More than a decade on from the Institute’s first investigation of the living standards of families post-separation and divorce (Weston 1986; 1993), it is clear that the ‘feminisation of poverty’ remains a contentious issue in family law and social research. However, articles in this edition of Family Matters suggest that while gender is a significant determinant of post-divorce circumstances, it is not the sole determinant. Thus while articles by Ruth Weston and Bruce Smyth, and by Jody Hughes, focus specifically on gender and its role in determining the pathways taken out of economic disadvantage post-separation and divorce, these articles also identify certain groups of men (in particular, younger sole fathers) for whom the divorce transition is especially difficult financially.

While Weston and Smyth’s analysis strongly indicates that a key pathway out of this hardship continues to be repartnering, the ability or desire to repartner is itself constrained by factors related to gender and ongoing child care responsibilities. The various constraints to repartnering are explored in detail by Jody Hughes. In particular, Hughes draws on data from the Australian Divorce

Post-divorce disadvantage

An important aspect of any inquiry into the divorce transition is the relative positions of men and women post-divorce, including their social and financial circumstances. This edition of Family Matters includes up-to-date Institute data which strongly suggest that on both counts divorced single older women and sole mothers are likely to be particularly disadvantaged, a trend consistent with previous Institute research (Settling Up, McDonald (ed.) 1986; Settling Down, Funder, Harrison and Weston 1993).

Despite the breadth of issues and disciplinary frameworks evident in these pages, four distinct themes arise from the articles: divergent (and gendered) pathways out of economic disadvantage post-separation and divorce; tensions between the ideal of continuing, shared parental responsibility and reality (in relation to financial support for young adult children, and post-separation parenting arrangements); and the practical impact on families of Australia’s fragmented family law system. Together, these themes reflect some key areas of current family law and social policy debate.
New Zealand and Canada), and the needs of mothers with dependent children. Baker argues, among other things, that an assumption of ‘gender-neutrality’ (or gender equality) underpins the implementation of such employment programs. Baker is critical of this assumption, identifying a variety of economic and personal costs to women with responsibility for caring for family members. She argues that these factors, especially the lack of affordable substitute care arrangements, need to be taken into account if programs are to be effective in assisting women to find paid employment while not imposing new pressures on them and their families. These pressures are particularly salient for low-income earning mothers, especially sole parents, for whom the costs of being employed may outweigh the benefits of having a wage.

The tension that exists in family law between the goal of ‘gender equality’ and the continued financial vulnerability of older women and women with the care of young children post-separation and divorce is particularly evident when property is divided (Graycar 1995; Funder 1995).

In their article on the division of matrimonial property, which draws on data from the Australian Divorce Transitions Project, Grania Sheehan and Jody Hughes argue that despite the disadvantaged position of women with the care of young children after divorce, property continues to be divided between the parties in a way that reflects: (1) the ongoing undervaluation of women’s non-financial contributions to the matrimonial property and the welfare of the family (in the form of unpaid work and care of dependent children); and (2) a tendency to under-acknowledge the long-term impact of the primary caregiver and homemaker roles on future earning capacity. When it comes to assessment of the parties’ respective future financial needs, the ‘equality trap’ (Mason 1988) still prevails. This means that equal treatment of men and women may deny that one party has a greater future financial need than the other. Equal treatment may therefore result in an inequitable or unfair outcome.

Read together, these four papers indicate that a range of factors combine to effect post-divorce economic disadvantage, but that the most significant of these is having had throughout the marriage, and continuing to have, the primary caregiver responsibility for young children. Inadequate recognition of the financial consequences of caring for family members impacts not only on financial settlements on divorce, but also on access to a range of social and economic pathways out of disadvantage.

Transitions Project to show that those who are most in need of the financial and social support provided by a new relationship – women with the primary responsibility for the care of young children, older women, and women and men with limited economic resources – are the least likely to have repartnered some six years after divorce. Hughes argues that women’s and men’s involvement in the paid workforce is an important catalyst for repartnering. Thus two of the key pathways out of poverty, repartnering and re-entry into the paid workforce, are linked. Access to either pathway is, in part, determined by a person’s gender and the extent of their responsibilities for the care of dependent children.

