

# Australian Journal of Family Law (AJFL)

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*(editorial and articles included in this part are linked to the LexisNexis platform)*

### CONTENTS

#### Editorial

Editorial

1

#### Articles

##### [A user-focused perspective on compliance with parenting orders](#)

— *Dr Rae Kaspiew, Dr Rachel Carson, Dr Emily Stevens, John DeMaio, Dr Lixia Qu and Dr Briony Horsfall*

4

This article examines issues surrounding compliance with and enforcement of family law parenting orders on the basis of empirical data, focusing particularly on the experiences of parents and the implications for children and young people. The analysis is based on a recently completed project that surveyed parents and carers with parenting orders, as well as family law system professionals, and examined court files involving contravention matters. Two particularly important insights are highlighted in this article. First, a significant factor in problems with compliance with parenting orders is that the orders themselves have been developed in a way that does not take adequate account of the needs of the children and young people involved and the circumstances of the family. Second, the options currently available for addressing these problems are inappropriate and insufficient. The evidence considered establishes a further significant and overarching point: that problems with compliance arise in the context of especially difficult relationship dynamics that mean that the needs of the children and young people in the family require particularly careful consideration.

##### [Exploring the ‘best interests’ principle: ‘Home’ after parental separation for children and young people who have experienced domestic abuse](#)

— *Belinda Fehlberg, Kristin Natalier, Bruce M Smyth and Monica Campo*

23

This paper was first published in *Family Matters: Essays in Honour of John Eekelaar*, eds Jens Scherpe and Stephen Gilmore (Intersentia, 2022) 853–68, and prior to the introduction into the House of Representatives on 29 March 2023 of the Family Law Amendment Bill 2023 (Cth). We draw on the responses of 68 Australian children and young people participating in the first major study of the meaning of ‘home’ after relationship separation to explore how home is experienced when children spend time with a father who has perpetrated domestic and family violence and how those experiences might inform our understanding of the operation of the ‘best interests’ principle. Responses suggested the complexity of home for children spending time with fathers who had used violence, the considerable emotional work required of them to maintain those relationships, the importance of engaging with their experiences as a central aspect of the best interests assessment — along with ongoing inattention to that need, and the value of their descriptions of home in conveying a sense of what they saw as being in their best interests.

## Prenuptial agreements — What's happening?

— *Miranda Kaye, Lisa Sarmas, Belinda Fehlberg and Bruce Smyth*

38

Pre or early relationship ('prenup') financial agreements have been available in Australia for some years now, but there is still a dearth of research regarding how they are being used by lawyers and their clients. This article draws on interviews with family lawyers regarding prenup agreements, with a focus on who is using them and why, and what lawyers think about them. Key findings include that while most participants considered that power imbalance usually or often existed between the parties and was not overcome by the process of entering agreements, most also supported the continued availability of Family Law Act financial agreements — a position that, in our view, indicates the need for further legislative reform.

## The right time for rights? Judicial engagement with the *UN Convention on the Rights of the Child* in Part VII proceedings

— *Georgina Dimopoulos*

63

This article examines the use of the UN Convention on the Rights of the Child ('CRC') in judicial decision-making in proceedings under Part VII of the Family Law Act 1975 (Cth). It presents the findings of an empirical study of published judgments at first instance from 1990–2021 that refer to the CRC, offering quantitative and qualitative insights into how judges have engaged with this international convention. Two key conclusions are drawn. The first is that children's rights are not yet a way of thinking for judges in Part VII proceedings. Secondly, further judicial engagement with children's right to express their views and be heard could improve children's meaningful, safe participation in decision-making about their best interests. This article stimulates dialogue about whether, and if so, how the CRC can be incorporated more robustly into Australian family law policy and practice.

## Post-separation parenting apps: Potential benefits and risks in the context of family violence

— *Michelle Irving and Bruce M Smyth*

90

Parental separation and the subsequent management of shared parental responsibilities are well-documented flashpoints for conflict and family violence. A growing number of post-separation parenting applications ('apps') purport to help parents by improving communication and reducing conflict and stress. These apps generally comprise a messaging tool, shared calendar, expense tracker and the ability to export records. This article examines the evidence for the use of post-separation parenting apps in the context of family violence. Specifically, we review two related but disparate bodies of literature and observe that (a) research that spans post-separation digital communication, coparenting, and family violence is fragmented; (b) there is little empirical work on post-separation technology-facilitated abuse in the context of coparenting; (c) there are a range of risks that separated parents (especially women) are likely to be exposed to when using post-separation parenting apps; and (d) these risks — as well as potential benefits — need to be better understood by family law professionals and separated parents alike.