



Family violence

Key findings from the *Evaluation of the 2006 Family Law Reforms*

Rae Kaspiw, Matthew Gray, Ruth Weston, Lawrie Moloney, Kelly Hand, Lixia Qu and the Family Law Evaluation Team

The Australian Institute of Family Studies' (AIFS) *Evaluation of the 2006 Family Law Reforms* (Kaspiw et al., 2009) found that one of the central challenges facing the family law system is family violence. A substantial minority of separated parents reported having experienced physical violence, and over half reported having experienced emotional or physical violence.

Concerns about the way in which the family law system deals with family violence are longstanding and pre-date the 2006 reforms (e.g., Family Law Pathways Advisory Group, 2001). Family violence is recognised internationally to be one of the most complex issues for legal systems in general, and family law systems in particular, to deal with effectively (e.g., Ver Steegh & Dalton, 2008).

The data collected as part of the AIFS evaluation highlighted the difficulties faced by those working in the family law system (service system professionals, lawyers, court staff and judicial officers) when working with families affected by family violence. Challenging issues include identifying whether there is family violence, the nature of the violence, whether it is ongoing and the most appropriate responses. Dealing with family violence in the family law context is difficult because of its prevalence in separating families, combined with the fact that there is often little or no evidence because most family violence occurs behind

The policy objectives of the 2006 changes to the family law system were to:

- help build strong healthy relationships and prevent separation;
- encourage greater involvement by both parents in their children's lives after separation, and also protect children from violence and abuse;
- help separated parents agree on what is best for their children (rather than litigating), through the provision of useful information and advice, and effective dispute resolution services; and
- establish a highly visible entry point that operates as a doorway to other services and helps families to access these other services.

“closed doors”, without witnesses. It is also difficult because a parent may be too frightened of their ex-partner to tell anyone about the violence, let alone a court.

The evaluation was based on 17 separated studies involving 28,000 parents and family law system professionals (who include family dispute resolution (FDR) practitioners, relationship services staff, lawyers, judges, family consultants and registrars). Findings clearly indicate that



The quality of the parental relationship post-separation is likely to be an important predictor of the extent to which parents are able to cooperate in making and implementing post-separation parenting arrangements in ways that are beneficial to children.

the system has some way to go in developing an effective response to family violence.¹

This article examines key aspects of the evaluation’s evidence on family violence, beginning with a discussion on prevalence. The subsequent sections discuss findings on relationship quality where there has been family violence and on child wellbeing in the context of such a history. Finally, the article examines data on the pathways taken through the family law system by parents who report a history of family violence, and the views of relevant professionals with regard to how the system is serving such families.

Prevalence of violence and safety concerns

The first wave of the Longitudinal Study of Separate Families (LSSF W1 2008) was an important component of the evaluation. Interviews were conducted with some 10,000 parents (around 5,000 mothers and 5,000 fathers

with at least one child under 18 years old) who had separated after the 2006 reforms and who were registered with the Child Support Agency. At the time of the survey, parents had been separated for an average of 15 months. For the most part, the child-related questions focused on one child only (the “focus child”).

This section uses data from the LSSF W1 2008 to examine the incidence of family violence before and during separation, and the proportion of parents who held concerns about personal or child safety relating to ongoing contact with the other parent.

The measures of family violence focused on physical hurt or emotional abuse.² One in four mothers (26%) and one in six fathers (17%) said that their former partner had “physically” hurt them prior to separation (Table 1). Most of these parents also reported that their former partner had emotionally abused them.

Thirty-nine per cent of mothers and 36% of fathers reported having experienced emotional abuse alone. Just over one-third mothers (35%) and just under half of the

Table 1 Experience of physical hurt before separation, or emotional abuse before or during separation, fathers and mothers, 2008

	Fathers	Mothers
	%	
Physical hurt ^a	16.8	26.0
Emotional abuse alone	36.4	39.0
No violence reported	46.8	35.0
Total	99.9	100.0
Number of respondents	4,918	4,959

Notes: ^a Physical hurt includes those who experienced both physical hurt and emotional abuse, given that the majority of parents who experienced physical violence also experienced emotional abuse. Percentages may not total 100.0% due to rounding.

Source: LSSF W1 2008

fathers (47%) said that they had not experienced physical violence or emotional abuse.

In considering these data, particularly in terms of gender patterns, it is important to recognise that many issues were not examined in collecting the information, including whether the acts were aggressive or defensive in nature, the severity and chronicity of the behaviours, and subjective aspects, including intent and impact.

A relatively high proportion of parents (72% of mothers and 63% of fathers) who reported being physically hurt by their ex-partner before separation said that their children had witnessed violence or abuse.

Parents who participated in the LSSF W1 2008 were also asked to indicate whether they currently held safety concerns for themselves and/or their focus child as a result of ongoing contact with the child's other parent.³ Seventeen per cent of fathers and 21% of mothers reported holding such concerns (Table 2).

