Australian Institute of Family Studies
The Institute is a statutory authority that originated in the Australian Family Law Act 1975. It was established by the Australian Government in February 1980. The Institute promotes the identification and understanding of factors affecting marital and family stability in Australia by:
- researching and evaluating the social, legal and economic wellbeing of all Australian families;
- informing government and the policy-making process about Institute findings;
- communicating the results of Institute and other family research to organisations concerned with family wellbeing and to the wider general community; and
- promoting improved support for families, including measures that prevent family disruption and enhance marital and family stability.

The objectives of the Institute are essentially practical ones, concerned primarily with learning about real situations through research on Australian families.
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Belinda Messer
Summer Abstract
Oil painting on canvas
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Following the federal election, the Institute remains within the portfolio of the Prime Minister and Cabinet (PM&C), with the Hon. Tanya Plibersek MP, who is now the Minister for Human Services and Minister for Social Inclusion, being the Minister responsible for the Institute. This positioning maintains the role of the Institute in providing research to inform policy relating to family wellbeing, within and beyond the portfolio. The Institute’s Australian Centre for the Study of Sexual Assault (ACSSA) came under Minister Plibersek’s previous portfolio responsibilities. I am looking forward to welcoming Minister Plibersek to the Institute early next year.

Interest in the Institute’s work continues apace, and we have hosted a steady flow of national and international visitors. On 7 September 2010, the Institute was privileged to welcome the Governor-General of Australia, Her Excellency Quentin Bryce AC, His Excellency Mr Bryce, and three staff from Yarralumla. Her Excellency was most interested in our current research and publication programs and very generously affirmed the value of the Institute and the contributions of those who have worked here across our three decades. She noted the extensive use she had made of the Institute’s research across her career.

While maintaining our central focus on national research, policy and practical relevance, international outreach, especially within the Asia–Pacific region, is growing in priority. Institute researchers are increasingly invited to present our work overseas and we have also recently welcomed delegations from several countries.

4th East Asia Ministerial Forum on Families

With Ruth Weston, PSM, I joined the Australian Delegation for the 4th East Asia Ministerial Forum on Families. The Ministerial Forum commenced on 9 November in Kuala Lumpur, Malaysia under the theme: Safe and Resilient Families: Protecting and Empowering At-Risk and High-Risk Families. The forum was attended by more than a dozen other nations from East and Southeast Asia.

Before the Ministerial Forum, we participated in the Senior Officials Forum, which included discussion of each country’s progress in implementing the Bali Statement, exchange of information on current policy, practice and research priorities with a focus on building family resilience, and the drafting of the Forum Communiqué, to be considered and endorsed by the Ministers on the following days.

At the invitation of Dato’ Amine Abdul Raman, Director-General of the Malaysian National Population and Family Development Board at the Ministry of Women, Family and Community Development, I presented the opening paper titled Building Family Resilience and Creating “Bounce Back” Families: Providing the Evidence Base, Assessing What Works and Disseminating the Knowledge as one of three presenters in a session on Building Family Resilience. Creating “Bounce Back” Families. The paper provided examples of ways in which the Institute’s research and evaluations have contributed to policy development and practice and improved our understanding of the...
developmental paths to resilience and vulnerability. These examples highlighted some of the personal, social and financial resources that families need in order to achieve resilience and to emphasise the importance of community-based, family-focused, and socially inclusive supports in assisting families in this endeavour. The paper was well received and generated several questions from the Ministers. They were particularly interested in how the Institute’s research and evaluation activities inform and influence family policy and practice, the value of Growing up in Australia: The Longitudinal Study of Australian Children (LSAC) and the role of the Institute’s clearinghouses in disseminating research information and promising practice to policy-makers and practitioners. In the final communiqué the ministers resolved to explore the feasibility of each nation establishing a repository of policy and research and consider ways in which information might be made accessible across the nations participating in the forum. Clearly, the work of the Institute and our clearinghouses is of growing interest across the region.

