

# ALLEGATIONS OF FAMILY VIOLENCE AND CHILD ABUSE IN FAMILY LAW CHILDREN'S PROCEEDINGS

A pre-reform exploratory study

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# Contents

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About the authors	v
Acknowledgements	vi
Legal restraint	vi
Synopsis	vii
Key findings	vii
Cautionary note	ix
<b>1 Family violence, child abuse and family law</b>	<b>1</b>
1.1 The new family law system and the Family Law Violence Strategy	2
1.2 Family violence: Grappling with definitions	4
1.3 Towards increased differentiation	5
1.4 The Johnson “domestic violence” typology: Implications and limitations	6
1.5 Child abuse and neglect	10
1.6 The need for pre-reform data in Australia	15
1.7 Structure of the report	16
<b>2 International research on allegations of family violence and child abuse in family law</b>	<b>17</b>
2.1 Empirical studies of family violence in family law	17
2.2 Empirical studies of allegations of child abuse in family law	20
2.3 Empirical studies of allegations of family violence, child abuse and neglect	28
2.4 Summary	31
<b>3 Australian research on allegations of family violence and child abuse in family law</b>	<b>34</b>
3.1 Empirical studies of allegations of family violence in family law	34
3.2 Empirical studies of allegations of child abuse in family law	36
3.3 Empirical studies of allegations of family violence, child abuse and neglect	38
3.4 Summary	47
<b>4 Methodology</b>	<b>49</b>
4.1 Unit of analysis, data collection sites and target year	49
4.2 Data collection and coding	49
4.3 Sample selection	50
4.4 Sampling procedures	51
4.5 Coding definitions	55
4.6 Coding frame and computerised data collection tool	57
4.7 Training and inter-rater agreement	61
4.8 Timelines and logistics	61
4.9 Caveats and limitations	61
<b>5 The prevalence and nature of allegations</b>	<b>63</b>
5.1 Technical preface: Two typologies	63
5.2 Court by sample	65
5.3 Applicant/respondent status by gender by sample	72
5.4 Summary	80
<b>6 Evidentiary material and responses to allegations</b>	<b>81</b>
6.1 Technical preface	81
6.2 Number of allegations	82
6.3 Corroboration provided by the alleging party	83
6.4 Response to allegations	86
6.5 Evidentiary material in Family Reports	90
6.6 Overall evidence	90
6.7 Level of detail	94
6.8 Summary	96

<b>7 Parenting proposals and court outcomes</b>	<b>97</b>
7.1 Non-adjudicated cases	97
7.2 Judgments, outcomes and written reasons	101
7.3 Summary	108
<b>8 Discussion and implications</b>	<b>109</b>
8.1 Key findings and links to prior work	109
8.2 Violence, child abuse and post-separation conflict: Some challenges and opportunities with respect to early differentiated screening and assessment	120
8.3 Future research	127
<b>References</b>	<b>129</b>
<b>Appendices</b>	
Appendix A: Summary tables of research literature	139
Appendix B: Coding frame for the three-category typology of family violence and child abuse	146
Appendix C: Case summary for each category in the typology	147
General population	147
Judicial determination sample	164
Appendix D: Classification of allegations relating to physical abuse, sexual abuse and emotional/verbal abuse	171
Appendix E: Classification of evidentiary material	172
Appendix F: Type of family violence or child abuse: All cases	173

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Any shortcomings and errors, of course, are the authors' own.

## Legal restraint

Disclosure of Family Court information is subject to legal restraint. As set out under Section 121 of the *Family Law Act 1975*, the publication or dissemination of the identity of any individual in any proceedings is prohibited under the Act. Considerable care has been taken at all stages of this research not to breach this legal restraint. Accordingly, the details of people and places used in this report have been changed to protect the identity of all litigants and their significant others. At no stage was any identifying information from any court file (including the actual court file case number) noted by the research team.

# Synopsis

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This research was commissioned by the Federal Attorney-General's Department to provide baseline information to assist in informing the Australian Government's Family Law Violence Strategy.

The study examines (a) the prevalence and nature of allegations of family violence and child abuse in family law children's proceedings filed in 2003 in selected registries; (b) the extent to which alleging parties provided evidence in support of their allegations, and to which allegations were denied, admitted or left unanswered by the other party; and (c) the extent to which court outcomes of post-separation parenting disputes appeared to be related to the presence or absence of allegations.

The study was based on a content analysis of two random samples of court files from the Melbourne, Dandenong and Adelaide registries of the Family Court of Australia (FCoA) and the Federal Magistrates Court (FMC): 240 files from the general population of cases in which parenting matters were in dispute (the *general litigants sample*), and 60 files from judicially determined matters in which parenting was in dispute (the *judicial determination sample*).

In summary, a total of 300 court files was analysed: 150 from the Family Court of Australia and 150 from the Federal Magistrates Court. It should not be assumed that this sample is representative of the divorcing population. In other words, the findings should not be generalised to this population.

## Key findings

### *Allegations of family violence and child abuse*

- More than half the cases in the FCoA and FMC in both samples contained allegations of adult family violence and/or child abuse.
- Where allegations of spousal violence were made, an average of 4 to 5 allegations per case were made in the general litigants sample, with an average of 5–7 allegations per case raised in matters requiring a judicial determination. Where allegations of parental child abuse were made in the general litigants sample, an average of 2 allegations per case were raised.
- Across courts and samples, the tenor of allegations was most commonly classified by the research team as “severe” (that is, suggesting significantly injurious or abusive circumstances).
- Cases in the FCoA that progressed to a defended hearing were the most likely of all cases to contain allegations. They also tended to involve both parties making allegations (that is, they comprised mutual allegations). More than half (57%) of the cases judicially determined in the FCoA contained allegations of actual physical spousal abuse, and many allegations looked to be at the “severe” end of the spectrum. Thus, allegations of violence appeared to be “core business” in family law disputes that went on to litigate in the FCoA and such allegations of violence were largely of a serious nature.
- The FMC cases that were examined also dealt with a substantial proportion of cases involving allegations at the severe end of the spectrum. Over 60% of cases in both FMC samples contained some form of allegation of adult family violence or child abuse. In fact, allegations of actual physical spousal abuse were more likely to be raised among the FMC cases (both samples) than in cases from the FCoA general litigants sample.
- The most common forms of alleged spousal violence were physical abuse (actual or threatened), emotional/verbal abuse, and property damage.
- In the general litigants and judicial determination samples taken separately, allegations of spousal violence were most likely to be made by applicant mothers, followed by respondent mothers, then applicant fathers, with respondent fathers being the least likely to make such

allegations. Where fathers made allegations, mothers were also likely to do so or to have done so.

- Allegations of spousal violence were more common than allegations of child abuse, within each court, sample, gender and applicant/respondent status group. (Allegations of spousal violence were raised in 48–79% of all cases in each court and sample, whereas allegations of child abuse were raised in 19–50% of all cases.)
- Allegations of child abuse were almost always accompanied by allegations of adult family violence.
- Allegations of child abuse largely centred on physical abuse, especially in cases requiring a judicial determination by the FCoA.
- Allegations that children saw or heard spousal violence were more common in cases requiring a judicial determination. Indeed, around two-thirds (68%) of the FCoA cases in this sample contained such allegations, while the equivalent figure for the FMC was 48%. Allegations that children saw or heard spousal violence occurred in roughly a quarter of the cases in the general litigants sample (25% FCoA and 29% FMC).

### **Evidentiary material and responses to allegations**

- Three layers of ambiguity are suggested by the data: (a) there is little evidentiary material to support allegations (especially in the general litigants sample); (b) there are fairly high rates of non-response to allegations of spousal violence—except for cases in the FCoA requiring a judicial determination; and (c) there are generally low levels of detail in the allegations and low levels of detail when responses are made.
- A scarcity of supporting evidentiary material suggests that legal advice and legal decision-making may often be taking place in the context of widespread factual uncertainty.
- Specifically, most alleging parties, especially fathers, did not provide any material in support of their allegations (although more than half the alleging mothers in the judicially determined cases provided some evidence). However, when fathers in the judicial determination sample did provide information about allegations of spousal violence, it appeared more likely to carry strong probative weight compared with the material provided by mothers in that sample.
- Cases in the FCoA that required judicial determination were more likely than other cases to contain evidence of spousal violence that appeared to have some strong probative weight.
- Mothers' allegations of child abuse by fathers were less likely to be accompanied by evidence than was the case for mothers' allegations of spousal violence. (Few fathers raised allegations of child abuse.)
- Across the courts and samples examined, allegations were most commonly denied or left unanswered.
- Denials were more likely to occur where the evidence appeared to be of a less probative weight than where the evidence was stronger or non-existent.
- Allegations of child abuse against fathers were more likely to yield a response—usually a denial—than allegations of spousal violence.
- When all the pieces of evidence were taken together, most *individual* allegations of spousal violence across the courts and samples received no corroborative evidence. This was less marked for allegations of spousal violence raised in the judicial determination sample than in the general litigants sample.
- Nevertheless, at least half the *case files* contained information about some of the allegations. As might be expected, case files in the FCoA judicial determination sample seemed the most likely of all sub-samples to contain such information and to provide strong support for the allegations raised. Cases that seemed to contain the most severe allegations of spousal violence were especially likely to be accompanied by evidentiary material. Many of these cases required a judicial determination.



- Mothers were more likely than fathers to provide or elicit relatively strong evidence for their allegations of spousal violence. More than half of the fathers in all groups provided or elicited no supporting evidence for their allegations.
- Mothers in the general litigants sample were more likely to elicit evidence for their allegations of spousal violence than of child abuse. (There were too few fathers who raised allegations of child abuse to make a similar comparison.)

### **Parenting proposals and court outcomes**

- Allegations of spousal violence or parental child abuse accompanied by evidence of strong probative weight appeared to influence court orders. Without such evidence, allegations did not seem to be formally linked to outcomes.
- Children typically lived with their mothers both prior to and following the granting of parenting orders. Put simply, the status quo usually remained. Where change occurred, it was most likely to involve a move to live with the mother, followed by living with both parents on a shared care basis.
- While it was unusual for contact to be denied, allegations of spousal violence appeared to increase the chance of orders for daytime-only contact or no contact. The apparent severity of allegations and the probative weight of supporting evidence did appear to increase the likelihood that contact was restricted to daytime only. Nonetheless, orders for overnight stays predominated among cases involving contact orders, whether or not allegations were made and regardless of the apparent severity or probative weight of that evidence.

### **Cautionary note**

No single study should ever be used to guide policy or practice—especially where the issues are tremendously complex, as is the case in the study of allegations of adult family violence and child abuse in family law proceedings. To this end, several important limitations should be noted in relation to the above findings.

- First, the sizes of the samples were modest—particularly the judicial determination sub-samples—which increases the possibility of error in our estimates. Moreover, since data from registries in only two states were sampled, it cannot be automatically assumed that the findings can be generalised as applying to other registries in Australia.
- Second, no information was sought from state- or territory-based child protection agencies or the police. This means that the scope of the study is far from comprehensive.
- Third, the findings are based entirely on the information documented in the court file. The study focused on the prevalence of allegations in selected registries, and not the prevalence of violence per se. The study cannot tell us what motivates an individual to make or not make an allegation, to admit or not admit to an act of violence or abuse, or to make or not make a denial.
- Fourth, some allegations may therefore be an underestimate of the real situation, some may be an overestimate and some may be untrue. In essence, in focusing on allegations recorded in court documents, the design of the study was such that it was not possible to assess their veracity, especially the extent to which any allegations had been fully or partially fabricated (that is, were fully or partially “false”).
- Fifth, it is important to note that when litigants are legally represented (as most were), allegations, denials and/or non-disclosures are inevitably filtered through the lens of the legal advice they receive and/or their legal representation. Legal advice and/or representation is based on a complex mix of experience and the understanding and interpretation of case law and legal practice. There is thus a sense in which the research could be seen as an examination by proxy of legal responses to clients’ concerns about violence and abuse. But the study is necessarily silent on how legal representatives address the many (and sometimes competing) issues their clients raise.

- Finally, there are likely to be additional considerations for certain groups of people (such as people from culturally and linguistically diverse backgrounds, Indigenous people, people with disabilities, and people in same-sex relationships) that are not canvassed in the study because of the relatively small numbers involved.

All of these limitations mean that great care should be taken when interpreting or reporting on these data. At the same time, the study is unique in many ways and should provide useful pre-reform data against which the recent family law reform package can be assessed at a later date.

# 1

## Family violence, child abuse and family law

A controversy in family law, frequently contested along ideological lines, centres on the prevalence of allegations of family violence and child abuse at the time of separation or divorce. Even more hotly debated are questions regarding the extent to which such allegations are “true”.<sup>1</sup>

Johnston, Lee, Olesen, and Walters (2005) have noted that on one side of the debate are feminist scholars and advocates for victims of family violence who argue that violence directed by men towards partners and children is common and that false allegations of violence and child abuse by women are rare. Johnston and her colleagues have suggested that it is the view of such scholars and advocates that:

the extent of real abuse suffered by children and their mothers has been largely ignored, dismissed, or greatly minimized by family courts. For this reason, they believe that the safety of mothers and children has too often been placed at grave risk by custody and access arrangements awarded by the court that favour a controlling and manipulative abuser. (p. 283)

Such a view constructs violence, whether directed primarily towards partners or children or both, as a male issue motivated principally by a sense of entitlement and a need to exercise control.

Conversely, Johnston et al. (2005) suggested that some fathers’ groups frequently claim that separated mothers routinely make false accusations of family violence and/or child abuse for revenge or to gain a tactical advantage in child custody disputes, with the aim of reducing their former partner’s involvement in their children’s lives or of cutting them out altogether.<sup>2</sup> They noted that those who hold this view often support Gardner’s (1999) formulation of a “parental alienation syndrome” to buttress their claims. Gardner claimed to have produced evidence that “vindictive parents” (mainly mothers) commonly pressure their children to make false claims of mistreatment, especially of sexual abuse in child custody cases.<sup>3</sup>

Though now largely debunked by the research community (see, for example, Faller, 1998, 2003; Garber, 2004) and ruled inadmissible in a number of North American courts (Shields, 2007),<sup>4</sup> some of the thinking that informed Gardner’s (1999) largely self-published views continue to strike a popular chord. In Australia, for example, a recent telephone survey of 2000 people in Victoria (VicHealth, 2006) found that 46% of respondents agreed with the statement that “women going through custody battles often make up claims of domestic violence to improve their case” (p. 24).<sup>5</sup> Men and women in the general population were equally likely to hold this view, while men from certain cultural groups were more likely than women in those groups to believe that women fabricate allegations to gain a tactical advantage in custody disputes (Taylor & Mouzos, 2006).

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1 In Australia, see the transcript from an episode of *SBS Insight* (“Family Ties”, screened on 15 November 2005), <http://news.sbs.com.au/insight/archive.php>

2 See also, for example, the claim by Dads on the Air (16 December 2002) that “false allegations [are] rife throughout the Family Court” ([www.dadsontheair.com](http://www.dadsontheair.com)), and a similar claim made on *SBS Insight* (note 1). Counter-claims against the perception that “false allegations are rampant” often take the form of “fact” sheets aimed at debunking this common “myth”. See, for example, Flood (2005a, 2005b), MacDonald (1998) and Wilson (2002).

3 See also the “syndromes” proposed by Blush and Ross (1987) and Turkat (1995).

4 Johnston (2005) is among those who have provided more sophisticated analyses of the phenomenon of the rejection of a parent by a child.

5 The survey was administered to two random samples: (a) 2000 Victorians 18 years and over, and (b) an over-sample of 800 adults from specific culturally and linguistically diverse (CALD) backgrounds.

## 1.1 The new family law system and the Family Law Violence Strategy

In Australia, the considerable interest in family violence and child protection within the context of family law derives in part from sweeping changes to the family law system introduced by the Australian Government on 1 July 2006. These changes include: (a) changes to services in the form of new and expanded programs to help families strengthen relationships or deal constructively with separation-related disputes (the “centrepiece” of which is a new network of 65 Family Relationship Centres being established during 2006, 2007 and 2008); (b) changes to the law, as embodied in the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (with shared parental responsibility being supported by less adversarial procedures in all child-related cases that reach the stage of litigation after July 2007); and (c) changes to child support, as set out in the *Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006* (Cth).

The changes have raised a number of important issues in relation to family violence and child abuse. For instance, the legislation has created a rebuttable presumption that parents will equally share parental responsibility for their children after separation. But the presumption does not hold as a default position where family violence and/or child abuse has occurred. Allegations of violence or child abuse and responses to such allegations are pivotal, because where there is joint parental responsibility after separation, the Court now has a responsibility, subject to the particular circumstances that are relevant to the welfare of the children in that case, to consider making orders for the children to spend equal or else substantial or significant periods of time with each parent.

Thus, within the new legislative provisions, the proven or likely or perceived presence or absence of family violence must impact on the framing of court-ordered parenting arrangements after separation. Moreover, with family dispute resolution being the default method of managing and resolving disputes from July 2007 (the presence of violence or abuse being a key exception), there are inevitably questions about the extent to which the new Family Relationship Centres and other nominated providers will be able to screen adequately for family violence and children’s safety. Furthermore, the fact that courts are required to consider the question of costs with respect to parties who “knowingly” make a false allegation or statement, raises questions of the extent to which this might put pressure on victims to “stay silent” about violence or abuse. A key policy question, therefore, is: Will children and adult victims of violence be at greater or lesser risk of harm under the new reforms?

The Australian Government recently introduced the Family Law Violence Strategy (“the Strategy”) to improve the functioning of the new family law system where allegations of family violence and/or child abuse are raised.

According to the Strategy:

1. The Government is focused on the right of each child to grow up with love and support from both parents, but also to be kept safe from harm.
2. The Government considers that family violence of any sort is unacceptable and violence involving children is especially abhorrent. This Strategy focuses upon family violence and child abuse in the context of the family law system and on identifying ways to improve the functioning of the system for these cases. Proceedings involving allegations of family violence and child abuse frequently appear before courts exercising family law jurisdiction. These cases are widely acknowledged as some of the most difficult and contentious family law issues to deal with.
3. The Government wants a system where allegations of family violence and child abuse are handled quickly, fairly and properly (Attorney-General’s Department, 2006a, p. 1).

The main objectives of the Strategy are to:

- (a) gain a better understanding of how family violence and child abuse issues arise in family law proceedings and how those issues are dealt with;

- (b) identify and highlight how the proposed legislative provisions in the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*<sup>6</sup> (the Shared Parenting Bill) and the assistance that will be available through Family Relationship Centres and support services will help address family violence and child abuse issues in the family law system;
- (c) work collaboratively with the States and Territories to ensure that family violence and child abuse allegations are properly investigated once they arise in family law proceedings;
- (d) work with courts to improve processes for dealing with cases where allegations of family violence and child abuse are raised; and
- (e) engage with relevant stakeholders to identify further areas of improvement to the family law process (Attorney-General's Department, 2006a, p. 1).

These objectives have raised many challenges for family law researchers, policy makers, practitioners and decision makers. The challenges are, in turn, inextricably linked to having an accurate knowledge base; having empirical data with respect to questions such as the following: How often are allegations of family violence and child abuse made in family law proceedings? What is the nature and range of these allegations? How often are allegations admitted, denied or left unanswered? How often are allegations withheld, and for what reason(s)? How often are deliberately false allegations made? Are false denials of violence and abuse more prevalent than false allegations? How do legal practitioners deal with allegations and admissions or denials and how do they advise clients who wish to make allegations, deny allegations or withhold allegations? How do dispute resolution practitioners and court personnel deal with such allegations? What impact do professional assessments of violence and abuse have on the appropriate provision of services, such as court-based services, community-based family dispute resolution, parent education, counselling, and anger management courses? How and to what extent do decision makers make use of professional assessments in weighing up the validity of allegations? And in making decisions about post-separation parenting arrangements, how and to what extent do decision makers link findings about violence and abuse with best outcomes for children and parents?

Underpinning all of these questions are more fundamental definitional issues about what is meant by violence and abuse. There is a tension, for example, between a general recognition that all violence and abuse is unacceptable, and an acknowledgement that not all violence and abuse is the same. There is also a tension between those who see all violence and abuse as motivated by a desire to control, and those who see evidence of multiple motivations. Thus, an Australian discussion paper published in the late nineties by the Domestic Violence and Incest Resources Centre (DVIRC) made the following observation about research in the area of domestic violence at the time:

Usually researchers go into the field armed with a preferred definition of domestic violence, then ask research participants for their view on, or experience of, that form of violence. They do not generally seek from participants their own understanding of violence. (MacDonald, 1998, p. 7)

Under the recently enacted *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth), much will turn on the capacity to both define and identify accurately the presence or absence of family violence and child abuse, and to link services and decisions to such identifications. At the same time, the Australian family law-related empirical data on violence and child abuse in the context of family law (see Chapter 3) have tended to reflect the DVIRC concerns. Violence has tended to be very broadly defined and sometimes not defined at all. Further, policy recommendations have tended to come out of analyses of small samples or samples skewed in the direction of victims of particularly extreme forms of violence, such as women and children in women's shelters. In addition, the research has rarely included reliability studies that might demonstrate a level of consistency with respect to identifying the type of violence and abuse being studied and the circumstances in which they occur.

<sup>6</sup> This has since become the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.

Thus, many of the family law–related studies to date might be regarded as “first wave” research, the primary aim of which has been to bring the reality of violence and abuse into the foreground. Largely due to such research, the fact that too many adults and children within families live in fear and/or are subjected to severe and humiliating acts of violence is no longer in serious dispute. At the same time, a significant part of the challenge in progressing the current legislation lies in being clear about exactly what is meant by “violence” and “abuse”, to what extent violence and abuse are manifested differently in different circumstances, and which definition(s) best serve the simultaneous aims of the legislation to enhance relationships and to keep children and other family members safe.

## 1.2 Family violence: Grappling with definitions

This section and the two sections that follow focus on adult-to-adult violence, with a core emphasis on violence directed at or between intimate partners. In Section 1.5, the focus is on violence within families directed at children, as well as violence that, while not necessarily directed at children, occurs in their presence and thus impacts on their wellbeing and sense of safety.

A reviewer of research in the area of “family violence” would quickly come to realise that data relating to such matters as prevalence and severity are difficult to capture unless that which is being measured has been carefully defined. Thus, as Hegarty and Roberts (1998) have noted, the prevalence of partner abuse in Australia has variously been estimated to be as low as 2% and as high as 28%, depending largely on the definitions used.

The Family Court of Australia is required to follow the definition of “family violence” set out in the *Family Law Act 1975*.<sup>7</sup> Until recently, the Act formally defined “family violence” as:

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 to fear for, or to be apprehensive about, his or her personal well being or safety. (Section 60D)

However, the new Act has qualified this definition by including the word “reasonably” in two places:

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 [emphasis added].

Though not without controversy, these amendments represent an attempt to acknowledge that fear or apprehension may be generated largely from without or from within, or possibly from a combination of both. All signals are interpreted through the lens of a range of experiences that include, but go beyond, one’s experience of the signaller. Thus, a person may know from experience that even a subtle signal from a partner, such as “knowing glance”, is suggestive of dangerous behaviour from that partner. On the other hand, neutral or even friendly signals can be misinterpreted in the light of past real or perceived dangers that have no connection with the current individuals or the current situation.

The World Health Organization (WHO) has defined violence as:

the intentional use of physical force or power, threatened or actual, against oneself, another person or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation. (Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002, p. 5)

7 This definition would normally encompass all violence to children within family situations—also commonly referred to as child abuse. It can be argued, therefore, that in the context of family law, the term “child abuse” is a sub-category of family violence. In practice, however, separate allegations of child abuse and child neglect are made to the Family Court and Federal Magistrates Court. Thus, while acknowledging that such allegations are virtually always a form of family violence, we have found it useful on occasions to focus on them as if they were separate entities.



A strength of this definition is that it could be seen to encompass a generally understood view of violence while at the same time being broad enough to accommodate issues of abuse and neglect of children. All three of these issues are important within the context of family law, and all three are interconnected.

In line with this definition, the World Health Organization's follow-up report on preventing violence (Butchart, Phinney, Check, & Villaveces, 2004) suggested that it is useful to think of three broad categories of violence: self-directed, interpersonal or collective. *Self-directed violence* refers to suicidal behaviour or self-harm. *Interpersonal violence* is subdivided into violence perpetrated on partners and family members, and violence perpetrated on other members of the community. *Collective violence* can be social, political or economic. In all three categories, the violence may be physical, sexual or psychological, or violence associated with deprivation or neglect.

If we accept this as a working classificatory system, then when separating parents are in dispute over children, the violence that most often confronts practitioners and decision makers falls within the category of actual or threatened interpersonal violence directed at, or occurring between, partners and family members. However, placing the definitional focus on interpersonal violence as it occurs within a family would be seen by some to put insufficient emphasis on the assertion of power—male power in particular—as a motivator of violence.

In addition, other areas of violence remain relevant to family law cases. For example, some self-directed violence can be turned outwards and become violence towards partners or children or others—at times with tragic consequences (see Johnson, 2002, whose research is further discussed in Section 1.6). Even if this is not the case, self-directed violence, especially suicide, can have a dramatic impact on the welfare of children and other family members. Nor is evidence of violence towards other members of the community an insignificant consideration in assessing the safety of family members in a parenting dispute. Such violence towards others can intimidate family members. In addition, a history of aggression towards others and/or criminal convictions correlates with a history or likelihood of family violence.

### 1.3 Towards increased differentiation

In her recent review of “domestic violence”<sup>8</sup> and its implications for post-separation decision-making about children, Ver Steegh (2005, p. 1379) suggested that in the United States, “child custody determinations are based on the fiction that families with a history of domestic violence are all alike”. The aim of her work was: (a) to reconcile competing viewpoints and contradictory evidence with respect to family violence; (b) to provide families with appropriate interventions; and (c) to address deficiencies in family violence child custody statutes.

Ver Steegh (2005) began by calling for differentiated case management that would minimise the risk of some families continuing to be referred to services that are unsafe for them, and of other families who could benefit from such services being discouraged from using them. Importantly, she noted that “all cases of domestic violence are serious and important; saying that they are not all the same does not diminish this fact” (p. 1380). Ver Steegh's aim of directing the right case to the right source of assistance reflects a core challenge to social and legal services. In Australia, this challenge will become more sharply focused as Family Relationship Centres (FRCs) aim to become increasingly responsive to the very broad range of separation-related parenting disputes, and the court system increasingly responds to parenting cases in which there are concerns about personal safety, or concerns about individuals' very capacity to parent responsibly.

From her reading of the literature, Ver Steegh (2005) concluded that the confusing and contradictory research findings in the area of “domestic violence” strongly suggest the existence of different types of violence. She maintained that adherence to only one view of violence makes it difficult, if not impossible, to assimilate contradictory claims that are situated in multiple schools of thought about the origins and causes of violence in general, and of family violence

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8 As suggested by the title of this report, our preferred term is “family violence”, though we acknowledge that this is not without its problems. (See Tolan, Gorman-Smith, and Henry (2006) for their useful overview of “family violence” as a construct.) In citing work by other researchers, however, we have decided as a general rule to adopt the terminology used by the researchers themselves at the time they were writing.

or intimate partner violence in particular.<sup>9</sup> Ver Steegh is among a number of researchers and commentators (such as Johnson, 1995; and Straus, 1999) who have argued that much of the debate around how to interpret differences in outcomes tends to dissolve if it is assumed that the different studies are observing and measuring different phenomena.

At the heart of such analyses of family violence are well-reported differences in findings from two types of studies. Those generally known as “family conflict studies” appear to paint a picture of violence that is largely situational and initiated by men and women in roughly equal proportions. By contrast, those generally known as “crime victimisation studies” paint a picture of escalating violence perpetrated overwhelmingly by men, primarily motivated by an obsessive need to control the partner and, usually, the children as well.

Consistent with these differential findings, Johnson (2000, 2005) has been developing a typology of intimate partner violence that currently posits the existence of three major categories: (a) “intimate terrorism”; (b) “violent resistance”; and (c) “situational couple violence”. The first of these, in his view, is discontinuously related to the third, and the second is largely a reaction to the perpetration of violence.<sup>10</sup>

According to Johnson (2005), “intimate terrorism” is strongly gendered in origin and is linked to questions of control associated with patriarchal assumptions and a patriarchal culture. In Johnson’s model, “violent resistance” is a typical response by the female partner to violent behaviour. As the name implies, Johnson sees “situational couple violence” as being characterised by a greater sense of reciprocity. He has suggested that it is not fundamentally gendered in its origins, though clearly it includes gender-related issues, such as the fact that where physical violence is concerned, men are generally more powerful than women and considerably more likely to inflict serious harm.

## 1.4 The Johnson “domestic violence” typology: Implications and limitations<sup>11</sup>

### 1.4.1 “Intimate terrorism”

Johnson and Ferraro (2000) have suggested that in “intimate terrorism” violence should be viewed as a tactic that underpins a broader pattern of power and control. A number of researchers, practitioners and commentators have described a range of such control mechanisms that are employed overwhelmingly by men. These include the exercise of economic power and threats; the use of privilege and punishment; isolation; the infliction of emotional, physical and sexual abuse; and the manipulation and threatening of children. According to Johnson and Ferraro, the violence associated with “intimate terrorism” tends to escalate over time, becoming more frequent, more severe and more likely to result in significant injury. Many of its victims, who are overwhelmingly women, suffer from post-traumatic stress disorder (PTSD), depression and poor health.

Such patterns of abusive control began to be identified by a number of researchers and theorists in the 1970s. In Australia, for example, Yeatman (1979, p. 19) pointed to “systematic destructive conflict between men and women in domestic relationships [that] can be comprehended only in

9 Renzetti, Edleson, and Bergen (2001), for example, pointed to intra-individual theories as well as social psychological theories such as social learning theory, psychopathology, physiological explanations, resource theory and exchange theory.

10 Strictly speaking, Johnson developed a fourth category, which he called “mutual violent control”, in which both partners violently attempt to control each other (Johnson & Ferraro 2000). Johnson has theorised, however, that this form of violence is rare and he does not mention it in his more recent article, cited above (Johnson 2005). In the context of the separation of couples, Kelly (2006) has recently suggested a variant on this classification system that appears to overlap with that of Johnson: “situational couple violence (conflict-instigated violence)”, “battering or intimate terrorism”, “female[-initiated] violence” and “separation-engendered violence”. Her classification system departs from that proposed by Ver Steegh (2005), especially around the inclusion of the category of “female violence”. “Separation-engendered violence” could be seen as a particular instance of “situational couple violence”, although in a family law context, it might be seen as a sub-category deserving special attention.

11 This typology has been suggested by Michael Johnson. The present report also refers from time to time to the work of Janet Johnston and Carol Johnson, each of whom made independent contributions to the field.



terms of a struggle around the legitimacy of patriarchal power". In the United States and, more specifically, in the context of post-separation disputes, Johnston and Campbell (1993, p. 90) have described a similar phenomenon in terms of "ongoing and episodic male[-induced] battering", while Ellis and Stuckless (1996) have spoken of "control instigated abuse".

Ver Steegh (2005) suggested that research that seeks to understand the plight of victims of family violence rarely distinguishes between "intimate terrorism" and "situational couple violence" (or similarly conceptualised distinctions). She suggested that, instead, the focus of most research and commentary is largely on female victims of coercive, controlling violence—Johnson's "intimate terrorism". Furthermore, although the victims of this form of violence suffer a range of symptoms, such as those related to PTSD, not all present as the sort of passive recipients sometimes portrayed or implied in the literature—a number of victims fight back. Perhaps more importantly, many manage to leave the relationship (Herbert, Silver, & Ellard, 1991), though not necessarily on the first attempt (Giles-Sims, 1998).

Ver Steegh (2005) suggested that of greatest importance is that service providers and decision makers develop a sense of clarity about what is needed by women and their children in circumstances that suggest the sort of coercive, controlling violence that Johnson has labelled "intimate terrorism". She noted that the most fundamental of these needs is "comprehensive safety planning, especially around the time of separation when the perpetrator's need to control may escalate" (p. 1390).

## **1.4.2 "Situational couple violence"**

### **1.4.2.1 Johnson's view**

In Johnson's typology, "situational couple violence" is seen as qualitatively different from "intimate terrorism". It generally involves fewer incidents of less severity that do not result in significant injury. It is not seen as part of a larger pattern of control and usually does not escalate. Indeed, Johnson and Ferraro (2000) claimed that it is more likely to de-escalate or stop altogether. Ver Steegh (2005) saw this category of violence as being consistent with the "conflict instigated violence" identified by Ellis and Stuckless (1996) and with what Johnston and Campbell (1993) referred to as "male controlling interactive violence".<sup>12</sup>

Johnson (2005) cited Archer's (2000) meta-analysis of intimate partner violence in the United States, in which Archer found that intimate partner violence in agency samples was heavily male-perpetrated, whereas in general samples it was largely gender-symmetric. Johnson suggested that much of the violence seen within agencies (such as women's shelters or refuges) falls into the category of "intimate terrorism", a largely gendered phenomenon, and that it is the observations by practitioners and researchers associated with such agencies that have fuelled more general gender-based theories of violence.

On the basis of his analysis of a 1970s Pittsburg sample, Johnson (2000) concluded that 97% of "intimate terrorism" was perpetrated by male partners. In contrast, 56% of "situational couple violence" was initiated by men. In a British sample, Graham-Kevan and Archer (2003) found figures of 87% and 45% respectively for these same dimensions.

Johnson's (2005) conclusion, therefore, is that broad statements about the gendered nature of violence are fundamentally misinformed. In his view, it is essential first to define the type of violence being considered. Johnson claimed support for his discontinuous model—in which gender plays a critical role in one form of violence but considerably less so in the other—from researchers such as Graham-Kevan and Archer (2003); Holtzworth-Munroe (2000); Holtzworth-Munroe and Stuart (1994); Jacobson and Gottman (1998); and Swan and Snow (2002).

Holtzworth-Munroe and Stuart (1994), for example, claimed to have identified "family only" male perpetrators, whose violence is less severe and who exhibit little or no psychopathology. In their view, the violence emanates from stress, anger and poor relationship skills; these men generally have positive attitudes towards women. Holtzworth-Munroe and Stuart estimated that

<sup>12</sup> It is interesting that Johnston and Campbell (1993) acknowledged the interactive nature of this form of violence, while simultaneously continuing to see elements of male control. It is a stance that perhaps more closely reflects the position of Kimmel (2002), described in more detail below.

about 50% of male violence in families is in this category. In a similar vein, Leone, Johnson, Cohan, and Lloyd (2004) suggested that “situational couple violence” is the most common form of family violence.

As Ver Steegh (2005) noted, the implications of adopting a discontinuous model of violence are profound. Johnson and Ferraro (2000) put it this way:

The modelling of the causes and consequences of partner violence will never be powerful as long as we aggregate behaviours as disparate as a “feminine” slap in the face, a terrorizing pattern of beatings accompanied by humiliating psychological abuse, an argument that escalates into a mutual shoving match, or a homicide committed by a person who feels there is no other way to save her own life. (p. 19)

In 2005, Johnson was prepared to go further:

It is no longer scientifically or ethically acceptable to speak of domestic violence without specifying loudly and clearly, the type of violence to which we refer. (p. 1126)

Johnson’s model offers a plausible solution to what has been referred to as “the gender paradox”. The gender paradox is the now broadly accepted finding that gender appears to be unrelated to a sizeable percentage<sup>13</sup> of mild to moderate violence recorded in population surveys, but strongly related to the generally more extreme acts of violence seen by police and hospitals and in women’s refuges.

#### 1.4.2.2 Challenges to the Johnson view

Other researchers who accept the existence of a “gender paradox” have suggested that Johnson’s model falsely solves the problem by the unnecessary construction of “surplus meaning”. Fergusson, Horwood, and Ridder (2005b) are among those who have proposed that the “gender paradox” be understood inside a continuity model of violence. They explained this by constructing hypothetical distributions of family violence for men and women that have the same arithmetic mean, but different dispersions at the extremes.<sup>14</sup> In this model, it is the extremes of the normal distribution, with men more likely than women to be at these extremes, that account for the gender differences seen in refuges, casualty departments and the like.

Fergusson, Horwood, and Ridder (2005a) claimed that Johnson was too dismissive of their core population survey findings that domestic conflict was reported in 70% of relationships, with the conflict ranging from minor psychological abuse to severe assault. In disputing Johnson’s observation that much of what was reported in their study was “hardly violence at all”, they again pointed to the danger that, in a discontinuous model of partner violence, “common couple violence” (a term Johnson originally employed to describe “situational couple violence”) might be dismissed as trivial. It is not, of course, trivial for the partners. Nor, as the research reported below indicates, is it trivial for the children of the partnership—whether they themselves are subjected to direct violence or witness it between their parents.

Kimmel (2002) approached the issue of violence between partners from a perspective that is somewhere in between the view of Johnson and the view of Fergusson et al. (2005a, 2005b) Kimmel broadly agreed with the distinction between violence motivated by the requirement to maintain control, and violence that is more situationally induced. At the same time, Kimmel’s analysis called into question the claim that, from the perspective of gender, situational violence is largely a symmetrical phenomenon.

A core concern for Kimmel (2002) was that, in his view, virtually all of the credible family conflict studies that have made use of random samples place considerable reliance on the Conflict Tactics Scale (CTS). Kimmel was critical of the CTS (Straus & Gelles, 1990) at a number of levels. But in particular, he concluded that a finding of gender symmetry that relies on the CTS is likely to be an artefact of the instrument itself. This conclusion was based on the reasons outlined below.

13 Although, as this chapter notes, the percentage itself remains contested.

14 See the figure on p. 1132 of the article.

To begin with, Kimmel (2002) pointed out that the very starting point of the CTS is a presumption that conflict is based on *situational disagreements*.<sup>15</sup> The second claim was that the instrument is insufficiently sensitive to circumstances and context, and not at all sensitive to the distinction between initiating and reacting to violence.<sup>16</sup> Third, Kimmel pointed out that the CTS does not provide scope for the reporting of many acts of violence against women, such as rape and assault by a former partner—both of which feature significantly in crime victimisation statistics. Nor is it administered to women under the age of 18, even though many women who report rape are juveniles.

Kimmel's (2002) review of the spectrum of family violence data led him to conclusions that have commonalities with, but important differences from, the conclusions of researchers and commentators such as Johnson and Ver Steegh. According to Kimmel:

Family conflict studies are useful in pointing out the ubiquity and the casualness with which violence structures our quotidian lives. Coupled with data about spousal murder, rape, and other forms of sexual assault, crime victimisation data are useful in pointing out the ways in which men's domination over women requires the implicit threat and often the instrumental use of violence to maintain power. (p. 22)

Kimmel (2002) went on to conclude:

With all the caveats and modifications we have suggested to the family conflict model, and especially the CTS as the standard of measurement, we might predict that violence as an expression of conflict is somewhat less than symmetrical, but includes a significant percentage of women. (p. 24)

Kimmel (2002) hypothesised that the percentage of violence initiated by women in the "family conflict" studies is closer to 25%—considerably less than the studies cited above and, in particular, considerably less than that suggested by Johnson and by Ver Steegh. Although Kimmel's hypothesis was based on an in-depth critique of the studies on which Johnson and Ver Steegh also relied, it is unfortunate that he did not spell out how he arrived at the figure of 25%. On the other hand, Kimmel's conclusion that violence that is instrumental and aimed at maintaining control is overwhelmingly (over 90%) perpetrated by men, is broadly in accordance with almost all the literature that has examined this category of violence.

In concluding this section, it should be acknowledged that analyses of the extent to which intimate partner violence is a gendered phenomenon will continue and needs to continue. It is commonly seen as a mark of a civilised society that violence in all forms is unacceptable. We understand better than we did even 30 years ago that violence has self-perpetuating tendencies, with psychological sequelae that reach into and sometimes beyond subsequent generations (Nechvoglod, 1995). The challenge for researchers is to continue to understand better the social, economic and psychological conditions that make violence more likely or even more acceptable. Gender is embedded in the social, the economic and the psychological. It is an important story, and there is no doubt that men perpetrate most of the serious violence-related damage both to themselves and to women.<sup>17</sup> At the same time, gender is not the whole story.

We now turn to a brief overview of intra-family abuse and neglect of children. In so doing, we acknowledge these behaviours to be another form of violence that indeed are contained within

15 In support of this statement, Kimmel cited the opening paragraph of the CTS administration instructions (Straus & Gelles, 1990): "No matter how well a couple get along, there are times when they disagree, get annoyed with the other person, or just have spats or fights because they're in a bad mood or tired or for some other reason. They may use many different ways of trying to settle their differences. I'm going to read some things that you and your (spouse/partner) might do when you have an argument. I would like you to tell me how many times ...". In Kimmel's view, domestic violence is thus framed as the result of an argument—more to do with being in a bad mood than about control. For an Australian critique of the CTS, see, for example, Bagshaw and Chung (2000).

16 Kimmel noted that: "if she pushes him back after being severely beaten, it would be scored one 'conflict tactic' for each" (p. 9).

17 The 2005 Crime and Safety Survey (Australian Bureau of Statistics, 2005) estimated that 4.8% of the population had been assaulted in the previous 12 months. In all assault cases, 84% of the offenders and 54% of the victims were men. The offender was known to the victim in 47% of cases involving male victims, but in 73% of cases in which the victim was female. Of the women assaulted, 19% were assaulted by a current or former partner.

the definition of violence under the *Family Law Act 1975*. There are strengths in considering the plight of children separately. As noted below, there is also a danger that the very act of separating these issues can create an illusion that intimate partner violence and violence towards children share little in the way of common ground. Such a conclusion is more likely to be an artefact of differing research pathways and traditions than a reflection of reality.

## 1.5 Child abuse and neglect

### 1.5.1 Confronting the legacy

Extensive psycho-historical research into the experience of childhood led de Mause (1998) to conclude that widespread abuse of children, including multiple levels of sexual abuse, has been a pervasive element of all cultures in all ages. Indeed de Mause claimed that “the history of childhood is a nightmare from which we have only recently begun to awaken” (p. 1).

The use of children to serve adult ends was, of course, recognised long before the revelations of historians of childhood.<sup>18</sup> Charles Dickens’ novels provide perhaps the best popular examples of such widespread abuse. In addition, James (2000) is one of a series of commentators to have outlined the shift that came in the wake of the Industrial Revolution from a focus on protecting society from “delinquent children”, to increasing concerns about protecting children from the abuse, abandonment, and physical and emotional neglect inflicted by the same society that purported to fear them.

As Parton (1985) pointed out, an increasing awareness of child abuse has gone hand-in-hand with attention to legislative reform that has afforded increasing legal status to children. More broadly, Hodgson (1992) has carefully described the ongoing development and “internationalisation” of the children’s rights movement, which perhaps reached its high-water mark with the adoption of the United Nations Convention of the Rights of the Child in September 1990.

Like the recognition of adult-to-adult family violence, however, it was not until well into the twentieth century that evidence was systematically gathered on the extent of undisclosed intra-familial violence towards children in relatively affluent Western countries. For example, an early North American paper by a paediatric radiologist (Caffey, 1946) made the then shocking suggestion that many subdural haematomas and long-bone fractures in infants were inconsistent with accidental trauma.

Fifteen years later, following a New York medical symposium on the subject of childhood injuries, Kempe, Silverman, Steele, Droegemueller, and Silver (1962) went on to demonstrate that a significant number of parents and caretakers were battering their children, some to the point of death. Kempe et al., who coined the term “battered child syndrome”, are generally acknowledged to have been the first to have presented systematic data on the extent of the phenomenon of child abuse. The data, however, were greeted with such scepticism that after a further 15 years, Helfer and Kempe (1976) suggested that children’s suffering at the hands of adults was being exacerbated by society’s continued widespread denial of the reality of child abuse.

It is salutary, therefore, to reflect on the fact that as family courts such as the Family Court of Australia began to develop case law to support post-separation decision-making in children’s cases, systematic evidence of intra-familial and other family-related violence towards children was generally either not available or not taken seriously. The same could be said of adult-to-adult family violence.<sup>19</sup> In both areas, the predominant atmosphere was one of widespread ignorance, shameful silence and public scepticism.

18 Aries (1962) is generally recognised as the first to attempt a history of childhood. He, like those who have followed, painted a generally bleak picture of the lot of the child.

19 See the evidence of Pizzey (1973) of largely male-initiated systematic controlling violence towards their female partners in the United Kingdom. Similar evidence in Australia did not begin to emerge until the early 1980s (see, for example, Scutt, 1983)

### 1.5.2 Defining and measuring child maltreatment

Although terms such as “child abuse” and “child neglect” have now been commonly accepted, they continue to refer to a broad spectrum of behaviours and experiences, the boundaries of which remain contested. Like terminology around adult-to-adult family violence, the terminology that describes child maltreatment continues to be plagued by definitional issues.

Typically, the maltreatment of children is divided into categories such as physical abuse, sexual abuse, neglect, and emotional and psychological abuse. But as Tomison (2000) noted, these distinctions tend to be artificial. Tomison suggested that when investigating child abuse, it is important to assess simultaneously the nature and extent of *all* forms of family violence. This is partly because many children who are subject to abuse suffer multiple forms of maltreatment. It is also partly due to an increasingly well-recognised relationship between adult-to-adult family violence and child maltreatment (Goddard & Hiller, 1993; Stanley, 1997; Stermac, Davidson, & Sheridan, 1995; Tomison, 1999; Truesdell, McNeil, & Deschner, 1986).

The problem of definitional issues is exacerbated by the fact that abusive behaviours towards children are interpreted differently according to differing social norms, values and beliefs, and according to each culture’s conventional and/or expertly derived knowledge base about children, children’s development and family relationships. Within mainstream Australian culture, the debate about corporal punishment is a case in point. Tucci, Goddard, and Mitchell (2003), for example, asked 500 Australian parents (39% male, 61% female) a series of questions about adult behaviours towards children. Among their key findings was that injuring a child while administering “discipline” was thought by 1 in 5 respondents to be something that should not warrant making a charge of assault.

It has been suggested that the child continues to occupy an ambiguous position in our culture. Thus, how one views the continued legitimacy of behaviours such as corporal punishment will inevitably be a reflection of one’s formally or informally held views about the nature of childhood itself and the manner in which society expects or requires parents to introduce children to the world of adult values and behaviours (see Richards, 1974; Bainham, Day-Sclater, & Richards, 1999). Constructions of childhood differ widely (James & Prout, 1990). On the dimension of morality and motivation, for example, they range from the totally “innocent child” of Rousseau and others, to notions of the “sinful child” that have informed the thinking within certain religious traditions.

The former view is well illustrated by Rousseau’s appeal to mothers<sup>20</sup> to provide a shield for their children “from the crushing force of social convention. Tend and water it [your child] ere it dies. One day, the fruit will reward your care” (1762/1911, p. 4). The latter view is illustrated, perhaps at its starkest, by a statement attributed to the mother of John Wesley: “When turned a year old (and sometimes a year before) they are taught to fear the rod and to cry softly” (cited in de Mause, 1998, p. 8).

Many researchers and commentators have pointed to the inconsistencies contained in laws that make it an offence to strike another adult but continue to endorse or at least permit the corporal punishment of children. Thus, there is ambivalence about the extent to which children are entitled to society’s protection. In the study by Tucci et al. (2003), for example, the authors found that child abuse was rated, on average, thirteenth on a list of community concerns—below the level of concern about public transport and council rates. They also reported that more than half the respondents said they would not necessarily believe children’s stories of abuse, and that almost a quarter of those surveyed did not believe that sexual relations between a 14-year-old and an adult necessarily constituted sexual abuse.

James (2000) noted that the true extent of child maltreatment is very difficult to gauge. In its 2001 report, the Australian Institute of Health and Welfare estimated that 5.6 per thousand children under the age of 16 had been the subject of *substantiated* child abuse and neglect cases. The Institute’s 2006 report suggested that between 1999/2000 and 2004/2005, the number of notifications to the child protection system had doubled. However, as Liddell, Donegan,

20 Interestingly, there is no reference here to the role of the father.



Goddard, and Tucci (2006) noted, these figures contain a number of discrepancies and possible contradictions, including wide variation in notification rates between states. It is likely, therefore, that such figures remain an underestimate of the true state of affairs.

The discrepancies in overall reporting rates, however, are extremely large, especially with regard to questions of sexual abuse. James (2000), for example, suggested that some research estimates that up to 1 in 4 girls and 1 in 12 boys have experienced sexual abuse (see James, 1996, for a more detailed discussion of these figures). Estimates by de Mause (1998), based on his own research and his reading of research in North America, England and Germany, were even higher. With respect to physical abuse and neglect, Bartollas (1993) has suggested that the incidence in the United States may be as high as 1 in 20 families, with neglect being twice as common as abuse.

It is clear that disagreements and confusion about what is meant by child abuse and neglect is one important reason for the discrepancies. Drawing on work from the National Research Council in the United States, James (2000, p. 3) summarised key difficulties in constructing universally acceptable definitions of child abuse as including:

- a lack of consensus of what forms of parenting are dangerous or unacceptable;
- uncertainty about whether to define abuse on the basis of adult characteristics, adult behaviour, the outcome for the child and the environmental context, in isolation or in combination;
- conflict over whether standards of risk or harm would be used in the construction of definitions;
- confusion as to whether similar definitions should be used for scientific, legal and clinical purposes; and
- difficulties over the parameters of child abuse and how far these parameters should be extended.

### **1.5.3 Impacts of child maltreatment**

Not surprisingly, there is no simple cause-and-effect relationship between child maltreatment and physical or emotional health outcomes. Not all abused and neglected children appear to experience long-term consequences. Instead, most researchers and commentators seem to agree that outcomes vary widely and appear to be affected by factors such as the following:

- the age and developmental maturity of the child at the time the abuse or neglect occurred;
- the type(s) of abuse;
- its frequency, severity and duration; and
- the quality of the relationship between the child and the abuser.

Some children experience long-term negative consequences of abuse and neglect, while the impact on others appears to be minimal. What is sometimes referred to as “resilience” in some children, which modifies the impact of maltreatment, seems to be influenced by a number of individual characteristics, such as optimism, self-esteem, intelligence, creativity, humour and a sense of independence. In addition, family, social or environmental factors that appear to modify negative effects include access to social support and/or to at least one unequivocally caring adult, neighbourhood stability and access to reasonable health care (see Thomlison, 1997).

Known negative consequences of maltreatment include problems with physical and mental health. Infants who are neglected, abused or violently shaken may show symptoms such as vomiting, concussion, respiratory distress, seizures and death. Long-term consequences can include blindness, learning disabilities, mental retardation, cerebral palsy or paralysis (Conway, 1998). Child maltreatment is generally associated with higher rates of long-term health problems, such as sexually transmitted disease, heart disease, cancer, chronic lung disease, skeletal fractures and liver disease (Hillis, Anda, Felitti, Nordenberg, & Marchbanks, 2000).

Increasingly, child abuse and neglect have also been associated with impaired neurological development, with physical, mental and emotional developmental consequences (Perry, 2002).

The stress of chronic abuse has also been linked to a neurologically driven “hyperarousal” response, which typically results in hyperactivity, sleep disturbances and anxiety, as well as increased vulnerability to post-traumatic stress disorder, attention deficit/hyperactivity disorder, conduct disorder, and learning and memory difficulties (Dallam, 2001; Perry, 2001).

Not surprisingly, a history of abuse and neglect is also associated in later life with feelings of isolation, fear and an inability to trust. In one long-term study, as many as 80% of young adults who had been abused met the diagnostic criteria for at least one psychiatric disorder at age 21. These young adults exhibited problems such as depression, anxiety, eating disorders and suicide attempts (Silverman, Reinherz, & Giaconia, 1996). Other psychological and emotional conditions associated with abuse and neglect include panic disorder, dissociative disorders, attention-deficit/hyperactivity disorder, PTSD and reactive attachment disorder (Teicher, 2000). Cognitive difficulties (US Department of Health and Human Services, 2006 and social difficulties, often linked with insecure attachments (see Morrison, Frank, Holland, & Kates, 1999), also feature more prominently for these children.

In addition, although not all victims of child abuse and neglect will experience behavioural consequences, there is greater likelihood during adolescence of problems such as delinquency, teen pregnancy, low academic achievement, drug use and mental health problems (Kelley, Thornberry, & Smith, 1997). In the United States, the increased adolescent delinquency noted among the victims of childhood abuse and neglect has also been shown to be associated with an increase in the likelihood of adult criminal behaviour and violent crime (Widom & Maxfield, 2001). Later drug and alcohol problems are also more prominent among these individuals (Swan, 1998). And perhaps not surprisingly, multiple studies have associated parents who were abused or neglected as children with greater rates of victimisation of their own children.

#### **1.5.4 Children’s exposure to family violence**

Of the 21,000 family-related incidents that were reported to Victorian police in a 12-month period in 1997/1998, children were recorded as present on more than half the occasions (Atmore, 2001). Bedi and Goddard (2007) have provided a brief review of the impacts on children of living alongside intimate partner violence. Although much of the research is again plagued with definitional problems, one is struck by the similarities between the reports of the symptoms and outcomes with respect to the children in this situation, and the symptoms and outcomes, noted above, that attach to more direct forms of child maltreatment.

Part of the explanation for this no doubt lies in the likelihood of the coexistence of child maltreatment and intimate partner violence in a considerable number of cases. According to Bedi and Goddard (2007), research into the levels of such coexistence has been hampered by an historical separation of disciplines concerned with each type of violence (see Edleson, 1999). Relatively early Australian data (Goddard & Hiller, 1993) suggested a co-occurrence rate of 55% between physical child abuse and intimate partner violence, and a co-occurrence rate of 40% with respect to intimate partner violence and child sexual abuse. A more general review of 31 studies (Appel & Holden, 1998), however, found co-occurrence figures that varied from 6% to 100%.

A major limitation of the co-occurrence studies to date is that the type of intimate partner violence is rarely defined. No doubt there are parents who, though violent towards their partners or towards each other, would consider it “beyond the pale” to abuse their children directly. On the other hand, one would expect that parents whose violence is primarily motivated by the need for control, would be more likely to attempt to control their children or insist on them being controlled by their partner. Studies cited by Bedi and Goddard (2007) have described a range of ways whereby children living with intimate partner violence are more likely to also be the targets of child abuse. These studies all assume that the violence is uni-directional and male-initiated.

Bedi and Goddard’s (2007) review of the impact of partner violence on children also addressed the question of causality (that is, can it be said that the witnessing of such behaviour is the *cause* of negative symptoms and outcomes?) and the mechanisms that might account for these symptoms and outcomes. Although causality cannot be unequivocally established at this stage, the evidence

from animal studies (Francis & Meaney, 1999) and twin studies (Jaffee, Caspi, Moffitt, Taylor, & Arseneault, 2002) appears to point in this direction. As the review demonstrated, the *mechanisms* whereby being in the presence of intimate partner violence leads to a range of negative impacts, are complex and not yet fully understood. Indeed, some of the findings appear counterintuitive. It is not clear, for example, “whether children who experience multiple traumas suffer worse outcomes than those who experience one type of victimisation in isolation” (Bedi & Goddard, 2007, p. 72).

Before leaving this necessarily limited overview of child maltreatment, it is important to also consider briefly the impact on children of ongoing, unresolved parental conflict, even in situations in which physical violence does not occur. McIntosh (2003) has reviewed the evidence that children exposed to continuing unresolved conflict are significantly more likely than their peers in no-conflict or low-conflict situations to do poorly across a range of cognitive, social, psychological and physical dimensions.

From the perspective of healthy child development, continued high conflict seriously erodes parental attunement to the needs and experiences of their children. Moloney and McIntosh (2006) suggest that parental attunement:

refers to a parent’s *capacity to take their child’s perspective*. It is the clarity and accuracy of the parent’s reflection on their own internal emotional states and ability to differentiate and process the child’s internal states that lead to security for the child in their attachment relationship and their sense of self. Parental reflective function is a crucial human capacity that is intrinsic to affect regulation and productive social relationships. [It is linked] to Bowlby’s concept of a “secure base” [italics added]. (p. 19)

In summary, violent responses, whether directed at a child, or at or between adults on whom the child depends, are simply incompatible with caring for that child’s needs. In this sense, violent responses, along with ongoing, unresolved adult-to-adult conflict, can both be understood as significant acts of neglect.

#### **1.5.4 Child maltreatment and family law**

Clearly, the family law challenges with respect to accurate identification and appropriate responses to allegations of violence and abuse directed at children are both considerable and multi-faceted. At its best, family law processes must aim to: (a) offer unequivocal protection to children when protection is needed; (b) publicly promote non-violent and non-sexualised relationships between parents (and parental figures) and the children they care for; (c) oversee wise and realistic outcomes in situations in which one or more parents/parental figures may be either causing or ignoring the abuse of their child; and (d) insist upon resolution and decision-making processes around parenting disputes that are simultaneously respectful and non-aggressive, while not being “soft” on child abuse in its many manifestations.

The widespread disagreement and even scepticism about the nature and extent of child abuse raises important policy issues about how research in the field is conducted and how the results are reported. Furthermore, the many issues that contribute to “muddying the waters” are likely to be especially prominent when families are separating and/or reforming. In the context of family law, McGleughlin, Meyer, and Baker (1999) spelt out a core and instantly recognisable difficulty:

Judges face a critical dilemma when they have to choose between allowing a child to remain in contact with a possibly abusive parent or, conversely, rupturing a parent–child relationship. Additionally, the judge is faced with how best to preserve an accused parent’s relationship with the child during the evaluation, which may be a long and arduous process. If the findings of the evaluation are inconclusive, the judge is left with the same dilemma. (pp. 384–5)

It could be argued that the second part of the statement by McGleughlin et al. (1999) is the more critical. Clearly, when allegations of child abuse are made in the context of a family law dispute,



there is a risk of adding to an already fraught situation an element of “systems abuse” (Cashmore, Dolby, & Brennan, 2004; Powers, Mooney, & Numo, 1990). Indeed, there is much truth in Breese, Stearns, Bess, and Packer’s (1986) observation that “an allegation of child abuse is clear evidence that the child is at risk, *whether or not* the allegation can be proved” [italics in original] (p. 561). The key point being made by Breese et al. is that such allegations need to be seen by service providers as in themselves “an indicator of emotional risk for the child” (p. 560).

Perhaps predictably, the most dramatic examples of “the cure [of the intervention] being worse than the disease” are probably found in studies of responses to allegations of child sexual abuse. According to James (2000), only a small percentage of such cases reach the courts.<sup>21</sup> But when they do, studies such as that of Eastwood, Patton, and Stacey (1998) have suggested that half the children interviewed would not recommend the process to other victims. These children generally described the investigative processes that both precede and continue through the court hearings as like going through hell and “not worth it”.

Most commonly, systems abuse grows not out of a lack of concern, but out of a failure to deal adequately with the sheer complexity of the task. During the negotiation and/or investigative processes, a clear focus is required with respect to multiple questions. What exactly is being alleged? What meanings might be ascribed to allegations that are not completely clear? In what ways do the allegations qualify as “abuse”? What is being denied? What is left unspoken? What holding and protective mechanisms can be put in place once allegations have been made? What sort of investigation is required and how quickly should it occur? To what extent can investigative and supportive functions be provided by the same person or even the same organisation? How should legal and psychosocial perspectives work together in the service of the child and/or in the service of the family?

Frequently, the problems raised by questions such as these are exacerbated by the perception or reality of inadequate resources and/or an inadequate coordination of what resources are available. Thus Powers et al. (1990) referred to systems abuse as normally being perpetuated not by a single individual but by the whole child-care system, a system often stretched beyond its limits.

That the resolution of allegations of family violence (including child abuse and neglect) is a highly challenging and complex task is beyond serious debate. Lacking to date have been reliable data on the extent and range of allegations made when parents make formal applications to the FCoA or FMC, how the allegations are supported, how they are responded to and how they are handled by the family law system.

## 1.6 The need for pre-reform data in Australia

One indicator of the success of the recent family law reforms will inevitably be the new system’s capacity to assess both the *veracity* and the *type* of alleged family violence and alleged abuse of children, as well as the presence and type of family violence and abuse that exists in those cases in which, for whatever reason, nothing has been alleged. As a step towards this goal, it is therefore important that reliable information is obtained to help assess the pre- and post-reform terrain in relation to allegations of family violence and child abuse and responses by the other party to these allegations.

In an attempt to gain a better understanding of how family violence and child abuse issues arise in family law proceedings and how these issues are dealt with by the courts, the Australian Institute of Family Studies was commissioned by the Attorney-General’s Department to conduct an expedited research project on how allegations are raised and addressed in courts exercising family law jurisdiction.<sup>22</sup> This report sets out the results of that research.

21 James is not referring to family courts here.

22 Approximately 80% of the work of the Federal Magistrates Court of Australia is in the family law jurisdiction. In addition, more than 40% of family law children’s and property applications are now completed in the FMC (Federal Magistrates Court, 2007). The objective of the FMC is “to provide a simpler and more accessible alternative to litigation in the superior courts and to relieve the workload of those courts” (Federal Magistrates Court, 2007). As the new family law system unfolds, and court systems (FMC and FCoA) continue to improve their integration, an important area of investigation would be to explore the nature and prevalence of allegations of family violence and child abuse in both courts.

Specifically, the project seeks to answer six research questions. These questions relate to applications for children’s matters in the Family Court of Australia and the Federal Magistrates Court:

1. How often are allegations of family violence and abuse raised and what types of allegations are raised?
2. How often is there a denial of the allegation(s) raised and what form do these denials take?
3. How are the allegations or refutations dealt with by the court(s)?
4. What happens with the allegations and refutations?
5. Are there any findings in relation to the veracity of the allegations or the denials?
6. What is the impact of allegations on case outcomes?

It must be emphasised at the outset that it was beyond the scope of this study to estimate the prevalence of “deliberately false” allegations of family violence or child abuse in the context of family law proceedings.

## **1.7 Structure of the report**

The remainder of this report is structured as follows. Chapter 2 examines overseas research into family violence in the context of family separation and disputes over children. Chapter 3 examines similar studies conducted in Australia. Chapter 4 describes the study’s methodology. Chapters 5 through 7 present the study’s findings. The final chapter attempts to bring together the key ideas and findings from the study and examines the implications of these new data for policy, practice and research.

# 2 International research on allegations of family violence and child abuse in family law

This chapter provides a brief overview of some of the key international studies of allegations of family violence and child abuse in the context of post-separation parenting disputes. Australian studies are summarised in the next chapter.

These studies are arbitrarily grouped into three distinct lines of inquiry: (a) those that focus on allegations of family violence; (b) those that focus on allegations of child abuse; and (c) those that focus on allegations of family violence, child abuse and child neglect as potentially overlapping forms of parental and interpersonal transgressions. (Appendix A contains a summary of the key attributes of each study for each line of inquiry.)

