experienced physical violence reported being advised to seek a protection order by their lawyer/legal service, compared with parents who had experienced emotional abuse alone and those who had not experienced family violence at any time.

Around one in ten parents who accessed a lawyer/legal service, and one in four parents who accessed an FRC, reported being exempted from having to attend pre-filing dispute resolution (Figure 7.34 on page 158). This was slightly higher among mothers than fathers, particularly mothers who had experienced physical violence (29%, compared with 12% of fathers who had experienced physical violence). Around one in ten parents who had experienced emotional abuse alone reported being exempted from having to attend pre-filing dispute resolution.31

Although this was also asked of FDR and FRC customers, the populations of those answering yes or no were too small to report.

Notes: Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (31%). Results are not shown where population is N < 50.

Source: Experiences With Services module (SRSP 2014)

Figure 7.32: Lawyer/legal service sought orders that accommodated parent/child’s safety, by gender

As shown in Figure 7.33 (on page 158), a higher proportion of mothers than fathers who had accessed a lawyer or legal service were advised to seek a protection order. Both mothers and fathers who had experienced physical violence reported being advised to seek a protection order by their lawyer/legal service, compared with parents who had experienced emotional abuse alone and those who had not experienced family violence at any time.

Around one in ten parents who accessed a lawyer/legal service, and one in four parents who accessed an FRC, reported being exempted from having to attend pre-filing dispute resolution (Figure 7.34 on page 158). This was slightly higher among mothers than fathers, particularly mothers who had experienced physical violence (29%, compared with 12% of fathers who had experienced physical violence). Around one in ten parents who had experienced emotional abuse alone reported being exempted from having to attend pre-filing dispute resolution.31

Although this was also asked of FDR and FRC customers, the populations of those answering yes or no were too small to report.
Chapter 7

Notes: Analysis excludes "don’t know" or "refused" responses. Analysis also excludes parents who felt this statement didn’t apply to them (24%). Results are not shown where population is N < 50.

Source: Experiences With Services module (SRSP 2014)

Figure 7.33: Lawyer/legal service advised parent to get a protection order, by gender and any experience of family violence

Notes: Analysis excludes "don’t know" or "refused" responses. Analysis also excludes parents who felt this statement didn’t apply to them (34%). Results are not shown where population is N < 50. Lawyers/legal service: n = 531; FRC: n = 125; Physical violence: n = 216; Emotional abuse alone: n = 316; No violence: n = 124.

Source: Experiences With Services module (SRSP 2014)

Figure 7.34: Exempted from attending pre-filing dispute resolution, by service, gender and any experiences of family violence

Court

Parents who accessed the courts were asked whether a one or both of two specific actions took place, namely:

- The court made interim or final parenting orders that accommodated my and my child’s safety.
- An Independent Children’s Lawyer (ICL) was requested or granted.\textsuperscript{32}

Figure 7.35 (on page 159) shows that around one in three parents who had accessed the courts reported that the orders granted in their case protected the safety of themselves and/or

\textsuperscript{32} This question was also asked of parents who had accessed a lawyer/legal service.
their children. Further, among the parents who had experienced physical violence, only 41% reported that the court granted orders that protected their safety and/or their children’s safety.

Among parents who had accessed legal professionals, around 5% who were asked about their lawyer/legal service reported that an ICL was requested in their case (slightly higher among fathers than mothers) (Figure 7.36). For parents asked about their experiences with the courts, 14% of fathers and 9% of mothers reported that an ICL was granted in their case. Further, around twice the number of fathers than mothers who had experienced physical violence reported that an ICL was either requested or granted in their case (18%, compared with 9%, respectively). Finally, among parents who had experienced physical violence, one in ten parents who were asked about their lawyer/legal service reported that an ICL was requested/granted, while around one in five who were asked about the courts reported that an ICL was granted.

Notes: Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (33%). Results are not shown where population is N < 50. Fathers: n = 56; Mothers: n = 64; Total: n = 120; Physical violence: n = 56.

Source: Experiences With Services module (SRSP 2014)

Figure 7.35: Court granted orders to protect parent/child safety, by gender and any experiences of family violence

Figure 7.36: An ICL was requested/granted, by service, gender and any experiences of family violence

Notes: Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (26%). Results are not shown where population is N < 50. Lawyers/legal service: n = 741; Court: n = 127; Physical violence: n = 282; Emotional abuse alone: n = 421; No violence: n = 165.

Source: Experiences With Services module (SRSP 2014)
Family consultant/single expert witness

Parents who had contact with a family consultant or single expert witness as part of a court case, were presented with one additional statement:

Their report in my family law matter made recommendations that accommodated my safety and my children's safety

Although the population of parents asked this question is too small to report reliably (n = 16), the results showed that, overall, more mothers than fathers agreed with this statement, as did parents who had experienced physical violence, compared with those who had experienced emotional abuse alone. Among the parents who had contact with a family consultant or single expert witness, all had experienced some form of family violence at some time, and all parents either answered "yes" or "no" to this statement (i.e., all parents considered this question to apply to them).

7.7 Perceived effectiveness of family law services

Parents were presented with a further series of statements about the service that they had accessed, and were asked to rate their level of agreement with each statement, based on their experiences or perceptions about the service.53 Parents were informed before the statements were read out that if they did not feel the statement was relevant to them, they could respond with "not applicable". These "not applicable" responses were higher for the statements "the service understood the impact of family violence" (33%), "the service understood children's developmental needs" (23%) and "the service understood the best outcomes for children" (20%). For the rest of the statements, the proportion of "not applicable" responses was less than 10%.

The results presented below are based on analyses that excluded the "not applicable" responses.

Figure 7.37 (on page 161) shows that the vast majority of parents agreed with each statement, based on their experiences. Most notably, nine in ten parents reported that the service that they had accessed treated them "fairly and with respect". Financial affordability of the service has the lowest proportion of agreement (73%), with just less than one in four parents disagreeing that the service was affordable.

There was almost no difference in fathers' and mothers' reports.

When examined by parents' experiences of family violence, the results showed that agreement with the statements appeared to be lower among parents who had experienced family violence at any time, compared with parents who had not (Table 7.7 on page 162). Conversely, higher proportions of parents disagreed with the statements where they had experienced physical violence at any time, compared with parents who had experienced emotional abuse alone and those who had not experienced any family violence.

Regarding the service understanding the effects of family violence, 78% of parents who had experienced physical violence and 83% of parents who had experienced emotional abuse agreed with this.

The degree to which parents agreed with each of the statements in relation to specific services is shown in Table 7.8 (on page 163). Agreement was lowest for each statement among parents who accessed the courts.

When presented with the statement "the service was financially affordable", lower proportions of parents who accessed legal professionals agreed with this (i.e., 53% of parents who accessed the courts and 58% who accessed a lawyer agreed, whereas 44% and 37%, respectively, disagreed).

Examining parents' perceptions regarding non-legal professionals, between 81% and 96% of parents agreed with the statements, with the only exception being that around one in five parents who accessed FDR or FRCs disagreed that "the overall quality of the service was high".

53 The response options were "strongly agree", "agree", "disagree" and "strongly disagree". Additional responses of "neither agree not disagree", "not applicable", "don't know" and "refused" were also available, but not read out to participants.
Figure 7.37: Parents’ perceptions about aspects of the service, all parents

### 7.8 Summary

This section has examined the experiences of 2,473 parents using family law system services in late 2012 and throughout 2013 to examine core issues of concern to this evaluation. The discussion focuses on patterns of disclosure of concerns about family violence and child safety, decisions made about parenting matters after accessing services and levels of satisfaction with various services. The services at the core of the analysis are FRCs, FDR, lawyers, courts and DV services.

Overall, three in four parents interviewed accessed at least one service in relation to their separation. Lawyers were the most commonly used service by both mothers and fathers in this sample, followed by FDR and FRCs.

Parents’ access to particular services, as well as the number of services they accessed varied by their experiences of family violence, in that higher proportions of parents who had experienced physical violence accessed each service, and also several services, compared with parents who had not experienced family violence.

The majority of parents reported that they accessed the service via informal pathways—predominantly self-referrals (43%) or referrals to the service by family/friends (16%) or the other parent (10%). Formal referrals came most commonly from lawyers (12%), with around 2% of referrals to a service made by courts, police or other services (7%). Higher proportions of parents who had experienced family violence reported that they accessed the service by a referral from another service. For example, 15% of parents who had experienced physical violence before/during separation were referred to the service by a lawyer (compared with 9% who had not experienced family violence), 4% were referred by police (compared with 1% who had not experienced family violence) and 3% referred by the courts (among parents who had not experienced family violence before/during separation, none were referred by the courts). Similar results were seen when analysed by family violence since separation.
Around two-thirds of parents who accessed a service reported that the service influenced the decisions they made about parenting arrangements during negotiations. The most common decision parents made after accessing a service was to agree to a shared-care arrangement, with around one in five mothers and fathers reporting this. Some differences in decisions emerged when analysed by gender, such as 18% of fathers reporting that they sought more time with their children, compared with 7% of mothers, while 15% of mothers reported that they decided to take steps to protect themselves or their children, compared with 7% of fathers. A reported history of family violence was associated with different patterns in decision making as a result of accessing services compared with no reported history of family violence. For example, 15% of parents who had experience physical violence before/during separation decided to seek more time with their children after accessing a service, compared with 6% of parents who had not experienced family violence before/during separation. Further, 20% of parents

<table>
<thead>
<tr>
<th>Table 7.7: Parents’ perceptions about aspects of the service, by experiences of family violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical violence at any time (%)</td>
</tr>
<tr>
<td>-----------------------------------</td>
</tr>
<tr>
<td><strong>Understood the impact of family violence</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td><strong>Understood children’s developmental needs</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td><strong>Understood best outcomes for children</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td><strong>Treated me fairly and with respect</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td><strong>Was financially affordable</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td><strong>Was convenient</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td><strong>Overall quality of the service was high</strong></td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Neither</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td>Total (N)</td>
</tr>
</tbody>
</table>

Notes: Population base: All parents who accessed a service (n = 2,125). Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (understood impact of family violence: 31%; children’s developmental needs: 22%; best outcomes for children: 19%; treated fairly: 6%; financially affordable: 9%; convenient: 6%; high quality: 6%). Percentages may not total exactly 100.0% due to rounding.

Source: Experiences With Services module (SRSP 2014)
Parents’ experiences

who had experienced physical violence before/during separation decided to take steps to protect themselves and/or their children after accessing a service, compared with 9% who had experienced emotional abuse alone and 3% who had not experienced any family violence before/during separation. When examined by specific services, 31% of mothers and 25% of fathers who accessed FDR, reported that they decided to agree to a shared-care arrangement for their children. Where parents reported that access to a service made no difference to decisions they made about parenting arrangements, the highest proportion emerged among parents who accessed a lawyer or legal service (52% of mothers and 47% of fathers).

Overall, the majority of parents reported that they were satisfied (or very satisfied) with the assistance that they received from the service they accessed, though higher proportions of satisfaction were reported among parents who had not experienced family violence than those who had experienced physical violence or emotional abuse alone. When examined by specific

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### Table 7.8: Parents’ perceptions about aspects of the service, by specific services

<table>
<thead>
<tr>
<th>Perception</th>
<th>FDR (%)</th>
<th>Lawyer/legal service (%)</th>
<th>Court (%)</th>
<th>FRC (%)</th>
<th>DV service (%)</th>
</tr>
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<tbody>
<tr>
<td>Understand the impact of family violence</td>
<td>82.6</td>
<td>80.8</td>
<td>64.7</td>
<td>87.3</td>
<td>92.9</td>
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<td>6.9</td>
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<tr>
<td>Disagree</td>
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<td>12.7</td>
<td>28.4</td>
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<td>7.1</td>
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<td>Understand children’s developmental needs</td>
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<td>8.7</td>
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<td>6.1</td>
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<td>26.0</td>
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<td>7.6</td>
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<tr>
<td>Understand best outcomes for children</td>
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<td>82.0</td>
<td>65.5</td>
<td>85.9</td>
<td>83.6</td>
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<td>2.8</td>
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<td>15.7</td>
<td>14.7</td>
<td>28.3</td>
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<td>9.8</td>
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<td>Treated me fairly and with respect</td>
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<td>93.3</td>
<td>78.4</td>
<td>86.6</td>
<td>95.8</td>
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<tr>
<td>Neither</td>
<td>0.5</td>
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<td>3.3</td>
<td>0.8</td>
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<td>5.5</td>
<td>18.3</td>
<td>12.6</td>
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<tr>
<td>Was financially affordable</td>
<td>87.8</td>
<td>58.4</td>
<td>52.8</td>
<td>92.5</td>
<td>91.9</td>
</tr>
<tr>
<td>Agree</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Neither</td>
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<td>2.8</td>
<td>1.3</td>
<td>3.2</td>
</tr>
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<td>44.3</td>
<td>6.8</td>
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<td>Was convenient</td>
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<td>85.1</td>
<td>70.0</td>
<td>81.9</td>
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</tr>
<tr>
<td>Agree</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>Neither</td>
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<td>2.3</td>
<td>1.3</td>
<td>1.3</td>
<td>2.8</td>
</tr>
<tr>
<td>Disagree</td>
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<td>12.5</td>
<td>28.7</td>
<td>16.8</td>
<td>9.9</td>
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<td>Overall quality of the service was high</td>
<td>76.6</td>
<td>81.1</td>
<td>72.3</td>
<td>77.0</td>
<td>80.6</td>
</tr>
<tr>
<td>Agree</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Neither</td>
<td>3.9</td>
<td>3.9</td>
<td>5.4</td>
<td>3.4</td>
<td>5.6</td>
</tr>
<tr>
<td>Disagree</td>
<td>19.4</td>
<td>15.0</td>
<td>22.3</td>
<td>19.6</td>
<td>13.9</td>
</tr>
<tr>
<td>Total (N)</td>
<td>432</td>
<td>1,009</td>
<td>196</td>
<td>264</td>
<td>81</td>
</tr>
</tbody>
</table>

Notes: Population base: All parents who accessed a service (n = 2,125). Analysis excludes “don’t know” or “refused” responses. Analysis also excludes parents who felt this statement didn’t apply to them (understood impact of family violence: 31%; children’s developmental needs: 22%; best outcomes for children: 19%; treated fairly: 6%; financially affordable: 9%; convenient: 6%; high quality: 6%). Percentages may not total exactly 100.0% due to rounding.

