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Shared Parental Responsibility, Family Violence and the 'Best Interests' of Children in Family Law.

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Introduction

This paper examines some of the 1995 and 2006 amendments to the *Family Law Act* (1975) Cth² and current concerns about these changes, in particular those which link the best interests of children with shared parental responsibility, make family dispute resolution compulsory (except where there is family violence) and impose sanctions for false allegations of family violence. It also explores special issues where there are families with a history of family violence.

Dispute Resolution for separating and divorcing couples in Australia

Australia has one of the highest divorce rates in the world {Brown, 2007 #3662}³. Family conflicts post-separation, in particular disputes about children and parenting, often involve a complexity of emotional and legal issues which cloud the ‘real’ issues, often eliciting intense feelings which threaten the disintegration of vital continuing relationships between family members.

In Australia today the main points of reference for separating couples wishing to settle their disputes are the 65 Family Relationship Centres (FRCs), which offer community-based family dispute resolution services (mediation), and the Family Court of Australia (FCA), Family Court of Western Australia (FCWA) and the Federal Magistrates Court (FMC) which administer the *Family Law Act*, 1975 (Cth). The *Family Law Reform Act*, 1995 (Cth) (enacted on June 11, 1996) made counselling, mediation and arbitration the preferred methods of dispute resolution in family law, in particular where there were disputes over children, shifting the focus away from court imposed solutions. The term ‘primary’ was used in preference to ‘alternative’ to convey the message that these were to be the principle methods to be used. The changes to the Act also reflected an increased emphasis on shared parental responsibility which was enhanced with the more recent amendments introduced by the *Family Law Amendment (Shared Parental Responsibility) Act*, 2006 (Cth).

Parental responsibility and children’s best interests in family law.

The 1995 and 2006 amendments to the Family Law Act replaced the term ‘guardianship’ with ‘parental responsibility’ and emphasised the importance of cooperative shared parenting. In 2006, with pressure from the men’s rights groups, the Australian Government legislated for significant changes which include the rebuttable ‘presumption that the best interests of the child for the child’s parents to have equal shared parental responsibility for the child’ (s61DA(1)). These changes include a requirement that family advisors inform parents that they may consider an arrangement whereby a child could spend equal time with each of them if such an arrangement was considered ‘reasonably practicable’ and in the best interests of the child (s63DA). Unless the court orders otherwise, both parents have equal decision-making power by virtue of having ‘parental responsibility’. Further, parents are now compulsorily required to attend *family dispute resolution* (mediation) prior to lodging an application with the FCA, FMC or FCWA and to show that they made a ‘genuine effort’ to resolve their issues with a family dispute resolution practitioner (s60I), unless they can provide evidence of

family violence or child abuse (s60J), which the family dispute resolution practitioner needs to verify. Sanctions apply if people make ‘false statements’ (false allegations or false denials), including false statements about family violence. However the focus tends to be more on false allegations rather than false denials, which are more prevalent⁴.

Section 60CC of the 2006 amendments created a two-tiered system of ‘primary’ and ‘additional’ considerations for determining what is in the child’s best interest. It outlines two primary considerations that can clearly be in conflict where there are allegations of family violence and child abuse. The ‘best interests of the child’ are still paramount but the ‘primary’ considerations are stated as being:

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

‘Additional’ considerations of a child’s best interests include: views expressed by the child; the nature of the relationship of the child with each parent and other persons; the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent; and family violence involving the child or member of the child’s family.

A number of concerns have been raised by lawyers, family dispute resolution practitioners and parents in relation to these changes. There is confusion about vague, ill-defined terms in the Act such as ‘practicable’, ‘reasonably fear’⁵, ‘meaningful relationship’ and ‘genuine effort’ and concerns about the reification of shared parenting responsibility (which is often interpreted as meaning that equal time spent with each parent), the use and abuse of Richard Gardner’s (1999)⁶ untested and controversial ‘parental alienation syndrome’ when a parent (usually a mother) tries to protect a child from abuse⁷, and the increased marginalisation of the issue of family violence in favour of shared parenting in considerations of the ‘best interests of the child’ in decision-making⁸.

