



**Exploring the impact and effect of self-  
representation by one or both parties in family law  
proceedings involving allegations of family violence:  
*Key findings and future directions***

**ANROWS**

AUSTRALIA'S NATIONAL RESEARCH  
ORGANISATION FOR WOMEN'S SAFETY  
*to Reduce Violence against Women & their Children*

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ANROWS Research to policy and practice papers are concise papers that summarise key findings of research on violence against women and their children, including research produced under ANROWS's research program, and provide advice on the implications for policy and practice.

This is an edited summary of key findings from ANROWS research "Exploring the impact and effect of self-representation by one or both parties in family law proceedings involving allegations of family violence". Please consult the ANROWS website for more information on this project and the full project report: Wangmann, J., Booth, T., & Kaye, M. (2020). *"No straight lines": Self-represented litigants in family law proceedings involving allegations about family violence* (Research report, 24/2020). Sydney: ANROWS.

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ANROWS research contributes to the six National Outcomes of the *National Plan to Reduce Violence against Women and their Children 2010-2022*. This research addresses National Plan Outcome 5—Justice responses are effective.

### **Acknowledgement of Country**

ANROWS acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and future, and we value Aboriginal and Torres Strait Islander histories, cultures, and knowledge. We are committed to standing and working with Aboriginal and Torres Strait Islander peoples, honouring the truths set out in the [Warawarni-gu Guma Statement](#).

### **Acknowledgement of lived experiences of violence**

ANROWS acknowledges the lives and experiences of the women and children affected by domestic, family and sexual violence who are represented in this report. We recognise the individual stories of courage, hope and resilience that form the basis of ANROWS research.

Caution: Some people may find parts of this content confronting or distressing. Recommended support services include 1800 RESPECT—1800 737 732 and Lifeline—13 11 14.

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# Exploring the impact and effect of self-representation by one or both parties in family law proceedings involving allegations of family violence

- It is common for people participating in family law cases to have experienced family violence.
- There is also a high proportion of people who represent themselves in family law cases.
- Little is known about experiences of self-represented litigants (SRLs) experiencing family violence and the impact on the outcomes of their cases.

## KEY FINDINGS

- There are high numbers of SRLs engaged in family law cases involving allegations of family violence. Due to the high costs of legal representation, and the eligibility tests for legal aid, the primary motivation for self-representing is financial.
- There are a number of services available to SRLs to obtain information and advice, but obtaining legal advice specific to a case—particularly ongoing, rather than once-off, advice—is very difficult.
- An SRL's capacity to present their case in the courtroom is impacted by their expectations of the process (which often don't match reality), their ability to prepare, and symptoms of trauma caused by experiences of family violence.
- There is a heavy emphasis in family law cases on paperwork and negotiations. SRLs are often unaware of this and are not equipped to complete paperwork, or to negotiate, in a way that effectively supports their case.
- Some SRL victims of family violence continue to experience violence in the courtroom and court precinct. How safe an SRL feels can impact their presentation in court, and hence the outcomes of a case. However, safety measures in the court are not always employed when they should be, and SRLs are not always aware of what is available.

## KEY RECOMMENDATIONS

- Increase access to lawyers and legal advice for SRLs. Consider how such services can better assist SRLs with ongoing litigation and with preparation and drafting of documents.
- Provide enhanced, up-to-date and practical information for SRLs in multiple formats (including face to face) and provision for languages other than English, including a centralised, authoritative website for SRLs.
- Enhance family violence expertise across key court personnel.
- Address possible system change, particularly with a view to the fragmentation of areas of law that respond to family violence. This would include reducing the complexity of family law matters, in terms of both the legislation and the process.

# The Australian family law system and self-represented litigants

The family law system in Australia is complex and can be confusing for those who are unfamiliar with it. With the exception of Western Australia, matters involving divorce, and parenting and financial disputes following relationship breakdown, are dealt with at the federal (national) level.<sup>1</sup> This occurs through two separate courts: the Family Court of Australia (FCA) and the Federal Circuit Court of Australia (FCCA), which operate with different rules and procedures.<sup>2</sup> Meanwhile, child protection, family violence protection orders and adoption are dealt with at the state or territory level.

