

Unpacking Family Law: Reforms, Family Violence and Parental Alienation

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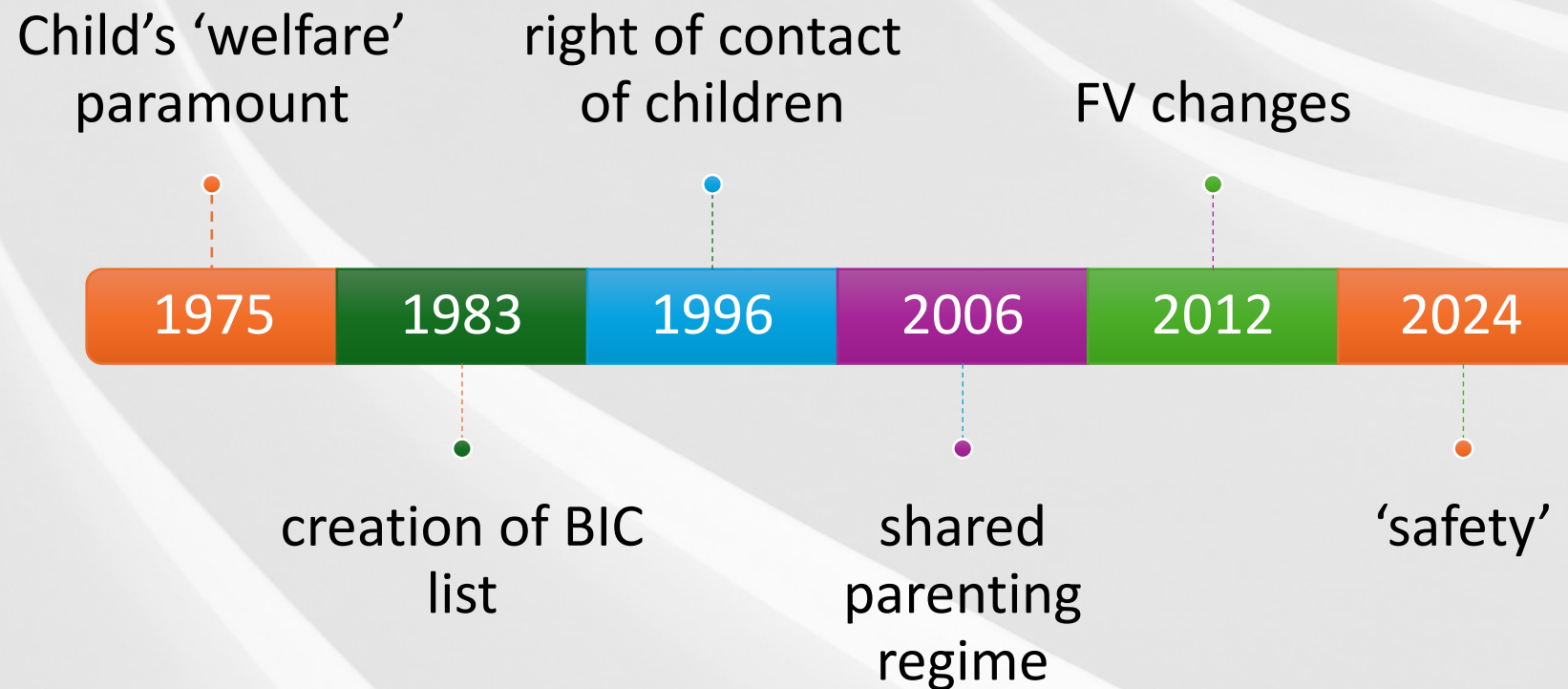
March, 2025

Acknowledgement of Country

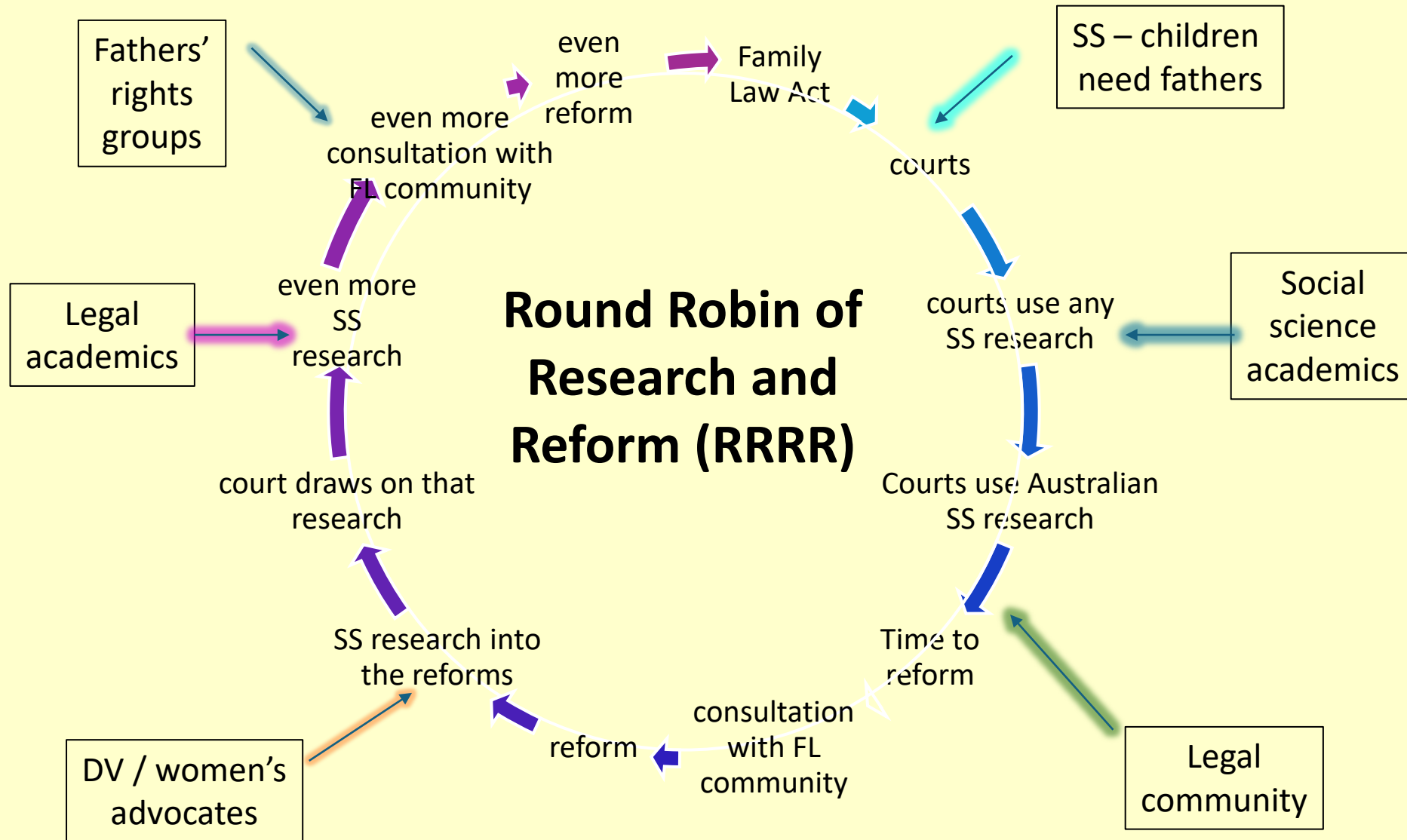


I acknowledge the Traditional Custodians of the
Lands throughout this country we call Australia and pay
respects to their Elders past and present. I also
acknowledge all First Nations people present with us today.