It is argued by researchers⁹, academics and practitioners that the new family law system has the potential to put children at greater risk where there are serious levels of conflict between parents and acrimonious co-parenting arrangements, and there are now increased opportunities for children to either witness or be the direct victims of emotional, physical, sexual and verbal abuse from a parent. In short, the changes are seen by many researchers to promote the parent’s (usually the father) right to contact over the safety of women and children¹⁰.

There is also research evidence to suggest that with the increased emphasis on shared parenting the importance of continuity for young children’s *primary* attachment (normally with their mother) is being undermined¹¹, in favour of increased involvement of fathers, thereby weakening children’s primary relationship with the mother without producing a measurable benefit to the father’s relationship with the child¹². Single-parent mothers also report that they find it difficult to relocate to remarry or for work, because they are required to keep their children in close proximity to their fathers¹³.

Richard Chisholm (2006)¹⁴ points out that the wording in the 2006 amendments conveys a questionable view that what children mainly need is a ‘meaningful relationship with both parents’, which is not clearly defined or supported by evidence or research, and that this ‘is inherently more important than the child’s need for nurturing and love’.

Chisholm (2006)¹⁵ also points out that the new two-tiered approach in the Family Law Act ‘downgrades the importance of children’s views by putting them into the category of an “additional” rather than a “primary” consideration’. This is inconsistent with the recommendations of the seminal report *Every Picture Tells a Story* (2003)¹⁶ which emphasise the importance of including the perspective and needs of children in decision making, with

and without assistance from the family law system. This report recommends that all processes, services and decision making agencies in the system have, as a priority, built-in opportunities for appropriate inclusion of children in decisions that affect them¹⁷ and gives high priority to screening for issues of entrenched conflict, family violence, substance and child abuse, including sexual abuse¹⁸.

Defining the ‘best interests’ of children is ambitious and difficult, and conceptions of children’s interests have changed markedly over a relatively short period of time. Policies affecting children do not occur outside of gender politics¹⁹. For example, Chisholm (2006)²⁰ suggests that the recent changes to the Family law Act reflect ‘a political desire to be even-handed between two opposing adult views or concerns that have pervaded the public debate: the men’s concerns to stay involved with the children, and the women’s concerns that this may expose the children to violence’. Parents who can effectively arrange to spend equal time with their children and focus on their best interests are usually those who don’t need assistance from the court or mediation services. However for those parents in conflict who need third party intervention, the requirement to start with ‘equal’ parenting time suggests that the non-resident parent’s needs are more important than the child’s.

Family law professionals need to look beyond the rhetoric of parental responsibility, parental rights and parental equality to the experiences, safety, needs, rights and expressed wishes of the *children* involved²¹, the reality of day-to-day caretaking and nurturing practices pre and post separation and the relative structural and economic situations of men and women.

Child-inclusive practice

Currently most family law services for separating families in Australia are designed for adults. There are too few services designed for children experiencing the separation and divorce of their caregivers and even fewer for children with special needs²², in particular, those who experience ongoing and/or high levels of parental conflict or abuse, either directly or indirectly. Where there is family violence some children are in double jeopardy, namely children from rural and remote areas, children from migrant, refugee and non-English speaking backgrounds, children with parents in a same-sex relationship and Indigenous children²³. In addition, some service providers in the community sector, including some mediators, need more education and training to work effectively with children, and some are currently managing with minimal resources in the face of increasing demand²⁴.

Separated parents often need help in focusing on, and addressing, the needs of their children, in particular those that require family mediation or the intervention of the court to resolve their differences. Child-focused interventions are those ‘that follow processes and reach conclusions that are in each child’s interests’²⁵. *Child-focused* practice in facilitated dispute resolution finds ‘the child’s voice in the absence of the child’, while *child-inclusive* practice finds ‘the child’s voice in the presence of the child’²⁶. As research continuously demonstrates, a child focus is particularly important where families experience ongoing or entrenched conflict or abuse, which is particularly destructive to children²⁷. During separation it is easy to concentrate on the needs of adults (parents and carers) and to overlook the children, or to focus on the child but not necessarily put the child in the centre²⁸.