Source: Experiences With Services module (SRSP 2014)
services, a higher proportion of mothers than fathers reported satisfaction with each service, though the majority of fathers did report they were satisfied. A higher proportion of fathers than mothers reported dissatisfaction with non-legal professionals, with 33% of fathers who accessed FDR and 36% of fathers who accessed an FRC, reporting they were dissatisfied (compared with 28% and 19% of mothers, respectively). Satisfaction with specific services by parents' experiences of family violence revealed no clear patterns. For example, among parents who accessed FDR, a higher proportion of parents who had not experienced family violence reported higher proportions of satisfaction compared with parents who had experienced physical violence and emotional abuse alone. Conversely, among parents who accessed the courts, parents who had experienced physical violence, reported a higher proportion of satisfaction than parents who had experienced emotional abuse alone.

The vast majority of parents reported that the service they accessed provided helpful advice and effective assistance, though this was slightly higher among mothers than fathers, as well as higher among parents who had not experienced family violence, compared with parents who had. Parents were also asked whether the service they accessed enabled them to get the help that they needed, with 68% of mothers and 55% of fathers reporting that this occurred. Again, higher proportions of parents who had not experienced family violence reported this occurred, compared with those who had experienced family violence. With regard to specific services, 62% of fathers and 69% of mothers who accessed a lawyer reported that the lawyer enabled them to get the help they needed, notably higher than the 44% of fathers and 55% of mothers who accessed the courts. When asked whether the service they accessed enabled them to make appropriate parenting arrangements, the majority of parents reported that this occurred, with the exception of fathers who accessed a lawyer (48%) and mothers who accessed the courts (41%) or a domestic and family violence service (29%).

Parents were also asked whether the service referred them to relevant services. Around half reported such referrals, although this varied by specific services. Fifty-seven per cent of parents who accessed FDR reported receiving referrals, compared with 41% of fathers and 45% of mothers who accessed a lawyer, and 35% of parents who accessed courts, reporting this occurred. These patterns are consistent with the role of FRCs as an early contact point for many separating parents.

Around three in five parents reported that the service they accessed asked them about their experiences of family violence, with responses varying somewhat by gender (higher proportions of mothers reporting this than fathers) and by family violence (higher proportions of parents who had experienced physical violence reporting this occurred). When experiences with specific services were examined, the majority of parents reported that they were asked about family violence, with the exception of fathers who accessed a lawyer, where just over one in three reported that this occurred. Similar patterns were seen with regard to services asking parents whether they held safety concerns for themselves or their children. Among all parents who accessed a service, around one in three fathers and almost half of mothers reported that they disclosed family violence and/or safety concerns to the service they accessed. Disclosure of both of these issues was higher among parents who had experienced physical violence from the other parent at any time (64% disclosed family violence and 60% raised safety concerns). Raising family violence or safety concerns also varied by the type of family violence parents had experienced, where higher proportions of parents who had experienced physical violence raised either issue, compared with parents who had experienced emotional abuse alone.

In relation to specific actions taken by professionals in the delivery of FDR services, overall, mothers' and fathers' reports were very similar, with nine in ten parents agreeing that FDR was provided in a safe environment. Just over half the parents reported that shuttle mediation was suggested by the service, and around two in five parents reported an s 60I certificate was issued by the service. In relation to shuttle mediation/FDR more specifically, reports of services suggesting this option to parents appear to have varied by whether parents were answering specifically about a FDR practitioner or about a relationship support service more generally. Parents' perceptions of whether FDR was provided in a safe environment or whether shuttle mediation/FDR was offered, did not differ greatly by their experiences of family violence. However, differences were seen in the issuing of s 60I certificates, both by gender and by family violence experiences, with 52% of fathers and 44% of mothers who had experienced physical violence, and 44% of fathers and 41% of mothers who had experienced emotional abuse,
reporting that an s 60I certificate was issued, as compared with 23% of parents who reported that they had not experienced family violence. Differences also emerged on a similar basis with respect to professionals’ provision of assistance with safety plans, with 32% of mothers who had experienced physical violence, and 13% who had experienced emotional abuse alone, assisted with a safety plan. Only 13% of fathers who had experienced physical violence and 6% who had experienced emotional abuse reported receiving this assistance.

In relation to the specific action taken by lawyers/legal services, almost one in three parents who had accessed this service, reported that the lawyer sought interim or final parenting orders that accommodated their or their children’s safety. This proportion was highest among mothers who had experienced physical violence (38%) compared to fathers who had experienced physical violence (31%) and parents who had experienced emotional abuse alone or no family violence. Both mothers and fathers who had experienced physical violence also reported being advised to seek a protection order by their lawyer/legal service. In relation to parents’ reports of specific action taken by courts, around one in three parents who had accessed courts reported that the orders granted in their case protected their safety and/or the safety of their children. Among the parents who reported experiencing physical violence, only 41% indicated that the court granted orders that protected their safety and/or their children’s safety.

When asked to rate their level of agreement with a number of statements about the services, the vast majority of parents agreed that the service understood family violence, children’s developmental needs, and what provided the best outcome for children. Most parents also agreed that they were treated fairly and with respect by the service they accessed and that the overall quality of the service was high.
This chapter sets out qualitative findings from the Survey of Practices that provide insight into professionals’ perceptions of the consequences of the 2012 family violence reforms. Open-ended survey questions in the final section of the survey sought the views and experiences of judicial officers and registrars, lawyers and non-legal professionals in relation to the positive, negative and unintended consequences of the reforms. Following an examination of these participant views and experiences, this chapter will conclude with a summary of the patterns emerging from these data about the consequences of the family violence reforms.

The data presented in this chapter provide further insight into some of the views and experiences that underlie the patterns in the quantitative data discussed in the preceding chapters. In particular, they provide more detailed insight into the views behind the majority responses endorsing many aspects of the reforms and the minority responses indicative of less positive views. Overall, positive consequences of the reforms are seen as raising awareness of the relevance of family violence and child safety concerns to parenting arrangements and providing a statutory basis for prioritising protection from harm. A range of negative consequences were raised, including those that arise from increased scrutiny of family violence and child safety concerns in terms of evidentiary requirements, court workloads and demands placed on child protection services. Some practitioners expressed concerns about an increase in false, frivolous and vexatious allegations about family violence and child safety. Such concerns are longstanding and pre-date the reforms, although some practitioners expressed the view that they have increased since the reforms.

8.1 Positive consequences of the family violence reforms

This section presents discussion of what are seen by the family law system professionals who participated in the Survey of Practices as the positive consequences of the 2012 family violence reforms. The discussion is based on responses to an invitation to comment on positive consequences in an open-ended text box. Some of these responses referred to the greater legislative clarity about the priority to be accorded protection from harm and the widened definitions of family violence and child abuse. Such comments have already been considered in the discussion in Chapters 2 and 3 respectively. In addition to these issues, three other main overlapping themes were evident in the discussion of positive consequences. Most broadly, the educative role of the reforms was endorsed by many professionals and was seen to be important at many levels, including in shaping community understanding and professional practices. A second theme related to improved support for examining family violence from several different practice perspectives, including in eliciting disclosure and improving the nature of the evidence that is presented to courts. A third theme related to having statutory backing for what is seen as sound practice: considering protection from harm as an inherent part of making parenting arrangements. A particularly important point made by some participants who raised this theme was a perception that the 2012 family violence reforms support a greater consideration than
before of the effects of exposure to family violence on children. Overall, this comment from a judge encapsulates what are seen as the positive consequences of the reforms:

They have highlighted the problem so there is now more focus on violence. (JO36, FCoA, judge)

### 8.1.1 Education and awareness

Many comments on positive consequences indicated that the reforms have raised awareness of family violence and child safety issues and their relevance to making parenting arrangements. They were seen to support practice in working with parents to identify concerns about family violence and child abuse and, more particularly, to provide parents with advice on parenting arrangements in this context. Heightened awareness among a range of professionals was also seen as an important positive consequence.

Two related issues were raised in such comments. The first was that the range of behaviours encompassed in the new definition provides a better basis for understanding family violence, including in relation to the exposure of children to violence. The second was the fact that the reforms supported conscious consideration of the implications of family violence for children’s wellbeing and parenting arrangements in this context.

[There is] greater AWARENESS of need to give high priority to the protection of children when determining their best interests … [and] that consideration pervades the decision-making process. (JO37, FCoWA, judge)

[There is] greater understanding amongst parties and in the community about the scope and nature of violence, beyond the physical. Probably also understanding the impact on children and that the indirect impact can be just as damaging. (JO69, FCC, judge)

In my view, amending legislation does not have the impact on parent behaviour and litigant behaviour that those pushing for such change generally anticipate. It is, however, a desirable outcome that steps have been taken to send to the community a message that being a “friendly parent” is not always in the best interests of the child. Parents should feel free to be frank with the court about their concerns about the behaviour of the other parent. (JO51, FCoWA, judge)

Practitioners are more aware of family violence issues and the impact that family violence has on children. (L490, lawyer)

Greater recognition of low level family violence and the power imbalances that result. (L49, lawyer)

[A positive consequence is] raising awareness about its prevalence, consequences for children, compelled thinking about strategic responses in the family law and care and protection arena, [and the] flow on is community awareness and education. It is being taken more seriously by police and courts. (L616, lawyer)

You can tell clients that the court prioritises protecting the child and explain to clients the expanded definition of family violence, which may encourage them to seek assistance. (L97, lawyer)

[There is] more awareness of the need to ask about it, and that it can have negative impacts for children. Less “threats” made to victims about being in trouble for making allegations. Probably a better opportunity to educate clients about it, and also get them to Parenting After Separation courses run by FRCs and the like. (L410, lawyer)

[There is] greater awareness on behalf of both myself and my clients of the definition of family violence and legal rights accordingly. (NL149, FRC, mediator/FDR practitioner)

[There is] greater understanding and awareness of family violence amongst the community as well as service professionals and the legal profession and a recognition that family violence is multi-faceted and has profound effects on children’s health and wellbeing. (NL355, FRC, mediator/FDR practitioner)
8.1.2 Scrutiny

A further set of comments on the positive consequences of the 2012 family violence reforms indicated that the changes support increased scrutiny of issues relating to family violence and child safety in a range of practice contexts, including FDR, legal practice and in courts. Non-legal professionals, lawyers and judicial officers/registrars indicated that the reforms support a greater level of scrutiny of these issues in their practice settings. In the court context, some comments suggested that family violence and child safety concerns are raised earlier in proceedings than previously, that more evidence on these questions is adduced, supporting better decision making, particularly at interim level (see also Chapter 4). Some comments suggested that prioritising safety made decision making at interim level clearer and there was a greater emphasis on risk management at this and other stages.

The reforms have meant a greater awareness of family violence issues as legal issues and that has meant more evidence of that violence (in its expanded definition form) has been adduced. (JO44, FCC, judge)

[There is] no trial by ambush. The issues are put forward early in proceedings. (JO48, FCoWA, magistrate)

[Issues of family violence] can be given greater weight, particularly in interim hearings. (JO68, FCC, judge)

[There are] simpler processes/ease of obtaining an order for sole PR [parental responsibility], sole care (in interim), supervised care for other parent. [The] court has heightened awareness and sensitivity to FV issues. (L355, lawyer)

For some practitioners, a greater emphasis on risk management was evident in their own practice and that of others.

There is perhaps a more heightened awareness by practitioners and the extent to which proposals seek to address the identified risks form a greater part of negotiations than prior to the reforms. (L317, lawyer)

I now have a much more comprehensive series of questions to put to clients regarding abuse and domestic violence issues. I have long been concerned with orders for a child to spend time with a parent where there are serious allegations of DV. We have developed a clearer understanding of the vicarious abuse suffered by a child when exposed to the abuse of one parent against the other. (L128, lawyer)

In addition to identification of risk and scrutiny of family violence, a further issue was raised: several participants suggested that there was greater awareness among some professionals of the implications of a history of family violence for parent-child relationships.

Lawyers and parents are far more willing and open to raise FV and issues of concern that impact on children with courts. Courts are far more open to hearing allegations of FV and take [them] far more seriously than in the past. The common view of many of the judiciary in the past of “bad/violent partner but good dad” is pleasingly under challenge from a far more aware and sophisticated analysis and understanding of the impacts of FV on parents, parenting and children. (L470, lawyer)

I think that more practitioners are identifying issues that may not have been detected before the reforms. I also think that parents are receiving more information about the impact upon their children. This has hopefully led to more protection for children from the less obvious and more long-term negative outcomes of being exposed to their parents’ conflict. (NL23, FCC, family consultant)

8.1.3 Statutory support for sound practice in protecting children

Another important theme in the discussion of positive consequences concerned the value of having sound practice in prioritising the protection of children from harm enshrined in
legislation. This is consistent with the discussion on views of s 60CC(2A) in Chapter 2; however, these comments were not pertinent to this provision only, but refer to the reforms overall. Some of these comments emphasised different elements of the reforms, but the combination of the definition and s 60CC(2A) emerged as being particularly significant in supporting this direction. Confidence that advice in relation to protecting children had a statutory base was seen as being critical in supporting good practice across practice settings, including family dispute resolution. Some comments indicated that the reforms also provide support for dispelling notions that parents’ rights were more important than children’s needs (see also Chapter 2).