While there was considerable commonality in the challenges confronting each nation (including disadvantage and poverty, family violence and relationship breakdown), it is clear that marked differences in cultural and national contexts result in very different approaches to addressing these. Despite similar challenges, the clash of traditional cultures with the impacts of globalisation, development and “modernity” formed another dimension of the complexity. All in all, this was a very valuable opportunity to gain a much richer perspective on our region and Australia’s engagement with our neighbors in the Asia-Pacific. I expect that we will have further visits from regional delegations and ministerial interest in learning more about the Institute. The forum also provided an excellent opportunity to progress negotiations around closer collaboration with several countries, including Vietnam, South Korea, Singapore and our hosts in Malaysia.

International delegations

Equally important for building capability and exchanging knowledge, are the visits made to the Institute by international delegations and scholars.

In July, we welcomed a delegation from the Singapore Ministry of Community Development, Youth and Sports. In the same month, the New Zealand Families Commissioner, Mr Gregory Fortuin, visited to discuss the commission’s Safety of Children project and Supporting Families and Whanau in Financial Hardship. In addition, the Institute also welcomed a delegation from the Hong Kong Council of Social Services.

A Taiwanese delegation from the Taipei Economic and Cultural Office visited the Institute in September. During this visit, we learned of the innovative approach being taken in Taiwan to technology and its use both in school education and programs for senior citizens, and of that nation’s enduring cultural commitment to filial piety. Members of the delegation were very well informed about the Institute’s work and keen to explore opportunities for further engagement.

Also in September, we welcomed a delegation from the Vietnamese Ministry of Culture, Sports and Tourism. Ms Ruth Weston, General Manager (Research), has worked over many years to establish and maintain our links to Vietnam and across the region. The delegation conveyed the Vietnamese Government’s interest in pursuing a formal collaborative agreement with the Institute.

In November, the Institute welcomed a very large delegation from China. Our visitors represented the National Bureau of Statistics of China and 19 regional bureaus. One of the Institute’s Research Fellows, Lixia Qu, invaluabley explained in Mandarin our statistical survey methodologies and the means by which our survey data inform the Institute’s research activities.

Also in November, we were very pleased to host a visit by members of the UK Family Justice Review, commissioned by the Ministry of Justice, the Department of Education and the Welsh Assembly Government. The review is examining both public and private law cases; exploring whether better use can be made of mediation and how best to support contact between children and non-resident parents or grandparents; examining the processes (but not the law) involved in granting divorces and awarding ancillary relief; and considering how the different parts of the family justice system are organised and managed. The aim is to provide advice that produces a system that allows families to reach easy, simple and efficient agreements that are in the best interests of children, while also protecting children and vulnerable adults from risk of harm. The delegation included Mr David Norgrove, the Chair, and Mr Justice Andrew McFarlane, a Judge of the High Court. They were particularly interested in the findings of the Institute’s Evaluation of the 2006 Family Law Reforms and their impacts and implications for the UK family law system.

Other Institute international presentations

Institute researchers increasingly are invited to present our work at major international conferences. For example, in June, Dr Daryl Higgins, General Manager (Research), delivered a plenary presentation on Global Challenges on Disabilities and Sexuality at the 4th International Conference on Peer Education, Sexuality, HIV and AIDS in Nairobi, Kenya.

The following month, Senior Research Fellow Carol Soloff made presentations on LSAC to the European Child Cohort Network (EUCCONET) International Workshop, at the University of London; at the Economic and Social Research Institute and Trinity College, Dublin; at the University of Mannheim; and at the International Association for Time Use Research Sciences, in Paris.

In October, Dr Michael Alexander, Principal Research Fellow, travelled to Italy to speak on recent parental leave changes in Australia at the International Parental Leave Policies and Research Network annual seminar in Bologna, and on fathering and family-friendly work arrangements at Barcelona University.

International visiting scholars

The Institute continues to attract international researchers to spend time working with our project teams. Dr Leanne
Dr Matthew Gray

After over five years at the Institute as Deputy Director (Research), and following an earlier time with us (from November 2000 to early 2004), it is with considerable ambivalence that we bid farewell to Dr Matthew Gray. From the start of 2011, Matthew will be taking up the position of Professor of Indigenous Public Policy at the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU). CAEPR is currently Australia’s major social science research centre focusing on Indigenous economic and social policy.