A higher proportion of mothers than fathers (8% compared with 3%) were fearful both for themselves and their child, while a slightly higher proportion of fathers than mothers (12% compared with 9%) expressed concerns about the focus child only. While mothers' concerns were predominantly about the child's other parent (92%), fathers' safety concerns were about a broader range of people in the child's life: 68% of fathers reported concerns about the child's other parent; 18% were concerned about the other parent's new partner; and 28% were concerned about another adult. Mothers with safety concerns had tried to limit contact with the other parent at twice the rate of fathers (50% compared with 24%).

The evaluation findings on parents' descriptions of the quality of the inter-parental relationship where a history of family violence had been reported highlight the complex nature of the issues raised by such a history. Parents in the LSSF W1 2008 were asked to indicate which of five descriptors best suited the current state of their relationship

Table 2 Current safety concerns, fathers and mothers, 2008

	Fathers	Mothers
	%	
Safety concerns for:		
both focus child and self	2.6	8.4
self	1.6	3.6
focus child	12.3	9.1
no concerns	83.5	79.0
Number of respondents	4,825	4,772
Of those reporting safety concerns, concerns related to:		
child's other parent	68.3	92.3
the other parent's new partner	18.0	8.0
another adult	28.0	11.2
another child	5.8	2.5
don't know	4.4	1.7
Number of respondents	831	1,033
Of those reporting safety concerns:		
attempted to limit contact with other parent	24.3	50.1
Number of respondents	820	1,016

Source: LSSF W1 2008

Table 3 Quality of inter-parental relationships, by experience of family violence, before separation, fathers and mothers, 2008

	Fathers			Mothers		
	Physical hurt	Emotional abuse alone	Neither	Physical hurt	Emotional abuse alone	Neither
	%			%		
Friendly	16.0	22.8	52.5	15.8	24.9	57.2
Cooperative	19.7	27.1	31.1	23.5	30.3	27.6
Distant	24.6	26.7	11.9	22.0	22.8	12.1
Lots of conflict	29.2	19.9	3.9	20.2	17.7	3.0
Fearful	10.5	3.6	0.6	18.5	4.4	0.1
Total	100.0	100.1	100.0	100.0	100.1	100.0
Number of respondents	812	1,802	2,190	1,283	1,951	1,633

Note: Percentages may not total 100.0% due to rounding.

Source: LSSF W1 2008

with the other parent: friendly; cooperative; distant; lots of conflict; or fearful.

Clearly positive relationships (friendly or cooperative) were reported by a substantial minority of parents who reported earlier experiences of physical hurt (36% of fathers and 39% of mothers), and at least half the parents who reported having experienced emotional abuse alone (55% of mothers and 50% of fathers) (Table 3). Distant or clearly negative relationships (lots of conflict or fearful), were reported by most parents who said that their partner had hurt them prior to separation (61–64%), and by around half the fathers and 45% of the mothers who reported emotional abuse alone. By contrast, all except 15–16% of parents who had not experienced any family violence described their relationships in clearly positive terms.

Although applying to a minority of parents, mothers were more likely than fathers to report being fearful of their ex-partner, with fearful relationships being reported by 11% of fathers and 19% of mothers who reported experiencing physical hurt, and 4% of fathers and 5% of mothers who reported emotional abuse alone.

The quality of the parental relationship post-separation is likely to be an important predictor of the extent to which parents are able to cooperate in making and implementing post-separation parenting arrangements in ways that are beneficial to children. Encouraging such cooperation between parents was a key goal of the 2006 reforms (see text box on page 38). The evaluation findings are consistent with those of previous research (e.g., Pryor & Rodgers, 2001) in highlighting links between relationship quality and child wellbeing.

Experience of mental health problems, alcohol/drug misuse, or other addictions before separation

The complexity of issues that confront many separated families is further indicated by the extent to which mental health problems or addiction are reported by recently separated parents.⁴ Half the mothers and about one-third of the fathers reported that at least one of four issues—mental health problems, alcohol or other drug use, gambling, or another addiction—had been present prior to separation (Table 4).

There was significant overlap between the presence of one or more of these issues and reports of family violence. For

example, the majority of parents who said that they had been physically hurt also reported that one or more of these four issues had been present in the relationship prior to separation (75% of mothers and 64% of fathers).

There was also a significant overlap between having experienced emotional abuse alone and these family problems, with 58% of mothers and 44% of fathers who reported emotional abuse alone also indicating one or more mental health and/or addiction issues in the pre-separation relationship. Only 9% of fathers and 13% of mothers indicated that they had been physical hurt where no mental health problems or addiction issues were present in the relationship.