The findings presented in the articles by Hughes, and by Weston and Smyth, raise the question: which social policies are best able to support sole parents to re-enter the workforce post-separation?

This question is addressed by Maureen Baker in her article on new employment policies, poverty and mothering. Baker examines the conflict that exists between the current program of welfare restructuring and development of employment programs in three liberal welfare states (Australia, New Zealand and Canada), and the needs of mothers with dependent children. Baker argues, among other things, that an assumption of ‘gender-neutrality’ (or gender equality) underpins the implementation of such employment programs. Baker is critical of this assumption, identifying a variety of economic and personal costs to women with responsibility for caring for family members. She argues that these factors, especially the lack of affordable substitute care arrangements, need to be taken into account if programs are to be effective in assisting women to find paid employment while not imposing new pressures on them and their families. These pressures are particularly salient for low-income earning mothers, especially sole parents, for whom the costs of being employed may outweigh the benefits of having a wage.

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Family law reform in Australia has pursued a vision of the post-divorce family as harmonious, where cooperative parenting practices are the norm and both parents remain involved with their children emotionally, practically and financially. The vision of ongoing parental responsibility despite changes in the parental relationship was particularly evident in the Family Law Reform Act 1995, while the notion of ongoing financial support for children underpins the Child Support Scheme.

A number of contributors to this edition of Family Matters have explored some of the difficulties that surround the realisation of this vision in practice. In particular, the articles by Bruce Smyth and by Christine Kilmartin highlight the expanding need for parents to support their young adult children financially, and some of the problems that arise for children and their parents as a result.

Using data from the Australian Divorce Transitions Project, Smyth explores the position of young adult children (aged 18 to 24 years) from divorced families who are not yet financially independent. Children over 18 are outside of the Child Support Scheme, and the grounds on which the Family Court will order a parent to pay child maintenance for a child over 18 are limited (namely, to allow the child to complete his/her education or mental or physical disability of the child). Smyth’s central finding is that children aged 18 years or over who are eligible to receive child support rarely receive it – a finding which puts a strict age limit on the vision of continuing parental responsibility referred to above.

Kilmartin’s article, based on data from the Institute’s Young Adults’ Aspirations Survey, provides a broader context for understanding Smyth’s findings. In particular, she provides empirical evidence of the new and varied early life course pathways being established among young adults in Australia (aged 20 to 29 years). These pathways, argues Kilmartin, are characterised by an increased likelihood that young adults will be at home with their parents for extended periods of time – a pattern driven, in part, by young adults’ commitment to post-secondary education, but also by relationship

Supporting young adult children: shifting boundaries

Since two in five marriages will end in divorce, and divorce will affect one in five children during their dependent years, marriage and relationship breakdown where children are involved is a common occurrence. The central purpose of the Institute’s Australian Divorce Transitions Project is to improve understanding of how divorce can be made a functional transition for families in Australia.

There are considerable risks associated with the reorganisation of the family unit throughout the divorce transition. These risks translate into social and economic costs, and personal suffering and ill-being of varying degrees, for both parents and children. Previous work suggests that there is great variation in the ways in which the divorce transition is effected and in the intensity and duration of economic hardship, social disorganisation and personal distress. From a systemic point of view, there is also a wide divergence in access to and use of services – for example, the Family Court, social security, legal and community services.

It is thus important to understand how interactions among individuals, families and resources may maximise the functioning of families with different characteristics throughout the divorce transition and, conversely, minimise damage and dysfunction.

The Australian Divorce Transitions Project was designed by the Australian Institute of Family Studies to build on its previous work in this area, including its studies of the consequences of marriage breakdown carried out in the 1980s.

The Project also reflects priorities and potential gaps in family law research identified by participants in a Joint Family Law Research Planning Seminar, convened by the Family Law Council and the late Dr Kathleen Funder of the Australian Institute of Family Studies in November 1995. Seminar participants came from a range of family law organisations including the Federal Attorney-General’s Department, the Family Court of Australia, the Family Court of Western Australia, the Law Council of Australia, National Legal Aid, the Australian Law Reform Commission, Family Services Council, Relationships Australia, and the National Alternative Dispute Resolution Advisory Council; academics from several Australian universities were also present.

