

Family violence and financial outcomes after parental separation

Belinda Fehlberg and Christine Millward

SINCE THE 1990s, THERE has been increasing recognition in Australia of the relevance of family violence to the resolution of financial arrangements when parents separate. Yet the available evidence suggests there is a continuing and significant gap between “law in books” and “law in action” in this area. Our analysis of interviews conducted with 60 separated parents as part of our wider study on links between post-separation parenting and financial settlements, following major family law and process amendments in 2006, suggests that the effects of family violence on financial arrangements require further attention.

By way of background, since the 1990s Australian family law courts have increasingly recognised the relevance of family violence in proceedings to divide property under the *Family Law Act 1975* (Cth) (FLA) (e.g., *In the Marriage of Kennon* (1997) 22 Fam LR 1; FLC 92–757 and, more recently, *Baranski & Baranski* [2012] FamCAFC 18). After *Kennon*, a course of violent conduct by one partner to another during the relationship that has a significant adverse effect on the target’s contributions can result in the target’s contributions being given additional weight. However, this test is difficult to satisfy and research suggests that adjustments are infrequent and small (Middleton, 2001). Moreover, most family law disputes are not decided by the courts. The most relevant research, conducted in the late 1990s by the Australian Institute of Family Studies for the Office of the Status of Women (Sheehan & Smyth, 2000), concluded that:

women who report spousal violence are more likely than women who report no violence to have received a minority share of property ... The share of property these women receive appears to reflect the practical difficulties they face in trying to negotiate a fair settlement with a violent former spouse—a situation where safety may be given precedence over the right to a fair share of the matrimonial property. (p. 16)

Their data also suggested better outcomes for those experiencing violence (usually women) who had access to legal advice.

In the child support context, separated parents who experience or fear family violence may be excluded from the usual requirement (known as the Maintenance Action Test) that they apply for child support to avoid a reduction in their Family Tax Benefit Part A payments (the main government payment to parents to assist with the costs of raising children). Confusingly, the exemptions policy is found in the *Family Assistance Guide* (Australian Government, 2013, section 3.1.5.70) but further information about the family violence exemption is found elsewhere, in *Child Support: The Guide* (Department of Human Services [DHS], 2012, section 6.10.1).¹ Determinations are made by Centrelink social workers. A 2012 report by the Australian Law Reform Commission (2012) recommended that the relevant legislation, *A New Tax System (Family Assistance) Act 1999* (Cth), and the *Family Assistance Guide* should be amended to make it clearer that family violence and fear of family violence are grounds for exemption. So far these recommendations have not been acted upon. In any case, qualitative research suggests that gaining an exemption does not necessarily resolve the complex range of issues raised by family violence (Patrick, Cook, & McKenzie, 2008; Patrick, Cook, & Taket, 2007). Most recently, research conducted by the Australian Institute of Family Studies (AIFS) found that parents who had experienced family violence before/during or since separation were more likely to use Child Support Collect, reported higher non-compliance and were more likely to perceive the amount of child support to be personally unfair than those not describing violence (De Maio, Kaspiew, Smart, Dunstan, & Moore, 2013).

Further, while the research suggests that family law services are valuable in addressing the problems faced by women exposed to family violence (Sheehan & Smyth, 2000), the availability of free or low cost professional advice on financial—especially property—matters after separation is very limited in Australia. There is negligible legal aid available for property matters, most Community Legal Centres do not provide property advice, Family Relationship Centres (FRCs) deal mainly with parenting issues, and financial counselling is not widely available (Fehlberg, Smyth, & Fraser, 2010).

It is also well known that women face significant additional issues, including fear of disclosing violence and reduced ability to navigate the family law system because of the violence. These issues have been increasingly addressed in relation to parenting disputes; for example, there is increased attention to screening and assessment for family violence in family dispute resolution (FDR) (which is parenting-focused), and the former (Gillard) Commonwealth Government supported increased lawyer involvement in FDR, including lawyer-assisted FDR (Moloney et al., 2011). However, the Commonwealth Government's coordinated FDR pilot (Kaspiew, De Maio, Deblaquiere, & Horsfall, 2012), which was directly addressed at providing FDR in the context of family violence, was not subsequently funded. There has generally been much less emphasis on supporting those exposed to family violence to resolve their property and child support arrangements.