The intention of *child-centred* practice is to keep the interests and wellbeing of children central to the process, and in order to do this ‘you have to engage with children and involve them wherever possible in issues that concern them’²⁹. In our research-based *Children and Families in Transition Report* (2006) we recommended that a range of services should be provided, with children in the centre, including child-inclusive mediation and parallel education groups for children and parents. We also established a child-centred website (ChaT First) to support and educate children and adolescents experiencing the separation of their parents and to provide information to assist parents to focus on their children’s needs³⁰.

Since the introduction of the 1995 and 2006 amendments to the Family Law Act³¹ there has been increasing pressure on legal and social science professionals to involve children in family law matters that affect them. The recent trials and evaluations of child-inclusive practices in mediation³², have encouraged court systems and community-based agencies to adopt processes whereby the voice of the child is heard³³. The increasing tendency towards compulsion to use mediation where there are parental disputes over children provide opportunities for family dispute resolution practitioners to influence the outcomes of decision-making for children and to facilitate their direct or indirect involvement in decision-making, in particular where there are allegations of family violence.

Family Violence

Family violence is significant in the population of families that attend for dispute resolution and other support services during separation and divorce and is even more likely to be present in the client population that proceeds to trial in the family court system³⁴. The needs of these families and their children are currently not being attended to in any significant way, in particular where children who are at risk of abuse fall between the national family law system and the State child welfare systems³⁵.

As family mediation has grown in popularity in Australia, feminists have been concerned that the rights of the participants could be compromised, in particular those of women and children in situations where there are structural imbalances or abuses of power³⁶. Since July 2006 separating couples have been required by law to see a family dispute resolution practitioner before a judge will hear their case, but are exempt if they can provide evidence of family violence. The definition of family violence has been amended in the FLA and the word 'reasonably' added:

Family violence means conduct. Whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to reasonably fear for, or reasonably to be apprehensive about, his or her personal well being or safety³⁷.

This change has brought criticism as the word 'reasonably' is not defined and if allegations of violence cannot be substantiated the parent making the allegation may be defined as an 'alienating parent'.

There are concerns that the 2006 changes to the Act are making it harder for women to report violence as they risk incurring costs or losing their primary caretaking role with the children if they cannot prove it. Central to family violence is the inappropriate exercise of power and control, leading to fear and intimidation³⁸. It is difficult, if not impossible, to make an objective assessment about a subjective emotion such as fear in order to say whether or not it is 'reasonable'³⁹. There are also no definitions or guidelines as to what constitutes 'reasonable grounds' to believe there has been family violence or child abuse and it is not clear what evidence is required to substantiate such grounds⁴⁰. Even where evidence can be provided, many adult victims choose to proceed with mediation, as the alternative is too costly. There is both anecdotal evidence and evidence from Cate Bank's research that since the 2006 changes to the Family Law Act some family lawyers have been advising their clients not to allege violence or abuse against their ex-partners unless there is 'absolute proof' as 'the court looks unfavourably on a parent not willing to facilitate a close and continuing relationship between the child and the other parent' (Fynes-Clinton, 2008a). It is therefore important to focus on how to enhance family law professionals' competence to effectively identify and respond to family violence to achieve safe and fair outcomes for victims, who are typically women and children⁴¹.

Family violence takes many different forms and includes physical, sexual, psychological, emotional, social and financial abuse - a mosaic of behaviours which often

occur in combination. It occurs at all levels of society and is often subtle, hard to detect as it more often than not takes place behind closed doors. In our large research study in South Australia (2000)⁴² victims said that they found it extremely difficult to leave abusive situations and found family violence hard to report for many reasons. Many thought that 'domestic' or 'family violence' was only physical; others did not want to shame their family or felt responsible for the violence and blamed themselves; some feared losing or harming their children if they reported it, or feared that they would not be believed; some still loved their partner and hoped he would change. We found that victims, who are usually women, are often isolated from family and friends, do not have enough funds to leave or to employ a lawyer, and do not know where to go for assistance. Women with disabilities, from indigenous or culturally and linguistically diverse backgrounds and from rural areas are doubly disadvantaged⁴³.