Patterns in care-time arrangements

As indicated at the beginning of this article, key objectives of the reforms were to encourage greater involvement of both parents with children after separation and to protect children from harm from direct or indirect exposure to family violence and child abuse. The parental involvement objective was supported legislatively through, among other provisions, the introduction of a presumption in favour of equal shared parental responsibility (*Family Law Act 1975 (Cth)(FLA) s61DA*).⁵ Orders made pursuant to the presumption of equal shared parental responsibility (*FLA s61DA*) trigger an obligation on the court to consider making an order for equal or substantial and significant time (*FLA s65DAA*). The need to exercise care in making arrangements where there are concerns about family violence and child abuse is recognised in a range of ways in the legislation. Importantly, circumstances where there are reasonable grounds to believe a party has engaged in family violence or child abuse are exceptions to the application of the presumption of equal shared parental responsibility (*FLA s61DA(2)*).

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The patterns in parenting arrangements in the evaluation data indicate that most children in separated families were cared for in an arrangement that involves spending most of their nights with their mothers. Shared care-time arrangements,

Table 4 Mental health problems and addiction issues, before separation, fathers' and mothers' reports, 2008

	Fathers	Mothers
	%	
Mental health problems	22.7	29.1
Alcohol or other drug use	20.1	36.5
Gambling	0.8	1.8
Other addictions	2.5	3.2
None of the above	64.7	49.8
Number of respondents	4,983	5,019

Note: Multiple types of issues could be reported, so column percentages sum to more than 100.0%.

Source: LSSF W1 2008

where children spend 35–65% of nights per year in the care of each parent, remained in the minority (16% of separated families), although there is evidence that such arrangements have been increasing gradually (Kaspiew et al., 2009; Smyth 2009). Only 7% had arrangements where children spend 48–52% of nights with each parent (“equal care time”). The LSSF W1 data suggest that those with a shared care-time arrangement were as likely as or more likely than those with some of the other care-time arrangements to report the experience of family violence and even safety concerns. For example, around 70% of mothers with equal or shared care time reported having experienced physical or emotional abuse, compared with 64% of mothers who cared for their child for 66–99% of nights (the most common of all arrangements) (Kaspiew et al., 2009, Figure 7.30). Safety concerns, on the other hand, were reported by 16–18% of fathers and mothers with equal care-time arrangements, by 16–20% of fathers and 18–19% of mothers with a shared care-time arrangement, and by 13% of fathers and 19% of mothers whose child spent 66–99% of nights with the mother (Kaspiew et al., 2009, Figure 7.31).

Parents with shared care-time arrangements were more likely than parents with other arrangements to have made their arrangements with formal assistance, including family dispute resolution, lawyers and courts. Between 13% and 17% of shared care-time parents with safety concerns reported using counselling, mediation or family dispute resolution as their main pathways, compared with 6–7% of shared care-time parents without safety concerns. The safety concerns group of shared care-time parents reported using lawyers more frequently than the shared care-time parents without safety concerns (15–18% compared with 4–5%). The safety concerns group of shared care-time parents reported using courts as a main pathway (15% fathers and 8% mothers) more often than shared care-time parents without safety concerns (2%) (see Kaspiew et al., 2009, p. 232).

Family violence, parental relationship quality and child wellbeing

A rationale for the second family law reform policy objective noted at the beginning of this article was that it is generally beneficial for children to spend time with each parent after separation and to have parenting arrangements that maximise the opportunity for the child to have meaningful involvement with each parent. However, the policy objectives also recognised that it is necessary to protect children from harm from exposure to abuse, neglect and family violence.

In the context of the policy objectives concerning parental involvement and protection from harm, a relevant concern is whether shared care-time arrangements exacerbate any negative impacts of parental separation on children’s wellbeing if their parents are locked in a high level of conflict or have a history of violence. Concerns have also been raised about the potentially detrimental impact of shared care-time arrangements on the developmental needs of very young children (e.g., McIntosh & Chisholm, 2008).

As part of the evaluation, the impact of the following aspects of children’s post-separation experiences on their wellbeing were assessed:

- care-time arrangements;
- the quality of the inter-parental relationship post-separation;
- safety concerns post-separation; and
- the existence of violence pre-separation.

Child wellbeing measures

A number of measures of children’s wellbeing was collected in the LSSF W1 2008. Some of the measures



were of low levels of wellbeing (sometimes termed “ill-being”), some were measures of high levels of wellbeing, and others covered dimensions ranging from positive to negative (i.e., from low to high levels of wellbeing).

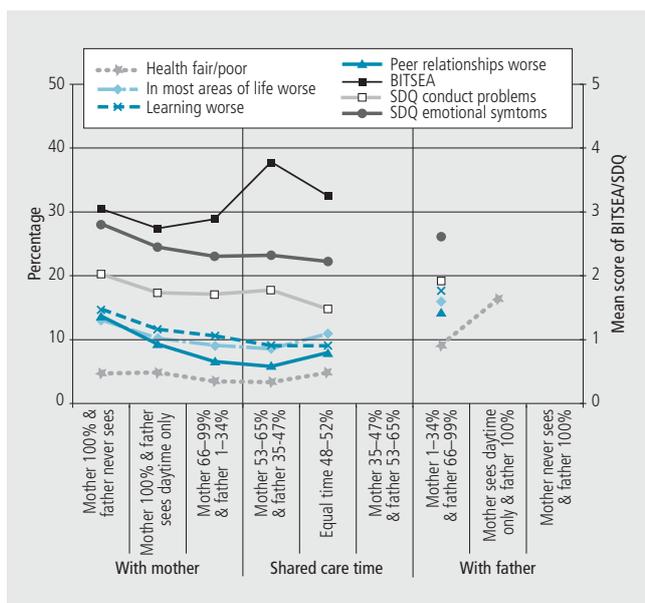
The dimensions examined were:

- overall health of the child (all ages);
- learning compared with other children (children aged 4+ years);
- getting along with other children of the same age compared with other children (children aged 4+ years);
- how they were doing in most areas of life compared to other children (children aged 4+ years);
- conduct problems (externalising behaviours) (children aged 4+ years)—measured using the Strengths and Difficulties Questionnaire (SDQ);
- emotional symptoms (internalising behaviours) (children aged 4+ years)—SDQ; and
- behavioural problems (children 1–3 years of age)—Brief Infant-Toddler Social and Emotional Assessment (BITSEA).

A more detailed discussion of the measures of wellbeing is provided in Chapter 11 of the evaluation report (Kaspiew et al., 2009).

The analysis was primarily based on data from the LSSF W1 2008.⁶ The results suggest that, compared with children who spent 1–34% of nights with their father or saw him during the daytime only, the developmental progress of children with shared care-time arrangements was similar (or perhaps marginally better), while the progress of children who never saw their father was worse (Figure 1).

Furthermore, children appeared to do better if their parents’ post-separation relationship was friendly rather than



Source: LSSF W1 2008

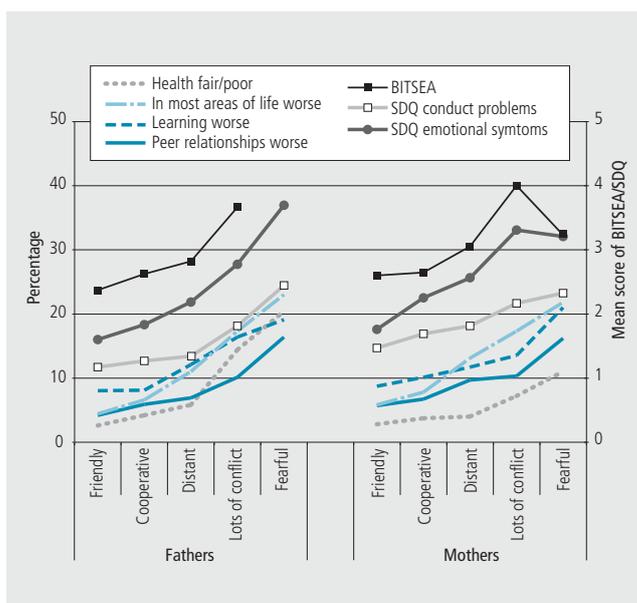
Figure 1 Children with low wellbeing, by care-time arrangements, mothers’ reports, 2008

distant, conflictual or fearful (Figure 2). Children whose parents’ relationship was highly conflictual or fearful had the lowest levels of wellbeing, while those whose parents had a distant relationship with each other appeared to be doing less well than those whose parents had a friendly or cooperative relationship, but better than those whose parents had a highly conflictual or fearful relationship.

There was a clear and strong link between parental experience of family violence and low child wellbeing. Across all measures, children whose mother reported having experienced family violence (emotional abuse and/or physical hurt) appeared to have a higher rate of low wellbeing based on mothers’ reports than those whose mothers did not report having experienced family violence. A similar relationship emerged between fathers’ reports of having experienced family violence and their assessments of their child’s wellbeing (Figure 3).

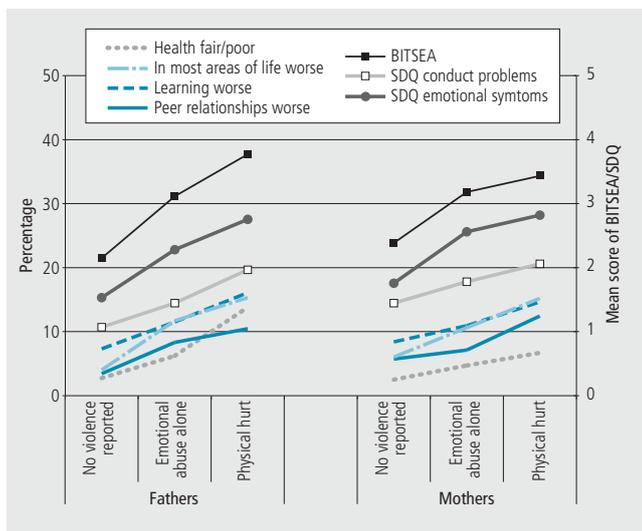
Figure 4 shows the relationship between fathers’ and mothers’ reports of their child having low wellbeing and their safety concerns (in relation to themselves and/or their child) as a result of ongoing contact with their child’s other parent. Regardless of gender, parents who expressed such concerns described their child’s wellbeing less favourably than parents who did not indicate any safety concerns.