Despite this complex system, self-represented litigants (SRLs) are a regular feature of the Australian family law system (Australian Law Reform Commission [ALRC], 2019). The high proportion of SRLs in this area is largely due to the high cost of legal representation, limited availability of legal aid, dissatisfaction with lawyers and, sometimes, choice. The extent of self-representation and the challenges it generates for litigants, as well as for the courts and professionals, have long been concerns in Australia (Dewar et al., 2000; Family Law Council [FLC], 2000; Hunter et al., 2002).

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1 Western Australia has its own family court and did not refer powers to the federal jurisdiction at the time that other states and territories did so.

2 The FCA generally deals with “more complex matters” than the FCCA, such as cases involving multiple parties, complex finances or serious allegations of abuse. The FCCA has almost the same jurisdiction in family law as the FCA and deals with the vast bulk of family law matters and all divorce applications (FCCA, 2019). Note that the courts are currently working toward harmonisation: see <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/m050419>

# Family violence in family law matters involving self-represented litigants

The Australian family law system also has high numbers of matters involving family violence. Previous studies have established that the “core” client base of the family law system is people affected by family violence (ARLC, 2019; FLC, 2009; Moloney et al., 2007; State of Victoria, 2016). The extent of self-representation and the prevalence of family violence in family law matters suggests that both of these issues are likely to occur in the same proceedings. Both alleged victims and alleged perpetrators of family violence may find themselves as SRLs.

The Australian Institute of Family Studies found that in judicially determined parenting matters, 65 percent of matters raised allegations about family violence, and that in matters resulting in consent orders after proceedings commenced, 53 percent involved allegations of family violence (Kaspiew, Carson, Qu., et al., 2015, p. 45). Parents who used the court system to resolve parenting issues reported the presence of pre-separation emotional abuse in 85 percent of cases and pre-separation physical violence in 54 percent of cases (Kaspiew, Carson, Qu, et al., 2015, p. 16).

The nature of the harm and the imbalance of power inherent in a relationship characterised by violence both influence how effectively a victim of violence is able to represent themselves in the legal process. Research also indicates that a perpetrator without legal representation can have additional opportunities to continue their abuse of the victim through the legal system, known as “legal systems abuse” (Dewar et al., 2000; Douglas, 2018; Fitch & Easteal, 2017; Kaspiew et al., 2017). This can include exploitation of the fragmented system of service and legal responses.

An extra layer of complexity is added by the fact that legal problems tend to occur “in clusters” and that dealing with these problems (such as family violence, housing, children and finances) without considering their interdependency can exacerbate them (Coumarelos, 2019; Hunter, 2011). Accordingly, SRLs may find themselves dealing simultaneously with more than one court, in different jurisdictions with different rules and procedures (Laing, 2013).

Forthcoming innovations by the FCA and FCCA, such as the Lighthouse Project (FCA, 2020), may address some of the gaps in safety and issues with case presentation currently experienced by victims of family violence who are self-represented. The focus on risk assessment, triage and a dedicated list in the Lighthouse Project is very promising for victims of family violence, whether represented or not.

# “Exploring the impact and effect of self-representation by one or both parties in family law proceedings involving allegations of family violence” by Jane Wangmann, Tracey Booth and Miranda Kaye

This research explored the challenges raised when self-representation—regardless of the reason, and at any point in proceedings—and family violence co-occur in proceedings in the FCA and the FCCA.

The study centred on two key components:

- the general interview sample: semi-structured interviews with 35 people, most of whom had represented themselves, with a small number of these participants also facing an SRL in family law proceedings; and 68 professionals who engage with SRLs involved in family law proceedings
- an intensive case study that examined individual cases where one or both parties were self-represented, involving:
  - observation of over 500 court events (of which almost half involved SRLs), including short matters, interim hearings and trials, at eight court sites in three states
  - 14 interviews with people involved in 12 of the observed cases (SRLs and/or the legal representative representing the other party and/or the Independent Children’s Lawyer [ICL])<sup>3</sup>
  - examination of 180 court files related to these cases.