In the last decade the co-occurrence of domestic violence, child abuse and pet abuse has been recognised and witnessing violence is also now seen as a form of child abuse⁴⁴. There is increasing criticism of the risks that are taken where decisions are made for children to have unsupervised contact with a parent who is mentally ill (McInnes, 2008) or an alleged perpetrator of abuse {McInnes, 2004 #5209}. There are also escalating concerns that allegations of abuse (usually made by mothers against fathers) are often not believed in the Family Court context, in spite of evidence that allegations of child abuse are rarely false and that false denials of abuse are more prevalent⁴⁵.

Susan Gribben⁴⁶ and Andrew Bickerdike⁴⁷ point out that, in reality, family dispute resolution (FDR) services have always provided mediation to clients affected by family violence, and over the years community-based organisations have improved their capacity to provide specialist services to these clients. With the introduction of the Family Relationship Centres (FRCs) across Australia offering free dispute resolution services, however, many more people are coming for mediation and may not be aware that they are exempt from attending where there is domestic violence⁴⁸. The FRCs, along with other government-funded community-based organisations, are compelled to use a comprehensive screening and assessment framework before proceeding with mediation. The FCA, FCWA and the FMC also have family law violence strategies and there are now many written guidelines for screening procedures available to family mediators so they can detect family violence before selecting mediation as an approach⁴⁹. However the victims of abuse that we interviewed in a phone-in in the Reshaping Responses to Domestic Violence Study in South Australia⁵⁰ said that they needed to be asked *specifically* and *directly* about violence and abuse in their relationship and even then they found it difficult to disclose if the abusive behaviours and often blamed themselves. Women talked frequently about the need for non-physical forms of domestic violence to be more widely understood in the community as they themselves thought that behaviour could only be labelled as 'domestic violence' if it was physical. Most reported that the threat of violence was enough to instil fear and intimidation and that verbal abuse was the most damaging form of abuse in the longer term as it eroded their self-esteem. A very small percentage of men reported that they were victims of violence but the effects did not appear to be as damaging or long-lasting as the effects on women – more research is needed in this area.

Feminist research and practice tends to be based on the theoretical premise that women are oppressed and need to be protected. However, Kelly stresses the importance of understanding how women categorise their own experience⁵¹. Women experiencing domestic violence may not see themselves as oppressed and may choose to proceed with mediation for family law matters. Denying women individual agency and choice can further add to their oppression. Where they have left the abusive relationship and the perpetrator has accepted responsibility for the violence mediation may offer some women a welcome opportunity to

negotiate for themselves, significantly increasing their self-esteem and sense of empowerment. Thus, some mediators in Australia may proceed with mediation where violence has been identified if the victim makes an informed choice to do so and if certain conditions are in place (such as advocates or support persons for the victims, 'shuttle' mediation, two experienced mediators, strict ground rules etc) and the safety of all parties is assured. However, where the perpetrator is not accepting responsibility for the violent behaviour, or where the woman is fearful and her ability to negotiate a fair outcome for herself is likely to be compromised, litigation may be the preferred option. Much more research is needed to be sure that mediation leads to satisfactory outcomes in the short and long term in these cases⁵².

Caution needs to be exercised, however, before assuming that litigation is a preferred option for women and children who have experiencing family violence. The 2006 amendments to the Act has led many parents and some professionals to believe that shared parental responsibility means children spending 'equal time' with their parents and this has led to an increase in shared care and therefore opportunities for parental conflict and family violence. The notion that shared parenting is in the best interests of the child, now suggested by these amendments, means that judges and legal practitioners are less inclined to ask for suspension of visitation with a parent where there are allegations of domestic violence. Various research studies have identified problems for this client group within the litigation process in the Family Court of Australia⁵³. The Australian Institute of Family Studies (2007)⁵⁴ research recently found that more than half of the cases studied from both the FCA and the FMC (a total of 300 files) contained allegations of spousal abuse or child abuse (often co-existing) and the most common response was 'no response'. 'Regardless of the apparent severity of probative weight of allegations, it remained unusual for some form of contact between the child and the alleged perpetrator to be denied'⁵⁵. The researchers also concluded that many of the allegations 'were on the severe end of the spectrum'⁵⁶. They speculated that 'legal processes within a settlement-oriented family law 'culture' might inhibit the making of fully fledged allegations or responses'⁵⁷ and encourage a 'downgrading' of violence and child abuse allegations⁵⁸. These findings were confirmed in Shea Hart's PhD study of 20 Family Court judgements in one registry in cases where children witnessing family violence had been alleged and in most cases substantiated (Shea Hart & Bagshaw, 2008). The judges and professionals advising them readily excused the fathers and made the assumption that violent men could make loving fathers, blamed the mothers who tried to interfere with father-child contact to protect their children and marginalised the voices of the majority of the children involved.