While a history of family violence and highly conflictual inter-parental relationships appear to be quite damaging for children (Figures 2 and 3), the evaluation found no evidence to suggest that this negative effect was any greater for children with shared care time than for children with other care-time arrangements.⁷ It remains possible, however, that the measures adopted in this analysis were insufficiently sensitive to detect existing effects in these areas. Longitudinal research based on a relatively small clinical sample of high-conflict separating families (McIntosh, 2009) suggested that, compared to other parenting arrangements, a pattern of shared care time



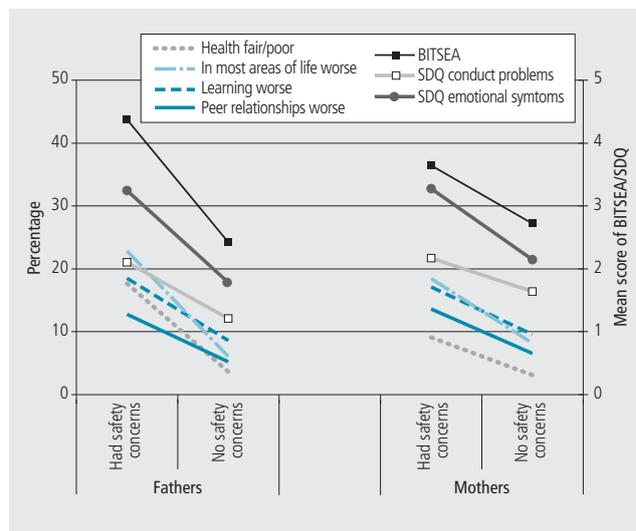
Source: LSSF W1 2008

Figure 2 Children with low wellbeing, by nature of inter-parental relationships, fathers’ and mothers’ reports, 2008



Source: LSSF W1 2008

Figure 3 Children with low wellbeing, by reports of experience of family violence, fathers' and mothers' reports, 2008



Source: LSSF W1 2008

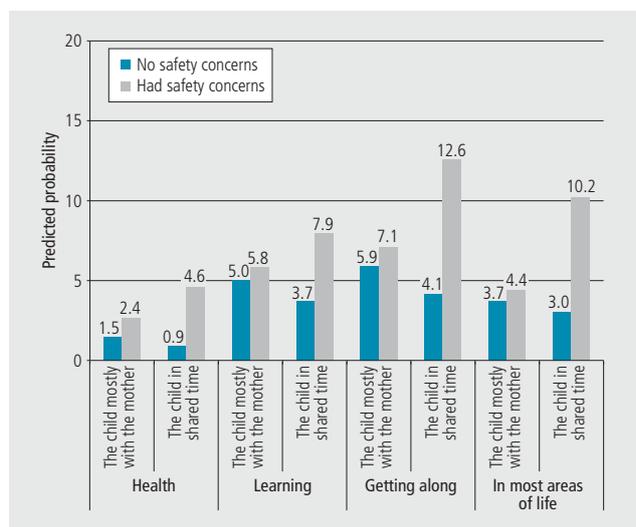
Figure 4 Children with low wellbeing, by whether parents had any safety concerns for self and/or focus child, fathers' and mothers' reports, 2008

sustained over more than 12 months was associated with a greater increase in the already negative impacts on children of highly conflictual inter-parental relationships and of circumstances in which one parent holds concerns about the child's safety.

When the measure of family violence is whether the mother expressed safety concerns, analysis of the LSSF W1 2008 suggests that shared care time exacerbates negative impacts on children (Figure 5). While the presence of safety concerns was associated with lower child wellbeing for all care-time arrangements, where mothers expressed safety concerns, children in shared care-time arrangements fared worse, according to mothers' assessments, than those who stayed with their father for only 1–34% of nights.

Parents' pathways

It is clear from a range of studies in the evaluation that the families who made most use of family law system services, lawyers and courts were, in the main, those with very complex problems. Reports from both parents and family law system professionals indicated that the parents who may be described as “heavier” users of the system were largely those for whom family violence and other issues—including safety concerns, mental health problems and addiction issues—were relevant (Kaspiew et al., 2009, Section 10.1). Parenting arrangements for these families were taking longer to sort out and these families were more likely than other families to use multiple services. For example, pre-separation experiences of having been physically hurt were reported by 17% of parents who said that they had sorted out their arrangements at the time the LSSF W1 data was being collected (third quarter of 2008), compared with 33% who were in the process of sorting arrangements out and 33% who had nothing sorted out (Kaspiew et al., 2009, Table 4.14). In contrast, no violence at all was reported by nearly half (48%) of the LSSF W1 parents who had apparently sorted out their arrangements,



Notes: This figure shows predicted probabilities, calculated holding constant explanatory variables at the sample means (mothers and fathers combined) for each care-time arrangement and safety concern combination. Higher scores indicate a lower level of wellbeing.