Though the review is not exhaustive, it provides a useful empirical context in which to locate the present study's methodology and findings. Of course, the extent to which the findings from overseas studies readily transfer to the Australian context cannot be certain. Some readers might prefer to read only the summary at the end of the chapter rather than immerse themselves in the detail of divergent methodologies and findings.

## 2.1 Empirical studies of family violence in family law

Studies of family violence in the context of custody/access disputes have been conducted in the US, Canada and the United Kingdom.<sup>23</sup> Some of the key studies from these countries are now briefly described.

### 2.1.1 Empirical studies of family violence in the United States of America

In the US context, Newmark, Harrell, and Salem (1995) explored the sorts of challenges facing courts and court-connected services when family violence is raised in the context of court-ordered mediation for child custody and access disputes. A total of 422 separated parents from 293 families were recruited from mediation services in Oregon and Minnesota in early 1993. Parents were surveyed about whether the other parent had ever engaged in different types of abusive behaviour against them (such as "intimidation", "physical abuse", "severe abuse" and/or "use of a weapon"), and, if so, how often this abuse had occurred in the 6 months (a) prior to attending the mediation service, and (b) prior to the survey. Perceptions of empowerment in dealing with the other parent and the court system and the risk of harm by the other parent were also assessed.

Newark et al. (1995) found that "a great deal of abuse was reported" (p. 57).<sup>24</sup> Specifically, 80% of women and 72% of the men in the sample reported experiencing some form of spousal abuse. While "intimidation" was reported as the most frequent and ongoing type of abuse, 55% of men and 68% of women reported being physically abused (being slapped, grabbed, pushed, kicked and punched to physically hurt), and 38% of the women and 20% of the men reported "severe

23 Small-scale qualitative studies have been excluded from this review, such as those that investigated the experiences of: battered women in refuges (e.g., Radford, Hester, Humphries, & Woodfield, 1997), mothers who shared the care of children with abusive partners (Shalansky, Eriksen, & Henderson, 1999), abused mothers whose children attended supervised contact centres (e.g., Shepard, 1992), mothers who had left abusive relationships but continued to support father-child contact while trying to protect the children (Varcoe & Irwin, 2004). This is not to suggest that these studies of women's experience of violence are unimportant.

24 The authors appeared to use domestic violence and abuse interchangeably. While no formal definition of either was offered, "abuse" appeared to be defined by the occurrence of any of the four types of abuse assessed. These four domains were adapted from the Conflict Tactics Scale (Straus, 1979).

abuse" (being beaten or choked). Those who reported the experience of abuse (both women and men) were more likely than those who did not report abuse to perceive that their former partner controlled decision-making in their relationship and that their former partner might physically harm them in the following 6 months. Most physical abuse was reported by women and men as having occurred more than 6 months prior to entering the mediation or evaluation services.

Newark et al. (1995) also found that women reported being abused more often than men, and that women who reported abuse felt a diminished sense of empowerment than women who did not report experiencing abuse. No such difference emerged for men.

On the basis of these data, Newark et al. (1995) suggested that family court programs develop specialised responses for dealing with allegations of family violence, and made six recommendations in relation to the need for specialised training, screening protocols, information, resources, practical support and a (shuttle) mediation process. More recently, Logan, Walker, Jordan, and Horvath (2002) conducted an exploratory study of court records to compare cases with and without family violence, paying particular attention to custody evaluation reports and recommendations, and case outcomes. A total of 135 cases containing at least one custody evaluation or child representative report were sampled from a Kentucky Circuit Court. Using a standardised coding protocol, two psychology students analysed the content of a random sample of 82 cases. Logan et al. found that 56% of the cases involved family violence, while 8% involved reciprocal violence between males and females.<sup>25</sup>

Cases classified as involving family violence were more likely than other cases to mention child abuse and substance abuse in the court file; the files were also more likely to mention the involvement of younger children, marital debts and parents returning to court for child support matters. By contrast, only minor differences emerged between the violence and non-violence cases in relation to the custody evaluations and recommendations. On the basis of these findings, Logan et al. (2002) suggested that custody evaluators do not seem to look into the nature or extent of family violence or to explore it as a way of addressing the safety of children. They speculated that evaluators may be overly focused on "parental rights" in the custody evaluation process (p. 737).

Logan, Walker, Horvath, and Leukefeld (2003) sought to examine, among other things, the characteristics of post-separation parenting arrangements, paying particular attention to whether these arrangements differed for divorcing couples who raised allegations of spousal violence. They conducted a content analysis of a random sample of 20% of divorce cases settled in Kentucky in the 1997/1998 financial year.<sup>26</sup> Logan et al. found that 20% of the cases within this sample ( $n = 258$ ) and 33% of the cases with children mentioned spousal violence. More specifically, they found that these cases were no more likely to require a judicial determination than other cases, with most cases in the sample settled by agreement through lawyers or self-representation. However, they also found that cases involving allegations of spousal violence were more likely than cases without violence to note substance abuse and post-decree activity in relation to child support. The cases with violence allegations also typically involved shorter marriages, shorter periods from filing to divorce, and more structured parent-child contact (or did not stipulate contact). It is noteworthy that the authors did not formally define "spousal violence" or mention whether the alleged violence was substantiated or remained an allegation.<sup>27</sup>

### **2.1.2 Empirical studies of family violence in Canada**

In Canada, Shaffer and Bala (2003) sought to examine the circumstances in which, and under what terms, abusive husbands were being allowed parent-child contact by the court. They also wanted to assess the extent to which judges believed claims by women of "wife abuse". They conducted a computerised search of children's matters reported in the Canadian family law database Quicklaw, which produced 42 cases in which wife abuse was likely to have been a

25 In this study, the presence of a Domestic Violence Order (DVO) was used to classify the case as a "domestic violence case". In this jurisdiction, a DVO is issued "after a court hearing with both parties present and findings of fact and law that support issuance of the order" (p. 724).

26 Cases sealed by the court were excluded from this analysis.

27 The researchers write: "Spousal violence information in this study includes both allegations (e.g., in pleadings and petitions) and findings (e.g., when a protective order is in evidence)" (p. 271).

consideration in a custody or access dispute.<sup>28</sup> As noted by Shaffer and Bala, cases in this database cover legal decisions with written reasons by judges and typically represent contentious, complex or novel legal arguments. These cases nonetheless provide an opportunity to access judicial thinking and decision-making.

Shafer and Bala (2003) concluded that a broad array of abusive male behaviour (pre- and post-separation) was evident in the cases they examined; covering such behaviours as enduring severe physical and sexual violence, some physical abuse in tandem with other types of abusive and controlling behaviour, and primarily emotional and verbal abuse. The authors suggested that many of the men denied or minimised their violent behaviour, which the court rejected when “physical violence was extreme or well documented” (p. 259); less extreme violence, however, tended to be seen as mutual by the court.

Shafer and Bala (2003) found that:

the general picture in terms of custody in the cases we surveyed was that abusive men were not succeeding in getting either sole or joint custody, provided that the court accepted the allegations of abuse. ... [But] the situation is quite different when dealing with access. Most of the men found to have abused their wives were granted access rights to their children, usually on an unsupervised basis. (pp. 263–64)

They also noted that the court found women’s allegations to be exaggerated or unsubstantiated in 11 of the 42 cases:

In some of these cases, the court gave no reasons for concluding that the women had fabricated or embellished their claims, making the validity of these judicial decisions impossible to assess. It is possible that the courts were correct and the claims had been fabricated or exaggerated. It is also possible, however, that judges failed to recognize abuse because it was not well documented or because the abuse took a predominantly emotional, rather than physical, form.

In the absence of medical records, police reports or witnesses to the abuse, judges may have difficulty finding that abuse occurred, and in fact, judges mention this as a problem in some of the cases. In part this may be a function of the law’s requirement that the person making an allegation of abuse prove it true on the balance of probabilities. ... Often the only adult witnesses to spousal abuse are the spouses. While children often see or hear spousal abuse, there are a variety of evidentiary and ethical concerns about calling them as witnesses. Many women do not disclose their abuse, report it to doctors, or call the police; therefore, it may be difficult to prove abuse in many cases. Absent evidence corroborating the women’s allegations, judges may be reluctant to find that abuse has been proven to the court’s satisfaction. Judges may decide the allegations are “unfounded” simply because the woman cannot muster sufficient evidence that it has occurred.

Judges may also conclude that allegations are unfounded where women raise allegations of emotional or verbal abuse as involving significant physical violence. If the abuse is primarily emotional or verbal, courts may have difficulty conceptualizing the conduct as abusive, viewing it instead as mutual conflict or discord. (pp. 259–60)

Shaffer and Bala (2003)<sup>29</sup> also reflected:

Some lawyers may advise at least some of their women clients who claim to have been victims of spousal abuse not to raise abuse concerns in their court documents. Some lawyers do this because they consider spousal abuse irrelevant to custody and access issues if there is no direct abuse of the children. In other cases, there is a concern that if the issue of spousal abuse is raised but not proven, that this will reflect poorly on

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28 These cases spanned the period January 1997 through May 2000. The original search actually produced 45 cases, 3 of which were excluded because they involved allegations of abuse against a mother or a stepfather.

29 See also Brown and Blenkinsop’s (1994) comment (cited in Brown et al. (1998), Chapter 3) on the difficulty some courts have in processing complex information.

the mother's claim for custody, suggesting that she is an "unfriendly parent" who will thwart the father's access to the children for selfish reasons. (p. 269)

Shaffer and Bala (2003) expressed concern at what they concluded to be an apparent lack of judicial sensitivity to abuse in some of the cases in their sample, and called for the development of more refined judicial responses for different configurations and levels of abuse so that children are not put at risk when in the care of a parent.

### **2.1.3 Empirical studies of family violence in the United Kingdom**

In the UK, Humphreys and Thiara (2003) surveyed 161 women about the women's experiences of post-separation violence. Women were recruited by domestic violence project outreach workers with the Women's Aid Federation. Half of the women recruited had lived in a women's refuge at some point, while the other half of women had only made use of the outreach service.<sup>30</sup> Humphreys and Thiara also conducted face-to-face in-depth interviews with 20 women who had not completed the survey questionnaire. Both samples were purposive.<sup>31</sup>

The researchers found that 76% of the women surveyed reported further abuse and harassment from their former partners after separation. They also noted that for many women, the violence and abuse stopped after 6–12 months; sometimes because women relocated, in other instances, because the abuse stopped. Nonetheless, 36% of women reported ongoing post-separation violence. All 20 of the women interviewed referred to an escalating pattern of violence and coercive control, characteristic of Johnson's category of "intimate terrorism" (Humphreys & Thiara, 2003).

While verbal and emotional abuse (76%), and serious physical threats (41%), were reported more frequently than physical and sexual assaults (23% and 6%), Humphreys and Thiara (2003) found that women often experienced threats, verbal and emotional abuse as "terrifying", and "some women found this harder to cope with than actual physical violence" (p. 201).

Humphreys and Thiara (2003) noted that:

69 per cent [of the women in the purposive sample] feared for their emotional wellbeing; 66 per cent said that the abuse was becoming worse; 60 per cent of women feared that they would be killed; 60 per cent feared for their mental health; 54 per cent left [the relationship] when they could see the abuse affecting their children; 25 per cent said they feared for their children's lives; 25 per cent said they feared they would kill their abuser. (p. 200)

Humphreys and Thiara (2003) also found that women reported diverse experiences of post-separation violence and found it difficult to achieve separation from an abusive former partner. They suggested that a lack of effective action by the legal system often put women and children at serious risk of harm, with father-child contact being a particular point of vulnerability for ongoing post-separation violence and abuse.

## **2.2 Empirical studies of allegations of child abuse in family law**

We begin with an examination of some of the early North American clinical studies of "false allegations" of child sexual abuse.<sup>32</sup> Larger empirical studies from North America and the United Kingdom are then examined.<sup>33</sup>

30 One quarter of the sample were from black and minority ethnic backgrounds.

31 That is, participants were not selected randomly but were selected on the basis of being typical of the category of cases under investigation.

32 Although these studies are now somewhat anachronistic, they nonetheless continue to be cited by some advocacy groups as evidence of the high rate of "false" allegations of child abuse in family law matters.

33 See also the excellent summaries provided by Bala et al. (2001) and Faller (2003). There are also clinical studies with medium-sized samples, but which suffer from many of the problems of the smaller studies (such as Gunter et al., 2000; Paradise, Rostain & Nathanson, 1988; Wakefield & Underwager, 1990).



### 2.2.1 Early clinical studies: North America

Much of the early work into allegations of abuse in the context of parental separation was conducted in North America during the 1980s. These small-scale clinical studies—drawing on data from the private practices of psychiatrists who conducted clinical assessments for litigants, the court or child welfare agencies—focused primarily on allegations of child sexual abuse in custody disputes.<sup>34</sup> These studies suggested that such allegations were on the rise, were largely false, and were made by mothers against fathers (Faller & DeVoe, 1995; McGraw & Smith, 1992; Thoennes & Tjaden, 1990).<sup>35</sup>

For instance, Kaplan and Kaplan (1981) reported on a single case from their clinical practice (with a passing reference to one other similar case). The case was referred to them by a family court judge who wanted to determine whether allegations of sexual abuse made by a child in a custody dispute were “true”. Although no definitive assessment was offered, Kaplan and Kaplan implied that the allegations were unfounded, suggesting that the allegations stemmed from a *folie à deux*, in which several family members shared similar delusional beliefs.

In another frequently cited study, Benedek and Schetky (1985) examined 18 cases of alleged incest (14 of which were related to custody disputes after divorce)<sup>36</sup> and concluded that 10 of these cases (55%) were based on “false” allegations. They suggested that although false allegations of sexual abuse by children and their parents are rare, such allegations were particularly likely to occur in custody disputes. They speculated that some parents might make false allegations “to obtain sole custody, to terminate visitation, to terminate parental rights, or to harass a non-custodial parent” (p. 156).

Green (1986) reported on 11 cases from his private practice in which the children, in the context of a custody or access dispute, claimed that they had been sexually assaulted by their non-resident father. Green concluded that four of these cases (36%) involved false allegations of abuse, which, he suggested, mirrored Benedek and Schetky’s (1985) “strikingly high” rate of false allegations (p. 449).<sup>37</sup> (Green also suggested that false denials by children were “common”, whereas false allegations by children were rare (p. 451).

Moreover, Schuman (1986) described seven cases from his clinical practice in which child physical and sexual abuse were alleged. He concluded that “all of the claims of abuse were ultimately shown to be nonvalid” (p. 6), and suggested that “domestic relations cases are unfortunately fertile ground for nonvalid perceptions and/or allegations of misconduct of all forms” (p. 19).

However, as several researchers (such as Faller, 2003) have noted, small-scale clinical studies are likely to be limited in several ways. First, they typically have little generalisability because of their small selective samples.<sup>38</sup> The examination of low base-rate conditions, such as child sexual abuse, requires large samples for statistical power; clinical case studies are not designed to estimate prevalence rates (Bala et al., 1998; McIntosh & Prinz, 1993; Thoennes & Tjaden, 1990). Second, case studies might reflect a clinician’s own views about, and theoretical orientation towards, abuse, which can shape what has been described and concluded (“confirmation bias”). This is especially likely in the emotionally charged area of custody proceedings, in which there

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34 In the context of researching family violence, Gelles (1990) noted that clinical studies typically have provided a frequent source of data, since psychiatrists, psychologists and other mental health professionals have the most direct access to cases. The same appears to hold for allegations of child sexual abuse, which is perhaps why clinical studies appeared at the vanguard of the early “research” into false allegations (and false denials) of child abuse in the context of divorce.

35 Some of these studies are cited as conference presentations (for example, Brant & Sink, 1984; Guyer & Ash, 1986; Yates & Musty, 1987); such presentations are typically difficult to obtain (and therefore assess), and are generally not peer-reviewed. Accordingly, these studies are not reported here.

36 Faller and DeVoe (1995) noted this; the original paper is somewhat opaque on this breakdown. Faller and DeVoe thus suggested that the derived rate of false allegations is actually 71% (10 out of 14 cases) rather than 55% (10 out of 18 cases).

37 See Corwin, Berliner, Goodman, Goodwin, and White’s (1987) critique of Green’s research.

38 Only the more difficult cases or ambiguous cases are generally referred to specialist child psychiatrists. Faller (2003) has pointed out that the study conducted by Benedek and Schetky is probably a study of cases “predetermined to be likely false” (p. 243) since Benedek herself noted that she tended to decline briefs in which there was evidence that sexual abuse may have occurred.

is pressure to reach a decision one way or the other.<sup>39</sup> An apparent gender bias against mothers in this early work has not gone unnoticed (see Corwin, Berliner, Goodman, Goodwin, & White, 1987). Third, clinicians in these early studies tended to categorise cases idiosyncratically rather than rely on empirically validated and consensually agreed observations (Corwin et al., 1987; Paradise, Rostain, & Nathanson, 1988).

More problematic, perhaps, is that these early clinical studies employed a simple binary classification system to assess allegations (“true” or “false”), in which unsubstantiated allegations were treated as “false”. This is understandable, given that a key aim of these studies was to try to identify clinical criteria that could distinguish between “true” and “false” reports (Thoennes & Tjaden, 1990). But, as several researchers have noted, allegations can remain unsubstantiated for many reasons, and there remains much confusion about definitional issues (Fahn, 1991; Myers, 1990; Penfold, 1995; Robin, 1991; Trocmé & Bala, 2005).<sup>40</sup>

For instance, Awad (1987) recommended that allegations be assessed as either “probably true”, “probably not true”, or indeterminate, because it may be impossible in many instances to determine the veracity of an allegation with any certainty (see also Faller & DeVoe, 1995). Likewise, Penfold (1995) suggested that allegations be classified into one of three types: substantiated reports (variously termed “true”, “found”, “proved” or “confirmed”), unsubstantiated (or “unfounded”, “unproven” or “insufficient information”), and false (or “fictitious”, “erroneous” or “manufactured”).

More recently, Trocmé and Bala (2005) emphasised the importance of distinguishing unsubstantiated investigations from “intentionally false” reports:

Most unsubstantiated investigations are the result of well intentioned reports triggered by a suspicious injury or concerning behavior or a misunderstood story. Mandatory reporting laws require the reporting of *reasonably suspected* child abuse or neglect, and do not expect reporters to conduct their own investigations prior to reporting.

In contrast to unsubstantiated allegations, intentionally false allegations are intentional fabrications that are made in the hope of manipulating the legal system, or made to seek revenge against an estranged former partner, or may be the product of the emotional disturbance of the reporter. If there is a deliberate fabrication made, it is important to distinguish between cases in which a parent or other adult who is taking the lead in the fabricating from those where it is the child who is fabricating the allegation without adult influence.

39 McGraw and Smith (1992) found that in many cases caseworkers prejudged allegations as “false” because they were made in the context of divorce proceedings.

40 Oates et al. (1998) have also cautioned against the use of a simple binary “substantiated” vs “non-substantiated” division. In their view, the latter category suggests that child sexual abuse “might well have occurred but was not able to be substantiated on this occasion” (p. 154). They believe such a view should be discouraged and have attempted to address this issue in their own categorisation scheme.

Oates and his colleagues (1998) reviewed the case notes of all ( $n = 551$ ) child sexual abuse reports to the Denver Department of Social Security that were opened and concluded over a 12-month period. Oates and his colleagues divided the results into: (a) *substantiated*—assessment that abuse had occurred made on one or more of the following grounds: information from child or family, medical evidence, court findings and/or perpetrator’s confession; (b) *no sexual abuse*—judged to have definitely not occurred or occurrence highly unlikely, but not in the “erroneous concerns” category (see (d)); (c) *inconclusive*—judged to have insufficient evidence to put in the “substantiated” category; and (d) *erroneous concerns by children*—consisting of cases of collusion between parent and child, cases in which a child thought sexual abuse had occurred but a professional did not, and cases in which a child had knowingly fabricated a story of sexual abuse. Inter-rater reliability with respect to capacity to assign to the above four categories was 89.5% (based on every 20th case).

Substantiation occurred in 43% of the cases, while 21% of cases were rated as inconclusive. In 34% of cases, it was judged that no sexual abuse had occurred, while 3% were assessed as erroneous concerns.

The rate of erroneous concerns was in keeping with the range between 2% and 8% found by others (Everson & Boat, 1989; Faller, 1991; Goodwin, Sahd, & Rada, 1978; Jones & McGraw, 1987; Peters, 1976). Oates et al. (1998) point out that although considerably higher incidents have been reported (Benedek & Schetky, 1985; Green, 1986), these have comprised “small samples of selected cases referred for forensic evaluation where allegations about sexual abuse were complicating custody decisions” (p. 153).



It is also important to distinguish allegations that are clearly unsubstantiated or false, from those where abuse cannot be substantiated but remains suspected [*italics in original*]. (p. 1335)<sup>41</sup>

Accordingly, Trocmé and Bala (2005) recently adopted a four-category classification scheme in which allegations were classified as “substantiated”, “suspected”, “unsubstantiated, [in] good faith”, or “intentionally false”.<sup>42</sup> They suggested that confusion often arises in the interpretation of allegation statistics because of a lack of conceptual or definitional clarity. For instance, Thoennes and Pearson (1988) defined “false” allegations as those “offered in good faith, but where, for a variety of reasons, the abuse was unlikely” (p. 23), whereas Trocmé and Bala would define these as “unsubstantiated, good faith”.<sup>43</sup> The issue of conceptual clarity is also germane when examining larger empirical studies of child abuse, to which we now turn.

## 2.2.2 Empirical studies of child abuse

From the late 1980s, a number of large-scale international empirical studies have examined allegations of child abuse in the context of “child custody” and “access disputes.”<sup>44</sup> Most of these studies focused on false allegations of child sexual abuse.

For clarity, these studies are grouped into three strands: (a) rigorous clinical studies in the US; (b) studies based on data from child protection services; and (c) studies using data from domestic relations courts (that is, courts with family law jurisdiction).

### 2.2.2.1 Clinical studies of child abuse allegations in the US

In one of the earliest, more rigorous clinical studies of child abuse allegations in the context of divorce, Jones and Seig (1988) reviewed the files of 20 cases of child abuse evaluated at the Kempe Center for the Prevention and Treatment of Child Abuse and Neglect, based in Denver, Colorado.<sup>45</sup> All cases at the Center were screened for alleged sexual abuse and the presence of a custody/access dispute, and the first 20 cases that met these criteria—working backwards in time from 1985 to 1983—were extracted from the Center’s files and analysed.<sup>46</sup> The allegations in 14 of the 20 cases (70%) were deemed “reliable” as evaluated by a clinical team, 4 cases (20%) appeared to be “fictitious”, 1 (5%) was deemed “unsubstantiated suspicion”, and the allegations in the other case (5%) remained uncertain. Jones and Seig noted that mothers alleged abuse in 14 of the 20 cases (70%), fathers made the report in 3 cases (15%), and children in 3 cases (15%). Three of the four cases believed to be fictitious were instigated by the mothers. On the basis of their findings and those of earlier studies (such as Benedek & Schetky, 1985; Green, 1986), Jones and Seig concluded that custody and access disputes seemed to increase the likelihood of clinicians finding fictitious allegations. It is important to note that a comparison group was not included in the study’s design.

41 The complexity of arguments around the truth or otherwise of such allegations is also well illustrated in a statement on allegations of child sexual abuse in Bala, Mitnick, Trocmé, and Houston (in press). Drawing on data taken from 10,756 useable cases in the 2003 Canadian Incidence Study (also reported on in Trocmé et al., 2005), Bala and his colleagues summarised the situation as follows: “A significant proportion of allegations of child abuse made in the context of parental separation are true, but this is a context with a relatively high rate of unfounded allegations. While some cases of untrue allegations are due to fabrication, more commonly unfounded allegations are made in good faith. Pre-existing distrust or hostility may result in misunderstandings and unfounded allegations, especially in cases where the children involved are young and the allegations are reported through a parent. Some cases of unfounded allegations may be the product of the emotional disturbance of the accusing parent”.

42 The “intentionally false” category is actually subsumed under the “unsubstantiated” category.

43 Thoennes and Pearson (1988) wrote: “In the absence of a generally accepted set of phrases to describe these cases, we refer to true, false, indeterminate, and spiteful or fictitious allegations” (p. 23).

44 Even though Australia stopped using the language of “custody” and “access”, and more recently, with the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, no longer uses their replacements (“residence” and “contact”), we have retained the language of “custody” and “access” (or “visitation”) in this report to stay true to the use of these terms in the North American literature.

45 The Kempe National Center for the Prevention and Treatment of Child Abuse and Neglect was established in 1972 to provide a clinically based resource for helping to treat abused children.

46 The re-analysis was actually conducted by the second author, since the first author had been involved in the original clinical assessments at the Center.

McGraw and Smith (1992) re-examined 18 cases of allegations of child sexual abuse made in the context of contested custody disputes that were investigated by the Boulder County Sexual Abuse Team in Colorado. These cases were selected from a larger pool of 290 cases investigated in 1987, most of which did not involve a post-divorce custody dispute. In the original 1987 analysis, only 1 of the 18 cases (6%) was assessed as being founded (94% were unfounded). But on re-assessment of the cases using a more comprehensive validation process, McGraw and Smith reported that the number of cases determined to be founded increased to 8 (44%); 10 cases (56%) remained unfounded, of which 5 cases (28%) were classified as “unsubstantiated suspicion”, 2 (11%) were deemed to contain insufficient information, 2 (11%) were believed to be fictitious adult reports, and 1 (5.5%) a fictitious report by a child. Fictitious reports of child sexual abuse in the context of custody disputes thus totalled 17% in this small clinical sample.<sup>47</sup> McGraw and Smith suggested that this estimate was slightly lower than the 20% estimate of “false” allegations reported by Jones and Seig (1988), and was much lower than the 36% figure reported by Green (1986), and the 55% figure of unsubstantiated reports found by Benedek and Schetky (1985). But all of these studies appear to mean “unsubstantiated” when they use the term “false”.

Faller and DeVoe (1995) sought to estimate the prevalence of false allegations of child sexual abuse in the context of divorce. They examined a clinical sample comprising 215 divorce cases involving allegations of sexual abuse. These cases were drawn from 15 years of practice at a multi-disciplinary university-based clinic in the mid-west of USA. Most of the referrals to the clinic had come from child welfare services. This study remains one of the most thorough clinical studies conducted in the area of divorce and false allegations of abuse.

Faller and DeVoe (1995) found that most allegations of sexual abuse were made against biological fathers (69% of named offenders), followed by step-parents and biological mothers (9% and 8% respectively), followed by other relatives, non-relatives and others (6%, 4% and 3%). Based on the clinical judgment of the multi-disciplinary team, alleged abuse was substantiated in 73% of cases, 20% of cases were classified as “unlikely”, and 7% as “uncertain”. By contrast, the domestic relations court substantiated 35% of these cases, did not substantiate 44% of cases, made no mention of the alleged sexual abuse in 14% of cases, and was “unclear” in 7% (for example, because of a vague court order, no decision by the court, or a lack of information).

Faller and DeVoe (1995) suggested that there were four causal pathways between divorce and allegations of child sexual abuse: (a) divorce follows the discovery of abuse (14% of cases); (b) divorce occurs before the discovery of abuse that has been occurring during the marriage (25%); (c) abuse begins to occur during or after parental separation (27%); and (d) allegations of abuse are false (14%) or potentially false (7%), with 5% classified as “knowingly made false”<sup>48</sup> This low rate of deliberately false allegations, as noted by Faller and DeVoe, accords with other studies (such as Thoennes & Tjaden, 1990, see below). It is noteworthy that Faller and DeVoe found that the substantiation rate by the court of allegations of child sexual abuse was around half the clinical substantiation rate.

In summary, these three clinical studies of alleged child sexual abuse produced mixed findings as to whether “fictitious” allegations disproportionately occur in child custody disputes: Jones and Seig (1988) suggested that custody disputes may increase the likelihood of fictitious allegations, McGraw and Smith (1992) found that allegations of child sexual abuse were “only slightly more likely” to be determined fictitious in the context of custody disputes, while Faller and DeVoe (1995) found only a small number of deliberately false allegations.

These studies point to the difficulty of establishing the veracity of allegations of child sexual abuse. It is also important to note that these samples may not be representative of the population

47 The reported rate was actually 16.5%, but all figures reported in the text of this chapter have been rounded for readability.

48 Percentages do not total 100% due to rounding. Faller and DeVoe (1995) also noted two other sets of cases: 13% of cases in which the allegations of abuse were not related to custody proceedings because the alleged abuser was not a biological parent; and 4% of cases involving apparently false allegations made by children (of which only 1 of 9 instances appeared to be intentionally false). It should be noted that the 10 “deliberately false” allegations made by adults actually only involved 6 parents; 4 of the allegations were made by one father.

of separating parents involved in parenting disputes, given that they were derived from referrals to specialist centres.

### 2.2.2.2 Studies of alleged child abuse based on child protection service data

Three studies of child protection investigations involving post-separation custody disputes also warrant brief mention: one study was conducted in England, the other two in Canada.

In England, Anthony and Watkeys (1991) examined all referrals of suspected child sexual abuse received by child health, social services and police between 1986 and 1989 in the South Wales area. Sexual abuse was proven in 197 of the 350 referrals (56%) that were fully investigated by a multidisciplinary team, 44% were deemed to be “unsubstantiated”, 18% “false”, while 9% of allegations were deemed to be “false and malicious”.<sup>49</sup>

Twenty-four of the children referred were also the subject of a custody dispute by their parents. Only 5 of these cases (21%) were substantiated. Anthony and Watkeys (1991) concluded that the aim of the deliberately false allegations in the 19 unsubstantiated cases was to prevent parent-child contact from occurring, and to make life more difficult (mostly for the fathers). They noted that these allegations were often followed by counter-accusations by fathers against mothers' new cohabiting partners or associates.

In Canada, Hlady and Gunter (1990) sought to determine the frequency of custody and access disputes within the caseload of a child protection unit in the British Columbia Children's Hospital. The unit assessed 370 children in 1988, 41 (11%) of whom were involved a custody/access dispute. Sexual abuse was alleged in 34 of these cases (83%), for which there was physical evidence in 6 cases; physical abuse was alleged in seven cases (17%), for which there were corroborating findings in 5 cases.

Hlady and Gunter (1990) found that child sexual abuse was substantiated at roughly the same rate for the custody/access group and the group where custody and access was not an issue (18% and 15%). This was in contrast to allegations of physical abuse, where such allegations were more likely to be substantiated in the custody/access group than in the non-custody dispute group (71% vs 48%). The finding requires caution, however, because the ‘custody’ sample involved only 7 allegations of physical abuse (of which 5 were substantiated). They noted that allegations were frequently vague, and that children's behavioural problems were typically the trigger for a report in the absence of physical findings. Hlady and Gunter concluded that, although false allegations of child sexual abuse were believed to be a common concern in divorce proceedings, their data did not support this concern.

More recently, two large specialised data collections that examine the incidence and characteristics of alleged child maltreatment have been developed in Canada: (a) the 1993 Ontario Incidence Study of Reported Child Abuse and Neglect (OIS-93) (Trocmé, McPhee, Tam, & Hay, 1994), which was based on surveys completed by child protection personnel in Ontario for a representative sample of 2447 children, and was replicated in 1998 and 2003; and (b) the 1998 Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-98), which expanded the scope and coverage of the Ontario study.

Drawing on data from the OIS-93 (Trocmé et al., 1994), Bala et al. (2001) noted that 46% of the investigations involved children from families in which the parents had separated or divorced.<sup>50</sup> Resident mothers made two-thirds of the allegations (with child sexual abuse being the most common allegation made by mothers—13% of all investigated sexual abuse allegations), while non-resident fathers raised a third of the allegations (see Table 2 in Bala et al., 2001).<sup>51</sup>

Of the allegations made by resident mothers against non-resident fathers, 23% were deemed to be substantiated, 27% were suspected, 50% were unfounded, while only 1% of the allegations were considered to be malicious (that is, deliberately false). There was a police investigation in

49 This last estimate is based on 6% malicious false reports by adults and 3% by children.

50 While data were not collected in the OIS about whether children were involved in a custody dispute, “cross-custody allegations”, in which separated parents raised allegations against each other, could be identified as a rough proxy for disputes (Bala et al., 2001, p. 32).

51 Similar relative proportions emerged in the OIS 1998 (see Table 8-1a in Trocmé et al., 2002, p. 116).

almost one third of these cases, with criminal charges being laid against the suspected non-resident father in 8% of the cases. By contrast, of the allegations raised by non-resident fathers against resident mothers, only 10% were deemed to be substantiated, 18% were suspected, 72% were unfounded, while 21% were considered to be malicious. There was a police investigation in 10% of these cases, with no criminal charges being laid against any of the resident mothers (again, see Table 2 in Bala et al., 2001).

Commenting on the OIS-93 data, Bala and Schuman (1999) noted that, while resident mothers made more than twice as many allegations of child sexual abuse against non-resident fathers than fathers did against mothers, non-resident fathers' allegations were less likely to have been substantiated and more likely to have been considered as deliberately false than the converse.

Drawing on national data from the CIS-98, Trocmé and Bala (2005) examined data from 7,672 child maltreatment investigations reported to a national random sample of Canadian child welfare services in late 1998. They sought to estimate the prevalence of deliberately false allegations of abuse and neglect in the context of post-separation custody and access disputes. Using a standard set of definitions, child protection workers in the sample reported the details of maltreatment incidents and the results of their investigations. Their assessment involved a clinical judgment as to whether the reports were substantiated, suspected, unsubstantiated (in good faith), or were made maliciously (that is, were deliberately false). Their attempt to identify "intentionally false" reports within a large national random sample is a unique feature of the study.

In line with other national studies of child maltreatment, data from the Canadian Incidence Study indicated that only 4% of all cases were considered to be deliberately false (42% were substantiated; 23% were suspected; and 31% were unsubstantiated but made in good faith). This contrasts with cases in which there had been a custody or access dispute: 12% of these cases were considered to have been intentionally fabricated (40% were substantiated; 14% were suspected; and 34% were unsubstantiated in good faith).

More specifically, Trocmé and Bala (2005) found, among other things, that: (a) deliberately false accusations of child neglect were far more common than false allegations of abuse; (b) non-resident parents (mostly fathers) were more likely than resident parents (mostly mothers) to make false reports, which runs counter to the view put forward by some that false allegations are widespread and made by mothers against fathers; and (c) children rarely made deliberately false allegations of sexual abuse.

Specifically, they concluded that:

noncustodial parents were responsible for 43% of intentionally false reports in cases involving custody or access disputes, with relatives, neighbors, or acquaintances accounting for another 19% of these cases. Custodial parents (14%) and children (2%) were responsible for relatively few intentionally false allegations in cases arising in a context in which there was an ongoing dispute over custody and access. (p. 1341)

Trocmé and Bala (2005) suggested that, although intentionally fabricated reports are an important issue (particularly in relation to custody disputes), of greater concern is that such allegations may overshadow unsubstantiated allegations raised in good faith and unresolved reports where suspicions of abuse and neglect remain, both of which were found to be far more prevalent.

### **2.2.2.3 Studies of child abuse based on family court data**

At least three significant studies of allegations of child sexual (and physical) abuse in the context of family law proceedings have been conducted: two in the US, and one in Canada.

In what continues to be one of the largest focused empirical studies to date, Thoennes and Tjaden (1990) examined the incidence, type and apparent veracity of allegations of child sexual abuse in the context of custody and access disputes. They analysed data from 169 custody/access disputes that involved an allegation of child sexual abuse. These data were collected across a six-month period by mediators and custody evaluators based at domestic relations courts in

jurisdictions in 12 US states.<sup>52</sup> Staff completed a summary form each time they encountered a case in which an allegation of child sexual abuse was raised. These data were then augmented by a detailed review of family court files (including any custody evaluation and court orders), and information from child protective service agency files (for example, Was the case reported? Was there an investigation? What was found?). Cases for over 9,000 families in dispute about custody or access were screened for allegations of sexual abuse.

Thoennes and Tjaden (1990) found that just under 2% of custody/access disputes involved an allegation of child sexual abuse (ranging from 1–8% across different jurisdictions).<sup>53</sup> Mothers accused fathers of the abuse in just under half (48%) of these cases, or accused step-fathers in 6% of cases. Fathers accused mothers or a mothers' new partner in 6% and 10% of cases respectively. Almost 20% of cases involved allegations by mothers (13%) or fathers (6%) against other family friends or relatives; a third party alleged abuse in another 11% of the cases. Four per cent of the cases involved a counter-accusation, in which the original allegation was denied by the alleged perpetrator, who in turn alleged the other parent perpetrated the abuse.

Based on the assessment of either a custody evaluator, child protection worker or both in the 129 cases where assessment data were available, Thoennes and Tjaden (1990) found that sexual abuse was believed to have occurred in half the cases, no abuse was thought to have occurred in one third of cases, and the remaining 17% of cases were indeterminate. More specifically, where mothers accused fathers of abuse, Thoennes and Tjaden found that half the cases were perceived by the professionals to be likely, one third were deemed unlikely, and 18% were indeterminate; in the less common situation where fathers accused mothers, 42% of cases were deemed "likely", 41% as "unlikely", and 17% could not be determined.<sup>54</sup>

Thoennes and Tjaden concluded that:

allegations of sexual abuse among families in dispute over custody and visitation are no more likely to be determined false than are allegations of child sexual abuse in the general population. Further, mothers are no more likely than fathers to make false allegations. (p. 161)

It is important to note that these researchers were equating allegations that were perceived to be unlikely with allegations that were perceived to be false—something that probably reflects the under-developed conceptual frames operating in the late 1980s.

Amid growing concern in the US that allegations of child sexual abuse were commonplace in child custody/access disputes, McIntosh and Prinz (1993) sought to determine the extent to which this was the case by analysing the entire one-year caseload of a county family court. Specifically, they reviewed the files of 603 applications in 1987 for divorce by parents (98% of the sample) or cases involving a post-divorce child custody/access dispute (2% of the sample); 14% of the overall sample involved a custody/access dispute.

McIntosh and Prinz (1993) found that allegations of child abuse were relatively rare. Allegations of child physical abuse were made in only 2% of all cases (6% of custody dispute cases), and sexual abuse allegations were raised in less than 1% of all cases (2% of the custody dispute cases). They noted that in the five cases where sexual abuse allegations had been made, not one of the final court judgments addressed the veracity of these allegations. It is noteworthy that this study included independent coding of a random sub-sample of 34 cases, as well as a review by the entire team of the relatively small number of cases where abuse was identified, as a reliability check of the coding.

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52 This data collection followed an extensive round of preliminary interviews with, and surveys of, over 200 court personnel (judges, administrators, mediators and custody evaluators) across the US, complemented by a subsequent round of personal interviews with 70 court professionals in 5 states involved in cases where allegations of sexual abuse have been raised. Some of these preliminary data are discussed by Thoennes and Pearson (1988).

53 They noted that this estimate is similar to those reported by Duryee (1987), who found that 6% of allegations of sexual abuse were raised in 524 custody/access disputes during a three-month block in 1985–86; 5% of allegations of sexual abuse were raised in 861 disputes during a similar period in 1986–87 (cited in Thoennes & Tjaden, 1990).

54 Where a parent accused a third party, the estimates were 30% "likely", 45% "unlikely" and 25% "indeterminate".



In Canada, Bala and Schuman (1999) reviewed family law judges' written decisions in 196 judgments between 1990 and 1998, where allegations of child (physical or sexual) abuse had been in the context of parental separation. Of these cases, 23% were substantiated, 45% were unfounded and 35% contained evidence of abuse, but the judge did not make a finding that abuse had occurred. According to Bala and Schuman, the judge believed a deliberately false allegation had been made in 45 of the 150 cases (30%) where abuse was unsubstantiated. Most (71%) of the allegations raised in the 196 judgments examined were made by mothers, compared with only 17% by fathers and 2% by grandparents or foster parents. Children were found to instigate allegations in only 9% of the cases under review. Thus, fathers were most likely to be accused of abuse (74%), followed by mothers (13%), stepfathers or a mother's boyfriend (7%), then a grandparent (3%), followed by other kin (including siblings) (3%) (Bala & Schuman, 1999). The researchers were quick to point out, however, that their findings may not generalise to all cases where allegations are made in family law because perpetrators are unlikely to contest allegations of abuse where there is strong evidence against them. In addition, the Quicklaw sample of judgments is likely to be biased towards judgments involving contentious, complex and novel legal arguments.

## 2.3 Empirical studies of allegations of family violence, child abuse and neglect

At least three significant empirical studies of allegations of family violence, child abuse, child neglect and their potential overlap, have been conducted in North America and England.

The California Administrative Office of the Courts collects state-wide longitudinal data on a range of family law issues, including the extent to which concerns about abuse are raised in court-mandated mediation and custody investigations. These data relate to over 18,000 child custody cases and are analysed by the AOC's Center for Families, Children and the Courts. A baseline survey was conducted in 1991 by the Center, with subsequent waves of data collected in 1993, 1996 and 1999.

In its Snapshot Study (Center for Families, Children and the Courts, 1993), the Center found that concerns about family violence, child abuse and substance abuse were frequently raised by either or both parents in mediation sessions. Specifically, family violence was raised in 39% of all sessions, co-existing with other problems in 31% of sessions. Substance abuse problems were raised almost as frequently as family violence (38% of sessions), followed by child neglect (30%), child physical abuse (18%), child sexual abuse (8%) and child abduction (6%). Concerns about other criminal activities were raised in 8% of sessions, typically in tandem with other forms of alleged parental misconduct.

In 1999, based on reports from 2,500 separating mothers and fathers, family violence and substance abuse continued to remain the two most common issues raised in a case (29% and 25%, respectively) (California Administrative Office of the Courts, 2003). More broadly, in 55% of cases, at least one issue related to parental misconduct was raised.<sup>55</sup> In just over three quarters (76%) of court-based custody mediation cases, at least one indicator of prior interparental violence was raised by a parent (California Administrative Office of the Courts, 2003, p. 3). The Center also noted that "even in cases with a history of relatively severe acts of domestic violence or restraining orders, the parents surveyed often did not raise issues of violence before or during mediation" (California Administrative Office of the Courts, 2003, p. 9).

In addition, mediators reported that mothers and fathers raised different types of issues about each other: family violence, substance abuse and harassment were raised as issues by mothers, whereas fathers tended to raise issues about child neglect and psychological disorders.

In Florida, Sorensen et al. (1995) examined the relationship between allegations of spousal violence, child abuse, child neglect and substance abuse on the one hand, and custody awards

<sup>55</sup> The issues included: "domestic violence, substance abuse, maligning, harassing, emotional abuse of child, physical abuse of child, sexual abuse of child, child neglect, psychological disorder, stalking, and child abduction" (California Administrative Office of the Courts, 2003, p. 2).

on the other.<sup>56</sup> They examined data reviewed by child representatives in 60 contested custody cases requiring judicial determination between September 1988 and October 1990.

Sorensen et al. (1995) found that allegations of parental misconduct occurred frequently in contested child custody cases: 83% of the cases contained at least one allegation, 70% of cases contained multiple allegations and 45% of the cases involved mutual allegations. Allegations of spousal emotional abuse were most common, whereas allegations of child sexual abuse were least common. They also found that allegations against mothers and stepfathers were more likely to be about the “previous abuse” of children (18% of cases) and recent child neglect (35%), more so than similar allegations against fathers and stepmothers. Conversely, allegations against fathers and stepmothers most often related to recent spousal abuse (physical and emotional) and child sexual abuse (35%, 42% and 17% respectively).

According to Sorensen et al. (1995), 30% of the allegations raised were substantiated; allegations of prior child abuse, child physical abuse and child neglect were substantiated most frequently (50%–43%), compared with only 20% of allegations of spousal physical abuse, alcohol abuse and child emotional abuse.<sup>57</sup> Allegations of child sexual abuse were substantiated the least (7%). Sorensen et al. noted how this estimate was markedly smaller than the 50% substantiation rate found by Thoennes and Tjaden (1990) in their study of custody cases and the study conducted by Jones and McGraw (1987) that examined reports to child welfare services. Sorensen et al. speculated that parents facing strong corroborating evidence of abuse or neglect might “fear negative responses from the court, and thus be more inclined to settle through mediation, or in family court, prior to dissolution of marriage” (p. 259). Sorensen et al. noted that they were unable to distinguish unsubstantiated allegations made in good faith from deliberately false allegations.

One of the key findings of the study was that judges seemed to be sensitive to allegations of abuse when making custody awards, despite the lack of corroborating evidence. Sorensen et al. (1995) suggested that:

judges do not require sufficient evidence for substantiation of the abuse/neglect allegations to consider such information relevant. The researchers believe this finding may indicate the presence of judicial sensitivity to the frequent absence of corroborative evidence of child abuse/neglect or spousal abuse. Another possible interpretation of this finding is that judges are more concerned with children’s welfare than with parental rights. ... [Conversely] it is possible that judges are not willing to severely limit one parent’s function vis-a-vis child care based on unsubstantiated allegations. (p. 258–259)

More recently, Smart, May, Wade, and Furniss (2003) investigated residence and contact disputes between litigating parents in three county courts in different parts of England. They obtained a random sample of 430 cases relating to residence and contact disputes under the *Children Act 1989*.<sup>58</sup> These cases went to court in the year 2000. They also conducted an in-depth content analysis of 281 files in order to perform a more fine-grained analysis of the nature of post-separation parenting disputes, including allegations of family violence and child abuse.

56 They were especially interested in the way in which judges interpreted and applied the law relating to children’s matters, but noted that existing research into judicial decision-making had generally relied on surveys of judges (e.g., Pearson & Ring, 1981, cited in Jones & McGraw, 1987; Settle & Lowery, 1982; Waller & Daniel, 2004). They noted that asking judges to rate the importance of certain criteria in their decisions (or asking lawyers to second-guess judges’ thinking) is problematic at a number of methodological levels—not the least of which is the potential for social desirability bias. Moreover, it may be difficult at the best of times to articulate one’s own decision-making processes. Sorensen et al. (1995) sought to overcome some of these methodological issues by modelling judicial decision-making from a sample of contested custody proceedings.

57 *Substantiation* was based on “corroborating information such as provided by a medical examination, report of witnesses, police, or child protection personnel” (Sorensen et al., 1995, p. 254).

58 The project also conducted in-depth interviews with parents, and step-kin and other kin involved in the disputes.

Smart et al. (2003) found that 22% of cases contained an allegation of physical or emotional violence<sup>59</sup> and 6% of cases contained allegations of child sexual abuse. They noted that the cases involving allegations of family violence could be classified into three broad types: (a) cases where mothers had applied for residence, typically because the mother had to leave the home without the children or because the father had taken (or had threatened to take) the children from the mother's care (one third of cases involving allegations of family violence); (b) cases where fathers were seeking in-person contact with children and perceived contact was being minimised or obstructed, but ongoing violence had been flagged as the reason for the cessation of contact (another third of cases); and (c) cases where both parents (or sometimes others) sought residence. Cases involving allegations of child sexual abuse by one of the parents unfolded in three main ways: (a) the case dissipated when the alleged perpetrator withdrew; (b) the court found that there was insufficient evidence to support the allegations; or (c) the allegations became the centre of prolonged investigations.

A key insight from the study was that where children had witnessed family violence or were the subject of abuse, this appeared to impact on judicial decision-making. Where there was little or inconclusive evidence, allegations of violence did not appear to influence residence or parent-child contact. Smart et al. (2003) suggested that it was rare for face-to-face parent-child contact to ever be denied by the courts. Even where the court thought that children might be at risk, indirect contact could still be ordered.

In the US, Johnston et al. (2005) investigated allegations of child abuse, neglect and family violence among 120 divorced families referred for child custody evaluations or custody counselling and the extent to which these allegations were substantiated.<sup>60</sup> The families in the study, according to Johnston et al., were at the high end of the conflict spectrum, had been unable to resolve their custody disputes after mandatory mediation and had been referred by family courts in the San Francisco Bay Area between 1989 and 2002.

Following coding of the documentary records<sup>61</sup> of these cases by experienced clinicians working independently, Johnston et al. (2005) found that at least one allegation of abuse was raised against mothers in 56% of families and against fathers in 77% of the families in the sample (and substantiated in 34% and 57% respectively). More specifically, allegations of child physical/verbal abuse were made against mothers in 15% of families and against fathers in 21% of families (and substantiated in 9% and 6% respectively); allegations of child sexual abuse were made against mothers in 6% of families and against fathers in 23% of families (and substantiated in 3% and 6% respectively); and allegations of family violence were made against mothers in 30% of families and against fathers in 55% of families (and substantiated in 15% and 41% respectively).

More broadly, Johnston et al. (2005) found that just over half of the allegations of abuse, neglect and family violence were substantiated in some way (52% against mothers, 51% against fathers); around one fourth (24%) of mutual allegations were also substantiated. Johnston and her colleagues interpreted these findings to suggest that mothers are "no more likely to allege unsubstantiated abuse against their children's other parent than are men" (p. 290); a finding that they believe offers little support for Gardner's (1999) "parental alienation syndrome" thesis that mothers were more likely than fathers to make false allegations. In line with larger national incidence studies in the US context, both mothers and fathers were also found to be equally responsible for child physical abuse and neglect.

Some gender differences did nonetheless emerge. Johnston et al. (2005) found that mothers were more likely to allege child sexual abuse and drug abuse against fathers than the reverse, although neither types of allegations were substantiated at a relatively high rate (unlike mothers' allegations against fathers of alcohol abuse and spousal violence). Johnston et al. suggested that the latter finding supports feminist approaches that point to the gendered nature of family violence.

59 Smart et al. (2003) defined "violence" and "abuse" as "physical, verbal and emotional violence and harassment of either a parent or child" (see note 18, p. 131).

60 While equal numbers of parents were in the custody evaluation and custody counselling groups, Johnston et al. (2005) noted that one-third of those in the custody counselling group had also received a prior custody evaluation.

61 According to Johnston and her colleagues (2005), the data had been collected, on average, about three to four years after parents had separated.



It is important to note some of the methodological limitations of the study, many of which Johnston and her colleagues (2005) noted themselves. First, the findings are based on a moderately sized, non-random sample from a single US state, and thus may not generalise to other populations of divorced parents in dispute about child custody—either in the US or elsewhere. Second, despite care to define and standardise “substantiations” of abuse, other researchers might believe this coding to be under- or over-inclusive. Third, Johnston et al.’s definition of domestic violence included any act of physical aggression or coercive control such as the use of physical restraint, force, or threats of force by one parent to compel the other parent to do something against his or her will. However, the range and severity of violence (and other forms of abuse) were not rated. So, pushing and slapping, for instance, was not distinguished from murder or the use of a weapon. Fourth, “substantiations of abuse” were coded on the basis of any corroborating evidence—except where this had been dismissed as entirely unfounded by the court—and where the abuse was deemed by the researchers to have been “severe enough” to have affected parenting and to have warranted consideration in custody decision-making (p. 288). Fifth, no attempt was made to distinguish intentionally false allegations from other forms of unsubstantiated allegations, or to distinguish alleged parent perpetrators from other alleged perpetrators.

At the same time, this work is one of the most comprehensive studies of abuse conducted to date. It has extended much of the earlier work by including spousal violence, substance abuse and child neglect in its analytic purview, not just child abuse. It also has expansive coverage in relation to documentary evidence, in that it examined concerns raised in mediation, custody counselling and custody evaluations, not just allegations raised in formal complaints to the court.

## 2.4 Summary

It seems fair to say that the international research literature focusing on allegations of family violence and child abuse in the context of post-separation parenting disputes is somewhat of a methodological potpourri: key concepts and terms are often used loosely, differentially or not defined at all; foci, aims, sampling strategies (and representativeness) and methodologies vary considerably across studies; the findings and pattern of results are often complex; and there appears to be little (if any) replication or regard for building on the methodological approaches of prior work. Put simply, the international literature looks to comprise—at best—a disparate collection of partially overlapping investigations, with little convergence among the various lines of inquiry.

The complexity and disparate nature of this literature makes it difficult to distil or articulate key findings into a definitive list. Nonetheless, several findings can be used as foundation stones in the absence of solid convergence between studies.

First, allegations of child sexual abuse in the context of custody disputes appear to occur relatively infrequently; the frequency of such allegations ranges from 2% (McIntosh & Prinz, 1993; Thoennes & Tjaden, 1990) to 6% (Smart, May, Wade, & Furniss, 2005). However, higher rates of allegations have been cited in studies with smaller samples that include high-conflict parents. In Johnston et al.’s (2005) study, child sexual abuse was alleged against mothers in 6% of families, while similar allegations were made against fathers in 23% of the 120 high-conflict families in that study. In Sorenson et al.’s (1995) study of 60 contested custody cases, 15% of cases involved allegations of child sexual abuse.

Second, though small, the incidence of child sexual abuse appears to be greater in the cases where the custody of children is in dispute than the incidence of such abuse reported in the general population (Thoennes & Tjaden, 1990).<sup>62</sup>

Third, allegations of child sexual abuse considered to be “deliberately false” (that is, “malicious” or “fictitious”) appear to be relatively uncommon in some studies, but elevated in other studies

62 According to Thoennes and Tjaden (1990), there are several possible reasons for this disparity; similar to other psychosocial stressors, child abuse may create stress and lead to separation, parental separation may itself create opportunities for abuse in certain family circumstances, and children may be more open to disclosing abuse by a parent because secrecy is less enforceable and the non-abusing parent may be more willing to believe the child in the face of inter-parental distrust and self-reliance (see also Corwin et al., 1987).

among certain subgroups—most notably, allegations made by non-resident fathers. Fallor and DeVoe (1995), for example, classified 5% of cases in their clinical sample as “knowingly made false”, and Trocmé et al. (1994) classified 1% of allegations made by resident mothers against non-resident fathers as “malicious”, compared with 21% of allegations made by non-resident fathers against resident mothers. More recently, Trocmé and Bala (2005) found that only 4% of all child protection cases in Canada in 1998 were considered to be deliberately false. This contrasts with cases in which there had been a custody or access dispute, of which 12% of those cases were considered to have been intentionally fabricated. Within the latter cases, non-resident parents (mostly fathers) were judged as being more likely than resident parents (mostly mothers) to make deliberately false reports of child sexual abuse (43% compared with 14%). Commenting on the Canadian data reported by Trocmé et al. (1994), Bala and Schuman (1999) suggested that even though mothers were more likely than fathers to make allegations of child sexual abuse, mothers’ allegations were more likely than fathers’ allegations to be substantiated.

Fourth, allegations of family violence appear to be more widespread than allegations of child abuse, ranging from 22% to 83% of custody/access dispute cases (Smart et al., 2005; Sorenson et al., 1995), with other estimates falling between these upper and lower bounds (Johnston et al., 2005; Logan et al., 2002; Logan et al., 2003).<sup>63</sup> That said, allegations of family violence and child abuse in the context of custody disputes can also co-occur. Logan et al. (2002), for example, found that cases involving family violence were more likely to have child abuse issues noted than cases in which family violence was not flagged.<sup>64</sup> Johnston et al. noted that “the more intransigent conflict-ridden divorcing families are likely to be troubled by multiple indicators of domestic violence, child neglect, molestation and abuse, parental substance abuse, mental health problems, and child abduction” (p. 291). High-end conflict can sometimes be part and parcel of a complex amalgam of interlocking psychosocial problems.

Fifth, several studies have noted that mothers and fathers often make different allegations: mothers are more likely to make allegations of family violence, child sexual abuse and substance abuse against fathers than fathers against mothers, with higher rates of substantiation in relation to family violence alleged against fathers than alleged against mothers (Johnston et al., 2005). By contrast, fathers appear to be more likely to allege child neglect and psychological problems against mothers than other types of allegations (California Administrative Office of the Courts, 2003). Nonetheless, mothers and fathers have been found by Johnston et al. to be equally likely to be responsible for child physical abuse and neglect. It is also noteworthy that two-sided allegations were raised in around half (49%) of the 120 families in Johnston et al.’s sample, and in 45% of cases in Sorensen et al.’s (1995) sample of 60 contested custody cases.

Sixth, allegations of violence have been found to influence applications for the custody (residence) of children (such that abusive fathers often do not gain the full-time care of children), but it seems that family courts rarely disallow parent–child contact (Shaffer & Bala, 2003; Smart et al., 2003). A potent predictor of case outcome in disputed parenting matters—at least in the UK—seems to be whether children witnessed any violence between their parents or experienced any violence or abuse themselves (Smart et al., 2005).

One final observation: As might be expected, the veracity of allegations is far more likely to be assessed in clinical or child protection settings than in family court jurisdictions. This is likely to reflect the different mandates and principles of evidence operating within each setting. As noted in Chapter 1, the role of the Family Court of Australia:

is not to determine whether an alleged perpetrator ... is guilty of any offence, nor necessarily to make a finding as to its occurrence. Rather, the High Court has made it clear that the Court must, in such circumstances, protect the child from an unacceptable risk. (FCoA, 2003, p. 9)<sup>65</sup>

63 Johnston et al. (2005) found that allegations of domestic violence were raised against mothers in 30% of families and against fathers in 55% of families in their sample.

64 However, only 2% of cases in Smart et al.’s (2003) sample involved allegations of both domestic violence and child sexual abuse—though this estimate is likely to be tempered by the low frequency of allegations of child sexual abuse.

65 See in this regard an excellent review of the concept of unacceptable risk by Fogarty (2006).

In the North American context, it is noteworthy that Faller and DeVoe (1995) found that the substantiation rate by court of allegations of child sexual abuse was around half the clinical substantiation rate. It is also worth noting that no attempt was made by Sorensen et al. (1995) or Johnston et al. (2005) to assess the veracity of allegations made in the context of family law proceedings. While assessing the veracity of allegations is difficult even where a plethora of clinical and collateral information is available, attempting to do so from the confines of formal court documents is to walk on shaky ground. While a judge may address the veracity of an allegation in setting out her or his written reasons (see, for example, Bala and Schuman, 1999), the international literature suggests that the court may sometimes look away from issues related to intimate partner violence or child abuse allegations (McIntosh & Prinz, 1993; Shaffer & Bala, 2003; Smart et al., 2003).

# 3 Australian research on allegations of family violence and child abuse in family law

A substantial Australian conceptual literature exists with respect to the impact of family violence on parenting and property applications in family law (see, for, example, Alexander, 2002, 2006; Behrens, 1993, 1995, 2006; Graycar, 1995; Kovacs, 2002; Monahan & Young, 2006; Parkinson, 1995; Victorian Law Reform Commission [VLRC], 2006). This chapter provides a brief overview of several key Australian empirical studies of family violence and child abuse, drawing on primary data in the context of post-separation parenting disputes.

As with the previous chapter, the Australian studies are arbitrarily grouped into three distinct lines of inquiry: (a) studies that focus on allegations of family violence; (b) studies that focus on allegations of child abuse; and (c) studies that focus on allegations of family violence and child abuse.<sup>66</sup> Some readers may prefer to skip to the summary at the end of this chapter rather than immerse themselves in the detail of diverse methodologies and findings. (Appendix A contains a summary of the key attributes of each study to help readers traverse the detail of these Australian studies.)

## 3.1 Empirical studies of allegations of family violence in family law

At least three empirical studies of family violence in the context of divorce have been conducted in Australia over the past decade: one study explored allegations of violence in the context of mediation (Keys Young, 1996); another examined the reports of a random sample of divorced adults (Sheehan & Smyth, 2000); a third study was primarily concerned with changes associated with the operation of the *Family Law Reform Act 1995* (Rhoades, Graycar, & Harrison, 2000).

### 3.1.1 Family violence in the context of mediation

Keys Young (1996) were commissioned by the Australian Government Attorney-General's Department to undertake a study into the issue of family violence and the practice of mediation. The study consulted with staff in 12 of the Australian Government-funded community-based family mediation services, at least one of which was in one of the states or territories. Exit surveys were conducted with mediation clients in all of these locations. Men and women ( $n = 27$  and  $n = 101$  respectively) were surveyed separately.<sup>67</sup> The surveys were designed to gather information about the prevalence of violence in cases presenting to mediation. Qualitative data were also gathered from 50 women and men who were willing to discuss their experiences of mediation. Finally, in three locations, information and referral network staff from organisations such as women's domestic violence and legal aid services were also consulted.

The key findings with respect to violence can be summarised as follows. The agencies themselves had identified almost a third of the women surveyed as clients in cases involving violence. On the other hand, almost three quarters of the women surveyed reported experiencing what they described as some type of violence or abuse. Thus, of the 65 cases in which agencies did not identify violence, 41 of the women surveyed by the researchers reported at least one form of violence directed at them or their children. Of the 27 men who responded to the survey, only 5 reported some form of violence or abuse.

66 Johnson's (2002) Western Australian study of post-separation familicide is also relevant and has been noted as part of the broader analysis of violence in Chapter 1.

67 The response rate was 47% for women but only 26% for men.

The report suggested that a broad range of violence was common in families presenting for mediation and that agencies tended not to identify a considerable number of these cases. On the other hand, it found that women, in many cases identified as involving violence, reported satisfaction with the mediation processes and with the outcomes.

As Cleak, Bickerdike, and Moloney (2006) noted, the Keys Young report helped to galvanise the mediation sector into adopting more systematic and more reliable instruments and protocols to assist in the identification of family violence and to make a judgment about victims' capacity to participate effectively in family mediation. Thus, for some years, specialist intake and screening has been routinely used and indeed is required by government as part of its accreditation of family dispute resolution programs. Screening aims not only to assess the suitability of the dispute and the disputants for mediation, but to make a referral to more appropriate services when this is not the case.

### **3.1.2 A national survey of divorced parents**

Sheehan and Smyth (2000) reported on telephone interviews with a random sample of Australian men and women who had divorced after January 1988.<sup>68</sup> Using questions derived from the Women's Safety Survey (Australian Bureau of Statistics [ABS], 1996), the study sought to ascertain the rate at which family violence had been experienced both during and after the marriage. In order to gain some idea of the emotional and physical consequences of reported violence, questions were also asked about experiences of fear during and after the marriage and the extent to which any physical injuries had required treatment by a doctor or nurse. In addition, the study sought information on post-separation property distribution, living standards and workforce participation.

Sheehan and Smyth (2000) found that the broader the definition of violence, the higher was its reported incidence and the less was the gender differentiation. Thus, when spousal violence was defined as all actions that would be considered as an offence under criminal law, 55% of the men ( $n = 152$ ) and 65% of the women ( $n = 244$ ) reported its existence. When violence was defined as "actual or threatened conduct that would cause fear about wellbeing or safety", the percentages decreased to 24% for men and 53% for women.<sup>69</sup> With respect to reports of injury that required medical treatment, the relevant percentages reduced further to 3% and 14%.