Courts now have clear legislative power to frame orders to protect parties and children from family violence. (L131, lawyer)

[There is] greater weight being given to family violence by prioritising it over meaningful relationship. Improved definition of family violence, which is subjective rather than objective and takes account of other forms of violence such as abuse to animals, financial abuse, etc. and it being a non-exhaustive list. Removal of the friendly parent provisions, removal of costs orders, requirement for court to enquire about family violence. (L501, lawyer)

Having what we have long known professionally, enshrined in the legislation, enables us to very clearly name the issues as they are, and to focus on the impact on children, and thus give the court evidence which increases the courts’ ability to act protectively towards children. (NL14, FCC, family consultant)

The new increased definitions of what constitutes family violence more adequately include verbal and emotional abuse and as such better protect children—or at least raise the issues for all those who make decisions on behalf of children (parents, lawyers, courts, practitioners, support services and child protection services). (NL430, family relationships counselling service, service-level coordinator/service manager)

Several professionals working in a variety of areas, including those not directly concerned with dispute resolution, indicated the reforms provided a clearer platform for supporting parents who did not want to expose the child to the violent or abusive behaviour of the other parent.

Child protection takes priority and parents who struggled to hand over their children to an abusive parent and whose children [were] betrayed by the parent handing them over to the abusive parent are less frequently put through this trauma. (NL498, Post-Separation Cooperative Parenting Program, counsellor)

[They] encouraged all stakeholders within the family law system to have a common goal of protecting the child, improved understanding of cumulative harm, provide more weight to protecting the child (in other words the child’s rights) instead of ensuring the “rights of the parent”. (NL494, POP, post-separation services manager)

I am more confident to privilege the child’s safety and wellbeing over any relationship with parent. I don’t give advice, but knowing about this change to the law empowers me to discuss this issue with a parent in a way I may not have done previously. (NL83, FRC, mediator/FDR practitioner)

[It is] dispelling the notion of the males’ “right” to 50% of time to children. (L160, lawyer)

8.2 Negative consequences of the family violence reforms

This section sets out the issues raised as being negative consequences of the reforms, recorded in open-ended text boxes inviting reflections on this question. Across the three professional groups involved, three themes emerged. The first concerned the family law system’s ability to deal with the consequences of the increased number of parents raising concerns about family violence and child abuse in parenting matters. This concern has a number of dimensions, including the system’s ability to separate out urgent and serious cases, and to deal with them expeditiously. A second theme reflected a view that the reforms had had limited effects on
improving responses to family violence and child safety concerns, with some participants attributing this to a lack of resources and a lack of understanding of these issues among family law system professionals. The third theme raised a set of concerns related to allegations of family violence and child abuse that were perceived to be false, frivolous or raised spuriously to gain strategic advantage in disputes over parenting arrangements.

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

The following sections present discussion on each theme. They enlarge understanding of the views and concerns that underlie the response patterns presented in the preceding chapters.

In responding to the request for comments on negative consequences, the response “no negative” comments was also made by many participants, particularly non-legal professionals.

8.2.1 Systemic pressures

A substantial number of comments about the negative consequences of the reforms raised concerns about emerging pressures on the family law system. A varied range of issues were mentioned, including longer court processes and delays in getting to court, the implications of the need for greater specificity about family violence and child abuse from an evidentiary, personal and cost perspective, and the perceived increased level of notifications to child protection services.

The time frame within which parenting disputes are heard that do not involve allegations of family violence has increased significantly—as matters which involve allegations of family violence are given priority of listing. This can result in, for example, a person whose child has been removed from the state without their permission, and with whom they are having no contact at all, but in relation to which there are no family violence allegations, not having their matter have its first hearing date in less than 3 months from filing. Given that parties are required to obtain a certificate from a dispute resolution practitioner prior to filing—and given that this process takes a minimum of 6 weeks (as the FDR has an intake process, then they invite the other party, then they invite them again if they fail to respond, prior to issuing the required certificate) this is resulting in parents being without any form of contact with their children for 5 months before the court even looks at the matter for the first time. (JO63, FCoA, registrar)

This comment by a judicial officer also raises a broader point that the family law courts have limited power to make orders protecting children:

How [can the] court deal with violence where it has no effective coercive powers in child protection and the perpetrator and the victim seek to continue their relationship. The violence is driven underground and the Child Protection Services are reluctant to be involved in proceedings under the Family Law Act. They regard such proceedings as being protective. (JO54, FCoA, judge)

As these comments show, concerns about increased caseloads and the complex issues involved in making assessments were not confined to the implications for child protection agencies (see also sections 4.2.5 and 6.3.1–6.3.2).

[The child protection authority] and other services are inundated and cannot meet the need for investigation in a timely way and in the best interest of children's safety. (NL306, FRC, family consultant)

The assessments required for the courts are now even more complex than previously but additional resources have not been provided to the family consultants services. Essentially, the expectations are greater but the time frame for family consultant interventions has remained the same (particularly for family reports). (NL19, FCC, family consultant)
Increases in the costs, delays and hostility associated with litigation, together with increases in the complexity of matters and of paperwork were nominated by some lawyers as negative consequences of the family violence reforms:

[There are] delays in families being assessed by single experts because of the shortage of experts. (L156, lawyer)

[A negative consequence is] parties including allegations in their affidavit of family violence, which are often not relevant and make the proceedings more litigious. For example, if there is no real risk to the child, allegations of past violence by one party directed to the other is raised when there are no further risks of abuse—such as changeover now being at a school, so the parents do not come into contact with each other. Also, how does family violence affect whether a parent is to spend for example 2 nights a fortnight as opposed to 4 nights—Parents raise allegations of family violence, however they still agree the other parent should spend unsupervised time with the child, but argue over how many nights. How is family violence relevant in these instances? (L54, lawyers)

8.2.2 Limited effects of the reforms

Some participants framed their comments about the negative consequences of the reforms in terms that suggested that the changes had had limited effects. These comments were made by 149 participants. Lawyers were most likely to make such comments (n = 99), followed by non-legal professionals (n = 42) and judicial officers/registrars (n = 8). In addition to the systemic and resource pressures outlined above, a range of issues was referred to in these kinds of comments. These included tokenistic responses by some agencies and professionals in the family law system, and a lack of change in ongoing problems with limited awareness about the nature and implications of family violence and child safety issues among some professionals. Some participants saw the complexity of Part VII of the Family Law Act 1975 (see also section 2.3.2) and the complexity of the family system itself as hampering the capacity of the legislative amendments to bring about substantive change. These themes were most common in the observations about negative consequences made by non-legal professionals and were also frequently raised by lawyers.

[They are] too general and added nothing of practical significance. (L234, lawyer)

It doesn’t seem to have made as great a difference as I believe it should have. (L321, lawyer)

I haven’t seen many changes to the application of the law—in terms of outcomes. Parenting orders are still being made allowing contact with violent parents. There is a strong future focus in the law courts, which don’t give weight to the ongoing emotional impact of experiencing or witnessing violence. There is still a lot of pressure to reach an agreement out of court, even if there may be safety concerns—not enough support to go to court if there is no agreement or if the parenting plan is not working—Legal Aid is getting rejected in concerning circumstances and parents are representing themselves even when they have been victims of violence. (NL97, D/FV service, D/FV professional)

Women are still being forced to hand over young children to violent men with no adequate supervision. (NL605, D/FV, children’s contact service professional)

Some participating lawyers who lamented this lack of change were critical of the court’s response to the family violence reforms:

[It] doesn’t address the culture of denial in the FC. (L280, lawyer)

[There is] a perception that courts will take child safety into account, when in reality they don’t. (L46, lawyer)

Judges and practitioners take little notice!! (L285, lawyer)

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

Nothing has really changed for a vast majority of people using the family court system. There is still a very strong leaning towards presumption of shared care or substantial care in situations when there is domestic violence or child abuse. (L18, lawyer)

The family violence reforms to the Family Law Act don’t seem to have made as great a difference to the outcome of parenting matters as would have been expected. The fundamental problem with the Family Law Act provisions relating to parenting is with equal shared parenting and presumptions about equal time arrangements—despite not being intended this way the provisions give people the impression that children are property of the parents, to be “shared out” as the parents see fit. (L314, lawyer)

Criticism in this respect was not limited to the responses of courts. Similar observations were made with respect to family consultants, single experts and lawyers and family dispute resolution practitioners:

The changes have not necessarily had an impact on the views and recommendations of experts, ICLs or the decisions of judges. The outcomes in terms of orders made do not seem to have changed in that there is still an expectation that children will spend significant or regular time with perpetrators. (L245, lawyer)

[There is] little understanding by practitioners representing the perpetrator of the breadth of the definition of family violence and the dangers of having a child exposed to this. (L126, lawyer)

Having worked as both a family lawyer and a family dispute resolution practitioner, there are still a lot of lawyers and some FDR practitioners who minimise abuse in a family. (L128, lawyer)

This lack of change was regarded by one lawyer as particularly problematic for matters at the interim hearing stage:

There is still a lack of investigation/determination of the evidence of family violence at an early stage. It seems to be shelved as one of the many issues to be resolved at trial. There is a lack of acknowledgement of responsibility by perpetrators. Affidavits are not detailed enough about family violence and how it has affected the children and parenting capacity. (L198, lawyer)

This thoughtful response from a lawyer raised the challenges associated with making cultural change and evolving knowledge and understanding:

I can’t see any negative consequences, just that it takes time for cultural change to happen. It is still quite slow to see family violence getting the recognition it should have, given its prevalence and serious effects. The impact of family violence on caregivers needs to be taken more seriously and not be artificially treated separately from protection of children. (L505, lawyer)

A small number of lawyers considered that the family violence reforms “did not go far enough”:

The reforms did not go far enough. The presumption of “equal shared parental responsibility” and how it links to time considerations still results in parties believing that they have a right to equal time. A terminology change to parental responsibility and no emphasis on particular time arrangements would be far better. The best interests of the child should be assessed in accordance with the s 60CC factors not presumptions of particular prescribed time arrangements. (L334, lawyer)

[They are] not enough, too little very late. (L280, lawyer)

A theme present to a lesser extent in the answers of judicial officers/registrars and lawyers was quite prominent in the responses of non-legal professionals: the potential for the effects of the reforms to be undermined by insufficient expertise about family violence among family law system professionals. Some non-legal professionals reported that a negative consequence was
that the family violence reforms were not sufficiently effective in practice, as they had not given rise to improvements in the proper identification, assessment and response to risks and harm factors (see also Chapters 4 and 6):

I believe that the reforms are good in theory, however, as a domestic/family violence worker it is apparent to me that while the reforms have been done, not a lot is being seen to have changed when the families are getting to court. It is my experience that family consultants, independent children’s solicitors and judges are still not necessarily putting the best interest of the child when it has been noted by solicitors in affidavits and Form 4s, that there is domestic violence, especially when it is not physical and the woman for whatever reason has not reported to police. (NL88, D/FV service, D/FV professional)

In my experience, often parents and sometimes legal representatives and judicial services still fail to apply the wider implications of the new legislation. It gets watered down somehow. It is seen as something to get around rather than a reminder of what children need. (NL430, family relationships counselling service, service-level coordinator/service manager)

More specifically, some non-legal professionals falling within this response category identified a lack of change in the interpretation of disclosures of family violence and in the understanding of the nature and the detrimental effects of family violence:

I have not seen any improvement. Protective mothers are still being labelled as delusional or vindictive. (NL209, FCoA, single expert witness)

The law (that is, legal practitioners, including ICLs) still seems to regard emotional and other forms of violence as tolerable and focuses mainly on physical violence. (NL483, FCC, family consultant)

Some non-legal professionals also identified a continuation in the emphasis on “parental rights” and a focus on “equal time” on the part of family law professionals and parents as negative consequences of the reforms:

The legal fraternity is still more focused on the rights of the parents rather than the wellbeing of the child. I believe the system still treats children as possessions. Most ICLs have no direct contact with the child, which is disappointing, and with the more recent cuts to legal aid funding, we have parents who are disempowered and often victims of violence and abuse directly facing off with the perpetrator, with no legal support in court. It is wrong. (NL146, children’s contact service, post-separation services manager)

A lot of parents demand 50–50 care, which is a “position” [that is] very difficult to shift in dispute resolution mediation. (NL423, FDR service, mediator/FDR practitioner)

8.2.3 Forensic complexity

A further aspect of comments about negative consequences underline the forensic complexities that dealing with family violence and child abuse concerns raise in practice, and which are implicit in many of the comments in the preceding sections. Some of these comments raise concerns that the 2012 family violence reforms had encouraged false or exaggerated claims in relation to family violence and, to a lesser extent, child abuse. Some also reflect a view that concerns about family violence and child abuse were being raised spuriously as a means of defeating the other parents’ desire to maintain a relationship or spend substantial time with the children. Several of the participants conveyed the view that intervention orders were being obtained under state and territory family violence systems to gain tactical advantage in family law proceedings. Other comments suggested that, in some instances, the family violence reforms had enabled perpetrators of family violence to use the system to continue to harass their former partners to a greater extent than previously.

The analysis of the comments presented here supports further understanding of some of the views that underlie the negative responses to aspects of the reforms discussed in the preceding chapters, particularly those relating to the wider definitions of family violence and child abuse (section 3.1) and the repeal of provisions perceived to discourage disclosure of such concerns.
Broadly, a frequent theme in comments concerning negative consequences related to allegations of family violence and child abuse being raised falsely, or to an exaggerated extent, or frivolously. A more specific concern along these lines relates to views about family violence protection orders being obtained for tactical advantage in family law proceedings. It should be noted that concerns of these kinds pre-date the 2012 family violence reforms (see Kaspiew et al., 2009; Parkinson et al., 2011; Parliament of the Commonwealth of Australia. House of Representatives, 2005). In relation to false claims about family violence and child abuse being made, these views mirror wider community perceptions. The most recent National Community Attitudes Towards Violence Against Women Survey (VicHealth, 2014) demonstrates that just over half of those surveyed in a nationally representative community sample agreed with the statement that “women going through custody battles often make up or exaggerate claims of domestic violence in order to improve their case”, and that this proportion remained consistent between 2009 and 2013. The commentary in the VicHealth report notes that “if the view that false allegations are commonplace is reflected in the responses of people from whom women seek help, there may be serious consequences for the safety of women and their children” (p. 61). A 2013 qualitative study by Lesley Laing examined the experiences of women who used the intervention order system in NSW. More than half of these women were also involved in family law system processes. Laing (2013) noted that even though they had experienced severe violence, these women “reported that they encountered scepticism in both systems that their allegations of domestic violence were tactics to gain advantage in their family law matter” (p. 8), and that as a result of the interaction between the two systems, their ability to gain protection through legal means was eroded.