Throughout his time at the Institute, Matthew has published extensively on a wide range of Australian social and economic policy issues. His particular expertise has been a valuable asset to the Institute, in a range of areas including work and family issues, labour economics, social exclusion and social inclusion, measuring wellbeing, the economic consequences of divorce, child support, and social and economic policy development.

While at the Institute, Matthew has led our research and evaluation programs for a wide range of organisations, including the Attorney-General’s Department, Department of Families, Housing, Community Services and Indigenous Affairs, Department of the Prime Minister and Cabinet, and the Department of Education, Employment, and Workplace Relations.

He will be sorely missed! I wish Professor Gray and his family well for a very exciting move and look forward to our continuing collaborative relationship.

Ms Maren Helland from the Norwegian Institute of Public Health arrived in October to spend six months working on comparative analyses of the LSAC data and longitudinal data from the Norwegian study, Tracing Opportunities and Problems in Childhood and Adolescence (TOPP).

In short, the international interest in the Institute’s work grows, and is resulting in very valuable collaborative opportunities, with tangible benefits.

Memoranda of understanding

In addition to memorandum of understanding (MoUs) with Australian entities—including the Australian Institute of Criminology (AIC), the Australian Institute of Health and Welfare (AIHW), the Department of Education, Employment and Workplace Relations (DEEWR) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)—the Institute continues to build international relationships, including the renewal of our MoU with the Norwegian National Institute of Public Health and a new MoU with our nearest regional partner, the New Zealand Families Commission.

Family law research

This edition focuses on key topics relevant to the family law system. The completion of the evaluation of the 2006 reforms to Australia’s family law system, commissioned by the Australian Government, represents one of the Institute’s major achievements of 2009–10. The report, released in January 2010, continues to attract considerable interest and the results of the evaluation are being used to inform the ongoing development of policy and practice in the family law area.

AIFS is continuing its family law work via the evaluation of two pilot programs, being undertaken for the Attorney-General’s Department, that aim to strengthen the delivery of services for separated parents. One pilot program is designed to build better partnerships and greater collaboration between Family Relationship Centres and legal assistance services, while the other is for legally assisted and supported family dispute resolution in family violence cases.

Concluding thoughts

Increasingly, a key priority for the Institute is to strengthen our international links, especially across our region, while ensuring that we extend the impact, value and relevance of our work, nationally. As I have outlined, above, there is pleasing progress in achieving the former, with considerable extension of our international links. The articles in this edition of Family Matters highlight the latter, and demonstrate how the work of Institute researchers and their colleagues in other institutions is contributing to a much stronger evidence base to inform policy and practice in an area of vital family policy—the family law system.
In the past year, the empirical evidence base about the operation of our family law system has grown exponentially. The Australian Institute of Family Studies’ Evaluation of the 2006 Family Law Reforms (the AIFS Evaluation) (Kaspiew et al., 2009) represents the largest and most detailed examination of any system internationally. A range of other research projects has also come to fruition, collectively providing an evidence base about our system that is the envy of international policy-makers, practitioners and researchers. This edition of Family Matters brings together articles from several of the key pieces of research that now inform our understanding of the system.

In exploring the operation of the system from the perspective of families and a diverse range of professionals (family service system professionals, lawyers, judges, family consultants and registrars), the AIFS Evaluation has provided an extensive and multifaceted picture of the system. Findings from key studies based on large-scale, representative samples of parents are supplemented by smaller scale studies, including qualitative studies tapping professionals’ views, and studies based on other sources of information, including administrative records, court data and court files.

As the summary by Kaspiew et al. in this edition indicates, many positive messages emerged from the AIFS Evaluation. The big picture view shows that, as was the case before the 2006 changes, substantial numbers of separated parents are able to reach agreement about post-separation parenting arrangements, with little if any use of formal services. Further, parents expressed high levels of satisfaction with their use of relationship services, and the use of these services is increasing. There was extensive (almost universal) support for a key principle in relation to post-separation parenting arrangements—that both parents should continue to be responsible for their children after separation.