A significant finding in this study was that:

despite the extent of the financial difficulties experienced, and their ongoing responsibility for the care of children, women who report spousal violence are more likely than women who report no spousal violence to have received a minority of the share of property. (p. 118)

Further, the more severe the reported violence, the greater was the likelihood that a minority of both the domestic assets and the total marital assets would be awarded to the female partner and the greater was the likelihood that the female partner would be in difficult financial circumstances following separation. In addition, the more severe the violence, the less likely it was that the female victims would be participating in the workforce at the time the interview was conducted.

Sheehan and Smyth (2000) concluded that legally defined violence appears to be common in the divorcing population, but that an adequate understanding of its consequences requires greater specificity with respect to definitions. Fear, combined with multiple domains of violence (physical/sexual, emotional and harassment) are associated with poorer post-separation financial outcomes for women. It was suggested that these more severe forms of violence are likely to be associated with difficulties in negotiating a fair property settlement, and a situation in which concerns for safety may give way to the right to a fair share.

68 Western Australia was excluded from this survey.

69 This figure for women is very similar to Hunter et al.'s (2000) finding. After examining 176 Family Court files, Hunter and her colleagues found that 54% ( $n = 95$ ) "contained evidence of domestic violence".

### 3.1.3 Assessing the impact of the Family Law Reform Act 1995

Rhoades et al. (2000) were especially interested in what impact the *Family Law Reform Act 1995* may have had on court-ordered parenting arrangements. They reported on a content analysis of 674 interim and final Family Court judgments, the vast majority of which ( $n = 635$ ) were unreported judgments collected in three batches: 1995, 1996–97 and 1998–99. Of the last batch of cases, 78 out of the 229 were in the “final judgments” category, of which 52 (67%) involved allegations of violence.

In addition to an analysis of contents and outcomes of court cases, the report by Rhoades et al. (2000) made use of a wide range of other data sources, including interviews with court personnel, solicitors, workers in women’s services and litigants. Among other things, these interviews pointed to a perception that court orders were being made for increased amounts of time with non-resident parents, and that resident parents were feeling greater pressure to agree to endorsing such parenting arrangements, even in circumstances where they had safety concerns for themselves or their children of both.

Interim hearings were identified as an especially problematic area for judges who were trying to balance the claims by each parent for a continued relationship with their children against claims that wished to reduce or terminate the involvement on the grounds of alleged violence or abuse. One judge described decision-making processes at the interim stage as more like “artful dodging” than a judicial exercise (Rhoades et al., 2000, p. 76).

Rhoades et al. (2000) concluded that the *Reform Act* had contributed to an increase in the expectations of fathers regarding post-separation parenting arrangements with their children, and that even in the face of allegations of violence against fathers, judges were now more reluctant than they had previously been to make orders that precluded fathers’ involvement. The grounds upon which these conclusions were drawn have been questioned (Moloney, 2001; Parkinson, 2001).

## 3.2 Empirical studies of allegations of child abuse in family law

At least three empirical studies of child abuse in the context of family law proceedings have been conducted in Australia.<sup>70</sup> Two were conducted in South Australia.<sup>71</sup>

### 3.2.1 Child sexual abuse and Family Court judgments

In one of the earliest Australian studies of child sexual abuse in the context of family law proceedings, Kiel (1988) examined seven transcripts of judges’ decisions in which strong corroborative evidence of child sexual abuse was provided to the Family Court. Kiel sought to assess how the Court weighed the competing interests of “the preservation of family relations on one side and the protection of children on the other” (p. 3), where child sexual abuse allegations are raised.<sup>72</sup> She did not describe how she selected the seven cases in her sample.

Kiel (1988) identified two key themes from her analysis: (a) judicial scepticism towards allegations of child sexual abuse; and (b) a “family and welfare ideology” (p. 9), in which the “best interest”

70 Bromfield (2005) also investigated the prevalence, course and predictors of chronic child maltreatment in a sample of 100 child protection cases in regional Victoria; 38 of the 100 cases involved allegations made in the context of a custody dispute. It is noteworthy that 8% of the 100 cases in the sample involved allegations that were classified by Bromfield as “malicious”.

71 Relevant studies (e.g., Cashmore, Chisholm, & Waters, 1992; Young, 1998) drawing on secondary data from courts with family law jurisdiction are not included in this review. It is nonetheless worth noting that figures for the 1993 calendar year provided by the Family Court of Western Australia to Young suggested to her that the rate of child sexual abuse allegations seemed to be “somewhere in the range of 1.2% of all cases involving parenting disputes” (p. 103). Young noted that this estimate was consistent with the findings of Cashmore et al. (1992), who wrote that “there is as yet little Australian data on these questions, but what is available does not support the notion that child sexual assault allegations are common in the resolution of custody and access disputes: a study by the Family Court Counselling Service found that in a 3-month period only 1.6% of all new cases registered with the Court Counselling Service involved allegations of child sexual assaults” (p. 32).

72 Kiel (1988) also analysed the Family Court’s submission to the 1985 New South Wales Child Sexual Assault Taskforce.



principle appeared to favour the interests of parents over children's interests. Specifically, she noted that a judge had made a formal finding of abuse in only two of the seven cases. Kiel concluded:

The Family Court has been said to rarely deny access, even in cases where there is strong evidence of abuse. This was true of the seven cases examined here. Access was denied in only one case. Normal access was granted in one case, and supervised access in five. (p. 4)

While Kiel (1988) noted that her sample was small and not necessarily representative, she suggested that the purpose of her analysis was to encourage consideration of the issue of child protection issues in family law matters.

### **3.2.2 Assessing the impact of spousal violence on children**

In what was effectively a clinical sample, Mertin (1995) studied changes in the emotional and behavioural functioning of 34 children whose mothers had sought refuge from violent partners in a women's shelter. Just over half the children were reported to have been hit by their fathers. Shortly after they had left their partners (Time 1), Mertin found that 62% of the children were rated by their mothers ( $n = 27$ ) as having borderline to severe behaviour problems. Responses to standardised measures filled out by the children themselves indicated that 18% had significantly elevated anxiety scores, while 35% had significant levels of depression. All but three of the children (the three having reported no fear of their fathers) had no contact with their fathers over the next 10 months.

Mertin (1995) found that at re-test at the end of this 10-month interval (Time 2), many of the children who had had psychological difficulties at Time 1, were now scoring in the normal range. This prompted him to speculate that many of these situations are reactive and are thus likely to improve if the source of the difficulties is removed. Mertin suggested that his findings were "consistent with" those of Church (1984). In a self-published study, Church had found similar recovery rates among children who, after their mothers had left a violent relationship, had had no contact with their fathers except in the cases in which they were unafraid of them.

Mertin (1995) concluded by suggesting that cessation of father-child contact following separation after a violent relationship is likely to be of benefit to the child. However, he acknowledged two significant design limitations. The first was the absence of a control group of children who continued contact with their fathers. The second was the lack of any data on the mothers' psychological health at Time 1 and Time 2.

### **3.2.3 Allegations of child sexual abuse in family law proceedings**

Hume (1996) investigated 50 cases in which child sexual assault allegations had been made in proceedings in the Family Court of Australia in Adelaide. The cases involved a total of 105 children (45 male, 60 female), 70 of whom (21 male, 49 female) were alleged to have been sexually abused. Of the 50 cases, 36 contained specific allegations of sexual abuse, 11 contained allegations that a child was at risk, and 3 expressed concerns about inappropriate behaviour that indicated the possibility of sexual abuse.

Across all cases, 42% of the allegations were confirmed, 16% proved inconclusive, and 8% were found to be false. In 34% of the cases, no investigation into the allegations was made. However, in the 36 cases in which the allegations of abuse were *specific*, 56% were confirmed, 14% were inconclusive, 11% were found to be false, and 19% were not investigated. Hume (1996) concluded that the more specific the allegation, the greater was the possibility of confirmation. The increase in possibility was only modest, however, and may have largely reflected the fact that specificity of allegation was more likely (though by no means certain) to trigger an investigation. At the same time, a slightly greater percentage of false allegations was also found in this group.

In the 32 cases in which the alleged abuser was the father, 59% were confirmed, 13% were inconclusive and 6% were found to be false. Again, however, the "no investigation" category (30%) was relatively large. In the 27 cases in which the alleged abuser was the father, and the allegations

were specific, the confirmation rate climbed to 70%, while the inconclusive outcomes and false allegation findings were both 7%. Even in this group, however, 15% were not investigated.

Hume (1996) found that for the sample as a whole, the pattern of confirmations, inconclusive findings, and false allegations were roughly similar to those reported by the state's child protective services. It was difficult to be clear if the non-investigation rate in the court group was higher. This was because the state sample contained separate figures in the "non-investigation", "partial investigation" and "not located" categories. When added together, these categories suggested a profile of non-investigations that are probably similar to that of the court. But Hume's findings that confirmation rates were greater as allegations became more specific, and considerably greater when that specificity was directed at the father, suggests that in these circumstances Family Court confirmation rates may be significantly greater than confirmation rates by state authorities.

Of the 50 cases investigated, 10 withdrew their Family Court applications and 1 had not been finalised at the time of the completion of the study. Of the remaining cases, 17 resulted in the alleged abuser having no further contact with the children, while 22 proceeded to "normal" post-separation parenting arrangements. However, this number was reduced to 8 "normal" arrangements when the alleged abuser was the father. Only 9 cases proceeded to a fully defended hearing. In 7 of these, allegations of sexual abuse were confirmed by an investigative body, though in only one case did the Court itself make a finding (on the balance of probabilities) that sexual abuse had occurred.

Hume (1996) summarised her study by suggesting that the Court, "despite [usually making] no legal determination that abuse had occurred, tended to take a child protective stance in its judgments. In only two cases, did the judgment suggest that the sexual abuse allegation had been made maliciously" (p. 18). Hume believed that her study supported the hypothesis that false allegations of child sexual abuse are no more likely to occur in the context of a family law dispute than in other circumstances.

### **3.3 Empirical studies of allegations of family violence, child abuse and neglect**

At least five sets of empirical studies of family violence and child abuse have been conducted in Australia.

#### ***3.3.1 Allegations of family violence and child abuse in fully defended cases***

The first significant study of the outcome of child-related cases in the Family Court of Australia was especially interested in the extent to which the Court's decisions reflected gendered assumptions about parenting. The Court at the time was being criticised for reinforcing gendered stereotypes in its custody decisions, the majority of which were made in favour of mothers.

The study, by Horwill and Bordow (1983), examined judicial decisions in 100 fully defended cases heard in the Melbourne and Sydney registries in 1980, approximately 5 years after the Court had commenced operations. The report made no reference to allegations of violence and child abuse. Rather, it examined the extent to which decisions were informed by gender-neutral principles—the "tender years" presumption (which traditionally favoured mothers)—and arguments based on the status quo. "Other factors" were briefly explored, but again, violence and child abuse were not included in this exploration. Indeed, it was a sign of the times in which the report was written that the authors described the sort of cases that went on to defended hearings in the Family Court in the following terms:

It should be noted that defended cases in general can be regarded as atypical because of the "selection" process involved in getting to that stage—a process affected by such things as how people respond to the conciliation process, how the parents' lawyers see the case and its prospects and the advice they give, parents' ability to pay the costs involved, their ability to cope with a lengthy time of uncertainty and conflict, and their determination to push their view as far as possible. (p. 369–370)

Bordow (1994) set out to replicate this study, drawing this time on a sample of 294 child-related judgments supplied by judges throughout Australia during 1990. Again, the words “violence” and “abuse” were not mentioned in Bordow’s reporting of the results. However, the summary of findings made the following observation:

Another atypical feature of defended custody cases is the presence of a significant number of allegations of physical and emotional misconduct by one or both of the parents. (p. 262)

The word “misconduct” sits uneasily in the context of later research findings that began to identify serious violence and abuse as a significant issue in a percentage of family separations and in a percentage of child-related applications made to the Family Court. Parkinson (1995), however, suggested that Bordow (personal communication, 1994) revealed that in this same sample of cases 22% contained affidavits that alleged violence towards the wife (presumably by the former husband or partner), while 2% of cases contained allegations of violence by the wife’s new partner. In addition, 7% of the cases contained allegations of child sexual abuse by the father and another 3% contained allegations of abuse (type unspecified) towards children by others, such as stepfathers or family relatives.

### 3.3.2 Project Magellan

Brown, Frederico, Hewitt, and Sheehan’s (1998) *Violence in families: Report number one* is perhaps the most frequently cited study of child abuse and neglect in the context of Australian family law. The report consists of a series of conference papers (with the addition of an initial and a concluding chapter), all of which speak to research conducted in the Family Court of Australia in Melbourne and Canberra. The first paper (Chapter 2) drew initial conclusions based on a sub-sample of 30 Family Court cases, representing approximately 3% of a larger sample, which, the authors noted, were drawn from “probably 50% of the total population of case files from the years 1992–1993” (p. 15). The authors found that family violence in this sample was “widespread”.

Brown et al. (1998) also suggested that there was evidence from these cases that adult-to-adult violence masked child abuse. By this, they meant that a careful reading of the files indicated a link between adult violence and child abuse that was not immediately clear when one looked only at key data such as the orders being sought. Indeed, the authors flagged a more general concern in this regard—the fact that many of the issues raised in material, such as affidavits, are not pursued in the court process. They speculated that this might link to an observation of Brown and Blenkinsop (1994), whose research in the Victorian Children’s Court led them to suggest that “the Court could not deal with numbers of perpetrators or *numbers* of victims in one family” [italics added] (cited in Brown et al., 1998, p.18).<sup>73</sup>

In Chapter 3 of their report, Brown and her colleagues spoke to a sample of “the first 40 families studied in the Family Court” (p. 23). This presumably included the 30 cases referred to in Chapter 2. In this sample, they found that, “seventy per cent of the child abuse cases studied had spouse violence occurring” (p. 23). In the same chapter, they noted that “in the 40 cases studied initially, *all* involved abuse of the children as well as the female partner” [italics added] (p. 24).

It would appear, therefore, that this is a sample of cases selected for the presence of partner violence or abuse or both. Thus, the statement that “the review of the initial 40 cases showed widespread and pervasive violence occurring in families which are in dispute” (p. 26) is not unexpected. What may be more significant is the authors’ observation of how multi-layered the violence appeared to be. However, this observation must be tempered by two qualifications. First, the sample size ( $n = 40$ ) is again small. Second, it is not clear how the sample was drawn; this may have been a group of cases with unusually violent and abusive profiles.

Brown et al. (1998) noted that the Court had begun “to base decision-making on a definition of child abuse that saw the witnessing of parental abuse acknowledged as a form of child abuse” (p. 24). On the other hand, the study repeated the suggestion referred to in Chapter 2 that

73 The suggestion that court *processes* may struggle to deal with multiple allegations and counter allegations, and that legal strategists may at times advise that only one or two principal allegations be focused on (a “less is more” approach), seems to be worth further investigation.

violence tended to be minimised by the Court. The example given in support of this contention was the use of the word “alleged” with respect to a case in which it was claimed that a husband had fired a bullet into his house and into the house of a neighbour. Perhaps the incident had been proven or admitted to, but this was not made clear.

Significantly, it was found that one third of these initial 40 cases was settled by consent orders that subsequently broke down. Brown et al. (1998) concluded that consent orders can mask serious violence. This finding was linked to a more general observation that final resolution of these matters seemed difficult to achieve, with cases taking between 2 years and 10 years to reach completion. Indeed, some matters were said to have resolved themselves by default only because the child became too old to continue to be part of Family Court proceedings.

The relatively small samples referred to in Chapters 2 and 3 were drawn with the aim of assisting the researchers to get a feel for the Family Court population and for court processes. Chapter 4 drew on a larger sample and addressed the question: “Who are the families involved in custody and access disputes<sup>74</sup> where child abuse allegations occur and what are the problems or what is the nature of the abuse allegations they bring to the Court?” (p. 34).

This question was addressed by:

- an examination of case files from the Family Court’s Melbourne and Canberra registries that had become active as either new or re-activated applications between January 1994 and June 1995, and which were then followed up until July 1996
- interviews with relevant Court staff from both registries
- observation of pre-hearing conferences
- interviews with state child protection staff.

The study drew on information from files from both Melbourne and Canberra. The design of the study made use of the fact that in the Melbourne Registry, cases in which child abuse is alleged or in other ways appear to be an issue are tagged by the Court. In the period in question, 373 such cases were identified. This represented 3% of the total population of files during that time and 5% of the child-related matters. The final Melbourne sample consisted of 117 of these cases. In addition, 20 defended cases taken from a total of 143 cases that had no allegations of violence and abuse were included for comparison purposes. The authors also included 10 threatened violence cases and 3 others whose characteristics were unspecified.

The Canberra Registry did not tag child abuse cases. Thus, all 102 cases in which there were disputes over custody and access during the period noted above were reviewed. From this, 38 were identified as including child abuse allegations. These then became part of the study. Thus, the total number of cases analysed was 188.

Brown et al. (1998) summarised the results of their study as follows. Family Court cases that contained allegations or other evidence of child abuse had an unexpectedly high proportion of fathers with high rates of unemployment and mothers with high rates of non-employment. The men also had high rates of criminal convictions. The women’s criminal conviction rates were less high than those of the men, but compared to the general population were high nonetheless. It was suggested that “violence is fundamentally the problem that these families presented to the Court. Not only were they families in which abuse allegations had emerged, they were families in which partner-to-partner violence and child abuse had played a large part in precipitating the family relationship breakdown” (p. 64).

The authors also suggested that child abuse in parenting disputes in the Family Court was underestimated “in that while almost every case of formally identified child abuse was found to be present in those cases, it was also found to have been reported in over half of the custody and access cases which were categorised by the Court as not involving child abuse” (p. 65). In light of the substantiation rates discussed by the authors in Chapter 5 (see below), the first part of this statement is difficult to interpret. With regard to the second part of the statement, several qualifications need to be made. First, the sample of cases not involving child abuse (either 20

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74 This was the language of the day.

or 24) was a small one. Second, it is not clear what method was used to select these cases from the population of 143 cases in this category. Third, it is also unclear how the presence of child abuse was detected or defined, or what, if any, reliability checks were made with respect to the identification of these cases. On the basis of the evidence presented in their paper, the finding that most defended hearings of custody and access disputes also involved child abuse should be treated with caution.

The focus of Chapter 5 was on the relationship between the Family Court and state-based child protective services in the State of Victoria. Much of this chapter was concerned with comparing data drawn from those cases identified as involving child abuse allegations (the 3% of all files and 5% of children's matters noted above) with 10,000 closed cases from Victoria's child protective services.<sup>75</sup>

With respect to the Family Court cases, Brown et al. (1998) found that, although the child abuse group began as 5% of children's matters, by the time they reach the stage of a pre-hearing conference (judged to be at about the half-way mark towards completion in a typical defended hearing at the time), they make up about 50% of this category of cases.

Interestingly, in light of the fact that these were identified cases of child abuse allegations, Brown et al. (1998) also found that child abuse was cited as the cause of the relationship breakdown in a relatively small percentage of cases, the most common cause being cited as arguments and next most common as spousal violence. The potential for child abuse to be a catalyst for separation has been noted by others (for example, Faller & DeVoe, 1995, see Chapter 2 of the present study).

In seeking to explain this finding, Brown et al. (1998) speculated that in view of the fact that their preliminary study of 30 cases (see Chapter 2) found a high correlation between child abuse and spousal abuse, it may be that the alleged spousal abuse and spousal arguments were more prominent in their minds. They also noted that when the research staff were asked to determine if child abuse was a factor in the separation via an examination of the files, they "thought it was" in 41% of the cases. It is not clear, however, what criteria the researchers used to arrive at this conclusion.

With regard to the parents themselves, it has already been noted that both sexes had higher than normal rates of unemployment or non-employment and higher than normal rates of criminal convictions. In addition, Brown et al. (1998) reported high levels of substance abuse and partner-to-partner violence. Comparing these parents to those involved in the 10,000 child protection cases, it was found that they were more likely to be violent, more likely to be involved in substance abuse and a little more likely to suffer from psychiatric disorders.

Of potential significance also was the finding that the abuse profile for the Family Court and the protective services families appeared quite different. The two *most common* forms of abuse recorded by state authorities—neglect and emotional abuse—were the two *least common* allegations in the Family Court. Brown et al.'s (1998) suggestion that this was a largely different group of families was reinforced by the finding that 76% of the Family Court group was unknown to the state services.

The question of substantiation of allegations is, of course, at the core of many of the debates in this difficult area. Here, it must be said that Brown et al. (1998) did not add clarity. Rather, for this factor only, they switched back to their first study, in which they assessed 9% of the allegations to be false. It is not clear from that study how the assessment of "false" allegations was made.

But there is a more critical problem. The casual reader might assume that in a chapter that is dealing with a respectable number of Family Court cases (at least 117 cases and possibly has high as 373), the 9% would be drawn from a numerically meaningful sample. In fact, the percentage is drawn from the first sample which, it will be recalled, had only 30 cases.

An analysis of the child protection reports that resulted from referral of the Family Court cases to this service revealed that abuse was substantiated in 22% of cases, not substantiated in 47% of cases and judged to be not known 28% of the time. In addition, a small number of cases were

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75 It is not clear if the total number ( $n = 373$ ) were compared, or if the child protection data were compared with the Family Court sub-sample ( $n = 117$ ) described in the previous chapter.



referred but not investigated. It remains difficult to know how to interpret these figures. Brown et al. (1998) noted that the two organisations had quite different cultures and were likely to be dealing with overlapping but largely different populations.

The authors also cited an interesting observation by Armytage (1997). Armytage claimed that Family Court referrals were dealt with in the same way as all other referrals to child protective services and that 50% of the cases were discarded in the initial screening. Furthermore, this process of discarding cases from the outset is not evident in the reports subsequently sent to the Court. None of the discarded cases, it is assumed, would have reports substantiating abuse.

### 3.3.3 Revisiting the “truth” or “falsity” of allegations

In a more recent publication, Brown (2003) revisited the theme of the truth or falsity of allegations of child abuse in the context of family law. She began by citing a large British study’s findings (Cawson, Wattam, Brooker, & Kelly, 2000) that 40% of fathers and 49% of mothers were responsible for the physical abuse of their children. In this category of abuse, there was no significant difference between mothers and fathers with respect to seriousness. The victims were equally male and female, with younger children being at greater risk.

In terms of child sexual abuse, however, Brown’s (2003) reading of the research suggested that “men have been shown to be the most common perpetrators ... with proportions ranging from 80% to 95%” (p. 370). Brown cited Cawson et al.’s (2000) finding that female children were 1.5 to 3 times more likely than boys to be the victims. This study also found that while the victims were most likely to be known to the perpetrator, with girls more likely than boys to be abused by a family member, the most common perpetrators were not fathers or father equivalents. Thus, while about 4% to 5% of girls reported abuse by a father figure, the abuse rate by biological fathers was between 1% and 2.8%.

Brown (2003) contextualised the issue of abuse allegations in Australian post-separation parenting disputes by reiterating the finding (Brown et al., 1998) that they comprise about 5% of child-related matters. Of these, 22% were substantiated in the study previously reported upon, but 52% were substantiated in a subsequent study by Brown and her colleagues (2001). The primary purpose of the subsequent study was to monitor the efficacy of a more proactive relationship between the Family Court and the state protective services. To this end, the study sampled and therefore reported on only serious allegations of abuse. The sampling strategy was likely to account for at least some—and possibly most—of the increased substantiation rate.

In the 2001 study, Brown and her colleagues found that in their sample of family law disputants, in which there were serious allegations of child abuse, mothers were twice as likely to make allegations as fathers. But the allegations made by mothers were four times as likely to be substantiated as those made by fathers.<sup>76</sup> Of a total of 11 allegations found to be false, 6 were made by fathers and 5 by mothers. Of the 52 cases of substantiated abuse, 32 involved the father as abuser and 4 involved the mother. This left 16 cases of substantiated abuse perpetrated by another family member. A little under half ( $n = 23$ ) of the 52 substantiated abuse cases were in the category of sexual abuse, with all but one of the remainder of cases being equally divided between physical abuse and emotional abuse. There was one case of neglect.

Brown (2003) set out to explore the stereotypes portrayed on the one hand by those who assert the prevalence of the “parental alienation syndrome” (referred to in Chapter 1 of the present study), and on the other hand by those who see fathers as “perpetrators of patriarchal power and control through the use of family violence such as child abuse” (p. 378). The sample size of 100 cases reported in Brown et al. (2001) reduced to numbers that would again suggest caution in making predictive statements. But combined with her reading of related research, Brown (2003) concluded as follows:

It is clear that allegations are made against fathers more frequently than against any other family member and that the person making the allegations is most commonly the mother. Furthermore, many fathers are not found to be the perpetrators as alleged.

76 The absolute numbers here are relatively small: 7 fathers and 32 mothers.



This gives some support to the belief of fathers that their former partners pursue them with malicious allegations of child abuse. However, fathers are the ones found to be the most common perpetrator of the abuse alleged in this context; allegations against fathers were found to be substantiated in just over half the cases. False allegations are few. They are not the prerogative of mothers but are almost equally initiated by fathers and mothers. At the same time, the uncertain conclusions from so many of the child protection investigations that leave fathers as the most frequently unsubstantiated perpetrators encourage their ongoing anger and frustration. Thus the stereotype presented in the Parental Alienation Syndrome is not supported ... but the feelings and views of fathers as expressed by individual men's groups are partially supported by the research. (p. 378)

### 3.3.4 Court administrative data

As part of its submissions to the Inquiry into Joint Custody Arrangements in the Event of Family Separation, the Family Court of Australia (2003) examined allegations of family violence and child abuse in a random sample of cases from its case file management information system. It extracted a sample of cases for the period January through June 2003 from the Court's three largest registries: Sydney, Melbourne and Brisbane. The final sample comprised three sub-groups: 450 "consent applications" (parenting orders made by consent), 300 "settled applications" (applications for final parenting orders that were settled prior to a trial) and 91 "judicially determined matters" (parenting matters that required a judicial determination).

The Family Court of Australia (2003) noted that allegations of physical abuse (or the risk of physical abuse) were made in a "high percentage of cases, particularly those which went to judgment. In that sample [91], physical violence was an issue in more than two thirds (67%) of the judgments" (p. 17).<sup>77</sup> In 59% of these cases, "the Court either made a finding upholding the allegation (51%) or found that there was an unacceptable risk of family violence (a further 8%)" (p. 18). No finding was made in 30% of the cases; the allegation was not upheld in another 10% of cases.

Allegations of child sexual abuse (or the risk of child sexual abuse) were made in around one quarter (26%) of the judgments sampled. There was found to be an unacceptable risk of child sexual abuse in 38% of these cases. A finding of no unacceptable risk was made in 29% of the cases, while no finding was made in another 29% of cases.<sup>78</sup>

### 3.3.5 Allegations of family violence in fully litigated cases

Kaspiew (2005a)<sup>79</sup> examined a randomised sample of 40 Family Court files involving children's matters that were fully litigated in the Melbourne Registry of the Court in 1999 and 2000. The focus of her analysis was on the content of affidavit material, psychosocial assessments and judicial determinations.

Kaspiew (2005a) reported that "violence was a factor" (p. 51) in 23 of the 40 cases (57.5%). In most cases, it remained a "background" factor, but in 10 cases it was judged to be highly significant. In three of the cases, fathers had received criminal convictions for violence against former partners. And domestic violence orders were mentioned in "more than half" the files.

Allegations of physical and emotional abuse of children were made in 16 cases and of sexual abuse in three cases. Issues relating to mental illness were raised in a total of 18 cases. Substance abuse was highly significant in two cases and a "background" factor in a further 10.

77 In its 2004–2005 *Family Violence Strategy* report (FCoA, 2005, p. 3), the Family Court of Australia suggested that this analysis "showed that violence was a factor in 68 out of the 91 matters judicially determined during that period"; that is, 75% of the judgments contained an allegation. The reason for this small disparity between reports is unclear. This latter estimate almost mirrors that produced by the random sample of judgments for the entire year in 2003 in the present study (see Chapter 5).

78 This would appear to amount to 9 cases (10%) of unacceptable risk, 7 cases (8%) of no unacceptable risk and 7 cases (8%) in which there was no finding.

79 See Kaspiew (2005b) for a published summary of this research.

A key claim resulting from this study was that the fathers in the sample were seeking bigger roles in their children's lives in the context of family histories that often involved violence, entrenched conflict, mental illnesses and substance addiction. Kaspiew (2005a) also suggested that although the circumstances of many of the cases prevented the fathers from realising these objectives, judges remained strongly committed to maintaining father-child relationships.

### **3.3.6 Separated mothers' experiences of an abusive former partner**

Kaye, Stubbs, and Tolmie (2003) interviewed 40 mothers, recruited largely from women's refuges and women's health services, who were negotiating and facilitating parenting arrangements with an abusive ex-partner. They found that 80% had obtained a violence restraining order at some point, with only one finding it to be a fully effective measure. Kaye and her colleagues also interviewed 22 individuals who were professionally involved in family law, domestic violence and children's contact services.

The mothers in this study reported multiple forms of abuse, with 85% of the sample disclosing serious physical and/or sexual abuse. They reported that almost two-thirds of the children had witnessed physical violence against their mothers and that 33% of children had themselves experienced physical violence. All but one reported a continuation of violence after separation. Kaye et al. (2003) found the professionals were divided over whether contact should go ahead when the non-resident parent had abused the children—most assuming that violence against mothers was separable from consideration of the wellbeing of the child.

Even though most of the mothers did not endorse father-child contact because of safety concerns, all of the fathers had obtained contact orders, and only four mothers reported that contact was to be supervised. The most common means of making contact and residence arrangements were reported to be through consent orders (44%), court orders (37%) and private negotiation (19%). In 13 families where the children had been direct targets of physical violence by their father, six had unsupervised contact, fathers had residence in four cases, contact was supervised in two cases and one case involved phone contact only. Mothers who had denied contact when there were orders or an agreement in place referred to circumstances such as child illness, child safety fears, child distress at contact or child allegations of sexual abuse during contact by the parent or their associates.

### **3.3.7 Allegations of violence in contested contact disputes**

Shea Hart (2004) reported on all judgments that related to disputed parenting cases in the Adelaide Registry of the Family Court of Australia between 1991 and 2001. The time interval divided itself equally into a period prior to and a period following the *Family Law Reform Act 1995* (Cth), which was introduced in Australia in June 1996. The total number of contested child-related cases prior to the *Reform Act* was 338; the number after the *Reform Act* was 447, an increase of 32%. Of the total number in this 10-year period, 399 were contested contact disputes, 159 of which took place prior to and 240 of which occurred after the *Reform Act*. This represented an increase in contact disputes of 51%. In 183 of these cases (46%), domestic violence was referred to as "an issue" by the judge—55 pre-reform and 128 post-reform. This represented a pre- to post-reform increase of 123% in cases in which domestic violence was seen as an issue.

Shea Hart (2004) then examined contested contact disputes in judgments that had been delivered and in which a finding of domestic violence had been made—43 cases pre-reform and 66 post-reform. Interestingly, both represent 27% of the total applications pre- and post-reform; however, the absolute number of applications post-reform had increased by 53%. In 36 (84%) of the pre-reform and in 52 (79%) of the post-reform cases in which a finding had been made, the father was referred to by the judge as the perpetrator of at least one act of domestic violence. This represented 23% of the pre-reform applications and 22% of the post-reform applications for contact. Domestic violence restraining orders had been in place in just over half the cases, both pre- and post-reform, in which family violence had been found to be present. More than half of these were alleged to have been breached.

The study also found a significant concurrence of allegations of child abuse with findings of domestic violence—26 (60%) pre-reform and 48 (73%) post-reform. This represented 16% of the total applications for contact pre-reform and 20% post-reform. Of the pre-reform allegations, 23 were against the person (usually the father) seeking contact; post-reform, the number was 39. A core finding was that the considerable increase in applications for contact that occurred post-reform was associated with roughly the same proportion of orders for contact being made, despite findings of “at least one instance” of domestic violence in the majority of cases. Thus, the absolute number of contact orders in cases in which there had been a finding of at least one instance of domestic violence had increased significantly following the reforms.

Similar to the findings of Brown and her colleagues cited above, this study pointed to the resource-intensive nature of these cases. Indeed, 17 (40%) of the pre-reform cases and 35 (53%) of the post-reform cases involved multiple (between 2 and 11) applications and multiple determinations. The length of these cases ranged from 2 to 8 years, with most using a considerable range of services, such as counselling, mediation, Family Reports and separate legal representation, and a range of clinical services for the children. There was a general (though not universal) tendency for more of these services to be employed post-reform and for the average time of litigation to increase.

Shea Hart (2004) discussed her findings in the context of a distinction between conflict and violence, which she saw as qualitatively different. She noted that:

From a feminist perspective, reconstructing violence as conflict is serious as it masks unique power relations and ongoing fear and risk factors inherent in cases where there is, or has been violence. It also implies that couples are mutually involved and equally responsible. (p. 182)

Shea Hart (2004) also endorsed Tolman’s (1992) view that:

Domestic violence involves a power imbalance where the perpetrator maintains intimidation and fear in the adult and child victims and this differs significantly in nature and effect from interpersonal conflict where both parents engage in the dispute with a reasonably equal power relationship. (p. 183)

From this perspective, Shea Hart (2004) discusses the dangers of too readily assuming a “culture of cooperation and negotiation” following separation, and of paying insufficient attention to safety issues at the expense of promoting an ongoing relationship with both parents. She points to a range of studies that address the impact of family violence on children and protective factors, such as the findings by Mullender et al. (2002) of the efficacy of support from siblings and mothers. She also noted that there was a dearth of research on the nature of the relationship between a child and a father who has perpetrated violence against the child’s mother.

Shea Hart (2004) called for more sophisticated analyses of allegations of violence in family law cases and an increase in resources to allow this to happen. She suggested that every case of alleged violence requires “thorough and early investigation to establish any possible adverse effects on the child ... before gambling with the child’s wellbeing through making orders for contact prior to a thorough specialised assessment of the child’s situation” (p. 189).

We return to this important issue in the final chapter. At the same time, we note that Shea Hart’s (2004) own position—that couples cannot be “mutually involved and equally responsible” for violence—appears to negate a number of the research findings in this area discussed in Chapter 1.

### **3.3.8 Resident mothers’ views of post-separation parenting arrangements**

McInnes (2006) used focus groups to assist initially in the shaping of a survey of separated resident mothers’ attitudes to child–father parenting arrangements (known in Australia at the time as “contact”). She drew her sample from networks of the National Council of Single Mothers and their Children and e-lists for women in South Australia. Acceptance into the focus groups was determined by an affirmative response to one or both the following questions:

- Have you ever been involved in family court proceedings with respect to children’s matters?

- Have you ever feared for your own or your children's safety from your ex-partner? (p. 21)

McInnes noted that the above questions were:

aimed at identifying a past or current conflict between the parents. [Thus,] mothers who answered affirmatively to one or both of these questions were scheduled to attend a separate focus group from mothers who answered both questions negatively to ensure that low-conflict cases were not overwhelmed by cases involving conflict. (p. 21)

This strategy resulted in six intending participants being scheduled to attend what the author referred to as the "no conflict" group. At the scheduled time, however, only one of the six individuals attended. By contrast, 16 women responded by saying they had been involved in child-related family court proceedings and/or had at some time feared for their own or their children's safety from their ex-partner. They were assigned to a "conflict" focus group and, at the scheduled time, 14 showed up.

It is not clear how many of this group had made applications to the Family Court. Selected citations from the transcripts would suggest that most, if not all, were in this category. What is clear is that all of the 14 women in the focus group had at some time had cause to be fearful of their former partners on their own behalf or on behalf of their children. It would seem, therefore, that most, if not all, of the women sampled answered both the trigger questions in the affirmative.

The key themes emerging from this focus group were the difficulties mothers reported in being able to guarantee safe, quality child–father contact. In addition, police, child protection and family law services, such as mediation and counselling, were frequently seen as ineffective. Participants felt that mediation and counselling service staff were often uninformed or withdrew services due to the men's violence. Some were labelled as "crazy" by their abusers and found it was the abusers who ended up with greater credibility in the family law decision-making system.

Mothers were also concerned that children's needs and interests were not central and that quality of parenting care was typically not examined. Rather, these mothers believed that a willingness to support child–father contact was the focus of the family law intervention system.

McInnes (2006) made use of the focus group material to inform the development of a set of survey questions. The survey attracted 170 valid responses. Of these, 100 were analysed. The remainder of the data are to be analysed at a future date.

According to McInnes (2006), the resident mothers in the survey reported strong support for fathers maintaining contact with their children after separation, with mothers wanting more father–child contact outnumbering those who were seeking less contact. McInnes also reported, however, that "most respondents were unhappy with the contact pattern, but nevertheless enabled contact to take place" (p. 65). Such findings suggest a complex set of dynamics that would probably require further teasing out in individual interviews.

Experiencing fear at the time of separation, experiencing continuing fear of the father and having contact determined by the court system were the most common factors linked to mothers wanting children to have less time with their fathers. Yet mothers who reported being afraid of their ex-partner and afraid for their children's safety suggested that they were nevertheless compliant with court orders and agreements in most instances. When mothers did stop contact, children's safety and health were the main reasons and most stopped contact only once or twice. According to the mothers, fathers' desires to see their children and their availability for contact had a much greater impact on whether contact took place, with twice as many fathers as mothers cancelling or not attending planned contact.

McInnes (2006) summarised her findings by suggesting that they highlight "the exposure of children to long-term continuing harm through court-ordered contact with parents who abuse or terrorise them" (p. 65). An obvious limitation of the research in this regard is that it reported on perceptions of the mothers only.

### 3.4 Summary

The Australian empirical literature generally echoes that of overseas studies, both in its findings and in the many gaps and the many methodological problems that are evident. Clearly, researchers have been struggling to pin down issues that are of considerable complexity, that have generally not begun to come to the fore until some years after the Family Court began operations and that have contested explanations that, at their extremes, reflect polarised constructions of gender.

There is little doubt that various forms of violence exist in a considerable proportion of separating families and that this was generally not appreciated when the idea of “no fault divorce” was being promoted in the 1970s.

It is also probably true to suggest, as do Brown and her colleagues (1998), that violence and abuse increasingly become “core business” as cases move further and further into family court processes. Indeed, it is almost certain, as Shea Hart (2004) also found, that a hugely disproportionate percentage of court resources are taken up with litigation by couples—for whom violence is quite often accompanied by unemployment or underemployment, mental health issues, and drug and alcohol abuse, which have been part of their “normal” lives.

The Australian evidence around child abuse, especially sexual abuse, remains sketchy. Brown’s (2003) summary suggests that we have a long way to go in unpicking questions about frequency and what is meant by sexual abuse in the context of family law; the fact that allegations may be made in good faith does not mean that they are necessarily “true”. Parents and step-parents remain vulnerable to such claims, and both they and the children can suffer great anguish if claims are later shown to be unsubstantiated, or even if the verdict is one that signals continuing uncertainty. This is where the principle of safety for children can collide with benefits that can derive from an ongoing relationship between children and both parents.

For all its methodological difficulties, the Australian research reviewed above does tell a story of a gradually increasing recognition that family law litigation over children has been tapping into a hitherto largely unrecognised (or at least under-recognised) problem. Compare, for example, the reports of Horwill and Bordow in 1983, and Bordow ten years later, with the increasingly strongly worded comments from researchers from about 1995 onwards. Why did violence and abuse virtually go unmentioned in the 1983 study, and why in the 1994 study was it labelled “misconduct” and probably underestimated in terms of its prevalence? It is possible, though unlikely, that this was a sampling issue. The more likely answer is that we tend to see only that for which we are searching.

The evidence about family violence in family law disputes has been hard won. It is therefore understandable that in seeking to bring this to the attention of sceptical professionals and decision makers in the context of family law, some researchers have been more concerned with getting the stories out there than with careful sampling or careful definitions.

At the same time, what most of the studies fail to address adequately is the range of expressions of violence and abuse. The stories tend to be of coercive control by men, perhaps because some theorists and some research samples are mainly tapping the experiences of women and children in refuges and perhaps because even in more broadly based qualitative research, these are the stories that are difficult to ignore.

Having highlighted such stories, the discussion sections in these studies tend to move from citing relatively large percentages of family violence to making overt or covert presumptions that all of this violence is of this type. They tend not to clearly identify how family violence was defined in the first place, and they rarely concede the possibility that at least some of the violence may be situational, one-off, reciprocated, or even at times initiated by women.

In sum, there appears to be a strange disjuncture between the research and debates on definitions and causes of family violence in the general literature reviewed in Chapter 1, and the family law-oriented research reviewed in both this and the preceding chapter. Perhaps this is a developmental issue. Perhaps there is also something about the urgency of family law that places pressure on researchers, when in doubt, to err on the side of safety at all costs.

For there can be little doubt that for some Australian families, separation is a time of danger. There can also be little doubt that for some children, spending time alone with a parent who has a history of violence and abuse puts them at risk. In decision-making about post-separation parenting, there is indeed a sense in which safety has to be the core concern. In an unsafe atmosphere, relationships inevitably grow into very twisted shapes that are likely, in turn, to impact on parent–child relationships in the next generation.

Thus, the next real challenge in this very difficult area is not to continue to attempt to convince policy makers, decision makers, mediators and others that family violence and abuse of children is a reality. The next challenge is to understand the nature of this violence and abuse, to recognise that it is not all the same, and that it requires a range of responses—from total exclusion of the perpetrator, to placing protective structures around parents and children, to various forms of rehabilitation, right through to a recognition that the violence or abuse was a single instance that is most unlikely to happen again.

Shea Hart (2004) has appealed for better and more sophisticated forensic resources that can support the decision makers by clarifying the nature of the violence and abuse that occurs in separating families. This may indeed prove to be a necessary way to break the seeming impasse that has resulted from the largely gender-based criticisms of family courts both in Australia and elsewhere. In the meantime, questions addressed in the present study—such as: What precisely is being alleged by whom? What evidence is there to support the allegations? and What responses are made by the alleged perpetrators?—offer a step forward in becoming clearer in this difficult area.



# 4 Methodology

This study is based on a content analysis of a random sample of 300 court files from the Melbourne, Dandenong and Adelaide registries of the Family Court of Australia ( $n = 150$ ) and the Federal Magistrates Court ( $n = 150$ ).<sup>80</sup> This chapter describes the detail of the research design.

## 4.1 Unit of analysis, data collection sites and target year

The unit of analysis in the study was a court file. It is important to note that the progression of each file through the Court can vary from case to case. Most files track the history of a single application and response, or a single set of applications and responses, made at a discrete point in time. Some of these culminate in a final defended hearing, but most are brought to a conclusion before the final hearing takes place. Other files contain successive separate concluded applications filed at different points in time. In children's matters, this might happen where a litigant perceives that there has been a change of circumstances that warrants the Court's reconsideration of parenting arrangements previously ordered.

To analyse files that were as recent as possible but that had been finalised, we selected the 2003 calendar year as the time period of interest. It was hoped that sufficient time had passed for most of these matters to have been finalised by the time the samples had been drawn in May 2006. It is not uncommon, of course, for litigants to return to Court even where "final" orders have been made (Kelly & Fehlberg, 2002).

Registries in South Australia and Victoria were chosen for analysis largely for pragmatic reasons: two barristers who were available for analysing the court files practised in the capital city of each of these states. At the same time, each registry afforded qualitatively different terrains: the Melbourne Registry covers a capital city on the eastern seaboard; by contrast, the Dandenong Registry services Gippsland and the south-eastern regions of Melbourne; and the Adelaide Registry has a state-wide catchment area and, while it encompasses a range of social groups and mixes, over 5% of applications are made by people who identify as being Indigenous.

It is unclear to what extent these registries are representative of other registries in Australia. This caveat is an important one and should be borne in mind when interpreting the study's findings. Courts and their registries vary in culture, demographic environs and resources, and these factors may well be related to the way that allegations and denials of family violence arise and are handled.

## 4.2 Data collection and coding

Previous studies (such as McIntosh & Prinz, 1993) have often employed undergraduate students to act as coders. In our view, the highly specialised and potentially contentious nature of the present study required a high level of analytic skill, legal expertise, experience of and familiarity with the conduct of court files, and objective independence. For this reason, two barristers were sub-contracted by the Australian Institute of Family Studies to conduct the coding of court files. One barrister was based in Melbourne and had practised in family law for 10 years (8 as a solicitor); the other barrister was based in Adelaide, and had practised civil, commercial, administrative and criminal law for 9 years (8 as a solicitor).

80 The target sample of 300 cases was chosen on the basis of statistical power, efficiency and cost in terms of (data collection) time and money.

### 4.3 Sample selection

Two (largely independent) samples were drawn: one from the general population of cases involving children's issues in which an application for final orders had been made ( $n = 240$ , hereafter referred to as the *general litigants sample*); the other comprising a sample of files involving a judicial determination of children's issues ( $n = 60$ , hereafter referred to as the *judicial determination sample*).<sup>81</sup> One case file from the judicial determination sample turned out to be out of scope and was subsequently excluded. The final sample thus comprised 59 case files.

The sample of judicial determinations was sought to address the likelihood that a random sample of general population files alone would yield too few judicial determinations for reliable statistical analysis.<sup>82</sup> It seemed important to be able to explore allegations and denials of family violence in a sample of judicial determinations because it was unclear whether such allegations and denials would be more prevalent in this sample than in the general population of applications for final orders settled by consent. The Family Court of Australia (2003) noted that:

cases which require a judicial determination may involve complex legal issues, disputes about facts, or serious allegations relating to child abuse or domestic violence. They may also be characterised by unresolved emotional issues which block or delay settlement and require the involvement of an external decision maker. (p. 5)

The general litigants sample was drawn from files that:

- had commenced in the Family Court or the Federal Magistrates Court in 2003; and
- concerned children's issues (although not necessarily exclusively children's issues); and
- had not been the subject of prior litigation about children's issues between the parties; and
- had since been concluded (that is to say, the applications for final orders had been determined or otherwise dealt with).

The judicial determination sample was drawn using the same selection criteria as the general litigants sample, but with an additional conjunctive condition: that these files were also the subject of a judicial determination of children's issues (rather than a resolution by consent).<sup>83</sup>

Three decisions were made prior to extracting the final samples. One sampling decision involved opting for an equal number of cases from both the Family Court of Australia and the Federal Magistrates Court.<sup>84</sup>

The second sampling decision involved stratifying the sample on the basis of geographical location so that the proportion of cases drawn from each registry—Adelaide, Melbourne and Dandenong—would approximate the case load of the Family Court of Australia. This approach sought to improve the representativeness of the sample.<sup>85</sup>

The third sampling decision involved requesting twice the number of general litigant cases needed (that is, double-sampling so that 600 randomly selected files would be extracted rather

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81 One case overlapped both samples. This case was excluded from the judicial determination sample, and replaced by another randomly selected case from that sample. The general population sample was analysed before the judicial determination sample.

82 We were expecting around 5–6% of cases in which final orders were sought to involve a judicial determination. A random sample of 300 cases would thus have been likely to have produced only 15–18 cases for analysis, which would have had little statistical power.

83 The judicial determination sample was drawn about 6 weeks after the general population sample was drawn. This decision was made for several reasons. First, very little is known about family law matters in the FMC. Second, in discussions with the courts and other stakeholders, the view was expressed that there would be a number of cases in the FMC in which there were allegations of violence. Third, increasing the number of cases from the FMC would increase the statistical reliability for the FMC data without substantially reducing it for the FCoA. Fourth, there is no defensible basis for not having an equal number of cases from each court. Initially, we were intending to sample 2/3 of the 300 files from the FCoA, and 1/3 from the FMC, but decided to opt for an equal split for the reasons just outlined.

85 We chose this regional distribution based on the Family Court of Australia's records of applications filed in the Adelaide, Melbourne and Dandenong registries in 2002/2003 (as summarised on the FCoA's website).

than 300).<sup>86</sup> In the case of the judicial determination sample, a triple sample was requested.<sup>87</sup> This was because judicial determinations can involve: (a) those in which there are no written reasons on file;<sup>88</sup> (b) those that contain *ex-tempore* judgments (judgments made from the bench that may or may not have written reasons on file); and (c) those that contain “reserved” judgments (in which the judge or federal magistrate required additional time to consider the issues and prepare written reasons). The triple sample allowed the research team to estimate the distribution of each of these judgment types and make a decision about the best way to proceed with the sampling. It was decided to ignore the issue of whether there were written reasons available and simply draw a random sample of judicially determined files. This enabled us to estimate the prevalence of allegations and denials of family violence within this small but important group of cases. It also had the benefit of not adding additional layers of complexity to an already complex design.

#### 4.4 Sampling procedures

On the basis of the sampling selection criteria described above, the Manager of the Statistical Services Unit, using the courts’ uniform case tracking system Casetrack,<sup>89</sup> extracted the target random samples<sup>90</sup> and then sent two separate lists of randomly selected target cases to each registry: a primary list and a supplementary list.<sup>91</sup> Each list contained roughly twice the number of target cases sought for analysis and included two file numbers for each case: a randomly generated study number and the actual court case file number.<sup>92</sup> To protect the privacy of individuals’ information, only the randomly allocated study numbers were ever recorded as the unique identifier for each case.

After examining the lists in each registry, the coders reported the number of cases in each primary list to a member of the research team, who in turn arranged for a matching list of random numbers to be generated. Coders used this list to select the relevant number of randomly selected cases from each primary list.<sup>93</sup> Where both coders were coding cases in the same registry, as was the case for Melbourne, cases were randomly assigned to coders.<sup>94</sup>

86 We did this for three reasons: (a) it makes the sampling much simpler and reduces the risk of problems associated with a non-random sample; (b) it is more efficient from the Court’s perspective; and (c) it meant that there would be no delays in obtaining an additional sample (or cases) should it be required. This decision turned out to be prudent because some cases were deemed to be “out of scope” or were not available for analysis.

87 In some cases, a smaller master sample was received because there were simply not enough judicial determinations under the specified conditions at a registry in the time period of interest.

88 This may have been because the judge or federal magistrate delivered reasons for their decision orally in Court and it was not considered necessary in all of the circumstances to have those reasons transcribed into a written judgment.

89 Casetrack is the common administrative data tool used by both the Family Court of Australia and the Federal Magistrates Court to track court files.

90 The methodology used by the Court for selecting the final sample was as follows. The population consisted of all finalised final orders applications lodged with the FCoA or FMC during 2003 where the file containing the application was, at close of business 3 May 2006, in either the Adelaide, Dandenong or Melbourne FCoA or FMC registries, and the applicant indicated “children’s issues” or “children and financial issues”.

Each record was assigned a random number. The random number was generated in SAS using the *ranuni* function, with a seed chosen at random from the book *A million random digits with 100,000 normal deviates* (see [www.rand.org/pubs/monograph\\_reports/MR1418](http://www.rand.org/pubs/monograph_reports/MR1418)). The population was then sorted in ascending order by the generated random number.

Before selecting the sample, the population was treated as six distinct entities (one for each location and jurisdiction). Each *n*th record was then selected, where each *n* was calculated by dividing the number of units in the population for each location and jurisdiction by the size of the sample in that location and jurisdiction and rounding to the nearest integer.

91 The supplementary list was to facilitate the selection of additional cases should this be necessary.

92 These lists acted as the case ID “key” and were kept at each registry so that the coders could always cross-check study numbers with actual case numbers.

93 Bruce Smyth coordinated this process. Ross Millward at the Australian Institute of Family Studies conducted the random allocation of these lists, using Excel to generate a random sample of *n* cases, which was then sorted in random order. This process was necessary because systematicity was present in the sampling frame: each list was sorted by the date that each application for final orders had been originally filed; without random allocation across the sampling frame, cases from a particular period may have been over-sampled (e.g., the first half of the list would have led to analysing cases from only the first half of 2003).

94 Both coders analysed cases in the Melbourne Registry of the FCoA and FMC (see Table 4.1). For logistical reasons, the Adelaide-based coder analysed cases in the Adelaide Registry and the Melbourne-based coder analysed cases in the Dandenong Registry.

Each coder proceeded to analyse the selected cases from the main list using a coding frame specifically designed for this study (see below). Coders kept detailed notes on which files were available for analysis—some files were deemed “out of scope”; others were not physically available for a variety of reasons.<sup>95</sup> Any shortfall of allocated cases from the main list was then noted, and the required additional cases were sought from the corresponding supplementary list using a similar randomisation process to that used for the main list. For example, if two cases in the main list were found to be “out of scope”, four cases (double sampling) were randomly selected from the supplementary list—taking into account the actual number of cases on that particular list (say 4/51 cases). These four cases were then randomly sorted so that the coder could work through the list of target supplementary cases in order.<sup>96</sup> Table 4.1 sets out the number of cases sampled from each registry.

**Table 4.1 Sampling strategy: Number of cases randomly sampled from each registry by coder**

Coder	General litigant cases <i>n</i> = 240 (80% of total cases sampled)						Judicially determined cases <i>n</i> = 60 (20% of total cases sampled)					
	Adelaide <i>n</i> = 80 (30% of GL)		Melbourne <i>n</i> = 120 (50% of GL)		Dandenong <i>n</i> = 40 (20% of GL)		Adelaide <i>n</i> = 20 (30% of JD)		Melbourne <i>n</i> = 30 (50% of JD)		Dandenong <i>n</i> = 10 (20% of JD)	
	FMC <i>n</i> = 40	FCoA <i>n</i> = 40	fmc <i>n</i> = 60	FCoA <i>n</i> = 60	FMC <i>n</i> = 20	FCoA <i>n</i> = 20	FMC <i>n</i> = 10	FCoA <i>n</i> = 10	FMC <i>n</i> = 15	FCoA <i>n</i> = 15	FMC <i>n</i> = 5	FCoA <i>n</i> = 5
Melbourne coder <i>n</i> = 150	0	0	40	40	20	20	0	0	10	10	5	5
Adelaide coder <i>n</i> = 150	40	40	20	20	0	0	10	10	5	5	0	0

Table 4.2 (on pages 53–54) summarises some of the key characteristics of the cases sampled for the four groups of interest: those who went to the Family Court of Australia or the Federal Magistrates Court, with or without a contested hearing.

Table 4.2 shows that over 90% of cases were disputes between former couples, as would be expected given the nature of disputes on which the sample was based.

Between 48% and 58% of mothers and 33% and 48% of fathers were the initial applicants, while their spouses were the respondents. In three of the four registries, mothers were more likely than fathers to be the applicants in those disputes between parents. Among these former couples, women were, on average aged in their early thirties, while men were in their mid- to late 30s. In most cases, men were older than their former wives.

While close to 60% of parents who filed applications for children’s matters in the FCoA had been married to each other, the proportion of parents in the FMC sample who had been married or in de facto relationships was similar (general litigants sample: 46% vs 43%; judicial determination sample: 44% vs 49%). (The marital status of 8–11% of former couples was indeterminate across registries.)

Owing to sample size and missing information, duration data are only available for the general litigants sample. For this group, the median duration between separation and filing was 6 months for those in the Family Court and 10–11 months for those in the Federal Magistrates Court. For married couples, the median length of the marriage (to separation) was 10.5 years for those attending the Family Court, and just under 7 years for those attending the Federal Magistrates Court.

95 “Out of scope” files included cases that: revealed prior litigation between parties concerning children’s issues, remained “on foot” (that is, were still active), or had been transferred to or returned to another court.

96 This was necessary because files on the supplementary list could also be deemed “out of scope” or not available.

**Table 4.2 Key characteristics of the cases sampled**

	General litigants		Judgments	
	FCoA <i>n</i> = 120	FMC <i>n</i> = 120	FCoA <i>n</i> = 30	FMC <i>n</i> = 29
<b>Case type</b>				
% cases involving a couple dispute <sup>a</sup>	91	97	93	93
% cases involving grandparent/other <sup>b</sup>	12	6	7	7
<b>Initial applicant or respondent<sup>c</sup></b>				
% applicant father and respondent mother	33	48	40	38
% applicant mother and respondent father	58	48	53	55
% other	9	4	7	7
<i>Total</i>	100	100	100	100
<b>Couple cases only</b>				
Female age (years): mean (standard deviation)	33.8 (6.8)	33.4 (7.6)	34.0 (7.0)	32.5 (8.5)
Male age (years): mean (standard deviation)	37.2 (8.0)	36.3 (8.9)	38.4 (7.5)	35.2 (9.9)
<b>Age symmetry</b>				
% where male older than female	74	71	77	68
% where female older than male	13	19	19	28
% where same age	13	10	4	4
<i>Total</i>	100	100	100	100
<b>Relationship status</b>				
% married	57	46	61	44
% de facto	35	43	28	49
% unknown	8	11	11	7
<i>Total</i>	100	100	100	100
<b>Duration (median)<sup>d</sup></b>				
Married: marriage to separation (yrs)	11	7	–	–
De facto: separation to filing (months)	6	11	–	–
Married: separation to filing (months)	6	10	–	–
<b>Children (all cases)</b>				
<b>No. of children</b>				
% with 1 child	52	50	56	45
% with 2 children	31	35	27	38
% with 3+ children	17	15	17	17
<i>Total</i>	100	100	100	100
<b>Age of youngest child (median)</b>	5	4	3	5
<b>Children's gender<sup>e</sup></b>				
% girls only	36	39	24	31
% boys only	36	33	52	45
Both	28	28	24	24
<i>Total</i>	100	100	100	100

	General litigants		Judgments	
	FCoA <i>n</i> = 120	FMC <i>n</i> = 120	FCoA <i>n</i> = 30	FMC <i>n</i> = 29
<b>Residence of child at initiation of case</b>				
% mother	73	75	78	93
% father	9	8	10	0
% other	8	3	3	7
% disputed	3	1	3	0
% split	3	8	3	0
% shared	3	5	3	0
% unknown	1	0	0	0
<i>Total</i>	100	100	100	100
<b>Legal representation (all cases)</b>				
<i>At commencement of proceedings</i>				
% applicant and respondent	70	57	80	63
% applicant only	19	30	13	22
% respondent only	3	3	7	8
% neither	8	10	0	7
<i>Total</i>	100	100	100	100
<i>At end of proceedings</i>				
% applicant and respondent	65	53	53	38
% applicant only	24	26	31	31
% respondent only	2	4	13	10
% neither	9	17	3	21
<i>Total</i>	100	100	100	100
<i>At both start and end of proceedings</i>				
% applicant and respondent	59	44	50	37
% neither	6	9	0	7
% other	35	46	50	55
<i>Total</i>	100	100	100	100
<b>Location of parties at initial application</b>				
<i>Applicant</i>				
% metropolitan	66	66	57	59
% rural/remote	20	28	40	35
% overseas	1	3	0	3
% not stated	13	3	3	3
<i>Total</i>	100	100	100	100
<i>Respondent</i>				
% metropolitan	54	52	43	38
% rural/remote	19	24	33	42
% overseas	3	4	14	3
% not stated	24	20	10	17
<i>Total</i>	100	100	100	100

Note. <sup>a</sup>Defined as case where first applicant is former partner of first respondent. <sup>b</sup>Includes cases where grandparent or other was second applicant or second respondent. <sup>c</sup>In almost all cases, there is only one applicant and one respondent throughout the entire proceeding. <sup>d</sup>For de facto couples, there were too few cases with sufficient information (both months and years) to calculate the duration of the relationship; pre-marital cohabitation was often indeterminate because of missing information. No data are presented for the judgment sample because missing information rendered the sample sizes too small. <sup>e</sup>For one case, the sex of Child 2 was not identified on court documentation.



Most of the families in the sample had one or two children, with the average age of the children being 3–5 years old. It is interesting to note that cases requiring a judicial determination—especially those in the FCoA—were more likely than cases in the general litigants sample to involve families in which there were only sons (FCoA: 52%, FMC: 45%, compared with 33–36% in the general litigants sub-samples). At the time the initial application was made, most of the children were living with their mothers (73–93%).

All except a maximum of 10% involved legal representation of one or both parties—most commonly both. Representation of each party was more likely in the Family Court of Australia than in the Federal Magistrates Court (70–80% vs 57–63% involved legal representation of applicant and respondent).

Most of the applicants lived in metropolitan areas. While there was no consistent pattern of residential location for respondents across the four groups, it should be noted that the residential location of between 10% and 24% of cases could not be determined.

## 4.5 Coding definitions

For the purpose of coding, we adopted the definition of “family violence” contained in s60D (1) of the *Family Law Act 1975* (Cth) which, until 30 June 2006, was:

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 to fear for, or to be apprehensive about, his or her personal well being or safety.

Likewise, for the purpose of coding, we adopted the legislative definition of “child abuse” as:

- (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 Law Act 1975*).

Allegations of family violence or child abuse prompted the coding of a flag variable to identify the presence of such allegations in a file.

Drawing on prior work (for example, ABS, 1996; Sheehan & Smyth, 2000), the following types of alleged family violence were recorded:

1. Sexual assault
2. Threats of sexual assault
3. Physical assault: pushed/grabbed/shoved
4. Physical assault: slapped
5. Physical assault: kicked, bit or punched
6. Physical assault: threw anything that could hurt
7. Physical assault: beaten
8. Physical assault: hit with something
9. Physical assault: choked
10. Physical assault: stabbed/shot
11. Physical assault: other physical assault
12. Physical threats of/attempt to: hit with a fist or anything else
13. Physical threats of/attempt to: stab with a knife
14. Physical threats of/attempt to: shoot with a gun
15. Physical threats of/attempt to: other

16. Verbal abuse
17. Other emotional abuse
18. Self-harm
19. Threatened self-harm
20. Unspecified abuse
21. Property damage
22. Threats of property damage

Correlates of alleged family violence and abuse, as identified in prior work (see previous chapters), were also noted:

1. Child neglect
2. Child abduction
3. Threats of child abduction
4. Mental illness of other party
5. Substance abuse (alcohol)
6. Substance abuse (illicit)

Up to 15 allegations were recorded. Where there were more than 15 allegations, only the 15 most serious allegations were noted. The month and year of each alleged event was noted where it was specified; so too was: which party was the perpetrator; who was the target of the violence or abuse directed at; whether any children witnessed the alleged violence or abuse; how frequent the alleged violence or abuse was (“one-off”; “low”: 1–4 instances; “medium”: 5–9 instances; “high”: 10 or more instances); how long it was alleged to have lasted; how much detail was given; and which document(s) contained the allegation(s).