Mandatory Mediation

There have been concerns about mandatory mediation in Australia as, by definition, participation in mediation is meant to be *voluntary*. In addition, whilst the values embodied in legislation or utilised in case law are public and open to challenge, claims that mediators can be 'neutral' and value free are questionable and the outcomes of mediation are private and not open to appeal or challenge⁵⁹. With the introduction of *compulsory* family dispute resolution in the 2006 amendments these concerns have come to the fore and are closely linked to the concerns about mediation where there is family violence. Mandatory family dispute resolution is most problematic when the disputant thinks that the mediator is part of the legal process and/or an appendage to the court system (e.g. in court annexed and sponsored programs) leading to uncertainty about the degree of voluntariness⁶⁰, in particular where disputants cannot afford to litigate. Litigation at least offers procedural safeguards with the fundamental principles of due process providing guarantees against oppressive or arbitrary treatment and rights of appeal offering protection against idiosyncrasy and error.

Recent changes to family law in Denmark and the United Kingdom

There are concerns across the Western world about the impact of changes to family law which increase the opportunity for shared parenting where there are allegations of family violence and child abuse. In the United Kingdom (UK) research evidence has emerged to indicate that, 'in spite of being regularly involved in childcare activities, violent fathers can continue to physically and emotionally abuse their children' and increased contact in the post-separation context can lead 'inconsistent parenting behaviour' and to fathers deflecting 'responsibility onto very young children themselves for provoking the abuse' with 'grave implications of harm for the children themselves'(Harne, 2003). In 2007, Craig published a summary of a report of a survey undertaken by the Family Justice Council in the UK to the President of the Family Division, triggered by 13 cases in which 29 children, from 13 different families, were murdered by their fathers during contact(Craig, 2007). In 5 of the 13 cases contact was ordered by the court, and in 3 of those cases, an order for contact was made by consent. The Council's recommendations included a requirement that there be a change in culture and a move away from 'contact is always the appropriate way forward' to 'contact that is safe and positive for the child'. They emphasised that there is no empirical evidence of the positive benefits of contact per se – 'it is the quality of relationships which contact supports that matter for children'. They recommended that a practice direction be issued that emphasises that child safety should be paramount, that in every case where domestic violence is alleged or admitted a process of risk assessment be undertaken by the child protection agency, CAFCASS, before a consent order is made, that there should be: multidisciplinary training on domestic violence issues for lawyers and the judiciary; that solicitors when acting for either parent should consider the safety and welfare of the child first and that feedback should be given to judges and the courts if there has been any harm to a child as an outcome of orders made (Hunt & Roberts, 2004). A Practice Direction (Residence and Contact Orders: Domestic Violence and Harm) was issued by the President of the Family Division in May 2008 which put those recommendations into effect and that now applies to any family proceedings in any court in the UK (President of the UK Family Division, 2008). 'Harm' in relation to a child is defined as 'ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another (Children Act 1989, ss 31(9), 105(1)), and the wishes and feelings of the child who have lived in a violent household have to be given appropriate weight in any decisions about parent-child contact.

In October 2008 I was invited to Denmark to address a special meeting of family lawyers who are also concerned about the increased risks for children who are being placed in the care of a parent who has a history of violence in their country (Bagshaw, 2008).