The AIFS Evaluation also highlighted areas where further improvement is necessary, notably the area of family violence (see Kaspiew et al., 2010). Along with other important legal system analyses published in 2009 (e.g., Chisholm, 2009; Family Law Council, 2009), the evidence shows that the family law system has some way to go in ensuring that clients affected by family violence access the most appropriate pathways for their needs, and arrive at post-separation parenting arrangements that optimise outcomes for their children. On 11 November 2010, the federal Attorney-General, The Hon. Robert McElland, announced the Government’s proposal to amend the legislation in response to the findings and recommendations of these three reports (Attorney-General’s Department, 2010a). Specifically, the Exposure Draft of the Family Law Amendment (Family Violence) Bill 2010 seeks to amend the Family Law Act 1975 (Cth) to strengthen provisions dealing with family violence and child abuse. In addition to a wider definition of family violence, the Bill introduces provisions specifying that where there is conflict between principles concerning meaningful involvement and protection from harm, protection from harm is to be given greater weight. The proposed legislation also seeks to repeal those parts of the legislation that discourage the disclosure of concern about family violence and child safety (FLA s60CC(3)(c) and s117AB).

The AIFS Evaluation demonstrated that it is a particularly complex group—families who report being affected by family violence, often accompanied by mental health problems or substance abuse issues—that represents the most intensive users of the system. Many of the needs of these families are not the same as the needs of families not affected by these issues, and it is clear that responses in the legislation, the service system and the courts need to recognise this. Another article in this edition, by Bagshaw and colleagues, specifically examines the experiences of purposive samples of self-selected system users, and provides further detail on experiences in the family law system of those affected by family violence.

While it has become commonplace to refer to Tolstoy’s famous observation in Anna Karenina (Tolstoy, 1901) that “all happy families are alike; each unhappy family is unhappy in its own way”, in the family law context, the evocation of this sentiment is irresistible in light of the material in this edition. The themes of diversity and complexity, manifest in various ways, are evident in the other articles in this edition, each of which reinforces the central point that policy and legislation will have differential impacts on different groups.

Diversity in the impact of the legislative underpinning of the 2006 family law reforms, the Family Law Amendment (Shared Parental Responsibility) Act 2006, is highlighted in research by Fehlberg and colleagues, who are undertaking a qualitative, longitudinal study of parents who have negotiated shared parenting and property arrangements in the post-reform era. The AIFS Evaluation’s findings, through the perspectives of lawyers and service system professionals, and to some extent parents, suggested that the legislation had changed to an uncertain degree the “bargaining dynamics” over post-separation arrangements in a range of areas, including over parenting and property (see Kaspiew et al., 2009, section 9.6). The data raised the hypothesis that an “agreeing dynamic” applied to some parents, but the dealings of other parents were susceptible to a “bargaining dynamic” and, for this latter group especially, the legislative amendments had weakened the position of women and favoured “parents over children”. Our understanding of these findings is enlarged significantly by the work of Fehlberg and colleagues, whose sample, although not representative of post-reform separated...
parents, included a group of parents whose shared care arrangements were arrived at amicably and proceeded smoothly. It also included a group whose arrangements had been negotiated; at times, it seems, in the shadow of a common misunderstanding of the law as establishing an “entitlement” to shared care. From the mothers’ perspectives, these arrangements were proceeding much less happily and were the source of significant concerns about children’s wellbeing. Conflictual relationships, and sometimes a history of violence, were evident in this latter group.

Two other articles in this edition demonstrate further the diverse nature of parental dealings over post-separation parenting arrangements. In combination, the findings of several recent studies are building an emergent understanding that some parenting arrangements are chosen bilaterally (or even multilaterally, if children are meaningfully consulted) by parents who genuinely have the capacity to cooperate and agree about what is best for their children (Cashmore et al., 2010; Fehlberg, Millward, & Campo, 2009; McIntosh et al., 2010). For other parents, arrangements may come about through negotiation (with “agreement” representing a continuum ranging from compromise to coercion) (Fehlberg et al., 2009); or through judicial determination for those who end up in court.