One area thought to be in need of update was the economic and social consequences of divorce. A strong plea was made by seminar participants for a follow-up study to explore areas of change that might have occurred over the decade following the research previously conducted by the Australian Institute of Family Studies in its Settling Up – Settling Down series (McDonald (ed.) 1986; Funder, Harrison and Weston 1993), two landmark studies based on a sample of 1981 and 1983 divorces. The Australian Divorce Transitions Project grew out of this plea.

Aims

Three guiding principles were applied by the Institute in selecting the research issues to be addressed in this Project. First, precedence was given to securing national data on the divorce transition, in that population estimates are a fundamental plank in any agenda for family law reform or for the review services and support provisions. A second and complementary principle was the importance of identifying particular groups among those divorcing so that the diversity in this population is recognised, allowing appropriate access to equity and justice and to services. The provision of detailed information about particular groups (perhaps relatively rare in the population) is also important in that some of these groups consume a large proportion of the service budget, so that careful study may assist in planning appropriate services and containing costs. In this category, for example, highly conflicted divorces make up less than 5 per cent of cases but consume enormous resources, and involve considerable suffering and personal ill-being for adults and children.
breakups and financial difficulties. The rites of passage from childhood to adulthood are, Kilmartin argues, anything but clear.

Together these two papers suggest that the current rules regarding child support ending at age 18 do not reflect the more complex reality that children of this age are often not in a position to support themselves financially. A future challenge for family law and social policy may be to expand current notions of shared parental responsibility for the support of children to reflect these new demographic trends – a controversial proposition indeed.

**Children, parenting, and conflict**

The vision of continuing parental responsibility embodied in the Family Law Reform Act, referred to above, is likely to be difficult for families to accomplish due to parental conflict that so often accompanies the breakdown of relationships. This struggle has also been evident in the Family Court, which since the reforms has had to strike a balance between the importance of a child having contact with both its parents on the one hand and exposing the child to family conflict on the other, with commentators claiming that the former priority has often succeeded over the latter (Rhoades, Graycar and Harrison 1999).

Papers by Greta Sviggum, and by Patricia Noller and colleagues, broadly inform this issue – Sviggum highlights the expressed desire on the part of young children and adolescents for ongoing contact with fathers, and Noller and colleagues provide a different perspective by examining adolescents’ reactions to inter-parental conflict.

Sviggum presents a qualitative analysis of the views of Norwegian children on their parents’ separation and divorce, and their current family circumstances. Her analysis highlights the ability of children to reconstruct their understanding of their parents’ separation and their family identity over time. In particular, she identifies children’s desire to bring fathers back into their everyday lives, and for parents to work together and participate in daily activities with them. The desire expressed by children to involve their fathers in their activities is consistent with

Older women and men from long-term marriages also warrant focused study directed to early detection of difficulties related to future financial security, assurance of access to services and the possible targeting of those services to particular needs.

Third, the project was designed to enable trend analysis by comparing recent divorce transitions with those which took place in the early 1980s and described in the three books published by the Institute – *Settling Up* (McDonald 1986), *Settling Down* (Funder, Harrison and Weston 1993), and *Remaking Families* (Funder 1996).

**Surveys**


The first and largest survey – the ‘adult survey’ – is a random national telephone survey of 650 divorced Australians, conducted by the Institute in late 1997. Two samples (stratified by gender and geographical location) were drawn from the population of Australian households with telephones. Households from Western Australia, however, were not sampled due to some differences in the law on child-related issues between this state and the rest of Australia.

The first sample in this survey consisted of 513 parents (284 women, 229 men) who were divorced under Australian law, were separated after January 1988, and who had a child under 18 years of age at the time of separation. The second sample comprised 137 older women and men from long-term marriages (77 women, 60 men). Respondents in this sample were divorced under Australian law, separated after January 1988, married for 15 or more years, and the age of the wife at separation was between 45–65 years. Although respondents’ status as a parent was not a specific criterion for inclusion in the long-term marriage sample, it is noteworthy that half the respondents in this sample had at least one child under the age of 18 years at the time of separation.