Conclusions

Since the changes to family law in 2006 there have been increasing concerns about decisions made where there are allegations or admissions of family violence, in particular where there are conflicts over the parenting of children. The emphasis on shared parental responsibility in the changes to the Act has meant that a Family Court judge or federal magistrate must now 'presume' that it is in the best interests of the child for the child's parents to have 'equal shared parental responsibility', except where there are 'reasonable' grounds to indicate a history of family violence or child abuse. This requires the court to consider instituting 50-50 shared parenting time where it is 'reasonably practicable'. This has led to residential orders being imposed in spite of the risk of harm to the children involved (Fynes-Clinton, 2008a, 2008b; McIntosh & Chisholm, 2008) and to a situation where lawyers are advising parents not

to mention family violence unless they can provide substantial evidence (Fynes-Clinton, 2008a).

It is important that professionals in the family law field critically analyse the research literature to be able to question and, if necessary, challenge concepts when they are used in family law decision-making, such as the reification of 'shared parenting' and the use and abuse of the controversial 'parental alienation syndrome'. Most importantly, all family law professionals (including judges and lawyers) should be specifically educated and trained to recognise and respond to situations where there is family violence and to understand the impact that witnessing or hearing such violence has on children. Parents and professionals need to be clear about when, and under what circumstances, concepts such as 'shared parenting' may be of benefit and for which children, taking into account their age, stage of development, cultural background, their primary attachment needs, their prior relationship with each parent, the level of parental conflict and any allegation or admission of a history of family violence. The safety of children must be given the highest priority.

Family law professionals also need education and training in order to engage in meaningful conversations with children and, where possible, engage in child-inclusive practices in order to ascertain and include the children's views of their 'best interests' in decision-making processes. It is also essential that judges, children's representatives and other legal professionals and parents are provided with information about *reliable* and up-to-date research data to ensure that children are safe and that their 'best interests' are truly served. For example, research indicates that well-run parent education groups can assist parents to understand the needs of their children during separation and divorce, the effects of their conflict and violence on the children, and the importance of listening to their voices.

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Endnotes

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² (Australian Government, 1975)

³ (Brown & Alexander, 2007).

⁴ (Kirkwood, 2007)

⁵ (Tesoriero, 2006)

⁶ (Gardner, 1999)

⁷ The Psychologists Board of Queensland disciplined a prominent Brisbane clinical psychologist in March 2008, saying that he acted unprofessionally in giving evidence about the parental alienation syndrome to the Family Court of Australia which led to a mother losing custody of her two children (Koch, 2008).

⁸ (Hawke Research Institute's Centre for Peace Conflict and Mediation, 2008, April).

⁹ (Chisholm, 2006; McIntosh & Chisholm, 2008)

¹⁰ (Kirkwood, 2007).

¹¹ Some mothers are even being forced to terminate breastfeeding early.

¹² (Solomon & George, 1999),

¹³ (Bruch, 2006) Personal emails from single parent associations in South Australia and the Northern Territory.

¹⁴ (Chisholm, 2006: 9), 9.

¹⁵ (Chisholm, 2006: 6) Chisholm (2006) 6.

¹⁶ (Australian Government House of Representatives Standing Committee Family and Community Affairs, 2003: Recommendation 7) Recommendation 7

¹⁷ Recommendation 13

¹⁸ Recommendation 15: xxi-xxvii.