Times of Major Change



The Only Constant is Change



1983 first best interests of children (BIC) list

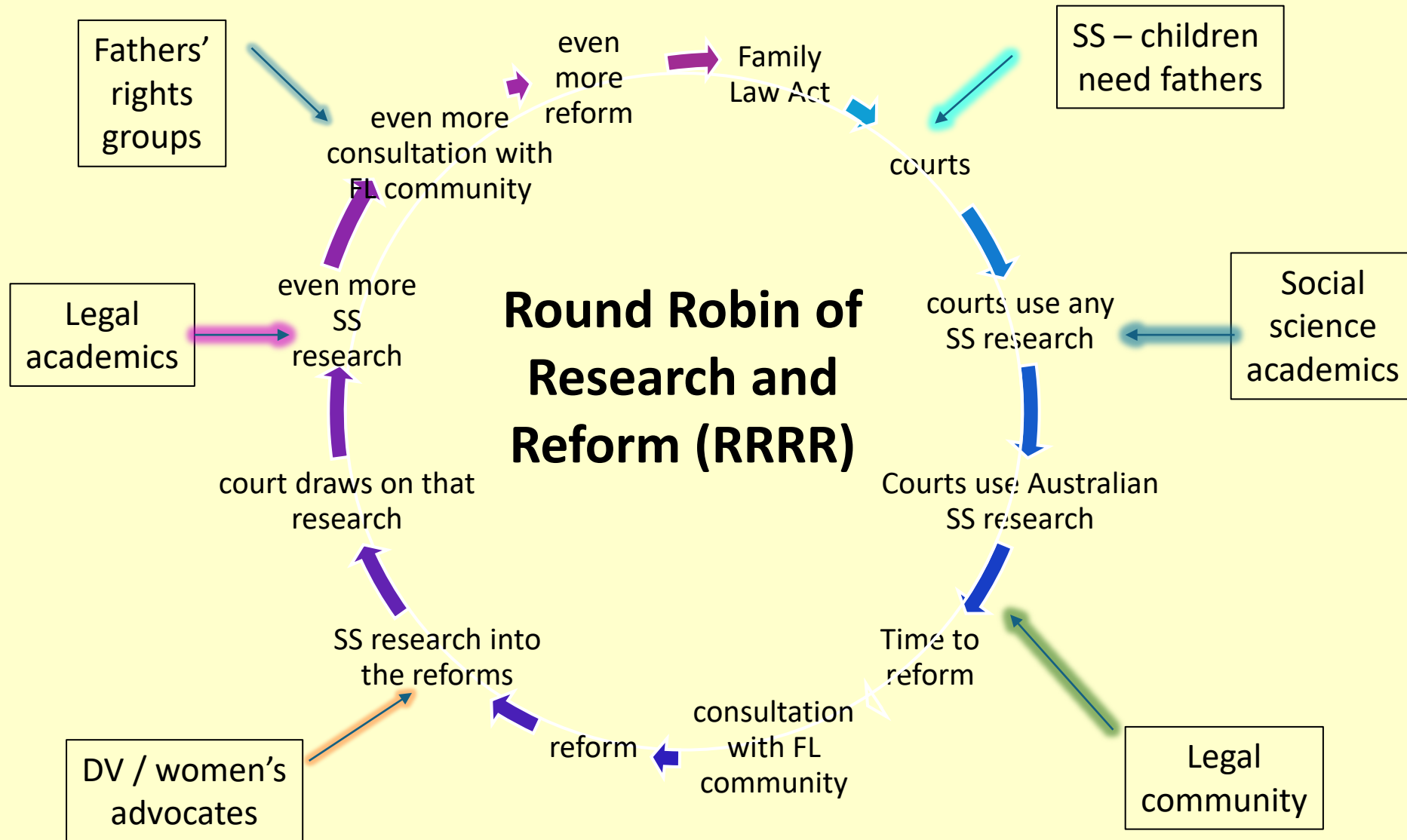
s 64(1)(a) the **welfare of the child paramount**

s 64(1)(b) the court shall consider **any wishes expressed by the child ...** and shall give those wishes **such weight as the court considers appropriate**

s 64(1)(bb) BIC factors list:

- the **nature of the relationship of the child with each of the parents of the child ...**
- the effect on the child of **any separation** from either parent of the child [or other person]
- the desirability of, and the effect of, **any change** in the existing arrangements
- the **attitude to the child**, and to the responsibilities and duties of parenthood
- the **capacity of each parent**, to provide adequately for the needs of the child, including the **emotional and intellectual** needs of the child
- **any other fact or circumstance ...**