The survey content covers a broad range of issues including: post-separation parenting arrangements (residence, contact and child support); property division and spousal support; education, training and work history; income; housing; personal wellbeing; and relationships. The second survey – the ‘childrens survey’ – is a telephone survey of 63 children (aged between 12 and 18 years at the time of interview) of the parents who were involved in the ‘adult survey’. The survey content covers: parenting arrangements (residence, contact and child support); family relationships; children’s adjustments; and educational and occupational aspirations and future plans.

The third survey – the ‘violence survey’ – is a follow-up telephone survey of 398 of the participants who were involved in the ‘adult survey’. This survey was commissioned by the Office of the Status of Women and focuses specifically on spousal violence. It covers a range of issues including: types of abuse; history of abuse; the nature of negotiations on property and children’s arrangements; legal process; and protection orders.

Because of this breadth of coverage by the Australian Divorce Transitions Project and associated surveys, the Project serves as an umbrella under which a number of subsidiary studies were undertaken. These studies seek to identify specific groups for whom the divorce transition is known to differ in ways that imply important questions of equity and justice, distribution of services, economic security, and wellbeing.

Some of the papers in this edition of *Family Matters* present findings from these subsidiary studies of property division, living standards following separation and divorce, child support, and family reformation.

**References**


The Australian Divorce Transitions Project was conceptualised by the late Dr Kathleen Funder, who was a Principal Research Fellow at the Australian Institute of Family Studies. This overview is based on Dr Funder’s original proposal for the Project.
current legislative preference for ongoing parental responsibility and regular parent–child contact. The wishes are also consistent with research findings in the area of fathering and child development. In particular, researchers have emphasised the importance of father involvement with the care of children that goes beyond recreation activities to assisting in day-to-day events such as helping with homework, talking over personal problems, and the administration of firm rules and discipline for misbehaviour (Amato and Gilbreth 1999; Larson 1993). However, as Amato and Gilbreth argue, the ability of the non-resident parents (usually fathers) to maintain anything other than a superficial, recreational relationship with their children is dependent upon their contact arrangements as well as their parenting skills. Contact arrangements that encourage non-resident parents to take on a substantial parenting role after divorce are conducive to children’s developmental needs.

One of the most difficult aspects of the implementation of ongoing parental responsibility is achieving residence/contact arrangements for high-conflict families that are not detrimental to the child’s interests. Striking the right balance between the child’s right to contact with both parents and to be safe from damaging family conflict is hardest in cases where there is domestic violence and child abuse. In such cases, decisions made in the best interests of the child are not always synonymous with the blind enforcement of the right of the child to ongoing contact with both parents (Woodhouse 1999).

These considerations are also relevant to separated parents more generally, many of whom are still in conflict with each other. Most inter-parental relationships (during marriage or post-separation) are characterised by some degree of conflict. However, it is unlikely that all expressions of marital conflict are damaging for children. Indeed, exposure to some types of conflict may even promote the development of constructive conflict resolution skills or coping strategies (Markman, Stanley and Blumberg 1994). Further, the effects of inter-parental conflict on children can vary depending on conflict frequency, intensity, content, and in the way the conflict is resolved.

Because marital conflict can be expressed in myriad ways, it is important to identify which dimensions of marital conflict are related to child problems and which are not. Patricia Noller and colleagues present findings from an empirical study of adolescents’ reactions to martial conflict. Their data provide strong support for children’s ability to distinguish between constructive and destructive forms of conflict resolution, and confirm that adolescent children are more emotionally distressed by the latter. In addition, they examine adolescents’ reaction to inter-parental conflict scenarios that are child-related and those that are not – confirming that the content of inter-parental conflict affects children’s responses. Conflict about child matters is more distressing to adolescents than non-child related conflict.

Together these two papers highlight the difficulties faced by families who have experienced separation and divorce in fashioning a system of shared parenting and financial support for children that meets the expressed needs of their children, particularly when these needs are to be met in a context of ongoing animosity and conflict between parents. The goal of eliminating all conflict between parents post-separation is clearly an unrealistic one for many families. Nevertheless the findings presented by Sviggum and Noller respectively suggest that energies may be well spent in attempting to educate separated and divorced parents about the consequences of various forms of conflict for their children, along with constructive methods of conflict resolution.