Evidence based on quantitative studies (Birdsey & Snowball, 2013; De Maio et al., 2013), shows a complex picture in relation to disclosing family violence and seeking help. In broad terms, substantial proportions of people who report experiencing physical hurt and emotional abuse also report not disclosing this to any professional. Family violence experienced after separation is more likely to be disclosed than family violence experienced before separation, but substantial minorities do not disclose in either time frame (De Maio et al., 2013; Chapter 5). As the preceding chapter shows, substantial minorities (31–45%) of the parents surveyed for the parents’ module for this study did not disclose physical violence, and majorities (55–77%) did not disclose emotional abuse to the services they used (Figure 7.24). Similarly, 58% of parents who had used a service and held safety concerns for themselves or their child did not disclose these concerns (Figure 7.22). These findings do not directly address the extent to which false allegations are made, but they do suggest that from a policy and practice perspective, continuing under-disclosure is a significant issue.

In relation to personal protection orders, the data set out in Chapter 7 show that 9% of all parents surveyed had been advised to obtain a personal protection order by a lawyer, and this was more common when physical violence had been experienced (18%) than emotional abuse (7%) (Figure 7.36). Two per cent of parents reported being advised to obtain a personal protection order in the absence of a reported history of physical violence or emotional abuse, and these parents may have held safety concerns for themselves or their child as a result of ongoing contact with the other parent. It should also be noted that if a professional identifies circumstances in which a parent or child is at risk of harm, then prudent professional practice would require them to suggest they seek a protection order. In this context, the fact that a minority of parents reported being advised to seek a protection order suggests that such advice is being given sparingly, perhaps even too sparingly. 

Research in Queensland prior to the 2012 family violence reforms and after the 2006 family law reforms (Douglas & Fitzgerald, 2013) showed an increase in the number of personal protection orders being taken out by both members of a former couple (mutual orders). The authors of the study suggest that this may in part have been attributable to the 2006 family law reforms and the role that personal protection orders potentially play in the rebuttal of the presumption of shared parental responsibility. An analysis by Parkinson, Cashmore, and Single (2011) of the use of family violence orders against a background of family law disputes in various areas (pre-dating the 2012 family violence reforms) describes the accounts of three fathers interviewed who told the researchers that personal protection order proceedings were dismissed because the allegations were found to be untrue. The analysis is based on interviews with 181 participants from three separate studies that were focused on different kinds of family law disputes.
Against this backdrop, in order to gain a better understanding of the context in which concerns about false, exaggerated and frivolous claims about family violence are expressed by professionals, comments raising these issues were coded and analysed to provide insight into the characteristics of the participants raising them. The coding was based on comments that raised these issues explicitly or by implication. The extent to which judicial participants raised these concerns was very limited (see below), so this process was not applied to judicial officers or registrars. In relation to lawyers, the coding shows that explicit comments of this nature were made by 46 lawyers, and implicit references occurred in the comments of 16 lawyers. The largest group of lawyers raising such concerns were from Queensland, followed by NSW and Victoria. The concerns were most likely to be raised by lawyers in private practice, and the lawyers making them were more likely to report not having undertaken training in AVERT, DOORS or other family violence professional development programs. In relation to non-legal professionals, such concerns were raised by this group to a lesser extent than lawyers. Among these participants, 34 non-legal professionals made explicit comments and six made implicit references. In relation to the states these professionals originate from, the pattern is different from lawyers: these participants were most likely to be from NSW, followed by Victoria and then Queensland. The comments were most likely to be made by participants who indicated their roles were FDRP/mediator and family consultant.

The following quotations provide insight into the nature of concerns raised:

More people are inclined to stretch the truth and perhaps embellish what has happened in a relationship because they know courts are more likely to take notice and no costs order [even] if it is found to be untrue. (L195, lawyer)

As a result of the amendments, minor incidents during a marriage tend to take greater precedence in matters, even if not current or relevant to the proceedings. Practitioners are now on the look out for family violence to an extent which leads to minor disputes (arguing between separating parents, etc.) being embellished to suit a particular purpose other than protection of children. This coupled with the excessive use of the current Intervention Order Proceedings leads to extended and more costly litigation for both parties with limited benefit to the parties at the end of the day. (L55, lawyer)

Some lawyers are assisting their clients to use domestic violence concerns that may not be valid, to manipulate property matters, or to control the time the children spend with the other parent. But that was happening prior to the reforms as well. (L500, lawyer)

[There has been] an increase in false allegations from parents; an increase in children being unfairly removed from care of a parent due to false or exaggerated allegations of family violence; an increase in disagreements between parents at FDR and mediation who would prefer to take their chances in court given the very broad description of family violence. (NL477, Post-Separation Cooperative Parenting Program, intake and assessment worker)

The “risk based” system has opened up the door to abuse by parents making allegations of family violence with little or no consequence if they lie but very damaging consequences to the other parent’s attachment and relationship with their child. (NL20, FDR service, mediator/FDR practitioner)

Some of the participating lawyers perceived that making false, exaggerated or frivolous allegations had significant implications for the parenting arrangements made at the interim hearing stage. These views are the converse of those set out in 8.1.2, which endorsed a shift towards a more protective approach to orders at the interim level:

The extent to which the risks of FV and DV are becoming overstated in affidavit material is of concern. In a number of matters which have gone from commencement of proceedings to trial since the reforms commenced (3 matters) there have been “high level” concerns raised in the initial material which by the time of trial/under cross examination were found to be grossly exaggerated. The removal of the “friendly parent” provision seems to have encouraged the making of allegations of risk of harm. My concern is this is making it increasingly difficult for the court to work out which matters are genuine and which require the court’s additional resources (i.e., appoint an ICL or Reg 7 consultant). If the trend continues, there appears [to be] an increased risk that matters requiring genuine
intervention to protect children or a parent from harm will be marginalised as there will simply be insufficient resources to intervene in every matter where the risk of harm is alleged. (L317, lawyer)

It can be used as a weapon in that one parent may make baseless allegations, or greatly exaggerate their concerns, in the knowledge that the court will likely take a fairly conservative approach to parenting arrangements until all of the evidence has been considered. The fact that the allegations can be made with the knowledge that there are no costs consequences, and that the court will only order a change of residence in extreme cases, means that even if the allegations are not substantiated there is no real consequence for the accusing party. The frustration is that by the time the allegations are investigated by the court the children may have had many months of having to see the other parent in an artificial environment such as a contact centre. (L113, lawyer)

Comments from participants on the specific question of intervention orders included the following:

It is very easy to abuse [the family violence reforms]. Parents are using this as a weapon against each other. More people are applying for frivolous DVOs to then be used for children's matters. (L36, lawyer)

Some lawyers are advising clients to take out ADVOs [apprehended domestic violence orders] to assist their case. This often results in fathers having to defend unnecessary ADVOs at a high cost to themselves. Examples are for ADVOs over incidents allegedly taking place 20–30 years earlier where the relationship has continued. Happens in property matters as well as children's matter. Lawyers ignore the elements required for an ADVO. (L215, lawyer)

AVOs are on the increase and most seem a try on. The language of the reforms, as is the language of this questionnaire, is geared towards moving away from "shared care". Privately, many of my friends who practice in family law, say that the reforms were an attempt to "close in" on the 2006 reforms. They stated that they would not say this publicly due to gender politics. (L228, lawyer)

The following participant suggested there had been an increase in mutual orders (i.e., situations where each member of a former couple has an intervention order against the other):

It seems there is an increase in perpetrators applying for AVOs against the victim. The police and local courts are often not trained to be able to work out who the dominant aggressor is and perpetrators may be becoming aware an AVO can be useful for them in denying their abusive behaviour in family law matters. (L498, lawyer)

8.3 Unintended consequences of the family violence reforms

Several diverse issues were raised as unintended consequences, but comments on this question were overall, less common than comments on the other two questions. Many of the themes already raised were present in these comments: increased pressure on resources, including legal aid; inadequate training in family violence to support the effective implementation of the reforms among some professionals; and the complexity of the Part VII framework remaining unresolved, and in the eyes of some participants, worse. Some comments also raised concerns about some aspects of the reforms being supportive of perpetrators of family violence using the legal system to maintain the abuse of their former partners. Many participants stated they did not consider that the reforms had had any unintended consequences.

The issues raised in comments about the reforms being associated with further abuse of victims of family violence were varied, and encompassed concerns about legal aid funding, trauma being caused by court processes, the exacerbation of violent and controlling behaviour and use of the system to perpetuate abuse and control:

35 Research examining this issue prior to the 2012 family violence reforms includes Douglas and Fitzgerald (2013) and Wangmann (2009).
We are seeing the courts being used increasingly for frivolous matters and it does to some extent seem that the courts are increasingly being used as a continuation of abuse for victims of domestic and child abuse. The legal aid funding, which cannot be divorced from this analysis, is also being used in matters where there does not seem to be any merit and often the other party who is the victim experiences a great deal of difficulty in obtaining legal aid funding. (L18, lawyer)

Victims tend to be excluded from courtrooms because of their safety concerns (which is unhelpful because they don’t get to hear what the judicial officer says, and it feels like marginalisation which is kind of a repeat of the abusive tactics). There needs to be better resourcing of these matters to ensure victims can fully participate. (L402, lawyer)

[There is an] increased ability in some cases for fathers to turn definitions around and use them unjustifiably against mothers. (NL624, FCoA, no occupation specified)

Some perpetrators get more skilled in using other services to continue with the abuse. (NL642, FRC, intake and assessment worker)

A small number of lawyers reported that an unintended consequence of the family violence reforms was an increase in hostility and litigation between parties (L64, L500), the increase in costs, delays and paperwork and continuing concerns about the implications of the complex Part VII legislative framework:

[There are] increased legal costs, increased court delays because judges have to read more material about family violence even if it is not a central issue or major issue in the case. (L336, lawyer)

Courts are meandering through what once was clear legislation. The legislation pathway is more confused than ever. (L202, lawyer)

Consistent with the discussion on the limited effects of the reforms at section 8.2.2, some participants identified the continued downplaying of family violence (by professionals across the system) as being an unintended consequence, with inadequate weight accorded to the “protection from harm” primary consideration and inadequate identification, assessment and response to family violence:

I don’t think that a lot of judicial officers get that emotional abuse is often more damaging then the physical abuse and they still don’t get that it is bad role modelling for children to be raised in such an environment. (L357, lawyer)

When explaining the reforms, and their intention, I believe it gives people false hope that their children will be protected from a violent parent by the courts. Especially at interim hearings, the reforms don’t seem to be given the weight we had hoped and expected. (L43, lawyer)

Like any reform or anything new it is open to criticism as the changes settle into common accepted practice. In my experience some practitioners have been slow to emphasise the significance of family violence and they continue to practice in a manner that is dismissive of alleged acts of family violence. Such practice then puts their client at odds with the court consideration of issues associated with family violence and leads to that client becoming frustrated by the proceedings. (L430, lawyer)

In answer to this question, a number of non-legal professionals reported difficulties in managing parental expectations and responses:

The biggest problem is still the unrealistic expectation about equal time as an option in the highly complex matters that come to the court. I wonder if more “reality testing” and information should be given to the clients by their lawyers prior to filing. (NL19, FCC, family consultant)

[There is a] false expectation for some clients that if violence is alleged and/or has occurred the children will not have any contact with other parent. (NL226, FDR service, mediator/FDR practitioner)

[It] gives a false sense of POWER to the parent against the other parent, which interferes at times with negotiating a parenting agreement. [It] creates a sense of helplessness to
the alleged perpetrator—and the loss and grief may lead to premature sense of finality, leading to self-harm or harming of others. (NL597, FRC, mediator/FDR practitioner)

Other non-legal professionals identified the continued downplaying of family violence by lawyers and courts as being an unintended consequence, giving rise to the inadequate identification, assessment and response to family violence:

Ongoing negative consequences of the Family Law Act can be seen in the very limited capacity for this tool to identify and address the wellbeing of women and children effectively where there is family violence. Much attention is given to reducing conflict and reaching care arrangements. (NL186, D/FV service—service-level coordinator/service manager)

Children [are] still placed at risk due to court parenting orders. Judges [are] not reading material fully prior to making orders, which places children at risk. Separate representatives [are] not taking the consequences of placing children at risk seriously enough. Court counsellors [are] making rash judgments, which places children at risk. (NL280, FDR service, mediator/FDR practitioner)

I don’t see the reforms making a lot of difference at the level I work at, as the experience is bi-directional and the legal system struggles with the population of high conflict separation couples. This can then encourage a dismissal of both the reform and the act because it doesn’t reflect the reality of the experience of these families. (NL106, POP, post-separation services manager)

Other non-legal professionals argued that an unintended consequence of the family violence reforms involves an increase in the focus on family violence and the protection from harm at the expense of other aspects of the best interests of the child, with these non-legal professionals reporting detrimental effects for both parents and children as a result:

[There has been a] diminution of the myriad other important aspects of children’s interest. (NL161, FRC, mediator/FDR practitioner)

[There is an] increase in fathers feeling a lack of options (and therefore hope) in seeing their children. (NL199, FDR service, educator)

8.4 Summary

This chapter has examined qualitative data illuminating the views of professionals on positive, negative and unintended consequences of the 2012 family violence reforms. These data shed further light on the views, attitudes and experiences that underlie the patterns in responses to quantitative questions presented earlier in this report. They confirm a variety of views and experiences among professionals across the system and some of the views described in section 8.1 (positive consequences) are the opposite of those described in section 8.2 (negative consequences). For example, for some professionals, cautious decision making at the interim level supported the protection of children. In contrast, others saw this as impeding parent-child relationships. Importantly, a substantial number of professionals raised concerns about the limited effects of the reforms and a substantial number also raised concerns about systemic pressures including court delays and increased burdens on child protection systems.