The focus on SRLs necessarily means that the research has concentrated on litigation. It does not capture, therefore, those people who may resolve their cases outside of court either privately or by Family Dispute Resolution (FDR), or simply walk away precisely because they do not have legal representation or because of the presence of family violence.

Quotes appearing in this paper come from the interviews carried out as part of the research, and also appear in the full report. Pseudonyms are used for SRLs, and the designation J is used for judges, and L for lawyers.

See [anrows.org.au](https://anrows.org.au) for the full report.

<sup>3</sup> ICLs can be appointed by the court to represent the interests of a child who is the subject of a family law dispute: see s 68L of the *Family Law Act 1975* (Cth).

# Key findings

## There are high rates of self-represented litigants who experience family violence

Eighty-two per cent of SRL matters observed in the case study involved allegations of family violence. In the general interview sample, almost all SRL participants alleged being subjected to family violence by their partner prior to and after separation, with a number also making allegations about partners abusing or neglecting children. A small number of interviewees also faced allegations of family violence. While there were some similarities in the experience of violence reported by men and women, the women were more likely to report multiple tactics of abuse and gendered forms of violence (for example, strangulation and sexual violence), which often intersected with concerns about their children.

Consistent with previous literature, the observations showed that SRLs were slightly more likely to be male and to be respondents (i.e. they did not initiate the matter), and to appear in child-related matters. However, the women SRLs were more likely to report experiencing violence.

## The main reason for self-representation is financial

This research confirms findings of earlier studies that SRLs report a number of key motivations for self-representing. In this study:

- The principal motivations were financial. To have representation, either you must be eligible for legal aid, which involves a strict means and merits test, or be able to afford legal representation on an ongoing basis—not only is this costly, but costs can increase rapidly and unpredictably. Many of the interviewed SRLs fell into the substantial gap between these options.
- To a lesser extent, SRLs self-represented due to dissatisfaction with their lawyers' performance or, more generally, did not trust lawyers.
- SRLs felt best placed to tell their own story.

Women and professionals also reported alleged perpetrators self-representing in order to harass the woman, or because of arrogance or rejection of legal advice. Female interviewees also identified strategies used by their former partners to deplete their funds and force self-representation (for example, if a woman had representation, the former partner would fail to turn up to court on days the woman attended with her lawyer, or would bombard the lawyer with correspondence that the lawyer had to respond to).



## Resources and services available to assist self-represented litigants aren't currently meeting their needs

### Obtaining legal information and advice is difficult

While there are a wide range of resources available to assist SRLs, both written and face to face, there are two key issues with them. Firstly, there is no centralised, authoritative source that groups written information together for SRLs.<sup>4</sup> Secondly, it is usually “legal information” provided, which focuses on procedural steps (i.e. what the law is, what forms to fill out, how to conduct litigation), rather than “legal advice” about an individual matter (i.e. how to achieve goals, prospects of success) or assistance in applying general information analytically to a specific case.

The most commonly accessed resources were:

- lawyers—including private, Legal Aid and community legal centre lawyers
- the relevant court website (FCA or FCCA)
- court or registry staff
- the Commonwealth Courts Portal (an online service for filing and accessing documentation, and seeing information about past and upcoming court events)
- other websites, including online forums and Facebook groups (often for examples of documents and how to behave at court).

Across the interview cohort, SRLs held mixed and often contradictory views about the resources that they used, reflecting their different circumstances, needs, expectations, skills and understanding of the legal system. This indicates a strong need to provide an array of resources pitched at different levels.

### Duty lawyers provide the most valuable assistance in court

Duty lawyer services are one of the most accessed and useful services provided to SRLs in family law proceedings. Duty lawyers provide advice to unrepresented people whose matters are listed in court that day. Depending on available resources, they may also present the matter in court, provide advice on forthcoming matters, assist with the completion of documents, assist in negotiations, and explain proposed consent orders. The Family Advocacy and Support Service (FASS) is the first holistic service targeted at SRLs with matters involving family violence that combines duty lawyer services with support workers for men and women. In interviews, professionals emphasised this holistic approach as critical to FASS's success.