The following alleged outcomes of the violence or abuse were also noted:

1. Broken bones
2. Cuts requiring stitches
3. Cuts
4. Scratches
5. Bruises
6. Concussion
7. Miscarriage
8. Damage to unborn child
9. Blood nose
10. Black eye
11. Other specified physical injury (specified)
12. Not specified
13. Restriction(s) on liberty (specified)
14. Restriction(s) on liberty (unspecified)
15. Apprehension/fear for self (specified)
16. Apprehension/fear for self (unspecified)
17. Fear of property damage (specified)
18. Fear of property damage (unspecified)
19. Emotional disturbance/upset
20. Estrangement from perpetrator
21. Property damage (specified)
22. Property damage (unspecified)

The response to each allegation of violence and abuse was coded as:

1. Complete denial
2. Confess and avoid (e.g., I did it, but it was mutual/provoked)
3. “Not admit”
4. Evidence is silent (does not address it)
5. Partial denial (e.g., exaggeration)
6. Deny and counter-allegation of family violence/child abuse
7. Admit and counter-allegation of family violence/child abuse
8. Full admission of allegation
9. Request for further particulars of allegation

It is worth noting that the study did not track the corroboration of denials. First, it is difficult to corroborate most denials. Second, allegations are rarely made when they can be easily disproved (for example, “I wasn’t there. I was with ...”). To clarify things, the level of detail in denials was examined. The level of detail given in responding to the allegation was noted with respect to options (1), (2), (5) and (6). They were coded as: *high* (indicated by a “comprehensive response addressing the particulars of the allegation in detail”); *medium* (indicated by a “less comprehensive response but providing some detail to rebut the particulars of the allegation”); and *low* (indicated by a “blanket denial without detail”). The level of corroboration perceived by the Family Report (where conducted), and the source(s) of corroboration cited in the report(s) were also recorded for each allegation.

#### 4.6 Coding frame and computerised data collection tool

A coding frame was developed for the project by the research team, with significant input from the Melbourne barrister, who had extensive experience in family law practice. Where possible, the coding frame required a quantitative rather than qualitative approach in order to minimise the scope for subjectivity in the conduct of the data collection.

The coding frame was first developed as a paper–pencil instrument. However, it soon became clear that the potential complexity of family law proceedings in relation to allegations and denials of family violence would require a more sophisticated approach. As a consequence, a computerised data collection tool was developed using the relational database FileMaker Pro 8. The final coding frame comprised over 4,000 potential data fields.

Upon completion, the coding frame was loaded onto two laptop computers so that each coder could key the relevant data from case files directly into the customised software. A sample of 25 cases was used to pilot test the coding frame. None of the cases in this sample was part of the final selected sample. Minor refinements were made to the software on a rolling basis until the coding frame was able to deal with all of the relevant information contained in the pilot sample.

There were many advantages in using a computer-assisted coding frame: (a) it was easy to enter data in a systematic way into the system, without unnecessary typing; (b) with allegations and denials of family violence forming the unit of analysis in the data collection process, information related to each allegation (such as corroboration) could be tracked horizontally in tables across different sections; (c) the computer software allowed data logic and validity checks to be included which, in turn, improved the integrity of the data; (d) data security was enhanced because all of the information was stored in two password-protected laptops, both of which were almost always kept within the Court for the duration of the data collection phase; and (e) the data could readily be exported directly into a statistical analysis package (keying data from a paper–pencil version into a statistical package is likely to lead to keying and transposition errors).

Figures 4.1 through 4.6 contain examples of the data capture screens.

Figure 4.1 Coding frame: Menu screen

Main Menu	
Coder	11. DHS/CYFS Involvement
1. Parties / 2. Relationship	12.1. Respondent's Response to Allegations
3. Children	12.2. Applicant's Response to Allegations
4. Proceedings	13. Family Reports
4.5. - 4.7. Proceedings Representation	13.3. Corroboration in interim report of Applicant's Allegations
5. Flag Question	13.4. Corroboration in interim report of Respondent's Allegations
6. Other Proceedings	13.5. Reporter's Unconditional Recommendations - Interim
6.12. - 6.19. Orders	13.6. Reporter's Conditional Recommendations T- Interim
7.1. Applicant's Allegations	13.7. Reporter's Conditional Recommendations F- Interim
7.2. Respondent's Allegations	13.8. Final Hearing
8.1. Applicant's Outcomes	13.9. Corroboration Fin Rep of Applicant's Allegations
8.2. Respondent's Outcomes	13.10. Corroboration Fin Rep of Respondent's Allegations
9.1. Timing of Applicant's Allegations	13.11. Reporter's Unconditional Recommendations - Final
9.2. Timing of Respondent's Allegations	13.12. Reporter's Conditional Recommendations T- Final
10.1. Applicant's Evidence of Corroboration	13.13. Reporter's Conditional Recommendations F- Final
10.2. Respondent's Evidence of Corroboration	14. Court Orders
10.3. Applicant's Subpoenas	14.5.1. Evidence Cited to Support Applicant's Allegations
10.4. Respondent's Subpoenas	14.5.2. Evidence Cited to Support Respondent's Allegations
10.5. Form 4	14.6 - 14.9. Conclusion
Case Overview and Final Comments	

Figure 4.2 Coding frame: Flag question screen

**5. FLAG QUESTION - ALLEGATIONS OF FAMILY VIOLENCE**

5.1 Is there an allegation of "family violence" or "child abuse" (as defined by S60D FLA) [see Appendix 1: Definitions]:

**Family Violence**  
 **Child Abuse**  
 **Both**  
 **Yes - but unclear which**  
 **No allegations**

[methodological note: err on the side of inclusivity so that ambiguous cases can be scrutinised later]

<< Back
Menu
Next >>

4.5. - 4.7. Proceedings Representation
\*\* See Below

\*\* If "No allegations" is selected then the "Next >>" button will skip to 14. Court Outcomes. Otherwise it will go to 6. Other Proceedings

Figure 4.3 Coding frame: Allegations by Applicant screen

<< Back
Menu
Next >>

6.12. - 6.19. Orders

7.2 Respondent's Allegations

### 7. Nature of Allegations

#### 7.1 Applicants allegations

No allegation(s) made

Allegation	Date of alleged event (mm/yyyy)	Alleged against	Conduct directed at	Seen or heard by child(ren) *	Which child(ren) #	Freq**	Duration	Amount of detail given	Doc type

Target: Respondent/ respondent and child/ child/ other  
 ^ Other = Other family member(s)  
 # If possible: Use number(s) of child(ren) from Child Grid or indicate "other"  
 \* Where the allegation is about violence or abuse directed at children, "child witnesses" would be children other than the alleged direct victim(s) of the behaviour;  
 \*\* Low = 1-4 instances; Medium = 5-9 instances; High = 10+ instances.

**Notes**

Figure 4.4 Timing of allegations: Sample screen

<< Back
Menu
Next >>

8.2. Respondent's Outcomes

9.2. Timing of Respondent's allegations

### 9. Timing

#### 9.1 Timing of applicant's allegations

Coder Note: Select option 2 in the second column if there is no reference to a prior report of the allegation

Allegation	When was the allegation of violence and/or abuse first made by the applicant?	Reasons given, if any, for delay in reporting?	If made 'prior to proceedings', to whom?





Table 4.3 summarises the content of each section of the coding frame. This summary is necessarily an over-simplification of each section.

**Table 4.3** Content of coding frame

Section	Content
1 Case info	Coder's name, case ID, registry and date examined.
2 The parties	Parties' ages, occupations and relationship chronology.
3 Children	Details about children: ages, parentage and usual residential care.
4 Proceedings	Details of what orders were sought by each party in each set of proceedings (interim and final).
5 Proceedings representation	Were the parties legally represented at the commencement and the conclusion of proceedings? Was a child representative appointed?
6 Flag question	Was an allegation of family violence or child abuse raised at any point?
7 Other proceedings	Were any other proceedings noted (such as family violence, child protection and child support etc.)?
8 Nature of allegations—Applicant	What type of violence or abuse did the applicant allege? When did it allegedly occur? Who was the alleged perpetrator? Who was the conduct directed at? Was it seen/heard by any of the children? If so, which ones? What was the frequency and duration of the alleged violence/abuse? How detailed was each allegation?
9 Nature of allegations—respondent	As above (8), but addressed to the allegations of the respondent.
10 Applicant's alleged outcomes of the violence	Applicant's alleged outcomes of the violence or abuse perpetrated by the respondent (e.g., bruises, cuts, broken bones, fear, apprehension)
11 Respondent's alleged outcomes of the violence	Respondent's alleged outcomes of the violence or abuse perpetrated by the applicant (e.g., bruises, cuts, broken bones, fear, apprehension)
12 Timing of applicant's allegations	For each allegation: When was the allegation of violence and/or abuse first raised by the applicant? Reasons given, if any, for a delay in reporting? If made prior to proceedings, to whom?
13 Timing of respondent's allegations	As above (12), but addressed to the allegations of the respondent.
14 Applicant's evidence of corroboration	Was there any corroborating evidence? If so, from whom and what form did it take?
15 Respondent's evidence of corroboration	As above (14), but addressed to the allegations of the respondent.
16 Subpoenas	Were any subpoenas on file? When was it filed, by whom, and to whom was it addressed?
17 Form 4	Was a Form 4 filed? If so, by whom? Who was the alleged perpetrator? Who was the alleged victim?
18 Child protection agency involvement	Did the court file indicate the involvement of a state child protection agency in the family law proceedings? If so, what did the agency do? What concerns, if any, did the agency express to the court?
19 Respondent's response to allegations	Did the respondent respond to any of the allegations and, if so, how (e.g., full admission, full denial, partial denial or was the evidence silent)?
20 Applicant's response to allegations	As above (19), but addressed to applicant's response to allegations.
21 Family Reports	Was there a Family Report for an interim hearing? What was the origin of the report?
22 Corroboration in interim report of applicant's allegations	What level of corroboration was contained in the report with respect to allegations by the applicant (e.g., fully corroborated, partially corroborated, fully discredited, partially discredited, no opinion offered or not raised)? What was the source of corroboration cited? Was there a link between the corroboration and reporter's final recommendations?
23 Corroboration in interim report of respondent's allegations	As above (22), but addressed to respondent's allegations.
24 Reporter's unconditional recommendations—Interim	What were the reporter's unconditional recommendations (interim report)?
25 Reporter's conditional recommendations (true)—Interim	If the report writer's recommendations were conditional on court finding that the allegations were true, what were those recommendations?
26 Reporter's conditional recommendations (false)—Interim	If the report writer's recommendations were conditional on court finding that the allegations were false, what were those recommendations?
27 Final hearing	Was there a Family Report for a final hearing?
28 Corroboration—Final report: Applicant's allegations	What level of corroboration (if any) was contained in the final report with respect to allegations by the applicant?
29 Corroboration—Final report: Respondent's allegations	What level of corroboration (if any) was contained in the final report with respect to allegations by the respondent?
30 Reporter's unconditional recommendations—Final	What were the reporter's unconditional recommendations (final report)?
31 Reporter's conditional recommendations (true)—Final	If the report writer's recommendations were conditional on court finding that the allegations were true, what were those recommendations?
32 Reporter's unconditional recommendations (false)—Final	If the report writer's recommendations were conditional on court finding that the allegations were false, what were those recommendations?

33	Court orders	What were the substantive orders of the court (interim and final)?
34	Evidence cited to support applicant's allegations	Where the court made findings about violence and abuse alleged by the applicant, what evidence did it cite in support of those findings?
35	Evidence cited to support respondent's allegations	As above (34), with respect to the respondents' allegations.
36	Court findings	Where the allegations were the subject of a finding, to what extent did the judge/federal magistrate expressly link the finding about violence or child abuse with the outcome ordered? Did the judge/federal magistrate make a finding that there was an "unacceptable risk" to the welfare of a child/children? What was the nature of the risk identified by the judge/federal magistrate (e.g. sexual abuse, exposure to violence, etc.)? What actions or orders were made or taken against a person found to have made a false allegation or false denial?

## 4.7 Training and inter-rater agreement

A 2-day training workshop was held early in the project in which all members of the team met to clarify the project's aims and parameters. The two coders simultaneously analysed the first five files in the Melbourne Registry of the FCoA in order to gain consistency in the way that they applied the various codes. They then coded separate files but used each other as a "sounding board" to deal with queries and ambiguities in the data. One of the members of the research team acted as an impartial third person in this process.<sup>97</sup>

Ten cases were coded by both coders in the early stages of the content analysis. This sample was used to check the consistency of each coder's coding. Some anomalies surfaced and were corrected by three-way discussion.<sup>98</sup>

## 4.8 Timelines and logistics

The project was conducted under tight timelines, given the size and complexity of the study. Eight weeks were allocated to obtain all of the necessary approvals<sup>99</sup>; 12 weeks were allocated for the content analysis of the 300 court files (which included two separate extractions of the various court samples); and 12 weeks were initially allocated for analysis and final write-up.

Once the coding frame was finalised and the random cases selected the coders began work on the selected files. There was considerable variation in the length of each file—some files comprised just a few pages—while at the other end of the spectrum, one file required five large boxes to hold its material.

## 4.9 Caveats and limitations

A number of caveats warrant mention. First, the samples were small—particularly the judicial determination sub-samples—which increases the likelihood of error in our estimates. Moreover, since the registry locations were selected on the basis of purposive sampling, the findings may not be generalisable to other registries in Australia.

Second, no information was sought from state- or territory-based child protection agencies, the police or local courts exercising power under the *Family Law Act 1975*. As noted earlier, state jurisdictions act as the frontline for dealing with allegations of family violence and child abuse in Australia. While very basic information was noted in the present study about the involvement of such agencies in each case, the omission of state-based data (and the potential interrelationship with the Family Court and Federal Magistrates Court data) means that the scope of the study was far from comprehensive. That said, the inclusion of such data represents an ambitious project and is well beyond the scope of the present investigation.

97 Lawrie Moloney fulfilled this role. He was a former Director of the Family Court Counselling Service in Victoria during the first 10 years of its existence.

98 These anomalies could not be quantified because of the complexity of the data structure; the number of actual data points varies for each case, and cannot be readily averaged into a denominator.

99 Approvals needed to be obtained from the Institute's Ethics Committee; the Family Court's Research and Ethics Committee; the Federal Magistrates Court; and from the Attorney-General. In addition, several discussions were also held with the Privacy Commission in order to check that a Public Interest determination was not required—it was not.

Third, it is important to note that the findings are based entirely on the information documented in the court file. While the courts expect litigants to provide most of the legal “evidence” in the form of written affidavits that are to be found on the court file, the file remains limited as a source of information about what has transpired in a relationship. For example, the court file does not retain documents produced to the court in answer to a subpoena; yet the subpoena process is frequently used in litigation to corroborate allegations of violence. No interviews were conducted with any of the parties involved in the disputes, or with any third parties (including legal representatives) who may have had other information of relevance. The study focused on the prevalence of allegations in selected registries and not the prevalence of violence per se.

Fourth, some allegations may be an underestimate of the real situation, some may be an overestimate, and some (whether made deliberately or otherwise) may be untrue. This study did not attempt to assess the veracity of allegations on the basis of court records, especially the extent to which any of these statements had been deliberately fabricated. Assessing veracity would require a much more sophisticated research design involving a multi-disciplinary approach within multiple agencies within state/territory and federal governments.

Fifth, it is also important to note that allegations (or non-disclosures) are typically filtered through the lens of litigants’ legal advice and/or representation. Legal advice and/or representation therefore act as a protective screen enveloping the data.

Finally, there are likely to be additional considerations for certain groups of individuals (such as people from non-English speaking backgrounds, Indigenous people, people with disabilities, and people in same-sex relationships). This study is not well placed to identify these considerations because of the relatively small number of people from such groups included in the samples. More focused qualitative approaches are likely to be better suited to exploring the considerations for these particular groups.

All of these caveats mean that great care should be taken when interpreting or reporting on these data. The study’s sophisticated research design should nonetheless provide useful pre-reform data against which the recent family law reform package can be assessed at a later date.

It is worth noting that while a range of sampling strategies have been used in prior research to estimate the prevalence of allegations of family violence or allegations of child abuse, no study has appeared to draw random samples from two naturally occurring populations of family law court cases—namely, the general population of applications for children’s matters, and cases requiring a judicial determination—in order to estimate the prevalence of family violence and child abuse and their co-occurrence in each sample.<sup>100</sup> This sampling strategy is the backbone of this study and one of its unique features.

We now turn to the study’s findings.

- Chapter 5 describes the frequency, nature and source of allegations of family violence and child abuse, and the extent to which children were reported as having witnessed violence.
- Chapter 6 sets out the extent to which allegations were corroborated by the alleging party, and were denied, admitted or left unanswered by the other party.
- Chapter 7 presents data on the relationship between allegations and court outcomes with respect to post-separation parenting arrangements.

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100 As noted in Chapter 2, Sorenson et al. (1995) sampled 60 “contested custody” cases from seven judicial circuits throughout Florida; and Smart et al. (2003) drew a random sample of 430 residence and contact disputes from three county courts in England.

# 5 The prevalence and nature of allegations

This chapter describes the prevalence, nature and source of allegations of family violence and child abuse, and the extent to which children were reported as having witnessed violence. Prevalence is examined in terms of two units of analysis: first, the proportion of court files concerning children's issues in which such an allegation was raised; and second, the proportion of all applicant and respondent mothers and fathers who raised allegations. The specific allegations examined are:

- spousal (or other adult family) violence or child abuse;
- specific types of spousal violence;
- specific types of child abuse;<sup>101</sup>
- a child witnessing family violence; and
- a child witnessing different types of spousal violence.

The key questions examined are to what extent the prevalence of allegations vary by:

- (a) sample (general litigants and judicial determination);
- (b) court (FCoA and FMC); and
- (c) gender and applicant/respondent status (applicant mother, respondent mother, applicant father and respondent father).

Allegations are examined at the level of a case for questions (a) and (b), and at the litigant (party) level for question (c).

The vast majority of cases were based on "couple cases"; that is, both the applicant and the respondent were the parents of the child. There were only 11 exceptions (non-couple cases) in the FCoA general litigants sample, 4 in the FMC general litigants sample, and 2 in each of the judicial determination samples. The pattern of results that emerged for files containing couple cases only were virtually identical to those in the total sample (see Appendix F, Table F1). Given their small number, the non-couple cases in each sample are excluded from all tables of results in the main body of the report.

It is important to point out that these analyses are not based on a random selection of cases from *all* registries of the FCoA and FMC across Australia (see Chapter 4). Furthermore, the judicial determination samples consisted of only 27 cases in the FMC and 28 in the FCoA ("couple only" cases), with most analyses of the judicial determination samples being based on even fewer cases from these two courts. Percentages based on a small number of cases can be unreliable.<sup>102</sup>

## 5.1 Technical preface: Two typologies

Complex family circumstances combined with complex legal and judicial processes yield complex data. Accordingly, content analyses of court files fail to capture the range and depth of the individual experiences and perceptions of litigants and their children. Inevitably a key challenge in a study of this nature is to find ways of simplifying the data: (a) while remaining respectful of what individuals are attempting to portray in their applications, and (b) without under- or over-stating the nature of what was being alleged.

101 This includes child abuse, child neglect and child abduction.

102 No percentages were derived if there were fewer than 20 cases in a group. In some of the tables, data from the two courts in the judicial determination sample were combined.

Ideally, to appreciate what is happening at the level of each individual family, quantitative data should be supplemented by qualitative data (ideally, data based on face-to-face interviews with litigants and the professionals from whom they seek help). Qualitative data are better suited than quantitative data to capturing the details regarding context, diversity and individual experiences. In the end, however, it must be acknowledged that all forms of data collection are limited in their ability to capture fully the phenomenology of participants' worlds, and the pragmatics of the research design did not allow for the collection of qualitative data from litigants.

In the present study, the complexity and amount of quantitative data collected meant that a range of data reduction techniques was needed. Two approaches were adopted. First, the various potential forms of abuse in the coding frame (see Section 4.5) were largely grouped into three commonly adopted abuse types: physical abuse, sexual abuse and emotional/verbal abuse—categorised for adults and children (see Appendix D for the details of this classification scheme). As possible correlates of family violence or child abuse, allegations of mental health problems and substance abuse were kept as separate categories, as were allegations of child neglect and child abduction. Secondly, each file containing one or more allegations of violence was classified into one of three groups according to the overall severity of the allegations in total. Each of these approaches is now described in more detail.

### **5.1.1 Typology 1: Physical, sexual and emotional abuse**

Allegations were first categorised according to whether the alleged behaviour was directed towards an adult (here called “family violence”) or towards a child (here called “child abuse”).<sup>103</sup> Family violence was subdivided according to whether it allegedly occurred between the couple (that is, it was alleged that one of the parents had been violent towards the other parent—here called “spousal violence”) or whether the violence involved another adult (for example, it was alleged that one of the spouses was violent towards another adult or that another adult was violent towards one of the spouses—here called “other adult family violence”).<sup>104</sup> Child abuse was subdivided according to whether the allegation involved abuse by one of the parents or by another person. The analysis focuses on cases involving the mother and father contesting residence or parent–child contact; only 15 of the 300 cases involved a third-party applicant or respondent, where one or both of the parties was not a parent of the child.

The type of alleged spousal violence was then subdivided according to whether it involved physical violence, sexual assault and emotional/verbal abuse. To be sensitive to the context, allegations of stalking, property damage and self-harm were classified separately. In addition, allegations of physical violence, sexual assault, property damage and self-harm were further delineated according to whether they were described as having taken place (“actual”), attempted but not achieved (“attempted”), or threatened. Where allegations of family violence and/or child abuse were raised, any associated allegations about mental health problems, substance abuse, child neglect and child abduction were also noted. Such allegations were not recorded if they did not accompany allegations of family violence or child abuse. (Details of the alleged specific behaviours that were included in each of these categories can be found in Appendix D.)

While “emotional/verbal abuse” is treated as a separate category of abuse, all forms of violence entail emotional harm, for any threatened or actual violence towards the self, another person or property can engender in others a sense of apprehension or fear that tendencies towards violence will be reignited. Likewise, stalking can be a highly intimidating or otherwise disconcerting emotional experience. So too can being an involuntary witness of violence. These are clearly forms of emotional abuse. Nevertheless, the categories used in this analysis are those that have been legislatively sanctioned and commonly adopted in Australia (for example, ABS, 1996, 2005; Sheehan & Smyth, 2000).

103 This categorisation was made by the research team on the basis of the initial analysis of court files by the barristers.

104 Allegations of “other adult violence” (not just spousal violence) may apply in “couple only” cases, for cases are considered “couple only” on the basis of whether the applicant and respondent were the parents of the child(ren) about whom contact or residence proceedings had been initiated. For instance, the mother may have alleged that the father's new partner had been violent towards her, or that the father had been violent towards her new partner.

### 5.1.2 Typology 2: Apparent severity of violence—Three clusters

Aside from distinguishing between different types of spousal violence and child abuse, the team also classified each party's set of allegations and each case's set of allegations according to how abusive or potentially injurious the overall alleged situation was likely to be (see Appendix B for the typology). Where only one party made any allegation, the classification for the case was the same as that for the party. Where each party made an allegation and these were given different classifications, the more severe of the two classifications was applied to the case.

We accept that any attempt to code cases along these lines is fraught with conceptual and philosophical difficulties. Nonetheless, after making a strong case for the importance of distinguishing different types of violence in the first chapter, and imagining that we were in the "shoes" of judges or federal magistrates having to sift through the many complex and varied pieces of information surrounding allegations of family violence, we reasoned that we should attempt to draw out some notion of the severity of the alleged situation.<sup>105</sup> To make our approach as transparent as possible, each case is summarised and placed in its respective category (see Appendix C).

More specifically, the typology was built using a "grounded theory" approach. The research team read each FileMaker Pro file in the general litigants sample that contained one or more allegations of family violence or child abuse and attempted to generate broad categories.<sup>106</sup> Inevitably, this was an iterative process. Initially, four clusters of cases seemed to fall out (named categories A, B, C and D; from potentially least to most serious allegations). "Line ball" cases were then discussed and resolved by the panel. On the few occasions of continuing uncertainty, the case was allocated to a category of *higher* rather than lower severity. Finally, it was decided to combine the two clusters in which the alleged violence or abuse seemed most extreme because the conceptual line between each was too blurry (Category D cases were therefore re-classified as Category C cases).<sup>107</sup> The coding panel was not able to identify from which court the case derived or the gender of the applicant or respondent.

A fresh set of FileMaker Pro files was then given to two other AIFS research staff for independent coding as part of a reliability analysis.<sup>108</sup> One staff member's coding was in agreement with the panel in 72% of cases. Interestingly, this coder's classification systematically *under*-estimated the panel's category of severity in virtually all occurrences of disagreement. The other member of staff's coding was in agreement with the panel in 86% of cases. Unlike the classifications of the first of these two coders, where disagreement with the panel's judgments occurred, ratings of severity were sometimes higher and sometimes lower than those of the panel. Discordant codes were resolved by discussion between these two coders and members of the panel. The same method was used for coding the severity of alleged violence or abuse in the files for the judicial determination sample.<sup>109</sup>

## 5.2 Court by sample

### 5.2.1 Alleged family violence or child abuse

Table 5.1 shows the overall proportion of ("couple only") cases in each sample that contained allegations of family violence or child abuse or both. The top row of results in Table 5.1 point to three important findings: (a) more than half the cases in both courts contained an allegation of family violence and/or child abuse; (b) allegations of family violence were most likely to be raised in judicially determined cases in the FCoA (79%); and (c) by comparison, rates of allegations in the FMC sub-samples were not much lower (62–67%).

105 Of course, judges and federal magistrates would have access to more information than is available in the files that form the basis for this analysis.

106 The panel comprised the research team, with help from Stephanie Amir.

107 Category A is probably the least reliable of the three final groupings because it included cases in which the level of abuse or intended injury remained unclear.

108 Jennifer Renda and Suzanne Vassallo conducted these independent (blind) reliability checks.

109 Suzanne Vassallo conducted the independent (blind) reliability checks. Agreement was reached in 95% of cases. Suzanne then coded each party's set of allegations in a case.



**Table 5.1 Type of family violence or child abuse alleged in each court by sample: Couple cases**

Type of family violence or child abuse alleged	General litigants		Judicial determination	
	FCoA (109 cases)	FMC (116 cases)	FCoA (28 cases)	FMC (27 cases)
	% of cases	% of cases	% of cases	% of cases
Family violence and/or child abuse	53.2	62.1	78.6	66.7
Spousal violence	47.7	55.2	78.6	63.0
Other adult family violence	16.5	19.0	25.0	18.5
Any family violence <sup>a</sup>	48.6	56.9	78.6	63.0
Child abuse <sup>1</sup> by spouse/parent	22.0	24.1	46.4	11.1
Child abuse by other	3.7	5.2	17.9	7.4
Any child abuse	22.9	27.6	50.0	18.5
Family violence only	30.3	34.5	28.6	48.1
Child abuse only	4.6	5.2	0	3.7
Co-occurrence of family violence and child abuse	18.3	22.4	50.0	14.8
No allegations	46.8	37.9	21.4	33.3
<i>Total</i>	100.0	100.0	100.0	100.0

Note. <sup>a</sup>Any family violence” includes two cases where there was a disclosure of an intervention order only (with no specific allegations contained in the family law affidavit material, or in a “complaint for intervention order” annexed to the information sheet).

In each court, family violence was more likely to have been alleged than child abuse (general litigants— FCoA: 49% vs 23%, FMC: 57% vs 28%; judicial determination—FCoA: 79% vs 50%, FMC: 63% vs 19%). Furthermore, cases were considerably more likely to contain an allegation of spousal violence than other adult family violence (spousal violence: 48–79%; other adult family violence: 17–25%). In addition, an allegation of child abuse committed by a spouse/parent was more likely to be raised in each group than child abuse by another adult (general litigants—FCoA: 22% vs 4%, FMC: 24% vs 5%; judicial determination—FCoA: 46% vs 18%, FMC: 11% vs 7%). It is also worth noting that the vast majority of all cases containing an allegation of other adult family violence also contained an allegation of spousal violence.<sup>110</sup>

Allegations of spousal violence, and other adult family violence, were most likely to have been raised among the FCoA judicial determination cases (spousal violence: 79% vs 48–63%; other adult family violence: 25% vs 17–19%). It is interesting to note that, where any allegation of family violence or child abuse was raised, spousal violence was *always* raised among cases in the FCoA judicial determination sample (that is, either alone or with other allegations, applying to nearly 80% of cases).

Both types of child abuse were more likely to be raised in cases requiring a judicial determination in the FCoA than in other samples (child abuse by spouse/parent: 46% vs 11–24%; by other person: 18% vs 4–7%), while the FMC judicial determination cases were the least likely of all sub-samples to contain an allegation of child abuse committed by the spouse/parent (11%). (Only 4–7% of cases in the latter sample and in the two general litigants samples contained an allegation of child abuse perpetrated by another person.)

The bottom panel of Table 5.1 shows that an allegation of child abuse alone was rare. That is, all or nearly all, allegations of child abuse were accompanied by allegations of family violence. Interestingly, the co-occurrence of family violence and child abuse represented the most commonly alleged scenario in the FCoA judicial determination sample (applying to half the cases—50%), while family violence alone was the most commonly alleged scenario in the other three samples (applying to 30–48% of cases).

110 This is evident from the fact that the proportion of cases containing a spousal violence allegation is the same, or almost the same, as the proportion containing an allegation of any adult violence.

Thus, the FCoA judicial determination cases were the most likely to contain each of the four types of allegations set out in the top panel of Table 5.1. This points to the greater complexity of those cases requiring a judicial determination in the FCoA.

In general, the pattern of results for the FCoA and FMC general litigants sub-samples was very similar (the largest difference in proportions was around 9 percentage points).

In summary, Table 5.1 suggests that across all samples:

- more than half the cases in both courts contained an allegation of family violence and/or child abuse;
- spousal violence was more likely to have been alleged than child abuse;
- a spouse/parent was more likely than another person to be seen as the perpetrator of family violence or child abuse;
- the vast majority of cases containing an allegation of other adult family violence also contained an allegation of spousal violence; and
- virtually all cases in which child abuse was alleged also included an allegation of family violence.

Regarding comparisons between the samples:

- the FCoA judicial determination cases were the most likely to contain the four types of allegations (taken separately);
- the FMC judicial determination sample was the least likely to contain an allegation of child abuse perpetrated by a spouse/parent and the most likely to contain an allegation of family violence in the absence of an allegation of child abuse; and
- the pattern of allegations in the two general litigants sub-samples was very similar.

### **5.2.2 Specific types of alleged spousal violence**

Table 5.2 presents the proportions of cases in both courts that contained allegations of specific domains of spousal violence and “associated allegations”—for both samples. “Associated allegations” cover mental health problems and substance abuse, both of which may be risk factors for spousal violence (see, for example, Link, Andrews & Cullen 1992). Because a file may contain more than one type of spousal violence allegation, the percentages in this table do not sum to 100.

The cases in all four samples were most likely to contain an allegation of actual physical violence (such as pushing, shoving, slapping—contained in 30–57% of files), followed by either threats of physical violence (19–50%) or emotional/verbal abuse (26–46%). The fourth most commonly mentioned form of spousal violence allegation in a file was actual property damage (13–36%). Less than 15% of cases in each sample contained each of the other spousal violence allegations listed in Table 5.2 (taken separately).

Although substance abuse is often associated with mental health problems (Andrews, Henderson, & Hall, 2001; Degenhardt, Hall, & Lynskey, 2001), each sample of files was more likely to contain an allegation of substance abuse than mental health problems (19–39% vs 10–25%).

While the overall pattern of allegations in the two general litigants samples is similar, the following differences are worth noting: a higher proportion of FMC than FCoA files in the general litigants sample contained allegations of actual and threatened physical violence (actual: 43% vs 30%; threatened: 28% vs 19%), and of associated allegations of substance abuse (29% vs 19%).

The cases in the FCoA requiring a judicial determination contained the highest or equally highest proportion of cases containing each of the most common forms of allegations. These cases were the most likely of all sub-samples to contain allegations of: actual physical abuse (57% vs 30–48%), threatened physical abuse (50% vs 19–41%), actual property damage (36% vs 13–16%)

**Table 5.2 Type of spousal violence alleged in each court by sample: Couple cases**

Type of spousal abuse alleged	General litigants		Judicial determination	
	FCoA (109 cases)	FMC (116 cases)	FCoA (28 cases)	FMC (27 cases)
	% of cases	% of cases	% of cases	% of cases
<i>Physical</i>				
Actual	30.3	43.1	57.1	48.1
Attempted	1.8	3.4	0	7.4
Threatened	19.3	28.4	50.0	40.7
<i>Sexual</i>				
Actual	2.8	2.6	7.1	0
Attempted	0	0	3.6	7.4
Threatened	0	0	0	0
<i>Emotional/verbal</i>	25.7	26.7	46.4	44.4
<i>Stalking</i>	4.6	5.2	7.1	11.1
<i>Property damage</i>				
Actual	12.8	15.5	35.7	14.8
Attempted	0	0	0	0
Threatened	0.9	0.9	3.6	0
<i>Self-harm by spouse</i>				
Actual	6.4	1.7	14.3	3.7
Attempted	2.8	0	7.1	3.7
Threatened	4.6	4.3	14.3	11.1
<i>Unspecified</i>	8.3	5.2	7.1	7.4
<b>Any</b>	<b>47.7</b>	<b>55.2</b>	<b>78.6</b>	<b>63.0</b>
<i>Associated allegations</i>				
Mental health	12.8	9.5	25.0	14.8
Substance abuse	19.3	29.3	39.3	25.9

and actual self-harm by spouse (14% vs 2–6%), as well as substance abuse (39% vs 19–29%) and mental health problems (25% vs 10–15%).<sup>111</sup>

It is noteworthy that nearly 60% of FCoA judicial determination cases contained an allegation of actual physical abuse. Again, cases in the two FMC samples showed elevated rates of alleged actual physical abuse relative to that in the FCoA general litigants sample (43–48% vs 30%).

To sum up:

- Cases in both courts were most likely to contain an allegation of actual physical violence, followed by either threats of physical violence or emotional/verbal abuse, then actual property damage.
- Cases in both courts were also more likely to contain allegations of substance abuse than allegations of mental health problems.
- The prevalence of most of these allegations was highest in the FCoA judicial determination cases.
- More than half of the FCoA judicial determination cases contained allegations of actual physical abuse.
- Allegations of actual physical abuse were more likely to be raised among the FMC cases (both samples) than in cases from the FCoA general litigants sample.

<sup>111</sup> It should be noted that these estimates refer to allegations that were included in cases where allegations of family violence and/or child abuse were raised.

### 5.2.3 Specific types of alleged child abuse

The proportions of files in the two sets of FCoA and FMC samples that contained allegations of specific domains of child abuse, as well as associated allegations of neglect and abduction, are presented in Table 5.3.

**Table 5.3** Type of parental child abuse alleged in each court by sample: Couple cases

Type of child abuse alleged	General litigants		Judicial determination	
	FCoA (109 cases)	FMC (116 cases)	FCoA (28 cases)	FMC (27 cases)
	% of cases	% of cases	% of cases	% of cases
<b>Child abuse allegations</b>				
<i>Physical</i>				
Actual	13.8	12.1	39.3	7.4
Attempted	0	0.9	0	0
Threatened	9.2	6.0	7.1	3.7
<i>Sexual</i>				
Actual	2.8	2.6	10.7	0
Attempted	0	0	0	0
Threatened	0	0	0	0
<i>Emotional/verbal</i>	7.3	8.6	10.7	0
<i>Unspecified</i>	1.8	0.9	3.6	0
<b>Any</b>	<b>22.0</b>	<b>24.1</b>	<b>46.4</b>	<b>11.1</b>
<b>Associated allegations</b>				
<i>Abduction</i>				
Actual	1.8	0.9	7.1	11.1
Attempted	0	0	0	0
Threatened	0	0	0	3.7
<i>Neglect</i>	3.7	3.4	10.7	3.7

As in the case of alleged spousal violence, allegations of child abuse most commonly concerned actual physical abuse. This form of abuse was mentioned in nearly 40% of FCoA judicial determination cases, but in only 7–14% of cases in the other samples.<sup>112</sup> Other forms of abuse (taken separately) were raised in less than 15% of cases in each sample, although it is noteworthy that allegations of sexual abuse were contained in 11% of FCoA judicial determination cases and 0–3% of cases in the other samples.

Associated allegations of child neglect were mentioned in 11% of FCoA judicial determination cases and in 3–4% of other cases, while actual abduction was alleged in 7–11% of FCoA and FMC judicial determination cases and in only 1–2% of other cases.

### 5.2.4 The apparent severity of allegations in each case

Table 5.4 refers to the apparent severity of allegations contained in each file in which at least one allegation of family violence or child abuse was made. Here, “severity” refers to how abusive or injurious the overall alleged situation appeared to be. As noted in Section 5.1, Category A (the “least abusive or potentially injurious” sets of allegations) is probably the least reliable, given that it includes situations in which the severity of the alleged behaviour was ambiguous. Percentages are not provided for the FMC judicial determination sample because allegations were raised in fewer than 20 of these “couple only” cases.

112 This may reflect court policies on the transfer of proceedings between courts.

**Table 5.4 Apparent severity of each case's allegations in each court by sample: Couple cases**

Category of apparent severity	General litigants		Judicial determination	
	FCoA (58 cases)	FMC (72 cases)	FCoA (22 cases)	FMC (18 cases)
	% of cases	% of cases	% of cases	% of cases
Category A	15.5	20.8	13.6	–
Category B	36.2	23.6	18.2	–
Category C	48.2	55.6	68.2	–
<i>Total</i>	100.0	100.0	100.0	–

*Note.* No percentages are reported where there were fewer than 20 cases (depicted by “–”). Category A refers to the most ambiguous allegations, and to allegations that did not seem as serious as those contained in Category B or C. By contrast, Category C allegations appeared to be particularly serious.

Interestingly, cases (containing allegations) in all three sub-samples were more likely to have been assigned a Category C classification than Category A or B classifications (applying to between half and two thirds of all cases containing allegations of family violence or child abuse). And when Category B and C cases were combined, they accounted for around 80% or more of the cases containing allegations. (Appendix C summarises the content of the cases in each of these categories.)

Once again, the pattern of results for the FCoA judicial determination sample stood out. Tables 5.1–5.3 suggest that this sample was the most likely to contain allegations of several of the various types of family violence or child abuse, including the co-occurrence of family violence and child abuse. Table 5.4 suggests that the general tenor of allegations raised in the FCoA judicially determined cases (containing allegations) appeared to be particularly severe: around two thirds of cases in this sample (68%) and 48–56% of cases in the other two samples were classified as Category C cases.

### 5.2.5 Allegations that children witnessed family violence

Two tables are presented in this section. The first table (Table 5.5) focuses on allegations that the children witnessed spousal or other adult family violence. The second table (Table 5.6) focuses on the different types of spousal violence that children were alleged to have witnessed. Here, “witnessing” means that it was alleged that the child saw or heard the violence.

Consistent with the overall pattern of results regarding allegations of spousal and other adult family violence (Table 5.1), an allegation that spousal violence was witnessed by a child was most commonly raised in cases requiring judicial determination, especially in the FCoA cases. This type of allegation was raised in two thirds of FCoA cases requiring judicial determination (68%), in nearly half their FMC counterparts (48%), and in 25–29% of the general litigants samples. Indeed, in half of the cases in the FCoA and FMC general litigants sub-samples in which allegations of spousal violence were raised, it was also alleged that children had witnessed spousal violence (comparison data not shown). This rate is much higher in the FCoA judicial determination sub-sample (86%), although this percentage is based on only 22 cases. (There were only 18 cases containing spousal violence allegations in the FMC judicial determination sub-sample.)<sup>113</sup>

Just as virtually all cases containing allegations of other adult family violence also contained allegations of spousal violence (Table 5.1), so too, virtually all cases containing allegations that a child witnessed other adult family violence also contained allegations that a child witnessed spousal violence (Table 5.5).

113 These data are not presented in a table but can be extrapolated from Tables 5.1 and 5.5. For example, 47.7% of FCoA cases in the general litigants sample included allegations of spousal violence ( $n = 52$ ), while 24.8% of all FCoA cases in that sample contained allegations that a child witnessed spousal violence ( $n = 27$ ). Thus, 27 of 52 cases (52.0%) containing allegations of spousal violence also included an allegation that a child witnessed such violence.

**Table 5.5 Type of family violence alleged to have been witnessed by children in each court by sample: Couple cases**

	General litigants		Judicial determination	
	FCoA (n = 109)	FMC (n = 116)	FCoA (n = 28)	FMC (n = 27)
	% of cases	% of cases	% of cases	% of cases
Spousal violence	24.8	29.3	67.9	48.1
Other adult family violence	10.1	4.3	7.1	11.1
<b>Any adult family violence</b>	<b>28.4</b>	<b>30.2</b>	<b>67.9</b>	<b>48.1</b>
Spousal violence only	18.3	25.9	60.7	37.0
Other adult family violence only	3.7	0.9	0	0
Both	6.4	3.4	7.1	11.1
Neither	71.6	69.8	32.2	51.9
<i>Total</i>	100.0	100.0	100.0	100.0

Table 5.6 shows the proportion of cases containing an allegation of specific spousal violence witnessed by children.

Regarding spousal violence, it has already been noted that cases in all four sub-samples were most likely to contain an allegation of actual physical violence, followed by either threats of physical violence or emotional/verbal abuse, then actual property damage (Table 5.2). Not surprisingly, the same pattern of results generally applied to allegations about spousal violence witnessed by children (Table 5.6).<sup>114</sup>

**Table 5.6 Type of spousal violence alleged to have been witnessed by children in each court by sample: Couple cases**

Type of spousal violence alleged	General litigants		Judicial determination	
	FCoA (n = 109)	FMC (n = 116)	FCoA (n = 28)	FMC (n = 27)
	% of cases	% of cases	% of cases	% of cases
<b>Physical</b>				
Actual	16.5	15.5	42.9	37.0
Attempted	0.9	0	0	3.7
Threatened	7.3	6.9	17.9	11.1
<b>Sexual</b>				
Actual	0.9	0	0	0
Attempted	0	0	0	0
Threatened	0	0	0	0
<b>Emotional/verbal</b>	9.2	13.8	28.6	33.3
<b>Stalking</b>	0	0.9	0	0
<b>Property damage</b>				
Actual	8.3	3.4	14.3	7.4
Attempted	0	0	0	0
Threatened	0	0	0	0
<b>Self-harm by spouse</b>				
Actual	0.9	0.9	0	0
Attempted	0.9	0	0	3.7
Threatened	2.8	0.9	7.1	3.7
<b>Unspecified</b>	0.9	2.6	0	3.7
<b>Any</b>	<b>24.8</b>	<b>29.3</b>	<b>67.9</b>	<b>48.1</b>

114 There is one exception: the same proportions of cases in the FCoA general population contained allegations that a child witnessed emotional/verbal abuse and that a child witnessed actual property damage (8%).



It is noteworthy that 37–43% of cases in the two judicial determination samples contained an allegation that children witnessed actual physical (spousal) violence. This rate is more than double that in the general litigants samples (16–17%). The two judicial determination samples were also more likely to contain allegations that a child witnessed emotional/verbal abuse (29–33% vs 9–14%).

In summary, the results concerning allegations that a child witnessed family violence suggest that:

- the two judicial determination samples were the most likely to contain allegations that children witnessed spousal violence, with two thirds of FCoA cases and nearly half the FMC cases containing such allegations;
- in each group, virtually all cases containing allegations that a child witnessed other adult family violence also contained allegations that a child witnessed spousal violence; and
- consistent with the pattern of allegations about spousal violence in general, actual physical abuse was the most common type of spousal violence that children were alleged to have witnessed.

### 5.3 Applicant/respondent status by gender by sample

This section focuses on patterns of allegations made by applicant and respondent mothers and fathers (four groups in the two samples taken separately).<sup>115</sup> As explained earlier, this approach helps to examine whether any differences in patterns according to applicant/respondent status are really a function of gender, given that a higher proportion of applicants were mothers than fathers (56% vs 44% in the general litigants sample). It is important to point out that the judicial determination sample sub-groups were very small (the “couple only” sample, on which this analysis is based, contained 23 applicant fathers and respondent mothers, and 32 applicant mothers and respondent fathers), even though we combined data from the two courts to increase the sample size. Therefore, any interpretations of “trends” regarding the judicial determination sample should be considered highly tentative.

#### 5.3.1 Alleged family violence or child abuse

Table 5.7 sets out the proportions of applicant and respondent mothers and fathers who made allegations of either spousal or other adult family violence, or child abuse in the general litigants and judicial determination samples.

As already indicated, allegations of family violence and/or child abuse were more likely to have been made in the sample that proceeded to judicial determination than in the general litigants sample. This pattern applied regardless of which parent made the allegation. Regardless of whether they were applicants or respondents, mothers in the general litigants sample were considerably more likely than fathers in this sample to raise an allegation of family violence and/or child abuse. Allegations were raised by around half the applicant and respondent mothers (49–54%) and by 21–36% of fathers. Table 5.7 also suggests that, within each gender, applicants in the general litigants sample were more likely than respondents in that sample to raise an allegation—a trend that was more pronounced for fathers than mothers (fathers: 36% vs 21%; mothers: 54% vs 49%). A similar pattern occurred for fathers in the judicial determination sample: allegations were made by 56% of applicant fathers and 47% of respondent fathers. But applicant and respondent mothers in the judicial determination sample were equally likely to raise allegations (65–66%).

Table 5.7 also indicates that around one in five cases in the general litigants sample involved mutual allegations by each party, regardless of who initiated the application for children’s matters. By contrast, one-sided allegations (where only one party made an allegation) were more likely to be made by mothers than fathers (applicant mothers: 35%; applicant fathers: 12%; respondent

115 In this section, we have adopted the terms “mother” and “father” to describe all parents, irrespective of whether they were legally married.

**Table 5.7 Parent who alleged family violence and/or child abuse according to applicant/respondent status in each sample**

Who made allegation(s)?a	General litigants		Judicial determination	
	Alleging party		Alleging party	
	Applicant mother and respondent father (n = 127)	Applicant father and respondent mother (n = 98)	Applicant mother and respondent father (n = 32)	Applicant father and respondent mother (n = 23)
	%	%	%	%
Applicant	54.3	35.7	65.7	56.4
Respondent	20.5	49.0	46.9	65.2
Applicant only	34.6	12.2	25.0	8.7
Respondent only	0.8	25.5	6.3	17.4
Mutual allegations (both allege)	19.7	23.5	40.6	47.8
Neither	44.9	38.8	28.1	26.1
<i>Total</i>	100.0	100.0	100.0	100.0

Note. <sup>a</sup>Associated allegations (mental health problems, substance abuse, child neglect and child abduction) are also excluded.

mothers: 26%; respondent fathers: 1%). It is important to note that the data do not distinguish between allegations and counter-allegations.

The tendency for an allegation by the father to be accompanied by an allegation by the mother also applied in the judicial determination sample. Only 9% of applicant fathers and 6% of respondent fathers were the sole “alleging party” (compared with 17 and 25% of applicant and respondent mothers respectively).

Indeed, the raising of mutual allegations represented the dominant feature of the cases requiring a judicial determination (41% of applicant mother cases; 48% of applicant father cases). The rate of mutual allegations in the judicial determination sample was around twice that in the general litigants sample.

Four clear patterns thus emerged:

- Allegations were more likely to be raised in the judicial determination samples, and tended to be two-sided (that is, each party raised allegations against their partner).
- Mothers were more likely to make an allegation than fathers.
- Allegations by fathers tended to be accompanied by allegations by mothers.
- Fathers in both samples were more likely to make an allegation if they were the applicant to the proceedings than if they were the respondent.

Table 5.8 shows the proportion of applicant and respondent mothers and fathers in the two samples who raised an allegation of spousal violence, other adult family violence, or child abuse.

Irrespective of who initiated the application and whether the case was judicially determined, allegations of family violence mostly concerned spousal violence and were far more likely to be made than those of child abuse. Nonetheless, allegations of spousal violence were more pronounced in the judicial determination sample than in the general litigants sample. This particularly applied to allegations made by fathers. Specifically, applicant and respondent fathers in the judicial determination sample were at least twice as likely as their counterparts in the general litigants sample to allege that their partners had been violent towards them (applicant fathers: 52% vs 26%; respondent fathers: 38% vs 16%). Indeed, applicant fathers in the judicial determination sample were as likely or more likely than applicant or respondent mothers in the

**Table 5.8 Type of family violence or child abuse alleged by each applicant or respondent parent by sample: Couple cases**

	General litigants				Judicial determination			
	Alleging party				Alleging party			
	Applicant mothers (n = 127)	Respondent mothers (n = 98)	Applicant fathers (n = 98)	Respondent fathers (n = 127)	Applicant mothers (n = 32)	Respondent mothers (n = 23)	Applicant fathers (n = 23)	Respondent fathers (n = 32)
	%	%	%	%	%	%	%	%
<b>Family violence and/or child abuse</b>	54.3	48.9	35.7	20.4	65.7	65.2	56.4	46.9
Spousal violence	49.6	43.9	25.5	15.7	65.6	56.5	52.2	37.5
Other adult family violence	15.0	15.3	8.2	3.9	25.0	4.3	8.7	12.5
<b>Any family violence</b>	51.2	45.9	30.6	17.3	65.6	56.5	52.2	40.6
Child abuse by spouse	17.3	19.4	8.2	6.3	21.9	26.1	13.0	12.5
Child abuse by other	3.1	0	3.1	3.1	0	4.3	8.7	12.5
<b>Any child abuse</b>	18.9	19.4	10.2	7.9	21.9	26.1	17.4	21.9
Family violence only	35.4	29.6	25.5	12.6	43.8	39.1	39.1	25.0
Child abuse only	3.1	3.1	5.1	3.1	0	8.7	4.3	6.3
Co-occurrence of family violence and child abuse	15.7	16.3	5.1	4.7	21.9	17.4	13.0	15.6
No allegations	45.7	51.1	64.3	79.6	34.3	34.8	43.6	53.1
<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

general litigants sample to have alleged spousal violence (52% vs 44–50%). Of course, the nature of the alleged spousal violence needs clarification.

Table 5.8 also indicates that, within each sample, allegations of spousal violence were more likely to be made by mothers than fathers, and by applicants than respondents within each gender. That is, such an allegation was most likely to be made by applicant mothers, followed by respondent mothers, then applicant fathers, with respondent fathers being the least likely to make such an allegation. Given the high proportion of all allegations that included spousal violence allegations, these patterns mirror those evident in Table 5.7.

It is also worth noting that an allegation of other adult family violence was made by one quarter of applicant mothers in the judicial determination sample. This group was clearly the most likely to make such an allegation. The proportions in other groups to do so were 4–15% of mothers and 4–13% of fathers.

Regarding allegations of child abuse, fathers in the general litigants sample were less likely than all other groups to raise such allegations (8–10% vs 17–26%), whereas respondent fathers in the judicial determination sample were as likely or almost as likely as all four groups of mothers to allege child abuse (22% vs 19–26%).

Although allegations of child abuse by a person other than the spouse were generally rare in these selected groups of couple cases, respondent fathers in the judicial determination sample were just as likely to make an allegation of child abuse by a spouse as they were to make an allegation of child abuse by another person (13%).

Finally, regarding the bottom section of Table 5.8, the most common scenario alleged by all groups of parents was that family violence alone had occurred. The group least likely to make any allegation (respondent fathers in the general litigants sample) were, not surprisingly, the least likely to claim that family violence alone had taken place (13% vs 25–44%).

It has already been shown that an allegation of child abuse in the absence of an allegation of adult abuse was highly unusual. Such a scenario was alleged by less than 10% in all groups. Allegations of both child abuse and family violence were mentioned by between 13–22% of parents in all groups except fathers (whether applicant or respondent) in the general sample. Only 5% of fathers in these two groups made such a claim. These two groups of fathers clearly differed from all other groups in this respect. Indeed, fathers in the general litigants sample tended not to make any allegations of child abuse (only 8–10% did so).

To summarise:

- Irrespective of gender, applicant/respondent status and sample, allegations of family violence mostly concerned spousal violence and were far more likely to be made than those of child abuse.
- Regarding family violence:
  - allegations of spousal violence by mothers and fathers taken separately were more pronounced in the judicial determination sample than in the general litigants sample, especially allegations raised by fathers;
  - within each sample, allegations of spousal violence were more likely to be made by mothers than fathers, and by applicants than respondents within each gender; and
  - an allegation of other adult family violence was made by more applicant mothers in the judicial determination sample than by any other group.
- Regarding allegations of child abuse:
  - fathers in the general litigants sample were less likely than all other groups to raise such allegations;
  - respondent fathers in the judicial determination sample were as likely or almost as likely as all four groups of mothers to allege child abuse; and
  - although an allegation of child abuse by a person other than the spouse was generally rare overall, respondent fathers in the judicial determination sample were equally likely to make an allegation of child abuse by spouse as child abuse by another person.
- Finally, regarding whether child abuse and family violence occurred alone or in combination:
  - the most common scenario alleged by all groups of parents was that family violence alone had occurred;
  - an allegation of child abuse in the absence of an allegation of family violence was highly unusual; and
  - applicant and respondent fathers in the general litigants sample were the least likely of all groups to make allegations of child abuse.

### **5.3.2 Specific types of alleged spousal violence**

Table 5.9 shows the prevalence of each type of spousal violence allegation raised by applicant and respondent mothers and fathers in the two samples.

As noted earlier, Table 5.2 showed that the most commonly alleged forms of spousal violence were physical violence (actual or threatened), emotional/verbal abuse and actual property damage. In Table 5.9, threatened self-harm by a former partner was also relatively commonly alleged for one group: applicant mothers in the judicial determination sample (19% vs 0–4% in the general litigants sample). The striking feature of this table is that these mothers were the most likely of all groups to not only allege self-harm by the spouse but also physical violence (actual or threatened) and emotional/verbal abuse. Each of these other categories were alleged by 44–50% of these mothers.

In stark contrast, only 16–26% of applicant and respondent fathers in the general litigants sample raised any specific type of spousal violence allegations. No striking patterns emerged across the groups in relation to the associated allegations of mental health problems and substance abuse.

**Table 5.9 Type of spousal violence alleged by each applicant or respondent parent by sample: Couple cases**

	General litigants				Judicial determination			
	Alleging party				Alleging party			
	Applicant mothers (n = 127)	Respondent mothers (n = 98)	Applicant fathers (n = 98)	Respondent fathers (n = 127)	Applicant mothers (n = 32)	Respondent mothers (n = 23)	Applicant fathers (n = 23)	Respondent fathers (n = 32)
	%	%	%	%	%	%	%	%
<b>Physical</b>								
Actual	35.4	31.6	12.2	11.8	50.0	43.5	39.1	12.5
Attempted	1.6	2.0	0	1.6	0	0	8.7	0
Threatened	24.4	17.3	4.1	3.9	46.9	30.4	8.7	9.4
<b>Sexual</b>								
Actual	3.9	1.0	0	0	6.3	0	0	0
Attempted	0	0	0	0	3.1	0	0	0
Threatened	0	0	0	0	0	0	0	0
<b>Emotional/verbal</b>	24.4	21.4	7.1	6.3	43.8	26.1	17.4	15.6
<b>Stalking</b>	4.7	3.1	2.0	0	3.1	13.0	4.3	0
<b>Unspecified</b>	7.1	3.1	2.0	0.8	6.3	8.7	0	0
<b>Property damage</b>								
Actual	10.2	14.3	5.1	2.4	21.9	17.4	17.1	12.5
Attempted	0	0	0	0	0	0	0	0
Threatened	0.8	1.0	0	0	3.1	0	0	3.1
<b>Self-harm by spouse</b>								
Actual	3.1	2.0	2.0	0.8	3.1	0	4.3	9.4
Attempted	0.8	1.0	1.0	0	3.1	0	4.3	3.1
Threatened	3.9	1.0	2.0	1.6	18.8	4.3	0	0
<b>Any</b>	49.6	43.9	25.5	15.7	65.6	56.5	52.2	37.5
<b>Associated allegations</b>								
Mental health	5.5	5.1	5.1	7.1	9.4	0	13.0	15.6
Substance abuse	18.1	20.4	15.3	9.4	25.0	21.7	17.4	12.5

### 5.3.3 Specific types of alleged child abuse

Table 5.10 shows the prevalence of each type of child abuse allegation raised by applicant and respondent mothers and fathers in the two samples.

As already noted, allegations of child abuse were less common. But one allegation type by one group stands out in this context: applicant mothers were more likely than any other group to allege that children had been physically abused (22% vs 4–13%). This was the only allegation of child abuse made by applicant mothers in the judicial determination sample, and Table 5.8 shows that all these mothers alleged that the father was the perpetrator of this abuse. It is also noteworthy that 13% of respondent mothers in the judicial determination sample, compared with 0–3% of all other groups, alleged that child sexual abuse had occurred.

The bottom section of Table 5.10 shows that 13% of applicant mothers in the judicial sample, and 0–4% of parents in all other groups, alleged that the child had been abducted by the other parent. Child neglect was alleged by 9% of father respondents in the judicial determination sample, and 0–4% of parents in all other groups. These refer to associated allegations. That is, such allegations were only recorded if an allegation of family violence or child abuse was made. It must be emphasised that allegations of any specific form of child abuse was unusual, and care should be taken in interpreting these data, particularly for the small judicial determination sample.

**Table 5.10 Type of parental child abuse alleged by each applicant or respondent parent by sample: Couple cases**

	General litigants				Judicial determination			
	Alleging party				Alleging party			
	Applicant mothers (n = 127)	Respondent mothers (n = 98)	Applicant fathers (n = 98)	Respondent fathers (n = 127)	Applicant mothers (n = 32)	Respondent mothers (n = 23)	Applicant fathers (n = 23)	Respondent fathers (n = 32)
	%	%	%	%	%	%	%	
<b>Physical</b>								
Actual	8.7	8.2	6.1	3.9	21.9	8.7	13.0	12.5
Attempted	0	1.0	0	0	0	0	0	0
Threatened	7.1	6.1	2.0	0	0	8.7	0	3.1
<b>Sexual</b>								
Actual	3.1	2.0	0	0	0	13.0	0	0
Attempted	0	0	0	0	0	0	0	0
Threatened	0	0	0	0	0	0	0	0
<b>Emotional/verbal</b>								
Unspecified	5.5	8.2	1.0	2.4	0	4.3	4.3	3.1
Any	0.8	1.0	0	0.8	0	0	4.3	0
Any	17.3	19.4	8.2	6.3	21.9	26.1	13.0	12.5
<b>Associated allegations</b>								
<b>Abduction</b>								
Actual	0.8	2.0	0	0	12.5	4.3	0	0
Attempted	0	0	0	0	0	0	0	0
Threatened	0	0	0	0	3.1	0	0	0
<b>Neglect</b>								
Any	0.8	1.0	4.1	1.6	3.1	0	4.3	9.4

**Table 5.11 Apparent severity of sets of allegations made by each applicant or respondent parent by sample: Couple cases**

	General litigants				Judicial determination			
	Alleging party				Alleging party			
	Applicant mothers (n = 69)	Respondent mothers (n = 48)	Applicant fathers (n = 35)	Respondent fathers (n = 26)	Applicant mothers (n = 21)	Respondent mothers (n = 15)	Applicant fathers (n = 13)	Respondent fathers (n = 15)
	%	%	%	%	%	%	%	
Category A	18.8	25.0	42.9	38.4	14.3	–	–	–
Category B	30.4	22.9	34.1	15.4	14.3	–	–	–
Category C	50.7	52.1	22.9	46.2	71.4	–	–	–
<b>Total</b>	100.0	100.0	100.0	100.0	100.0	–	–	–

Note. Percentages are not reported where there were fewer than 20 cases. Category A refers to the most ambiguous allegations, and to allegations that did not seem as serious as those contained in Category B or C. By contrast, Category C allegations appeared to be particularly serious.

### 5.3.4 The apparent severity of allegations in each case

Table 5.11 shows the apparent severity of each party's set of allegations (applicant and respondent mothers and fathers in the two samples), where such allegations were made.<sup>116</sup> Given that only one party (applicant or respondent) may have made allegations, the number of applicant mothers and respondent fathers represented in Table 5.1 differs. The same applies to the number of applicant fathers and respondent mothers.

<sup>116</sup> As noted earlier, each party's set of allegations was first categorised according to the apparent severity of the circumstances described. Each of the paired sets was then used to categorise the severity of each case's circumstances.



Before discussing Table 5.11, it should be noted that some of these groups are quite small and only one group—applicant mothers—in the judicial determination sample contained at least 20 cases.

The most conspicuous result in this table concerns the 71% of applicant mothers in the judicial determination sample (15 out of 21 applicant mothers) whose sets of allegations were classified as Category C (suggesting particularly severe alleged circumstances). This category was applied to the allegations of close to half the representatives in three of the four general litigants groups (46–52%). The exception concerned applicant fathers: only 23% of the set of allegations made by these men was assigned a Category C rating, while 43% were given a Category A rating.

### 5.3.5 Allegations that children witnessed family violence

Table 5.12 sets out the proportions of applicant and respondent mothers and fathers in each sample who alleged that children witnessed spousal or other adult family violence.

**Table 5.12** Type of family violence alleged to have been witnessed by children cross-tabulated by each applicant or respondent parent by sample: Couple cases

	General litigants				Judicial determination			
	Alleging party				Alleging party			
	Applicant mothers (n = 127)	Respondent mothers (n = 98)	Applicant fathers (n = 98)	Respondent fathers (n = 127)	Applicant mothers (n = 32)	Respondent mothers (n = 23)	Applicant fathers (n = 23)	Respondent fathers (n = 32)
	%	%	%	%	%	%	%	
Spousal violence	22.8	24.5	10.2	6.3	50.0	47.8	30.4	12.5
Other adult family violence	7.1	4.1	1.0	1.6	12.5	0	0	6.3
<b>Any family violence</b>	<b>25.2</b>	<b>25.5</b>	<b>10.2</b>	<b>7.1</b>	<b>50.0</b>	<b>47.8</b>	<b>30.4</b>	<b>15.6</b>
Spousal only	18.1	21.4	9.2	5.5	37.5	47.8	30.4	9.4
Other adult family violence only	2.4	1.0	0	0.8	0	0	0	3.1
Both	4.7	3.1	1.0	0.8	12.5	0	0	3.1
Neither	74.8	74.5	89.8	92.9	50.0	52.2	69.6	84.4
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Around half the applicant and respondent mothers in the judicial determination sample (48–50%), and 30% of applicant fathers in the same sample, had raised an allegation that children had witnessed family violence. This was alleged by one quarter of applicant and respondent mothers in the general litigants sample and by 7–16% of the other three groups of fathers.

Most or all of these allegations made by parents in each group referred to children witnessing spousal violence. Furthermore, applicant mothers in the judicial determination sample were the most likely of all groups to have alleged that children had witnessed both spousal and other adult family violence (13% vs 0–5%). Table 5.13 shows the proportions of applicant and respondent mothers and fathers in the general litigants and judicial determination samples who alleged that children witnessed the various types of spousal violence.