Most recently, 2012 FLA amendments widened the legislative definition of “family violence”, but specific amendments were directed at parenting rather than financial disputes, and discussion of the implications of the changed definition on financial disputes has been noticeably absent.

1 In 2011, the Child Support Agency (CSA) was integrated into the Australian Government Department of Human Services and is now known as DHS Child Support. The former CSA Collect service is now known as Child Support Collect. The terminology used in this chapter reflects that used at the time and as referred to by the participants.

Our study participants and method

Between 2009 and 2011 we conducted in-depth, face-to-face interviews annually with the 60 separated parents participating in our study. We asked participants about their parenting and financial arrangements (property, child support, spousal maintenance) and about the level of financial difficulty they experienced. We aimed to explore whether financial arrangements changed if parenting patterns changed, and specifically whether financial disadvantage resulted for primary carers and their children if shared time reverted to primary care. In the context of this wider study, family violence was of key relevance.

Our participants comprised 40 mothers and 20 fathers. Only one parent per family was interviewed for reasons of sensitivity and confidentiality (so we did not collect couple data). Participants were all resident in Victoria and were recruited mainly via newspaper and online advertisements, and study brochures left at mediation/FDR services and mailed out with final court orders. The study was described to participants as focusing on decisions about parenting and finances (property and money) after separation or divorce, but not on family violence.

This was a volunteer sample resulting in rich, qualitative data. We over-sampled for parents with shared time arrangements, while still including those whose children lived with one parent and spent time with the other. As a result, we had three main groups: parents whose children lived with one parent for more than 70 per cent of time, substantial shared time arrangements (where children lived at least 30 per cent and up to 44 of time with each parent) and equal shared time arrangements (where children lived at least 45 per cent of time with each parent).

Most of our participants had completed secondary school and had post-secondary school qualifications. About two-thirds had been married and about one-third had been in de facto relationships (all had separated before the 2009 amendments bringing de facto couples under the FLA). Participating fathers' total household income was considerably higher, on average, than that of participating mothers (\$70,650 and \$56,430 respectively). Net property pools ranged very widely, from \$2,000 to \$2 million, but averaged around \$460,000 and a median value of \$322,000.

Wider study findings are reported elsewhere (Fehlberg & Millward, 2013; Fehlberg, Millward, Campo, & Carson, 2013). Pseudonyms are used in the case examples below in order to protect participants' anonymity.

Family violence within our sample

As previously noted, our study did not focus specifically on cases involving family violence but questions regarding this issue were asked each year. In the course of interviewing, half of our 60 participants disclosed "family violence" in their relationship with their ex-partner, as now defined in FLA s 4AB ("violent, threatening or other behaviour by a person that coerces or controls a member of the person's family ... or causes the family member to be fearful"). Many reported ongoing hostile relationships.

In addition, a small number of participants (including two fathers who said that their wives had taken out intervention orders against them) described family violence but did not identify it as such. For example, "Beth" said there had been no family violence, but later described her ex-husband's ongoing verbal abuse related to child support:

I rang [Child Support] last week when my ex had sent me threatening text messages to cancel the back pay and to, you know, change things and

whatnot, and threatened me that if I didn't he would do this, that and the other. So I rang them very upset and the lady was very good, advising me what to do and how to deal with it.

Consistent with previous research (De Maio et al., 2013; Kaspiw et al., 2009), our participants most commonly reported their ex-partner's emotional and financial abuse directed towards them. Around a third (all of whom were mothers) reported their physical and/or sexual abuse by their ex-partner. A small number reported perpetrating violence toward their ex-partner (usually describing this as mutual), or provided information suggesting they had done so (see, for example, "Jeremy", below). A small number also reported their ex-partner's abuse of children of the relationship (usually emotional abuse, and in one instance physical abuse and neglect, resulting in intervention by the Children's Court), but child abuse is not our specific focus here.