Source: LSSF W1 2008

Figure 5 Children with low wellbeing, by care time and safety concerns (health, learning, getting along, overall progress), mothers' reports, 2008

23% who reported being in the process of sorting thing out and 25% who had nothing sorted out.

Similarly, among parents who had apparently sorted out their arrangements, pre-separation experiences of physical hurt were reported by 48% of parents who nominated courts as the main way of sorting out their parenting arrangements, compared with 12% who said that their arrangements had been reached mainly through discussions with the other parent. On the other hand, the latter parents were considerably more likely to indicate that that they had not experienced any violence at all, compared with those who nominated the courts as their



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main means of arriving at their arrangements (56% and 9% respectively).

One of the key aims of the fourth policy objective noted at the beginning of this article is to provide encouragement to use means other than litigation to resolve parenting disputes. This objective was reflected in the legislative changes that supported the reforms through the introduction of a requirement for parties to attend family dispute resolution prior to filing a court application (*FLA s60I*) except in circumstances that include where there are grounds to believe a party had engaged in family violence or child abuse (*FLA s60I(9)(b)*). A critical issue therefore is whether and/or how family violence affects the extent to which FDR is an effective mechanism in addressing post-separation parenting agreements. Family violence is one of the considerations FDR practitioners must take into account in assessing the capacity of parents to undertake FDR (Family Law (Family Dispute Resolution Practitioner) Regulations (2008) (Cth) R25), and is one of the bases upon which a certificate under *s60I(8)* (which relieves a parent of the requirement to attempt or continue with FDR) may be issued.

While the evaluation concluded that FDR works well for many parents and their children, it also found that Family Relationship Centres have become a first point of contact for a significant number of parents whose capacity to

mediate is likely to be severely compromised by fear and abuse. For example, 40–41% of practitioners in FRCs and FDR services indicated that “about a quarter” of clients who attended the service would not be suitable candidates for FDR, although 45% of those in FDR services and 38% of those in FRCs indicated that fewer than a quarter of clients would fall into this category (see Kaspiew et al., 2009, Figure 5.2). It would seem, therefore, that FRCs and other FDR services have been performing a significant screening and assessment service. At the same time, there is evidence from clients and lawyers that FDR was occurring in some cases for which this process was probably unsuitable.

The situation however is complex. Parents who reported experiencing violence (physical or emotional) were much more likely to have attempted FDR (41% of those who experienced physical violence and 35% of those who had experienced emotional abuse alone) than those who did not report experiencing violence (15%). Indeed, many FDR clients had concerns about violence, abuse, safety, mental health or substance misuse. FDR can be appropriate in some cases in which violence or other dysfunctional behaviours have occurred, but qualitative data from parents and lawyers suggest that the levels of concerns in some cases were such that it would have been difficult for a client to represent their own needs or their children’s needs adequately.



Children appeared to do better if their parents' post-separation relationship was friendly rather than distant, conflictual or fearful.

Perhaps not surprisingly, the highest rate of agreement in FDR was reached in cases in which there had been no reports of violence (48%), while the lowest rate of agreement was reached in cases in which there had been physical abuse (36%). Similarly, the highest proportion of certificates issued (which permit a case to proceed to court) were in cases in which physical abuse had been reported (26%), and the lowest proportion was when there were no reports of physical violence or emotional abuse (10%).

While the evaluation provides evidence of more systematic screening being undertaken in the family relationships services sector under the reforms, it also suggests that there may have been a level of over-confidence among service system professionals in their ability to assist clients affected by family violence or safety concerns. While a large majority (70–90%) of professionals provided a positive assessment of their ability to assist families where there was concern about violence or safety (Kaspiew et al., 2009, Table 10.7), client reports suggest lower effectiveness than this. For example, a survey of 2,335 clients of family relationships services revealed that:

- 29% indicated in the survey that they had felt afraid of the person about whom they were attending the service (it is unclear whether these fears were conveyed to practitioners at the service);
- 23% indicated in the survey that they sometimes felt afraid of the person they were attending the service about during sessions at the service; and

- 24% experienced threats or abuse outside the service while attending the service (Kaspiew et al., Table 10.3).

The 29% who indicated in the survey that they had felt afraid of the person about whom they attended the service were also asked whether their fear had been addressed. Of this group, 65% (reflecting 19% of all clients in the survey) said their fears had been addressed, indicating that their fears had been conveyed to a practitioner at the service. The remainder of this part of the sub-sample (35%, amounting to 10% of the total sample of clients) said their fears had not been addressed, but it is unclear whether or not these fears had been conveyed to the relevant practitioners.

The finding that services such as FDR were offered in some cases in which one parent is fearful of another and feels that this fear has not been adequately addressed raises important issues for practitioners. It may be that in some cases the fear was not adequately assessed in the first instance or it may be that events unfold in some FDR processes that rekindle the fear. The finding points to the need for constant vigilance on the part of those practitioners working with both former partners. At the same time, refusing FDR in all cases in which fear is reported may not necessarily be in the interests of the fearful parent or the children.