In working towards educating parents in this way, the experiences of those whose marriages have stood the test of time may be instructive. Robyn Parker draws on data from the Institute’s Marital Perceptions Study to consider the reflections of those in mainly long-tem marriages regarding the characteristics of strong marital relationships. In her qualitative analysis, Parker provides some insights relevant to separated as well as still-married parents, including that ‘children were largely regarded as an integral part of, if not the primary reason for, being married’. Given the centrality of children, it is important that when a marriage ends, some positive features of the relationship between parents – for example, effective communication – be ongoing or re-established.

**Australia’s fragmented family law system**

Talk of Australia’s federal system of government and Constitution as they impact on families and family law may initially sound rather dry and abstract. These features of our system of government, however, continue to have a direct practical impact on the pathways available to particular families to resolve their family law disputes, and thus on the divorce transition.

Any explanation of Australia’s fragmented family law system must begin with the Commonwealth Constitution. Under the Constitution, the Commonwealth Parliament only has power to legislate in relation to particular family law issues, namely ‘marriage’ and ‘matrimonial causes’ (divorce). One problem that results from this is that only married couples can use the Family Court to resolve their property disputes on relationship breakdown.
Laws applicable to de facto couples (including same-sex couples) are a matter for the different state parliaments.

As a result, the applicable law for married couples regarding property division is consistent throughout Australia, but the law applicable to de facto couples is not. This means that separating de facto couples who cannot agree may have to go to the cost of accessing two court systems to resolve their disputes: the state courts (property) and the Family Court (children), while married couples can use the Family Court for both issues.

The legal position in relation to children is more streamlined due to a referral of legislative powers by the states to the Commonwealth in the 1980s. The Family Court can now decide all parenting disputes related to children, regardless of parental relationship status. Until this referral, disputes regarding children born outside of marriage were decided by state courts rather than the Family Court.

A fragmented system continues in the area of child protection, as the states have never referred their ‘welfare’ powers to the Commonwealth. Child protection thus remains a matter for state parliaments to legislate upon. The line, however, becomes blurred when a child protection issue arises in the context of a parenting dispute. An example would be when, in a children dispute being heard by the Family Court, one parent alleges that the other parent has abused the child and should therefore not have contact with the child. Either the state children’s courts or the Family Court, or both, could ultimately hear this sort of dispute. Having cases of this nature proceed through two court systems is likely to be extremely damaging for the families involved.

The Chief Justice of the Family Court, Alistair Nicholson, discusses the fragmented nature of the Australian family law system in this edition. His article provides a valuable summary of the complex family law system operating in Australia, which, as noted above, results largely from Australia’s Constitution but which has also been accentuated by political decisions, including the recent establishment of the new Federal Magistrates Service. The operation of the Federal Magistracy, including its place in the existing family law system, is considered by Belinda Fehlberg in her Family Law Update column.

In this edition’s Opinion column, Jenni Millbank deals with a further significant area of fragmentation in the Australian family law system: the legal recognition of same-sex couples, particularly the property rights of separating same-sex couples. Here, the critical issue is that, as same-sex couples cannot marry, they cannot have recourse to the Family Court to determine their property disputes on relationship breakdown. While de facto couples’ property disputes are covered by state law, the definition of ‘de facto’ does not always include same-sex couples. For same-sex couples in Australia, the extent of legal intervention regarding property division on relationship breakdown thus depends on which state the couple lived in throughout most of their relationship. In contrast, as noted above, the Family Court determines all parenting disputes.

Read together, these three articles provide a very good sense of the complex legal system that has developed in Australia to resolve family law disputes, and the inadequacies of the current system. Unfortunately, two of the most conclusive ways of resolving constitutional problems – amending the Constitution, and the referral of powers by the states to the Commonwealth – would seem to be remote possibilities at the present time.

**Conclusion**

Previous Institute research suggests that there is great variation in the ways in which the divorce transition is effected and in the intensity and duration of economic hardship, social disorganisation and personal distress experienced (Settling Up, McDonald (ed.) 1986; Settling Down, Funder, Harrison and Weston 1993). The papers in this edition of Family Matters reconfirm this variation, and also identify some current features of Australia’s family law system which are likely to hinder rather than help many families through the legal system, and thus through the divorce transition more generally.

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