More mothers than fathers said they had been the target of their ex-partner's family violence. Unlike mothers, descriptions given by fathers ($n = 6$) who said they had experienced family violence did not convey coercion, control or fear, as the current legislative definition requires, and mainly involved financial abuse. Mothers but not fathers in our study said they had called the police, obtained intervention orders, left the family home, sought refuge accommodation, changed their phone number to stop verbal abuse and/or declined or gave up property entitlements or child support due to family violence (see the next section).

In our study, the reports of participants who described experiencing family violence within the FLA definition (all mothers) indicated that physical and sexual violence ceased after separation, but emotional and financial abuse often continued. Violence commonly ceased because contact with the ex-partner also ceased. Some other parents described family violence within the FLA definition followed by a subsequently cooperative relationship, but they commonly spoke in qualified terms. For example, in 2009, "Fran" had an equal-time shared-care arrangement, following Family Court consent orders. She was unhappy with that arrangement because her ex-partner had mental health problems. She described him as having been physically violent in the past and said the legal system had done nothing to protect her and the children:

Well I was actually going to go to court for full custody, but they said unless I could physically prove his mental health issues ... Unless I could physically prove that he was violent towards them or whatever, because it was predominantly projected at me, there's not a whole lot I can do ... I thought, well, if I push and go to court, I either really push him over the edge mentally or financially ... In regards to parenting there wasn't a whole lot I could do because I had never reported things over the years and I think even if I had reported it, it probably wouldn't have made much difference anyway because the courts want that shared care.

By 2011, Fran was reporting very little conflict with her ex-partner. However, she had called the state statutory child protection service recently because of her concerns about his neglect of the children, and she described recent verbal abuse: "He rings up and just goes off his nut at me". Yet by this time Fran no longer appeared fearful of, or coerced or controlled by, her ex-partner. She appeared resigned to the equal time arrangement, believing that it was futile to try to change it, especially as "the boys like going there; they do like to see their Dad".

As Fran's case illustrates, and consistent with previous research, participants' descriptions suggested that family violence did not limit the perpetrator's parenting role. Also, disclosure of family violence was discouraged in a context where there was pressure to support the abusive partner's involvement and agree to shared time (Chisholm, 2009; Kaspiw, 2005; Kaspiw et al., 2009; Moloney et al., 2011; see examples in the next section). The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* (Cth), in force from 7 June 2012, reflected the Australian Government's recognition that a better balance needed to be achieved between protecting children from family violence and abuse and supporting parent–child relationships (see, for example, the new FLA s 60CC(2A)). Research on the effects of the most recent amendments is just beginning to emerge (Rathus, 2013), and it is unclear whether the pressure to agree to shared time described by several parents in our study was greater immediately following the 2006 amendments than it is now.

Family violence and financial arrangements

None of our participants described receiving an increased share of property in recognition of their contributions having been made more onerous due to the family violence they experienced (*Kennon*), but nor did they describe judicially adjudicated arrangements where this may be more likely to occur. Our participants had arrived at property settlements privately or with the assistance of a family lawyer, sometimes formalised in consent orders. Participants accessed mediators or FRCs regarding financial issues far less often than they did for parenting issues, reflecting the greater focus of such services on parenting (Fehlberg et al., 2010).

Our study included several cases in which participants described their experiencing family violence within the current FLA definition that had had a negative effect on property division, child support outcomes or both.

Our study also included participants who described experiencing family violence within the FLA definition that appeared to have no *direct* negative influence on financial outcomes. These cases commonly involved victims with reasonably strong personal and professional resources, including legal representation leading to property arrangements formalised in consent orders, and an ability to navigate their relationship with their ex-partner. Even so, the controlling behaviour of ex-partners often influenced parenting outcomes, which in turn played a role in shaping financial outcomes, so in this respect violence could have an *indirect* negative effect on financial outcomes.