Clearly there are significant ongoing challenges for FRCs and other FDR services in this domain. Dealing with these challenges has been the subject of previous research (see, for example, Cleak, Bickerdike, & Moloney 2006) and the clinical judgement to be made at any given moment may not always be an easy one. The findings suggest,

however, a need for considerable caution in such cases. Clients may need greater support if FDR proceeds in such cases: processes may need to be slowed down while therapeutic or other work is done, or the case may need to proceed as quickly as possible to some form of judicial determination.

An area where the evaluation indicates a need for refinement of practices is in the interface between family relationships services (including dispute resolution services) and the legal and court sector. There is a need for the development of cross-sectoral understandings that will facilitate a clearer understanding of where a matter may not be suitable for FDR either because it satisfies one of the exceptions to *FLA* s60I or because there is insufficient capacity to mediate responsibly and safely.

A refinement of practices in this area may assist matters to move more quickly through the system. At the same time, as noted above, a considerable number of parents who reported family violence had friendly or cooperative post-separation relationships; and a considerable number of these parents reached agreement in FDR. Getting the balance right here must be regarded as “work in progress”.

A further issue highlighted in the evaluation is that at the intake, screening and risk assessment phases that precede FDR, information is collected about the circumstances of the family, including the possible existence of a history of or ongoing family violence. However, beyond the issuing of a certificate (which provides little information), there are no formal mechanisms whereby this information may be shared and possibly considered by a decision-maker or by an individual providing a forensic service. There are, of course, some significant barriers to passing on such information, including professional obligations of confidentiality and legal imperatives to maintain client privacy.

As things currently stand, families who progress from the service sector into the legal/court sector essentially start afresh. The issue of “starting again” has been discussed in the Chisholm (2009) and Family Law Council (2009) reports and some proposals have been put forward for comment by the Australian Law Reform Commission (ALRC; 2010) as part of its family violence inquiry. The National Alternative Dispute Resolution Advisory Council (NADRAC) has also been asked to provide input on issues of confidentiality, admissibility, conduct and practitioner immunity in family dispute resolution (NADRAC, 2010). Clearly, any consideration of if and how information obtained as part of the FDR process might be transmitted to a court or another agent must recognise that FDR practitioners do not have a forensic or diagnostic role. They may take note of allegations and admissions, but they are not in a position to assess the truth or otherwise of such statements.

Other issues

The evaluation examined the views of family law system professionals about the efficacy of the system’s handling of family violence in a range of ways. One telling set of data arises from questions in surveys administered to family lawyers and family relationship sector professionals, aimed at gauging how the system balances maintaining a child’s

need for “meaningful involvement with both parents” (e.g., *FLA* s60B(1)(a)) against their need to be “protected from harm” (e.g., *FLA* s60B(1)(b)). These are two fundamental concepts in the reformed Part VII of the *Family Law Act 1975*, which of course preserved the paramountcy of the principle that parenting orders should be in the child’s “best interests” (*FLA* s60CA). Endorsement of the adequacy of the priority placed on meaningful involvement was stronger than endorsement of the priority placed on protection from harm:

- 92% of FRC professionals, 89% of FDR professionals and 86% of lawyers responded affirmatively to the proposition that the system “gives adequate priority” to the “meaningful involvement” principle; and
- 65% of FRC professionals, 66% of FDR professionals and 55% of lawyers responded affirmatively to the proposition that the system “gives adequate priority” to the “protection from harm” principle (see Kaspiew et al., 2009, Section 10.1.2).

Response rates to the second proposition indicate that there is a lack of confidence by a substantial minority of professionals, especially lawyers, in the system response to the “protection from harm” principle. Evidence consistent with this is provided by the evaluation in, for example, data indicating that ongoing safety concerns were reported by similar or greater proportions of parents with shared care-time arrangements compared with parents whose child spent most nights with the mother (the most common arrangement).

Family Relationship Centres have become a first point of contact for a significant number of parents whose capacity to mediate is likely to be severely compromised by fear and abuse.

Studies in the evaluation suggest a range of reasons for these response patterns, in addition to issues already discussed. Qualitative data obtained from professionals and clients indicate the following issues are relevant:

- a common misunderstanding that legislative changes somehow established an “entitlement” to shared care-time arrangements, exacerbated by uneven and ineffective approaches in some parts of the system to identifying family violence;
- systemic issues, including difficulties engaging state child protection systems where children were believed to be at risk and the existence of different approaches and procedures in the Family Court of Australia and the Federal Magistrates Court; and
- specific aspects of the legislation, including a 2006 provision obligating courts to make a costs order against a party found to have “knowingly made a false allegation or statement in proceedings” (s117AB) and a new provision requiring a court to consider the extent to which one parent has facilitated the relationship between the child and the other parent (s60CC(3)(c)) (see Kaspiew et al., 2009, Section 10.4).

