

Child Contact, Domestic Violence, and Family Law in Australia

Donna Celeste Roberts.
BSc (Hons). Grad Dip Psych Sci. BHSc (Hons).

School of Psychology
University of Adelaide

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List of Abbreviations

ADHD – attention deficit hyperactive disorder

AVO – apprehended violence order

BIC – Best interests of the Child

DV – domestic violence

ESPR – equal shared parental responsibility

FCC – Federal Circuit Court

FCoA – Family Court of Australia

FLA – Family Law Act

FM – Federal Magistrate

FMC – Federal Magistrates Court

FV – family violence

ICL – Independent Children’s Lawyer

NRF – non-resident father

NRP – non-resident parent

PTSD – post traumatic stress disorder

UNCRoC – United Nations Convention on the Rights of the Child

List of Cases

Pseudonym	Reference	Magistrate
Cloake & Cloake	[2011]FMCAfam784	Neville
Goldstein & Hopkirk	[2010]FMCAfam469	Monahan
Houlis & Houlis	[2010]FMCAfam972	Baker
Howard & Birnie and Anor	[2010]FMCAfam16	Bender
Katzer & Katzer	[2011]FMCAfam85	Harman
Marino & Marino No.2	[2010]FMCAfam951	Brown
Meeker & Loucks	[2010] FMCAfam345	Altobelli
Starkey & Starkey	[2011]FMCAfam940	Harman
Vogel & Abel	[2010]FMCAfam1189	Harman

Abstract

Divorce is a common experience for many children - around half of Australian divorces annually involve children under 18 years. Research indicates these children are worse off on several measures of well-being than children from intact families. Evidence suggests children can benefit from contact with the non-resident parent (NRP), usually the father, although not if he exhibits anti-social behaviours including violence and substance abuse.

Domestic violence (DV) is a pervasive, endemic, significant social and public health issue that can have a range of physical, emotional, social, legal, economic and political ramifications. The full extent of the problem is not understood due to considerable underreporting; however, studies reveal 25-34% of women who have ever had an intimate partner have experienced at least one form of violence in their lifetime.

A popular belief is that women should leave the violent/abusive partner, yet separation creates significant risk for women and children - more than 30% of women are murdered by their intimate partner at this time. These women are then required to arrange residence and contact agreements, frequently resorting to litigation.

This dissertation examined three elements of the family law process – court orders; the effects of contact with violent/abusive fathers on children subjected to orders; and finally, for young adults who have ‘aged out’ of the orders, their opinions about spending time with their NRP, particularly where violence/abuse was present.

Study one explored the application of the presumption of equal shared parental responsibility (ESPR) in cases with DV and apprehended violence orders (AVOs). Published judgments from the Australian Federal Magistrates Court for 2010-2012 were examined. Of 105 cases containing the term ‘domestic violence’, 68 had evidence of AVOs, 15 of these had an order for ESPR. Judgments fell into two groups: group one were “one off incidents”, group two recognised “severe violence”. The results indicated that some judges are unwilling to remove decision making responsibility from parents even when they acknowledge serious DV.

Study two examined the effects of court ordered contact for children of violent/abusive fathers. The sample comprised eight mothers whose children were ordered to spend time with fathers who were violent/abusive to the mother during their relationship. Qualitative interviews investigated mothers’ experiences of ex-partners’ behaviour at handovers, their parenting, and children’s behaviours before and after visits. Respondents were also asked about the attitude of legal practitioners, including judges who were often perceived as tending to minimise fathers’ behaviour or being towards mothers for wanting to protect their children. The results highlighted the potential links between problematic child behaviour and contact with their violent and/or abusive fathers.

Study three used a survey to assess the opinions of young adults (N = 210, 18-25 years) about contact with their NRP, usually the father. Most participants experienced maternal primary care; almost all had contact with their father post-separation, although the type of contact varied. The perception of contact as found to be related to the pre-separation relationship with the father. Good relationships predicted positive contact, whereas the reverse held for negative relationships.

Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint award of this degree.

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It has been a long and difficult journey to complete this labour of love, a journey that at times I was not sure I would complete, however, here I am! As such, I would like to thank both Peter and my other supervisor, Professor Paul Delfabbro for their insight, support and feedback. I have been blessed to have continued my research under their guidance. Sincere thanks also go to Professor Molly Dragiewicz, for sharing her knowledge and time with me. I would also like to thank Professor Anna Chur-Hansen for her support during the final stages of my PhD. I am deeply grateful to all of these people.

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