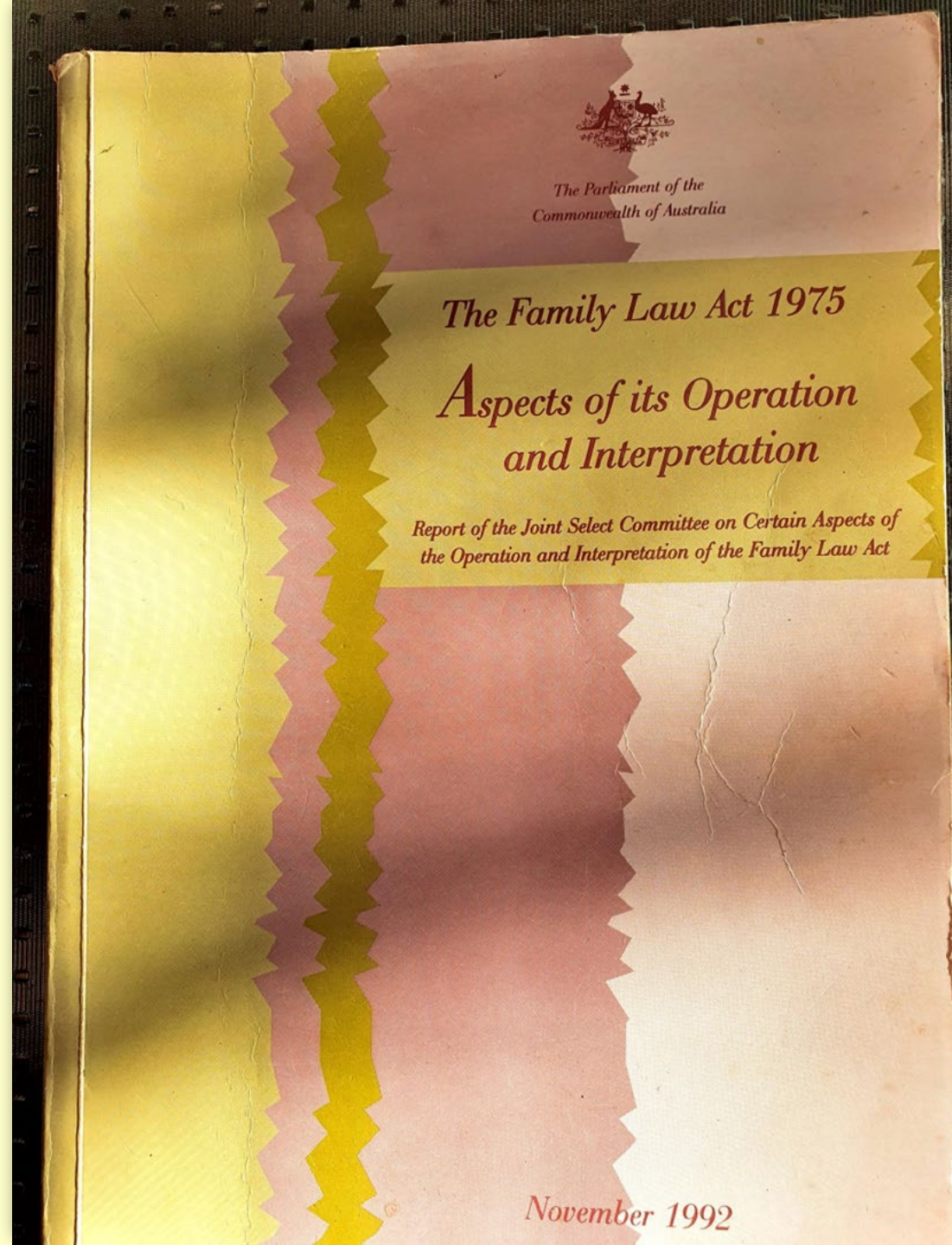
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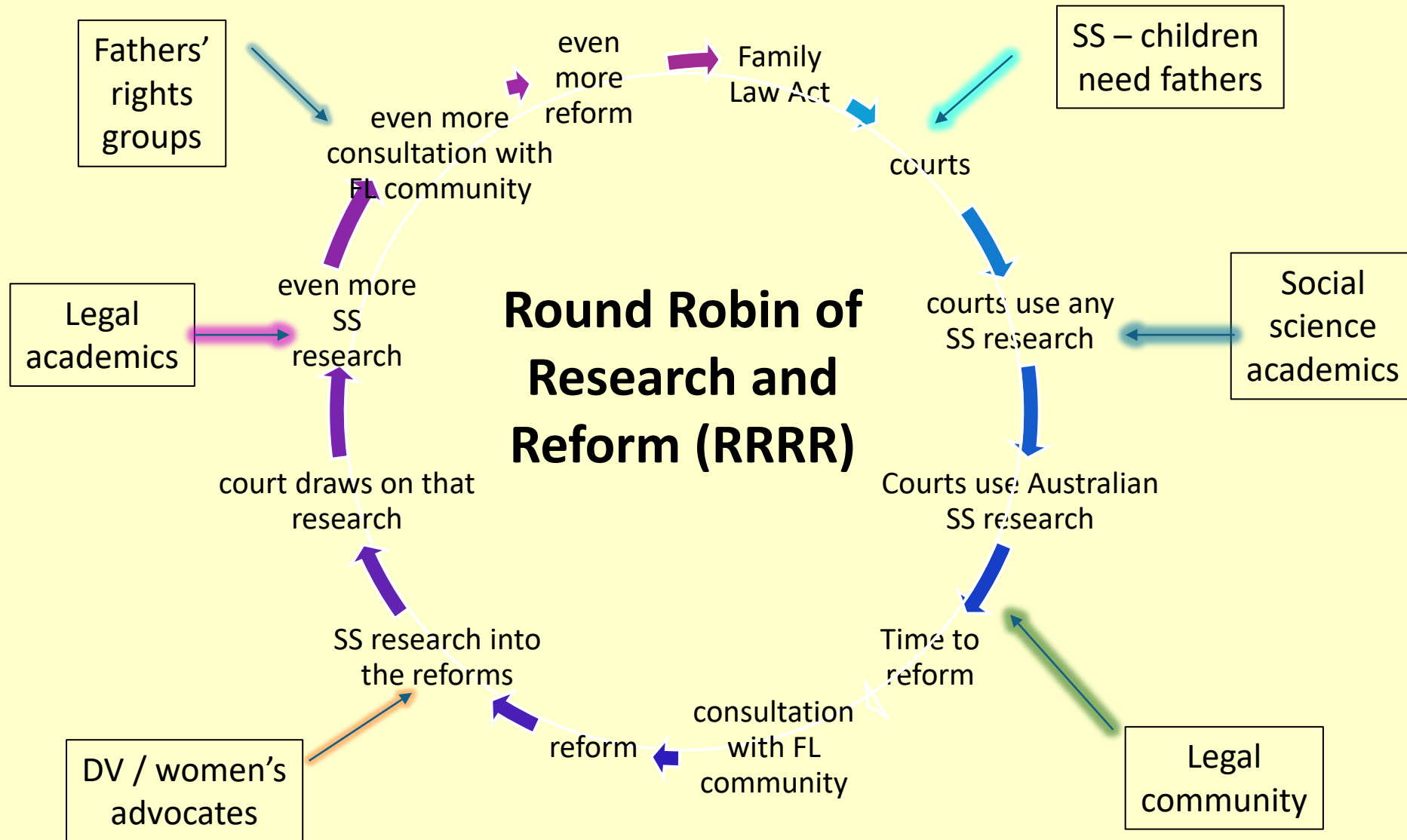
Family Law Reform Act 1995 – Principles – s 60B

... except when it is or would be contrary to a child's best interests:

- children have a right of contact, on a regular basis, with both their parents**

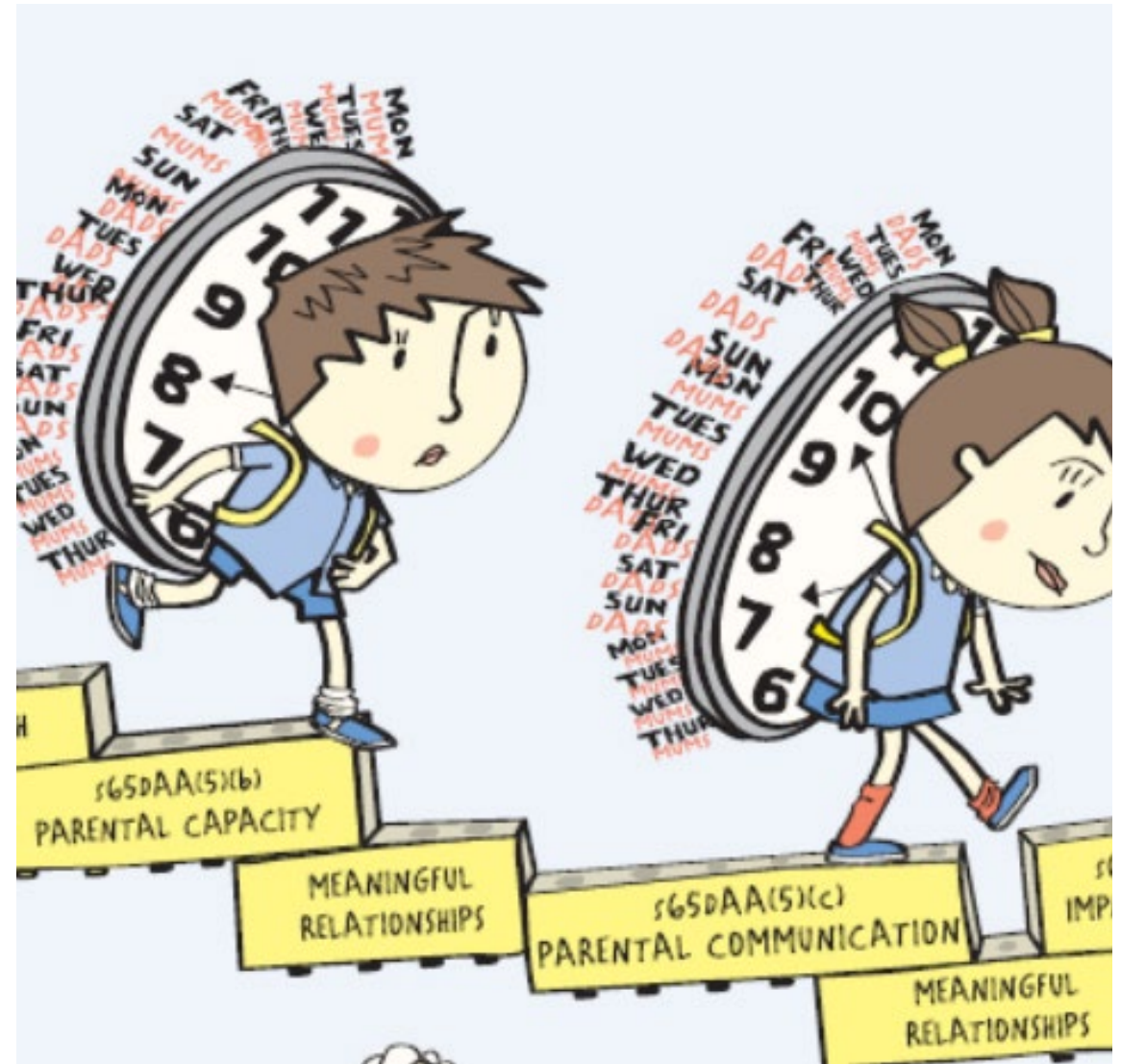


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2006 Shared Parenting Reforms