However, despite duty lawyers being identified as the best resource for SRLs, the workload of courts and other resourcing constraints mean that duty lawyer services may not be able to serve every SRL, particularly in rural and regional areas. This is particularly true for FASS.

<sup>4</sup> The Family Violence Law Help website (<https://familyviolencelaw.gov.au>) provides a good model of a resource that successfully combines family violence with other areas of law.



Additionally, both FASS and duty lawyer services more generally are focused on the front end of litigation; there is an absence of services for ongoing litigation. Without ongoing legal advice, SRLs need to analyse any information and advice they receive, apply it to their own legal argument or strategy, and adapt to changing circumstances. This process requires legal reasoning skills.

## A self-represented litigant's performance in the courtroom is impacted by their expectations, capacity to prepare and trauma

### Expectations

There was general agreement between SRLs, professionals and judicial officers that SRLs' expectations of court events and process do not align with reality. SRLs do not understand how the process works, what can be realistically achieved or how long it will take. They expect:

- to tell their story to the court and have the space to talk about violence
- to have their matter finalised at the first court event or at least quickly
- that the orders they seek are reasonable within the legislative framework
- that they will achieve what they perceive as “justice”.

### Preparation

SRLs' preparation for and performances in the courtroom were mixed. On a fundamental level, SRLs face challenges knowing where to sit, when to stand and when to speak; and how to address the court, and what can and cannot be said.

On a more complex level, SRLs are expected to know and comply with the relevant law and rules, including rules of evidence, and determine their own litigation strategy at each court event. Most SRLs do not have capacity to prepare in this way.

### Trauma

Family violence and resulting trauma impacted negatively on SRLs' capacity to present their case in the courtroom. SRLs reported that it was difficult to control their emotions. According to Jenny:

It doesn't matter how scared you are, it doesn't matter if you are in trauma ... I was told by the judge ... because I broke down in court ... “This is not a therapy session, this is a court of law”.

Fear and anxiety were exacerbated by the proximity of the alleged perpetrator. Lydia explained that being close to her abuser was hard: she knew that “he's not going to jump up and hit me—yes, the front part of my brain knows that ... [but] the back part of my brain is like run, run!” Jenny agreed: “The fear of just being in the same room as somebody who wants to kill you overshadows everything”.

## Self-represented litigants struggle to complete critical documentation and do not recognise its importance

A lot of self-representeds don't understand, it's document-based and it's not what flourishing speech you can give from the bar table like they see on television. It's what's in the documents. (L22)

In our courts... for most times, you don't get to speak much to the judge. It's based on the paperwork that you put in. (L11)

Paperwork is critical in family law proceedings and SRLs in this research often did not know this. SRLs found preparing documentation challenging: it took time to identify the correct forms and to understand the requirements for each document. The general interview sample and examination of court files revealed that a number of SRLs had their documentation rejected by the court due to errors in presentation, content or length, or for omissions.

SRLs' confidence, language and literacy skills, computer literacy and access to technology, knowledge of the law and access to legal assistance all influenced the quality of their paperwork. For SRLs who had experienced family violence, completing the documentation was impacted by the emotional and psychological toll of the experience of violence and the requirement to relive that experience in paperwork. Compounding and intersecting disadvantages, such as mental health issues, disability, homelessness or incarceration, also greatly affect an SRL's capacity to complete paperwork.

The technicalities of the paperwork mean that SRLs often do not get the requisite evidence in front of the court. For example, very few SRLs issued subpoenas, which can perform a critical role in presenting evidence about violence (such as police and child protection agency records) to the court. Many SRLs struggled to document violence in a form that the court could consider. One judge commented:

If you prepare your affidavit in a way that the evidence is admissible and compelling, then it's going to be given weight ... In terms of family violence, that's the biggest failing I see, it's the inability of self-represented litigants ... to articulate the violence. (J14)

These obstacles jeopardise the quality of the evidence that an SRL presents to the court and the information available to the judge—and, thus, the ultimate outcome in the case.

