

FAMILY LAW REVIEW

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ARTICLES

Family violence and family law: Where to now? – *Dr Adiva Sifris and Anna Parker*

The *Family Law Amendment (Family Violence and other Measures Act) 2011* (Cth) introduced a number of amendments to the *Family Law Act 1975* (Cth) relating to the manner in which courts exercising jurisdiction under the Act should deal with cases involving family violence and child abuse. This article examines these reforms, including the context in which they took place. It then argues that while the reforms are significant and will go some way towards improving the family law system's response to victims of violence and abuse, further reform is required. In particular, it is argued that if the family law system is to respond adequately to the high incidence of violence and abuse within separated families, provisions in the *Family Law Act* which treat family violence as an exception to the norm must be amended.

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Legal capacity and case guardians – *Brendan Ashdown*

The procedural rules of court give expression to when a party lacks legal capacity to conduct proceedings on their own behalf. Formulation of the test requires reference to common law principles for determining whether a person lacks legal capacity. This article examines their interaction and the content of the test to be applied. While the lack of legal capacity requires the existence of a diagnosable medical disorder as a causative element, it is the assessment of the functional ability of a person which determines capacity. The existence of the requisite level of understanding, insight and comprehension required involves an objective assessment relative to the nature and complexity of the transaction or matter calling for the exercise of judgment or decision-making, while still taking account of the individual's personal circumstances.

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