As noted earlier, the small group sizes mean that the percentages derived are based on all litigants in each group and not just those who made any allegation. The broad patterns tend to reflect those in Table 5.9, which referred to the type of spousal violence alleged by each applicant or respondent in each sample.

Children were most commonly alleged to have witnessed actual or threatened physical violence, emotional/verbal abuse, or actual property damage. Of these, the most common allegation for

**Table 5.13 Type of spousal violence alleged to have been witnessed by children cross-tabulated by each applicant or respondent parent by sample: Couple cases**

	General litigants				Judicial determination			
	Alleging party				Alleging party			
	Applicant mothers (n = 127)	Respondent mothers (n = 98)	Applicant fathers (n = 98)	Respondent fathers (n = 127)	Applicant mothers (n = 32)	Respondent mothers (n = 23)	Applicant fathers (n = 23)	Respondent fathers (n = 32)
	%	%	%	%	%	%	%	
<i>Physical</i>								
Actual	13.4	14.3	6.1	3.9	31.3	34.8	17.4	3.1
Attempted	0.8	0	0	0	0	0	4.3	0
Threatened	8.7	3.1	2.0	0	12.5	13.0	4.3	0
<i>Sexual</i>								
Actual	0.8	0	0	0	0	0	0	0
Attempted	0	0	0	0	0	0	0	0
Threatened	0	0	0	0	0	0	0	0
<i>Emotional/verbal</i>	11.0	8.2	2.0	2.4	25.0	17.4	13.0	6.3
<i>Stalking</i>	0	1.0	0	0	0	0	0	0
<i>Unspecified</i>	2.4	1.0	0	0	0	4.3	0	0
<i>Property damage</i>								
Actual	2.4	9.2	0	0.8	9.4	13.0	0	0
Attempted	0	0	0	0	0	0	0	0
Threatened	0	0	0	0	0	0	0	0
<i>Self-harm by spouse</i>								
Actual	0.8	0	1.0	0	0	0	0	0
Attempted	0	1.0	0	0	0	0	0	3.1
Threatened	1.6	0	1.0	0.8	6.3	4.3	0	0
<b>Any</b>	<b>22.8</b>	<b>24.5</b>	<b>10.2</b>	<b>6.3</b>	<b>50.0</b>	<b>47.8</b>	<b>31.4</b>	<b>12.5</b>

most groups was that children had witnessed actual physical abuse. Such an allegation was raised by around a third of applicant and respondent mothers in the judicial determination sample and by 3–17% in all other groups.

## 5.4 Summary

This chapter has examined the prevalence of allegations of family violence (spousal and/or other adult family violence) and child abuse raised in family law children’s proceedings. Specific foci included different types of spousal violence and child abuse (and also associated allegations of mental health problems, substance abuse, child neglect and abduction), apparent levels of severity, and allegations that a child witnessed family violence. The extent to which the prevalence of allegations varied by sample, court, gender and applicant/respondent status was also examined.

Four groups of *case files* were compared in terms of the proportions that contained at least one allegation: FCoA and FMC cases in the general litigants sample, and FCoA and FMC cases in the small sample that required a judicial determination. Eight groups of *parties* were then compared in terms of the proportions who made at least one allegation: applicant and respondent mothers and fathers (four groups) in each of the two samples (general litigants and judicial determination samples).

Several key patterns emerged. First, more than half the cases in both courts in each sample contained allegations of family violence and/or child abuse.

Second, regardless of court or sample, the tenor of these allegations was most commonly classified by the research team as “severe” (that is, suggesting highly injurious or abusive circumstances).

Third, cases in the FCoA requiring a judicial determination were the most likely of all cases to contain allegations; they also tended to be two-sided (with each party raising allegations) and tended to contain allegations that were coded at the severe end of the spectrum. This is likely to be consistent with a policy that aims to direct the most difficult cases into the FCoA. At the same time, it is notable that the FMC is also dealing with a substantial proportion of cases at the severe end of the spectrum (and over 60% of cases contained some form of allegation of family violence or child abuse).

Fourth, allegations of spousal violence were far more common than those of child abuse within each of the court, sample, gender and applicant/respondent status groups. Allegations of child abuse alone were rare. Put another way, allegations of child abuse were almost always accompanied by allegations of family violence. This is consistent with observations by many researchers (e.g. see Brown et al., 1998) concerning the complex dynamics and range of issues that exist in cases in which violence is alleged.

Fifth, allegations of child abuse largely centred on physical abuse, especially in cases requiring a judicial determination by the FCoA and in the allegations raised by applicant mothers in this context.

Sixth, the most common forms of alleged spousal violence were physical abuse (actual and threatened), emotional/verbal abuse and property damage.

Seventh, mothers were more likely than fathers and applicants were more likely than respondents within each gender to allege spousal violence. That is, for the general litigants and judicially determined samples taken separately, these allegations were most likely to be made by applicant mothers, followed by respondent mothers, then applicant fathers, with respondent fathers being the least likely to make such an allegation. Two other points warrant mention here: where fathers made allegations, mothers were also likely to have done so; and applicant mothers in the judicial determination sample were the most likely to raise the allegations of both spousal violence and other adult family violence.

Finally, allegations that children saw or heard spousal violence were more common in cases requiring a judicial determination (especially those filed in the FCoA) than those in the general litigants sample. While this mirrors the overall pattern of allegations occurring in each court, it is noteworthy that such allegations were raised in two thirds of FCoA judicially determined cases.

# 6

## Evidentiary material and responses to allegations

The previous chapter examined the proportion of FCoA and FMC case files that contained allegations of family violence or child abuse, and the proportion of applicant and respondent parents who made such allegations. In this chapter, we investigate the total number of allegations raised and the evidence filed in support of those allegations.<sup>117</sup> We also explore the apparent strength of evidence for and responses to allegations.<sup>118</sup>

The following questions guide the chapter:

- How many allegations were generally raised in a case?
- How specific were the allegations and responses?
- How often did the alleging party provide corroborative evidence, and what form did this evidence take?
- How often were allegations denied, admitted or left unanswered?
- Were certain types of allegations more likely than other types of allegations to be admitted or denied?
- Over the life of the case, what other (if any) evidentiary material emerged?
- To what extent was the apparent severity of allegations linked with the existence of evidentiary material and any response to allegations?

Results are presented in six sections. First, a brief snapshot of the number of allegations raised by parties is offered. Second, the extent of the corroboration provided by the alleging party is described. The third section examines responses to the allegations. Next, the extent to which evidentiary material was provided in Family Reports is set out. Fifth, the overall weight of evidence is assessed. Finally, the level of detail of the allegations and responses are compared.

### 6.1 Technical preface

A single allegation may refer to a single event or multiple events of differing duration. For example, an allegation that a spouse had been physically violent on multiple occasions over 6 months might be presented by a litigant in their affidavit as a single allegation. The way in which allegations were documented in affidavit material may, in part, be a reflection of both the nature of the disclosure by a litigant and the framing of this information on the advice of a lawyer representing that party. For instance, one lawyer might adopt a “less is more” strategy, and suggest that the client report two or three critical events, but combine a longer-term pattern of behaviour as a single allegation. Another lawyer may suggest a “more is more” approach, and advise that every instance of perceived abuse be documented as a separate allegation. This means that the number of allegations documented in a court file is not necessarily a measure of the frequency and duration of specific types of abuse. The same issue applies to responses by the other party to these allegations, since the responding party may elect to reply to several

117 This chapter focuses on allegations of child abuse made against the other parent (“parental child abuse”) and excludes allegations made against others.

118 As noted in Chapter 4, the study did not track the corroboration of denials, on the grounds that: (a) it is frequently difficult to corroborate a denial, as it involves proving a negative; and (b) allegations are unlikely to be falsely made when they can be easily disproved (e.g., “I wasn’t there. I was with ...”). However, the level of detail of denials is noted to help clarify the situation. Presumably, any Family Report that drew conclusions about the veracity of allegations would have taken into account the arguments of both parties. Chapter 6 includes an examination of conclusions made in Family Reports.

allegations in a collective manner. This highlights the importance of examining the data at both the case and litigant levels, an approach adopted here.

## 6.2 Number of allegations

Whereas Chapter 5 focused on allegations at the case level, this section examines the number of allegations within each case. This approach is a useful springboard into an examination of the extent to which individual allegations were accompanied by supporting evidence and/or denied (allegation level data).

Table 6.1 shows the number of allegations of spousal violence and child abuse found within individual court files in the FCoA and FMC, in both the general litigants and the judicial determination samples. So, for example, the table shows that 53% of cases in the FCoA general litigants sub-sample contained no allegations of spousal violence, while 14% contained one such allegation. (Allegations of child abuse raised in the judicial determination sample are not shown because there were fewer than 20 cases containing such allegations in the FCoA and FMC sub-samples combined.)

**Table 6.1** Number of allegations about spousal violence and parental child abuse raised by litigants in the FCoA and FMC by sample: Couple cases

Number of allegations	Allegations of spousal violence				Allegations of parental child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [109 cases]	FMC (330 allegations) [116 cases]	FCoA (161 allegations) [28 cases]	FMC (93 allegations) [27 cases]	FCoA (56 allegations) [109 cases]	FMC (50 allegations) [116 cases]
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
None	53.2	46.6	21.4	37.0	78.0	75.9
1	13.8	10.3	3.6	7.4	9.2	13.8
2	7.3	7.8	21.4	11.1	6.4	6.9
3	3.7	5.2	3.6	14.8	3.7	1.7
4 or more	22.0	30.1	50.0	29.6	2.7	1.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Mean no. of allegations (where at least 1 allegation was made)	4.4	5.3	7.3	5.4	2.3	1.8
Number of case files in which an allegation was made	51	62	22	18	24	28

It has already been shown in Chapter 5 that allegations of spousal violence were more likely to be made in the judicial determination sample than in the general litigants sample, and over 70% of cases in the general litigants sample did not contain any allegations of child abuse.

Table 6.1 suggests that, where allegations of spousal violence were made, several tended to be raised (average: 4–7 allegations), particularly in FCoA cases requiring a judicial determination. In fact, half of the FCoA cases in the judicial determination sample contained four or more allegations, compared with only 22–30% in the other sample. By contrast, in the small proportion of cases containing allegations of parental child abuse in the general litigants sample, an average of only two such allegations were raised.

Given that only 18 of the 27 cases in the FMC judicial determination sub-sample contained allegations of spousal violence, these data are combined with those for the FCoA judicial determination sub-sample in subsequent tables.<sup>119</sup>

### 6.3 Corroboration provided by the alleging party

This section focuses on the material provided by alleging parties in support of their allegations of spousal violence and parental child abuse (respectively). Patterns for cases within the two courts are first compared, followed by patterns for litigants.

As noted in Chapter 1, it is not possible to directly determine the prevalence of “true” and “false” allegations of family violence or child abuse within the confines of this study. However, one way in which we can begin to approach that question is to note the extent to which such allegations were corroborated. For this purpose, we defined “corroboration” as *evidence that tends to confirm or give support to a statement made as to the occurrence of family violence or child abuse in the proceedings*.

Corroboration can take many different forms. The probative weight, or tendency of such weight to prove the allegation of violence or abuse, also varies depending on the type of corroboration. For example, if a family law litigant had previously been convicted in criminal law proceedings for the assault of their former spouse, that conviction would constitute corroborative evidence of very high probative weight in family law proceedings. At the other extreme, an affidavit from a third party confirming that a family law litigant had once told them of an experience of family violence (hearsay evidence) would have little, if any, probative weight, if indeed the court was prepared to consider such evidence at all.

In order to understand court outcomes, it is clear that we must recognise that corroboration entails a spectrum of probative weight. And yet, it is not possible to place different types of corroboration into an absolute hierarchy of probative weight. These are matters upon which reasonable minds may differ, and indeed courts and lawyers alike are engaged daily in such a weighing exercise from one case to the next. With these caveats in mind, different forms of corroboration were grouped into two categories. The first comprised corroborative evidence of *relatively strong probative weight*; the second, corroborative evidence of less probative weight. The specific types of evidence within each category are listed in Appendix E.

It should be noted at the outset that a lack of corroborative evidence should not be interpreted to mean that an allegation is “false”. Evidence can be hard to come by (Jaffe, Lemon, & Poisson, 2003), with abuse often occurring behind closed doors (Straus, Gelles, & Steinmetz, 1980) and not necessarily leaving any physical marks. Moreover, a victim of violence or abuse may be extremely reluctant to disclose abuse; indeed, she or he may stay silent about the experience of abuse for months or years, given the significant ramifications that may occur upon disclosure. Furthermore, he or she may remain silent about the abuse for so long that it eventually becomes difficult or impossible to corroborate an allegation at a later date.<sup>120</sup>

Table 6.2 indicates the extent of corroboration provided by the alleging party.<sup>121</sup> The table has three panels of data. (We use the term “panel” to refer to the space between the shaded headings.) The first panel summarises the number of pieces of evidence for each allegation raised; the second panel relates to the apparent probative weight of the evidence for each allegation; and the third panel looks at the overall weight of corroborative evidence for allegations raised in a case.

So, for example, in the first panel we see that 82% of allegations of spousal violence in the general population of Family Court cases were not supported by any form of corroborative evidence, while 14% of allegations in that group were supported by one piece of corroborative evidence.

119 No percentages are derived where allegations are based on fewer than 20 cases in a sample, with the exception of Table 6.14 ( $n = 19$ ).

120 A related methodological issue is that the corroboration of allegations through subpoenaed documents could not be noted since such documents were not available for inspection as part of our research.

121 There were only a sufficient number of cases in the general population sample to allow an examination of the evidence provided in relation to allegations of parental child abuse.



**Table 6.2** Extent of corroborative evidence of spousal violence and parental child abuse provided by the alleging party by court and sample: Couple cases

Number of pieces of corroborative evidence	Evidence in support of allegations of spousal violence and child abuse					
	Allegations of spousal violence				Allegations of child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
None	81.7	78.2	78.3	71.3	75.0	92.0
1	14.3	18.2	21.1	27.6	21.4	6.0
2	4.0	3.3	0.6	1.2	3.6	2.0
3 or more	0	0.3	0	0	0	0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Apparent weight of corroborative evidence	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
No evidence	81.7	78.2	78.3	71.3	75.0	92.0
Relatively strong probative weight	10.7	13.9	11.2	11.4	17.9	2.0
Of less probative weight	7.6	7.9	10.6	17.3	7.1	6.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
Cases containing allegations: weight of corroborative evidence	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
All strong <sup>a</sup>	2.0	8.0	4.5	7.7	12.5	0
Some strong	17.6	21.0	36.4	28.2	12.5	3.6
Relatively weak only <sup>b</sup>	15.7	9.7	18.2	25.6	12.5	10.7
<i>Total providing evidence</i>	35.3	38.8	59.1	61.5	37.5	14.3
<i>No information</i>	64.7	61.2	40.9	38.5	62.5	85.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. <sup>a</sup>“All strong” means that all of the allegations were supported by strong evidence. <sup>b</sup>“Relatively weak only” refers to such things as hearsay reports, interim *ex parte* orders, or evidence by a relative (see Appendix E).

Most individual allegations of spousal violence and child abuse were made in the absence of any information that may support them (top row, top panel in Table 6.2). This absence was especially pronounced for allegations of child abuse raised in the FMC general litigants sample (92% vs 71–82%). Where any evidence was raised, usually only one piece of evidence was cited.

It is difficult to comment conclusively upon the apparently high rate of unsupported allegations. The subpoena process is often a useful method of corroborating an allegation. For example, a party might subpoena police records to corroborate police attendance at a domestic violence incident, or one might subpoena medical or child welfare records to corroborate allegations of child abuse. Yet it was not possible to use such records as part of the study since these would ordinarily be returned to their source or be destroyed following the conclusion of the case. It would be clearly wrong to conclude that an allegation that is not corroborated is “false”; however, what does appear to emerge is that the family law system is required to process children’s cases amidst a high volume of allegations and denials of violence and abuse without the benefit of any independent corroboration of greater or lesser probative weight. This is one of several layers of ambiguity that shadow the analyses in this chapter.

The third panel in Table 6.2 suggests that cases involving allegations of spousal violence were more likely to contain evidence with apparently strong probative weight than to contain only

relatively weak evidence. This is most pronounced in the FCoA judicial determination sample, where 41% of relevant cases contained evidence of potentially convincing probative weight (“all strong” and “some strong” categories), and only 18% contained only relatively weak evidence.

Regarding allegations of child abuse, while 25% of relevant cases in the FCoA general litigants sample contained at least some evidence of apparently strong probative weight, 13% appeared to provide relatively weak evidence only (third panel). The opposite pattern was evident for the relevant cases in the FMC general litigants sample: only 4% contained apparently strong evidence, while 11% appeared to contain relatively weak evidence only. So, a greater proportion of cases involving allegations of parental child abuse raised in the FCoA seem to have stronger evidentiary value than relevant cases in the FMC.

Table 6.3 focuses on the parties who made allegations about spousal violence and indicates the proportion who provided corroborative evidence and the overall apparent probative weight of this evidence. Three categories of the overall strength of evidence for all allegations were derived using the same ranking system as adopted in Table 6.2. For example, Table 6.3 shows that 7% of mothers in the FCoA general litigants sample only filed corroborative evidence of strong probative weight in support of their allegations of spousal violence, while none of the fathers in this group did so.

**Table 6.3** Extent of corroborative evidence of spousal violence provided by the alleging party by court and sample: Couple cases

Presence and apparent weight of evidence	Evidence in support of allegations of spousal violence					
	General litigants				Judicial determination	
	FCoA		FMC		FCoA & FMC combined	
	Mother alleges (43 mothers)	Father alleges (21 fathers)	Mother alleges (60 mothers)	Father alleges (24 fathers)	Mother alleges (34 mothers)	Father alleges (24 fathers)
	%	%	%	%	%	
All strong probative weight	7.0	0.0	8.3	0	8.8	8.3
Some strong probative weight <sup>a</sup>	14.0	4.8	20.0	12.5	14.7	20.8
Relatively weak probative weight only	14.0	9.5	10.0	4.2	32.4	4.2
<i>Total providing evidence</i>	34.9	14.3	38.3	16.7	55.9	33.3
<i>No information</i>	65.1	85.7	61.7	83.3	44.1	66.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. <sup>a</sup>“Some strong” includes a combination of strong evidence for one or more allegations, and either relatively weak or no information for others. This table excludes “associated allegations” (e.g., mental illness, substance abuse, etc.).

Most alleging parties, except those in the combined judicial determination sample, did not provide any evidence to support their claims of spousal violence. Mothers in each group were more likely than fathers in the same group to provide evidence to support their allegations (general litigants sample—mothers: 35–38%; fathers: 14–17%; judicial determination combined sample—mothers: 56%; fathers: 33%).

Differences also emerged between the general litigants and judicial determination samples. Mothers in the combined judicial determination sample were more likely to provide some evidence to support their allegations than mothers in the general litigants sample (56% vs 35–38%). The same pattern of results appeared to hold for fathers (33% vs 14–17%).

While fathers in the judicial determination sample were less likely than mothers in the same sample to provide supporting evidence, when they did so their evidence was more likely to have strong—rather than relatively weak—probative weight. Specifically, 29% of all fathers in this sample provided evidence of some strong probative weight, whereas only 4% provided only relatively weak evidence; the respective proportions for mothers were 24% (“strong”) and 32% (“relatively weak”).

Less can be said about allegations of parental child abuse because of the small number of cases that included such allegations. As a consequence, Table 6.4 combines the data for the two courts in the general litigants sample. It focuses only on the 41 mothers who made allegations of parental child abuse and compares the extent of the corroborative evidence in this domain with the extent of corroborative evidence put forward when spousal violence was alleged. (Only 16 fathers made allegations of child abuse by their former partners.)

**Table 6.4** Extent of corroborative evidence provided by mothers who alleged spousal violence or parental child abuse in the general litigants sample (FCoA and FMC combined): Couple cases

Presence and apparent weight of evidence	Evidence in support of allegations of spousal violence and parental child abuse	
	General litigants: FCoA & FMC combined	
	Mothers who make allegations	
	Spousal violence (103 mothers)	Child abuse (41 mothers)
	%	%
All strong probative weight	7.8	4.9
Some strong probative weight <sup>a</sup>	17.5	7.3
Relatively weak probative weight only	11.7	14.6
<i>Total providing evidence</i>	36.9	26.8
<i>No information</i>	63.1	73.2
<i>Total</i>	100.0	100.0

*Note.* <sup>a</sup>The “some strong” category includes a combination of strong evidence for one or more allegations, and either relatively weak or no information for others. This table excludes association allegations (e.g., mental illness, substance abuse, etc.).

Mothers were less likely to provide evidence in support of allegations of parental child abuse than to provide evidence in support of allegations of spousal violence (27% vs 37%). Furthermore, mothers were more likely to provide at least some apparently strong evidence (rather than only relatively weak evidence) for their allegations of spousal violence than for their allegations of child abuse: spousal violence: 25% “all strong” or “some strong”, compared with 12% “relatively weak”; child abuse: 12% “all strong” or “some strong”, compared with 15% “relatively weak”).

To sum up: most alleging parties—more so fathers than mothers—did not provide any material in support of their allegations. But where fathers in the judicial determination sample provided information about allegations of spousal violence, it appeared more likely to carry strong probative weight compared with the material provided by mothers in that sample. More broadly, cases in the FCoA that required judicial determination were more likely to contain corroborative evidence of spousal violence that appeared to have some strong probative weight than only relatively weak evidence; unlike cases in the general litigants sample. Only a small number of cases included allegations of parental child abuse (made mostly by mothers). Mothers’ allegations of such abuse were less likely to be accompanied by evidence than was the case for mothers’ allegations of spousal violence. Of course, such evidence may be much harder to come by.

## 6.4 Response to allegations

This section compares the pattern of responses to allegations of spousal violence and parental child abuse across groups. Some allegations raised against one party may be fully denied, others may be partially denied (and therefore partially admitted), and others may be fully admitted. Alternatively, allegations may go unanswered (that is, the evidence is “silent”), but whether this means a “silent admission” or “silent denial” in any given case cannot be determined. In the present study, a prototypical example of “partial denial/partial admission” was the claim by an accused litigant that the allegation represented an exaggeration of what transpired.

Table 6.5 indicates the pattern of responses to allegations of spousal violence and parental child abuse in each court and sample.<sup>122</sup> The top panel refers to the nature of responses to each allegation, while the bottom panel refers to the overall set of responses *within each case*. So, for example, Table 6.5 shows that in the FMC general litigants sample, 10% of allegations were fully admitted, 6% were partially admitted, 36% were fully denied, while 48% were not the subject of a written response. Given the small number of cases containing allegations of child abuse, responses to these allegations can only be compared for the two general litigants sub-samples.

**Table 6.5 Response to allegations of spousal violence and parental child abuse raised in each court by sample: Couple cases**

Response to allegations	Response to allegations of spousal violence				Response to allegations of child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
Full admission	7.1	10.0	9.3	11.4	5.4	8.0
Partial admission/partial denial	6.3	6.1	13.0	9.4	1.8	6.0
Full denial	23.2	36.4	31.1	26.4	39.3	54.0
No response	63.4	47.5	46.6	52.8	53.6	32.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
Mostly full admission	2.0	1.6	4.5	5.1	0	3.6
Mostly partial admission/partial denial	2.0	3.2	4.5	2.6	0	3.6
Mostly denial	17.6	30.6	22.7	17.9	45.8	35.7
Mixture <sup>a</sup>	31.4	24.2	45.5	33.3	12.5	21.4
<i>Response to at least one allegation</i>	53.0	59.6	77.2	58.9	58.3	64.3
<i>No response to all allegations</i>	47.0	40.4	22.8	41.1	41.7	35.7
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. This table excludes associated allegations of substance abuse, mental illness, child neglect and child abduction.

<sup>a</sup>“Mixture” refers to cases where neither full nor partial admissions or denials predominated. Non-responses were taken into account (for example, two admissions and three non-responses would equal a “mixture” of responses).

Table 6.5 (top panel) suggests that by far the majority of individual allegations were either fully denied or were not the subject of a written response. Full and partial admissions were both relatively uncommon.

It is noteworthy that, in relation to the general litigants sample, allegations of child abuse were more likely to be fully denied than those of spousal violence (FCoA: 39% vs 23%; FMC: 54% vs 36%). Further, in the general litigants sample, allegations of spousal violence and of child abuse were more likely to be left unanswered in the FCoA than in the FMC (allegations of spousal violence: 63% vs 48%; allegations of child abuse: 54% vs 32%). It is difficult to comment conclusively about the remarkably high proportion of non-responses.

While parties to proceedings in the FCoA and FMC are required to file their evidence and sworn affidavit, and the rules of natural justice would traditionally afford a litigant the opportunity to respond to an allegation by the other party before the case is decided, in practice, several factors limit the likelihood of such a response being recorded in writing on the court file. One

122 Data for the judicial determination are not provided in relation to allegations of parental child abuse because such allegations ( $n = 45$ ) were raised in only 16 case files.

party, particularly the applicant, may not have (or exercise) the opportunity to file an affidavit responding to the allegations of the other party before the hearing. It may be financially or strategically prohibitive to adjourn the case so as to prepare a responding affidavit. At an interim hearing, the court may be told orally of a person’s response to particular allegations, yet such responses may not be recorded on the court file.

Moreover, in the case of a final hearing, a litigant might only respond to an allegation by giving oral evidence in court rather than in a written form.<sup>123</sup> Such a response is unlikely to be evident on examination of the court file. These aspects of court procedure go part of the way to explain why such a high proportion of allegations do not receive a sworn written response in the course of the litigation. However, even bearing these caveats in mind, the number of allegations that are not the subject of a formal response still appears to be strikingly high across all categories, augmenting the difficulties faced by the presiding judicial officer.

Returning to Table 6.5, the bottom panel presents the data at the case level. “Mostly” refers to more than half the presence of each attribute, whereas “mixture” refers to cases where neither full nor partial admissions or denials predominated. “Mixture” includes non-responses; for example, two admissions and three non-responses would equal a “mixture” of responses.

More than half the cases provided a response to at least one allegation, with the FCoA judicial determination cases being more likely than other cases to contain a response to at least one allegation of spousal violence (77% vs 53–60%). Further, almost all responses were either mostly denials or a mixture of responses (with no single type of response predominating).<sup>124</sup>

It is important to point out that each of these categories included the possibility that some allegations went unanswered. The extent to which these “non-responses” implied an admission of the allegation is unable to be determined. Table 6.6 summarises the pattern of responses to allegations of spousal violence by litigants.<sup>125</sup>

**Table 6.6 Response of litigant to allegations of spousal violence raised in each court by sample: Couple cases**

Response to allegations	Response to allegations of spousal violence					
	General litigants				Judicial determination	
	FCoA		FMC		FCoA & FMC combined	
	Mothers’ reply (n = 21)	Fathers’ reply (n = 43)	Mothers’ reply (n = 24)	Fathers’ reply (n = 60)	Mothers’ reply (n = 24)	Fathers’ reply (n = 34)
	%	%	%	%	%	
Mostly full admission	4.8	4.7	8.3	3.3	4.2	8.8
Mostly partial admission/partial denial	9.5	2.3	0.0	5.0	0.0	5.9
Mostly denial	14.3	25.6	33.3	30.0	16.7	20.6
Mixture	14.3	23.3	12.5	16.7	16.7	20.6
<b>Response to at least one allegation</b>	<b>42.9</b>	<b>45.8</b>	<b>54.2</b>	<b>55.0</b>	<b>37.5</b>	<b>55.9</b>
<b>No response to all allegations</b>	<b>57.1</b>	<b>44.2</b>	<b>45.8</b>	<b>45.0</b>	<b>62.5</b>	<b>44.1</b>
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Note. “Mostly full admission” and “mostly full denial” mean that more than half of the responses related to full admissions and full denials respectively. “Mostly part admissions/part denials” means that more than half of the responses provided represented some acknowledgement of the alleged behaviour—typically with the statement that the allegation represented an exaggeration. “Mixture” refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

123 Although a litigant would be expected to respond by way of affidavit to an allegation of which they are aware, in practice this may not occur; for example, where a respondent in the proceedings alleges misconduct by the applicant. Such unanswered allegations would need to be addressed by oral evidence during the trial.

124 This mixture includes no response.

125 Data for neither of the courts in the judicial determination sample were presented separately because there were fewer than 20 mothers and fathers in each group.

**Table 6.8 Responses of fathers to mothers' allegations of spousal violence or parental child abuse, according to the existence and "quality" of evidence provided by mothers: Couple cases**

Fathers' responses	Evidence provided by mothers		
	Relatively strong probative weight (77 allegations) [28 cases]	Of less probative weight (50 allegations) [21 cases]	No evidence (456 allegations) [96 cases]
	% of allegations	% of allegations	% of allegations
Admission	9.1	14.0	7.0
Partial admission	16.9	6.0	4.8
Denial	36.4	52.0	34.6
Evidence silent	37.7	28.0	53.5
<i>Total</i>	100.0	100.0	100.0

In relation to allegations of spousal violence, the most common specific "response" for all groups was to leave all allegations unanswered.<sup>126</sup> Most other responses either contained a predominance of denials, or a mixture of responses with no particular type of response prevailing. The group most likely to provide a predominance of denials, rather than a mixture, were mothers and fathers in the FMC general litigants sample (mothers: 33% vs 13%; fathers: 30% vs 17%).

Again, less can be said about allegations of child abuse because of the small number of cases that included such allegations, as shown in Table 6.7. This table compares the responses of fathers in the general litigants sample (FCoA and FMC combined) to allegations of spousal violence and child abuse.<sup>127</sup>

**Table 6.7 Responses of fathers in the general litigants sample (FCoA and FMC combined) to allegations of spousal violence and parental child abuse: Couple cases**

Response to allegations	Response to allegations of spousal violence and parental child abuse	
	General litigants: FCoA & FMC combined	
	Fathers' reply	
	Spousal violence (103 fathers)	Child abuse (41 fathers)
	%	%
Mostly full admission	3.9	0.0
Mostly partial admission/partial denial	3.9	0.0
Mostly denial	28.2	46.3
Mixture	19.4	17.0
<i>Response to at least one allegation</i>	55.4	63.4
<i>No response to all allegations</i>	44.6	36.6
<i>Total</i>	100.0	100.0

Note. "Mostly full admission" and "mostly full denial" mean that more than half of the responses related to full admissions and full denials respectively. "Mostly part admissions/part denials" means that more than half of the responses provided represented some acknowledgement of the alleged behaviour, typically with the statement that the allegation represented an exaggeration. "Mixture" refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

Table 6.7 indicates that the fathers in the general litigants sample were more likely to deny allegations of parental child abuse than allegations of spousal violence (46% vs 28%). None of the fathers provided even partial admission to allegations of child abuse, whereas 8% of fathers fully or partly admitted to spousal violence.

126 The fathers in the FCoA judicial determination sample appeared to be an exception: only 5 of the 18 fathers in this group left all of the allegations unanswered (data not shown).

127 This table focuses exclusively on fathers because there were only 16 mothers against whom allegations of child abuse were made by their former partners.



Before moving to the next section, it is useful to assess the extent to which responses to allegations may be linked with the existence and apparent weight of evidence provided by the alleging party. Table 6.8 shows the relationship between responses of fathers and evidence provided by mothers. Because of the small number of fathers who provided evidence in support of their allegations, this table focuses on fathers' responses to mothers' allegations.

Regardless of the existence or apparent weight of evidence provided by mothers, most allegations were either denied or left unanswered by fathers. Allegations that were not accompanied by evidence were more likely to be left unanswered than denied (54% vs 35%), while the opposite was the case when there was evidence that appeared to be of weaker rather than stronger probative weight (52% of allegations were denied, while 28% were left unanswered). Where the evidence appeared to be relatively strong, denials were just as likely as non-responses (36–38%). In addition, 17% of allegations with apparently strong probative weight elicited partial admission/partial denials, compared with only 5–6% where evidence appeared to be weaker or non-existent.

In summary, across the courts and samples examined, allegations were most commonly denied or left unanswered. Those most likely to deny the majority of allegations of spousal violence made against them were mothers and fathers in the FMC general litigants sample. Allegations of child abuse against fathers were more likely to yield a response and to be denied than allegations of spousal violence. Finally, there appeared to be a relationship between the evidence for allegations made by mothers and fathers' responses to these allegations: denials were more likely to occur where the evidence appeared to be of a less probative weight than where the evidence was either stronger, on the one hand, or non-existent, on the other.

## 6.5 Evidentiary material in Family Reports

In order to assist the court to make a decision about the welfare of children, the court may request that a Family Report be prepared.<sup>128</sup> At the time, this report was usually prepared by a Family Court counsellor or a private individual appointed under the legislation to provide such an independent report. The purpose of the Family Report is not to make findings about disputed facts, but to focus on a wide range of issues that relate to the welfare of the child(ren) and, where appropriate, to make recommendations that the report writer considers will advance the welfare of the child(ren). Although a Family Report is clearly not the appropriate vehicle for findings about disputed facts, the report writer may nonetheless remark on the apparent veracity of allegations. She or he may, for example, raise allegations with the alleged perpetrator or victim or the children and record any admissions, inconsistencies or other reflections upon the disputed facts.

In this section, we focus on the proportion of cases involving a Family Report in which allegations of spousal violence and/or parental child abuse were raised, and the extent to which any allegations were corroborated or discredited by this report (see Table 6.9).

Table 6.9 indicates that, apart from the FCoA and FMC judicial determination samples, most cases containing an allegation did not involve a Family Report (top panel, bottom two rows). Across all groups, no views were generally expressed in Family Reports about specific allegations. Of all allegations raised, no more than 10% in any group were fully or partially corroborated by a Family Report, and no more than 2% were fully or partially discredited. There were so few cases containing an allegation of spousal violence or parental child abuse that included a Family Report that no further analysis of this issue was conducted ( $n = 8–21$  in all groups except the FMC general litigants sub-sample, which contained 25 cases).

## 6.6 Overall evidence

In this section, we attempt to combine all the pieces of information into a single measure. This evidentiary material was ranked from full admission (the strongest evidence) to full or partial discreditation in a Family Report.

<sup>128</sup> Reports may also be ordered from other sources, such as psychiatrists, paediatricians and child welfare authorities.

**Table 6.9 Apparent extent of corroboration in final or interim Family Report for each allegation raised in each court by sample: Couple cases**

Apparent extent of corroboration	Allegations of spousal violence				Allegations of child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
Fully corroborated	2.7	2.4	3.8	2.4	5.4	0
Partially corroborated	1.3	4.2	0	0	1.8	10.0
Fully/partially discredited	0	0.6	1.2	0.8	1.8	0
No view expressed	33.5	40.1	70.8	57.6	30.4	42.0
<i>Total with Family Report</i>	37.5	47.3	75.8	60.6	39.3	52.0
<i>No Family Report</i>	62.5	52.7	24.2	39.4	60.7	48.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
% of all cases containing an allegation that included a Family Report	21.6	40.3	77.3	53.9	33.3	39.3
Number of all cases containing an allegation that included a Family Report	11	25	17	21	8	13

Note. In the FMC judicial determination sample, fewer than 20 cases contained allegations. Accordingly, data for both the FCoA and FMC in the judicial determination sample are combined.

**Table 6.10 Overall evidence for allegations of spousal violence and parental child abuse raised in each court by sample: Couple cases**

Overall corroborative evidence	Allegations of spousal violence				Allegations of parental child abuse	
	General litigants		Judicial determination		General litigants	
	FCoA (224 allegations) [51 cases]	FMC (330 allegations) [62 cases]	FCoA (161 allegations) [22 cases]	FMC & FCoA (254 allegations) [39 cases]	FCoA (56 allegations) [24 cases]	FMC (50 allegations) [28 cases]
	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations	% of allegations
Full admission	7.1	10.0	9.3	11.4	5.4	8.0
Relatively strong evidence	17.9	17.3	23.6	19.7	19.6	16.0
Relatively weak evidence	4.9	6.1	5.6	13.0	5.4	6.0
Full or partial discreditation in interim or final Family Report	0	0.6	1.2	0.8	1.8	0
<i>Some evidentiary material</i>	29.9	33.9	39.8	44.9	32.1	30.0
<i>No information</i>	70.1	66.1	60.2	55.1	67.9	70.0
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0
<b>Overall corroborative evidence</b>	<b>% of cases</b>	<b>% of cases</b>	<b>% of cases</b>	<b>% of cases</b>	<b>% of cases</b>	<b>% of cases</b>
Full admission or relatively strong evidence for at least one allegation	45.1	46.8	63.6	56.4	37.5	32.1
Relatively weak evidence only	7.8	8.1	9.1	17.9	8.3	10.7
Full or partial discreditation in interim or final Family Report	0	1.6	4.5	2.6	4.2	0
<i>Some evidentiary material</i>	52.9	56.5	77.2	76.9	50	42.8
<i>No information</i>	47.1	43.5	22.8	23.1	50	57.2
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

In Table 6.10, the upper panel shows the apparent extent of overall evidence for each allegation of spousal violence and parental child abuse. The lower panel shows the extent of overall evidence in case files made across the courts and samples. It is important to note that the “full admission” category in the lower panel is combined with “relatively strong evidence” because there were such low rates of full admission at the case level.

Even when all the different sources of potential evidence were combined, only 30–45% of all allegations of spousal violence elicited any evidentiary material (top panel). However, of all the cases that contained allegations of spousal violence, 53–77% were accompanied with evidentiary material (bottom panel), especially cases that required a judicial determination.

Where there was evidentiary material, it was inclined to be of a strong probative weight for at least one of the allegations raised.

Only 30–32% of all allegations of parental child abuse raised in the general litigants sample elicited evidentiary material; 43–50% of all cases containing such allegations were accompanied with evidentiary material. Again, where evidentiary material was present, it tended to have relatively strong probative weight. Table 6.11 shows the apparent overall evidence for allegations made by each parent in each sample.

**Table 6.11 Overall evidence for allegations of spousal violence by alleging party, by court and sample: Couple cases**

Overall corroborative evidence	Allegations of spousal violence					
	General litigants				Judicial determination	
	FCoA		FMC		FCoA & FMC	
	Mother alleges (n = 43)	Fathers alleges (n = 21)	Mother alleges (n = 60)	Father alleges (n = 24)	Mother alleges (n = 34)	Father alleges (n = 24)
	%	%	%	%	%	
Full admission or relatively strong evidence	48.8	33.3	46.7	25.0	52.9	41.7
Relatively weak evidence only	7.0	4.8	8.3	4.2	23.5	4.2
Full or partial discreditation in interim or final Family Report	0	0	1.7	0	2.9	0
<i>Some evidentiary material</i>	53.8	38.1	56.7	29.2	79.3	45.9
<i>No information</i>	44.2	61.9	43.3	70.8	20.7	54.1
<i>Total</i>	100.0	100.0	100.0	100.0	100.0	100.0

Note. “Mostly full admission” and “mostly full denial” mean that more than half of the responses related to full admissions and full denials respectively. “Mostly part admissions/part denials” means that more than half of the responses provided represented some acknowledgement of the alleged behaviour, typically with the statement that the allegation represented an exaggeration. “Mixture” refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

Table 6.11 suggests that the alleging party tended to have either relatively strong support (including full admission) for some of their allegations of spousal violence or no information at all for any of their allegations. Mothers in all groups most commonly appeared to provide or elicit relatively strong evidence for their allegations (47–53%).

More than half the fathers in all groups had no information in support of their allegations of spousal violence. This situation was most marked for those in the general litigants sub-groups (62–71%). But where some information about fathers’ allegations was available, it typically appeared to offer strong support. Table 6.12 shows the apparent weight of evidence provided for mothers’ allegations of spousal violence and parental child abuse (general litigants sample).

Mothers were more likely to have relatively strong evidence for their allegations of spousal violence than for allegations of child abuse (48% vs 32%). By contrast, more than half the mothers (56%)

**Table 6.12 Overall evidence provided by mothers who alleged spousal violence and parental child abuse in the general litigants sample (FCoA and FMC combined): Couple cases**

Overall corroborative evidence	Allegations of spousal violence and parental child abuse	
	General litigants: FCoA & FMC combined	
	Mothers who make allegations	
	Spousal violence (103 mothers)	Child abuse (41 mothers)
	%	%
Full admission or relatively strong evidence	47.6	31.7
Relatively weak evidence only	7.8	12.2
Full or partial discreditation in interim or final Family Report	1.0	0
<i>Some evidentiary material</i>	56.3	43.9
<i>No information</i>	43.7	56.1
<i>Total</i>	100.0	100.0

Note. "Mostly full admission" and "mostly full denial" mean that more than half of the responses related to full admissions and full denials respectively. "Mostly part admissions/part denials" means that more than half of the responses provided represented some acknowledgement of the alleged behaviour, typically with the statement that the allegation represented an exaggeration. "Mixture" refers to a combination of full admission, part admission/part denial, and denial, and responses that did not fall in the first three categories where no type of response set predominated.

had no corroborative information regarding any of their allegations of child abuse, compared with 44% regarding spousal violence allegations.

Are the cases containing allegations that were classified as the most severe in nature (Category C cases) the most likely to elicit evidentiary material, and is this evidence most likely to support those allegations? The data presented in Table 6.13 shed light on this question.

**Table 6.13 Severity of allegations by extent of overall corroborative evidence (general litigants sample): Couple cases**

Overall corroborative evidence	Allegations of spousal violence			Allegations of parental child abuse		
	Category A (20 cases)	Category B (31 cases)	Category C (62 cases)	Category A (4 cases)	Category B (13 cases)	Category C (35 cases)
	% of cases	% of cases	% of cases	% of cases	% of cases	% of cases
Full admission or relatively strong evidence	25.0	32.3	59.7	–	–	34.6
Relatively weak evidence only	20.0	9.7	3.2	–	–	9.6
Full or partial discreditation in interim or final Family Report	0	0	1.6	–	–	1.9
<i>Some evidentiary material</i>	45.0	42.0	64.5	–	–	46.1
<i>No information</i>	55.0	58.0	35.5	–	–	53.9
<i>Total</i>	100.0	100.0	100.0	–	–	100.0

Note. No percentages are reported where there were fewer than 20 cases (depicted by "–"). Category A refers to the most ambiguous allegations, and to allegations that did not seem as serious as those contained in Category B or C. By contrast, Category C allegations appeared to be particularly serious.

Cases classified as containing the most severe allegations of spousal violence were more likely than other cases to be accompanied by evidentiary material (65% vs 42–45%). Indeed, virtually all of this material seemed to be of relatively strong probative weight. Two-thirds of cases containing allegations of parental child abuse were classified into the Category C grouping (the most severe sets of allegations). A lower proportion of these Category C cases contained evidentiary material compared with Category C cases of spousal violence allegations.

In summary, when all the pieces of evidence were taken together, most individual allegations of spousal violence across the courts and samples received no corroborative evidence. This was less marked for allegations of spousal violence raised in the judicial determination sample than in the general litigants sample. Nevertheless, most case files contained information about some of the allegations. As might be expected, case files in the judicial determination sample seemed the more likely of those in the general litigants samples to contain such information, and the FCoA judicial determination cases were more likely to contain strong support for the allegations raised.

Mothers in all groups most commonly appeared to achieve relatively strong evidence for their allegations, whereas fathers were less likely than mothers to provide any evidence. But where some information about fathers' allegations was available, it typically appeared to offer relatively strong support.

Mothers in the general litigants sample were more likely to elicit evidence for their allegations of spousal violence than of child abuse. There were too few fathers who raised allegations of child abuse to make a similar comparison. Cases that seemed to contain the most severe allegations of spousal violence were especially likely to be accompanied by evidentiary material.

## 6.7 Level of detail

Another issue of potential interest concerns the specificity of allegations and responses. How common are non-specific allegations and responses? Do highly detailed allegations elicit highly detailed responses?

The level of detail of each response to an allegation was coded as: *high* (indicated by a "comprehensive response addressing the particulars of the allegation in detail"); *medium* (indicated by a "less comprehensive response but providing some detail to rebut the particulars of the allegation"); or *low* (indicated by a "blanket denial without detail").<sup>129</sup>

Table 6.14 shows the level of detail of allegations cross-tabulated by the level of specificity of response to each allegation (for example, the proportions of allegations of low specificity that elicited responses of low, medium or high specificity). Allegations of spousal violence and child abuse are combined to maximise the number of cases in each sub-sample of interest.

**Table 6.14 Level of detail of each allegation by level of detail of response (general litigants sample): Couple cases**

Response	Allegations of spousal violence or parental child abuse			Total (326 allegations)
	Low detail (156 allegations) [48 cases]	Medium detail (151 allegations) [48 cases]	High detail (55 allegations) [19 cases]	
	% of total allegations	% of total allegations	% of total allegations	
Low detail	33.1	24.8	8.3	66.3
Medium detail	8.9	13.5	6.4	28.8
High detail	0.3	3.7	0.9	4.9
<i>Total</i>	42.3	42.0	15.6	100.0
Response	% of low detail allegations	% of medium detail allegations	% of highly detailed allegations	
Low detail	78.3	59.1	52.9	N/A
Medium detail	21.0	32.1	41.2	N/A
High detail	0.7	8.8	5.9	N/A
<i>Total</i>	100.0	100.0	100.0	N/A

Note. N/A = Not applicable.

129 The level of detail of responses was only coded for the following options: "Complete denial", "Confess and avoid" (e.g., I did it, but it was mutual/provoked), "Partial denial" (e.g., exaggeration) and "Deny and counter-allegation". Coding other response options for the level of detail was not appropriate.

This table is unlike all preceding tables because the percentages in each cell of the top panel represent the joint conditions of the level of detail of both the allegations and responses to them as a proportion of all allegations. So, for example, the top left percentage (33.1%) means that 33% of all allegations were low in detail and yielded a low detailed response.

Only 16% of allegations were coded as containing a high level of detail. Roughly equal proportions of all other allegations were of low or medium detail (42% each). This result may seem inconsistent with the high rate of Category C (i.e., apparently severe) classifications (applying to 48–68% of cases, see Table 5.4). However, the severity classification is based on all allegations at the case level or party level, whereas the amount of detail is coded at the allegation level. The far-right column of the top panel shows that most responses were of low detail (66%). Only 5% of responses were coded as highly detailed.

While one third (33%) of allegations and responses to them contained little detail, nearly one quarter (23%) contained medium detail and elicited a low detail response. Only 1% of allegations along with their associated responses were rated as highly detailed.

The bottom panel of Table 6.14 shows that of all non-specific allegations raised, 78% elicited a non-specific response. More than half (53–59%) the responses to allegations containing medium or high levels of detail were also accompanied by non-specific responses. Table 6.15 extends this line of investigation by showing the relationship between specificity of allegations and the overall apparent probative weight of evidence.

**Table 6.15 Level of detail of each allegation, by whether alleging party had provided corroborative evidence (general litigants sample): Couple cases**

Evidence	Allegations of spousal violence or parental child abuse			
	Low detail (310 allegations) [103 cases]	Medium detail (311 allegations) [91 cases]	High detail (125 allegations) [51 cases]	Total (746 allegations)
	% of total allegations	% of total allegations	% of total allegations	
Full admission	3.5	4.0	1.1	8.6
Relatively strong evidence	5.4	6.2	5.8	17.3
Relatively weak evidence	2.3	2.3	0.7	5.2
Full or partial discreditation in interim or final Family Report	0.4	0	0	0.4
<i>No information</i>	30.0	29.3	9.2	68.5
<i>Total</i>	41.6	41.7	16.8	100.0
Response	% of low detail allegations	% of medium detail allegations	% of highly detailed allegations	
Full admission	8.4	9.6	6.4	N/A
Relatively strong evidence	12.9	14.8	34.4	N/A
Relatively weak evidence	5.5	5.5	4.0	N/A
Full or partial discreditation in interim or final Family Report	1.0	0	0	N/A
<i>Some evidentiary material</i>	28.7	19.9	44.5	N/A
<i>No information</i>	72.3	70.1	55.5	N/A
<i>Total</i>	100.0	100.0	100.0	N/A

The top panel of Table 6.15 indicates that 30% of all allegations were non-specific and were not accompanied by any evidentiary material, while a similar proportion (29%) had a medium level of detail but also lacked any evidentiary material. The lower panel indicates that highly detailed allegations were more likely than other allegations to elicit some evidentiary material (45% compared with 20–29%). Most of this evidence appeared to have relatively strong probative weight.



## 6.8 Summary

This chapter examined the existence and apparent strength of evidence for and responses to allegations of spousal violence and parental child abuse.

Where allegations of spousal violence are made, an average of 4–5 allegations were made in cases in the general litigants sample, while an average of 5–7 allegations were raised in cases requiring a judicial determination. Where allegations of parental child abuse are made, an average of 2 allegations were raised in cases in the general litigants sample.

Most alleging parties, especially fathers, did not provide any material in support of their allegations. But where fathers in the judicial determination sample provided information about allegations of spousal violence, it appeared more likely to carry relatively strong probative weight compared with the material provided by mothers in that sample.

Cases in the FCoA that required judicial determination were more likely to contain evidence of spousal violence that appeared to have some strong probative weight than only relatively weak evidence, unlike cases in the general litigants sample. Only a small number of cases included allegations of parental child abuse (made mostly by mothers). Mothers' allegations of such abuse were less likely to be accompanied by evidence than was the case for mothers' allegations of spousal violence.

Across the courts and samples examined, allegations were most commonly denied or left unanswered. Admissions or partial admissions (or partial denials) were uncommon. Denials were more likely to occur where the evidence appeared to be of a less probative weight than where the evidence was stronger or non-existent. Those most likely to deny the majority of allegations of spousal violence made against them were mothers and fathers in the FMC general litigants sample. Allegations of child abuse against fathers were more likely to yield a response and to be denied than allegations of spousal violence.

When all the pieces of evidence were taken together, most individual allegations of spousal violence across the courts and samples received no corroborative evidence. This was less marked for allegations of spousal violence raised in the judicial determination sample than in the general litigants sample. Nevertheless, most case files contained information about some of the allegations of spousal violence. As might be expected, case files in the FCoA judicial determination sample seemed the most likely of all sub-samples to contain such information, and to provide strong support for the allegations raised. Cases that seemed to contain the most severe allegations of spousal violence were especially likely to be accompanied by evidentiary material. Many of these cases required a judicial determination.

Mothers in all groups were more likely than fathers to achieve relatively strong evidence for their allegations of spousal violence. More than half the fathers in all groups had no supporting information. But where some information about fathers' allegations was available, it typically appeared to offer relatively strong support. Mothers in the general litigants sample were more likely to elicit evidence for their allegations of spousal violence than of child abuse. (There were insufficient numbers of fathers to make a similar comparison.)

Three layers of ambiguity are suggested by these data: (a) little evidentiary material to support allegations (especially in the general litigants sample); (b) fairly high rates of non-response to allegations of spousal violence, except for cases in the FCoA requiring a judicial determination; and (c) generally low levels of detail in the allegations and low levels of detail when responses are made.

The dynamics underlying these apparent ambiguities are clearly complex and somewhat puzzling. The lack of supporting evidence suggests legal decision-making may often be taking place in the context of widespread factual uncertainty. We explore some of the implications of this apparent uncertainty in Chapter 8.

# 7

## Parenting proposals and court outcomes

This chapter sets out the types of parenting orders sought by litigants and the outcomes of proceedings. Couple cases in which allegations of spousal violence and parental child abuse were raised are compared with couple cases that did not contain allegations.

The chapter comprises two sections. Non-adjudicated cases are examined first, followed by the small sample of cases requiring a judicial determination.

### 7.1 Non-adjudicated cases

This section examines cases in the general litigants sample that did not involve a judicial determination (that is, both parties reached agreement about their parenting arrangements and the court formalised this agreement with a consent order; in some cases, no orders followed because one or both parties discontinued proceedings). In total, 170 cases in the general litigants sample were examined.<sup>130</sup> It is important to note that some of these cases were complex in nature, with some having different arrangements occurring for different children in a family, and others having unspecified arrangements (“as agreed” or “as specified”) or orders unrelated to parenting time (for example, the order could be about parental decision-making, changeovers or supervision conditions).

#### 7.1.1 Children’s living arrangements

We begin this analysis by focusing on pre-existing living arrangements for children, and changes in these arrangements brought about by orders.

Table 7.1 subdivides the sample into three groups according to residence status at the time of the proceedings: resident mothers/non-resident fathers (hereafter called “maternal residence”); resident fathers/non-resident mothers (“paternal residence”), and a mixture of “other” arrangements.<sup>131</sup> The top panel of Table 7.1 shows the prevalence and nature of residence orders, while the bottom panel indicates the prevalence of change in residence resulting from a residence order. The results point to the dominance of the status quo. Only 16% of cases involved a change in residence arrangements for children.<sup>132</sup>

An order was made covering residence in 93% of cases. In 77% of all cases, an order was made for children to live with their mother. In almost all of the pre-existing maternal residence cases (95%), children continued to live primarily with their mother (see bottom panel in Table 7.1). While a change was more likely to have occurred in cases where the children were not already living with their mother, pre-existing non-maternal residence applied to a minority (23%; that is, 39 of 170 cases).

130 Of the 225 couple cases in the general population, 55 cases were excluded: 39 cases that were discontinued before final court orders, 7 cases that had multiple final orders because of re-litigation, and another 9 cases that were adjudicated. Of the resulting 170 cases, 4 did not have a final court order; the most recent interim order was treated as the final order in these cases.

131 These “other” cases comprised: 9 former couples with shared care; 6 with “split” arrangements (where at least one child was living with each parent); 6 cases in which the partners disagreed about which parent had the primary care of children; and 2 other complex cases (e.g., one child might be living with one parent, while another was living with extended family).

132 In the small proportion of cases that did not entail any applications for either residence or contact, it is assumed that the lack of an order means that the pre-existing residence arrangements remained in place.

**Table 7.1 Court orders for children’s living arrangements: Couple cases**

	Pre-litigation residence arrangement			
	Maternal residence (n = 131)	Paternal residence (n = 16)	Other cases (n = 23)	Total (n = 170)
<b>Residence order</b>	%	Number	%	%
With mother	87.8	[3]	56.5	77.1
With father	0.8	[10]	0.0	6.5
Shared <sup>a</sup>	4.6	[2]	21.7	7.6
Split	0.0	[0]	13.0	1.8
<i>Total order</i>	93.1	[15]	91.3	92.9
<i>No order</i>	6.9	[1]	8.7	7.1
<i>Total</i>	100.0	[16]	100.0	100.0
<b>Change in residence</b>	%	Number	%	%
with mother		[3]	52.2	8.8
with father	0.8		0	0.6
shared residence	4.6	[2]	4.3	5.3
split residence	0	[0]	8.7	1.2
<i>Total change</i>	5.3	[5]	65.2	15.9
<i>No change</i>	94.7	[11]	34.8	84.1
<i>Total</i>	100.0	[16]	100.0	100.0

Note. <sup>a</sup>“Shared” care refers to care of children by each parent in excess of 109 nights per year.

The “other cases” category mainly refers to a mixture of shared, split or disputed residence arrangements. Given that around one quarter of the “other cases” (26%) involved disputes about the nature of pre-existing arrangements, the extent of change for this group may be a small over- or under-estimate. In total, 77% of orders were for children to live with their mother. This translated into a change to maternal residence in only 9% of cases. Around 7% involved an order to live with the father, resulting in a change to paternal residence of less than 1% of cases. An order for shared residence occurred for 8% of cases, requiring a change in children’s living arrangements for 5% of all cases. That is to say, change was uncommon and, if it occurred, it was more likely to involve a move to live with the mother, or to live with both parents on a shared care basis.

Although not shown in the table, it is interesting to note that 13 fathers applied for the children to live with them, but only one of these fathers was successful in his application. Eight of the 13 fathers had orders for overnight stays, while another father obtained an order for daytime contact graduating into overnight stays. Seventeen fathers sought shared care; 6 were successful; 9 obtained orders for overnight stays; 2 obtained other orders.<sup>133</sup> With so little change occurring in children’s living arrangements, attention is now turned towards the relationship between parenting time and allegations of spousal violence and/or parental child abuse.

### 7.1.2 Parenting time

Given that in most cases children were living with their mother, and orders reflected this, we focus on parenting time from the point of view of non-resident fathers. Specifically, this section attempts to answer the following questions.

Did parenting orders vary according to:

- whether or not allegations of spousal violence or child abuse were made?
- whether or not allegations that children witnessed spousal violence were made?

133 We did not record the extent to which these arrangements represented a change in the arrangements that pertained prior to the applications being made.

- the apparent severity of the allegations made?
- the apparent probative weight of the evidence provided?

It is worth noting at the outset that 50 (38%) of the 131 non-resident fathers in the general litigants sample applied for orders for overnight stays; 62% of these fathers obtained such orders, 22% obtained an order for daytime contact graduating to overnight stays, while 6% were denied contact. The remaining 10% obtained orders for other arrangements.

### 7.1.2.1 Allegations of spousal violence and case outcomes

Table 7.2 shows different court outcomes according to whether or not allegations were raised about spousal violence, and whether children were alleged to have witnessed this violence.

**Table 7.2 Non-resident fathers' parenting time, by allegations of spousal violence: Couple cases**

Case outcome	Allegations of spousal violence					
	No allegations (n = 66)	Yes but not seen by children (n = 20)	Yes and seen by children (n = 41)	Total spousal violence allegations (n = 61)	No allegations (n = 38)	Spousal violence allegations (n = 42)
Overnight stays	47.0	50.0	48.8	49.2	81.6	63.8
Daytime only	10.6	15.0	22.0	19.7	18.4	25.6
No contact	0.0	10.0	7.3	8.2	0.0	10.6
Other order <sup>a</sup>	34.8	20.0	17.1	18.1	Total: 100.0	Total: 100.0
<b>Total orders</b>	92.4	95.0	95.1	95.1		
<b>No order</b>	7.6	5.0	4.9	4.9		
<b>Total</b>	100.0	100.0	100.0	100.0		

Note. <sup>a</sup>“Other order” mostly concerns parental decision-making responsibilities, but also includes orders that were recorded as “as agreed” or “as specified”, changeover arrangements and scheduling parenting time.

Table 7.2 suggests that 47–50% of fathers had orders for overnight stays. But orders for daytime-only contact and no contact increased if allegations of spousal violence were raised. This was particularly the case for daytime-only contact where it was alleged that children had witnessed spousal violence (22%).

Cases containing no allegations of spousal violence were more likely than cases containing allegations of spousal violence to have “other” orders (35% vs 17–20%). The exact nature of some of these “other” orders was unclear in that some were referred to in the case files as “as agreed” or “as specified” arrangements. “No order” may also imply no change in parenting time. This ambiguity makes it difficult to compare patterns of orders for those with and without allegations. The presence of “other” orders and “no orders” is part and parcel of the complexity of post-separation parenting arrangements.

In an attempt to obtain a clearer picture of the possible relationship between allegations and specific types of parenting orders, the two columns on the far right of Table 7.2 exclude these more ambiguous parenting orders or lack of orders. That is, these two columns focus on those files that clearly indicated orders for overnight stays, daytime-only contact or no contact. For this subgroup, orders for overnight stays were lower where allegations of spousal violence had been raised than when there were no allegations (64% vs 82%), whereas the proportion of orders for daytime-only contact and no contact increased (26% vs 18%, and 11% vs 0% respectively).<sup>134</sup>

Thus, regardless of which lens is used to analyse these data, orders for overnight stays occurred most commonly—both for cases containing allegations of spousal violence and for cases in which

134 There were too few cases to examine the link between children witnessing spousal violence and specific parenting orders for overnight stays, daytime-only contact, and no contact.

no allegations were raised. Nevertheless, allegations for spousal violence appeared to increase the chance of orders for daytime-only contact or no contact.

### 7.1.2.2 Apparent severity of allegations and case outcomes

Were orders in any way related to the apparent severity of allegations? This is an interesting question, and one that we now attempt to answer.

There were only 12 relevant cases (involving consent orders) where the severity of the set of allegations was rated as being the least severe or ambiguous (Category A). For the analysis shown in Table 7.3, these cases were combined with the 20 cases that contained allegations that were classified as Category B, even though the research team concluded that Category B allegations were fairly close in the level of “severity” as those classified as Category C (the most serious sets of allegations: see Chapter 5).

**Table 7.3** Apparent severity of allegations of spousal violence or parental child abuse raised by outcomes for non-resident fathers

	Allegations of spousal violence or parental child abuse					
	No allegation (n = 66)	Categories A & B (n = 32)	Category C (n = 33)	No allegations (n = 38)	Categories A & B (n = 27)	Category C (n = 24)
Case outcome	%	%	%	%	%	%
Overnight	47.0	62.5	42.4	81.6	74.1	58.3
Daytime only	10.6	12.5	24.2	18.4	14.8	33.3
No contact	0.0	9.4	6.1	0.0	11.1	8.4
Other order	34.8	12.5	21.2	Total: 100.0	Total: 100.0	Total: 100.0
<i>Total with order</i>	92.4	96.9	93.9			
<i>No order</i>	7.6	3.1	6.1			
<i>Total</i>	100.0	100.0	100.0			

*Note.* Category A refers to the most ambiguous allegations, and to allegations that did not seem as serious as those contained in Category B or C. By contrast, Category C allegations appeared to be particularly serious. “Other order” mostly concerns parental decision-making responsibilities, but also includes orders that were recorded as “as agreed” or “as specified”, changeover arrangements and scheduling parenting time.

Table 7.3 shows that orders for overnight stays were the most common type of orders made, regardless of the existence or apparent severity of allegations, and were more common for the combined cases with allegations that were classified as either Category A or B (63%) than for those with no allegations (47%). This is an artefact of the relatively low proportion of “other” orders (13%) that occurred for those with allegations classified as Category A or B. It is therefore useful to re-examine the data relating exclusively to specified orders for overnight stays, daytime-only contact, and no contact (the three far-right columns). Overnight stays remained the most common type of order, but was highest for cases with no allegations at all, and lowest for cases with Category C allegations (82% vs 58%). Category C allegations were the most likely to have daytime-only contact orders (33% vs 15–18%), while orders for no contact occurred for 8–11% of cases, regardless of their apparent severity, and no cases where no allegations were made.

### 7.1.2.3 The apparent probative weight of evidence and case outcomes

Thus far, the analysis has focused on the potential links between allegations and parenting/residence orders, without regard as to whether these allegations were supported by evidence. Table 7.4 takes up this issue. We have combined cases with no evidence for allegations with those with evidence that seemed to carry less probative weight because of the small numbers in each of these groups. (See Chapter 6 and Appendix E for a description of the evidentiary classification system adopted.)