## Self-represented litigants do not appreciate the centrality of negotiations and are not well equipped for them

The family law system encourages settlement by parties. Negotiations, then, are a central and expected part of the family law process and can occur at all stages along the litigation timeline. There is surprisingly little information about this negotiation process and many SRLs come to court not expecting to negotiate and not knowing how to do it.

Some of the SRL women interviewed reported that their lawyers or other professionals advised them against including information about family violence. Grace was told, "Don't go there ... My lawyer's advice has been ... don't give the perception of conflict".

An SRL's ability to negotiate is impacted by what they seek, their mental health, whether they have obtained advice prior to attending court, how well they understand the law and legal terms, and the distance between the positions of the parties. Several professional and judicial interviewees talked about SRLs lacking a “reality check” when they do not have legal representation. That is, there is no one to advise on whether what an SRL is seeking is reasonable, or of the risks of continuing with the litigation.

Some SRLs reported being pressured by the judge and lawyers to participate in negotiations and to settle. For example, Lydia, who reached a consent order, described that the pressure she felt to settle made her feel that she was “basically at gunpoint”. She reported that the judge was frustrated and said to her and her former partner:

I have read all the materials, why haven't you settled, why haven't you settled this yet? Why haven't you guys negotiated an outcome? I'm sick to death of people who won't negotiate. Get out there and negotiate or I'm just going to flip a coin.

Legal professionals noted that some victims of family violence may agree to orders that are unsafe or unsatisfactory because that has been their mode of dealing with the perpetrator to “keep the peace”, or they simply “give in” because they do not want to deal with the perpetrator in court anymore, or have been worn down by the court process.

## Feeling unsafe can impact a self-represented litigant's case, however, safety measures in the court are not always employed when they should be

Safety measures offered by the federal family courts, such as safe rooms, separate entry and exit points, security, and alternative means of participating in court events, are important safeguards against violence and abuse by perpetrators of family violence. These measures are, however, not available at all family law courts, and in many cases SRLs, by the simple fact of not having legal representation, are unaware of what is available. Efficacy of safety measures depends on victims being aware of and requesting them (with some measures requiring requests prior to attending court), and legal and other professionals at court implementing them as appropriate.

Even where measures are in place, fear, or experience of intimidation and abuse within a court building, may affect the capacity of SRLs to effectively conduct their case. Many SRLs felt particularly vulnerable in common areas such as waiting rooms. Anna said her former partner would purposely “walk over and stand above me, just to intimidate”. Joanne's former partner would “mouth absolute abuse” at her as she walked past the waiting areas to reach the safe room.

Having a safety plan and access to a safe room did not necessarily make SRLs feel safer at court. Joanne said that when she was in the safe room, her former partner would repeatedly walk past and look in to intimidate her; security eventually had to tell him to stop. Jenny pointed out that the protection offered by security ends at the courthouse door: “They don't take you outside, just to the door”. This gave her former partner an opportunity to say threatening things to her as he drove past.

Danielle said that each time she applied to speak to a duty lawyer, she ticked “yes” in response to the question “Do you feel unsafe in the court?” Yet, no one picked up on it or asked her about safety concerns.

## All participants felt that outcomes were impacted by a litigant self-representing

Overwhelmingly, participants in this study (SRLs and professionals) felt that SRLs were disadvantaged in a system premised on a model of legal representation. Many professionals considered that SRLs generally achieve poorer and less child-focused outcomes. According to one lawyer, being an SRL is “just an inherent disadvantage from the start”, and that disadvantage permeates every step of the process and “obviously affect[s] the outcome” (L2). Poor or unsafe outcomes may result from a lack of evidence or poor-quality evidence presented to the court. The absence of this material makes it difficult for the judge to take account of allegations of family violence in the assessment of risk.

