

Child abuse, intimate partner violence, and the Australian family law system

- Child abuse and intimate partner violence are issues that need special sensitivity when raised in family law courts.
- Acts of violence can occur or worsen around the time of parental separation or divorce.
- Emeritus Professor Thea Brown of Monash University, Australia has spent over two decades closely inspecting family law courts in Australia and the issues surrounding them.
- The legal system provides special pathways for some family violence cases, but the court system largely remains problematic and slow.
- Brown voices the need for total reform of the family law court system.

Sometimes, people in a family hurt each other. Family violence is often handled by family law courts, but they have long been criticised for dealing with these serious complaints unsatisfactorily. In Australia, there have been numerous attempts to reform the legal system to improve the experience of separating and divorcing couples, especially when there is a history of violence involved, such as child abuse. The system, however, remains significantly flawed.

Family violence encompasses physical, sexual, emotional, financial, and religious violence. It can occur between partners, where it is known as intimate partner violence, or is perpetrated by parents on children, commonly known as child abuse. The most common victims are women and children. Relationships are often entangled over time and deeply complex. This enmeshment can be dangerous, with the period after parental separation being highly risky for women. The breakdown of the partnership can initiate or worsen violence.

Academics studying the legal system have repeatedly highlighted the problems and called for reform. Academics have also contributed to reviews which have led to change and reform. Despite these improvements, the court format remains mired in crisis, without successfully addressing issues such as child abuse, intimate partner violence, filicide, and domestic homicide. There are also inadequate links with supporting services. Emeritus Professor Thea Brown of Monash University, Australia, believes that the change is 'too slow, too little, and too late.'

Over the years, academics have drawn attention to the deficiencies and contributed to improvements in the family law system. The courts, however, remain bedevilled by insufficient resources, time delays, high costs, and poor understanding of the nature and dangers of family violence.

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The need for change

Brown has conducted research into family violence since 1996. Until then, the courts hadn't acknowledged intimate partner violence as an underlying issue – it was largely dismissed in society, framed as false allegations, or regarded as being a fault of the victim. Similarly, the theory of parental alienation, which has now been discounted, was used to frame, deny, and attempt to excuse allegations of child sex abuse.

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Brown's research on child abuse, intimate partner violence, domestic homicide, and filicide, coupled with her scholarly articles and books have continued to demonstrate the deficiencies of the legal system. She has also highlighted the ongoing problems with the implementation of the Magellan List. In 1999, Brown was asked to contribute to the Family Law Pathways Advisory Committee, which reported that the system was confusing and distressing. The Committee also recommended simplification and clarification of the system, emphasising the importance of education of parenting after separation and conflict negotiation.

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New legislation

The Family Law Amendment (Shared Parental Responsibility) Act 2006 established local Family Relationship Centres across Australia which were the entry point to the Family Court. The staff comprised experienced social workers and psychologists. In cases with evidence of family violence, a special pathway sometimes proceeded directly to court. In 2009, Family Violence Best Practice Principles were published. These incorporated typologies, which were developed from US studies and were supposedly gender neutral. The typologies grouped violence into categories, which were used to help determine if allegations were true or false. Additionally, the categories were leveraged for risk assessment and to aid predictions for court decision-making.

Brown studied the impact of this Act and highlighted that the principles used poor social science research; they have since been amended. Following Brown's review of the 2006 Act, she was commissioned to contribute to a review which led to new legislation. Under Brown's guidance, the law placed the child's safety as the paramount principle and provided a wider definition of violence. However, as Brown points out – some forms of violence, such as choking, stalking, and attempts of self-harm, were omitted from the examples cited.



Hope in the Lighthouse Project

In 2021, the Lighthouse Project was introduced to provide specific legal pathways where risk of family violence, substance abuse, mental illness or criminal behaviour is indicated. This legal route has a series of pre-planned steps monitored by judicial staff. The project has its advantages, such as being child-centred and giving priority to the child's needs and is a move from adversarial approaches to an inquisitorial approach. However, some previous problems persist. The project only covers the higher court, the Family Court of Australia, and omits the lower court, the Federal Circuit Court, which is where most divorce matters of parenting and property are heard. The capacity of the programme is insufficient – long wait times mean it often takes a year for a case to reach trial.