- **Rebuttable presumption** that equal shared parental responsibility in the best interests of children
- Two **primary BIC** considerations:
 - **Meaningful post-separation relationships** between both parents and children that **benefit**
 - **Protection from harm**
- When ESPR granted – court **MUST** consider **equal time or lots of time**
- s 60CC(3) – **13 ‘additional’ BIC** factors



The Presumption of ESPR **Does Not Apply** if Reasonable Grounds to Believe FV or Child Abuse

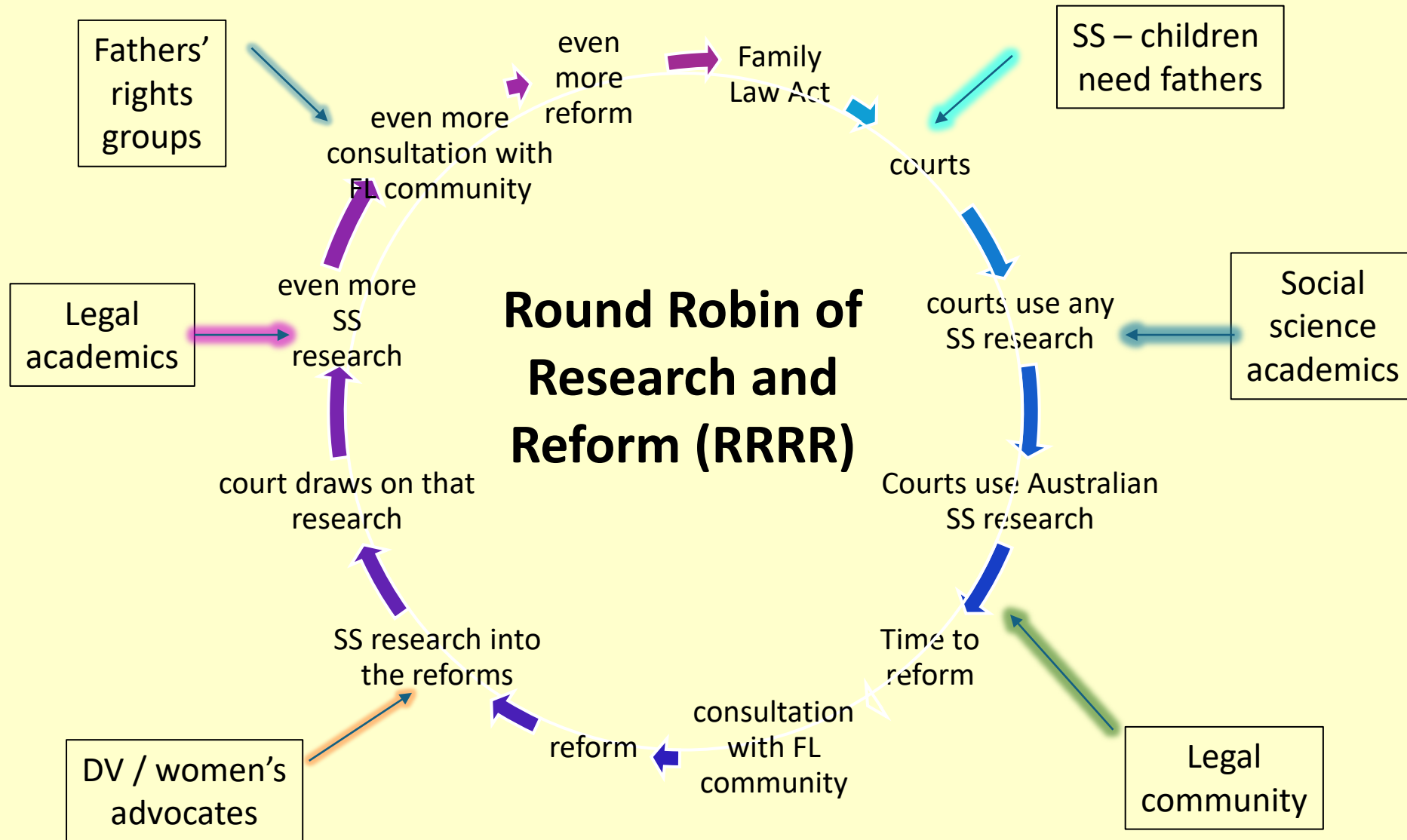
ESPR Orders Made post 1 July 2006 - (consent and judicially determined)

	FV and CA alleged	FV only	CA only	No allegation
ESPR	75.8%	79.6%	71.9%	89.8%
Sole to mother	14.0%	18.5%	18.0%	4.9%
Sole to father	4.0%	1.0%	4.4%	1.8%
Other	6.3%	0.9%	5.6%	3.4%

Table 8.7 – Kaspiew, (AIFS, 2009)

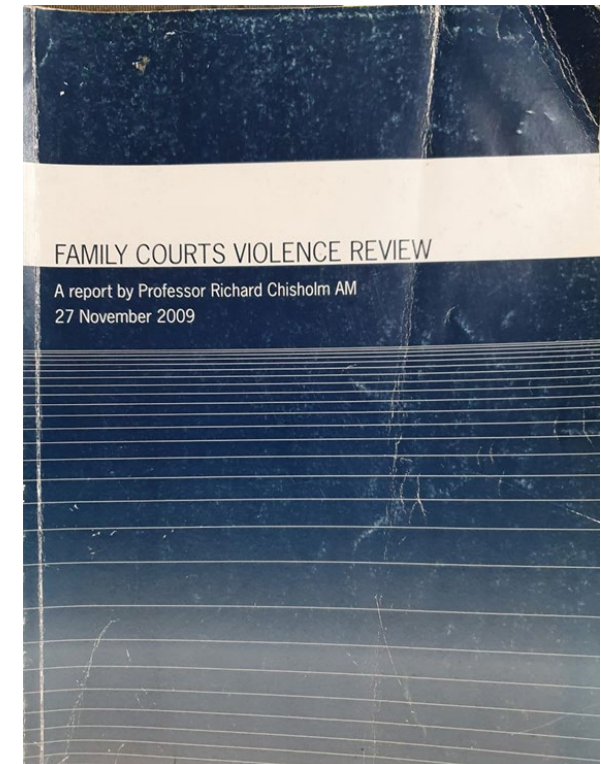
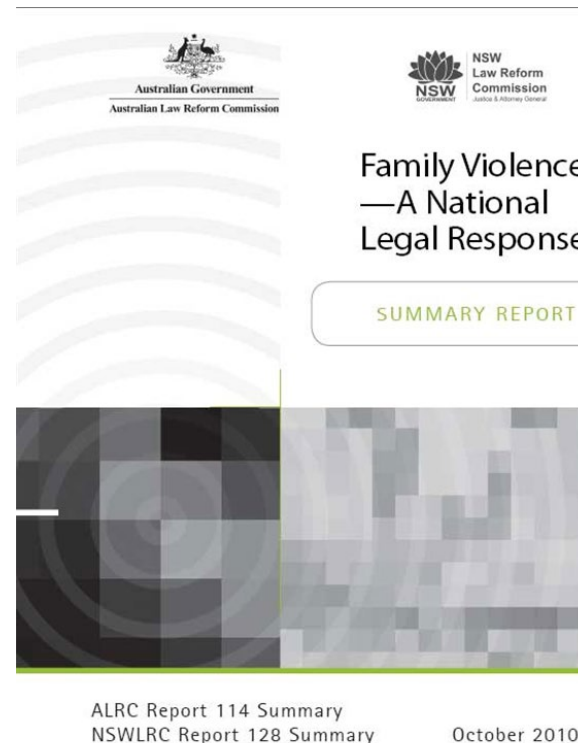
FV = family violence
CA = child abuse

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Family Violence Amendments - 2012