Property division

It was clear that family violence had influenced property settlements reached by several parents ($n = 7$) in our sample. Of these, five were mothers who described shared time arrangements at some point during our study and two were mothers with primary care. All described experiencing emotional abuse, with three cases also involving physical, sexual and financial abuse. The cases in this group provided strong support for Sheehan and Smyth's (2000) finding that "a party's experience of violence puts them at a disadvantage when dividing the matrimonial property" (p. 111), but also regarding child support.

An example of this is "Jeanette" whose ex-partner had been physically and emotionally abusive during their relationship due to his "drinking problem" and depression. When she left their family home with her three children (including one child of that relationship), she relied on financial help from her family, and her ex-partner retained most of their property, worth \$160,000: "It would have been a fight uphill all the way and, look, at

the end of the day my main concern was the children". Jeanette kept just the car she left in, worth \$20,000 and comprising 13% of the total property pool. Jeanette also said child support was being collected for her by the then Child Support Agency (CSA Collect). Amounts varied over the course of our study due to the father quitting his job and not declaring cash income (which Jeanette saw as aimed at reducing his child support liability). In 2011, Jeanette was receiving \$30 a month. Following several years of legal dispute and a period where the child spent 2 out of 14 nights with her father (leading to her severe anxiety), Jeanette obtained full-time care of their child, formalised in further consent orders. Her ex-partner then began stalking her house and making abusive phone calls.

Another example is "Lynn", a recent migrant to Australia. Lynn was the main carer in a substantial shared-care arrangement for her young son with her ex-husband, pursuant to Family Court consent orders that she had agreed to under pressure, including pressure from her solicitor. During the marriage, Lynn experienced verbal, emotional and financial abuse and highly controlling behaviour by her ex-husband. The financial abuse involved her being pressured by him to take out personal loans in her own name to finance his business and new car. Lynn said that her cultural background led her to believe that wives should be submissive to their husbands. All assets were in her husband's sole name and she had received nothing from the \$1.3 million pool, but was still paying off the personal loans, totalling \$22,000:

He got everything. He has everything, everything ... I wasn't in a position to ask for more legal advice because they all cost money ... To settle [parenting] cost me \$5,000. If I want to go through that [property settlement] it will cost me, and they told me there's no guarantee I will get the money from him, so it's better just to give up.

After Lynn agreed to consent orders for substantial shared time she was assessed by the then CSA as being liable to pay child support to her ex-husband, who was self-employed. Lynn did not comply with this assessment because she disputed his income estimate, claiming that he made a lot more money than disclosed. She lodged an objection to the assessment but he persuaded her to withdraw her application, saying he would enter a private agreement to pay child support. He agreed to pay her \$125 per week but paid nothing. In 2011, Lynn made a further private agreement with her ex-husband that he would pay \$50 a week directly to her but he had paid only twice in eight months. Due to his self-employed status and failure to declare his true income, Lynn feared she would once again be assessed to pay child support if she went back to the CSA so chose not to do so. She had by that time re-partnered with a high income earner and so financially she was able to make that choice.

Child support

Problems obtaining child support were often described by mothers in our study, including those who reported family violence. Problems were described by those with Private Collect and CSA Collect arrangements. While the patterns we found were consistent with recent AIFS research (De Maio et al., 2013), our case studies provide the opportunity to explore these patterns in greater depth.