SRLs whose matter was finalised at the time of the interview were dissatisfied with the outcomes, often due to safety concerns. Common reasons for final orders being unsatisfactory were:

- They were made via consent orders that may have been a result of bullying, fear, pressures or encouragement to settle, or the need to placate the alleged perpetrator.<sup>5</sup>
- There was a lack of understanding about what can be sought as part of an order (particularly in relation to addressing safety concerns).
- There was a lack of understanding of the orders that had been agreed to.
- There was a lack of understanding of the practicalities of the orders, or their enforceability.

These issues can all be underlying reasons why an SRL may later contravene an order, or be unable to enforce it.

In Robyn’s matter, her former partner’s barrister did all the talking when the interim consent minute was handed up to the judge. Robyn was disappointed in the lack of discussion about the agreement:

The judge ... said, “Do you understand that [a term in the proposed order]?” I said, “Not really” because I’d asked his barrister all day, about three times, “What does [that clause] mean for the children?” And she just didn’t answer me again. At one point she said, “I’ll have to clarify with my client”, but she never came back to me and told me. The judge ... asked me, “Do you think you will be able to sleep with these orders?” and I said, “No I don’t think I will”. There was no other question asked ... to be honest, I was completely bamboozled and I had no idea, I did not understand the process at all.

The interim order was made despite Robyn’s lack of understanding and her expressed discomfort.

<sup>5</sup> A clear dissonance emerged between what judicial officers described as their practice scrutinising consent orders and what SRLs (particularly women victims of violence) expressed about the consent orders reached in their matters. This may be for a number of reasons, but confirms the need behind the Family Law Council’s call for further research into consent orders in matters involving family violence (2016, p. 11; see also pp. 156-157).

# Implications for policy and practice design

The high number of family law cases involving both family violence allegations and self-representation indicates a pressing need to attend to safety issues and bring a “family violence lens” to the conduct of family law proceedings. Legislative and policy responses need to contend with the complex needs of SRLs, with careful attention paid to the specific needs of SRLs who experience family violence.

The key areas of focus identified through the research are:

- safety—that is, awareness of safety plans, safety in the courtroom (for example, alternative mechanisms for giving evidence), use of trauma-informed practice, and safety of parenting orders
- addressing legal needs over the whole course of litigation
- assistance with completing documentation—the primacy of paperwork in the family law system means well-targeted assistance could make a difference to the articulation of an SRL’s case, the nature of the decision made, and the outcomes achieved
- expanding FASS or similar holistic supports.

Some ways forward in terms of achieving these are as follows.

## FOR POLICYMAKERS

- Increase access to lawyers and legal advice for SRLs, in particular by expanding FASS to a greater number of locations. Consideration of how such services can better assist SRLs with ongoing litigation, and assist with the preparation and drafting of documents, is needed. Access to professionals who explain final or consent orders would also be useful.
- Provide enhanced, up-to-date, and practical information for SRLs in multiple formats (including face to face) and provision for languages other than English. There is a need for a centralised, authoritative website for SRLs (perhaps maintained by National Legal Aid or the federal Attorney-General’s department), which also accounts for the different needs of SRLs in Western Australia. This should include information about negotiation.
- Address possible system change, particularly with a view to the fragmentation of areas of law that respond to family violence. This would include reducing the complexity of family law matters, in terms of both the legislation and the process (for example, SRLs could be consulted in the design of administrative forms).

## FOR COURT PROFESSIONALS

- Deliver training and education for legal professionals on SRLs and family violence. This would be particularly effective if run by those with expertise in addressing and responding to family violence, and if examples of good practice were used as an educative tool. Best practice guidelines for legal professionals on ethical engagement with SRLs could be developed.

- Increase family violence expertise across key court personnel, particularly security officers who are implementing safety plans.
- Integrate information about safety into routinely accessed documents in order to raise awareness about available services. For example, include information about safety measures and safety planning on all administrative forms and in all communication formats for SRLs.
- Provide holistic case management and referral pathways.

# Further reading

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