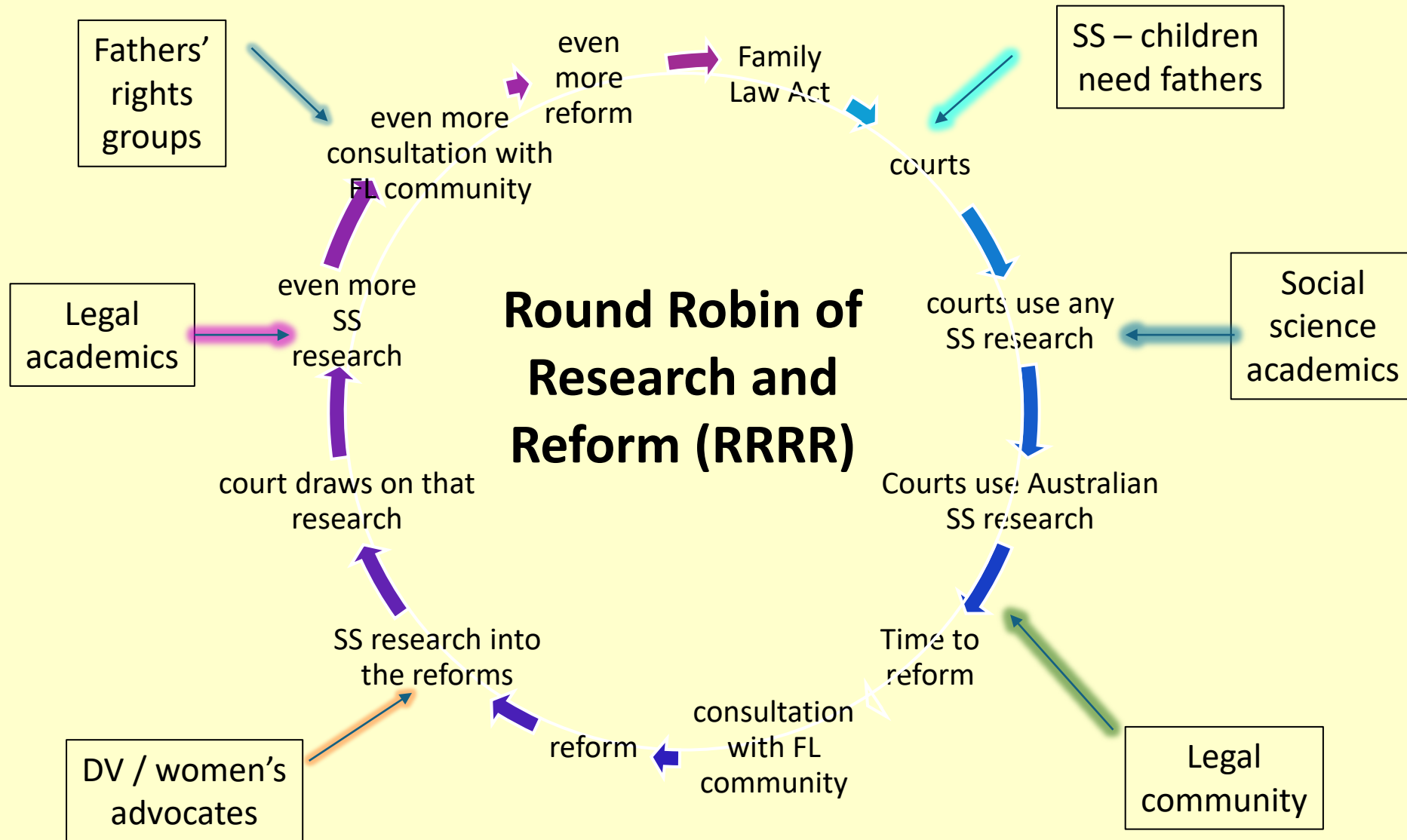
- New primary considerations 60CC(2A) - greater weight to protection from harm than benefit of relationship
- Repeal of the 'friendly parent' provision
- New definition of 'family violence'



Just a few more Inquiries ...

- Special Taskforce on Domestic and Family Violence in Qld, *Not Now Not Ever* (2015)
- Royal Commission into Family Violence in Victoria (2016)
- House of Reps Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence*, (Dec 2017)
- Australian Law Reform Commission, *Family Law for the Future: An Inquiry into the Family Law System* (2017 - 2019)
- Joint Select Committee on Australia's Family Law System (2019 - 2021) - Hanson

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Family Law Amendment Act 2023



Family Law Amendment Act 2023 Key Reforms

Repeal of the presumption of equal shared parental responsibility

Repeal of equal and 'substantial and significant' time provisions.

Repeal of 'primary' & 'additional considerations

Replaced by list of six BIC factors

Attempts to deal with systems abuse

New term 'joint decision-making'

Provisions for First Nations children


Some Key Impressions

- Much easier to read / understand the published judgments
- Easier to explain to clients?
- All options on the table – ESPR and equal time are not the default
- Does this mean victims of DFV do not need to justify why they do not want to agree to ESPR and lots of time
- Best interests of children are still paramount – s 60CA
- The definition of FV has not changed
- Pre-reform case law still relevant on many issues

s 60CC(2) BIC Considerations

- a) what arrangements would promote the **safety** (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of:
 - (i) the child; and
 - (ii) each person who has care of the child ...;
- b) any **views** expressed by the child;
- c) the **developmental, psychological, emotional and cultural needs** of the child;
- d) the **capacity** of each person who has or is proposed to have **PR** for the child **to provide** for the child's developmental, psychological, emotional and cultural needs;
- e) the **benefit** to the child of being able to have a relationship with the **child's parents**, and **other people who are significant** to the child, where it is **safe** to do so;
- f) **anything else** that is relevant to the particular circumstances of the child.

**NB: Safety comes first but
not given greater weight**



Additional
sub-section
added later

s 60CC(2A) In considering the matters set out in paragraph **(2)(a)**, the court must include consideration of:

- (a) any **history of family violence**, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and
- (b) any **family violence order** that applies or has applied to the child or a member of the child's family.

Statutory interpretation
and case law ahead



TRIGGER WARNING

Parenting responsibility / decision-making

Some new sections

s 61CA Consultation between parents on major long-term issues

If it is safe to do so, and subject to any court orders, the parents of a child who is not yet 18 are encouraged:

- (a) to **consult each other** about major long-term issues in relation to the child; and
- (b) in doing so, to have regard to the **best interests of the child** as the paramount consideration.

s 61DAA Effect of parenting order ... for joint decision-making about major long-term issues

If a parenting order provides for **joint decision-making** by persons in relation to ... major long-term issues ... then ...the order is taken to **require** each of the persons:

- (a) to **consult each other** person in relation to each such decision; and
- (b) to make a **genuine effort to come to a joint decision**.

Two cases on PR

***Laing & Raimondo* [2024] FedCFamC2F 637**

Brown J

Significant discussion of new sections on PR

Connected concept to child's 'emotional integrity' to order for PR

Sole PR to mother but 'subject to the condition that she shall notify [the father] of all major L/T decisions' 28 days before required to be made except for medical emergencies which must be notified forthwith

***Traverso & Traverso* [2024] FedCFamC1A 225**

Aldridge J

s 61CA – aspirational and not directed to the court

Safety + History of FV: s 60CC(2)(a) and (2A)

Eastling & Pariser [2024] FedCFamC2F 815

Burt J - Excellent judgment for application of new Part VII

Relocation – Mother wanting to move from Melbourne to regional Qld with new partner – 3 kids – 14 years and twins aged 11 - History of FV – but kids see father regularly

79. The Explanatory Memorandum indicates further that “*other harm*” allows me to consider whether these children are affected by issues such as **inter-parental conflict**.

Orders

The mother to make sole decisions relating to major long-term issues concerning medical, psychological or allied health assessment and treatment for the children ...