The case examples in the previous section illustrate that family violence could affect property and child support, but there were also mothers in our study who described family violence affecting child support but not property. Reasons for this included an

absence of property to divide (see Angela's case, below) and the greater role of legal representation in property settlements. For example, "Sharon" had not identified family violence, but it appeared that she had suffered financial and emotional abuse. She described her ex-husband as being "totally controlling about money" and said he had not wanted her to make any decisions during their relationship and this had continued after separation, including Sharon feeling pressured into consent orders for equal shared time. Her financial settlement (65% of the \$800,000 asset pool and spousal maintenance of \$1,500 per month for one year and \$750 per month for a further year), was negotiated by her lawyer and formalised in consent orders, and reflected her homemaker role during a long marriage to a company executive. More problematic was the parents' "self-administered" child support arrangements: despite his much greater income, her ex-husband refused to pay any set periodic child support and required the mother and their three teenage daughters come to him "cap in hand" for every bill or purchase. They mostly got the things they needed, but it was quite an onerous and demeaning exercise.

In our study, mothers often described problems with obtaining child support when the on-going parental relationship was hostile. Family violence (along with other related problems, such as mental health issues, drug and alcohol dependency, and employment instability) often featured in these cases (e.g., Beth, Jeanette and Lynn, above, and "Jeremy" below). A further example is "Angela", who had been in a *de facto* relationship and was the primary carer of two primary-school-aged children with special needs. Her ex-partner (who was alcohol- and drug-dependent) had been violent towards her, involving physical and emotional abuse, which led her to call the police on two occasions. Soon after they separated, he took the children (aged only 1 and 3 years at the time) and refused to return them despite not having the correct medications and the younger child still being breastfed. Family and lawyers intervened to return them. A parenting plan was reached at a legal aid roundtable dispute management, which stipulated that he would have their 5-year-old daughter three nights a week and their 3-year-old son two days a week, but he had often had the children for less time than this. From 2008, there were consent orders providing that the children stayed with him one night a week, due to the children's medical needs and their father's drug and alcohol dependency, which hindered his capacity to care for them. While there was negligible property to divide (a pool of \$13,000), ongoing problems existed regarding child support. Angela described herself as having no choice but to apply to the CSA (due to the operation of the Maintenance Action Test; Angela appeared to have no awareness of the exemptions mentioned earlier and there was a history of irregular payments):

I just had to fax the birth certificates of the children, and tell [CSA] what income I was on and they contacted him, and he told them what income he was on, and then he went absolutely ballistic at me. He just thought that I was trying to get money out of him. It was actually one of the worst things that you have to do when you're dealing with a person who's got some real mental issues. And you have to talk to the Child Support, when you don't have any money, just want to be sent some money so that you can buy food, and they make you contact Child Support who then stir all up this stuff and make the other [parent] psycho.

Even so, for the first two years after separation Angela received no child support at all. Her ex-partner was often unemployed, and when employed he did not declare his income. However, in 2010 (three years post-separation), he lodged a tax return, which

resulted in a new CSA assessment of \$140 per month (\$33 per week). By 2011, he had lost his job, Angela received no child support (not even the minimum payment), and he successfully claimed for the Australian Government Carer's Allowance to be split between them. Angela described their relationship as involving less conflict over time but it appeared that there were ongoing difficulties arising from his care of the children and that she carefully assessed his mood before raising issues with him. She also accepted full responsibility for the children, including the high costs of their medications. In this way, his behaviour was still controlling. In order to survive financially, Angela had moved in with her father and received a lot of support (child care, clothes and food) from her extended family, in addition to family assistance payments from the government (including some Rent Assistance).

Over time, several mothers who described family violence (such as Lynn and Angela) had "given up" on expecting to receive financial support from their ex-partner and were therefore paying for almost everything for their children.

Some fathers also reported paying no child support after acrimonious separations. "Jeremy" said his ex-wife was granted a relocation order and had moved interstate with their children. He reported that an intervention order had been made against him because his ex-wife alleged there had been violence. Jeremy was supposed to pay for the children to fly down and visit him (in lieu of child support), but this rarely happened and he had not paid any child support since separation.

Conclusion

In our study, family violence often influenced parenting arrangements and thus indirectly influenced financial settlements. Family violence often affected mothers' child support receipt, including in CSA Collect/Child Support Collect cases. Mothers who described family violence that affected property settlements also commonly described problems obtaining child support from their ex-partner. Family violence that diminished or ceased after separation could still have a continuing influence, discouraging pursuit of legal remedies by those exposed.