The discussion of positive responses reinforces the findings reported in Chapters 2 and 3 of majority support among most groups of professionals for the direction of the reforms. Positive consequences nominated by each professional participant group included the introduction of the broader definition of family violence and the introduction of s 60CC(2A) as a means of clarifying the priority to be accorded to the “protection from harm” primary consideration when determining parenting orders. The greater awareness of family violence as an issue among professionals, litigants and the broader community, together with improved understandings of the nature and effects of family violence, were factors that were identified as positive consequences of the family violence reforms. Improvements in the identification and assessment of, and response to, family violence by family law professionals, were also nominated as positive consequences by each professional group, together with the increase in focus on protecting children from risks or harm factors.
This chapter also set out professionals’ perspectives on the negative consequences of the family violence reforms. Again, these comments provide further insight into views that inform the pattern of responses in the quantitative data reported in the preceding chapters. Overall, negative views are significantly less common than positive views. Negative consequences nominated by professional participants included the absence of appreciable differences in responses or court outcomes in cases involving risks or harm factors, and the absence of substantive changes to the levels of understanding or attitudes to family violence. More specifically, these reported negative consequences included a lack of change in the interpretation of disclosures of family violence and in the level of understanding among professionals of the nature and detrimental effects of family violence. Other negative consequences nominated included increases in the costs, delays and hostility associated with litigation in parenting cases, together with increases in the complexity of matters and of paperwork. There were also concerns about the lack of resources to enable prescribed child welfare authorities or courts to adequately respond in cases involving risks or harm factors. In addition, concerns of an evidentiary nature were also raised by some professionals, including arguments that it had become easier to make false, exaggerated or irrelevant allegations, or that there had been an increase in the making of such allegations.

Finally, the chapter considered professionals’ open-ended responses regarding any unintended consequences of the family violence reforms. Participants responding to this question reported an increase in the workload of courts and prescribed child welfare authorities. Other unintended consequences included the family law process potentially being used by perpetrators to continue their abusive behaviour or to deny their violent behaviour, an increase in hostility and litigation between parties, and increases in costs, delays and paperwork. Some professionals also nominated the continued downplaying of family violence, which was identified as giving rise to the inadequate identification, assessment and response to family violence. These unintended consequences were consistent with the negative consequences nominated by some professionals.
Summary and conclusions

This chapter presents the findings of one part of a three-stage evaluation of the 2012 family reforms. The Survey of Practices examined the views and experiences of professionals working across the family law system. Responses from 653 professionals, including 37 judicial officers/registrars, 322 lawyers and 294 non-legal professionals were involved in the survey. Information from 2,473 parents—comprising a sub-sample that completed a module of questions relating to service use and disclosure of family violence as part of the Survey of Recently Separated Parents 2014—provided an important means of triangulating the data from professionals. Therefore, this assessment of the effects of the 2012 family violence reforms is informed by the perspectives of both professionals and parents.

The discussion in this chapter summarises the findings of the Survey of Practices on how the family violence reforms are working. Conclusions formed on the basis of the data available from this study may be subject to revision when the findings of the other two elements of the evaluation—the Court Outcomes Project and the Surveys of Recently Separated Parents 2012 and 2014—are available. The first part of the chapter sets out a thematic analysis of the findings. The second part provides a summary based on the insights from this study of emerging responses to the research questions that have guided the Evaluation of the 2012 Family Violence Amendments. It should be noted that these are tentative conclusions and may be revised on the basis of the findings from the other parts of the evaluation.

A significant feature of the approach applied in this study has been the inclusion of perspectives of professionals from different disciplines working in different parts of the family law system. This has supported the development of a multidimensional understanding of experiences with the reforms in different parts of the system, building the foundation for understanding how professionals in different areas of the system are working with the reforms. More generally, it sheds light on the influence of the legislation in both court and non-court-based practice, including legal practice and practice in the family dispute resolution arena. Parents’ perspectives are also an integral part of considering the extent to which professionals’ accounts of their own practices are reflected in client experiences in using the legal system since the reforms.

An important aspect of the context for these findings is the complex nature of family violence. The findings of SRSP 2012 have demonstrated that it varies considerably in form, frequency and severity (De Maio et al., 2013). From a longitudinal perspective, the findings of the LSSF Wave 3 established that family violence and safety concerns can be dynamic, with some parents reporting that these concerns abate, or to a lesser extent, fluctuate over time (Qu et al., 2014; section 3.3). They also show that for some parents, family violence and safety concerns can be sustained for five years after separation. These studies also reinforce the point that it is these families at the more complex end of the spectrum who engage, and in some cases continue to re-engage, with family law system services over time.

Several important findings from the parents’ module in this study warrant reiteration. Four in ten parents reported seeing psychologists or psychiatrists. Close to three in ten parents who reported a history of physical violence since separation used more than six services. Close to two in ten who reported a history of emotional abuse since separation used more than six. This level of intensive service use was only evident among 3% of parents who reported no physical violence or emotional abuse since separation.
9.1 Thematic analysis

9.1.1 Majority support for the direction of the 2012 family violence reforms

Significantly, the data set out in Chapters 2 and 3 show the direction of the 2012 family violence reforms have the support of a substantial majority of the participants in the Survey of Practices. On an aggregate basis, 77% of the sample agreed that the family law system needed the 2012 family violence reforms. The professional group most in favour of the reforms was non-legal professionals, with 88% of this group agreeing the reforms were necessary. A smaller but substantial majority of lawyers (70%) and a still smaller majority of judicial officers registrars (57%) agreed these reforms were necessary. These response patterns are relatively consistent throughout the survey, with majorities of professionals supporting key aspects of the reforms, including: the new definitions of family violence and child abuse (s 4AB and s 4), and the provision specifying that protection from harm was to be given greater weight than a child's right to a meaningful relationship when the two principles are in conflict (s 60CC(2A)). Minorities of between 21% (definitions) and 11% (protection from harm) disagreed with these aspects of the reforms. The relative response patterns in these areas establish a pattern characteristic throughout the report: non-legal professionals are consistently more positive about the reforms and the necessity for them than are lawyers or judicial officers registrars.

Among some judicial officers and registrars and, to a lesser extent, lawyers, the overall pattern of responses suggests that a minority of these professionals considered that family violence and child abuse were dealt with effectively prior to the reforms and that the changes consolidated pre-existing approaches. In contrast, some professionals (particularly lawyers and non-legal professionals) considered that the reforms have had only very limited effects on addressing entrenched ineffective practice in relation to family violence and child abuse in the family law system.

9.1.2 Support for the legislative changes

Each of the main significant legislative changes dealt with in the report attracted majority support across the sample and majority support within each of the professional groups involved in the survey. There was very strong support among all professionals for the assistance provided by s 60CC(2A), which clarifies that the principle that children need to be protected from harm outweighs their right to a meaningful relationship with each parent where these principles are in conflict. This provision was seen to be critical, both in areas where advice is provided to parents (lawyers and non-legal professionals) and where decisions are made (judicial officers registrars). From the perspective of those who give advice, it was seen to support being able to provide clearer, firmer guidance to parents and was also seen to have an educative function. In decision-making practice, it was seen to support making protective determinations in circumstances where a protective approach may not have been sustainable prior to the reforms, such as at interim hearings. There was little evidence that this provision has caused concern.

The expanded definitions of family violence (s 4AB) and child abuse (s 4) also attracted majority support, with 73% of the sample agreeing that they supported safer parenting arrangements for parents and children. Endorsement of the view that more effective responses to non-physical forms of family violence were evident was less strong, with fewer participants agreeing (37%) than disagreeing (48%) that this was the case. Qualitative comments indicate a spread of views about the new family violence definition and shed light on the reasons for the negative responses among some professionals. It is clear that the interpretation of the definition varies, with some professionals considering it to be too wide and others being concerned that it may be applied narrowly because of the necessity to establish fear, coercion or control. However, many professionals consider the definition to appropriately reflect social science evidence and social understandings of the behaviours that constitute family violence, and consider that it helps in eliciting information from clients.

The discussion in this report shows that advice-giving practice has shifted in a direction consistent with the intent of the reforms, with 64% of lawyers and 56% of non-legal professionals indicating...
that they have changed the advice they give about family violence. Similarly, advice about child abuse has changed, according to 59% of lawyers and 50% of non-legal professionals.

These findings suggest greater certainty in advice-giving and decision-making practice in the new legislative environment. However, the overall pattern in responses to propositions about the extent to which adequate priority is accorded to: (a) protection from harm, and (b) a meaningful relationship shows endorsement in relation to the former proposition sits nearly 20 percentage points below the latter.

Some evidence of the effects of advice-giving practices under the 2012 family violence reforms is shown in parents’ accounts of the decisions they made as a result of accessing services. The data demonstrate that the patterns differ between parents who had reported experiencing family violence and those who had not (see section 7.3). In the group who had experienced no violence before or during separation, 54% reported that accessing the service made no difference to their decisions. In contrast, one-third of the group who reported experiencing physical violence decided to seek restrictions on contact with the other parent. These findings suggest a nexus between advice-giving practices and parents’ subsequent actions, but the evidence of this is weaker in connection with emotional violence: only 21% of parents who reported emotional abuse in the absence of physical violence indicated they decided to seek restrictions on the other parents’ time with the child. The data also indicated an ongoing and higher level of service use by those parents reporting that they experienced family violence (directed against them or their child).

### 9.1.3 Screening, assessment and responding to family violence: A work in progress

In relation to screening for and dealing with family violence and child abuse, the evidence indicates that this is an area where practice requires further refinement (Chapter 4). On an aggregate basis, more professionals in the sample disagreed (46%) than agreed (43%) with the proposition that the legal system had been able to screen adequately for family violence and child abuse. Differences among professionals were important in this context, with non-legal professionals being less confident than lawyers and judicial officers/registrars in this regard. The 2008 and 2014 comparative data from lawyers suggest an incremental improvement in this area, with total agreement rates of 46% in 2014, compared with 43% in 2008.

Significantly, the evidence from parents reinforces these findings. As reported in section 7.5.1, 41% of parents indicated they had not been asked about family violence and 38% indicated they had not been asked about safety concerns. Domestic violence services were most likely to be associated with eliciting disclosure of concerns about safety (for the participant parent and children) (88%), followed by FRCs (73% fathers and 71% mothers) and FDR services (66% of fathers and 77% mothers). Fathers were less likely to report being asked about these concerns by courts (41%) and lawyers (43%), as were mothers, to a lesser extent (60% courts and 58% lawyers).

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

These findings indicate that the training provided to familiarise professionals with DOORS has had limited reach. Further, participants expressed mixed views on the screening and assessment approach that DOORS represents. There were a number of positive responses, particularly from non-legal professionals, suggesting that the availability of this tool reflected an advance for the family law system’s ability to respond to family violence, child safety and other issues related to risk. However, some participants in this group expressed concerns about the tool.
A fundamental aspect of the concerns raised by each of the professional groups related to the proceduralised nature of the DOORS approach, with many expressing the view that this kind of approach was no substitute for practice-based wisdom, careful questioning and personal engagement with clients, informed by highly developed professional judgement. Underlying this view was a concern that the application of the DOORS approach in the absence of carefully honed professional judgement would be inadequate.

Other concerns raised by participants related to the workability of the approach in day-to-day practice. The amount of time required to administer the two parts of DOORS was a concern that was raised, as was the way in which these were administered. An approach based on the completion of a questionnaire was seen as problematic for a number of reasons. These included the impersonal nature of the engagement with clients over difficult issues that this approach entails. There were also concerns that this approach was not appropriate for clients with limited or no literacy in English, including clients from Aboriginal and Torres Strait Islander backgrounds and culturally and linguistically diverse communities. The comments from family consultants indicate it is not considered appropriate for practice in this context.

It is important to acknowledge, however, that DOOR2 of the DOORS tool enables the DOOR1 questions to be administered by a practitioner with their client.

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

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

It is also clear that FDR is provided in a substantial number of cases where there are concerns about family violence and child safety, as discussed in Chapter 5. This occurs consciously in some cases, but may also occur without sufficient awareness in others. Clinical decisions about providing FDR are made in a dynamic context: knowledge about a family's circumstances may change as the process progresses, and the question of whether FDR is provided may be influenced by both parents' preferences (perhaps to a limited extent) and the professional's judgement. The issue this raises is the circumstances in which this is appropriate practice and whether arrangements made in this context protect children. This is not an issue that has arisen as a result of the 2012 family violence reforms, rather it is a development that has emerged since (or possibly even pre-dates) the 2006 family law reforms. However, one of the significant questions that arises in this context is whether the 2012 family violence reforms support safe agreement-making in this context. The findings in this report tend to suggest that this may the case, but it is also an issue that will be examined further using data from SRSP 2012 and 2014.