The parties make joint decisions in relation to all other major long-term issues

Mother permitted to relocate with children – generous time with father

Trudeau & Andrewson [2025] FedCFamC1A 26

Appeal against an interim order giving father supervised contact until the final hearing: Aldridge, Wilson and Campton JJ

- Unhappy that mother's case seemed to be an 'exegesis' of what she asserts the law to be now - not the task of the Court to provide an advisory opinion on matters not raised in the appeal
- The mother wrongly submitted that the correct interpretation of this subsection meant that a trial judge was obliged to make **orders that ensured the children were safe. That is not so.** Rather the Court must consider what arrangements would **promote the safety** of the children and any person with caring responsibility.
- The risk of emotional harm to the children is very relevant to the question of safety.
- Apply principles set out in *Isles & Nelissen* (2022) FLC 94-092

Isles v Nelissen [2022] FedCFamC1A 97

- As prospective events, risks 'are capable of classification in only one of **three mutually exclusive categories: possibilities, probabilities, or certainties.**
- ... courts should (and do) react to dangers in the form of **risks of harm which may merely be possibilities, it is an oxymoron to expect such possibilities to then be forensically proven on the balance of probabilities**
- Whether or allegations of abuse are proven on the balance of probabilities and whether or not there is an unacceptable risk of harm are 2 separate questions that should not be conflated
- Range of facts and circumstances available to trial judge here, including some unproven allegations of abuse as well as father's sexual interest in other adolescents and child exploitation material).
- **The assessment of risk is an evidence-based conclusion and is not discretionary. The finding about whether an unacceptable risk exists, based on known facts and circumstances, is either open on the evidence or it is not. It is only the overall judgment, expressed in the form of orders made in the children's best interests, which entails an exercise of discretion.** That discretionary judgment is influenced by the various material considerations enumerated within s 60CC of the Act, of which the evidence-based finding made about the existence of any unacceptable risk of harm is but one.

Melounis v Melounis (No 4) [2024] FedCFamC1F 778

135. The former provisions focused on *protection from harm*, whereas the current provisions focus on *promotion of safety*.

141. The **legislature must have intended there to be a distinction** between the former provisions, which focused on protection from harm, and the current provisions which focus on the promotion of safety, otherwise the amendments would lack utility.

- Looked at dictionary definitions of ‘promote’ and ‘safety’



159. Pending guidance from the Full Court, this Court believes that the **amendments require a more nuanced, proactive and future-focused approach to considering the safety of children** and those who care for them. This will be guided by historical risk assessment. It is, **potentially, a longer-term, wider focus** on the best interests of children which gives more attention to a broader range of proactive future measures such as creating environments that **promote holistic safety**, as well as minimise risk.

170. An order that promotes safety will enable **children to meet their developmental milestones as uninhibited by historical and ongoing parental conflict and dysfunction**, as is possible on the facts of the case.

Judicial consideration of s 4AB – ‘family violence’

Pickford & Pickford [2024] FedCFamC1A 249

- McClelland DCJ, Aldridge, Austin, Carew & Williams JJ
- All judges – intention not an element of the section (different from criminal law definitions)
- **But how to interpret the section?**
 - (1) For the purposes of this Act, family violence means **violent, threatening OR other behaviour** by a person **that** coerces **OR** controls a member of the person’s family (the family member), **OR** causes the family member to be fearful.
 - (2) **Examples** of behaviour that **may** constitute family violence include (but are not limited to): (a) to (j) of examples

Aldridge & Carew JJ

43. The section is both remedial and protective and as such should not be read down by artificial limitations ...

44. The definition identifies certain behaviour that may fall within the definition, namely, violent, threatening or other behaviour that coerces or controls a member of the person's family or causes the family member to be fearful. Violent behaviour or threatening behaviour are stand-alone behaviours that fall within the definition of family violence. **Such behaviours may coerce or control or cause fear, but it is not essential.** It might be, for instance, that a female punches her male partner but the punch neither coerces nor controls nor causes the male to be fearful. The behaviour may nevertheless be an act of family violence.

Austin & Williams JJ

The definition is exclusive, not exhaustive. Notwithstanding the obvious breadth of the definition, it is disjunctive and admits of “violent, threatening or other behaviour” amounting to “family violence” in only one of two ways, being behaviour of that sort which:

- (a) “coerces” or “controls” a family member – which is an objective concept focussing on the characteristic nature of the perpetrator’s behaviour towards the victim, or
- (b) Causes the family member to be fearful – which is a subjective concept instead focusing upon the victim’s reaction to the perpetrator's behaviour (at [109]).

Aldridge & Carew JJ

How to determine CC:

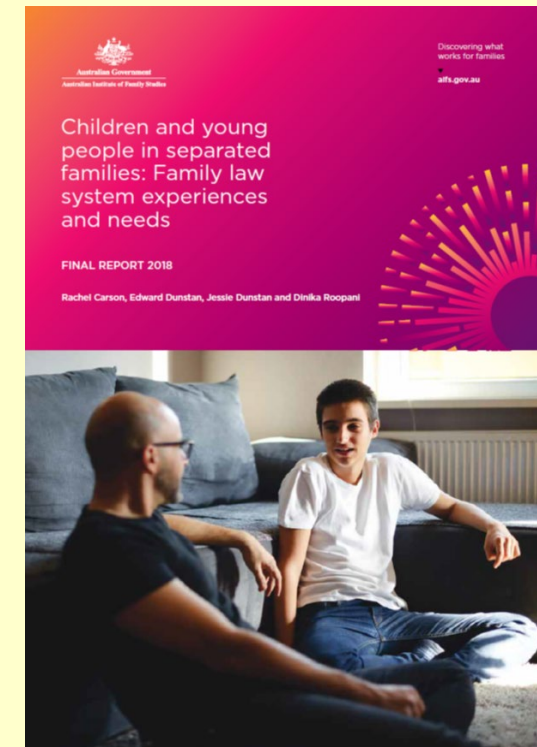
- (a) **Identify the behaviour** about which complaint is made;
- (b) Identify the **full context** of the behaviour including **any explanation** that may be given by the alleged perpetrator;
- (c) Identify the **impact of the behaviour** on the alleged victim (mere assertion by the alleged victim that they feel coerced or controlled is insufficient).
- (d) Make all relevant factual findings;
- (e) Explain why the behaviour in question is or is not family violence that coerces or controls the family member and if the alleged behaviour does not entail a course or pattern of conduct, explain how the behaviour can nevertheless be characterised as behaviour that coerces or controls, if so found.



Empirical research with kids suggests we are not yet very good at listening to kids – all views filtered through adults – family report writer or ICL. See AIFS (2018) and Georgina Dimopoulos et al (2025)

s 60CC(2)(b) - Views

any **views** expressed
by the child



s 60CC(2) (c) and (d) - Child's needs and parents' capacity

(c) the **developmental, psychological, emotional and cultural needs** of the child

(d) the **capacity** of each person who has or is proposed to have **parental responsibility** for the child to provide for the child's developmental, psychological, emotional and cultural **needs**

Why is this only about PR???

s 60CC(2)(e) – benefits of relationships

(e) the **benefit** to the child of being able to have a relationship with the **child's parents**, and **other people who are significant** to the child, where it is **safe** to do so