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- ¹⁹ (Smart & Sevenhuijsen, 1989)
- ²⁰ (Chisholm, 2006: 7), 7.
- ²¹ (Bagshaw, 2007),
- ²² (Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, 1997; Bagshaw, Quinn, & Schmidt, 2006; McIntosh, 2000)
- ²³ (Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, 1997; Bagshaw & Chung, 2001; Bagshaw, Chung, Couch, Lilburn, & Wadham, 2000; Bagshaw et al., 2006; McIntosh, 2000b).
- ²⁴ (Australian Law Reform Commission & Human Rights and Equal Opportunity Commission, 1997); (Bagshaw et al., 2006).
- ²⁵ (Webb & Moloney, 2003:32), 32.
- ²⁶ Ibid, page 72.
- ²⁷ (Shea Hart, 2004)
- ²⁸ (Bagshaw et al., 2006).
- ²⁹ (Ridge, 2003: 5), 5.
- ³⁰ (Bagshaw et al., 2006); Website: Children and Teens First – www.chatfirst.com
- ³¹ *Family Law Reform Act (1995) Cth and Family Law Amendment (Shared Parental Responsibility) Act (2006) Cth*
- ³² (McIntosh, 2003; McIntosh & Long, 2006)
- ³³ The Family Court of Australia's Less Adversarial Trial (LAT) and innovative Child Responsive Program separately and in combination tend to focus attention on the children and enable the earlier identification of the most important elements of the evidence relating to the children's best interests (Faulks, 2008).
- ³⁴ (Kaye, Stubbs, & Tolmie, 2003; Lawrie Moloney et al., 2007)
- ³⁵ (Brown & Alexander, 2007)
- ³⁶ (Astor & Chinkin, 1992; Astor & Chinkin, 2002; Bagshaw, 1990, 1995, 1997, 2003; Bailey & Bickerdike, 2005; Kirkwood, 2007; Mack, 1995).
- ³⁷ (Australian Government, 1975)
- ³⁸ (Bagshaw & Chung, 2001; Laing, 2000)
- ³⁹ (Kirkwood, 2007)
- ⁴⁰ (Brown & Alexander, 2007)
- ⁴¹ (Bagshaw, 2003; Kirkwood, 2007)
- ⁴² (Bagshaw, 2003; Bagshaw et al., 2000)
- ⁴³ (Bagshaw et al., 2000; Salthouse & Frohmader, 2005/2005; Victorian Indigenous Family Violence Task Force, 2003)
- ⁴⁴ (Bagshaw et al., 2000; Brown & Alexander, 2007; Brown, Sheehan, Frederico, & Hewitt, 2001; Laing, 2000; Shea Hart, 2004).
- ⁴⁵ (Brown & Alexander, 2007; Brown et al., 2001; Saccuzzo, Johnson, & Keon, 2003; Shea Hart, 2003; Shea Hart, 2004)
- ⁴⁶ (Gribben, 1990)
- ⁴⁷ (Bickerdike, 2007:20)
- ⁴⁸ (Bickerdike, 2007)
- ⁴⁹ (Kirkwood, 2007)
- ⁵⁰ (Bagshaw et al., 2000)
- ⁵¹ (Kelly, Burton, & Regan, 1996)
- ⁵² (Bagshaw, 2003)
- ⁵³ (Bagshaw et al., 2006; Brown & Alexander, 2007; Brown et al., 2001; Humphrey, 2005; Rhoades, Graycar, & Harrison, 2000; Rhoades, Graycar, & Harrison, 2001; Shea Hart, 2004).
- ⁵⁴ (Lawrie Moloney et al., 2007)
- ⁵⁵ (L Moloney et al., 2007:12), 12.
- ⁵⁶ Moloney et al (2007), 11.
- ⁵⁷ Moloney et al (2007), 14
- ⁵⁸ Moloney et al (2007), 15. Rhoades et al's (2001) research indicated that the concept of ongoing parental responsibility in the 1995 changes to the Family Law Act 'created greater scope for an abusive non-resident parent to harass or interfere in the life of the child's primary caregiver by challenging her decisions and choices ...'. Their research suggested that children's welfare was being compromised in the way that allegations of violence were dealt with at an *interim stage* of court hearings. After the 1995 amendments there was an increase in the number of contravention applications brought by non-resident parents (89 per cent fathers) alleging breaches of contact orders, many without merit and 'pursued as a way of harassing or challenging the resident parent, rather than representing a genuine grievance about missed contact ...'⁵⁸. Interviews with parents in this study suggested that unsafe contact orders were being made by consent, either because mothers felt coerced by

their lawyer who advised them that this was the ‘usual’ approach of the court where there are allegations of violence at the interim stage, or they believed that the father would not agree to any other option and/or they did not have the resources to fight. (Rhoades et al., 2001)

⁵⁹ (Astor & Chinkin, 1992; Bagshaw, 1990; Scutt, 1986)

⁶⁰ (Merry, 1989)