**Table 7.4 Apparent probative weight of evidence for allegations of spousal violence or parental child abuse raised, and outcomes for non-resident fathers: Couple cases**

Case outcome	Allegations of spousal violence or parental child abuse					
	No allegations (n = 66)	Allegation(s): no evidence or evidence of a less probative weight (n = 30)	Allegation(s): at least one with strong probative weight (n = 35)	No allegations (n = 38)	Allegation(s): no evidence or evidence of a less probative weight (n = 21)	Allegation(s): at least one with strong probative weight (n = 30)
	%	%	%	%	%	%
Overnight stays	47.0	53.3	51.4	81.6	76.1	60.0
Daytime-only	10.6	13.3	22.9	18.4	19.0	26.7
No contact	0.0	3.3	11.4	0.0	4.7	13.0
Other order	34.8	23.3	11.4	Total: 100.0	Total: 100.0	Total: 100.0
<i>Total orders</i>	92.4	93.3	97.1			
<i>No order</i>	7.6	6.7	2.9			
<i>Total</i>	100.0	100.0	100.0			

Note. "Other order" mostly concerns parental decision-making responsibilities, but also includes orders that were recorded as "as agreed" or "as specified", changeover arrangements and scheduling parenting time.

Close to half of all the cases resulted in orders for overnight stays (47–53%). However, if attention is directed exclusively at cases where specific orders for overnight stays, daytime-only contact or no contact occur, then the proportion of orders for overnight stays decreases where allegations were supported with apparently strong probative weight (60% vs 76–82%). The latter cases were the most likely to have daytime-only contact orders (27% vs 18–19%) and no contact orders (13% vs 0–5%). In short, allegations accompanied by weak or no evidence appeared to have little if any impact on orders.

### 7.1.3 Summary

In the general litigants sample, allegations of spousal violence or parental child abuse appeared to make a difference to case outcomes if they were supported by evidence that appeared to have strong probative weight; the proportion of cases with orders for overnight stays decreased and the proportions of cases with orders for daytime-only and no contact increased. A similar pattern emerged where the sets of allegations were classified as fairly serious (Category C). As noted in Chapter 6 (Table 6.13), cases classified as containing the most severe allegations of spousal violence were more likely than other cases to be accompanied by evidentiary material of a strong probative weight. (Most allegations of child abuse were classified into the Category C grouping.) This means that there was some overlap between the apparent severity of allegations and the apparent weight of evidence in support of such allegations. It should be borne in mind that Category C allegations also tended to be more detailed.

In addition, regardless of the weight of evidence or the apparent severity of allegations, daytime-only contact was more likely to be ordered than no contact. Nonetheless, overnight contact remained the most common of orders, irrespective of the apparent severity of the allegation and the apparent weight of evidence that supported these allegations.

## 7.2 Judgments, outcomes and written reasons

This section examines cases in both samples that were fully litigated and required a judicial determination. The power of this small sample of adjudicated cases is that many of the judgments contain written reasons by the judge or federal magistrate for their final decision and thus offer insight into the reasoning of the judicial decision-maker. In particular, a judge's or federal magistrate's written reasons allow an assessment of whether there was a finding as to the



occurrence of alleged violence or child abuse and whether there was a link between the findings and an order made by the court.

At the same time, analysing data from small selected samples requires a more fine-grained approach than adopted in the prior two chapters, and fine-grained analysis calls for detailed information. On this point, it must be stressed that the following cross-case analysis is an interpretation of a coded court file (which is itself a crude abbreviation of the content of the case). Because we are two steps removed from the actual data, only an impressionistic view of the case outcomes could be gained.

Several questions guide the analysis:

- What proportion of cases containing allegations went to final hearing?
- What proportion of these cases were truly contested, as opposed to undefended?
- How often did the court make findings about violence and child abuse?
- Where allegations were the subject of a finding, how often did the judge/federal magistrate expressly link the finding about violence or child abuse with the outcome ordered?
- How often did court findings confirm or vindicate allegations of violence?
- How often was someone punished for an allegation or denial that was considered to be false?

Figure 7.1 shows the number of couple cases in which parenting issues were judicially determined following litigation,<sup>135</sup> the number of these cases in which written reasons for judgment were on file, and the number that contained allegations of violence. The figure shows that, in the general litigants sample, 6 of the 109 couple cases in the FCoA and 4 of the 116 couple cases in the FMC were fully litigated (see Step 2). These numbers represent 6% and 3% of the couple cases. Thus, the percentages that proceeded to litigation are broadly consistent with previously cited FCoA data that suggest litigation rates with respect to all applications of approximately 5–6% (FCoA, 2006).

As already noted, the design of the study included a sample of 59 cases (30 from the FCoA and 29 from the FMC) that proceeded to judicial determination. Of these, all except two cases in the FCoA and one in the FMC were couple cases. This separate sample was drawn because only a small number of adjudicated cases were likely to be identified in the general litigants sample, which indeed was the case (9 out of 225 couple cases in the general litigants sample).

But not all cases in the judicial determination sample were fully litigated. As Figure 7.1 illustrates, 23 of the 28 FCoA couple cases in which judicial orders were made (82%) and only 17 of the 27 FMC adjudicated couple cases (63%) went to a defended final judicial determination (see Step 2). In other words, 15 cases in the judicial determination sample (5 FCoA and 10 FMC) were not fully litigated, but nonetheless had a judicially determined court order. Most commonly, this occurred because one of the parties (generally the respondent) did not attend the hearing.

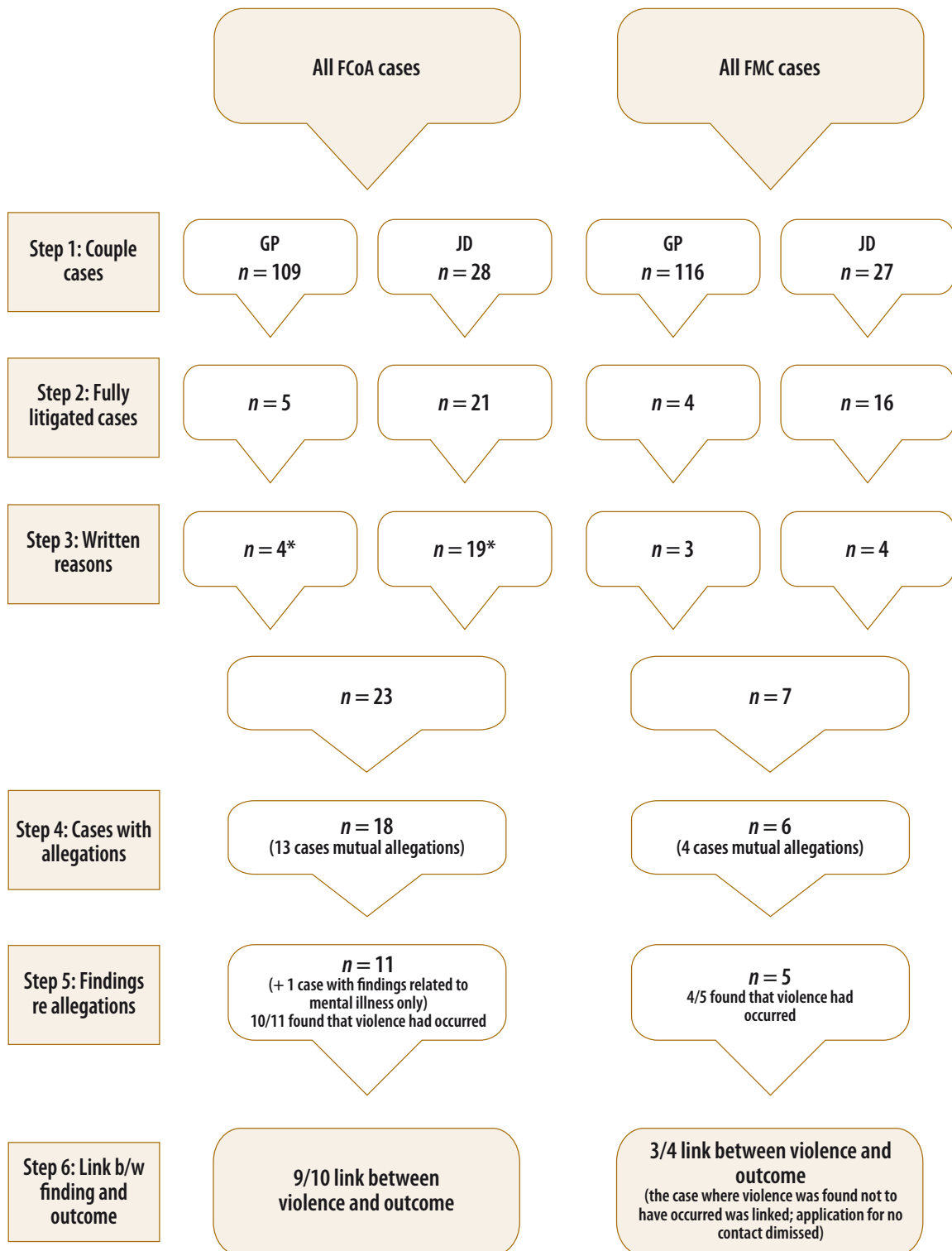
In addition, not all couple cases involving a fully contested hearing were found to have written reasons on file supporting that determination (see Step 3). Thus in the FCoA, a total of 23 written judgments emerged from both the general litigants and the judicial determination samples. In the case of the FMC, a total of 7 written judgments were available for both samples. Where written reasons were on file, 18 FCoA cases and 6 FMC cases contained allegations of violence or child abuse (Step 4).

Of the 18 FCoA alleged violence cases that contained written reasons, 11 made findings about allegations of family violence and/or child abuse (while in one other case, findings were made about mental health issues) (Step 5). Of the 11 cases where findings were made, 10 cases resulted in a finding that violence had occurred, with a link between violence and the court orders evident in 9 of these 10 cases.

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135 The majority of applications in the general population sample resulted in arrangements that were consented to by the parties, scrutinised by a judicial officer and finalised as “orders by consent”. The orders referred to here, however, were not consented to, but were made by a judicial officer at the completion of litigation. (In other words, these were not orders by consent that had been scrutinised and approved by a judicial officer.)

Figure 7.1 Case flow: Judgments



\* includes 1 case not fully litigated

Of the 6 FMC alleged violence cases that contained written reasons, 5 contained findings about allegations of family violence and/or child abuse (Step 5). In 4 of these 5 cases, violence was found to have occurred, with a link between violence and the court orders evident in 3 of these 4 cases.

Thus, of the small select sample of 24 fully contested cases containing allegations and written reasons behind the judgment (Step 4: 18 FCoA, 6 FMC), the final court order appeared to take into account the allegations raised in half these cases ( $n = 12$ ). These data can, of course, be approached positively or critically. (Is the glass half-full or half-empty?) From a critical perspective, the following questions can be asked: Why were there no findings in 8 cases? What led to a finding that an allegation was unfounded? Where there was a finding that violence had occurred, why was this finding unrelated to the outcome in 2 cases?<sup>136</sup>

A key aspect that appeared to differentiate between cases in which allegations were and were not addressed was the level of evidentiary material in support of the allegations. In all 8 of the cases where allegations were not addressed, the court file contained no evidence or only evidence of lower probative weight in support of allegations. In contrast, 9 of the 16 cases where allegations were addressed had supportive evidence of higher probative weight in support.<sup>137</sup>

It is also interesting to note that in all but 2 cases in which allegations were addressed, allegations were made by the applicant and respondent; one case that was the exception was (albeit unsurprisingly) undefended. Three of the 8 cases that involved “unaddressed” allegations were made by one party only, compared with 14 of the 16 cases in which allegations were “addressed”. In addition, 3 of the 8 cases contained emotional abuse exclusively, compared with none of the 16 cases in which allegations were addressed. This suggests that those cases in which allegations were addressed were more complex or perhaps involved more tangible allegations.

### **7.2.1 Findings concerning violence, evidence cited and links with case outcomes**

There were 16 cases in which there were findings about allegations of violence or abuse (and an additional finding related solely to allegations of mental health problems: no. 17 in Table 7.5). In 10 of the 16 cases, the findings concerned allegations made against the father only and, in one case (no. 13), allegations were made against the mother only. Three cases (nos. 6, 9 and 16) contained findings about allegations of violence perpetrated by both the father and mother. One case (no. 1) contained findings about allegations directed toward the mother and child by the mother’s stepfather, and one case (no. 15) contained findings about the mother’s partner only (allegations that were admitted by the mother).

The nature of the allegations that were most commonly the subject of findings concerned spousal physical violence (9 cases).<sup>138</sup> Five cases contained findings about child sexual abuse.<sup>139</sup> Only one case (no. 6) contained findings about physical spousal abuse and child sexual abuse. Thus, while data presented in Chapter 5 suggest that allegations of child abuse were almost always accompanied by allegations of spousal violence, findings in this small group tended to relate to spousal violence *or* child abuse, but not both. One case (no. 4) contained findings about emotional spousal abuse exclusively, another (no. 15) involved findings about physical child abuse only, and a third (no. 13) contained findings regarding emotional child abuse only.

Physical violence or sexual abuse was found to have occurred in 12 of the 16 cases (the exceptions were nos. 4, 5, 12 and 13). One of these 12 cases (no. 6) had findings that physical spousal violence had occurred, but that child sexual abuse had not. There were two other cases in which the alleged behaviour was found not to have occurred. Of the five cases containing allegations of child sexual abuse, three (nos. 5, 6 and 12) resulted in findings that the abuse had not occurred, although one of these (no. 6) had a positive finding about spousal physical abuse. All other cases had allegations with positive findings.

136 The first of these two questions refers to the difference between Steps 4 and 5 ( $18-11 = 7$ ;  $6-5 = 1$ ;  $7+1 = 8$ ). The second question refers to Step 5, where it is shown that all except one case in each of the courts contained a link between violence and outcome.

137 See definitions of “lower” and “higher” probative weight in Chapter 6 and Appendix E.

138 Those cases involving allegations of spousal physical violence were: no. 2, 6, 7, 8, 9, 10, 11, 14 and 16.

139 Those cases were: nos. 1, 3, 5, 6 and 12.

**Table 7.5 Findings made by a judicial officer in relation to allegations**

No.	App	Court orders	Findings concerned violence by which party?	Findings about the alleged violence and abuse	Evidence cited	Did findings address the veracity of allegations or denials?	Was there a link between findings and orders?
1	Mo	Respondent residence. Day-only contact.	Fa, Mo's stepfather	Yes. Child and mother sexually abused by mother's stepfather. Father's physical child abuse and substance abuse by mother occurred.	Sexual abuse—cross-examination of mother. Physical child abuse—admission of respondent. Alcohol abuse—respondent's evidence.	Yes. Applicant mother lied about child sexual abuse by her stepfather and her substance abuse.	Findings resulted in orders restraining her from consuming alcohol, and mother was incapable of properly supervising child.
2	Mo	Applicant resident. Contact reserved.	Fa	Yes. Physical spousal violence by father occurred.	Applicant mother's evidence was unchallenged as respondent did not participate.	Yes. Residence to mother. Reserving of contact for father.	Yes. Residence to mother. Reserving of contact for father.
3	Fa	Residence with respondent. Day-only contact. Supervised contact.	Fa	Yes. Unacceptable risk that child sexual abuse did occur.	Expert testimony.	Yes. That all contact be supervised.	Yes. That all contact be supervised.
4	Fa	Shared residence.	Fa	Yes. Father had verbally abused the mother.	Cross-examination of applicant.	Mother lied on oath about substance abuse.	Verbal abuse had no effect, but finding that mother lied about substance abuse undermined her application for sole residence
5	Fa	Residence with respondent. Overnight contact.	Fa	Yes. Child sexual abuse by father did <i>not</i> occur. Mental illness of father was found.	Mental illness of father found by reference to an expert. Findings on sexual abuse based on cross-examination of parties and examination of child protection records.	Not made. The respondent withdrew allegations.	Yes. Finding that sexual assault did not occur led to orders intended to maximise as far as practicable the amount of contact for the father.
6	Mo	Applicant residence. Overnight contact.	Fa, Mo	Yes. Physical spousal violence by father and mother occurred. Sexual child abuse by mother's family did <i>not</i> occur. Substance abuse by mother occurred.	Cross-examination of respondent. Admission by applicant. Child protection evidence.	Yes. Deny respondent husband residence.	Yes. Deny respondent husband residence.
7	Fa	Residence with respondent. Overnight contact. Mother permitted to relocate overseas.	Fa	Yes. Findings of physical spousal abuse by father.	Cross-examination of applicant.	Yes. Deny application for shared residence. Therefore, mother permitted to relocate overseas.	Yes. Deny application for shared residence. Therefore, mother permitted to relocate overseas.
8	Fa	Respondent residence. Day-only, graduating to overnight contact.	Fa	Yes. Findings of physical spousal abuse by father.	Subpoenaed documents that showed wife's attendance at relevant time for medical care.	Yes. Anger management and parenting course orders for husband.	Yes. Anger management and parenting course orders for husband.
9	Fa	Respondent residence. Day-only contact. Mother permitted to relocate overseas.	Fa, Mo	Yes. Physical spousal abuse by father and mother. Emotional child abuse by father did occur.	Disclosures by child for all allegations.	Yes. Denied application for shared residence. Therefore, mother permitted to relocate overseas.	Yes. Denied application for shared residence. Therefore, mother permitted to relocate overseas.

No.	App	Court orders	Findings concerned violence by which party?	Findings about the alleged violence and abuse	Evidence cited	Did findings address the veracity of allegations or denials?	Was there a link between findings and orders?
10	Mo	Applicant residence. Contact reserved.	Fa	Yes. Emotional and physical spousal abuse by father occurred.	Corroboration by creditable applicant witness.	Yes. Contact reserved.	
11	Mo	Applicant residence. Contact reserved.	Fa	Yes. Physical spousal violence by father occurred.	Cross-examination of applicant and respondent.	Yes. Residence to applicant. Telephone-only contact.	
12	Mo	Residence with applicant. Overnight contact.	Fa	Yes. Finding that child sexual abuse by father did <i>not</i> occur.	By reference to a separate expert. Cross-examination of parties. Evidence of child's behaviour. Evidence of the family reporter.	Yes. Applicant mother's application to reserve contact for respondent father dismissed.	
13	Mo	Residence with applicant. Overnight contact.	Mo	Yes. Child emotional abuse by mother occurred.	Corroboration by creditable respondent witness.	Yes. Applicant mother's application to reserve contact for respondent father dismissed.	
14	Mo	Applicant residence. No details for contact.	Fa	Yes. Physical spousal violence by father did occur.	Respondent father incarcerated for breaches of intervention order, which included property damage and beatings of the wife. Admissions by respondent.	Yes. Wife sole parental residence. No contact order.	
15	Fa	Respondent residence. Overnight contact. Mother's partner to attend for parenting counselling.	Oth (mo's partner)	Yes. Physical child abuse by mother's partner did occur.		Yes. Respondent's partner to attend for assessment for parenting course. Medium weight. No effect on residence.	
16	Mo	Applicant residence. Overnight contact.	Fa, Mo	Yes. Physical spousal violence by father and mother occurred. Father was deemed responsible for violence.	Respondent violence was found using cross-examination of applicant. Applicant's violence was found by admission by applicant.	Yes. The judge found that respondent father's fears of the applicant mother were either feigned or exaggerated.	Yes. Findings that respondent father was responsible for violence was major reason for decision to deny shared residence.
17	Mo	Interim (written reasons); no residence orders until mother's death. Final: residence with father.	Fa	Yes. Mental illness of father did occur.	By reference to expert.	No.	Yes. Strong link between this finding and the decision not to make residence orders until after the applicant mother's death.

Multiple sources of evidence were cited in support of findings in most cases. Commonly cited sources of evidence included: cross-examination of the parties; evidence submitted, including testimony of an expert (such as a psychiatrist); admission by the accused party; child disclosure; subpoenaed medical records; and child protection records. Where only one source of evidence was cited, this evidence tended to be strong (such as conviction and incarceration for a breach of intervention order, full admission or subpoenaed medical documents). Nonetheless, the data examined were not comprehensive. For example, we could not assess issues such as findings of credit that may have also influenced the decision maker's view. On the data that were available, however, the judicial findings were generally underpinned by a solid evidence base.

There was only one case (no. 13) in which there appeared to be no link between the findings and orders. In this case, there was a finding that child emotional abuse occurred, but a range of serious allegations of spousal violence and child abuse made by the applicant mother against the father were apparently not addressed.

Positive judicial findings appeared to contribute to the denial of an application for residence in six cases. In four of these cases (nos. 2, 7, 9 and 11), face-to-face contact was also disallowed or effectively disallowed.<sup>140</sup> Two cases in which residence was denied (nos. 1 and 16) did, however, specify some form of contact (1 overnight and 1 daytime-only).

Findings in three cases (nos. 3, 10 and 14) contributed to contact being denied, reserved or supervised. In another case (no. 8), positive findings concerning violence contributed to the decision to require the father to attend anger management and parenting courses. This father was permitted daytime-only contact, eventually to be increased to overnight contact. Likewise, in another case (no. 15), the partner of the respondent mother was required to attend similar courses, although the mother was awarded residence.

Two cases in which negative findings were made in relation to child sexual abuse (nos. 5 and 12) culminated in the dismissal of applications for the denial of contact in favour of overnight stays. In the case in which spousal physical violence was found to have occurred but child sexual abuse was not found (no. 6), residence was denied and overnight contact ordered.

In the case where there was a finding of mental illness (no. 17), a strong link was evident between this finding and the decision not to make residence orders until after the apparently imminent death of the applicant mother.

### **7.2.2 Findings concerning the veracity of allegations and denials, and effect on outcome**

Three cases contained a finding of "false" allegations. The finding in one such case (no. 12) was that the respondent father had not engaged in child sexual abuse. The trial judge did not expressly find that the applicant mother had made a false allegation, but found that "it appear(ed) likely that the mother's embellishment and misreporting of events emanates from her fear the father may mistreat [the child]". There was no action against the mother for making this allegation, but her application to deny the father contact was dismissed in favour of overnight contact.

The finding of a "false" allegation in another case (no. 5) concluded that the sexual abuse by the respondent mother to her children did not occur. In this case, the applicant father was found to have a mental illness. As a result, his application for shared residence was denied in favour of overnight contact with his children. In the third "false" allegation case (no. 6), the court concluded that the applicant mother's family had not physically or sexually abused the child as alleged by the respondent father. The court found that the respondent father was not a credible witness and that he was the cause of considerable conflict in the relationship. This conflict appeared to play a greater role than the apparently "false" allegation in the order made to deny the father's request for residence. Instead, he was granted overnight contact.

In the 12 cases in which there were positive findings concerning allegations of physical violence or sexual abuse, the "other side" had denied or partially denied at least one allegation that was

<sup>140</sup> The "effectively disallowed" cases relate to two cases (nos. 7 and 9) in which the dismissal of a residence application resulted in the resident parent being allowed to relocate overseas.

later determined to have occurred.<sup>141</sup> In only two of these cases, however, did the judicial officer make reference to the denial. One case (no. 1) concerned a respondent mother's denial that her stepfather had sexually abused her child (and herself). She also denied the allegation of substance abuse and self-harm. This apparently "false" denial contributed to the awarding of residence to the applicant father and an order for the mother to attend alcohol rehabilitation. In the other case (no. 4), the mother was found to have lied about her heroin abuse. The mother's application for sole residence was not successful.

### 7.3 Summary

The main message that resonates from the data presented in this chapter—for both non-adjudicated cases and adjudicated cases with reasons available—is that allegations of spousal violence or parental child abuse, accompanied by evidence of a strong probative weight, appeared to influence court orders. Without such evidence, allegations did not seem to have much effect on outcomes.

While it was unusual for contact to be denied, parenting time may well have been restricted to the daytime. But by and large, orders for overnight stays predominated in the presence or absence of allegations, regardless of the apparent severity or probative weight of evidence underpinning them.

Residence may be a different story. Children typically lived with their mothers prior to and following the making of parenting orders. The status quo generally remained. An order for a change in residence was more likely to occur when children were not already living with their mother. However, there were too few cases involving alternative arrangements (such as paternal residence, shared care or split arrangements) to enable assessment of the extent to which allegations affected orders for these sub-groups.

Three threads begin to emerge as important in this investigation of allegations of family violence and child abuse: (a) the apparent severity of allegations, (b) the level of detail provided, and (c) the apparent weight of evidence in support of allegations. These threads are taken up in the next and final chapter as part of the broader tapestry of this study's findings and the implications of these for practitioners, policy-makers, and researchers.

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141 One case that was the exception was undefended.



# 8 Discussion and implications

## 8.1 Key findings and links to prior work

### 8.1.1 *The prevalence of allegations*

At the most general level, this study supports public statements made by the FCoA over a number of years that allegations of violence and/or abuse frequently accompany post-separation child-related disputes that proceed as far as, or beyond, a formal application. Thus, in the present study, the “violence/abuse” flag (as defined in Chapter 4) was raised in the general litigants sample in 53% of the child-related applications to the FCoA and 62% of the applications to the FMC. In the judicial determination sample, these figures increased to 79% with respect to the FCoA and 67% with respect to the FMC. Broadly speaking, the findings also reflect a number of overseas reports, such as Johnston et al.’s (2005) finding that more than half the high-conflict separation cases in Californian family courts involved an allegation of spousal violence or child abuse.

When adult family violence was looked at independently<sup>142</sup> from child abuse, the figures remained high—49% and 57% for the FCoA and FMC general litigants sample. The figure remained the same (79%) for the FCoA judicial determination category and was almost the same (63%) for the FMC judicial determination group. When child abuse was looked at independently, this form of abuse was alleged in 23% of cases in the FCoA general litigants sub-sample and in 28% of cases in the FMC. These figures rose to 50% in the FCoA judicial determination group but, interestingly, reduced to 19% in the equivalent group within the FMC.

These findings suggest at least three processes that may be at work. First, not unexpectedly, cases that culminated in a defended final hearing had a higher percentage of violence allegations than general litigants sample cases—only a small number of which (9/225 couple cases) proceeded to full judicial determination. Second, the vast majority of child abuse allegations co-occurred with allegations of adult-to-adult violence. This trend is consistent with findings of, and suggestions by, a broad range of researchers and theorists both inside and outside the field of family law (see Chapter 1). Third, in relative terms, the data appeared to reflect a tendency to transfer family law matters containing child abuse allegations away from the FMC and into the FCoA. This may be the result of at least two factors. First, the FMC does not generally hear complex cases of more than two days’ duration. Second, the FCoA has more specialised procedures for dealing with allegations of child abuse—in particular, the Magellan Program.

Overall, the data from the files examined in the Melbourne, Dandenong and Adelaide Registries supported Brown et al.’s (1998) assertion (Chapter 3) that violence allegations have become (or have become better recognised as) “core business” for the FCoA. This statement also appears to extend to the work of the FMC. As noted earlier, we cannot be certain that this finding would be closely reflected in figures from courts with family law jurisdiction in other parts of Australia.

Are the FCoA and the FMC attracting a higher percentage of violence and abuse allegations than would be anticipated in the Australian divorcing population at large? As noted in Chapter 3, Sheehan and Smyth (2000) derived data from self-reports of divorced parents in the general population. They found that, based on the legal definition of *spousal* violence (that is, behaviour that could be considered to be an offence under criminal law), 55% of men and 65% of women reported having experienced at least one such violent act. These figures are similar to the figures

142 The term “independently” does not imply that adult-to-adult family violence has no negative impact on dependent children. Clearly it does.

for the spousal violence and child abuse allegations in the general litigants sub-samples (FCoA: 53%; FMC: 62%) in the present study. This might suggest that the family violence allegation rates in children's proceedings in the FCoA or FMC may be similar to the reported rates of spousal violence profiles in the general divorcing population.<sup>143</sup>

At the same time, in their overview of the very extensive data derived from a series of Canadian studies, Bala, Jaffe and Crooks (2007) suggested that violence was a "factor" in about a quarter of all separations, and that cases in which violence was a factor were more likely to litigate. If these figures were extrapolated to the Australian situation, they might suggest that the critical dimension in understanding these cases is not so much whether or not violence ever occurred in the relationship (unfortunately, as noted, it would appear that violence of some sort occurs at some time in the majority of intimate partner relationships ending in divorce), but whether or not the violence is judged by one or both former partners to be an *issue* that impacts on the way they feel they can manage post-separation parenting arrangements.

Thus, in addition to the perceived *types* and *frequency* of violence, the way the violence has been or is being *experienced*, is likely to influence the decision to make an application to a court. Types and frequencies of violence can be measured, albeit imperfectly. But, as noted earlier, the way one experiences violence is highly variable and is less amenable to hard empirical analysis.

With around three quarters (79%) of adjudicated cases in the FCoA containing alleged violence, the present study's results are at the higher end of findings from other Australian studies that focused on FCoA cases.<sup>144</sup> Thus, Rhoades et al. (2000) reported that in their sample of 78 final judgments made in the FCoA in 1998/99, 67% involved allegations of violence. In 2003, the FCoA's research into 91 child-related judgments also concluded that in 67% of cases, physical violence was an "issue".<sup>145</sup> In just over half these cases, the Court upheld at least one of the allegations. Relying on comments made by FCoA judges in 399 contested contact disputes heard by the Adelaide Court between 1991 and 2001, Shea Hart (2004) found domestic violence to have been an issue in 46% of the cases. In 27% of these cases, a formal finding of domestic violence had been made. Finally, Kaspiew's (2005a, 2005b) qualitative analysis of 40 randomly selected child-related judgments concluded that violence was a "factor" in 58% of the cases and was "highly significant" in 25% of the judgments.

Most of the Australian studies into violence and child abuse in the context of family law are not formally comparable. Sampling techniques vary with respect to their quality and clarity. Findings are from a mixture of sources—allegations by litigants, formal determinations and less formal mentions by judges, and conclusions reached by interrogation of the documents by the researchers themselves. Different classes of individuals—litigants, judges and researchers—both define and estimate the incidence of violence. And finally, reliability processes with respect to the identification of violence are generally not described, nor are reliability figures supplied.

These limitations notwithstanding, if a process of triangulation is assumed (whereby differing methodologies and differing samples nonetheless reveal broadly similar results) and we add to this the results of the present study (which paid close attention to issues of sampling as well as to issues of validity and reliability), there is strong evidence for the proposition that allegations of violence are common in post-separation disputes over children that proceed as far as an application to one of the courts, and particularly common among the cases that continue on to the point of fully defended litigation.

143 Sheehan and Smyth's (2000) legal definition of "spousal violence", taken from the Australian Bureau of Statistics (1996), is: "any incident involving the occurrence, attempt or threat of either physical or sexual assault". This is a somewhat different definition than the definition of "family violence" from s60D (1) of the *Family Law Act 1975* (Cth), which, until June 2006, was: "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 to fear for or to be apprehensive about his or her personal wellbeing or safety".

144 Findings from overseas studies appear to be more variable, with figures as low as 22% (Smart et al., 2003; though this study also included non-adjudicated cases) and as high as 83% (Sorenson et al., 1995).

145 It is unclear how the Family Court coded or analysed its data. It may not have had the research capacity and resources to scrutinise each page of each individual court file—the approach we were able to adopt.

### 8.1.2 Types of violence

As Table 5.2 reveals, the analysis of the types of spousal violence suggested that the most common allegation across all four samples related to actual physical spousal violence, followed by threats of physical violence and verbal or emotional abuse, and then property damage. Allegations of substance abuse, an established correlate of violence, were also common. Less frequent than substance abuse, but still substantial, were allegations of mental health problems.<sup>146</sup>

Prevalence of each of these allegations is consistently highest in the FCoA's judicial determination sample; indeed actual physical violence was alleged in over half the cases in this sample. The findings relating to the FCoA judicial determination sample reinforce the suggestion in the previous section that there is a general tendency to move more complex violence-related cases into the FCoA for judicial determination.<sup>147</sup> Interestingly, the FMC general litigants sub-sample contained considerably more physical violence allegations—whether actual or threatened—and considerably more allegations of substance abuse, than its FCoA counterpart. These could be chance findings. They may, on the other hand, reflect a perception that by applying to the FMC, a more speedy result may be achieved at less cost.

Though not as common as allegations of substance abuse in any of the four sub-samples, mental health concerns were nonetheless alleged in 25% of the adjudicated cases heard by the FCoA. Mental health is a notoriously slippery area, with diagnoses being not infrequently contested by applicants and respondents, as well as by mental health professionals themselves. Certain forms of psychotic illness correlate with moderately elevated risks of violence, but to date there is little convincing evidence linking violence with other forms of mental illness.<sup>148</sup> On the other hand, what is known in the drug and alcohol treatment field is that many clients carry a dual diagnosis of a mental illness *and* a drug or alcohol addiction. Which problem precedes which remains difficult to untangle.

At the level of clinical observation, as Kelly (2003) has observed, individuals with diagnoses of personality disorders, especially borderline personality disorders, not infrequently become obsessive litigators who appear incapable of understanding or empathising with the points of view of their former partners or their children. Such obsessions can be dangerous, as evidenced, for example, in Johnson's (2002) intensive study of 7 cases of familicide in the context of parenting disputes in Western Australia. Johnson's analysis led her to conclude that the 7 men in her study, all of whom had murdered their child and all but one of whom had then committed suicide, each met the American Psychiatric Association (1994) criteria for borderline personality disorder.<sup>149</sup>

As Rodgers, Smyth, and Robinson (2004) have noted, although mental health does not feature strongly in family law research and commentary, mental health issues do feature in many relationship breakdowns. Rodgers and his colleagues suggest that mental health issues are deserving of more attention in family law disputes than they have received to date. Like questions of violence and child abuse, however, the term "mental health" covers a wide range of symptoms and behaviours that, in turn, have a wide range of aetiological explanations. Clearly, the more specific the allegation, the greater the chance that its implication can be assessed during negotiations or decision-making. Clearly, too, the interaction between substance abuse and mental health issues needs careful analysis when both are alleged in parenting disputes.

### 8.1.3 Types of child abuse alleged

A form of parental child abuse was alleged in nearly one quarter of cases in the general litigants sample. This proportion roughly doubled in the FCoA judicial determination sub-sample, but it roughly halved in the FMC judicial determination sub-sample—a result that again suggests

146 It should be noted that allegations of substance abuse and mental health issues in this study were only recorded in cases that also contained allegations of family violence or child abuse. It is probable that substance and mental health issues were also raised in at least some of the cases that contained no allegations of violence or child abuse.

147 In the end, of course, only a small proportion is finally dealt with in this manner.

148 For a detailed analysis of this issue, see Link et al. (1992).

149 Although this was a total population drawn over a 10-year period, the number of men was only 7. In addition, because all but one of the cases were murder-suicides, the analysis of what may have caused this extreme behaviour was necessarily retrospective.

that the FMC is considerably less inclined to go on to hear child abuse allegations. Indeed, the FMC judicial determination sub-sample heard no cases of alleged sexual abuse, even though this category was represented in the FMC general litigants sub-sample.

Overall, the FCoA judicial determination sample's profile of allegations stood out as different, with a considerably higher proportion (nearly 40%) of the cases including allegations of actual physical child abuse and/or child sexual assault (the latter allegations were raised in 11% of cases). Interestingly, the only category in which the FMC (compared with the FCoA) judicial sample had a higher percentage of allegations was that of actual abduction. The difference was quite small (11% vs 7%), and may well reflect chance variation. Alternatively, the results may suggest a tendency to use the decision-making part of the FMC in child maltreatment allegation cases mainly when there is a perceived emergency. In such cases, there may be no time for referrals to other sources of assistance. The key need may well be a decision that is capable of containing issues as quickly as possible.<sup>150</sup>

### **8.1.4 Apparent severity of the alleged violence**

Specifying types of violence (and their correlates) in the manner described above is only a first step towards understanding what is being alleged. For example, damage to property might be very minor, or mutual threats might be part of a couple's normal repertoire and not seen by either partner as intimidating. On the other hand, either action might be a fearful experience, clearly intended by one party to intimidate. An examination of court files with a view to coding each allegation cannot hope to capture fully the contextual circumstances in which the allegation was made. Nonetheless, it was important to assess each set of allegations on a scale of likely severity and to do this with as much transparency and inter-rater reliability as possible.

Though inevitably an imperfect exercise, the results (Table 5.4) leave us in little doubt that most of the allegations we were dealing with in this sample covered behaviours that were classified as serious (Categories B and C). Indeed, no more than one fifth of the allegations in any of the samples could be conceived as even potentially falling into a category that might be seen as less than serious violence.<sup>151</sup>

Again, too, we see a pattern with respect to the most severe allegations (Category C) that suggests a movement towards judicial determination by the FCoA. In addition, there is strong support for Brown et al.'s (1998) assertion, not just that allegations of violence are "core business" in family law disputes that go on to litigate, but that the allegations of violence are largely of a serious nature.

Two matters relating to this finding are worth noting at this point. The first is that a large minority of cases made no allegations of violence, raising important questions about the nature of the disputes in these instances and the extent to which the FCoA and the FMC are the most appropriate venues for the resolution of these disputes.<sup>152</sup> The second is that the apparently serious nature of many of the allegations placed a significant burden on negotiators, family consultants, external experts and decision-makers, who are charged in their different ways to make sound assessments, often within short time frames. We will return to both these issues in the penultimate section of this chapter.

Finally, although the absolute numbers were relatively small, Table 5.11 suggests a gendered pattern with respect to categories of severity, with considerably more of the fathers' allegations compared to the mothers' allegations in the general litigants sample being in the least severe

150 It should be noted that overall rates of allegations of child abduction were not derived because such allegations were only noted where they accompanied allegations of family violence or child abuse.

151 We acknowledge that without further contextual understanding, it cannot of course be assumed that allegations in Category A were not serious. On the other hand, it seems reasonable to assume that most of the allegations in Categories B and C, by their very nature and regardless of context, would have to attract a default presumption of being serious.

152 Again, the caveat here is that it cannot be assumed that no allegation equates with no violence, or on the other hand that alleged circumstances necessarily reflect reality. In addition, we are not implying here that only violence and abuse cases require judicial determination. With court and judicial resources stretched, however, the question of what allegations are being made by litigants who do not allege violence, and what other resolution options (such as referral to Family Relationship Centres) might be available, is worthy of further study.

category (Category A).<sup>153</sup> In addition, the only group in the judicial determination sample with a number large enough to report upon (the applicant mothers) had 71% of their allegations of violence rated in the most severe category.

### 8.1.5 The witnessing of family violence by children

As noted in Chapter 5, allegations of the types of violence witnessed by children followed a similar pattern to the allegations of the types of spousal violence that have already been noted. Children, therefore, were alleged to have witnessed actual physical violence most often (Table 5.6). This was followed by threatened physical violence, or emotional or verbal abuse, and then property damage. Again, these allegations were considerably more likely to have been raised in the judicial determination sub-samples and, of these sub-samples, all except emotional abuse allegations were more likely to be raised in the FCoA.

It may be useful to reflect at this point on how the child witness allegations within each sample compared with the total family violence allegations outlined in Table 5.1. As Table 5.5 indicates, virtually all cases containing allegations that a child witnessed other adult family violence, also contained allegations that the child witnessed spousal violence. Yet allegations from the general litigants sub-samples that a child had witnessed *any* type of family violence were made only about half as often as the allegations of family violence itself.

However, when we move into the judicial determination group, and focus on the FCoA figures in particular, there is a considerably stronger concordance between allegations of violence and the child's witnessing of that violence. Four hypotheses are worth considering with respect to this particular finding.

The first is that, because the judicial determination samples (especially the FCoA) were likely to be dealing with more complex cases, it was also likely that there would have been more opportunities for children to witness the violence as alleged. A second hypothesis relates to the fact that the FCoA judicial determination sample contained the youngest group of children. These children were more likely to be recognised by a parent as being unable to absent themselves from the violence. (They were also, as developmental psychologists would no doubt argue, the children likely to be the most negatively affected.) A third hypothesis is that one or both parents in the judicial determination group were indeed more sensitive to the impact on children of the witnessing of family violence and were therefore not willing to settle for less than a judicial hearing. A final possibility runs somewhat counter to the third. It is that, particularly in cases in which there was high acrimony, one tactic might have been to make allegations in as many domains as possible. High acrimony, especially in the context of the more adversarial processes that prevailed in 2003, is more compatible with a "winner takes all" mentality. The four hypotheses are not, of course, mutually exclusive.

Moloney and McIntosh (2006) have demonstrated how separating couples in high conflict find it difficult to remain aware of the need to protect their children from the spill-over effects of that conflict. As noted in Chapter 1, one or both parents struggle at these times to remain adequately attuned to their children's needs. This dynamic is likely to be strongly present during intermittent periods of family violence when the violence emerges primarily out of a failure to negotiate situational factors. On the other hand, an absence of parental attunement, at least on the part of the perpetrator, is likely to be *chronically* present when the violence is motivated primarily by an obsessive need to control one's partner (and probably one's children).<sup>154</sup>

Table 5.12 reveals that, whether a respondent or applicant, mothers in the general litigants and judicial determination samples were more likely than fathers in the same samples to allege that their child or children witnessed violence—the most common category of which was physical violence (Table 5.13). This finding may largely reflect the fact that a higher proportion of mothers than fathers alleged physical spousal abuse and therefore a higher proportion of mothers than fathers would have had the opportunity to allege that a child witnessed such abuse. It might also

153 This may be associated with the fact that fathers' allegations also tended to be less specific.

154 As noted in Chapter 1, high conflict can spill over into violence. Equally, however, some acts of violence have nothing to do with the resolution of conflict.



suggest a greater sensitivity on the part of mothers with respect to the impact on the child of witnessing violence.

A further caveat is required with respect to interpreting these data. Just as “no allegation of violence” does not guarantee its absence, “no allegation of the witnessing of violence by a child” does not mean that we are entitled to “rest easy” on that account in cases in which spousal violence is judged to have been likely. There is evidence, for example (such as in Tritt & Pryor, 2005), that many parents typically underestimate the emotional impact of negative family-related experiences on the lives of their children. This evidence supports the clinical experiences of many relationship counsellors and family therapists, who are not infrequently told by couples or individual parents that the children “don’t know” about the conflict or the violence or about the fact that they are contemplating a separation. More often than not, it turns out that the children have been aware of these issues for some time but simply don’t know how to express the fact or process the information (see Tonge, 1980, and McIntosh & Moloney, 2002, for examples and discussion with respect to children’s drawings in this regard).

Thus, it would be naïve to accept the view that a child has not been affected when the violence has not literally been “seen”—for example, when it may be said to have taken place in another part of the house. As noted in Chapter 3, it has been increasingly recognised not only that abuse of children is strongly associated with spousal violence, but that spousal violence when children are anywhere in the vicinity runs a considerable risk of traumatising them. The witnessing of family violence has increasingly come to be recognised a form of child abuse in its own right.

### **8.1.6 Who alleged what?**

As noted in Chapter 5 (see Table 5.7), being an applicant increased the chances that an allegation would be raised—an effect that was especially pronounced when the applicant was a father. But whether they were applicants or respondents, mothers were much more likely than fathers in the same sample to make allegations of both adult-to-adult violence and child abuse (Table 5.8). About a fifth of the allegations in the general litigants sample were mutual, but this rate was at least double in the judicial determination sample, probably suggesting a higher degree of complexity and/or intractability in these cases (Table 5.7).

As Table 5.8 demonstrates, allegations of spousal violence were more common than allegations of child abuse in each sample and in each of the 8 applicant respondent groups. Spousal violence allegations were especially pronounced in the judicial determination sample, with fathers in this group making such allegations at least twice as often as fathers in the general litigants sample. Within each sample, however, mothers alleged spousal violence more often than fathers and, within each gender, applicants alleged spousal violence more often than respondents. In addition, allegations of “other family violence” were made most often by applicant mothers in the judicial determination sample.

As noted in Chapter 1, previous research suggests that men are more likely than women to commit extremely intimidating and controlling acts of violence. In addition, Gilding (1991) has suggested that violence in families is cited by women far more often than men as a reason for leaving a marriage. It is not surprising, therefore, that allegations of spousal violence are made more often by women. What is perhaps surprising is that applicant fathers in the judicial determination sample made allegations related to spousal violence in just over half the cases.

What might this high rate of allegations by applicant fathers mean in the context of high rates of allegations by mothers? Do they reflect a history of mutual violence? Are they mainly an artefact of the high acrimony not infrequently seen in litigated cases? Are some of these fathers attempting to gain a tactical advantage by ensuring they allege violence (whether “true” or “false”) in the first instance? Might it be seen as socially unacceptable for a mother to not make allegations of violence when fathers are making them (again whether or not the allegation is “true” or “false”)?) Again, such hypotheses are neither mutually exclusive nor exhaustive.

The types of spousal violence alleged by all groups of applicant and respondent parents largely followed the same patterns noted in Section 8.1.2—with actual physical violence being most commonly alleged, followed by threatened physical abuse or emotional/verbal abuse, then

actual property damage. In both the general litigants and judicial determination samples, each form of violence (except property damage in the judicial determination sample) was alleged considerably more often by both applicant and respondent mothers than fathers. In the judicial determination sample, applicant mothers alleged actual physical violence in 50% of the cases. Most sub-groups alleged substance abuse more often than mental health issues—a trend that was most pronounced for respondent mothers (Table 5.9).

Fathers in the general litigants sample were the least likely to raise child abuse allegations, but respondent fathers in the judicial determination sample were as likely as mothers in all four groups to allege child abuse. In addition, allegations of child abuse in the absence of allegations of family violence were rare for mother and father applicants and respondents (Table 5.6).

We have already noted that spousal violence was alleged considerably more often than children were alleged to have witnessed it. Further, the data strongly suggest that the majority of the spousal violence allegations concerned behaviour that was far from trivial. Taken together, what might these findings suggest?

It may be that some separating couples cope by partially detaching questions related to the welfare of their children from the spousal violence that they allege. It may also be that, like the courts, many parents struggle to reconcile questions of violence towards themselves, with the recognition that they do not want the other parent to be completely excluded from their children's lives, or at least do not see this as a reasonable outcome. Consistent with this hypothesis, McInnes' (2006) research (see Chapter 3) reported on the experiences of women in situations of serious violence, many of whom reported that they did not want parenting by the father to cease. Kaspiew's (2005a, 2005b) qualitative examination of court files (see Chapter 3) yielded similar findings.

In some cases, too, there might also be a recognition of some mutuality with respect to the spousal violence that precludes these applicants or respondents from "going too far" in their allegations of child abuse. Finally, some parents may be hopeful that the violence that has occurred will cease as a result of the separation and that, in this sense, the separation is likely to improve the situation, not only for themselves, but also for the children.<sup>155</sup>

All of the applicant mothers who made child abuse allegations in the judicial determination sample alleged actual physical abuse (Table 5.10). Fathers' allegations in this sample also mostly concerned actual physical abuse, but such allegations were made in a lower proportion of cases. The pattern of allegations in the general litigants sample was more varied, although, overall, allegations of any child abuse were made by a higher proportion of mothers than fathers.

Interestingly, the only allegations of sexual abuse in the judicial determination sample were made by *respondent* mothers. Allegations of sexual abuse were made by a small proportion of both applicant and respondent mothers in the general litigants sample. Larger samples (especially of the judicial determination sub-samples) and/or more contextual information would be needed before a realistic attempt could be made to interpret these data.

### 8.1.7 Evidentiary material

Table 6.1 demonstrates that in the general litigants sample not only was the proportion of cases containing allegations of child abuse considerably less than the proportion of cases containing allegations of spousal violence, but that within each case, the average *number* of allegations of child abuse was less than the average number of allegations made in the spousal violence cases. The average number of allegations of spousal violence made in the judicial determination cases was greater than in the general litigants sample—although most of this difference was accounted for by differences in the FCoA sub-sample. Indeed, in the FCoA judicial determination sub-sample, four or more allegations were raised in 50% of the cases. (The numbers were too small to make comparisons between the judicial determination and the general litigants groups in the case of allegations of child abuse.)

155 Again, this is not to downplay the findings noted in Chapter 1 that in some circumstances separation can be an especially dangerous period, during which, for example, opportunities for violent acts arise around parenting arrangements, especially during changeover times.



When it came to the provision of corroborative evidence, the numbers were stark. Table 6.2 shows that between 71% and 92% of the total number of spousal violence or child abuse allegations provided no corroborative evidence to support the allegations made. When corroborative evidence was supplied, it was most often (between 6% and 28% of the allegations) confined to a single piece; only 1–4% of allegations were accompanied by more than two pieces of corroborative evidence. Pieces of corroborative evidence were judged to be of relatively strong probative weight in 2–18% of the allegations.

Table 6.2 also reveals that no evidence in support of allegations was provided in 39–86% of the cases. In addition, the corroborative evidence provided was considered to be “all strong” in only 0–13% of the cases. Compared with all other sub-samples, cases in the FMC general litigants sub-sample were the least likely to make child abuse allegations, and less likely that the FCoA judicial determination to provide any strong evidence for such allegations (Table 5.1 and Table 6.2).

Compared with their male counterparts, mothers in the general litigants and judicial determination samples were more likely to provide corroborative evidence in relation to spousal violence (Table 6.3). Mothers in the combined judicial determination sample were more likely than mothers in the general litigants sample to provide corroborative evidence. The same trend applied to fathers. At the same time, the gender gap with respect to the provision of corroborative evidence was narrower for the judicial determination sample than for the general litigants sample. Interestingly, in the combined judicial determination sample, mothers were also more likely than fathers to provide corroborative evidence of relatively weak probative weight.

In Table 6.10, *all* sources of evidence that might support an allegation have been combined. Even when this was done, only 30–45% of allegations of spousal violence had any evidentiary support. However, of all *cases* that contained allegations of spousal violence, between 53% and 77% provided *some* form of evidentiary material for at least *one* of the allegations raised. Only 43% to 50% of cases reach this benchmark, however, when allegations of child abuse were considered in the general litigants sample.

From the perspective of gender and evidence from all sources (Table 6.11), roughly half the mothers in both the general litigants and judicial determination cases had at least one piece of relatively strong evidence or full admission with respect to at least one allegation of spousal violence. However, 43–44% in the general litigants sample had no corroborative evidence. Mothers were more likely to have better evidence supporting allegations of spousal violence than evidence supporting allegations of child abuse (Table 6.1.2), with 56% having no corroborative evidence regarding child abuse (compared with 44% who lacked corroborative evidence regarding their allegations of spousal violence). Compared with mothers, fathers more often made allegations of spousal violence that were supported by no evidence, but when evidence *was* supplied by fathers, it was highly likely to be relatively strong.

With respect to questions of severity of allegations, and its link to evidence, Table 6.13 demonstrates that the greater the apparent severity of the spousal violence allegation, the greater was the chance of having a full admission or evidence of relatively strong probative weight. But even when allegations were in the highest category of apparent severity (Category C), no evidence was provided in support of those allegations in 36% of the cases. Of the child abuse allegations, 67% were considered to be in Category C. Yet more than half of these provided no evidentiary support.

Once again, the contextual paucity of these data means that we can only speculate on their meaning. The data on which the present study was based did not enable us to identify the prevalence of long-standing coercive violence. But the title of Pizzey’s (1973) seminal work, *Scream quietly or the neighbours will hear*, serves as a reminder that for a proportion of individuals within intimate partnerships, violence and abuse may be difficult to allege and, if alleged, evidence of that violence and abuse may be hard to come by.

Thus, those whose allegations suggest not only serious violence but also a pattern of such behaviour over time—the group likely to fit into Walker’s (1984) formulation of the “battered woman syndrome”—are likely to have “suffered in silence” for too long. Obtaining corroborative evidence is likely to be very difficult when the violence has occurred over an extended period

of time, potential sources of proof may be lost, witnesses (where there were any) may no longer be available, injuries may have faded and the non-physical symptoms of trauma may not be obvious.

### **8.1.8 Responses, denials and specificity**

Table 6.5 indicates that the most common single response to the 808 allegations of spousal violence was “no response”. Easily the next most common response, which occurred with respect to at least a quarter of the allegations, was full denial. The difference in the rate of denials between the general litigants and the judicial determination samples was minimal. A response to at least one allegation was more common in the FCoA judicial determination sample than in any other. But even in cases requiring judicial determination, “no response” to all allegations applied to a substantial minority.

Where responses to child abuse allegations were made, they were mostly full denials. Even here, however, “no response” clearly outweighed the full denial category in the FCoA and applied to one third of child abuse allegations in the FMC. Specifically, fathers in the general litigants sample were more likely to respond with denials to allegations of child abuse than to allegations of spousal violence (Table 6.7).<sup>156</sup> Indeed, no father in this sample made a full or partial admission with respect to child abuse, though a small proportion (8%) did so with respect to spousal violence.

While the large number of denials is not a surprising finding, the substantial amount of overall silence as a response to most allegations is a phenomenon deserving more investigation. What cultural norms or court practices might support this absence of any response to so many allegations? At a general level, experienced negotiators know that early concessions can position one badly with respect to preliminary discussions or interim arrangements. This can be especially important in family law, where it has been shown even in early studies (such as Bordow, 1994; Horwill & Bordow, 1983) that significant alterations to orders and arrangements made at the interim stage are relatively uncommon.

Thus, legally informed processes may be an important key to understanding the phenomenon of “no response” to a large number of allegations. It may be thought, for example, that the making of too many responses, the content of which may later have to be fully or partially conceded in negotiations, is a poor or potentially dangerous approach, especially early in the process (see, for example, Cohen’s (1980) research and theorising on negotiations). “No response” to the majority of allegations may leave more space for making partial concessions—especially “last-minute” concessions—that may be offered during negotiations in exchange for perceived benefits, such as more money or more time with a child.

If negotiations fail and a fully defended litigation process is likely, it might then become more important to respond to a greater number of allegations, for fear that an absence of response will be construed by a court as equivalent to an admission. This could partly explain why the percentage of “no responses”, though still considerable, is appreciably less in the FCoA judicial determination sample. Finally, there may also be an expectation that if the matter proceeds very far, much will depend on the recommendation of the family report or other independent psychosocial assessment—in which case, perhaps, the fewer early concessions that might be contained in a response, the better.

Interestingly, when one looks to family reports as a possible source of independent assistance with respect to corroboration, two matters stand out. First, in the general litigants sample, the proportion of cases of alleged violence or abuse that attracted a family report was low. Second, within all family reports, partial or full corroboration of allegations happened relatively rarely and the discrediting of an allegation was almost non-existent. It would seem, therefore, that in this sample of parenting disputes in which violence or abuse had been alleged, family reports played a very minor probative role, and that their main function lay elsewhere.

<sup>156</sup> There were too few cases where fathers alleged that mothers had abused the children to assess mothers’ responses to such allegations.

Finally, the data presented in Table 6.14 demonstrate that low levels of corroboration and low levels of responses generally sat beside low levels of specificity. Indeed, only 16% of allegations in the general litigants sample of couple cases were judged to have high levels of detail. Furthermore, only 6% of high-level detailed allegations attracted high-level responses.

Perhaps not surprisingly, non-specific allegations usually elicited non-specific responses; but, in addition, about half the medium to highly specific allegations that were responded to were also answered non-specifically. Core issues around specificity of allegations of spousal violence and parental child abuse can be summarised by referring to Table 6.15, which shows that just under a third of all such allegations were non-specific and were not accompanied by, or did not elicit, any evidence; about a third had a medium level of detail and had no evidence; and about 10% had high specificity but also had no accompanying evidence. Although highly detailed allegations were uncommon (applying to 17% of all allegations), they were about twice as likely as less detailed allegations to provide at least some evidentiary material, much of which had relatively strong probative weight.

### **8.1.9 Violence allegations and outcomes**

A data set such as this, which reveals the existence of a considerable number of worrying allegations of violence and abuse accompanied by low levels of specificity, low levels of corroborative evidence, and either denials or a complete absence of responses, inevitably poses challenges with respect to assessing outcomes. As noted in Chapter 7, when specific allegations with evidence of a high probative weight were fully litigated, the courts' orders were much more inclined to respond to the concerns raised. For example, they may have demonstrated signs of caution (such as daytime parenting arrangements only) or built in stronger protective qualifiers (such as supervised parenting). In addition, when specific allegations with evidence of a high probative weight led to consent orders, these orders also tended to be similarly responsive to the allegations.

As we have seen, however, most of the allegations in all four court sub-samples lacked supporting evidence and specificity. Where responses were made, they were mainly (and overwhelmingly in the case of child abuse allegations) in the form of full denials. In cases involving allegations that lacked evidence or specificity, the outcomes, whether fully litigated or not, were much more similar to the outcomes in the cases in which violence or abuse was not alleged.

Thus, at first glance, it would appear that if the parenting outcomes for many of the alleged violence cases were indistinguishable from the outcomes in the cases in which no violence or abuse was alleged, then both categories (alleged violence and no alleged violence) were being treated, on average, as if they were the same. One possible explanation for this is that allegations of violence were simply so ubiquitous and, on average, so difficult to assess in detail, that the impact they had on the outcomes became blunted.

There may be echoes here of issues that were raised in Chapter 1—in particular, the calls in that chapter for greater definitional clarity with respect to family violence and child abuse. It was acknowledged in Chapter 1 that a focus on definitions that discriminate between possible types of family violence and child abuse runs the risk of being seen to tacitly endorse or trivialise what is always unacceptable behaviour. But, as noted, it has also been suggested by an increasing number of researchers (such as Johnson, 2005; Johnston et al., 2005) that it is no longer acceptable to continue to research or write in this domain as if all violence is the same.

This study cannot adequately tap into the subtleties that accompany the weighing of evidence when cases are judicially determined. Nor can it analyse the informal admissions, concessions or, perhaps, promises that might be made during the negotiations that take place with a view to resolving a matter without the need for a fully defended hearing. In other words, the data do not permit us to assess the nuances within or the nature of the determinations or negotiating processes that take place on behalf of each litigant and on behalf of their children when violence or abuse has been alleged.

In addition, we can make no claim to understand adequately the circumstances, thinking, motivation or advice that led the majority of litigants to make so many non-specific allegations

which, in turn, often elicited no response. We have offered a few thoughts on these matters in the present discussion. Some, such as the difficulties experienced by those who have been in a victim role in breaking free, asserting their rights, detailing the nature of the violence or abuse *and* gathering evidential support are well recognised. Others, such as the idea that legal processes within a settlement-oriented family law “culture” might inhibit the making of fully fledged allegations or responses, are more speculative.<sup>157</sup>

Perhaps, too, amidst the ongoing controversies surrounding “false allegations” and “false denials” in family law disputes, practitioners and researchers may underestimate the extent to which it is no trivial matter for many litigants to make any allegations against a former partner with whom one has had children, and with whom one probably wanted to share a lifetime. The data may therefore be reflecting some ambivalence on the part of some of the litigants—perhaps a desire to set a tone that speaks of violence or abuse without being totally condemning of the individual.

A further way of approaching this issue is to consider that the fact that violence in the home has become a criminal matter does not in itself address the highly complex meaning of the behaviour. Bala et al. (2007), for example, cite a prosecutor in a Toronto domestic violence court, who describes the situation this way:

it’s a crime. But you can’t tell me a stranger hitting you is the same as your husband hitting you. There are just not as many factors involved. A stranger doesn’t pay the mortgage; he isn’t the father of your children and he’s sure not someone, rightly or wrongly, that you love. (p. 22)

At this stage, the data suggest that to the extent that the information that informs litigation processes is a reflection of the information contained in the court files, much of the decision-making and negotiating in cases in which violence is alleged in Melbourne and Adelaide appears to be taking place in a climate of considerable factual uncertainty. This could mean that courts and negotiators are generally struggling to make transparent links between many of the violence-related allegations and the final outcomes. It could, on the other hand, mean that negotiations and decisions are being based largely on material that is not formally recorded on court files. If the first of these hypotheses is the case, one way forward would be to explore ways in which this material can be made clearer and more informative. If the second hypothesis has more weight, then the focus of future research would need to move further in the direction of understanding decision-making processes within the courts themselves and at the level of pre-trial negotiations conducted mainly, though not exclusively, by legal representatives.<sup>158</sup>

In either case, it is difficult to see how persisting with such a paucity of information attached to core sworn documents can be helpful. We suggest that where uncertainty predominates in a set of such core documents, its impact is most likely to be in the direction of a relative downgrading of the violence and child abuse allegations. We suggest this because if allegations of serious violence or abuse were to be reflected in the details of the parenting arrangements ordered or agreed to, one would expect these arrangements to look somewhat different to the parenting orders in the sample in which no allegations were made.

In the next section, therefore, we consider some of the ramifications of encouraging greater specificity and better corroborative evidence when allegations of violence and abuse are made. We suggest that negotiators and decision-makers (as well as separating families and their children) would benefit from helping to generate and respond to more detailed and more differentiated information. We consider some of the implications of such a change in the light of the evolving family law reforms.

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157 Though such speculation has support. See, for example, Kimm (2006), who has written on “lawyers’ settlement conventions” in the context of Australian family law.

158 See previous studies in this regard, such as Ingleby (1992) and Eekelaar, Maclean and Beinart (2000).

## 8.2 Violence, child abuse and post-separation conflict: Some challenges and opportunities with respect to early differentiated screening and assessment

This research has drawn on two random samples to understand better the situation as it applied in courts with family law jurisdiction in two Australian states in 2003. Since that time, however, and following upon the publication of *Every picture tells a story* (Parliament of the Commonwealth of Australia, 2003), family law in Australia has embarked upon a path of significant change. In terms of dispute management processes, especially via the rollout of Family Relationship Centres, resources have shifted towards supporting community-based services that are more in touch with local needs and are charged with taking a more holistic approach to the multiple issues with which separating families present.

Under the new Division 12A of the *Family Law Act*, courts too are required to move towards less adversarial procedures aimed at encouraging separating parents to focus less on past misdemeanours and more on how to parent effectively into the future.

Consistent with these aspirations, the default post-separation presumption becomes one of sharing the arrangements in ways that permit children to have more than just a functional relationship with each of their parents and, in appropriate cases, more than just a functional relationship with other parental figures to whom they may be significantly attached.

At the same time, the Australian Government's Family Law Violence Strategy requires a focus on the right of children and their carers to be kept safe from harm. To this end, as noted in Chapter 1, family courts and the family law system are required to aim at "a system where allegations of family violence and child abuse are handled quickly, fairly and properly" (Attorney-General's Department, 2006a, p. 1).

There are clear tensions with respect to the twin objectives of, on the one hand, child-sensitive processes that promote substantial ongoing post-separation parenting, and, on the other hand, high-quality investigative and decision-making processes that put a premium on safety for both child and adult victims of violence. Indeed, in their report to the Canadian Department of Justice, it was suggested by Jaffe, Crooks, and Bala (2006) that contemporary family law in that country was trying to manage these very different expectations with insufficient appreciation of the fact that they were on a collision course. To avoid the collision, the authors called for nothing short of a paradigm shift.