Green & Green [2024] FedCFamC1F 896

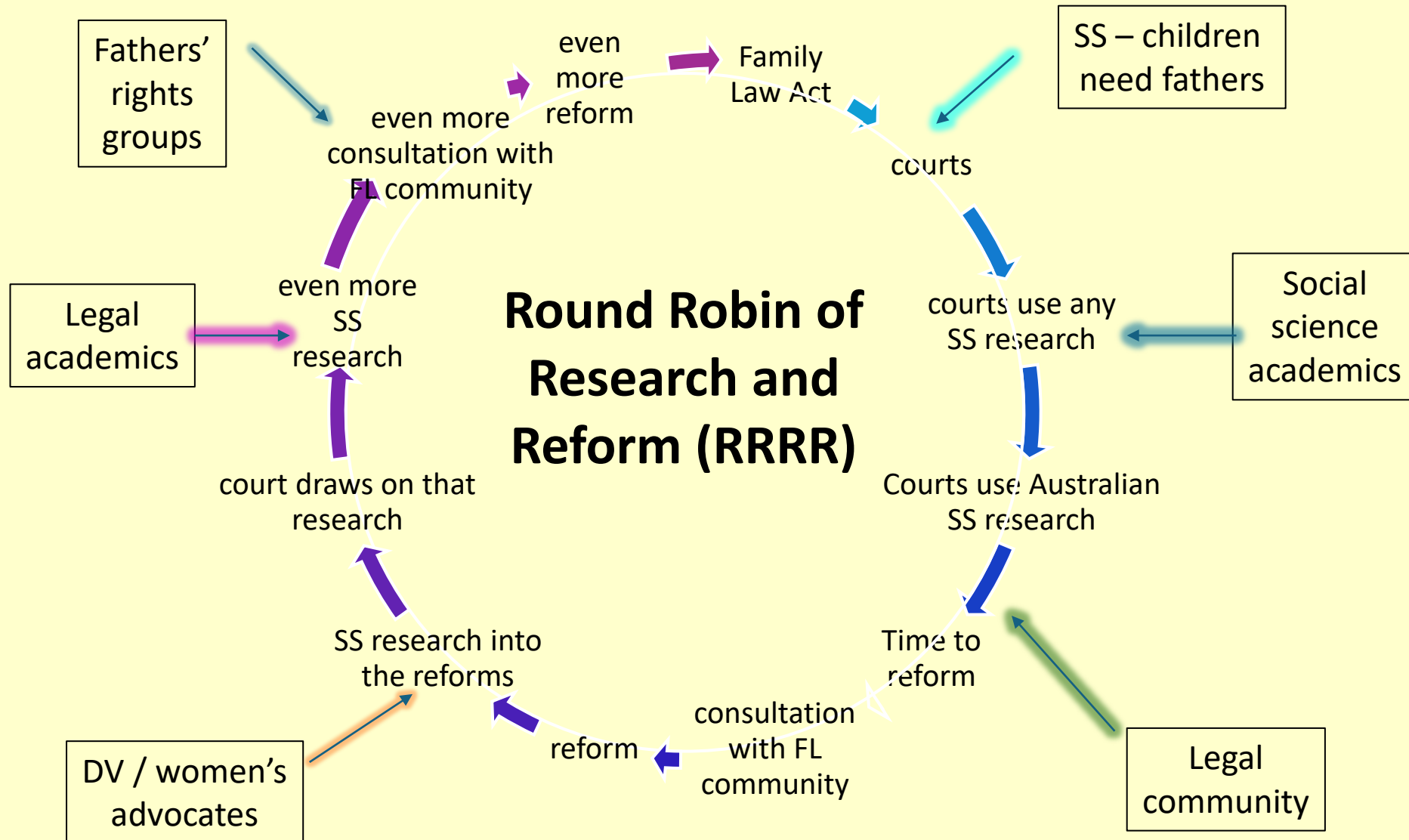
59. .. it is clear that it is in the child's best interests to have an ongoing relationship with his father and members of the paternal family. ... Nevertheless, the **precondition** to making an order for the child to spend such time with his father is **my satisfaction that it is safe** to do so (per McClelland DCJ).

Have something been lost? - s 65DAA(5) repealed

When a court did consider equal or S and S time – had to consider:

- a) how far apart the parents live from each other; and
- b) the parents' current and future capacity to implement an arrangement for the child spending equal time, or substantial and significant time, with each of the parents; and
- c) the parents' current and future capacity to communicate with each other and resolve difficulties that might arise in implementing an arrangement of that kind; and
- d) the impact that an arrangement of that kind would have on the child; and
- e) such other matters as the court considers relevant.

The Only Constant is Change

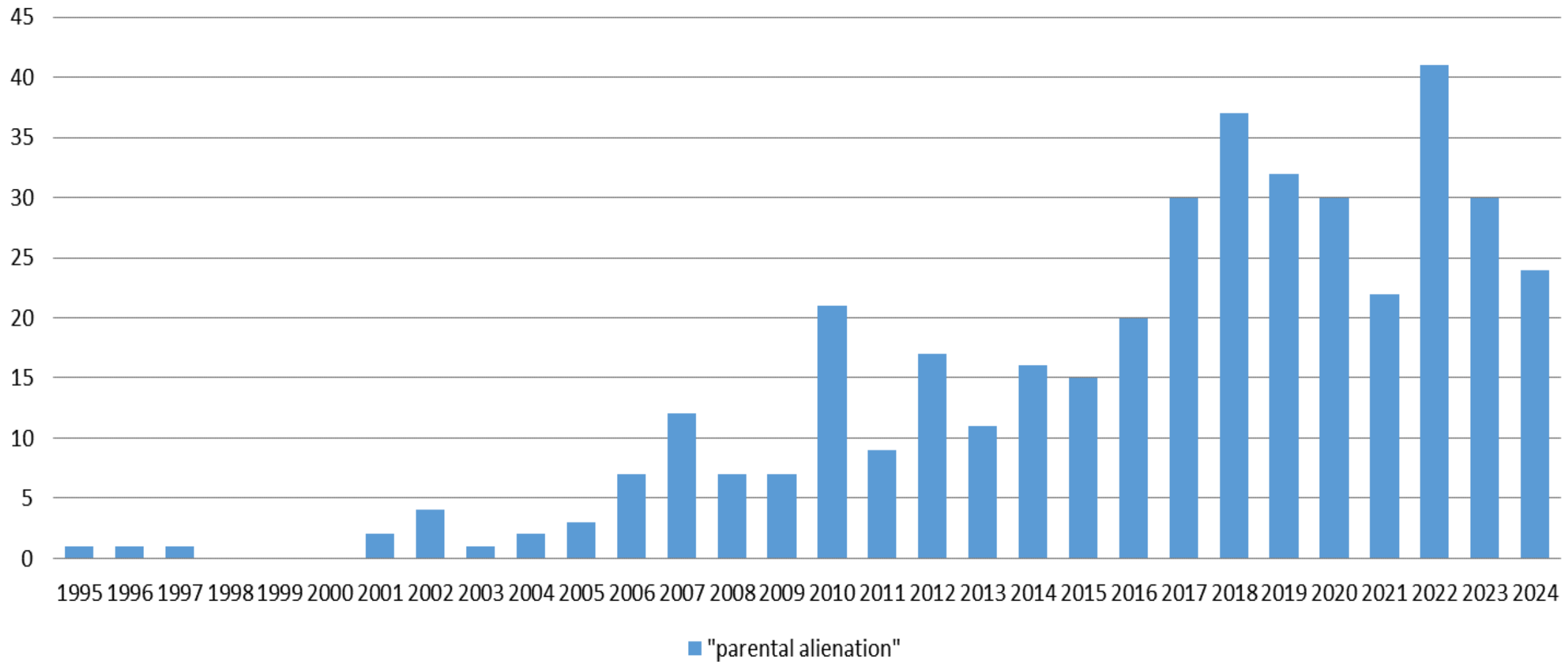


Some amending to consider

- Get the definition of 'family violence' right and not create ambiguity and dissent
- Should s 60CC(2)(a) be given more weight than the other sections?
- Why is capacity related only to PR and not all the other aspects of parenting orders and arrangements?
- Should there be a section with some practicalities about parenting orders
- Or a section which sets out circumstances that would militate against some kind of shared physical care arrangement?

‘Parental Alienation’ and Australian family law

Term "parental alienation" in Published Australian Family Law Decisions 1995 - October, 2024



My Research on 'Reunification' Orders and PA

- Examination of discussion / ordering of reunification therapy in Australian cases
- Growing presence of programs on the internet
- Some international research about the programs is authored by the creators and operators of the programs
 - Many advocate a change of residence for the child
- Other international research paints a grim picture for some children:
 - Adrienne Barnett – harrowing stories
 - Jean Mercer – describes a 'boot camp' situation

Data Set

- Searched AUSTLii for published cases containing the words 'alienation' and 'reunification'
- Span of years – 2015 to 2022
- Data base of 22 families
 - 48 children (1 child to 5 children)
 - Litigating between 1 and 10 years
- Analysed by gender of alleged alienator

Who was accused of 'alienation'?