There has been much emphasis on family violence when reviewing the 2006 shared parenting amendments, but less on its implications for financial outcomes. In our study, family violence was often relevant to disputes and to disadvantageous processes and outcomes for both finances and parenting (property and child support) matters, and could add to financial difficulties for primary carers and children. Our study, and the paucity of previous research in Australia and internationally, suggests that more work needs to be done with larger, representative samples as a first step in encouraging law reforms and policies that reflect a more holistic understanding of the relevance of family violence to post-separation disputes.

References

- Australian Government. (2013). *Family assistance guide*. Canberra: Australian Government. Retrieved from <guidesacts.fahcsia.gov.au/guides_acts/fag/fag-rn.html>.
- Australian Law Reform Commission. (2012). *Family violence and Commonwealth laws: Improving legal frameworks. Final report* (ALRC Report No. 117). Sydney: ALRC. Retrieved from <www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws>.
- Chisholm, R. (2009). *Family courts violence review*. Canberra: Attorney-General's Department.
- De Maio, J., Kaspiew, R., Smart, D., & Dunstan, J., & Moore, S. (2013). *Survey of Recently Separated Parents: A study of parents who separated prior to the implementation of the Family*

- Law Amendment (Family Violence and Other Matters) Act 2011. Canberra: Attorney-General's Department. Retrieved from <tinyurl.com/mjntohe>.
- Department of Human Services. (2012). *Child support: The guide*. Canberra: DHS. Retrieved from <www.humanservices.gov.au/corporate/publications-and-resources/child-support-guide/>.
- Fehlberg, B., & Millward, C. (2013). Post-separation parenting and financial arrangements over time: Recent qualitative findings. *Family Matters*, 92, 29–40.
- Fehlberg B., Millward C., Campo, M., & Carson, R. (2013). Post-separation parenting and financial arrangements: Exploring changes over time. *International Journal of Law, Policy and the Family*, 27(3), 359–380.
- Fehlberg, B., Smyth, B., & Fraser, K. (2010). Pre-filing family dispute resolution for financial disputes: Putting the cart before the horse. *Journal of Family Studies*, 16, 197–209.
- Kaspiew, R. (2005). Violence in contested children's cases: An empirical exploration. *Australian Journal of Family Law*, 19, 112–143.
- Kaspiew, R., De Maio, J., Deblaquiere, J., & Horsfall, B. (2012). *Evaluation of a pilot of legally assisted and supported family dispute resolution in family violence cases*. Melbourne: Australian Institute of Family Studies.
- Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L. & the Family Law Evaluation Team. (2009). *Evaluation of the 2006 family law reforms*. Melbourne: Australian Institute of Family Studies.
- Middleton, S. (2001). Domestic violence, contributions, and s 75(2) considerations: An analysis of unreported property judgments. *Australian Journal of Family Law*, 15(3), 230–260.
- Moloney, L., Kaspiew, R., De Maio, J., Deblaquiere, J., Hand, K., & Horsfall B. (2011). *Evaluation of the Family Relationship Centre Legal Assistance Partnerships Program: Final report*. Canberra: Attorney-General's Department.
- Patrick, R., Cook, K., & McKenzie, H. (2008). Domestic violence and the exemption from seeking child support: Providing safety or legitimizing ongoing poverty and fear. *Social Policy and Administration*, 42(7), 749–767.
- Patrick, R., Cook, K., & Taket, A. (2007). Multiple barriers to obtaining child support: Experiences of women leaving violent partners. *Just Policy*, 45, 30–37.
- Rathus, Z. (2013). Shifting language and meanings between social science and the law: Defining family violence. *University of New South Wales Law Journal*, 36(2), 359–389.
- Sheehan, G., & Smyth, B. (2000). Spousal violence and post-separation family law outcomes. *Australian Journal of Family Law*, 14(2), 102–118.