The Australian Court system has undergone several changes in legislation, policy, and procedures in relation to child abuse and intimate partner violence. Brown has published numerous critiques of the system and contributed to reform and improvements in legislation. While initiatives such as the Lighthouse Project are major steps forward in how courts deal with family violence, Brown maintains that the concerns are still alarmingly high, and results have only been partially achieved. Bringing attention to the deficiencies in the legal system for families and victims of violence, as well as contributing to reviews and recommendations, her work has led to better outcomes for families. In the years to come, Brown hopes for a broader and positive impact, which can only be realised through research and cooperation throughout the entire family law system.

Personal response

Do you have a message for victims who have been hurt by family violence?

Victim survivors of family violence must never blame themselves. They are not at fault no matter what they think, or who says otherwise. They are not the problem. The perpetrator is the problem; the perpetrator is always to blame, regardless of what the perpetrator or others say.

All the different kinds of family violence hurt and hurt a great deal; recovering can be a long process. Be patient with yourself. Victim survivors must keep fighting to recover and keep fighting for recognition of the violence done to them and for ways of addressing it, both for themselves and for others. Services can help in recovery, but the services need to be experts in family violence and to have highly trained staff. The services must be made aware of the violence done to the victim survivors and acknowledge it when working with the family. They must not overlook it.

What important messages and learnings have been uncovered through your filicide research hub?

Our filicide research hub, the Monash Deakin Filicide Research Hub, has led an international campaign to focus research on filicide and to develop policies and programmes for the prevention of filicide.

Prior to our work, little was known about filicide and how to prevent it. Research was sparse and action was uncommon. It was ignored. By instigating biennial international conferences, the Hub has

brought researchers from around the world together to follow common themes and methodologies in specialised research. Research groups from UK, Australia, Canada, USA, Japan, Chile, South Africa, Ghana, Hong Kong, the Netherlands, Austria, Italy, and Ireland are pursuing the topic.

As a result, knowledge about the incidence of filicide, of its victims, its perpetrators, their characteristics, and the circumstances surrounding the children's deaths has grown rapidly in the counties collaborating with the Hub. The Hub has shown that there are constellations of risks for perpetrators that can be identified before the tragedies and used to prevent them. The Hub's research, together with that of its international collaborators, has shown that the health and welfare services know little about filicide, do not recognise the danger to children, do not screen for it, and have no models of intervention to address it.

Using the research data, the Hub has developed separate constellations of red flags for each of the three major perpetrator groups, one constellation for mothers, another for fathers, and yet another for stepfathers, for professionals to help them recognise the potential danger for each group of perpetrators and for groups of children. In addition, it is creating more proactive and longer-term models of intervention for the services to use in working for these families.

How can friends and family help the victims of family violence?

Friends and families of victim survivors often ask how they can help. The answers are simple, but the thought of confronting family violence can frighten people. Should they intervene or not? Friends, neighbours, and family need to understand that their help is vital. Even if they have not been aware previously of the problems, they are now, and their support is the most significant action they can take. If they are close to the victim, they can stay with them to help them through their search for medical, legal, and welfare service; they can go with them to services to ensure their friend/family member and the professional in the service fully connect. Sometimes it is difficult for the victim to tell anyone just what has been happening to them and sometimes they can't easily explain. Just listening may be very helpful.

The experience and impact of family violence is a complex one and the victim survivor may not do what you expect, or think is the most helpful. This is where you must be patient and encourage the victim survivor to be careful of their own and their children's safety.

Where can a reader look for support if they're worried about these topics?

A reader looking for more information should consult books from the further readings and Brown, T, Tyson, D, Fernandez Arias, P, (2019) (ed) *When parents kill children*, Palgrave Macmillan. Readers looking for services should consult the most highly recommended specialist domestic violence services.

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Bio

Professor Emeritus Thea Brown (BA Dip Social Work, University of Sydney, PhD University of Melbourne), Department of Social Work, Monash University, is a policy researcher in the field of family violence. For the past 20 years, Thea's research has focused on family violence. Earlier research in the Family Court prompted a 10-year retrospective study on filicide deaths in Victoria, and led to the Monash/Deakin Filicide Research Hub team's desire to develop inter-country links to drive research and action on filicide internationally.

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Collaborators

- Dr Renata Alexander
- Associate Professor Danielle Tyson
- Dr Paula Fernandez Arias
- Dr Dale Bagshaw

Further reading

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