

From the Editors

This special edition of *Family Matters* has a thematic focus on issues that are challenging for families from personal and systemic perspectives. The topics covered range from family violence and family law, the way that the family law system deals with child representation, the personal and legal consequences of conceiving and raising children through donor conception, and elder abuse. Each of these areas raises complex issues for the people whose lives are affected by them and for the policy and legal responses to them. They also reflect issues that will continue to offer challenges for policy and practice into the future.

One of the articles sets out insights from the Australian Institute of Family Studies' *Evaluation of the 2012 Family Violence Amendments* (Kaspiew, Carson, Dunstan, Qu et al., 2015), which was released in October last year. It provides an overview of the evaluation findings. Themes highlighted in some of the significant findings of the evaluation of the 2012 family violence amendments are further explored in two other articles. Andrew Bickerdike and Helen Cleak offer a considered analysis of approaches to screening for family violence in light of the evaluation findings that indicate that this remains a key focus for practice development after the 2012 family violence reforms. Kylie Beckhouse canvasses existing approaches to the representation of children's interests in family law proceedings and considers some of the steps that need to be taken—including filling significant gaps in the research evidence and the need to develop clearer practice guidelines—to support a more coherent approach in this important area.

Viewed in the context of the way the family law system has evolved in the past decade, it is clear that screening and assessment for family violence and other risks and the treatment of children's interests are issues of central concern for the continued development of a system that meets the needs of families generally and, perhaps most critically, children. For more than a decade now, the Australian family law system has been under significant

scrutiny. Since the 2003 Parliamentary Inquiry into child custody arrangements in the event of family separation, which resulted in the *Every Picture Tells a Story* report (House of Representatives Standing Committee on Family and Community Affairs, 2003), there have been two main sets of legislative reforms. In 2006, legislative amendments were introduced and services expanded to support parents to resolve parenting arrangements without going to court, and to support shared parenting after separation if it was compatible with protecting children from abuse or family violence. Then in 2012, amid growing community concern about family violence and child abuse, a narrower set of legislative amendments were introduced that strengthened the emphasis on protecting children from harm when making parenting arrangements.

These changes responded to a growing body of research, including the AIFS evaluation of the 2006 family law reforms, that showed the families using the family law system to make parenting arrangements are those who also report a history of family violence and other problems including safety concerns for themselves or their children as a result of contact with the other parent, mental ill-health and substance abuse. The AIFS evaluation of the 2012 amendments to the Family Law Act demonstrates that now it is a troubled minority of parents that calls on the system for substantial help, especially in the case of those that end up using lawyers and courts to sort out their issues. This explains the increasing need to consider and assess family violence, safety concerns and other matters raising risk when making parenting arrangements.

Despite the increased scrutiny of the family law system over the last decade, the treatment of children's interests has not been prominent in the public debate. The 2003 *Every Picture Tells a Story* report called for processes in the family law system to become more child focused. A partial response came with the establishment of Family Relationship Centres and family dispute resolution services designed to focus attention on the needs of the children. Further



changes occurred in 2012, with the inclusion of a provision in Part VII of the Family Law Act specifying that an Object of the Part was to give effect to Australia's obligations as a signatory of the United Nations Convention on the Rights of the Child. The findings of the evaluation of the 2012 family violence amendments found no indication that children's views were receiving any greater emphasis in litigated matters in courts after this amendment. More broadly, parents' views on whether the family law system "meets the needs of children" changed only marginally after the 2012 family violence amendments, with 47% of those who separated after the changes agreeing that it did, compared to 44% of the parents who separated before the changes (Kaspiew, Carson, Dunstan, De Maio et al., 2015).

An earlier AIFS study that examined the role of Independent Children's Lawyers (ICL) in the family court system found that children and young people wanted a greater say in family law proceedings (Kaspiew et al., 2014). The children expected to meet with an ICL, usually more than once, and to be supported to understand what was going on in the proceedings. A lack of meaningful contact between children and ICLs caused significant disappointment among the children and young people interviewed.

As Kylie Beckhouse argues, findings like these underscore the need to understand what effective professional practice is from the viewpoint of those who are most directly affected—the children and young people. New research that the Attorney-General's Department has commissioned from AIFS, the Children and Young People in Separated Families: Family law System Experiences and Needs project, will provide important insights into what children need when their parents are separating and using family law system services.¹ The research involves interviewing children whose families have used family law system services, including family dispute resolution, lawyers and courts, to examine the

extent to which children's needs are met within these processes. The new research will open a window into the world of children and young people affected by parental separation and their needs and experiences in engaging with family law system services. This will be vital in informing thinking about the family law system and its capacity to serve the interests of the children and young people who experience the upheaval of parental separation and may live in families affected by domestic violence, safety concerns and other complex issues.

Our final article in the area of family law and family violence is authored by Jenn McIntosh, Jamie Lee and Claire Ralfs. In this article, the authors provide an update on the Family Law DOORS (FL-DOORS). This risk screening framework was a practice initiative that accompanied the 2012 family violence amendments, with its announcement by media release on 31 January 2013.

Two articles in this special edition provide insight into an area of increasing significance to Australians—accessing donor conception and the rights of children and young people more generally. Sonia Allan's article examines the history, passage and future application of Victoria's new legislation to provide all donor-conceived people with access to any available identifying information about their donor. Fiona Kelly's article focuses on the experiences of single mothers by choice in relation to donor linking—that is, making contact with their child's donor while the child is under the age of 18 years, with a view to exploring the implications of this for the family law system in Australia.

The articles on family law and family violence in this edition reflect the development of policy and practice thinking and the development of research evidence over more than a decade. This body of work evidences the significant challenges that exist in meeting the needs of parents and children in the current service landscape, where responsibility for legal, policy

and services framework in family law, family violence and child abuse are spread over areas of federal, state and territory competence.

In comparison with family violence, the knowledge base and policy thinking on elder abuse are much less well-developed, as the summary of the AIFS research paper on elder abuse (Kaspiew, Carson, & Rhoades, 2016) in this edition indicates. Prevalence data is lacking in Australia, but it appears that elder abuse is an issue experienced by a small proportion of elder Australians and that a background of abuse or family violence at earlier life stages is associated with susceptibility to elder abuse in later life. In this area too, legal, policy and service responses are spread across an array of areas where federal, state and territory agencies operate in parallel or overlap in the areas of criminal and civil justice, health and aged care. The range of laws and frameworks canvassed in the Australian Law Reform Commission's (June 2015) issues paper on safeguarding the rights of older Australians evidences the complexity of the challenges in formulating coherent and accessible responses to elder abuse. As thinking on policy responses to elder abuse develops, it should be informed by the last decade of experience of change in the family law system, particularly from the perspective of understanding the need for and impact of change through empirical evidence.

Endnote

1. See *Children and Young People in Separated Families* <aifs.gov.au/projects/children-and-young-people-separated-families>.

References and further reading

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