A further issue of relevance to the findings on the identification and assessment of family violence and child abuse concerns in court-based practice is the role and utility of the Form 4 Notice of Child Abuse, Family Violence and Risk of Family Violence. A majority of participating judicial officers and registrars (73%) reported that, when filed by lawyers, the Form 4 Notice assisted them to understand whether there were risks to parents or children in a case. However, a majority
of the judicial sample (59%) disagreed that the Form 4 Notice was of the same assistance when filed by self-represented litigants. Relevant qualitative data from judicial professionals described benefits arising from the Form 4 Notice to include improved information flow with prescribed child welfare authorities and more informed assessments of risks and harm factors, although affidavit material and expert reports were nominated by some judicial respondents to be of greater benefit. Support for the revised and compulsory Notice of Risk to be introduced in 2015 following its pilot in the South Australian Registry of the FCCoA received positive endorsement as a more effective method of flagging risk. Participating lawyers were less positive in their reflections on the Form 4 Notice. Nevertheless, while one-half of participating lawyers thought the Form 4 Notice was simple and easy to use, a substantial proportion (41%) did not agree. Further, professionals who responded to the open-ended survey questions described concerns about the utility of the form and its need for revision and simplification.

9.1.4 Substantive responses to matters involving family violence and child safety

In relation to dealing with family violence and child abuse, the evidence indicates that, consistent with findings relating to screening and assessment capacities, this too is an area where practice requires further refinement (see Chapter 6). On an aggregate basis, more professionals in the sample disagreed (49%) than agreed (41%) that the legal system had been able to deal adequately with cases involving allegations of family violence and child abuse. Differences among professionals were again important in this context, with non-legal professionals being less confident than lawyers and judicial officers/registrars in this regard. The 2008 and 2014 comparative data from lawyers suggest an incremental improvement in this area, with total agreement rates of 48% in 2014 compared with 43% in 2008.

In terms of substantive changes to parenting arrangements, close to a majority of the aggregate sample of professional participants (49%) reported that the family violence reforms had resulted in more arrangements for supervised or neutral venue changeovers. While affirmative responses were largely consistent across each participant category, responses from judicial officers, registrars and lawyers reflected higher levels of disagreement than non-legal professionals on this proposition. A slightly lower proportion of the aggregate sample of participants (44%) agreed that the family violence reforms resulted in more supervised time arrangements, with greater consistency emerging in the affirmative responses of lawyers and non-legal professionals on this question. Only 21% of the aggregate sample of participants agreed that the reforms had resulted in more arrangements for no parenting time, with greater consistency emerging in the affirmative responses of lawyers and non-legal professionals on this question. Responses from judicial officers, registrars and lawyers reflected lower levels of agreement than among non-legal professionals. A majority of participating lawyers (60%) agreed that to a greater degree courts now prioritised safety from family violence and child abuse at the interim hearing stage.

The qualitative data reported throughout this report, but particularly in the discussion of positive consequences in Chapter 8, indicate that many professionals endorse the legislative mandate to prioritise protection from harm in agreement-making in FDR, in advice-giving in legal practice and in decision making in court. Comments from lawyers and judicial officers/registrars suggest that legislative support for protective decision making at interim hearing stage, a point at which evidence is often sparse, has been a welcome aspect of the reforms.

Parents’ levels of satisfaction with the services they accessed show that parents who had experienced family violence were more likely to be dissatisfied than those who had not, confirming professionals’ concerns. Notably, however, majorities of parents reported being satisfied with the service they were questioned about, even when they had reported a history of family violence before or during separation. There is considerable variance in the rates of reported dissatisfaction according to gender, the service used and whether the participant had experienced physical hurt or emotional abuse alone. Fathers were less likely than mothers to be satisfied with their experiences with FDR, FRCs, lawyers and courts (section 7.4), with the widest discrepancy evident in relation to courts, where 34% of fathers reported dissatisfaction, compared with 20% of mothers. Courts were more likely to elicit dissatisfaction responses where parents had reported emotional abuse (34%)
9.1.5 Positive, negative or unintended consequences

An important finding evidenced in various ways throughout the chapters is the limited evidence of negative consequences arising from the family violence reforms. For example, professionals' responses generally indicate that no less emphasis is placed on the child's right to a meaningful relationship in 2014 compared to 2008–09. Additionally, the 2012 family violence reforms were not associated with changes in the advice about service use that counteracted the effects of the 2006 family law reforms, which encouraged greater use of services to resolve parenting issues. Indeed the evidence suggests the continuing consolidation of these aims, such as an increase in the levels of confidence lawyers place on FRCs.

The qualitative data reported in Chapter 8 illuminate the perceptions and concerns that underlie some of the response patterns evident in the quantitative data. It is clear that attitudes and approaches to the reforms vary, but it is important not to lose sight of the findings showing majority support for the direction of the reforms. Three significant themes emerge from the discussion in Chapter 8. First, there are concerns throughout the family law system about the forensic complexity that family violence and child abuse raise. The consequence of this complexity can be seen in the comments about heavy court and child protection service workloads. Some professionals raised issues relating to increased costs for clients, longer court hearings, and delays in attaining a hearing. A second, related, concern goes to the question of whether the reforms are linked to an increase in ‘false allegations’ or ‘frivolous claims’. It is clear that there are contrasting viewpoints on this issue. Some practitioners raised these concerns, while others more specifically raised the possibility that the reforms have increased opportunities for abuse to be perpetuated in legal and dispute resolution processes. Some also indicated that the capacity of some family law system professionals to address family violence and understand its complex dynamics and effects were limited. The third theme relates to the extent to which family law system professionals have adequate training to implement the reforms effectively and in a way that means unintended consequences are minimised. The discussion of screening and assessment in Chapter 4 reinforces the multiple challenges involved in addressing such a complex phenomenon across different practice settings in the family law system.

9.2 Emerging responses to the research questions

This summary puts forward tentative responses to each of the research questions to provide an indication of the conclusions that are emerging on the basis of the evidence in this report. They are based on a considered analysis of the overall evidence in this report, specifically considering the weight that can be accorded the views of professionals in light of the data from parents. In several areas, the findings from the two other elements of the evaluation program, the SRSP 2012 and 2014 and the Court Outcomes Project will be decisive in forming firm conclusions to the research question. In turn, the data contained in this report will be critical for interpreting such findings and addressing research question 5.

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

The insights in this report suggest that since the 2012 family violence reforms, there has been greater emphasis on identifying matters where child safety and family violence concerns are pertinent; however, screening for these issues is not universally applied across the system, and a substantial minority of parents reported not being asked about these issues. It is likely that more attention is being paid to the implications of a history of emotional abuse for service use pathways and parenting arrangements than before the reforms; however, changes in this regard are modest and concerns of this nature are more likely than not to remain undisclosed.
Chapter 9

The data demonstrate that in relation to parenting arrangements involving supervised changeover, changeover at a neutral venue, and supervised time, close to a majority of the aggregated sample confirmed that the family violence reforms had resulted in more of these arrangements, although lower proportions of participants reported an increase in arrangements for no parenting time. A majority of participating lawyers (60%) also agreed that courts now prioritised safety to a greater degree when making interim orders. On this basis, it is unlikely that substantial shifts in patterns in post-separation parenting arrangements will be evident.

Where family violence and child safety concerns are identified, the indications from professionals are that parents are more likely to be encouraged to consider parenting arrangements that prioritise the safety of children than they were before the reforms.

The findings from the comparison of data from SRSP 2012 and SRSP 2014 and from the Court Outcomes project (in relation to parents who initiate court proceedings and obtain consent orders) will be most relevant to formulating a firm conclusion to this question.

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

As noted, reports from professionals suggest that there is more emphasis on eliciting disclosure of family violence and child safety concerns across the system. However, data from parents indicate that substantial minorities of parents still report not being asked about family violence and child safety concerns (Figure 7.21).

Majorities of parents who reported a history of emotional abuse also reported not disclosing or raising this history with services (around three-quarters for FDR, lawyers and courts and 55% for FRCs). Substantial minorities (31–45%) reported not raising or disclosing a history of physical hurt.

SRSP 2012 and SRSP 2014 data will provide a basis for firmer conclusions on this point.

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

Any shifts in this area are likely to be modest. There is little indication that advice on service use and referral patterns have changed to any significant extent. FDR is still being applied in circumstances where concerns about family violence and child safety are pertinent. The obligations on advisors to provide advice consistent with s 60CC(2A) (prioritisation of protection from harm) may mean fewer shared parenting arrangements where there are ongoing safety concerns; however, this remains to be seen. There is evidence of a greater number of notifications being made to child protection agencies as a result of the necessity to complete the Form 4 Notice of Child Abuse, Family Violence, or Risk of Family Violence form.

The SRSP 2012 and 2014 and the Court Filings Study in the Court Outcomes project will support firm conclusions on this point.

4. What is the size and nature of any changes in the following areas and to what extent are any such changes consistent with the intent of the reforms?

Practices among advisors (within the meaning of FLA s 63DA(5) [legal practitioners, family counsellors, family dispute resolution practitioners and family consultants]):

- Substantial proportions of family relationship service professionals, lawyers, judicial officers and registrars reported placing increased emphasis on eliciting and considering concerns about family violence and child abuse. At the same time, indications of changes in practice among these groups were not universal, with some professionals perceiving a lack of need for change in these areas. There was strong support among family law system professionals for s 60CC(2A), the provision that specifies that greater weight is to be given to protection from harm where it conflicts with the child's right to a meaningful relationship with each parent where these principles are in conflict. Majorities of lawyers and non-legal professionals indicated they had changed the advice they gave clients about family violence and child abuse, but substantial minorities indicated not changing their advice.
Substantial minorities of parents reported not being asked about family violence across each service type, particularly by lawyers: 29% of parents who experienced physical hurt and 31% who experienced emotional abuse reported not being asked about family violence in FDR. For those who used lawyers, these proportions were 46% and 53%, and for FRCs they were 31% and 23% respectively.

Court-endorsed outcomes (consent orders) and court-ordered outcomes (judicially determined orders):

This will be addressed using data from the Court Outcomes Project.

Court-based practices, as reflected in the manner in which practitioner and judges fulfill their obligations under the *Family Law Act 1975* (Cth):

There is evidence that there is greater emphasis on identifying concerns about child abuse and family violence in courts. At the same time, there is concern about the capacity of the system to prioritize the resolution of matters involving the most serious kinds of issues. However, substantial proportions of parents (46% who experienced physical hurt and 53% who experienced emotional abuse) reported using courts and not being asked about family violence.

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

As noted, when data from SRSP 2012 and 2014 and the File Analysis 2014 are available, firm conclusions in relation to questions 1–3 will be drawn and the findings interpreted in light of the evidence from the *Responding to Family Violence* report.

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

The 2012 family violence reforms have the support of majorities of professionals across the system. The wider definitions of family violence and child abuse, the prioritization of protection from harm over the child's right to a meaningful relationship with both parents, and the obligations to elicit and disclose concerns about family violence and child abuse are seen to support making safer parenting arrangements. At the same time, practice in screening for and assessing family violence is developing and in some practice contexts, particularly legal practice, the implications of screening for lawyer-client relationships have yet to unfold.

At this comparatively early point in the implementation of the 2012 family violence reforms, views on the questions of whether the reforms have been effective are very varied. It's fair to say that a majority of professionals across the system see them as a step in the right direction. Support for the direction of the reforms is strongest among non-legal professionals, but is also evident among majorities of lawyers and judicial officers/registrars. There are also professionals, including lawyers and non-legal professionals, who believe the reforms have had limited effects and do not go far enough. In contrast, there is another group, mainly but not exclusively lawyers, who believe the reforms have had negative unintended consequences, including eroding the extent to which relationships between fathers and children are supported in the system, and increasing the extent to which false, frivolous or vexatious allegations of family violence may be made. In this context, it should be noted that such concerns have been longstanding and mirror a persistent belief held by about half of the community that women make up false allegations of family violence to obtain advantage in “custody proceedings”.

Against this background, it is pertinent to reiterate some of the findings from the parents’ module in this study. As noted earlier, there was considerable variation in the extent to which parents affected by family violence reported being asked about it. There was also considerable variation in the decisions made in relation to parenting arrangements after using services when their decisions are compared to those of parents not affected by these issues. These findings underline the uneven effects of the reforms. Compared to parents who had not experienced any violence, those who had experienced physical or emotional violence after separation:

- were more likely to report agreeing to shared care;
- were more likely to report agreeing to less time with their child;
were more likely to report deciding to seek more time with their child; and
- were more likely to report taking steps to seek protection for them or their child (Figure 7.3).

These findings underline the uneven effects of the reforms.

### 9.3 Summary

Overall, the findings set out in this report indicate that the 2012 family violence amendments are a step in the right direction in a reform strategy aimed at improving the family law system’s capacity to address the needs of families affected by complex issues, including family violence and child abuse. The data reported in this study were gathered some 18 months after the implementation of the 2012 family violence reforms. To some extent, they reflect the operation of a system still undergoing adjustment in the post-reform period.

The direction of the reforms has the support of a substantial majority of the professionals working in the system. According to many professionals’ survey responses, priority has been given to protecting children from harm when giving advice and making decisions about children’s care arrangements. The findings of the SRSP 2012 and 2014 and the Court Outcomes Project will provide further evidence on this point. There is also a greater focus on screening and identifying families for whom family violence and child safety concerns are pertinent. However, the findings indicate that there is still some way to go in fulfilling the intention of the reforms “to provide better protection for children and families at risk of violence and abuse” (Parliament of the Commonwealth of Australia, House of Representatives, 2011, p. 2).

There are three areas where challenges are particularly evident. One is in the approaches used to screen for and assess family violence, with only a minority of professionals reporting that they use the DOORs tool, and a range of concerns raised about the extent to which it represents a workable approach in day-to-day practice. Second, the identification of cases that are suitable and unsuitable for FDR remains a complex and challenging task. In a departure from the intention of the 2006 family law reforms, cases involving family violence and child abuse are dealt with to a substantial extent in FDR. The evidence reported in this study, together with insights from LSSF Wave 3 (Qu et al., 2014, section 4.6), suggest that this may be appropriate in some cases and inappropriate in others. The implications for families in the latter situation is that there may be delays in the resolution of the parenting matter and extended periods of uncertainty, and potentially a lack of safety, in the care arrangements for children. This is an area that warrants further examination.