These were also issues that the Chisholm (2009) and the Family Law Council (2009) reports identified as being

impediments to assisting in the best way possible parents and children affected by family violence and concerns about child safety. The consultation paper issued by the Australian Law Reform Commission (2010) as part of its family violence inquiry also canvassed the need for legislative reform, among other issues.

Summary

In summary, the evaluation found that the family law system has some way to go in achieving effective practice in the area of family violence. The data demonstrate that family violence is a complex phenomenon, reinforcing the need for strategies based on case-by-case assessments rather than a “one-size-fits-all” approach. Family violence is common among separated families, with the majority of parents in the LSSF W1 2008 indicating that they had experienced physical hurt prior to separation or emotional abuse only before, during or after separation. At the same time, while most parents who reported physical hurt prior to separation also described their post-separation parental relationship as distant or clearly negative (highly conflictual or fearful), a solid minority described their relationships in clearly positive terms (friendly or cooperative).

Parents with a shared care-time arrangement were as likely as, if not more likely than, those whose child spent 66–99% of nights with the mother (the most common arrangement) to report a history of family violence or ongoing safety concerns. A history of violence, the presence of ongoing safety concerns and parental relationships described as distant, highly conflictual or fearful were all linked to poorer child wellbeing.

Family law system professionals were less confident in the system’s ability to protect children from harm than in the system’s ability to ensure that children maintained meaningful involvement with each parent after separation. There is a need for ongoing refinement of practices that distinguish families suitable for FDR processes from those that, because of family violence issues, are not suitable for FDR and require other assistance. There is also a need for better avenues of communication and examination of barriers to communication between family relationship sector professionals and legal court sector professionals (ALRC, 2010).

In common with the Chisholm (2009), Family Law Council (2009) and Australian Law Reform Commission (2010) reports, the evaluation highlighted some aspects of the 2006 legislative changes that appear to have either not addressed or actually contributed to ongoing concerns about the way in which the family law system deals with family violence.

The challenge posed by a history of family violence is clearly complex and multidimensional, with different families being affected in different ways. The evaluation evidence highlights the necessity of professionals across the system being trained to recognise and deal with violence so that the most appropriate process for making parenting arrangements can be applied and the parenting arrangements themselves are in the best interests of children and do not jeopardise their short- or long-term wellbeing.

Endnotes

- 1 This conclusion is consistent with analyses contained in three other recent reports that have all put forward recommendations for improvements in the way in which the family law system deals with family violence (Australian Law Reform Commission, 2010; Chisholm, 2009; Family Law Council, 2009).
- 2 Parents were asked whether the other parent had emotionally abused them before or during the separation, with options for nominating different types of emotional abuse being available (multiple forms could be nominated). The measure of emotional abuse covers the other parent: (a) preventing the respondent from contacting family or friends, using the telephone or car, or having knowledge of or access to family money; (b) insulting the respondent, with the intent to shame, belittle or humiliate; (c) threatening to harm the child/children, other family/friends, the respondent, pets or themselves; and (d) damaging or destroying property. Parents were then asked: “Before you separated, were you ever physically hurt by [child’s other parent]?” If they said “yes” to this question, they were asked whether the children had heard or seen any abuse or violence.
- 3 The question on safety concerns identified whether the concerns related to the respondent alone, the focus child alone, or both the respondent and focus child.
- 4 The LSSF W1 2008 question was: “Before finally separating, were there ever issues with: Alcohol or drug use? Mental health problems? Another addiction?” The respondents who mentioned that another addiction was apparent were then asked to indicate the nature of this addiction. Gambling was the most commonly cited of the range of addictions mentioned.
- 5 Part VII of the *Family Law Act 1975* (Cth), as amended by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.
- 6 The analysis of the LSSF W1 2008 was supplemented by data from the first three waves of the Longitudinal Study of Australian Children (LSAC). While the LSSF W1 2008 had the advantage of providing a large sample of children and their separated parents, its main limitation was that information on child wellbeing was entirely based on parents’ reports. The LSAC survey, on the other hand, is based on a much smaller number of children whose parents have separated, but information on child wellbeing is derived from parents, teachers and the children themselves.
- 7 These findings are based on the results of regression analysis that holds constant the effects of differences in parental socio-economic status and demographic characteristics. These factors vary according to care-time arrangement and are also likely to affect child wellbeing (e.g., maternal education, employment status). Further details of the regression modeling are provided in Chapter 11 of the full evaluation report (Kaspiew et al., 2009).

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Dr Rae Kaspiew, Dr Matthew Gray, Ruth Weston, Professor Lawrie Moloney, Kelly Hand, Dr Lixia Qu and the Family Law Evaluation Team are all at the Australian Institute of Family Studies. The Family Law Evaluation Team consists of **Dr Michael Alexander, Dr Jennifer Baxter, Catherine Caruana, Chelsea Cornell, Julie Deblaquiere, John De Maio, Jessica Fullarton, Kirsten Hancock, Dr Bianca Klettke, Dr Jodie Lodge, Shaun Lohoar, Jennifer Renda, Grace Soriano, Robert Stainsby and Danielle Wisniak.**