PARENT	ACCUSED	FOUND		NOT FOUND		AMBIGUOUS	
Mother	15	5	33%	7	47%	3	20%
Father	7	3	42%	2	29%	2	29%

Five Cases: Mother found to 'alienate'

All four cases where M had alleged child sexual abuse

- Mothers disbelieved in all cases
- 3 cases - children stayed with mother
 - 2 – fathers no time
 - 1 – father time
- 1 case - changed to father
 - Time to mother

Seven cases: Mothers not found to 'alienate'

- Six cases mothers alleged DV and were believed
 - Ms granted sole PR and kids live with them
 - 3 - no time to father
 - 3 - time to father
- 7th case – unique child – gifted, anxious and phobias
 - ESPR, live with mother and no time to father

Reunification not ordered in six M no PA cases

Powell & Powell [2022] FedCFamC2F 67 Middleton J, Brisbane)

- Father described the four-day intervention program
- Director of program gave evidence
- Judge:
 - ... sounds very similar to a kidnapping scenario often played out in Hollywood movies. I was alarmed that a person holding themselves out to be an expert would come along to a court and ask me to make orders for a very vulnerable child that would effectively see that child handled by unknown persons at an unknown location for a period of time.

Limitations and Gaps in Study

- Small data set - cases involving discussion of reunification therapy
- Generally families where past intervention has not worked
- Paints a varied picture of families and outcomes
- Some themes emerge but need further testing
- Further analysis?
 - Links between disbelief of CSA and findings of PA
 - The evidence of the expert witnesses
 - Gauge their beliefs and opinions about PA
 - Forensic expert or therapeutic professional who worked with the family?
 - Are they giving evidence about their own program?

Reunification Therapy / Programs

- Therapy programs are being established and operated, including the four-day camp
- Other family therapy programs also exist
- Sometimes program / therapy is ordered
- Sometimes it is specifically ordered NOT to occur
- Therapy ordered may be confidential or reportable
- Little information about their methods
- No evaluations or understanding of their success or otherwise

Venno v Isaacs [2024] FCWA 92

- WA case, O'Brien J
- Dr H gave evidence about his program
- ... I make no finding as to whether by reason of specified training, study or experience he has become an expert in a relevant field of specialised knowledge. Nevertheless, the methodology he adopted to reach his conclusions is flawed. He did not make all necessary or appropriate enquiries. He demonstrated an unwillingness to be deviated from, or to reconsider, previously expressed views when presented with information that would objectively require their reconsideration. He presented as holding strong beliefs, not specific to this family, which influenced his approach, analysis and conclusions consistently with a broader agenda. He sought to express limitations on the parameters of his assessment and the purpose for which it could be relied upon, but drew conclusions and expressed firm opinions well outside those self-imposed parameters.

Some emerging themes / issues

- Some judges demonstrate a considerable level of nuance
- Many avoid finding 'PA' or really engaging with that language
- PAS not accepted as a 'syndrome' in Australia
- Some judges describe the conduct of the accused 'alienator' as a form of 'psychological harm' to the children
- Finding of PA does not necessarily mean the children will be removed
- Where there are significant changes in arrangements the children are often split

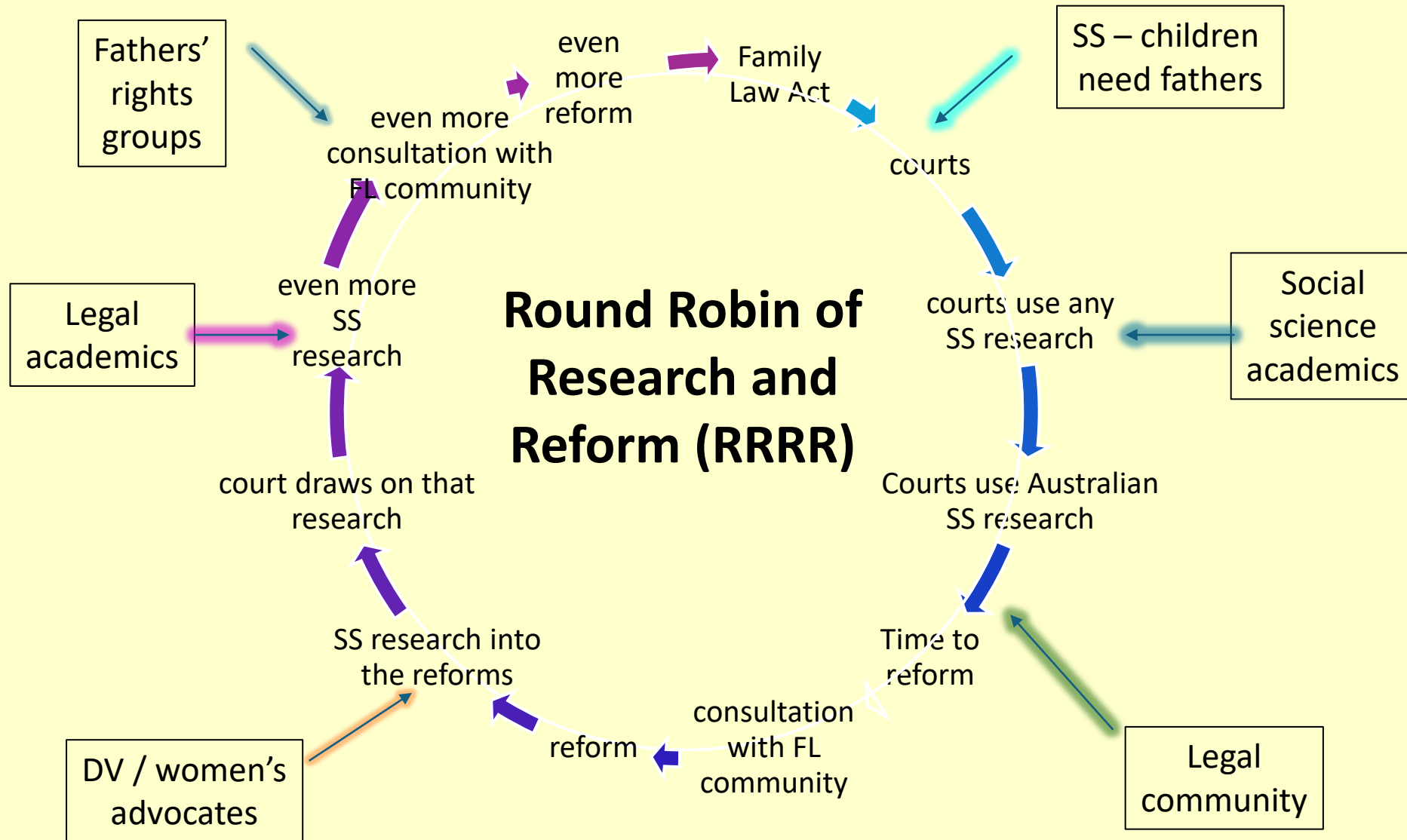
Some Observations

- Many of the cases seem to involve families where children have serious disabilities or illnesses
- Allegations of FV both ways
- Allegations of CSA
- Mental health issues for one or both parents
- Issues of misuse of alcohol or illicit drugs
- Presence of new partners and step-children or 'half' siblings
- **Why are expert witnesses protected from identification?**

Shadow of the law?

- Perhaps lawyers are operating in the shadow of what they think the law is
- And parents cannot afford litigation - settle on advice of lawyers
- Some of these parents have litigated for years – children's wishes are set
- Judges seem loathe to order against the vehemently, and often long, held wishes of the children in these cases
- Rarely permanently exclude the preferred parent

The Only Constant is Change



Review of the FCFCoA Due



Public consultation was conducted between 25 November and 12 December 2024.

Link to review site:

- [Review of the Federal Circuit and Family Court of Australia Act 2021 | Attorney-General's Department](#)