Third, the mechanisms whereby risks to children and family members are flagged and assessed in court processes also evoke different responses among different practice groups. This point is illustrated in the discussion of positive judicial and negative legal practitioner responses to Form 4 Notices and their utility as a method for flagging the existence of risk factors for children. From a systemic perspective, many practitioners doubt the use of a Form 4 Notice as an effective mechanism for alerting child protection authorities to children who may be at risk.

More broadly, the interface between child protection systems and the family law system continues to cause concern, and there is some indication that the concerns raised by this intersection have been heightened in the post-2012 family violence reform period as a result of the increased emphasis placed on identifying risks to children (e.g., Higgins & Kaspiew, 2011; ALRC & NSW LRC, 2010). In this context, several recent developments are intended to support improvements in this area. Most recent is a reference by the Attorney-General, The Hon. George Brandis, to the Family Law Council to examine how the system’s response to complex families can be improved, including specifically in relation to the intersection of the family law and child protection systems (Brandis, 2014). Further relevant developments are the analyses of information sharing by Chisholm (2014) and the National Child Protection and Family Law Collaboration meetings convened by the Attorney-General’s Department.  

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Attorney-General's Department. (2010). *AVERT Family Violence: Collaborative responses in the family law system*. Canberra: AGD.


Laing, L. (2013). “It’s like this maze that you have to make your way through”: Women’s experiences of seeking a domestic violence protection order in NSW. Sydney: Law and Justice Foundation of New South Wales.


Appendix A: Notice of Risk (SA Pilot) and Form 4 Notice

Federal Circuit Court

Instructions for completion

NOTICE OF RISK

1. This form must be completed and filed and served with every application or response in a proceeding seeking parenting orders.

2. If no risk is alleged, the form must still be filed and served setting out that no risks are alleged.

3. The purpose of this form is to identify whether there are alleged risks to the child or children in the proceedings of the type defined in ss.67Z and 67ZBA of the Family Law Act 1975. This form is also required to fulfil the court’s obligation pursuant to s.69ZQ. These sections provide:

67Z Where interested person makes allegation of child abuse

(1) This section applies if an interested person in proceedings under this Act alleges that

a child to whom the proceedings relate has been abused or is at risk of being abused.

(2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the person who is alleged to have abused the child or from whom the child is alleged to be at risk of abuse.

67ZBA Where interested person makes allegation of family violence

(1) This section applies if an interested person in proceedings for an order under this Part in relation to a child alleges, as a consideration that is relevant to whether the court should make or refuse to make the order, that:

(a) there has been family violence by one of the parties to the proceedings; or

(b) there is a risk of family violence by one of the parties to the proceedings.

(2) The interested person must file a notice in the prescribed form in the court hearing the proceedings, and serve a true copy of the notice upon the party referred to in paragraph (1)(a) or (b).

69ZQ General duties

(1) In giving effect to the principles in section 69ZN [for conducting child-related proceedings], the court must:

(aa) ask each party to the proceedings:

(i) whether the party considers that the child concerned has been, or is at risk of being, subjected to, or exposed to, abuse, neglect or family violence; and

(ii) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence;

NOTE: Allegations of child abuse or risk of child abuse will be reported to a child welfare authority, as required in section 67Z of the Family Law Act 1975.
When completing this form you should carefully read the specific definitions of the terms ‘abuse’ and ‘family violence’ in the Family Law Act 1975, which provides:

4 Interpretation

(1) In this Act, the standard Rules of Court and the related Federal Circuit Court Rules, unless the contrary intention appears:

**abuse**, in relation to a child, means:

(a) an assault, including a sexual assault, of the child; or
(b) a person (the **first person**) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
(c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
(d) serious neglect of the child.

4AB Definition of **family violence** etc.

(1) For the purposes of this Act, **family violence** means 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.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

(a) an assault; or
(b) a sexual assault or other sexually abusive behaviour; or
(c) stalking; or
(d) repeated derogatory taunts; or
(e) intentionally damaging or destroying property; or
(f) intentionally causing death or injury to an animal; or
(g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
(i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
(j) unlawfully depriving the family member, or any member of the family member’s family, of his or her liberty.

(3) For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:

(a) overhearing threats of death or personal injury by a member of the child’s family towards another member of the child’s family; or
(b) seeing or hearing an assault of a member of the child’s family by another member of the child’s family; or
(c) comforting or providing assistance to a member of the child’s family who has been assaulted by another member of the child’s family; or
(d) cleaning up a site after a member of the child’s family has intentionally damaged property of another member of the child’s family; or
(e) being present when police or ambulance officers attend an incident involving the assault of a member of the child’s family by another member of the child’s family.
4. If the relevant risk is identified after the application or response is filed, an amended Notice of Risk must be filed and served as soon as possible.

5. This form will not be accepted unless the risks are particularised in detail.

7. If you tick ‘yes’ to question 2(a) or 2(b) the prescribed child welfare authority will be notified of the allegations.

8. Specific details of the alleged abuse, or risk of abuse, should be clearly particularised in the space provided.

Examples of the appropriate particulars required:

**Do you allege that a child to whom the proceedings relate has been abused?**

*On* <date> the child Jason was struck on the back of the head in anger by the respondent’s partner David because Jason had refused to complete his household chores. The assault resulted in a 3cm laceration and bleeding. Jason was distressed and crying. Jason was taken to a GP for treatment where he was diagnosed with a mild concussion, received 6 stitches and was prescribed pain relief medication. Jason was absent from school for 2 days as a result of his injuries.

**Do you allege that a child to whom the proceedings relate is at risk of abuse?**

The children are at significant risk of serious harm as the respondent was evicted from their home on <date> and has been sleeping in the car with the children for the last 2 weeks with no access to bathroom or kitchen facilities. It is not known how the 3 month old baby’s bottles are being sterilised or how formula is being heated.

**Do you allege that there has been family violence or there is risk of family violence?**

Between <date> and <date> the child has witnessed domestic abuse of his mother (Anne) by his father (John). Incidents are alleged to have occurred weekly including the father yelling at, threatening to assault and threatening to kill the mother. Incidents are characterised by physical violence perpetrated by the father including hitting, kicking, pushing, hair pulling and throwing objects. The mother has sought medical attention for injuries on at least one occasion and police have attended the home on 3 occasions over the last 12 months.

9. Details of the adults and children involved in these risks are to be provided to enable them to be clearly identified. The list must include the children or adults at risk. For example:

**Details of relevant adults or children:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Last Known Address</th>
<th>Date of Birth</th>
<th>Description/Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Smith</td>
<td>21 Known Pde, Kew</td>
<td>02/03/1985</td>
<td>Applicant Father</td>
</tr>
<tr>
<td>Jane Smith</td>
<td>304 Unknown St, Kew</td>
<td>04/05/1985</td>
<td>Respondent Mother</td>
</tr>
<tr>
<td>Jason Smith</td>
<td>304 Unknown St, Kew</td>
<td>06/07/2008</td>
<td>Child of parties</td>
</tr>
<tr>
<td>Pete Newe</td>
<td>304 Unknown St, Kew</td>
<td>Unknown</td>
<td>Partner of Mother</td>
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Remove these instruction sheets before filing
IN THE FEDERAL CIRCUIT COURT
OF AUSTRALIA
REGISTRY: ........................................................

Applicant’s Client ID ........................................
Respondent’s Client ID ....................................
File number ..............................................
Next Court date (if known) .........................

Applicant

Respondent

Other party (if applicable)

* Repeat as necessary for additional parties

NOTICE OF RISK

1. This Notice is filed by:
   Applicant ☐  Respondent ☐
   Other Party ☐  Specify: ............................................

2. Has there been child abuse or is there a risk of child abuse by a party to proceedings or any other person, that is relevant to these proceedings? (See sections 67Z, 67ZBA, 69ZQ(1)(aa) and sections 4 & 4AB of the Family Law Act 1975)
   Yes ☐  No ☐

If you tick ‘no’ go straight to question 3.

NOTE: If you tick ‘yes’ to this question, this information will be reported to the relevant child welfare authority, as required in section 67Z of the Family Law Act 1975.

File on behalf of ...........................................
Prepared by ..............................................
Lawyer’s code ...........................................
Name of law firm ........................................
Address for service in Australia ..................
State ......................................................
Postcode ...............................................
Email ....................................................
DX ......................................................
Tel ........................................................
Fax ......................................................
Attention .............................................

QUESTIONS IN THIS SECTION RELATE TO ALLEGED CHILD ABUSE.
(a) Do you allege that a child to whom the proceedings relate has been abused by a party to proceedings or any other person who is relevant to these proceedings?

<table>
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<th>Yes</th>
<th>No</th>
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**Particulars of alleged abuse to a child**

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(b) Do you allege that a child to whom the proceedings relate is at risk of abuse by a party to proceedings or any other person? (See s. 67Z)

<table>
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<th>Yes</th>
<th>No</th>
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**Particulars of alleged risk of abuse to a child**

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(c) If ‘yes’ is ticked to questions (a) or (b) please select all of the categories that cover the alleged abuse or risk of abuse.

- Physical Assault
- Sexual Assault or abuse
- Serious psychological harm
- Serious neglect

(d) Who have these allegation/s already been reported to?

- Police
- Child Welfare Authority
- Medical Practitioner
- Other  

Form approved by the Chief Judge pursuant to Subrule 2.04(1A)
3. **Has there been family violence or is there a risk of family violence by a party to proceedings or any other person who is relevant to these proceedings?**

(See sections 67Z, 67ZBA, sections 4 & 4AB and 69ZQ(1)(aa) of the Family Law Act 1975)

Yes ☐  No ☐

NOTE: If you tick ‘yes’ to this question, and the child or children have suffered or are at risk of suffering abuse in the form of serious psychological harm caused by being subjected to or exposed to family violence, you should also answer yes to Question 2 above.

(a) **Particulars of alleged family violence or risk of family violence:**

(b) Who have these allegation/s already been reported to?

- Police ☐
- Child Welfare Authority ☐
- Medical Practitioner ☐
- Other ☐ …………………………………

(please specify)

4. **Are there any other facts or circumstances that you allege pose a risk to a child who is the subject of the proceedings?**

(a) Do you allege that a child(ren) is at risk because a party to the proceedings suffers mental ill-health?

Yes ☐  No ☐

(b) Do you allege that a child(ren) is at risk because a party to the proceedings abuses drugs or alcohol?

Yes ☐  No ☐

(c) Do you allege that a child(ren) is at risk because a party suffers a serious parental incapacity?

Yes ☐  No ☐

(d) Do you allege that a child(ren) is otherwise at risk of neglect or abuse?

Yes ☐  No ☐
5. Details of the identity of all relevant adults and children:

NOTE: If you fear for your safety or the safety of your children, you do not need to disclose your residential address

<table>
<thead>
<tr>
<th>Name</th>
<th>Last Known Address*</th>
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Signature: ..................................................

Signed by: □ person giving this notice □ lawyer

Date: ........../........../..........

Notice prepared by: □ person giving this notice □ lawyer

(Print name if lawyer) ..................................................
Appendix A: Notice of Risk (SA Pilot) and Form 4 Notice

Notice of Child Abuse, Family Violence, or Risk of Family Violence (Form 4)

This is a mandatory form.

This form is to be used in all proceedings for an order under Part VII commenced before, on or after 7 June 2012.

(a) when allegations of child abuse or risk of child abuse are made and a prescribed child welfare authority must be notified of the allegations (Section 67Z of the Family Law Act 1975), or

(b) if, in a case where an application is made to the court for a Part VII order in relation to a child, a person alleges that there has been abuse of a child or family violence or there is a risk of abuse of a child or family violence and the allegation of abuse, family violence or risk of abuse of family violence is relevant to whether the court should grant or refuse the application (Section 67ZBA of the Family Law Act 1975, and Rule 2.04E of the Family Law Rules 2004).

For proceedings commenced before 7 June 2012 and when notice is given and this form filed before 7 June 2012.

Section 4(1) of the Family Law Act states as follows:

Abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or

(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first mentioned person.

Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

For proceedings commenced on or after 7 June 2012 and when notice is given and this form filed on or after 7 June 2012.

Section 4(1) of the Family Law Act states as follows:

Abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child; or

(b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is an unequal power in the relationship between the child and the first person; or

(c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or

(d) serious neglect of the child.
A family violence order is an order (including an interim order) made under a prescribed law of a state or territory to protect a person from family violence.

**Family violence** means:

- 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; and
- a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence (Section 4AB).

**Making copies of the form for filing, service and yourself**

The completed and signed original of the form is filed at the Court. Before you file it you must also make sufficient copies to have one for each person to be served and a copy for your own records.

**Filing fee**

Nil

**What you file with this form**

An affidavit or affidavits setting out the evidence on which the allegations in the *Notice of Child Abuse, Family Violence, or Risk of Family Violence (Form 4)* are based (Rule 2.04D).

**How to complete Parts E, F, G and H**

The answers to questions 10, 11, 12, 14, 15, 16, 18, 19, and 20 are to be a concise summary of the precise allegations and details of each of them including dates they occurred, and any other particulars which reflect the contents of the affidavit evidence.

**Who you serve**

- Each party to the case
- The person who is alleged to have abused the child, or exposed the child to family violence
- The person from whom the child is alleged to be at risk of abuse or family violence
- Any independent children’s lawyer who represents the interests of the child.

**NOTE:** The Registry Manager must provide a copy of the *Notice of Child Abuse, Family Violence, or Risk of Family Violence (Form 4)* to the prescribed child welfare authority and may provide such other court documents and information as is required to enable investigation of the contents of the Notice.

**How you serve this form**

By ordinary service. The Service Kit provides instructions on how to do this.