Does the current emphasis on shared care following parental separation amount to a paradigm? And does greater sensitivity to the presence and consequences of violence and abuse amount to a paradigm shift? As noted, Bala et al. (2007), in their large-scale Canadian study, suggested that violence was a "factor" in about a quarter of separations and, not surprisingly, separated couples who nominate violence as a factor are more likely to litigate. At the same time, we have seen that, using the broadest of their definitions of "violence", Sheehan and Smyth (2000) found that in an Australian context, 65% of divorced women and 55% of divorced men reported having experienced violence in their relationship.

Assuming broad parity between Australia and Canada, it would seem that, although when asked, a majority of divorced individuals acknowledge a history of at least some violence in their relationship, most choose not to revisit this during their separation-related negotiations. This may be consistent with Jaffe et al.'s (2006) suggestion that the majority of separating couples do not seek much in the way of professional resources to make successful and responsible post-separation parenting arrangements.

As increased shared parental responsibilities reflect increased sharing of paid work time in "intact" families, various forms of shared post-separation parenting arrangements are, in turn, likely to be more frequently sought. At the same time, this study suggests that the majority of parents who go so far as making a formal application to an Australian family court allege some form of violence. In this sense, therefore, there is merit in Jaffe and his colleagues' (2006) suggestion that:



There is a critical need to move from a one-size-fits-all focus on shared parenting to a differential response focus in cases of family violence, including a comprehensive assessment by a social worker, psychologist or other mental health professional. (p. 50)

In our view, therefore, the core challenge facing the response of contemporary family law to matters involving children is this: can non-adversarial, child-sensitive dispute resolution and decision-making processes that begin with a presumption of sharing post-separation parenting arrangements work in tandem with the formal assessment and management of the risks associated with family violence?

We would support Jaffe and his colleagues (2006) in suggesting that an important step towards meeting this challenge is to begin with a more differentiated approach to questions of violence and child abuse.<sup>159</sup> The extent to which this calls for a paradigm shift or simply the employment of more sophisticated assessment, negotiation and decision-making processes, may reduce itself to a question of semantics. More importantly, the evidence that has emerged in this study points to a need to gather and record information about alleged violence in ways that are more comprehensive, more nuanced and, where possible, better corroborated than was the case in most of those family law proceedings examined in our 2003 sample. A development in this direction would better recognise the research findings reported in Chapter 1—that while family violence is never acceptable, not all acts of violence and abuse are the same with respect to their motivation or their impact.

As noted earlier, the data in this study suggest that issues raised in a significant number of cases in which violence and/or child abuse were alleged were being negotiated or judicially determined in an atmosphere of factual ambiguity. We have speculated briefly (but by no means comprehensively) on why this might be the case. We recognise that, in the final analysis, the dynamics that underpin such continued factual ambiguity are complex. Many factors come into play, not least of which is the fact that for many families the allegations themselves are likely to precipitate a crisis that in some cases actually increases the chances of being subjected to the very behaviour being alleged. At a personal level, too, alleging violence or abuse can require courage. At a personal level, the short-term and long-term consequences of making allegations are always uncertain

To better understand the dynamics that contribute to factual ambiguity around violence and abuse allegations in family law cases would require a more contextually based research design. At the same time, notwithstanding the gaps in our knowledge in this regard, the results of the present research strongly suggest the need for key parts of the family law system to continue to work proactively to better identify the extent and types of violence being alleged. From the perspective of safety, the core need here is the early identification of those cases that suggest a significant present or future risk to former partners and/or their children. Once identified, such cases require the speedy endorsement, either through negotiation or adjudication, of interim arrangements that, in the short term, prioritise safety over parent–child relationships. Such arrangements might, in the short term, restrict or even put a stop to the amount of time alleged perpetrators spend with their children.

When cases that might pose a significant risk are identified, it is of course critical that subsequent, more wide-ranging investigations are carried out quickly. In our view, turnaround times similar to those aimed for in the Project Magellan cases of suspected significant child abuse (roughly 2 months) should apply. If such investigations confirm that the violence or abuse is primarily systemic and controlling rather than primarily situational, and/or that it has been severe, then the safety mechanisms that were put in place in the interim will, broadly speaking, need to continue until and unless a rehabilitation plan is shown to have been effective. If subsequent investigations suggest that the violence or abuse was falsely alleged (whether deliberately or

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159 Taken literally, there is a presumption in this suggestion that present processes in Australia are essentially the same as they were in 2003. Clearly, since 2003, the Australian Government has made strenuous efforts to better match service requirements to differing needs—the pre-court Family Relationship Centres and the court-based family consultants being two critical initiatives in this direction. We argue below that the call for more proactive attempts to differentiate forms of violence and abuse is highly compatible with these important initiatives.



not), or was largely reciprocal or situational, and/or relatively minor in nature, the short-term interruption to the parent–child relationship, while clearly regrettable, is unlikely to cause long-term damage.

Early intervention means paying formal attention to processes of triage at key points of entry into the family law system that normally take place prior to interim determination by judicial officers. Broadly speaking, there are multiple points of early entry into the family law system—some relatively specialised and others less so. Mental health professionals, staff from women’s and men’s services, child support agency workers, drug and alcohol counsellors, and other counsellors and social workers from a wide range of agencies and specialist organisations, all deal with family breakdown in its early stages. So too do those associated with government-supported family law information and advice lines, and with telephone or web-based counselling services.

Ultimately, however, disputes over children associated with family breakdown require some form of negotiation between the disputants or, in the event of these negotiations being fully or partially unsuccessful, some form of adjudication. Currently, the three key points of entry that are most generally (albeit not exclusively) capable of providing professionally supported pre-adjudication negotiation facilities, combined with adequate assessment strategies, are:

- community-based family dispute resolution service providers;
- legally qualified family law practitioners; and
- Family Court–based family consultants.<sup>160</sup>

We suggest that these points of entry into family law’s dispute management system have both overlapping and differing functions. In the first instance, the aim of all three service types should be to make an assessment, as rapidly as possible, of their clients’/applicants’ capacity to be assisted to negotiate on their own behalf and to negotiate as responsible parents, on behalf of their children. “Capacity” involves a range of issues, but the key questions that must be addressed are those that relate to violence, mental health and substance abuse.

When violence, mental health issues and substance abuse are alleged, or when these issues emerge as a result of professional supportive inquiry, clients/applicants require proactive assistance to articulate whatever can be recalled with respect to type, severity, frequency and impact and whatever can be recalled with respect to the evidence that might be available. Initial assessment of what type of violence is alleged and eliciting what evidence might be available to support the allegations is considerably enhanced by the adoption of a formally structured approach to information gathering. Indeed, in our view, the use of well-recognised, preferably validated violence assessment protocols should by now be standard practice among *all* professionals who see clients at an early stage in a potential family law dispute. We will consider this further a little later in this chapter.

Returning to the specific services noted above, we suggest that, following appropriate triage, professionals are then in a position to consider the particular relevance of their own service and what further actions they should take. Suggested core functions of each of the services are as follows:

- *Community-based family dispute resolution* and associated services would normally assist in fully or partially resolving disputes in appropriate cases, using child-focused (see McIntosh & Moloney, 2006; Moloney & McIntosh, 2006), child-inclusive interventions (see Hewitt, 2007; McIntosh & Moloney, 2002) or related dispute resolution approaches as appropriate. They would also attend to other relevant needs (such as parent education, counselling) via facilitated community-based referrals.<sup>161</sup> They would refer into the court system when capacity (or willingness) to negotiate responsibly is judged to be compromised, or when the issue proves to be unresolvable, even though the negotiations take place in good faith.<sup>162</sup>

160 Recent initiatives aimed at increasing access to family dispute resolution services via telephone or the Internet may also become an important entry point. New practice and assessment issues are being raised by the contemplation of such services. Because of their rapidly evolving nature, we have decided not to include them in the discussion that follows. However, see a recent review by Conley Tyler and McPherson (2006).

161 Also known as “warm referrals”.

162 Relocation disputes can at times fall into this category.

- *Legally qualified family law practitioners*, while advocating for their adult clients, would, when appropriate, support child-focused negotiations with the other parent or his/her representative. They might, for example, make use of collaborative law practices,<sup>163</sup> possibly with the assistance of a dispute resolution practitioner and possibly with the assistance of a qualified child consultant. They might, on the other hand, use more traditional methods of negotiation. In cases in which they have concluded that the capacity or willingness of one or both clients to negotiate responsibly was compromised, legal representatives would generally seek urgent interim judicial determination.
- *Family Court-based family consultants* would initially facilitate child-focused discussions between parties in appropriate cases that, for one reason or another, were not otherwise suitable for or not able to be dealt with by community-based agencies. They would provide child consultations as appropriate and provide or arrange for initial family assessments to judicial officers as needed.

The common emphasis in the above scenarios is, again, on early intervention. Early *differentiated* assessments of violence and abuse in family law cases, opens the way for more individually tailored outcomes for both parents and children. At this point, therefore, it is useful to return to the Canadian report of Jaffe et al. (2006) which, in essence, attempts to tie the lessons from the research literature into the most efficacious (or, in some cases, least destructive) practices and outcomes in each case.

A core suggestion of these authors is that as the evaluated risk to children or to a caregiver increases, presumptions of shared parenting should give way to more realistic notions of parallel parenting.<sup>164</sup> As the risk increases further, this in turn gives way to supervised exchange, and then supervised time. At the extreme end, when the risk is judged to be unacceptable, the opportunity to continue to play a parental role may be denied completely. The report by Jaffe et al. (2006) also articulates a risk scale of family violence that draws upon and attempts to amalgamate a number of categories suggested by previous researchers such as Johnston (1994). It begins with minor and isolated acts. It then moves upward through high conflict, to violence that is more severe and frequent, and then to “battering”.<sup>165</sup> The final category, which, like the category of battering is likely to coincide with a recommended outcome of “no parental contact”, is termed “terrorism/stalking” (Jaffe et al., 2006, p. 41).

Jaffe and his colleagues (2006) further suggested that outcomes need to be informed by a realistic assessment of available professional and community *resources*. More liberal parenting arrangements might be considered when appropriate professional interventions for victims, perpetrators and child witnesses are available. More conservative parenting arrangements need to be considered when such services are “inaccessible or inappropriate” or when there are “systemic barriers” to these services, such as poverty or language difficulties (p. 44). Finally, Jaffe et al. noted that attention must also be paid to the stage of proceedings at which allegations are made. Safety issues need to be given higher prominence during earlier negotiations or interim hearings—a stage at which “adequate information to evaluate the safety of children and adults” is more likely to be lacking (p. 47).

Jaffe et al. (2006) also provided case vignettes for each parenting category described above. They defined and described the core elements of each arrangement, and addressed the indicators and contra-indicators, as well as some of the special considerations that might apply. A “contra-indicator” for supervised access, for example, might be a situation in which it is judged that

163 See Family Law Council (2006).

164 “Parallel parenting” is a term that has been in use for a number of years (see Maccoby & Mnookin, 1992). According to Jaffe and his colleagues (2006) the concept developed in response to a recognition that some separated couples are competent parents, even though they remain in high conflict. In parallel parenting, “the arrangement is structured to minimize contact between the parents and protect the children from exposure from ongoing parental conflict, typically by having each parent make day to day decisions independently from each other when the children are in his or her care. ... Rather than encourage co-parenting, the goal of the plan is to disengage the parents from each other and their long-standing hostilities” (Jaffe et al., 2006, p. 34).

165 Drawing on Frederick and Tilley’s (2001) work, Jaffe and his colleagues (2006) suggested that battering goes beyond violence and abuse to include “a larger system of intimidation, control and isolation that purposefully puts the victim at a power disadvantage” (p. 11).

the safety offered by the supervisor may not be commensurate with the degree of assessed risk. In this case, professional supervision may be required or, if this cannot be arranged, a “no contact” order may be necessary. On the other hand, a contra-indicator for “no contact” may be a case in which the whole family system (rather than one individual) needs to change and where, despite the violence, “there is a solid foundation of a parent–child relationship” (p. 39). A “special consideration” with respect to supporting “no contact”, even if violence has not been perpetrated, might be the sort of extreme case described by Johnston (2005) in which the alienation between child and parent is so extreme that forcing contact between them is simply not in the child’s interests.

Consideration of the challenges and opportunities that exist in the difficult task of identifying violence and abuse and matching such identification with appropriate outcomes inevitably raises the question of resources. There is little doubt that adequate assessment in this area requires considerable skill and professionalism. Often, however, it also requires patience and time, the latter frequently being an expensive commodity.

Policymakers, it seems, must grapple with appropriate ways of responding to the following realities:

- Many disputants who make child-related applications to family courts are in high conflict (see, for example, Jaffe, Austin, & Poisson, 1995).
- High-conflict cases take up a disproportionately large percentage of the time of family courts. High conflict is not synonymous with violence or abuse, but many separating individuals who are in high conflict allege violence or abuse (Jaffe et al., 1995) and make conflicting allegations (Jaffe et al., 2006).
- Extreme entrenched expressions of family violence are likely to be a gendered phenomenon. Less extreme, less entrenched expressions of family violence are less likely to be so. While national victimisation rates in Western countries look relatively similar for men and women, the differential *impact* of family violence on men and women means that gender remains an important consideration when decisions need to be made that take account of safety (see generally Chapter 1).
- Parental separation has the potential to heighten or reduce the impact of family violence. When service providers intervene at times of separation, the impact will be linked to the accuracy of the assessment of the violence and the interventions that follow those assessments—especially the endorsements, recommendations and decisions about parenting arrangements.
- While in some cases there is likely to be “outright lying” about violence, it is more often likely that “conflicting stories reflect differences in perception and understanding, and exaggeration and minimization” (Jaffe et al., 2006, p. 51).
- Notwithstanding the above, the most carefully conducted research (such as Johnston et al., 2005) suggests that the majority of allegations of family violence are fundamentally valid. Similarly, Trocmé and Bala’s (2005) extensive investigation into allegations of child abuse in separation-related parenting disputes provides strong evidence that, while false allegations are more common in family law cases than in the general population, a very large majority remain fundamentally valid.
- The Australian evidence reported on in the previous chapters suggests that one or more individuals in more than half the cases in which a child-related dispute is brought to a family court alleged violence or abuse, much of it in the serious category.
- Insofar as court files are capable of providing detailed knowledge of such allegations, it is clear that, although serious, most of these allegations lack specificity and detail, and also lack corroboration.

At the same time, the identification of these issues sits beside the following current understandings and important developments:<sup>166</sup>

166 Though important, this is not, of course, an exhaustive list.

- While plagued with definitional issues and while not a unitary phenomenon, it is now clear that many aspects of family violence have the potential to impact seriously (though in differing ways) on children’s functioning. So too does ongoing unresolved parental conflict which, when severe, is also associated with violence.
- As noted by Jaffe et al. (2006), the availability of good quality supportive services is an important consideration in the assessment of the safety of post-separation arrangements when violence or abuse is a factor. This links to a key development within the Family Relationships Centres initiative, which has a strong emphasis on networking, and forming and maintaining associations with local supportive services.
- The Family Court’s family consultants initiative, which endorses a combination of facilitative interventions *and* the ability to report directly to a judicial officer, increases opportunities for rapid intervention in the early stages of alleged violence and abuse cases that make application to a court.
- In recent times, there has been considerable development in violence risk assessment research in the areas of family (Dutton, 2006), family law (Austin, 2000) and parenting (Bancroft & Silverman, 2002), and in the development of assessment tools capable of showing “moderate accuracy in predicting violent recidivism” (Hanson, 2005, p. 214).
- In an Australian context, Ogloff (2006a, p. 15)<sup>167</sup> provided details of key assessment instruments with respect to areas such as spousal assault, sexual violence, adolescent violence and (importantly, in the light of the challenges of interim decision-making) short-term risk.
- In addition, professional staff within Family Relationship Centres and other community-based family relationship services, as well as Family Court–employed family consultants, have been increasingly better supported and better trained in the use of formally developed protocols for assessing violence and abuse.<sup>168</sup> The situation with regard to family law legal practitioners is less clear.
- There is a growing amount of high-quality research-informed literature (Jaffe et al., 2006; Johnston, 2006) on the subject of increasingly differentiated responses to violence and abuse allegations in child-related disputes in family law.

Reflecting on the above research-informed realities and recent developments, a key question becomes: to what extent can allegations of violence and abuse in family law cases be adequately handled via an increasingly integrated use of existing resources?

Though it is well beyond the brief of the present report to provide a definitive answer to this question, it is useful nonetheless to speculate on the way in which matters might unfold as the Family Relationship Centres and other community-based services continue to expand, as the Family Court’s family consultants become increasingly specialised in their new roles, and, perhaps, as judicial officers take on a less adversarial and more proactive role<sup>169</sup> in assessing and deciding upon child-related cases brought before them.

With respect to the first development—the continued expansion of Family Relationship Centres and community-based services—it is important to recall in the present study that although individuals who approached the FCoA and FMC alleged violence or abuse in a majority of cases, no such allegations were made in a substantial minority of cases. This does not in itself rule out the possibility that violence or abuse was an issue in some of these cases. Nor, as noted above, is violence or abuse the only issue that would cause separating couples to seek a litigation pathway over community-based dispute resolution or other less formal negotiation

167 Ogloff’s (2006b) empirical work also extends to a vexed question in family law (see, for example, Kelly, 2003)—that of personality disorders and their possible links with the risk of violence.

168 See, for example, the screening and assessment guidelines recommended by the Attorney General’s Department (2006b).

169 See the reference to less adversarial trials (LAT) on the website of the Family Court of Australia and the generally very positive evaluation by McIntosh (2006) of a pilot LAT program. However, as Hunter (2006) pointed out, there are tensions between LAT’s laudable aim of providing a positive forum for former partners to consider their future roles as parents, and the obligation of the courts to formally address allegations of violence and abuse.

opportunities. Furthermore, we do not know how many of these litigants had already made use of such opportunities but had failed to reach full or partial resolution.

It is fair to assume, nonetheless, that whether legally represented or not, a reasonable percentage of this potentially large number of cases would have been more expeditiously and more appropriately handled through community-based services. Logically, as both the expectations and the requirements to make use of community-based dispute resolution services continues to grow, the total *number* of cases using court services should be fewer. Within the court system, therefore, the *percentage* of those making allegations of violence and abuse would be expected to increase.<sup>170</sup>

It should be noted too that there is now clear evidence (see especially McIntosh & Long, 2006) that advances such as the child-focused and child-inclusive family dispute resolution interventions referred to earlier are capable of addressing and containing disputes in which parents are quite highly conflicted and have even at times, been situationally violent.<sup>171</sup> Indeed, there is encouraging evidence that 12-month follow-up of child-focused and child-inclusive processes are frequently associated with decreased parental acrimony and more positive attitudes towards each other as parents.

If community-based services expand with respect to both the number and range of clients they see and if they successfully assist most of them to resolve disputes in both the shorter and longer term, courts are likely to have a smaller volume of cases to deal with. The smaller volume should enable cases to be given earlier and more intensive scrutiny. At the same time, however, the high percentage of violence and abuse allegations will place a burden on legal practitioners and court staff to find increasingly more predictable ways to discriminate between cases that pose significant risks to a parent or a child, and cases that are less likely to do so.

The pressure point for courts exercising family law jurisdiction, therefore, will increasingly become their capacity to make early and accurate assessments that can inform pre-hearing negotiations and, when required, that can assist judicial officers to make decisions that lead to responsible interim arrangements. The present research suggests that judicial officers were frequently being given inadequate levels of assistance to support them in making these very difficult decisions. As noted above, one way forward is for professionals involved in pre-court assessments and negotiations to routinely make use of high-quality, user-friendly and preferably validated violence assessment protocols that are capable of assisting in categorising and predicting violence.<sup>172</sup> It is recognised that such protocols cannot be thought of as a substitute for clinical or legal wisdom, or clinical or legal judgment.<sup>173</sup> On the other hand, even clinical or legal judgment of the highest quality is inevitably compromised if the information upon which it rests has not been comprehensively and systematically gathered.

At the end of the day, the extent to which litigation-related processes can be successful in both generating and responding to more detailed and, whenever possible, better corroborated evidence of family violence and abuse remains to be seen. The extent to which any barriers to achieving this will be attitudinal or skill-based or resource-driven, or a reflection—especially in the area of child abuse or ongoing debates about State and Commonwealth responsibilities—is also difficult to predict.<sup>174</sup>

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170 This assumes no significant changes in the rates of separation of parents with children, and no significant changes in rates of child-related disputation and violence-related allegations following separation.

171 Under the family law reforms, individuals who allege violence or abuse will not be required to use community-based dispute resolution services. It is likely, however, that for a variety of reasons, some individuals and couples who have experienced violence will opt for such services. For their part, dispute resolution practitioners will continue to have an obligation to determine the appropriateness of such a process and, on the occasions when they judge that each party has the capacity to represent themselves and their children adequately despite some evidence of past violence, to ensure that they do so safely.

172 An application to a court accompanied by a certificate of referral from a Family Relationship Centre or similar agency or individual might possibly act as an additional alert to court staff.

173 For example, good practitioners recognise that details of serious violence and abuse are more likely to be revealed in the context of a trusting relationship. This takes time. Having met this first condition, the questions about violence and abuse then need to be specific and asked at a pace that the individual can handle (remembering that if violence or abuse has occurred, the very questions can inadvertently re-traumatise).

174 This last issue requires ongoing careful analysis. We note the Family Law Council's (2002) recommendation that a Federal Government Child Protection Service be formed. At the same time, we are aware that Project



What the current research confirms, however, is that the problem of family violence among prospective litigants is a significant one. What the broader contemporary research also indicates is that it is almost certainly multi-faceted. The results of this and other research emphasise the need for continuing efforts, especially at the early stages, to match each dispute with the process most likely to ensure an outcome that is fair, affordable, child-focused and safe.

### 8.3 Future research

Several lines of substantive and methodological inquiry warrant further investigation. Extension and replication are important foundation stones of social science research, and no single study should ever become the sole basis for policy or practice. Thus, it would be useful to replicate and extend this study with a national random sample. Courts and their registries vary in culture, demographic environs and resources, and these factors may well be related to the way that allegations and denials of family violence arise and are handled. A national study would clarify this, and enable the identification of registries that may need specialised support services. Replication of such a study after the reforms have been fully implemented would be an excellent means of evaluating the effectiveness of those aspects of the package that address violence.

Given that the present study has provided the relative proportions of allegations in each court, it would be reasonably straightforward to refine the sampling strategy, increase the sample sizes, and expand the study so that it was nationally representative of registries. Larger samples would increase the reliability of the findings, and allow comparisons to be made of some of the smaller groups that could not be examined in the present study (such as comparing the allegations raised in the judicial determination sample between the FMC and FCoA).

Second, it would be extremely useful to examine the potential links between the courts' cases and data collected by state- and territory-based child protection agencies and police. As noted earlier, state jurisdictions are the frontline for dealing with allegations of family violence and child abuse in Australia. While very basic information was noted in the present study about the involvement of such agencies in each case, the omission of state-based data (and the potential interrelationship with the Family Court and Federal Magistrates Court data) means that the scope of the study was far from comprehensive. Although the inclusion of such data represents an ambitious project, the gains are likely to be large since the triangulation of all these data sources may represent the best chance for assessing the veracity of allegations and denials.

Third, the largely "positivist" approach of counting "things"—most notably, allegations, denials, evidence and outcomes—in the current study has de-contextualised the data from human experience. There is little doubt that much suffering lies underneath the cold numbers presented in the various tables in this report (see, in particular, the Category C narratives summarised in Appendix C). There is much to be gained from speaking with the parties involved in the disputes, their legal representatives, court staff and others (such as counsellors, mediators and refuge staff) who may have information of relevance. Further Australian research into the experience of abuse that aims at improving our understanding of non-disclosure within the family law system may be of assistance.<sup>175</sup> In addition, a project exploring the sorts of advice that lawyers give to their clients in raising and responding (and not responding) to allegations could prove very useful.

Fourth, the data in this study have been analysed largely as cross-sectional data. That is, how many cases contain *x*? It would be extremely useful to obtain all of the details of each case and build a narrative around each. These narratives could then be examined in a more holistic manner to build up a more contextualised analysis of the data. This is likely to require a considerable amount of time and effort, but is certain to yield important insights of the type that could only be speculated upon in the current study.

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Magellan, which, in part at least, addresses the problems identified by the Family Law Council, has been expanded throughout Australia and is currently being evaluated. Western Australia too has responded to its unique set of circumstances with its carefully researched Columbus project (see Murphy & Pike, 2003).

175 We recognise that much good work has already been done on questions related to reluctance to disclose violence and abuse. It may be that some of this research could be re-worked with a particular focus on allegations made as part of parenting disputes. Or it may be that further in-depth explorations of how litigants make decisions about what and how much to allege (and perhaps not allege) would be a valuable additional avenue of inquiry.



Fifth, we acknowledge that the “truth” or “falsity” of allegations (and the various nuances of veracity within this crude dichotomy) remains an issue that the present study could not address. The most extensive work to date on the subject—the various research reports of Bala and his colleagues in Canada—has concluded that in that country, false denials are considerably more common than false allegations. Nonetheless, the soundness of our judgments of the veracity or otherwise of allegations in the context of family law proceedings will continue to have an important impact on children and parents. This area remains a key question to be addressed by future research in Australia.

Sixth, this study has focused on formal allegations raised by potential litigants in a formal legal system. We do not know what percentage of separating couples who do not approach the court are in violent relationships and are unable or unwilling to seek assistance. Thus, an understanding of the “bigger picture” demands a more complex mix of methodological approaches.

Finally, we note that the Chief Justice of the Family Court, the Honourable Diana Bryant, has recently announced that the Court has started the electronic collection of additional data related to final parenting orders, including those arising from adjudicated matters (Family Court of Australia, 2006). These data include basic information about children’s living arrangements, parenting time, relocation orders, family violence, child abuse, drug and alcohol issues, and mental health issues. They will allow the Court to monitor, at a broad brushstroke level, the nature and prevalence of allegations of family violence across all of its registries, examine the extent to which prevalence rates change over time, and explore any links between allegations and court outcomes. These new data are likely to play an important role in monitoring the performance of the family law reform package in relation to parenting disputes that involve courts with family law jurisdiction—especially those disputes in which allegations of family violence and child abuse are raised.

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# Appendix A: Summary tables of research literature

**Table A1** Key international studies of allegations of family violence and child abuse in the context of post-separation parenting disputes

Authors	Country	Sample	Method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n%)	Definition of "violence"
<b>Child sexual abuse: Small clinical</b>								
Kaplan & Kaplan (1981)	USA (NY)	1 family from own practice	Case study—clinical judgment	CSA	All	–	True False (where "false" = unsubstantiated)	–
Benedek & Schetty (1985)	USA	18 children seen by psychiatrists	Analysis of cases—clinical judgment	CSA	All	–	True (n = 8/18) False (n = 10/18) (where "false" = unsubstantiated)	–
Green (1986)	USA (NY)	11 clients from own practice	Case study—clinical judgment	CSA	All	–	True (n = 7/11) False (n = 4/11) (where "false" = unsubstantiated)	–
Schuman (1986)	USA (MA)	7 cases from own practice	Case study—clinical judgment + court judgment	CSA + Phys	All	–	Valid (n = 0/7) Non-valid (n = 7/7)	–
<b>Child abuse: Clinical</b>								
Jones & Seig (1988)	USA (Colorado)	20 cases from the caseload of a specialist child abuse centre	Analysis of case files by clinical team	CSA	All	70% made by mother 15% made by father 15% made by children	Reliable (70%) Fictitious (20%) Unsubstantiated suspicion (5%) Uncertain (5%)	–
McGraw & Smith (1992)	USA (Colorado)	18 cases investigated by a sexual abuse team	Analysis of divorce and custody disputes cases	CSA	All	–	Founded (44.4%) Unfounded (55.6%): ■ Unsubstantiated suspicion (28%) ■ Insufficient information (11%) ■ Fictitious (16.5%)	–
Faller & DeVoe (1995)	USA (Midwest)	215 cases from a university-based clinic	Clinical assessment by team Domestic relations court	CSA	All	69% of named offenders were fathers 9% step-parents 8% mothers 13% others	Substantiated (73%) [court = 35%] Unlikely (20%) Uncertain (7%) False and possibly false: ■ False (14%) ■ Potentially false (6.5%) ■ Knowingly made false (4.7%)	–

Note. DV = domestic violence; CA = child abuse; CSA = child sexual abuse; Phys = child physical abuse.



Authors	Country	Sample	Method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n/n%)	Definition of "violence"
<b>Child abuse: Data from child protective service workers</b>								
Anthony & Watkeys (1991)	England	24 cases involving a custody dispute (from 350 referrals from CPS and police)	Assessed case files	CSA	All	–	Proven (20.8%) [56.3% of 350] Unsubstantiated (79.2%) [43.7% of 350]: <ul style="list-style-type: none"> <li>■ "False" (not substantiated) [18% of 350]</li> <li>■ "False &amp; malicious" [8.5% of 350]</li> </ul>	–
Hlady & Gutter (1990)	Canada (BC)	41 cases involving a custody/access dispute (from 370 referrals from CPS)	Charts of all children involved in custody access disputes seen by the Child Protection Service at BC Children's Hospital in 1988 were reviewed	CSA + Phys	All	–	Substantiated with physical evidence Custody dispute: <ul style="list-style-type: none"> <li>■ Physical abuse (n = 5/7; 71%*)</li> <li>■ Sexual abuse (n = 6/34; 17%)</li> </ul> No custody dispute: <ul style="list-style-type: none"> <li>■ Physical abuse (n = 48/110; 44%)</li> <li>■ Sexual abuse (n = 33/219; 15%)</li> </ul> [* reported by authors despite small n]	–
Trocmé, McPhee, Tam, & Hay (1994) as cited in Bala et al. (2001)	Canada (Ontario)	Representative sample of 2,447 children	Surveys completed by CPS personnel	CSA + Phys	All	Where parents had separated or divorced, resident mothers made 2/3 of the allegations (sexual abuse most common allegation) Non-resident fathers raised a third of allegations	Allegations made by resident mothers against non-resident fathers: <ul style="list-style-type: none"> <li>■ 23% substantiated</li> <li>■ 27% suspected</li> <li>■ 50% unfounded</li> <li>■ 1% malicious</li> </ul> Allegations made by non-resident fathers against resident mothers: <ul style="list-style-type: none"> <li>■ 10% substantiated</li> <li>■ 18% suspected</li> <li>■ 72% unfounded</li> <li>■ 21% malicious</li> </ul>	–
Trocmé & Bala (2005)	Canada	7,642 child maltreatment investigations, of which 12% (n = 903) involved an ongoing custody/access dispute	Assessment and clinical judgment by child welfare workers	CA	All	–	General population: <ul style="list-style-type: none"> <li>■ 42% substantiated</li> <li>■ 23% suspected</li> <li>■ 31% unsubstantiated in good faith</li> <li>■ 4% considered "deliberately false"</li> </ul> Custody/access dispute: <ul style="list-style-type: none"> <li>■ 40% substantiated</li> <li>■ 14% suspected</li> <li>■ 34% unsubstantiated in good faith</li> <li>■ 12% considered "deliberately false"</li> </ul>	–

Note. DV = domestic violence; CA = child abuse; CSA = child sexual abuse; Phys = child physical abuse.

Authors	Country	Sample	Method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n/%)	Definition of "violence"
<b>Child abuse: Data from family courts</b>								
Thoennes & Tjaden (1990)	USA	169 custody/access disputes involving an allegation of child sexual abuse (from 9,000 families in dispute about custody or access)	Survey of mediation and custody evaluation staff from 12 domestic relations courts	CSA	< 2%	Mothers accused fathers in 48% or step-fathers in 6% of cases Fathers accused mothers in 6% or a mother's new partner in 10% of cases	Likely 50% of allegations Unlikely 33% Indeterminate 17%	—
McIntosh & Prinz (1993)	USA	603 family court files (14% involved a custody/access dispute; remainder divorces)	File analysis of the entire one-year caseload of 1987 of the court	CSA + Phys	Physical abuse (n = 12): 2% of all cases (6% of custody cases) Sexual abuse (n = 5): 1% of all cases (2% of custody cases)	Alleged by: ■ Mother (n = 6) ■ Father (n = 6) Alleged by: ■ Mother (n = 3) ■ Father (n = 1) ■ Both (n = 1)	Veracity not assessed by court	—
Bala & Schuman (1999)	Canada	196 family law judgments cited in Quicklaw database	Analysis of all reported Canadian family law decisions in database (1990–1998) involving allegations of child sexual/physical abuse	CSA + Phys	All	Mothers made allegations: 71% Fathers made allegations: 17% Grand/foster parents: 2% Children: 9%	Substantiated in 23% of cases Unfounded 45% Evidence of abuse but judge did not make a finding that abuse occurred 35%	—
<b>Family violence: Data from family courts and surveys</b>								
Newmark, Harell, & Salem (1995)	USA (Oregon/Minnesota)	422 separated parents participating in mediation over custody/access disputes	Survey	DV	—	80% of women and 72% of men reported experiencing domestic abuse	—	"Domestic violence" or "abuse" was not formally defined—operationalised through Conflict Tactics Scale domains
Logan et al. (2002)	USA (Kentucky)	Random sample of 82 disputed custody cases in family court from 135 cases containing a court record & at least 1 cust eval report	Court records and evaluator reports examined	DV (but noted child abuse issues)	56% involved DV (n = 46/82) Child abuse/neglect issue 67% of DV cases (compared with 42% in non-DV cases) Child abuse/neglect issue against new partner: 11% of DV cases (compared with 3% in non-DV cases)	—	—	DV was defined as cases in which a domestic violence order (DVO) was present

Note. DV = domestic violence; CA = child abuse; CSA = child sexual abuse; Phys = child physical abuse.

Authors	Country	Sample	Method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n/%)	Definition of "violence"
Logan (2003)	USA (Kentucky)	258 cases from a total of 1,292 divorce cases; 98/258 cases involved children	Court records and evaluator reports examined for mentions of spousal violence	DV	33% of cases mentioned spousal violence	—	—	"Spousal violence" not defined
Shaffer & Bala (2003)	Canada	45 family law contested judgments involving DV, of which 42 wife abuse likely to have been consideration in custody/access dispute	Cases examined to determine whether DV impacts on custody outcomes	DV	42 of the cases involved mention of abuse by women "in many" of these 42 cases, men alleged spousal abuse by their wives	—	Court judgment 11 cases: Mothers' allegations exaggerated or unfounded (24%) 30 cases: Mothers' allegations accepted by court (i.e. 67% substantiated) 1 case: Court makes no finding (2% indeterm) 3 cases: Father alleges mother abusive partner (6%)	"Wife abuse" not formally defined—in practical terms, it included emotional and verbal abuse, as well as "extreme levels of chronic physical (and sexual) violence" (p. 258)
Humphreys & Thiara (2003)	England	181 women from women's refuges or outreach DV services (161 surveyed; 20 interviewed) [2 purposive samples]	Survey and in-depth interviews	DV	—	All	76% reported ongoing violence after separation, which stopped within 6–12 months 36% experienced ongoing post-separation violence	"Post-separation violence" not formally defined. In practical terms, it included: verbal and emotional abuse, serious threats (such as to kill, rape, abduct children, self-harm, or harm family pets), physical assault, financial abuse, to and from other family members, threats to new partners, and sexual violence
<b>Family violence and child abuse: Data from family courts</b>								
Californian Administrative Office of the Courts	USA (California)	18,000 custody cases across 4 waves of family court data	Snapshot surveys conducted in 1991, 1993, 1996 and 1999	DV, CA	DV raised as issue in 39% of all mediation sessions Child neglect—30% of sessions Child physical abuse—18% of sessions Child sexual abuse—8% of sessions (1991 data)	Mothers allege domestic violence, substance abuse, and harassment Fathers allege child neglect & psychological disorders (1999 data)	—	"Interpersonal violence" included "ever": "pushing, grabbing, shoving, throwing things, slapping, kicking, biting, or hitting, physical violence, threats of violence, had a restraining order, children ever witnessing violence between parents, physical violence in the last 6 months, use of a weapon, knife, or firearm, sexual assault"

Note. DV = domestic violence; CA = child abuse; CSA = child sexual abuse; Phys = child physical abuse.

Authors	Country	Sample	Method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n/%)	Definition of "violence"
Sorenson et al. (1995)	USA (Florida)	60 contested custody cases from 7 judicial circuits throughout Florida	Examined data reviewed by child representatives	DV, CA, Neglect	88% of cases involved at least 1 allegation Spousal physical abuse was alleged against fathers/stepmothers in 35% of cases Spousal emotional abuse (42%) Child sexual abuse (17%) Child physical abuse (15%) Child emotional abuse (28%) Child neglect (15%) These were alleged against mothers/stepfathers in 15%, 25%, 7%, 8%, 28%, 35% of cases	–	Substantiated in about 30% but varied by type of alleged abuse: <ul style="list-style-type: none"> <li>29% of alleged physical abuse by fathers/stepmothers was substantiated, compared with 11% of alleged physical abuse by mothers/stepfathers</li> <li>0% of alleged child sexual abuse by fathers/stepmothers was substantiated, compared with ¼ cases of alleged physical abuse by mothers/stepfathers</li> <li>Not able to assess if "fictitious"</li> </ul>	–
Smart, May, Wade, & Furniss (2003)	England	A random sample of 430 cases relating to residence and contact disputes from 3 county courts	In-depth analysis of 281 files and mixed-methods analysis on the full data set	DV, CA	22% of cases contained an allegation of physical or emotional abuse 60% of cases contained allegation of child sexual abuse (2% of cases involved allegations of both domestic violence and child sexual abuse)	–	Indeterminate because of the often opaque nature of court records and documentation	"Violence" and "abuse" were defined as "physical, verbal and emotional violence and harassment of either a parent or child" (note 18; p. 131)
Johnston, Lee, Olesen, & Walter (2005)	USA (California)	120 families referred for child custody evaluations or custody counselling	Analysis and coding of court documents (including mediation data)	DV, CA	Allegations of domestic violence were raised against mothers in 30% of families; and against fathers in 55% of families Allegations of child sexual abuse were raised against mothers in 6% of families; and against fathers in 23% of families	At least one allegation was raised against mothers in 56% of families; and against fathers in 77% of families Mutual allegations were raised in 49% of families	Allegations of abuse against mothers were substantiated in 52% of the sample Allegations against fathers were substantiated in 51% of the sample Mutual allegations were substantiated in 24% of the sample. No attempt was made "to distinguish among 'unsubstantiated' allegations to conclude which were clearly false and which could not be determined due to lack of evidence" (pp. 290–291)	"Domestic violence" included "any act of physical aggression or coercive control such as the use of physical restraint, force, or threats of force by one parent to compel the other parent to do something against his or her will. It included but was not limited to assault (pushing, slapping, choking, hitting, biting, etc), use of threat to use a weapon, sexual assault, unlawful entry, destruction of property, infliction of physical injury, suicide, and murder. It also included psychological intimidation and control maintained through such means as stalking, threats to hurt the children or others, violence against pets, or destruction of property" (p. 288)

Note. DV = domestic violence; CA = child abuse; CSA = child sexual abuse; Phys = child physical abuse.

**Table A2 Key Australian studies of allegations of family violence and child abuse in the context of post-separation parenting disputes**

Authors	Aust'n state	Sample	Principal method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n/%)	Definition of "violence"
<b>Child abuse: Data from family courts</b>								
Kiel (1988)	NSW	7 FCoA cases requiring judicial determination	Content analysis of court files and written reasons	CSA	All	Against fathers/male partners	2 cases had findings of CSA. Author claims strong evidence but no finding in other 5	As alleged
Mertin (1995)	SA	Clinical sample: 27 mothers and 34 children whose mothers had sought refuge from violent partners	Survey	Child Phys	All	Against fathers/male partners	53% of children reported being hit by fathers. All but 3 children had no contact with fathers following separation	Defined by participants
Hume (1996)	SA	50 cases in which child sexual abuse (CSA) raised in FCoA proceedings; 36 involved specific allegations; 11 suggested child at risk of CSA; 3 alleged "inappropriate behaviour"	Content analysis of court files	CSA	All	64% against fathers	Confirmed child sexual abuse in 56% No abuse in 11% No finding or no investigation in 33%	As alleged
<b>Family violence: Data from family courts and surveys</b>								
Keys Young (1996)	National	128 men and women who had accessed mediation	Exit surveys	DV	62%	75% by mothers 18% by fathers	–	Defined by participants
Sheehan & Smyth (2000)		National random sample of 396 divorced men and women	Telephone survey	DV	65% women and 55% men on "legal definition"	65% by women 53% by men on "legal definition"	–	Legal—offence under criminal law Fear-based Injury-based—injury requiring medical intervention
Rhoades, Graycar, & Harrison (2000)	National	674 family court judgments	Content analysis	DV	67% of sub-sample of judgments	–	–	–
<b>Family violence and child abuse: Data from family courts</b>								
Horwill & Bordow (1983); Bordow 1993	Melbourne and Sydney	100 family court child-related judgments (H&B); 294 child-related judgments (B)	Content analysis	DV CSA Other CA	DV 24% CSA 7% Other CA 3% (B) <sup>1</sup>	–	–	–
Brown, Frederico, Hewitt, & Sheehan (1998)	FCOA	Sub-sample of case 40 files from 1992–1993	Content analysis	FV CA	FV "extensive" —exact figure uncertain Much FV "masks CA"	–	–	–

Authors	Aust'n state	Sample	Principal method	Type of abuse	% involving allegations	Direction of allegations	Veracity classification scheme (n/%)	Definition of "violence"
Brown, Frederico, Hewitt, & Sheehan (1998)	Melbourne and Canberra FCoA	117 "flagged" CA cases (Melbourne) taken from all files in 1994 and first half of 1995 38 CA cases (Canberra) plus small comparison sample	Content analysis of files Interviews with key FCoA and child protection staff	FV CA	All	Complex gender breakdown with respect to correlates of alleged CA	9% false allegations of CA2	–
Brown, Frederico, Sheehan, & Hewitt (2001)	Melbourne and Canberra FCoA	200 family court cases in which child abuse allegations had been made	Content analysis	FV CA	All	–	9% false allegations of CA	–
Brown (2003)	FCoA	Case files Sample 1: n = 150 Sample 2: n = 100	Content analysis	FV CA	All	Mothers alleged twice as often as fathers (both samples) Mothers' allegation much more likely to be substantiated (sample 1) 1)	22% substantiated; 78% non-substantiated (sample 1) 52% substantiated; 48% non-substantiated (sample 2)	As alleged
FCoA (2003)	Brisbane, Melbourne and Sydney	450 consent applications 300 settled applications 91 judicial determinations		FV CSA	FV an issue in 67% of judgments Allegations of FV substantiated in 51% of these CSA an issue in 26% of judgments Unacceptable risk found in 38% of these	–	CSA: ■ Unacceptable risk ■ No unacceptable risk ■ No finding	As alleged
Kaspiew (2005)	Melbourne	40 randomly selected fully litigated children's matters	File content analysis	DV CSA	DV a "factor" in 58% CSA 40%	–	–	As alleged
Kaye, Stubbs, & Tolmie (2003)		40 mothers, mainly from refugees and women's health services	Interview content analysis	DV CSA Other CA	Serious DV 85%	Towards fathers/male partners	–	Defined by participants
Shea Hart (2004)	Adelaide	All child-related judgments between 1991 and 2001	Significant post-1995 reform increase in applications for contact when violence and abuse were noted Many applications continued to be successful	DV	43% DV 16–20% CA	Towards male applicants for access or contact	At least one allegation or incident accepted by a judge	As alleged
McInnes (2006)	Adelaide	Focus groups 100 female subjects	Court-ordered contact continued in many cases, in which children were exposed to "long-term continuing harm"	DV CA	All	Towards male partners	–	Defined by participants



## Appendix B: Coding frame for the three-category typology of family violence and child abuse<sup>176</sup>

Category A	Category B	Category C
<p>No category 2 or 3 allegations made The following features are present:</p> <ul style="list-style-type: none"> <li>■ No injuries noted</li> <li>■ Outcomes not specified or outcomes confined to emotional upset and/or estrangement</li> </ul>	<p>No category 3 allegations made. All allegations had one of more of the following features:</p> <ul style="list-style-type: none"> <li>■ Any action, whether or not specifically reported, that resulted in a bruise, scratch or minor cut not requiring stitches</li> <li>■ Kicking or use of an object other than a weapon<sup>3</sup> (i.e. throwing an object, hitting with an object) resulting in no reported injury or a “low level” injury, such as a bruise or scratch</li> <li>■ Threat to hit with an object</li> <li>■ Intervention order noted</li> <li>■ Stalking</li> </ul>	<p>One or more of the following present:</p> <ul style="list-style-type: none"> <li>■ Significant fear for one’s life or life of other family member(s) or individuals associated with the family</li> <li>■ Any injury other than a scratch, bruise or minor cut not requiring stitches</li> <li>■ Any injury that resulted in miscarriage, or injury to an unborn child</li> <li>■ Use of or threat to use a weapon</li> <li>■ Beating or threat to beat</li> <li>■ Choking or threat to choke</li> <li>■ Burning or threat to burn</li> <li>■ Hitting with a fist or threatening to hit with a fist</li> <li>■ Sexual assault or threat to sexually assault</li> <li>■ Child abduction or threat of child abduction</li> </ul>

<sup>176</sup> Based on categorisation of formal allegations made specifically in the context of proceedings in the Family Court of Australia and the Federal Magistrates Court (by case).

## Appendix C: Case summary for each category in the typology

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This appendix presents a summary of each case in the study for each category of the violence allegation typology. Cases containing allegations from the general population sample are presented first, followed by cases containing allegations from the judicial determination sample.

### General population

#### Category A

##### Case number withheld: Allegations of child abuse

In this case, the applicant alleged that the respondent hit a child with an object, but no outcomes were stated. The respondent alleged that the applicant was an illicit substance user.

##### Case number withheld: Allegations of child abuse

In this case, the applicant alleged that the respondent threatened the child (unspecified), but no outcomes were stated. The respondent made no allegations.

##### Case number withheld: Allegations of both family violence and child abuse

In this case, the applicant alleged that the respondent harmed herself on one occasion, and that she threatened the children. No outcomes were specified and no allegations were made by the respondent.

##### Case number withheld: Allegations of child abuse

In this case, the applicant alleged that the respondent physically pushed a child. No outcomes were specified and no allegations were made by the respondent.

##### Case number withheld: Allegations of family violence

In this case, the applicant alleged that the respondent was physically violent on three occasions, one in which he threw an object. She also alleged that the respondent was an illicit substance user. Further, the applicant alleged that the respondent was verbally abusive on one occasion and made a threat on one occasion. No outcomes were specified and no allegations were made by the respondent.

##### Case number withheld: Allegations of family violence

In this case, the applicant alleged that the respondent was physically violent on two occasions, and was verbally abusive (frequency unspecified). She also alleged that the applicant threatened her and was a substance abuser. The applicant reported that physical and verbal abuse caused estrangement from the perpetrator, and that the threat caused emotional disturbance/upset. No allegations were made by the respondent.

##### Case number withheld: Allegations of family violence

In this case, the applicant alleged that the respondent was verbally abusive 5–9 times over a period of more than 12 months. She also reported that the respondent threw an object on 7–11 occasions. No outcomes were stated. The respondent alleged that the applicant had a mental illness.

##### Case number withheld: Allegations of family violence

In this case, the applicant alleged that the respondent was physically violent (frequency not specified). No outcomes were stated and no allegations were made by the respondent.

##### Case number withheld: Allegations of family violence

In this case, the applicant alleged that the respondent was physically abusive in 1–4 instances. No outcomes were stated and no allegations were made by the respondent.

##### Case number withheld: Allegations of both family violence and child abuse

In this case, the applicant alleged that the respondent was physically abusive to both herself and the children for a period of less than one month. She also alleged that the respondent was mentally ill and had harmed himself on one occasion. No outcomes were stated and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was aggressive and manipulating. No frequency was specified, no outcomes were stated, and no allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive. No frequency was specified, no outcomes were stated, and no allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent harmed himself on one occasion, resulting in cuts. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on one occasion. No outcomes were stated. The respondent alleged that the applicant had been verbally abusive in 5–9 instances over a period of 7–12 months. No outcomes were specified.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive on two occasions. No outcomes were stated and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on one occasion, resulting in emotional disturbance/upset. The applicant also alleged that she had been threatened by the respondent (frequency not specified) and experienced additional abuse (type or frequency not specified). No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was physically violent in 10+ instances over 12+ months, and caused property damage over a period of 12+ months. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions over 12+ months. She also alleged that the respondent had threatened to push her on one occasion. The outcomes of these events were emotional disturbance/upset and estrangement from the perpetrator. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive in 10+ instances, and that she had been pushed by a member of the respondent's family, resulting in emotional disturbance/upset. She also alleged that the respondent was a substance abuser. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 5–9 instances over 12+ months. The applicant also alleged illicit substance abuse by the respondent. The respondent alleged that the applicant was mentally ill, and that he engaged in substance abuse. No outcomes were stated.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent harmed himself. The frequency and outcomes were not stated, and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent caused property damage on one occasion, and was verbally abusive on 10+ occasions. The applicant also alleged that the respondent had a mental illness. The respondent alleged that the applicant pushed her on 10+ occasions, resulting in estrangement from the perpetrator.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions. No outcomes were specified and no allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that they were pushed by the respondent on one occasion. The applicant also alleged that the respondent abused illicit substances. The respondent also alleged that the applicant abused illicit substances. No outcomes were stated.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent's partner was physically abusive on two occasions. The applicant also alleged that the respondent's partner was verbally abusive on 5–9 occasions and threatened the applicant on one occasion, resulting in emotional disturbance/upset. The respondent alleged that the applicant was a substance abuser. No outcomes were stated by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions over a period of less than one month. No outcomes were specified. The respondent alleged that the applicant was emotionally abusive on 10+ occasions over 4–6 months, resulting in emotional disturbance/upset.

#### **Case number withheld: Allegations of child abuse**

The respondent alleged that the applicant was verbally abusive to the children on 5–9 occasions, and had a mental illness. No outcomes were stated and no allegations were made by the applicant.

### **Category B**

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent's partner threatened them on one occasion, resulting in apprehension/fear for self. The applicant also alleged that the respondent attempted self-harm on one occasion, and abused illicit substances.

In the same case, the respondent alleged that the applicant was also a substance abuser.

#### **Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive on 5–9 occasions, resulting in apprehension/fear for self. There were no claims made by the applicant.

#### **Case number withheld: Allegations of family violence and child abuse**

In this case, the applicant made three different allegations against the respondent. Firstly, the applicant alleged that the respondent suffered from a mental illness, resulting in apprehension/fear for self over a period of 12+ months. Secondly, the applicant alleged emotional abuse of the children on 5–9 occasions, resulting in the children suffering emotional disturbance/upset. Thirdly, the applicant alleged child neglect, including the children not being fed or having proper clothing, and causing property damage over 4–6 months. The applicant also alleged that the respondent's partner was physically violent on four occasions, but no outcomes were specified. Finally, the applicant alleged that a third party caused property damage on two occasions. No allegations were made by the respondent.

#### **Case number withheld: Allegations of child abuse**

In this case, the applicant alleged that the respondent slapped the child on one occasion, resulting in bruises and a black eye. No allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit a third party on one occasion, kicked/bit a third party on one occasion, and was physically violence towards her in 1–4 instances. She also alleged that the respondent was a substance abuser. No outcomes were stated and no allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened self-harm on one occasion, made an additional threat on one occasion, and was abusive on one occasion (not specified). No outcomes were stated. In addition, the applicant made four allegations of one-off physical violence directed at her by the respondent: one of being hit with an object, one of being kicked/bit, and two of being pushed. This physical violence resulted in emotional disturbance/upset. No allegations were made by the respondent.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally abusive towards her on three occasions, and towards a third party on one occasion. The applicant also alleged that the respondent threatened her on one occasion, threatened the children on one occasion, and kicked/bit her on one occasion. No outcomes were specified and no allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent pushed her 6–13 times over a period of 12+ months, resulting in apprehension/fear for self, and emotional disturbance/upset. The applicant also alleged that the respondent was verbally abusive on 5–9 occasions over a period of 12+ months, resulting in emotional disturbance/upset and estrangement from the perpetrator. Finally, the applicant alleged that the respondent was a substance abuser.

In the same case, the respondent alleged that the applicant was verbally abusive on 5–9 occasions and physically abusive on 5–9 occasions, both of which lead to estrangement from the perpetrator. The respondent also alleged that the applicant suffered from mental illness.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent made six allegations against the applicant. Firstly, the respondent alleged that the applicant was verbally abusive towards both her and the children on 10+ occasions, resulting in apprehension and fear for self. Secondly, respondent alleged that the applicant pushed her on one occasion, and was emotionally abusive on 10+ occasions over 1–3 months, both of which resulted in emotional disturbance/upset and estrangement from the perpetrator. Thirdly, the respondent alleged that the applicant caused property damage on 5–9 occasions, and was a substance abuser. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically violent on one occasion, resulting in emotional disturbance/upset. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically and verbally abusive on 10+ occasions. The respondent alleged that the applicant suffered from a mental illness. No outcomes were stated by either party.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened both the applicant and the applicant’s mother, resulting in the mother feeling apprehension/fear for self. The applicant also alleged that the respondent was verbally abusive on one occasion. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive on 5–9 occasions over a period of less than one month. The applicant also alleged that the respondent threw an object on one occasion (resulting in property damage), threatened the applicant on one occasion, and caused property damage on one occasion. Each of these resulted in apprehension/fear for self and emotional disturbance/upset. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive (frequency/duration not specified), resulting in apprehension/fear for self. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was stalking her for a period of 4–6 months, resulting in apprehension/fear for self and emotional disturbance/upset.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent’s partner was verbally abusive on 1–4 occasions over 1–3 months. This resulted in apprehension/fear for self and emotional disturbance/upset. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened him/her (gender not specified) on three occasions, resulting in apprehension/fear for child and self. The applicant also made one allegation of unspecified abuse, but reported no outcomes. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent kicked/bit him on one occasion. No outcomes were specified.

In the same case, the respondent alleged that the applicant was physically violent on four occasions, and threatened the respondent on at least one occasion and the children on at least two occasions, resulting in apprehension/fear for self and emotional disturbance/upset. The respondent also alleged that the applicant suffered from mental illness.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally abusive towards the children on one occasion and pushed a child on one occasion, and that the respondent's family was physically violent to the children on 5–9 occasions over a 12+ month period. Each of these events resulted in emotional disturbance/upset. The applicant also alleged that the respondent had been a substance abuser for a period of 12+ months and had caused property damage on 5–9 occasions.

In the same case, the respondent alleged that the applicant was verbally abusive towards a child on 5–9 occasions, resulting in emotional disturbance/upset and another child being fearful of the perpetrator. The respondent also alleged that the applicant was verbally abusive to her (no frequency or duration specified), and had both pushed her and threatened her on one occasion. No outcomes were specified for these events. Finally, the respondent alleged that the applicant had been abusive (unspecified) on 5–9 occasions, resulting in one child developing behavioural difficulties.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made four different allegations against the respondent. Firstly, she alleged that the respondent threatened her on at least nine occasions, resulting in emotional disturbance/upset. Secondly, she alleged that the respondent stalked her on at least six occasions, resulting in apprehension/fear for self. Thirdly, the applicant made two allegations of abuse, one of which was a one-off incident, and the other 5–9 instances over 4–6 weeks, resulting in emotional disturbance/upset. Finally, the applicant made one allegation of unspecified abuse, with no frequency, duration or outcomes stated. No allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made three different allegations against the respondent. She alleged that the respondent was physically violent on 10+ instances over 12+ months, and that he hit her on one occasion, resulting in emotional disturbance/upset and estrangement from the perpetrator. She also alleged that the respondent threatened her on two occasions, with no outcomes specified. No allegations were made by the applicant.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent slapped him on 1–4 occasions, and abused illicit substances. The respondent alleged that the applicant was physically violent on 10+ occasions over a period of 12+ months. No outcomes were stated by either party.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive on 10+ occasions over 12+ months, resulting in restrictions of liberty, and apprehension/fear for self. She also alleged that the respondent abused illicit substances. No allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions over 12+ months. She also alleged that the respondent slapped her on one occasion, resulting in cuts and bruises. No allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically violent on one occasion, and that the respondent was guilty of child neglect. The respondent alleged that the applicant was also physically violent on one occasion. No outcomes were stated for either party.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically violent on 10+ occasions over 12+ months. No outcomes were stated and no allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened her property on 5–9 occasions, resulting in fear of property damage. She also made an allegation of unspecified abuse on 5–9 occasions, resulting in a physical injury (unspecified). No allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive on one occasion, and made threats on two occasions, resulting in apprehension/fear for self. The applicant also alleged that the respondent stalked her over a period of less than one month and pushed her on one occasion, resulting in bruises. In addition, the applicant made one allegation of unspecified abuse resulting in apprehension/fear for self, and alleged that the respondent was mentally ill. No allegations were made by the respondent.



**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent threatened her, as well as the children and a third party. She also alleged that the respondent harmed himself. Each of these events resulted in apprehension/fear for self. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically violent on 10+ occasions over 12+ months. No outcomes were stated and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened her and was verbally abusive, resulting in apprehension/fear for self. No frequencies or durations were given and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant threatened her on one occasion, with a third party threatening her on two occasions, with no outcomes specified. She also alleged that the applicant was verbally abusive, but no frequency or duration was stated. Finally, she alleged that the applicant stalked her (duration not stated), resulting in apprehension/fear for self.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent's family threatened him on one occasion, and that the respondent was an illicit substance user.

In the same case, the respondent alleged that the applicant threatened her on two occasions, that the applicant's family threatened her on one occasion, and that the applicant threatened to hit the children on 5–9 occasions. The threat by the family resulted in apprehension/fear for self, and one of the threats made by the applicant resulted in emotional disturbance/upset and estrangement from the perpetrator. The respondent also alleged that the applicant slapped her on 5–9 occasions, was physically abusive (not specified) on 5–9 occasions, and used illicit substances. No outcomes were stated for these allegations.

**Case number withheld: Allegations of child abuse**

In this case, the respondent alleged that the applicant was physically violent towards the children on 5–9 occasions, resulting in emotional disturbance/upset, and that he hit a child with an object on one occasion, resulting in welts. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that on one occasion both the respondent and a third party threatened both the applicant and the applicant's partner. An additional threat was allegedly made by the respondent to the applicant on a different day. Further, the applicant alleged that a member of the respondent's family was physically violent towards him on 1–4 occasions and the respondent was physically violent towards the applicant on one occasion. In addition, the applicant alleged that the respondent caused property damage on 5–9 occasions, and made allegations of child neglect and illicit substance abuse. No outcomes were specified and no allegations were made by the respondent.

**Case number withheld: Allegations of child abuse**

In this case, the respondent alleged that the applicant was abusive (unspecified), including verbal abuse (frequency and duration not specified), resulting in apprehension/fear for self. He also stated that the applicant's partner threatened the children (frequency not specified), also resulting in apprehension/fear for self.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally abusive towards the children on one occasion, and that he pushed a child on one occasion. These events resulted in apprehension/fear for the children and emotional disturbance/upset. She also alleged that the respondent was mentally ill, resulting in the same outcomes. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent threatened her. No outcomes were specified. The respondent alleged that a member of the applicant's family hit the children with an object on 5–9 occasions and was also verbally abusive towards the respondent (frequency not given). No outcomes were specified.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent alleged that the applicant threatened her (frequency not given), and threatened the children on one occasion. These threats resulted in apprehension/fear for self. Further, the respondent alleged that

the applicant slapped the child (frequency not specified), resulting in apprehension/fear by the child. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent stalked him on 5–9 occasions. The respondent alleged that the applicant threatened her on one occasion, pushed her on one occasion and was physically violent on one further occasion. No outcomes were specified by either party.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent caused property damage on at least 14 occasions. She also alleged that the respondent pushed a child (frequency not specified), and kicked a pet on one occasion. No outcomes were specified. Further, the applicant alleged that the respondent was physically violent on one occasion, resulting in bruises, and stalked her (duration/frequency not given), resulting in apprehension/fear for self. Finally, the applicant alleged that the respondent was a substance abuser.

In the same case, the respondent alleged that the applicant's partner pushed him on one occasion (no outcomes specified) and threatened him, resulting in apprehension/fear for self.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant threatened the children, resulting in apprehension/fear for child. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions over less than one month. No outcomes were specified and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive on one occasion, pushed her on one occasion, caused property damage on one occasion, was physically violent on an additional occasion, and was emotionally abusive on one occasion. No outcomes were specified and no allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent pushed him/her on 10+ occasions over 12+ months, resulting in bruises and apprehension/fear for self. No allegations were made by the respondent.

## **Category C**

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive towards her (duration/frequency not given), threatened sexual assault, and was mentally ill. No outcomes were given and no allegations were made by the applicant.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was physically violent to both herself and the children on 10+ occasions over 12+ months. This included hitting and kicking a child. No outcomes were specified. Further, the applicant alleged that the respondent was emotionally abusive towards both her and the children (duration/frequency not given), and hence she and the children required counselling. In addition, the applicant alleged unspecified abuse by the respondent towards herself and the children, as well as alleging that the respondent threatened her and threatened to harm himself, each on one occasion. The threat of self-harm resulted in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator. No outcomes were specified for the other allegations and no allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent beat her on one occasion, resulting in scratches and bruises, and that the respondent's partner slapped a child on one occasion, with no outcomes specified. The applicant also alleged that the respondent abused illicit substances. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was physically violent towards her on 10+ occasions over 12+ months, including hitting her with a fist. This resulted in bruises on at least two occasions. The applicant also alleged that the respondent caused property damage on 10+ occasions over 12+ months, and was physically abusive of the children on two occasions, with a child being hit on one occasion. No outcomes were specified for these events. In addition, the applicant alleged that the respondent made two threats towards her and one threat towards the children, all resulting in apprehension/fear for self. Finally, the applicant alleged that the respondent

attempted to harm himself on one occasion, and that the respondent was mentally ill, both causing the applicant apprehension/fear for self. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive towards her on 10+ occasions, resulting in emotional disturbance/upset and estrangement from the perpetrator. The applicant also alleged that the respondent threatened self-harm and threatened to shoot her, both of which resulted in estrangement from the perpetrator. Finally, the applicant alleged that the respondent caused property damage on one occasion, and abused illicit substances. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally and emotionally abusive towards the children (frequency not specified), both of which resulted in emotional disturbance/upset. The applicant also alleged that the respondent was abusive towards her (type unspecified), resulting in emotional disturbance/upset, that the respondent pushed her, resulting in damage to an unborn child, and that the respondent threatened self-harm. An additional two allegations were made, but it was not known at whom the conduct was directed. This consisted of one allegation of verbal abuse, resulting in emotional disturbance/upset, and one allegation of physical abuse. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent burnt him on one occasion, and that the respondent was mentally ill and an illicit substance user. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent slapped a child on one occasion, pushed a child on another occasion, and neglected the children. No outcomes were specified for these events. The applicant also alleged that the respondent was a substance abuser, and that she was physically violent towards a third party (unclear, but appears to be the children's paternal grandfather) on one occasion. Finally, the applicant alleged that a member of the respondent's family was physically violent on one occasion, and that this violent act resulted in broken bones. It was not known at whom this conduct was directed.