**What is filed in response**

Nothing

**In completing a Court form, you must**

- Use the court’s prescribed form.
- Complete the form by typing (e.g. on a computer or typewriter) or hand printed in ink.
## Notice of Child Abuse, Family Violence, or Risk of Family Violence

### Part A  About the notice

This notice alleges:

- [ ] Child abuse or risk of child abuse
- [ ] Family violence or risk of family violence
- [ ] Child abuse or risk of child abuse and family violence or risk of family violence

### Part B  About the person filing this notice and parties

1. **Who is giving this notice?**

<table>
<thead>
<tr>
<th>Family name as used now</th>
<th>Given names</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Family name as used now</th>
<th>Given names</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
At what address can you be contacted? (THIS NEED NOT BE WHERE YOU LIVE) If you give a lawyer’s address, include the name of the law firm.

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>State of residence</td>
</tr>
<tr>
<td>Postcode</td>
<td>Postal code</td>
</tr>
<tr>
<td>Phone</td>
<td>Phone number</td>
</tr>
<tr>
<td>Fax *</td>
<td>Fax number</td>
</tr>
<tr>
<td>DX</td>
<td>Fax number for DX</td>
</tr>
<tr>
<td>Email*</td>
<td>Email address</td>
</tr>
<tr>
<td>Lawyer’s code</td>
<td>Lawyer’s code code</td>
</tr>
</tbody>
</table>

* Please do not include email or fax addresses unless you are willing to receive documents from the Court and other parties in that way.

What are the names of the other interested persons and parties?

<table>
<thead>
<tr>
<th>Family name as used now</th>
<th>Given names</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Family name as used now</th>
<th>Given names</th>
</tr>
</thead>
</table>

Part C  About the independent children’s lawyer

<table>
<thead>
<tr>
<th>Independent children’s lawyer family name</th>
<th>Given names</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Firm name</th>
</tr>
</thead>
</table>

Part D  About the children to whom the notice relates

<table>
<thead>
<tr>
<th>Child 1</th>
<th>Child 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child’s family name</td>
<td>Child’s family name</td>
</tr>
<tr>
<td>Given names</td>
<td>Given names</td>
</tr>
<tr>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Child’s date of birth  /  /</td>
<td>Child’s date of birth  /  /</td>
</tr>
<tr>
<td>Child’s address</td>
<td>Child’s address</td>
</tr>
<tr>
<td>State  Postcode</td>
<td>State  Postcode</td>
</tr>
<tr>
<td>Name of the person with whom the child lives</td>
<td>Name of the person with whom the child lives</td>
</tr>
</tbody>
</table>

IF THERE ARE MORE CHILDREN ATTACH EXTRA PAGES ANSWERING PART D
Part E  About the alleged abuse

Before you complete Items 6-13 you should carefully read the definition of ‘abuse’ in section 4(1) of the Family Law Act:

For proceedings commenced prior to 7 June 2012:

Abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or

(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first-mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.

For proceedings commenced on or after 7 June 2012:

Abuse, in relation to a child, means:

(a) an assault, including a sexual assault, of the child; or

(b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or

(c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to*, family violence*; or

(d) serious neglect of the child.

*Family Violence – has the meaning given by subsection 4AB(1)
*Exposed to family violence – in relation to a child, has the meaning given by subsection 4AB(3).

Describe any acts or omissions that you allege constitute abuse.
Please include the identity of the alleged abuser(s), if known.

NUMBER EACH PARAGRAPH AND ATTACH EXTRA PAGE/S IF YOU NEED MORE SPACE.

1. 
2. 
3. 
4. 
5. 
6. 
7. 
8. 
9. 
10. 
11. 
12. 
13. 
14. 
15. 
16. 
17. 
18. 
19. 
20. 
21. 
22. 
23. 
24. 
25. 
26. 
27. 
28. 
29. 
30. 

7 Identify the application/response where you seek orders to which the allegation(s) described in Item 6 are relevant.

<table>
<thead>
<tr>
<th>Application/response</th>
<th>Date filed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8 Identify the affidavit(s) containing evidence of the allegations described in Item 6.

<table>
<thead>
<tr>
<th>Name of the person swearing or affirming the affidavit</th>
<th>Date of filing</th>
<th>The paragraphs of the affidavits which relate to each allegation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9 What is the last known address of the alleged abuser(s) if known?

<table>
<thead>
<tr>
<th>State</th>
<th>Postcode</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: A copy of this notice must be served on the person identified in Item 6 as the alleged abuser (section 67Z(2) of the Family Law Act 1975).
Part F  About the alleged risk of abuse

Before you complete Part F you should carefully read the definition of ‘abuse’ in section 4(1) of the Family Law Act (set out in Part E of this form for your information).

10 Describe the facts alleged to constitute any risk of abuse. Include the name of any person(s) from whom a child is alleged to be at risk of abuse, if known.

NUMBER EACH PARAGRAPH AND ATTACH EXTRA PAGE(S) IF YOU NEED MORE SPACE.

1.

11 Identify the application/response where you seek orders to which the allegation(s) described in Item 10 are relevant.

<table>
<thead>
<tr>
<th>Application/response</th>
<th>Date filed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12 Identify the affidavit(s) containing evidence of the allegations described in Item 10.

<table>
<thead>
<tr>
<th>Name of the person swearing or affirming the affidavit</th>
<th>Date of filing</th>
<th>The paragraphs of the affidavits which relate to each allegation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

13 What is the last known address of the person(s) from whom the child is alleged to be at risk of abuse?

<table>
<thead>
<tr>
<th>State</th>
<th>Postcode</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

NOTE: A copy of this notice must be served on the person identified in Item 10 as the person from who a child is alleged to be at risk of abuse (section 67Z(2) and 67ZBA of the Family Law Act 1975).
Part G  About the alleged family violence

Before you complete Items 14-21 you should carefully read the definition of ‘abuse’ in section 4(1) and ‘family violence’ in section 4AB (1) and (3) of the Family Law Act as follows:

For proceedings commenced before 7 June 2012:

Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

NOTE: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about, his or her personal wellbeing or safety.

When proceedings commenced on or after 7 June 2012:

Family violence means:

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.

A child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.

Abuse, in relation to a child, means:

a) an assault, including a sexual assault, of the child; or

b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is an unequal power in the relationship between the child and the first person; or

c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to*, family violence*; or

d) serious neglect of the child.

*Family Violence – has the meaning given by subsection 4AB(1)

*Exposed to family violence – in relation to a child, has the meaning given by subsection 4AB(3).

Describe any acts or omissions that you allege constitute family violence. Please include the identity of the alleged perpetrator(s).

NUMBER EACH PARAGRAPH AND ATTACH EXTRA PAGE/S IF YOU NEED MORE SPACE.

1.
### 15 Identify the application/response where you seek orders to which the allegation(s) described in Item 14 are relevant.

<table>
<thead>
<tr>
<th>Application/response</th>
<th>Date filed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 16 Identify the affidavit(s) containing evidence of the allegations described in Item 14.

<table>
<thead>
<tr>
<th>Name of the person swearing or affirming the affidavit</th>
<th>Date of filing</th>
<th>The paragraphs of the affidavits which relate to each allegation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 17 What is the last known address of the alleged perpetrator(s), if known?

<table>
<thead>
<tr>
<th>State</th>
<th>Postcode</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Part H  About the alleged risk of family violence

Whether proceedings commenced before, on or after 7 June 2012 and before you complete Part H you should carefully read the definition of ‘abuse’ in sections 4(1) and ‘family violence’ 4AB of the Family Law Act (set out in Part G of this form for your information)

18 Describe the facts alleged to constitute any risk of family violence.
Include the name of any person(s) from whom a child is alleged to be at risk of family violence.
NUMBER EACH PARAGRAPH AND ATTACH EXTRA PAGE/S IF YOU NEED MORE SPACE.

<p>| |</p>
<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

19 Identify the application/response where you seek orders to which the allegation(s) described in Item 18 are relevant.

<table>
<thead>
<tr>
<th>Application/response</th>
<th>Date filed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

20 Identify the affidavit(s) containing evidence of the allegations described in Item 18.

<table>
<thead>
<tr>
<th>Name of the person swearing or affirming the affidavit</th>
<th>Date of filing</th>
<th>The paragraphs of the affidavits which relate to each allegation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

21 What is the last known address of the person(s) from whom it is alleged there is a risk of family violence?

<table>
<thead>
<tr>
<th>State</th>
<th>Postcode</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Part I: Signature of Person Filing Notice

<table>
<thead>
<tr>
<th>Signed</th>
<th>Date</th>
</tr>
</thead>
</table>

This notice was signed by

- [ ] person(s) filing this notice
- [ ] lawyer for person(s) filing this notice

This notice was prepared by

- [ ] person(s) filing this notice
- [ ] lawyer

---

PRINT NAME AND LAWYER’S CODE
Appendix B: Understanding of the exceptions to FLA s 60I

Additional data from non-legal professionals and from the aggregate sample of participants (lawyers and non-legal professionals in this instance) regarding their level of agreement that parents and family law professionals understand the exceptions to the requirement to attend family dispute resolution are presented in Tables B1 to B3.

Table B4 presents data regarding non-legal professionals agreement that the exceptions to the requirement to attend family dispute resolution are well understood by other family relationship service practitioners.

### Table B1: The exceptions to the requirement to attend family dispute resolution are well understood by parents (before seeing a lawyer/attending your service)

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th></th>
<th>Non-legal professionals</th>
<th></th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>4</td>
<td>1.4</td>
<td>4</td>
<td>1.5</td>
<td>8</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>29</td>
<td>10.4</td>
<td>46</td>
<td>17.8</td>
<td>75</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>132</td>
<td>47.5</td>
<td>125</td>
<td>48.3</td>
<td>257</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>93</td>
<td>33.5</td>
<td>58</td>
<td>22.4</td>
<td>151</td>
</tr>
<tr>
<td>Cannot say</td>
<td>20</td>
<td>7.2</td>
<td>20</td>
<td>7.7</td>
<td>40</td>
</tr>
<tr>
<td>Not applicable</td>
<td>–</td>
<td>–</td>
<td>6</td>
<td>2.3</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>278</td>
<td>100.0</td>
<td>259</td>
<td>100.0</td>
<td>537</td>
</tr>
</tbody>
</table>

Notes: Lawyers and non-legal professionals were asked: “Please indicate your level of agreement with this statement: The exceptions to the requirement to attend family dispute resolution are well-understood by parents”. Percentages may not total exactly 100.0% due to rounding.

Source: Survey of Practices 2014

### Table B2: The exceptions to the requirement to attend family dispute resolution are well understood by FDR practitioners

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th></th>
<th>Non-legal professionals</th>
<th></th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>60</td>
<td>21.7</td>
<td>105</td>
<td>40.9</td>
<td>165</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>139</td>
<td>50.2</td>
<td>94</td>
<td>36.6</td>
<td>233</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>40</td>
<td>14.4</td>
<td>21</td>
<td>8.2</td>
<td>61</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>16</td>
<td>5.8</td>
<td>7</td>
<td>2.7</td>
<td>23</td>
</tr>
<tr>
<td>Cannot say</td>
<td>22</td>
<td>7.9</td>
<td>21</td>
<td>8.2</td>
<td>43</td>
</tr>
<tr>
<td>Not applicable</td>
<td>–</td>
<td>–</td>
<td>9</td>
<td>3.5</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>277</td>
<td>100.0</td>
<td>257</td>
<td>100.0</td>
<td>534</td>
</tr>
</tbody>
</table>

Notes: Lawyers and non-legal professionals were asked: “Please indicate your level of agreement with this statement: The exceptions to the requirement to attend family dispute resolution are well-understood by FDRPs”. Percentages may not total exactly 100.0% due to rounding.

Source: Survey of Practices 2014
### Appendix B: Understanding of the exceptions to FLA s 60I

#### Table B3: The exceptions to the requirement to attend family dispute resolution are well understood by lawyers

<table>
<thead>
<tr>
<th></th>
<th>Lawyers</th>
<th>Non-legal professionals</th>
<th>Aggregated</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>74</td>
<td>26.7</td>
<td>114</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>164</td>
<td>59.2</td>
<td>265</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>27</td>
<td>9.8</td>
<td>87</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>6</td>
<td>2.2</td>
<td>19</td>
</tr>
<tr>
<td>Cannot say</td>
<td>6</td>
<td>2.2</td>
<td>39</td>
</tr>
<tr>
<td>Not applicable</td>
<td>–</td>
<td>–</td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>277</td>
<td>100.0</td>
<td>535</td>
</tr>
</tbody>
</table>

**Notes:** Lawyers and non-legal professionals were asked: “Please indicate your level of agreement with this statement: The exceptions to the requirement to attend family dispute resolution are well-understood by lawyers”. Percentages may not total exactly 100.0% due to rounding.

**Source:** Survey of Practices 2014

#### Table B4: Non-legal professionals agreement that the exception to the requirement to attend family dispute resolution is well understood by other family relationship services practitioners

<table>
<thead>
<tr>
<th></th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly agree</td>
<td>28</td>
<td>11.0</td>
</tr>
<tr>
<td>Mostly agree</td>
<td>121</td>
<td>47.5</td>
</tr>
<tr>
<td>Mostly disagree</td>
<td>32</td>
<td>12.6</td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>9</td>
<td>3.5</td>
</tr>
<tr>
<td>Not applicable</td>
<td>21</td>
<td>8.2</td>
</tr>
<tr>
<td>Cannot say/do not know</td>
<td>44</td>
<td>17.3</td>
</tr>
<tr>
<td>Total</td>
<td>255</td>
<td>100.0</td>
</tr>
</tbody>
</table>

**Notes:** Non-legal professionals were asked: "Please indicate your level of agreement with this statement: The exceptions to the requirement to attend family dispute resolution are well-understood by other family relationship services practitioners”. Percentages may not total exactly 100.0% due to rounding.

**Source:** Survey of Practices 2014