In the same case, the respondent alleged that the applicant caused property damage on one occasion and that a member of the applicant's family slapped the respondent on one occasion, resulting in emotional disturbance/upset. The respondent also alleged that the applicant was a substance abuser. No physical outcomes were specified.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent abused both alcohol and illicit substances. No outcomes were specified.

In the same case, the respondent alleged that the applicant threatened to stab her on one occasion, resulting in apprehension/fear for self, and was also physically violent on one occasion. No outcomes were specified for this allegation.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent abused both alcohol and illicit substances. No outcomes were specified.

In the same case, the respondent alleged that the applicant beat her on one occasion, resulting in cuts. The respondent also alleged that the applicant was physically abusive on at least one other occasion, but no frequency or outcomes were given. Finally, the respondent alleged that the applicant was also a substance abuser.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit her with an object on one occasion. No outcomes were specified. The applicant also alleged that the respondent was verbally abusive on one occasion, resulting in apprehension/fear for self, and was violently slapped, resulting in bruises and a ruptured eardrum.

In the same case, the respondent alleged that the applicant slapped him on one occasion. No outcomes were specified. He also alleged that the applicant was a substance abuser.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that she was beaten by the applicant on one occasion, resulting in broken bones, cuts, scratches, bruises, a black eye, a fat lip and clumps of hair missing. No allegations were made by the applicant.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit her with a fist on one occasion, resulting in bruises, and that he hit her again the following year, also resulting in bruises. She also alleged that the respondent was verbally abusive on 10+ occasions over 12+ months. No outcomes were specified.

In the same case, the respondent alleged that the applicant hit him with a fist on one occasion. No outcomes were specified.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made seven different allegations. First, she alleged that the respondent was verbally abusive on 10+ occasions over 12+ months, hit her on 10+ occasions over 12+ months, and threatened to hit her on 5–9 occasions over 12+ months. No outcomes were specified. Secondly, she alleged that the respondent beat her on one occasion, resulting in scratches and bruises. Thirdly, she alleged that the respondent sexually assaulted her on 10+ occasions over 12+ months, resulting in apprehension/fear for self. Fourth, she alleged that the respondent was emotionally abusive on 1–4 occasions, and was a substance abuser. No outcomes were specified for these allegations.

In the same case, the respondent alleged that the applicant hit someone (identity unclear) on one occasion, was verbally abusive towards the children on 5–9 occasions, and was physically abusive towards him on 5–9 occasions. He also alleged that she was an illicit substance user and suffered from mental illness. No outcomes were stated.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit him with a fist on one occasion.

In the same case, the respondent alleged that the applicant threatened her on 16–28 occasions over a period of at least nine months. The respondent also alleged that the applicant threatened a third party on 5–9 occasions over 1–3 months. In addition, the respondent alleged that the applicant was verbally abusive towards her on 6–10 occasions. Four allegations of physical violence towards the respondent were made against the applicant: unspecified physical violence on 5–9 occasions; being pushed on one occasion; being kicked on one occasion; causing property damage on one occasion. Finally, the respondent made three allegations of the applicant abusing both illicit and legal substances. No outcomes were stated by either party.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threw something at him on 5–9 occasions. No outcomes were specified.

In the same case, the respondent alleged that the applicant kicked her on 1–4 occasions and hit her with a fist on 1–4 occasions. Each of these events resulted in bruises. The respondent also alleged that the applicant slapped someone (identity unclear) on 1–4 occasions, was verbally abusive on 5–9 occasions and threatened the respondent on one occasion. No outcomes were stated for these allegations.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened him on one occasion, and that the respondent suffered from mental illness. No outcomes were stated.

In the same case, the respondent alleged that the applicant was verbally abusive on 6–10 occasions, resulting in apprehension/fear for self. The respondent also alleged that the applicant was physically abusive “on a regular basis” over 12+ months. This included: punches to all parts of the body, including the head; pulling of hair; spitting; pushing through a glass door. This violence resulted in bruises, black eye, apprehension/fear for self and emotional disturbance/upset.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made nine allegations against the respondent. The following five resulted in apprehension/fear for self and emotional disturbance/upset: unspecified physical violence (duration/frequency not specified); verbal abuse (duration/frequency not specified); substance abuse for a period of 12+ months; threats over 7–12 months. The following four resulted in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator: threat of shooting on one occasion; threat of pushing on one occasion; verbal abuse on one occasion; other threat on one occasion.

In the same case, the respondent alleged that the respondent was abusive (unspecified), including verbally abusive. No durations or frequencies were given, and no outcomes were stated.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent’s family beat him on one occasion, resulting in broken bones, bruises, a blood nose and apprehension/fear for self. These injuries required hospitalisation and were considered to be “significant”. The applicant also alleged that the respondent stalked him (no outcomes specified), and caused property damage on two occasions. Further, the applicant alleged that the respondent was verbally abusive on 10+ occasions over 1–3 months and hit him with a fist on one occasion. No outcomes were specified for these allegations.

In the same case, the respondent made one allegation of verbal abuse against the applicant's partner (duration/frequency unclear) and one allegation of one-off verbal abuse against the applicant. The respondent also made eight allegations of physical violence: one of being hit with a fist on one occasion (no outcomes specified); one of being pushed on one occasion (no outcomes specified); two allegations of physical violence by the applicant's family directed at the applicant, each on one occasion (no outcomes specified); one allegation of physical violence by the applicant's family directed at a third party, resulting in cuts requiring stitches; one allegation of property damage by the applicant, resulting in apprehension/fear by child and emotional disturbance/upset; one allegation of the applicant hitting the respondent (no outcomes stated); one allegation of the applicant hitting the respondent with a fist, resulting in the respondent being knocked unconscious. In addition, the respondent alleged that the applicant threatened her on at least 22 occasions. No outcomes were specified.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive on one occasion. No outcomes were specified.

In the same case, the respondent alleged that the applicant was verbally abusive on at least three occasions (no outcomes specified). The respondent also made three allegations of the applicant threatening her. Each of these was a "one-off" event: threat to the property; unspecified threat; threat of shooting. One allegation was also made of the applicant threatening to hit a third party with a fist. In addition, the respondent made four different allegations of physical violence: unspecified violence on two occasions; being pushed by the applicant on two occasions; property damage (frequency not specified); self-harm on one occasion. No outcomes were specified for the threats or acts of physical violence. Finally, the respondent alleged that the applicant engaged in substance abuse, firstly during a "one-off" event, and again five years later for an unspecified period of time. This resulted in estrangement from the perpetrator.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made four different allegations of the respondent being physically violent towards him: one instance of property damage; two instances of being hit with a fist; one incident of being pushed; two additional instances of physical violence (not specified). No outcomes were given.

In the same case, the respondent alleged that the applicant was verbally abusive on at least seven occasions. The respondent also alleged that the applicant threatened her (no frequency given), and that the applicant abused both alcohol and illicit substances. The respondent reported that the substance abuse by the applicant resulted in emotional disturbance/upset. Further, the respondent made four different allegations of physical violence: two allegations of unspecified physical violence (frequency not given, no outcomes specified); one allegation of being hit with a fist on one occasion (resulting in bruises); two allegations of being slapped (no outcomes specified); one allegation of being choked, resulting in apprehension/fear for self.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive towards her (frequency/duration not specified), and was mentally ill. She also made four allegations of physical violence: three allegations of being hit by the respondent (frequency not stated), of which one incident resulted in a perforated ear drum, and another which resulted in another physical injury (not specified); one allegation of being kicked on one occasion (no outcomes given); one allegation of being pushed (frequency not specified); two allegations of other physical violence (frequency not specified, no outcomes given).

In the same case, the respondent alleged that the applicant was verbally abusive on two occasions, and threatened to stab him on one occasion. No outcomes were stated. The respondent also alleged that the applicant attempted to hit him (no outcomes stated), and made an additional six allegations of physical violence: one allegation of the applicant pushing the respondent on one occasion (no outcomes stated); one allegation of the applicant throwing something at the respondent, resulting in property damage; two allegations of direct property damage; one allegation of the applicant hitting the respondent with a fist, resulting in apprehension/fear for child.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent choked her on 1–4 occasions, resulting in physical injury. She also alleged that the respondent caused property damage on 10+ occasions. Further, she alleged 10+ incidents of unspecified abuse over 12+ months. No outcomes were stated for this allegation.

In the same case, the respondent alleged that the applicant was physically violent on one occasion, resulting in emotional disturbance/upset and estrangement from the perpetrator. He also alleged that the applicant suffered from mental illness.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 1–4 occasions (no outcomes specified), and caused property damage on at least two occasions. The applicant also alleged that the respondent threatened others on at least two occasions. The applicant reported that during one incident she "felt threatened in his company" and during another incident the respondent threatened his parents using weapons. Three allegations of substance abuse were also made, and one of child neglect, resulting in emotional disturbance/upset.



In the same case, the respondent alleged that the applicant threatened him on 1–4 occasions over 1–3 months (no outcomes stated), that she hit him, resulting in a black eye, that she was verbally abusive (frequency/duration not stated), and that she was a substance abuser.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened to hit her with an object on one occasion, and to shoot her on one occasion. No outcomes were specified. She also alleged that the respondent threatened her partner on two occasions, and stated that one of these incidents resulted in apprehension/fear for self, emotional disturbance/upset, and estrangement from the perpetrator. Further, the applicant alleged that the respondent pushed her on one occasion (resulting in bruises and apprehension/fear for self), hit her on one occasion (no outcomes specified) and was physically violent on 5–9 occasions (also resulting in apprehension/fear for self). Finally, the applicant alleged that the respondent pushed a child on one occasion, with no outcomes specified, and that the respondent suffered from mental illness.

#### **Case number withheld: Allegations of family violence or child abuse (unclear which)**

In this case, the applicant alleged that the respondent sexually assaulted a member of the respondent's family on one occasion, affecting the respondent's ability to parent the child.

In the same case, the respondent alleged that the applicant was physically violent towards the applicant's partner (frequency/duration not specified), abused illicit substances (duration not specified), and was verbally abusive towards a child, causing the child emotional disturbance/upset.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent slapped a child, causing bruises, and the emotional disturbance/upset of the child. The applicant also alleged that the respondent was physically violent towards the children on four additional occasions, resulting in bruises on one occasion, and the emotional disturbance/upset of the child on all occasions specified.

In the same case, the respondent alleged that the applicant hit her with a fist on one occasion, and was verbally abusive (frequency/duration not specified). No outcomes were specified for these allegations. Further, the respondent alleged that the applicant suffered from mental illness for a period of 12+ months, and made one allegation of alcohol abuse.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent hit him (frequency/duration not specified), including hitting him with a fist on one occasion. The applicant also alleged that the respondent suffered from mental illness for a period of 12+ months, and neglected the child, both of which resulted in fear for the child's welfare. Finally, the applicant alleged that the respondent was a substance abuser.

In the same case, the respondent alleged that the applicant was physically abusive (frequency/duration not specified), including the applicant hitting the respondent. The respondent also alleged that the applicant made two unspecified attempts at violence, one conducted at the respondent and the other at a child. No outcomes were stated.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the children had been sexually assaulted by both the respondent and a member of the respondent's family over a period of 4–6 months. No outcomes were stated. The applicant also alleged that the respondent was verbally abusive on one occasion, resulting in emotional disturbance/upset, and threatened her on one occasion, resulting in emotional disturbance/upset.

In the same case, the respondent alleged that the applicant threatened the respondent on at least one occasion, and that the applicant's family threatened him on at least one occasion, resulting in apprehension/fear for self. In addition, the respondent made one allegation of child neglect and another of illicit substance abuse. No outcomes were specified for these allegations. The respondent also alleged that the applicant hit him (no outcomes specified), was verbally abusive towards the respondent's partner on one occasion, resulting in the child becoming upset, and that the respondent made an unspecified attempt on one occasion, also resulting in the child becoming upset.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was a substance abuser and suffered from mental illness. No duration was given, and no outcomes were stated.

In the same case, the respondent alleged that the applicant had involved a child in sexual activity on one occasion (no outcomes specified), and abused both alcohol and illicit substances. The respondent also made five allegations of physical violence: one of the applicant pushing the respondent on 10+ occasions (resulting in apprehension/fear for self and emotional disturbance/upset); two of property damage (both 'one-off' incidents); one incident of unspecified physical violence directed at the respondent; one incident of unspecified physical violence directed at a third party (resulting in apprehension/fear for self and emotional disturbance/upset).



#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was physically violent towards an unknown party (frequency/duration unknown, no outcomes stated), and that the respondent threatened a child on one occasion, resulting in emotional disturbance/upset. There were also “borderline allegations” made by the applicant, including allegations that the respondent had previous convictions for assault, and that the respondent had a bad temper.

In the same case, the respondent alleged that the applicant hit him on two occasions, one instance resulting in cuts and the other resulting in a black eye. The respondent also alleged that the applicant’s partner sexually assaulted him on one occasion. No outcomes were listed for this allegation.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent verbally abused him/her (gender not specified) on 1–4 occasions. No outcomes were specified.

In the same case, the respondent alleged that the applicant involved the child in sexual activity on 1–4 occasions, resulting in estrangement from the perpetrator.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent involved the child in sexual activity on 5–9 occasions, resulting in emotional disturbance/upset, estrangement from the perpetrator and clinically observed behavioural problems. The applicant also alleged that the respondent was physically violent towards her on 10+ occasions, resulting in emotional disturbance/upset and estrangement from the perpetrator. In addition, the applicant also alleged that the respondent abused illicit substances.

In the same case, the respondent alleged that the applicant pushed him on one occasion. No outcomes were specified.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive towards her on one occasion, and pushed her on one occasion, both resulting in emotional disturbance/upset and estrangement from the perpetrator. The applicant also alleged that the respondent caused property damage on one occasion, alleged that the respondent was abusive (type unspecified) on 10+ occasions over 12+ months, resulting in bruises.

In the same case, the respondent alleged that the applicant was physically violent towards him on one occasion, resulting in physical injury (unspecified), and that the applicant hit him on 10+ occasions over 12+ months, resulting in cuts, scratches and scars. The respondent also alleged that the applicant was verbally abusive on 10+ occasions over 12+ months.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent harmed herself on multiple occasions over 12+ months, resulting in cuts.

In the same case, a total of 21 allegations were made by the respondent. Three were allegations of substance abuse over a period of 12+ months. One was of child neglect over a period of 7–12 months (no outcomes specified). One was an unspecified threat directed at the applicant (no outcomes specified), and another was a threat of self-harm on one occasion. Two were allegations of unspecified abuse (duration/frequency not given). The remaining allegations were allegations of physical abuse, comprising the following: two allegations of being pushed, each on one occasion, resulting in bruises; one allegation of the applicant throwing something at the respondent, resulting in bruises; one allegation of the applicant hitting the respondent (no outcomes specified); one allegation of the applicant hitting the respondent with a fist (no outcomes specified); seven allegations of other physical abuse, two of which were directed at children and five of which were directed at the respondent (duration/frequency and outcomes not specified). Finally, the respondent alleged that a third party had sexually abused a child on one occasion.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent neglected a child (frequency/duration not given), resulting in apprehension/fear for the children. The applicant also alleged that the respondent was a substance abuser for a period of 12+ months, and that the respondent was verbally abusive on one occasion. No outcomes were given for these two allegations.

In the same case, the respondent alleged that the applicant abused both alcohol and illicit substances (duration/frequency not given), and was verbally abusive towards the children (no outcomes given). The respondent also alleged that the applicant caused property damage (frequency/duration not stated); that he pushed her on one occasion, resulting in a dislocated shoulder; and that he was physically violent on at least two additional occasions (no outcomes specified).

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent threatened to hit him on 1–4 occasions over 1–3 months. He also alleged that the respondent was abusive (unspecified) on 5–9 occasions, and that she abused illicit substances. No outcomes were specified.

In the same case, the respondent alleged that the applicant was verbally abusive towards the children on 5–9 occasions over 4–6 months, and also pushed a child on one occasion, both of which resulted in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator. The respondent also made six allegations of physical violence by the applicant: she alleged that the applicant pushed her on 10+ occasions over 12+ months, resulting in apprehension/fear for self; threw an object at her on one occasion (no outcomes specified); choked her on one occasion, resulting in the respondent beginning to suffocate; hit her with a fist on one occasion, resulting in a black eye; other physical violence on 10+ occasions over 4–6 months.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent caused property damage on at least five occasions, and threatened the property on an additional 5–9 occasions, resulting in apprehension/fear for self. The applicant also alleged that the respondent was verbally abusive towards the children (no duration/frequency specified), resulting in the children becoming upset and apprehensive, and threatened the applicant, resulting in her becoming apprehensive about the children's safety. In addition, the applicant alleged that the respondent hit a third party (outcomes not specified), was physically violent (no details given), and abused illicit substances.

In the same case, the respondent alleged that the applicant abused illicit substances on 5–9 occasions over 12+ months. He also alleged that the respondent hit him with a fist on one occasion, and threatened him during the same incident. No outcomes were stated.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent involved a child in sexual activity on 5–9 occasions, and sexually assaulted the child on 5–9 occasions.

In the same case, the respondent alleged that the applicant choked a child on one occasion, and suffered from mental illness. No outcomes were stated by either party.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit him with a fist, resulting in the perpetrator breaking a bone, that the respondent was physically violent on an additional occasion (no details given), and the respondent was verbally abusive towards the applicant on one occasion (no outcomes stated). The applicant also alleged that the respondent threw objects on three occasions, one of which resulted in property damage. In addition, the applicant made allegations regarding his own conduct. He alleged that he caused property damage on one occasion, and was abusive (unspecified) on one occasion.

In the same case, the respondent made seven different allegations against the applicant: one allegation of the respondent threatening a third party on one occasion, resulting in apprehension/fear for self; two allegations of property damage; one allegation of the applicant pushing the respondent (no outcomes stated); two allegations of the applicant being verbally abusive towards the respondent (no outcomes specified); one allegation of threatening self-harm, resulting in apprehension/fear for child; two allegations of "continual and unabated aggression" towards the respondent over 7–12 months; one allegation of stalking (no duration/frequency given); one allegation of other physical violence (no details given).

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent's partner was verbally abusive towards the children, that the respondent was verbally abusive towards the applicant and that the respondent threatened the applicant. Neither duration nor frequency was stated in these allegations. Eight different allegations of physical violence were also made by the applicant: one allegation of property damage by the respondent's partner on one occasion; one allegation of the respondent's partner pushing a child on one occasion; one allegation of the respondent's partner hitting a child on one occasion; one allegation of the respondent's partner beating a child on one occasion; two allegations of physical violence by the respondent's partner towards the children, each on one occasion; one allegation of physical violence by the respondent's partner towards the applicant's partner on one occasion; one allegation of physical violence by the respondent's partner towards a third party; one allegation of physical violence by the respondent's partner towards the respondent. No outcomes were specified and no allegations were made by the respondent.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was mentally ill, and that the respondent neglected the children (no duration/frequency given), resulting in the children being hungry, having dirty clothes, and becoming ill. The applicant also alleged that the respondent attempted property damage on two occasions, threatened to sexually assault the children, and made an additional threat (no details known). In addition, the applicant alleged that the respondent was physically violent towards him/her (gender not specified) on one occasion, was abusive

towards the children (no details known), and sexually assaulted a child (no details known). No outcomes were given for these allegations.

In the same case, the respondent alleged that the applicant abducted a child on one occasion (no outcomes specified), that the applicant suffered from mental illness, and that the applicant threatened the children on one occasion. The respondent made three allegations against the applicant's partner: one that the applicant's partner sexually assaulted the respondent, one that the applicant's partner was physically violent towards the respondent, and one that the applicant's partner was emotionally abusive towards the respondent. No frequency/duration was stated for these allegations. The respondent also made seven allegations of violence against the applicant. He/she (gender not specified) stated that the applicant had engaged in self-harm on one occasion, causing the respondent emotional disturbance/upset; that the applicant had sexually assaulted a child on one occasion; that the applicant had hit a child (no duration/frequency specified); that the applicant had sexually assaulted the respondent and a third party; that the applicant had beaten and otherwise been physically violent towards the respondent (no duration/frequency specified). The respondent stated that the physical abuse, sexual abuse and threats resulted in mental illness (unclear whether this refers to the respondent, the children, or both).

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that a third party sexually assaulted a child on one occasion (no outcomes specified). The applicant also made eleven allegations against the respondent. She alleged that the respondent was verbally abusive towards the children on one occasion, threatened the children on two occasions, pushed a child on one occasion, and slapped a child on one occasion. She also made three allegations of the respondent hitting the children, of which one time was with an object. Further, the applicant alleged that the respondent sexually assaulted her, stalked her on one occasion and was physically violent towards her (duration/frequency not specified). The applicant stated that one of the incidents involving a child being hit resulted in bruises. No outcomes were stated for any other allegation.

In the same case, the respondent also alleged that a third party sexually assaulted a child on one occasion. He also alleged that the applicant neglected the children on 5–9 occasions, and alleged that the applicant was a substance abuser. In addition, the respondent made seven allegations of physical violence by the applicant: one allegation of self-harm on one occasion, two allegations of the applicant hitting the children (frequency/duration not specified), two allegations of the applicant hitting the respondent (frequency/duration not specified), one allegation of property damage on one occasion, and one allegation of other physical violence towards the children on one occasion. The respondent alleged that the unspecified physical violence resulted in bruises, and one of the incidents involving the applicant hitting the respondent resulted in pain and distress. No outcomes were stated for other allegations.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent neglected the children on 5–9 occasions, was verbally abusive towards the children on 10+ occasions, hit the children (no details given), and hit a child with a fist on one occasion. The applicant also alleged that the respondent's partner was physically violent towards the children on one occasion, and hit a child on one occasion. All of these allegations resulted in apprehension/fear for self and emotional disturbance/upset.

In the same case, the respondent alleged that the applicant threatened a third party on one occasion and was physically violent towards a third party one occasion. He/she (gender not specified) also alleged that a third party hit a child with an object on one occasion. No outcomes were given for any of these allegations.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit her with a fist over a period of 12+ months, resulting in an unspecified injury to the face, and hit her with an object (no duration/frequency given), resulting in a cut requiring stitches, a head wound, and blood loss. The applicant also alleged that the respondent was physically violent on an additional occasion, resulting in the applicant being burnt/scalded, and that the respondent was physically violent towards a third party (no details given). Finally, the applicant alleged that the respondent was a substance abuser. No allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant pushed her on one occasion, was physically violent towards a third party on an additional occasion, and was physically violent towards an unknown victim on a third occasion. The respondent also alleged that the applicant was abusive on 10+ occasions over 12+ months (unspecified), and that he hit a third party (duration/frequency not given), resulting in emotional disturbance/upset. No outcomes were stated for any other allegation. Finally, the respondent alleged that a member of the applicant's family sexually assaulted a third party on one occasion. No outcomes were stated for this allegation and no allegations were made by the applicant.

#### **Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was physically violent on 5–9 occasions over 12+ months, resulting in various physical injuries and negative psychological outcomes (unspecified). The respondent also alleged that the applicant hit her, threatened to stab her, made other threats, and was a substance abuser (duration/

frequency not known for these allegations). No outcomes were stated for these allegations and no allegations were made by the applicant.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent alleged that the applicant was verbally abusive towards a child on one occasion, causing the child emotional disturbance/upset and estrangement from the perpetrator, and was verbally abusive towards the respondent (duration/frequency not specified), causing emotional disturbance/upset. The respondent also alleged that the applicant caused property damage on at least two occasions, and made one allegation of substance abuse. The respondent made three additional allegations of physical violence: that the applicant hit her with a fist, causing a broken nose, pushed her twice, one of which resulted in cuts, and was physically violent on at least one other occasion (frequency/duration not specified). No allegations were made by the applicant.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally abusive on at least two occasions (no outcomes given), and that he threatened to hit her with a fist on one occasion, resulting in emotional disturbance/upset. The applicant alleged that the respondent also attempted to hit her with a fist (no outcomes specified), and attempted to cause property damage. The applicant alleged that the respondent later did cause property damage, and that he stalked her for a period of 4–6 months. Further, the applicant made three allegations of physical violence (unspecified), two of which were one-off events (one directed at the respondent, one directed at the children), and one for which the duration/frequency was not specified. These events caused emotional disturbance/upset, estrangement from the perpetrator, and caused both the children and the applicant to become extremely frightened. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent alleged that the applicant involved the child in sexual activity on three occasions, resulting in apprehension/fear or self and estrangement from the perpetrator. The respondent also alleged that the applicant caused property damage on 2–5 occasions, resulting in apprehension/fear for self and fear for property. One allegation was also made of the applicant being emotionally abusive towards the respondent on 5–9 occasions, resulting in emotional disturbance/upset.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit her with a fist (frequency/duration not specified), resulting in estrangement from the perpetrator, and that he hit her with an object on one occasion, resulting in a black eye. The applicant also made one allegation of substance abuse, and three allegations of threats: one threat that the respondent would stab her (resulting in apprehension/fear for self and estrangement from the perpetrator), one threat to make the applicant ill (no outcomes specified), and one threat of child abduction. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent alleged that the applicant was verbally abusive to both the children and a third party (duration/frequency not specified), resulting in apprehension/fear for self, and made one allegation of substance abuse, also resulting in apprehension/fear for self. The respondent made four different allegations of physical abuse: one of the applicant being physically violent towards the children (duration/frequency unspecified), allegations of the applicant choking the respondent on two occasions, one allegation of the applicant pushing the respondent on 10+ occasions over 12+ months, and one allegation of physical violence towards a third party (duration/frequency unspecified). These events resulted in apprehension/fear for self. No physical outcomes were specified. The respondent also alleged that the applicant attempted self-harm on at least two occasions (no outcomes specified), and made an additional allegation of unspecified abuse, resulting in apprehension/fear for self. No allegations were made by the applicant.

**Case number withheld: Allegations of family violence**

In this case, the applicant made allegations of both legal and illicit substance abuse over 12+ months, one allegation of the respondent suffering from mental illness, one allegation of a threat (unspecified) on one occasion, and one allegation of verbal abuse on one occasion. The applicant also made nine allegations of physical violence by the respondent: one allegation of the respondent hitting the applicant with a fist on one occasion; one allegation of the respondent hitting the applicant with an object on one occasion; one allegation of the respondent hitting the applicant on an additional occasion; one allegation of the respondent causing property damage on one occasion; four additional allegations of the respondent inflicting physical violence on the applicant, totalling 16–32 incidents over at least 3 years; one allegation of physical violence directed at a third party on 5–9 occasions. No outcomes were stated and no allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant made twelve allegations against the respondent. She alleged that the respondent was verbally abusive (no outcomes or duration/frequency specified), was an illicit substance user (causing emotional disturbance/upset), that the respondent threatened the children on one occasion (causing emotional disturbance/

upset), that the respondent threatened to push her on one occasion (resulting in apprehension/fear for self and emotional disturbance/upset), and that he made an additional attempt at violence on one occasion (type and outcomes not specified). In addition, the applicant alleged that the respondent beat her on one occasion (resulting in bruises), hit a child with a fist on three occasions (resulting in bruises, other physical injury and emotional disturbance/upset), choked her on one occasion (resulting in emotional disturbance/upset), and pushed the children (frequency/duration and outcomes not specified). No allegations were made by the respondent.

**Case number withheld: Allegations of child abuse**

In this case, the applicant alleged that the respondent sexually assaulted a child on one occasion, resulting in apprehension/fear for self, and the child becoming frightened of the father. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent threatened a third party on one occasion, with no outcomes specified. The applicant also made nine allegations against the respondent's partner. The applicant alleged that the respondent's partner attempted to choke the respondent on one occasion and threatened to hit both the applicant and a third party, each on one occasion. No outcomes were stated for these allegations. The applicant also alleged that the respondent's partner pushed a child on one occasion, slapped a child on one occasion, was physically violent towards a child on an additional occasion, was emotionally abusive (duration/frequency not specified), and was abusive on at least one other occasion (type not specified). Each of these incidents resulted in emotional disturbance/upset and the child becoming fearful. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent pushed him on one occasion, and made an allegation of illicit substance use. No outcomes were specified.

In the same case, the respondent alleged that the applicant beat her on two occasions, resulting in cuts requiring stitches, scratches, bruises, a black eye, and other physical injuries. The respondent also alleged that the applicant was verbally abusive on 10+ occasions over 12+ months (no outcomes specified), and threatened her on 10+ occasions over 12+ months (resulting in apprehension/fear for self and emotional disturbance/upset). An allegation of illicit substance use was also made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive (duration/frequency not specified), resulting in a broken wrist, and that the respondent was a substance abuser. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made eight allegations. The first allegation of being hit with an object by the respondent resulted in a gash to the head. The second allegation of being stabbed resulted in a large open wound to the back. The third allegation of being hit with an object resulted in cuts. An allegation of property damage was made. For the remaining allegations of the applicant being hit with a fist, slapped, again hit with an object, and experiencing unspecified physical violence by the respondent, there were no outcomes stated.

In the same case, the respondent made two allegations that the applicant had been verbally abusive, one allegation of a threat, one allegation of sexual assault, two allegations of being pushed, two allegations of being hit, and an allegation of illicit substance abuse. The respondent reported emotional disturbance/upset and estrangement from the perpetrator as outcomes of one of the verbal abuse incidents and one of the physical abuse incidents. Apprehension/fear for self and emotional disturbance/upset were reported as outcomes of one of the incidents of being pushed. Further, three allegations of unspecified physical violence were made, two resulting in bruising and one resulting in cuts and a head wound. The respondent also made an allegation of property damage aimed at someone other than the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant made nine allegations. The first allegation of being pushed by the respondent resulted in bruising. The second allegation of being pushed resulted in two teeth being broken. On the third occasion, the pushing resulted in damage to an unborn child that required the victim to be hospitalised. The fourth and fifth occasions of pushing lead to further bruising, a lump on the head, and a child sustaining bruising. The applicant reported emotional disturbance, upset, and estrangement from the perpetrator of the violence.

In the same case, the respondent alleged that the applicant had attempted to stab him on one occasion. He also alleged illicit substance abuse. The respondent did not specify any outcomes with respect to his allegations.

**Case number withheld: Allegations of family violence**

In this case, the applicant made two allegations against the respondent: one of medium-frequency verbal abuse (5–9 instances) and one of high-frequency substance abuse (10+ instances).



In the same case, the respondent made fifteen allegations. Six allegations were made of property damage, five with the reported outcome of apprehension/fear for self (unspecified). Two allegations of ongoing threats were made, each lasting less than a month at medium frequency (5–9 instances). The respondent reported an outcome of apprehension/fear for self (unspecified) in response to these threats. Allegations of child abduction and an incident of unspecified physical violence also resulted in apprehension/fear for self. Two allegations were made of being beaten by the applicant, with one beating resulting in hair being pulled out, and the other resulting in back injuries. The respondent also made allegations against the applicant of high-frequency substance abuse (10+ instances), one instance of self-harm, and one uncategorised attempt. No outcomes were reported for these three allegations.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made twelve allegations against the respondent. The applicant alleged that the respondent beat her, resulting in concussion, and that he pushed/grabbed her, resulting in bruising. Two allegations were made of the respondent sexually assaulting the applicant, resulting in much physical pain. The applicant also alleged that the respondent threatened the children on one occasion (no outcomes specified), was emotionally abusive towards them on 5–9 occasions (no outcomes specified), and was physically violent towards them on one occasion (resulting in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator). Further, allegations were made of the respondent engaging in self-harm, threatening to stab the applicant, hitting the applicant's partner with an object, and causing property damage. These occurrences were all one-off events and resulted in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator.

In the same case, the respondent alleged one instance of unspecified physical violence directed at him by the applicant. No outcomes were reported.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made fifteen allegations against the respondent. This included three threats, each resulting in emotional disturbance/upset, and one instance of verbal abuse. The applicant also alleged that the respondent attempted to stab a third party. The remaining allegations were of physical violence: choking (1), hitting with fist (4), kicking/biting (1), unspecified hitting (1), unspecified physical violence (2) and property damage (1). One of these instances resulted in cuts and bruises; another resulted in a broken nose and temporary loss of consciousness. In two additional instances, the applicant fell to the ground.

In the same case, the respondent made six allegations against the applicant of physical violence. These included one instance of being hit with a fist, one of being slapped, one of being hit (unspecified), and two instances of unspecified physical violence. An additional allegation was made of unspecified physical violence directed at the respondent by the applicant's family. One of the acts of unspecified physical violence resulted in cuts. No outcomes were stated for the other allegations.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made nine different allegations against the respondent. One allegation of verbal abuse on 10+ occasions was made. One allegation of illicit substance abuse was made. Two threats of hitting with an object were made, one threat of stabbing, and one additional threat (unspecified). The remaining allegations were of physical violence: one occurrence of hitting with an object; three occurrences of property damage; 10+ occurrences of sexual assault; 10+ occurrences of other physical violence (unspecified). Each of these allegations resulted in apprehension/fear for self.

In the same case, the respondent made three allegations against the applicant: one allegation of property damage on one occasion (no psychological outcomes specified), one allegation of verbal abuse (frequency, duration and outcomes not specified), and one allegation of illicit substance abuse (no outcomes specified).

#### **Case number withheld: Allegations of child abuse**

In this case, the applicant made five different allegations against the respondent. She alleged that the respondent beat her on one occasion, resulting in broken bones, and choked her on two occasions, resulting in emotional disturbance/upset and estrangement from the perpetrator. She also alleged that the respondent threatened to stab her on two occasions (no outcomes specified), and threatened to harm himself on one occasion. Finally, the applicant alleged that the respondent abducted their child on one occasion, resulting in restrictions of liberty. No allegations were made by the respondent.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made eight different allegations against the respondent, and three against the respondent's family. The applicant alleged that a member of the respondent's family threatened to stab her on one occasion (resulting in apprehension/fear for self), threw something at her on one occasion (resulting in apprehension/fear for self and emotional disturbance/upset), and pushed her (no outcomes specified). The applicant made one allegation of the respondent stalking her on 10+ occasions, resulting in apprehension/fear for self. She also made one allegation of the respondent being emotionally abusive towards the children on 10+ occasions over 12+ months. Further, the applicant alleged that the respondent threatened her (unspecified) on two occasions, resulting in apprehension/fear for self. Finally, the applicant made one allegation of the respondent sexually assaulting her on 5–9 occasions (no outcomes specified), slapping her on one occasion (resulting in bruises), pushing her on three occasions (resulting



in cuts, scratches, apprehension/fear for self and emotional disturbance/upset), and stabbing her on one occasion (resulting in cuts).

In the same case, the respondent made ten different allegations against the applicant. He alleged that the applicant threw things at him on three occasions and at the children on 12+ occasions, resulting in emotional disturbance/upset. He also alleged that the applicant hit him with a fist on two occasions, resulting in a broken nose, and that the applicant kicked him on one occasion, resulting in cuts. In addition, the respondent alleged that the applicant threatened self-harm on one occasion, threatened to hit him with an object on one occasion, and threatened to stab him on one occasion. No outcomes were stated for these threats. Further, the respondent alleged that the applicant was a substance abuser (no outcomes specified), suffered from mental illness (no outcomes specified), and was verbally abusive towards him on one occasion (resulting in emotional disturbance/upset).

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent threatened to shoot the applicant (one-off) and to shoot someone else (not known who the conduct was directed at or how frequently this occurred). The applicant also alleged that the respondent was verbally abusive towards her on one occasion, and threatened the children (duration/frequency not specified). No outcomes were stated.

In the same case, the respondent alleged that the applicant threatened to harm herself on 10+ occasions over a period of less than 1 month. No outcomes were specified.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made twenty-two allegations against the respondent. One allegation of substance abuse was made (duration/frequency not specified), one allegation of unspecified violence (one-off), and five allegations of verbal abuse (three were one-off occurrences, two of unspecified duration/frequency). A total of eight allegations of threats were made, comprising one threat of child abduction (one-off), three threats of property damage (two were one-off occurrences, one for which duration/frequency was not specified), one threat to hit with an object, and four unspecified threats (two were one-off occurrences, one for which duration/frequency were not specified). In addition, the applicant made one allegation of child abduction (one-off), and one allegation of attempted property damage (one-off). The remaining allegations were of physical violence: three allegations of property damage (all one-off occurrences), one allegation of the respondent hitting the applicant (one-off), one allegation of other physical violence (unspecified) directed at the applicant (duration/frequency not given). No outcomes were specified other than property damage, and no allegations were made by the respondent.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent alleged that the applicant suffered from mental illness (no outcomes specified), and that the applicant threatened to hit the children (no frequency specified), resulting in apprehension/fear for self. She also alleged that the respondent abducted a child on one occasion and was verbally abusive towards her (no frequency/duration specified), both of which resulted in apprehension/fear for self. No allegations were made by the applicant.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent abused alcohol and illicit substances on 5–9 occasions over 7–12 months. The applicant also alleged that the respondent abducted a child on one occasion. Each of these events resulted in apprehension/fear for self. No allegations were made by the respondent.

## **Judicial determination sample**

### **Category A**

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was physically abusive towards her on 1–4 occasions and verbally abusive towards her on two occasions. The applicant also alleged that the respondent's partner was verbally abusive towards her on 1–4 occasions. The physical and verbal abuse resulted in emotional disturbance/upset of the applicant and the child. In addition, the applicant alleged that the respondent threatened to hit the applicant.

In the same case, the respondent alleged that the applicant was verbally abusive towards him on at least one occasion.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent threatened her, resulting in emotional disturbance/upset. No frequency/duration was given and no allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions, and threatened her on 1–4 occasions. The applicant also alleged that the respondent had abused both illicit and legal substances. No outcomes were specified, and no allegations were made by the respondent.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive towards him on 5–9 occasions and threatened him on one occasion. No outcomes were stated and no allegations were made by the respondent.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the respondent alleged that the applicant was verbally abusive towards the respondent on at least one occasion, resulting in the disturbance of the child. No allegations were made by the applicant.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent's partner was verbally abusive towards the respondent on 1–4 occasions (no outcomes specified), and that the respondent's partner was physically abusive towards the applicant on one occasion (no outcomes specified). The applicant also alleged that the respondent abused illicit substances and suffered from mental illness.

In the same case, the respondent alleged that the applicant was verbally abusive towards their own partner on one occasion. No outcomes were specified.

#### **Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant hit her (type, duration and frequency not specified), and that he was verbally abusive towards her (duration/frequency not given). These both resulted in estrangement from the perpetrator. No allegations were made by the applicant.

#### **Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive towards her on one occasion, resulting in emotional disturbance/upset and estrangement from the perpetrator. The respondent also alleged that the applicant caused property damage on one occasion, and abused substances over a period of 12+ months. No allegations were made by the applicant.

### **Category B**

#### **Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant was verbally abusive on 10+ occasions (duration not specified, resulting in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator), stalked her on one occasion (no outcomes stated), and threatened her on one occasion (no outcomes specified). No allegations of violence were made by the applicant.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent attempted self harm on one occasion, hit their child on one occasion and was physically violent towards the applicant (type not specified) on one occasion. The applicant also alleged that the respondent abused both illicit and legal substances. No outcomes were stated.

In the same case, the respondent alleged that the applicant stalked her (duration/frequency not specified, resulting in apprehension/fear for self), pushed her on one occasion (no outcomes specified), and was verbally abusive on 10+ occasions over 12+ months (no outcomes specified). The respondent also alleged that the applicant caused property damage on 5–9 occasions over 1–3 months.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent attempted to kick him on one occasion. No outcomes were specified.

In the same case, the respondent alleged that the applicant hit her on one occasion, resulting in cuts, scratches, bruises, emotional disturbance/upset and estrangement from the perpetrator. One allegation of unspecified abuse on 5–9 occasions (resulting in emotional disturbance/upset and estrangement from the perpetrator) was also made.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent pushed her on one occasion, resulting in apprehension/fear for self, and that he threatened her on one occasion (no outcomes specified). The applicant also alleged that the respondent was an illicit substance user.

In the same case, the respondent alleged that the applicant suffered from mental illness for a period of 1–3 months and was physically violent towards the children on at least one occasion. This resulted in fear for the safety of the children.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was an alcoholic for a period of 12+ months, threatened her (no details given) and was verbally abusive towards her (no details given). The applicant also alleged that the respondent hit a child with an object on one occasion (resulting in emotional disturbance/upset), caused property damage on one occasion, and threatened the applicant on one occasion (resulting in apprehension/fear for self and estrangement from the perpetrator).

In the same case, the respondent alleged that the applicant caused property damage on two occasions.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent stalked him over 1–3 months, and hit him on one occasion. The applicant also alleged that the respondent was verbally abusive on 5–9 occasions. No outcomes were specified.

In the same case, the respondent alleged that the applicant was physically violent towards her on one occasion, and threatened her on 5–9 occasions. No outcomes were specified.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent abused illicit substances (no details given).

In the same case, the respondent alleged that the applicant also abused illicit substances, and that he hit her on 10+ occasions over 12 years. The respondent also alleged that the applicant was verbally abusive towards her on 10+ occasions over 12 years and that he threatened both her and the children on 1–4 occasions. No outcomes were specified.

**Case number withheld: Allegations of family violence**

In this case, the respondent alleged that the applicant pushed her on one occasion (resulting in apprehension/fear for self and estrangement from the perpetrator), and that the applicant was physically violent on 1–4 occasions (no outcomes specified). No allegations were made by the applicant.

## **Category C**

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent slapped her on one occasion, hit her with a fist on two occasions, was verbally abusive over a period of two years and emotionally abusive on one occasion. The applicant also alleged that the respondent abused illicit substances and neglected their child. No outcomes were specified.

In the same case, the respondent alleged that the applicant's partner involved a child in inappropriate sexual practices on one occasion (no outcomes specified), hit the applicant on 10+ occasions (resulting in cuts, scratches and bruises), caused property damage on 10+ occasions and threatened to hit the respondent with an object on one occasion (no outcomes specified). The respondent also alleged that the applicant attempted self-harm on one occasion (no outcomes specified), neglected their child (no details given), and suffered from mental illness.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 5–9 occasions over 12+ months (no outcomes specified), mentally ill (no outcomes specified) and abused illicit substances (no outcomes specified). The applicant also alleged that the respondent threw something at him on one occasion (resulting in emotional disturbance/upset), kicked/bit him on one occasion (no outcomes specified) and caused property damage on one occasion.

In the same case, the respondent alleged that the applicant was verbally abusive on one occasion (resulting in apprehension/fear for self) and emotionally abusive on 5–9 occasions (resulting in emotional disturbance/upset and estrangement from the perpetrator), and that the applicant abused both legal and illicit substances (no outcomes specified). The respondent also alleged that the applicant threw something at her on one occasion (no outcomes specified), pushed her on six occasions (resulting in scratches, bruises and apprehension/fear for self), caused property damage on one occasion, kicked/bit her on one occasion, and was physically violent on an additional occasion (no outcomes specified).

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made twenty-one allegations against the respondent, all of which refer to one-off events: one threat of property damage (no outcomes specified); one threat of stabbing the applicant (no outcomes specified); one additional threat (no outcomes specified); six instances of pushing the applicant (resulting in emotional disturbance/upset); one instance of sexually assaulting the applicant (no outcomes specified); one instance of throwing an object at the applicant (no outcomes specified); one instance of property damage; one instance of choking the applicant (no outcomes specified); one instance of verbal abuse towards the children (resulting in the

emotional disturbance of the children); one instance of self-harm by the respondent (no outcomes specified); six additional instances of physical abuse towards the applicant (resulting in injuries to the head and arms, and the applicant bleeding).

In the same case, the respondent alleged that a member of the applicant's family pushed him on one occasion (no outcomes specified), grabbed him on one occasion (no outcomes specified) and threatened him on one occasion (no outcomes specified). The respondent also made eighteen allegations against the applicant: one allegation of verbal abuse towards the children (duration/frequency not specified); two allegations of hitting the children; two allegations of pushing the children (one a one-off instance, the other not specified); one allegation of property damage over 4–6 months (frequency not specified); two allegations of threats to damage property (one a one-off instance, the other not specified); one allegation of slapping the children on one occasion; one allegation of illicit substance abuse over 1–3 months; one allegation of verbal abuse towards the respondent; two allegations of self-harm over a period of less than one month; allegations of four unspecified threats; one allegation of throwing a child to the floor on one occasion; one additional allegation of violence on one occasion directed at a third party. No outcomes were stated for these allegations other than property damage.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive towards her, both resulting in apprehension/fear for self, emotional damage/upset and loss of self-esteem. The applicant also alleged that the respondent sexually assaulted her on two occasions, resulting in bleeding from the bowels on one of these occasions. Finally, the applicant alleged that the respondent abused illicit substances over a period of 12+ months.

In the same case, the respondent alleged that the applicant abused illicit substances over 12+ months. He also alleged that the applicant was guilty of child neglect (frequency/duration not specified), resulting in poor health of the child at birth. In addition, the respondent alleged that the applicant engaged in self-harm behaviour on one occasion, resulting in a scar on her arm, and suffered from reactive psychosis over a period of 12+ months.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent attempted to harm himself on one occasion, was physically violent towards the applicant on 1–4 occasions, threatened to hit a third party on one occasion, and threatened to shoot the applicant on one occasion. The applicant also alleged that the respondent suffered from mental illness. No outcomes were stated for these allegations.

The respondent alleged that the applicant's brother was guilty of sexual misconduct towards younger female family members, and hence that the children were at risk while living with this man. No outcomes were stated.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally abusive towards her on five occasions, slapped the children and hit them with a fist (duration/frequency not specified), caused property damage on 2–5 occasions, attempted to sexually assault the applicant on one occasion, threatened self-harm on one occasion, and was physically violent on an additional occasion. The property damage resulted in emotional disturbance/upset, but no outcomes were specified for any other allegation.

In the same case, the respondent alleged that the applicant pushed their child on one occasion, resulting in emotional disturbance/upset, and threatened to hit the respondent on one occasion (no outcomes specified).

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made six different allegations of physical violence directed at her by the respondent: hitting on one occasion (no outcomes specified), hitting with a fist over a period of 1–3 months (resulting in bruises and emotional disturbance/upset), choking over a period of 1–3 months (resulting in bruises), pushing over a period of 1–3 months (no outcomes specified), slapping on one occasion (no outcomes specified), and unspecified physical abuse (duration/frequency not given, resulting in emotional disturbance/upset). The applicant also alleged that the respondent threatened to harm himself on one occasion, resulting in fear for the children, and made two additional threats (type not specified), resulting in apprehension/fear for self and the children. In addition, the applicant alleged that the respondent was verbally abusive on at least one occasion, resulting in emotional disturbance/upset.

In the same case, the respondent alleged that the applicant made four threats towards him. No outcomes were specified.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made eighteen allegations against the respondent: four allegations of one-off property damage; two allegations of one-off verbal abuse (no outcomes specified); one allegation of the respondent pushing the applicant on one occasion (resulting in scratches); one allegation of unspecified abuse (no details given); allegations of both alcoholism and substance abuse over a period of 12+ months; one allegation of the respondent kicking the applicant (resulting in scratches and bruises); one allegation of the respondent hitting the applicant with a fist on one occasion (resulting in bruises); allegations of the respondent threatening both the applicant and a third party (resulting in apprehension/fear for self, emotional disturbance/upset and the children becoming

terrified); four additional allegations of physical violence towards the applicant (resulting in injuries to arms and legs, endangerment of applicant's and children's lives, and the children becoming terrified).

In the same case, the respondent alleged that the applicant hit him on one occasion, and was physically violent on an additional occasion (no details given). No outcomes were specified.

#### **Case number withheld: Judgments of both family violence and child abuse**

In this case, the applicant alleged that the respondent hit a child on one occasion, resulting in scratches, bruises, emotional disturbance/upset and estrangement from the perpetrator. The applicant also alleged that the respondent engaged in self-harm on 1–4 occasions (resulting in cuts requiring stitches), slapped their child on one occasion (resulting in scratches and bruises), and involved the child in inappropriate sexual practices (also resulting in scratches and bruises). In addition, the applicant alleged that the respondent put their child at risk by leaving him in the company of a convicted sexual offender, neglected the child (no details given), used illicit substances over four years, and suffered from mental illness.

In the same case, the respondent alleged that the applicant hit their child on one occasion, resulting in bruises.

#### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent was abusive towards their child as a result of post-natal depression (no details given), resulting in the child becoming upset, was verbally abusive towards the child over 1–3 months (no outcomes specified), and slapped the children over 1–3 months (no outcomes specified). The applicant also alleged that the respondent was verbally abusive towards a third party for a period of less than 1 month, threatened the third party for a period of less than 1 month, caused property damage on one occasion, and that the respondent suffered from mental illness for a period of 12+ months. No outcomes were specified for these allegations other than property damage.

In the same case, the respondent made twelve allegations of the applicant sexually assaulting their child, resulting in the child being hurt and suffering from a sore bottom. The respondent also alleged that the applicant threatened her (no details given) and that a member of the applicant's family threatened to abduct the child, resulting in apprehension/fear for self.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant made nine allegations of verbal abuse by the respondent, three of which resulted in apprehension/fear for self and emotional disturbance/upset. She also alleged that the respondent pushed her on one occasion (no outcomes specified) and a child on one occasion (no outcomes specified). One allegation of unspecified abuse towards the applicant was also made, and one of threat of self-harm.

In the same case, the respondent alleged that a member of the applicant's family was verbally abusive towards him (no details given), threatened him on one occasion, and was abusive on at least one additional occasion (no details given). The respondent also alleged that an employee of a contact centre pushed a child away on one occasion, and that a member of the police force attempted to hit the respondent with a fist on one occasion and hit the child with a fist on one occasion. No outcomes were specified for these allegations.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent pushed him on one occasion (no outcomes specified), kicked him on one occasion, resulting in cuts and bruises, and was physically violent on 10+ occasions (no outcomes specified).

In the same case, the respondent alleged that the applicant beat her on two occasions and choked her on one occasion, resulting in scratches, bruises, concussion, emotional disturbance/upset and estrangement from the perpetrator. The respondent also alleged that the applicant was an alcoholic.

#### **Case number withheld: Allegations of family violence**

In this case, the applicant alleged that both the respondent and the respondent's partner were verbally abusive (duration/frequency not given), caused property damage (frequency not given), and were physically violent (no details given). No outcomes were specified for these allegations. The applicant also alleged that the respondent made an additional attempt (type unspecified) on one occasion, resulting in apprehension/fear for self.

In the same case, the respondent made fourteen allegations against the applicant. The respondent alleged that the applicant was physically violent towards her (type, frequency/duration not specified), resulting in cuts, estrangement from the perpetrator and fear for safety of children. The respondent also alleged that the applicant was verbally and emotionally abusive towards her (frequency/duration not specified), resulting in estrangement and fear for the safety of the children. In addition, the respondent alleged that the applicant made five threats towards her (type unspecified), resulting in apprehension/fear for self and estrangement from the perpetrator, and that the applicant stalked her with a high frequency over a period of at least 1–3 months. Finally, the respondent alleged that the applicant pushed her on two occasions (resulting in a black eye, apprehension/fear for self, estrangement from the perpetrator and the children becoming frightened), was an alcoholic, and was abusive (no details given).



### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent threatened her (resulting in restrictions on liberty, no other details given) and abducted their child on one occasion (resulting in restrictions of liberty). The applicant also alleged that both the respondent's partner and a member of the respondent's family were physically violent towards her on one occasion (no additional details given). In addition, the applicant made seven allegations of physical violence against the respondent: two allegations of hitting the applicant with a fist on 2–5 occasions (resulting in loss of consciousness and being admitted to hospital), one allegation of kicking the applicant on 1–4 occasions over a period of less than a month (also resulting in loss of consciousness and being admitted to hospital), two allegations of property damage on one occasion, one allegation of being physically violent towards their children on one occasion (no outcomes specified), and one allegation of being physically violent towards the applicant over 12+ months (resulting in estrangement from the perpetrator).

In the same case, the respondent alleged that a member of the applicant's family had sexually assaulted their children (no details given), that a member of the applicant's family had hit their child (resulting in bruises), and that the applicant's partner hit their child with a fist (resulting in bruises). The respondent also alleged that the applicant hit their child (resulting in cuts and bruises, no other details given), was physically violent towards the child (no details given), and neglected the child (resulting in bruises, the child becoming dirty, and apprehension/fear for the child). Further, the respondent alleged that the applicant abused illicit substances over a period of 12+ months, caused property damage on one occasion, was mentally ill (resulting in estrangement from the perpetrator) and engaged in self-harm on one occasion (resulting in cuts). Finally, the respondent made four allegations of physical violence directed at him by the applicant: one allegation of stabbing (resulting in cuts and scratches), one allegation of hitting with a fist on one occasion (resulting in a chipped tooth), and two allegations of unspecified physical violence (resulting in estrangement from the perpetrator).

### **Case number withheld: Allegations of family violence**

In this case, the applicant made five allegations of physical violence resulting in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator. She alleged that the respondent choked her on one occasion, pushed her (frequency/duration not specified), hit her with a fist on two occasions, engaged in self-harm on one occasion and caused property damage. The applicant also alleged that the respondent threatened to hit her with a fist on one occasion and made three additional threats, resulting in apprehension/fear for self, emotional disturbance/upset and the child becoming upset. In addition, the applicant alleged that the respondent was verbally abusive on one occasion, resulting in the child becoming upset.

In the same case, the respondent alleged that the applicant had abused both illicit and legal substances and suffered from mental illness. The respondent also alleged that the applicant hit him with a fist on at least one occasion, caused property damage on one occasion, was physically violent on an additional occasion (no details given), and that a member of the applicant's family sexually assaulted the applicant. No outcomes were stated for these allegations other than property damage.

### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent hit him with an object on two occasions (one incident of which resulted in scratches), caused property damage on one occasion, threatened to stab him on one occasion (no outcomes specified), and was physically violent on an additional occasion (resulting in estrangement from the perpetrator).

In the same case, the respondent alleged that the applicant hit her with a fist on one occasion (resulting in the child becoming upset), caused property damage on one occasion, abducted the child on one occasion (resulting in the child becoming upset), sexually assaulted a female child in the extended family (resulting in the fear that the respondent's child may be at risk), threatened to stab the respondent (no outcomes specified), threatened the children on an additional occasion (resulting in the child becoming upset) and was physically violent on an additional three occasions.

### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant made five different allegations of physical violence. He alleged that the respondent kicked him on two occasions (no outcomes stated), threw objects on 1–4 occasions (no outcomes stated), hit him with an object (no outcomes stated), hit him with a fist (resulting in broken bones, cuts and bruises), and was physically violent on at least two other occasions (resulting in emotional disturbance/upset and estrangement from the perpetrator).

In the same case, the respondent alleged that the applicant was verbally and emotionally abusive of the children on 10+ occasions, resulting in emotional disturbance/upset and estrangement from the perpetrator, and that he threatened self-harm on one occasion (no outcomes specified). The respondent also alleged that the applicant beat her on one occasion, resulting in bruises, and that the respondent hit the children (frequency/duration not specified), resulting in emotional disturbance/upset and estrangement from the perpetrator.

### **Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent hit him with a fist on one occasion.



In the same case, the respondent alleged that the applicant involved the children in inappropriate sexual practices on 10+ occasions. The child was too young at the time of disclosure to provide a time-frame. One of these incidents resulted in estrangement from the perpetrator.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent hit her with a fist and pushed her on 10+ occasions over 12+ months, resulting in bruises. The applicant also alleged that the respondent threw something at her on one occasion (no outcomes specified), threatened to stab her (resulting in restriction on liberty, apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator), threatened to hit her on 5–9 occasions (resulting in apprehension/fear for self), and was verbally abusive on 10+ occasions (no outcomes specified).

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent beat her on 10+ occasions over nine years, and that he was verbally abusive for 10+ occasions over nine years. The applicant also alleged that the respondent pushed the children on one occasion, and caused damage on 10+ occasions over 12+ months. The beatings resulted in broken bones, cuts requiring stitches, scratches, bruises, blood noses, black eyes, and other physical injuries. No outcomes were specified for the other allegations other than property damage. No allegations were made by the respondent.

**Case number withheld: Allegations of both family violence and child abuse**

In this case, the applicant alleged that the respondent abused both illicit and legal substances (resulting in loss of memory/awareness), and that she was verbally abusive (resulting in emotional disturbance/upset). The applicant also alleged that the respondent's partner threatened him on one occasion, and threatened to stab both him and the children on an additional occasion. These threats resulted in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator. The applicant made an additional allegation of unspecified abuse by the respondent, but no details were given. No allegations were made by the respondent.

**Case number withheld: Judgments of both family violence and child abuse**

In this case, the applicant alleged that the respondent was verbally abusive, causing her emotional disturbance/upset. She also alleged that the respondent made six threats: one threat of self-harm, two threats to children, and three other threats. Each of these threats resulted in emotional disturbance/upset, and one resulted in apprehension/fear for self. In addition, the applicant alleged that the respondent was physically abusive towards the children on one occasion, resulting in fear for the children. No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent was verbally abusive on 10+ occasions over three years (resulting in apprehension/fear for self, emotional disturbance/upset and estrangement from the perpetrator), threatened self-harm on one occasion (no outcomes specified), threatened to beat the applicant on 1–4 occasions (no outcomes specified), abducted their child on one occasion (resulting in emotional disturbance/upset and estrangement from the perpetrator), abused illicit substances for four years and suffered from mental illness. The applicant also made four different allegations of physical violence: one of the respondent throwing something on one occasion (resulting in apprehension/fear for self); two of property damage; three of being beaten, totalling 3–11 instances (no outcomes specified); three of being pushed (resulting in pain and bruises). No allegations were made by the respondent.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent beat her on one occasion, resulting in emotional disturbance/upset and estrangement from the perpetrator. The applicant also alleged that the respondent threatened to hit her with a fist on one occasion (resulting in apprehension/fear for self and emotional disturbance/upset) and threatened to harm himself on 1–4 occasions (no outcomes specified). In addition, the applicant alleged that the respondent abducted their child on one occasion, resulting in emotional disturbance/upset, and hit the applicant's partner on one occasion. Further, the applicant alleged that the respondent had abused illicit substances over a period of five years and suffered from mental illness.

**Case number withheld: Allegations of family violence**

In this case, the applicant alleged that the respondent abducted their child on one occasion, and was physically violent towards her (duration/frequency not known). No outcomes were stated and no allegations were made by the respondent.

## Appendix D: Classification of allegations relating to physical abuse, sexual abuse and emotional/verbal abuse

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### *Physical*

- Pushed/grabbed/shoved
- Slapped
- Hit (unspecified)
- Hit with fist
- Hit with object
- Kicked/bit
- Threw anything that could hurt
- Beaten
- Choked
- Stabbed
- Shot
- Other

### *Sexual*

- Sexual assault
- Involving child in allegedly sexual behaviour

### *Emotional/verbal*

- Verbal abuse
- Other emotional abuse

## Appendix E: Classification of evidentiary material

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Evidence	Category
Conviction evident on court file	Of relatively strong probative weight
Guilty plea entered as to the alleged conduct—awaiting sentence	
Conviction alleged as to the alleged conduct	
Direct witness of family violence or child abuse—sworn	
Direct witness of family violence or child abuse and expert opinion	
Final intervention order by contest	
Prosecution pending as to the alleged conduct	
Prosecution pending on some but not all of this allegation	
Unsworn account of witnessing injuries (but not violence)	
Final intervention order—defendant did not appear	
Sworn account of witnessing injuries (but not violence)	
Photographs of injuries within sworn evidence	
Photographs of injuries within unsworn evidence	
Unsworn report of child welfare authority substantiates harm	
Unsworn account of witnessing injuries (but not violence)	
Final intervention order made by consent	
Final intervention order made by consent without admissions	
Interim intervention order granted in the absence of the defendant	
Sworn hearsay account of family violence or child abuse	
Unsworn hearsay account of family violence or child abuse	
Miscellaneous sworn form of corroborative evidence	
Miscellaneous unsworn form of corroborative evidence	

## Appendix F: Type of family violence or child abuse: All cases

**Table F1** Type of family violence or child abuse alleged in each court by sample: All cases

	General population ( <i>n</i> = 240)		Judicial determination ( <i>n</i> = 59)	
	FCoA ( <i>n</i> = 120)	FMC ( <i>n</i> = 120)	FCoA ( <i>n</i> = 30)	FMC ( <i>n</i> = 29)
	%	%	%	%
<b>Family violence and/or child abuse</b>	55.0	61.8	76.7	65.5
Spousal violence	45.8	53.3	76.7	62.1
Other adult family violence	19.2	20.0	26.7	20.7
<b>Any family violence</b>	50.0	56.7	76.7	62.1
Child abuse by spouse/parent	24.2	24.2	43.3	13.8
Child abuse by other	5.8	5.0	16.7	6.9
<b>Any child abuse</b>	25.8	27.5	46.7	20.7
Family violence only	29.2	34.3	30.0	44.9
Child abuse only	5.0	5.0	0	3.4
Co-occurrence of family violence and child abuse	20.8	22.5	46.7	17.2
No allegations	45.0	38.2	23.3	34.5
<i>Total</i>	100.0	100.0	100.0	100.0

*Note.* The FMC judicial determination sample excludes one case because no litigant was identified. “Spousal violence” includes allegations in non-couple cases of violence between the opposing parties. “Any family violence” includes two cases where there was a disclosure of an intervention order only (with no specific allegations contained in the family law affidavit material, or in a “complaint for intervention order” annexed to the information sheet).

- 1 Figures relate to Bordow (personal communication, 1994) only—cited by Parkinson (1995).
- 2 But see qualification regarding sample size noted in Chapter 2.
- 3 A “weapon” is defined as any object one person may use to threaten another person’s life. In these cases, weapons included guns, swords and knives.