In the other article drawing on evaluation-related research in this edition, Weston et al. describe different care arrangements and the characteristics of the families that have them. The 10,000 parents in this study had separated post-reform and most of the children were less than 5 years old. The data show that shared care arrangements (35–65% night split) applied to about 16% of the children, and while the picture for many families with these arrangements was a positive one—reflected in parents’ high satisfaction and views that the arrangements were working well—a sub-group of parents with shared care told a much less happy tale. Members of this sub-group, who were more likely to have relied on the formal family law system for assistance, had experienced a history of violence and/or held ongoing safety concerns arising from their child(ren)’s contact with the other parent. While such experiences were linked with diminished child wellbeing across all care-time arrangements, according to mothers’ reports, this was particularly the case where there were safety concerns and the children had a shared care-time arrangement.

The other article based on the project being undertaken by Fehlberg and her colleagues arises from the 2006 shared parenting changes, combined with changes to the child support scheme from 2006–08, which were partly rationalised on the basis of women’s increasing participation in the workforce. Millward et al. explore what is probably a growing, but little examined, group: women who have a child support liability. The article highlights significant diversity in their circumstances, attitudes and behaviour and suggests some insights into how these differ from those of fathers.

Yet another complex aspect of the legal system’s interaction with separated families is evident in the research on disputes over post-separation relocation, discussed by Kaspiew, Behrens and Smyth in their article in this edition. Family violence is a highly relevant theme in this research as well, with the study demonstrating the prevalence of a history of family violence among pre-reform samples of parents who have litigated relocation disputes and in judgments handed down in such cases. The study indicates that rather than being a source of conflict, many relocation disputes are a manifestation of conflict, with the qualitative data indicating that the majority of relationships among parents in the sample were conflicted before, during and after the dispute. Again, the empirical evidence in this study establishes the need for legislative and policy responses that can accommodate a diversity of needs. The authors conclude that “extreme caution [is needed] in making assumptions about the types of relocation cases to which the law is applied, and consequently [there is] a need for caution in framing such law should any changes in legislative policy be contemplated”.

The article by Losoncz, which is the only article in this edition that does not focus specifically on family law, examines mothers’ increasing involvement in the workforce. The impetus for Losoncz’s focus on persistent work–family strain among working mothers arises from their increasing workforce involvement, without much, if any, consequent decrease in their domestic responsibilities, including child care. Losoncz finds that working mothers fall into six “clusters” on the spectrum of persistent tension between work and family responsibilities, with factors such as the nature of work, numbers of hours worked and the age of their children being influential factors in terms of cluster status. Other important factors determining cluster status are personal characteristics, including attitudes to being a working mother. Mothers experiencing separation, as well as those whose youngest children are between the ages of 6 and 11, were found to be particularly vulnerable to such strain.

Although our evidence base about the family law system is significantly broader and deeper than it was prior to the 2006 reforms (as the material in this edition of Family Matters shows), there is little justification for thinking that there is not much more to learn. There are fewer big gaps in our empirical evidence base but the coverage is by no means comprehensive. For example, the evidence on the experience of children as participants in the family law
The conclusions of policy-makers (and by extension practitioners in the application of policy) may be in vain and uncertain if not founded upon the observations of researchers.

References


Dr Rae Kaspiew is a Senior Research Fellow at the Australian Institute of Family Studies.
In 2006, a series of changes to the family law system were introduced. These included changes to the Family Law Act 1975 (Cth) and increased funding for new and expanded family relationships services, including the establishment of 65 Family Relationship Centres (FRCs) and a national advice line. The aim of the reforms was to bring about “generational change in family law” and a “cultural shift” in the management of separation, “away from litigation and towards cooperative parenting”.

The 2006 reforms were partly shaped by the recognition that although the focus must always be on the best interests of the child, many disputes over children following separation are driven by relationship problems rather than legal ones. These disputes are often better suited to community-based interventions that focus on how unresolved relationship issues affect children and assist in reaching parenting agreements that meet the needs of children.

The changes to the family law system followed an inquiry by the House of Representatives Standing Committee on Family and Constitutional Affairs (2003), which recommended changes to the family relationship services system and the legislation. The committee’s report, Every Picture Tells a Story, made recommendations that aimed to make the family law system “fairer and better for children”. The 2006 changes reflected some, but not all, of the recommended changes.

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

- help to 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.
The policy objectives outlined above encompassed a range of more specific goals. A set of indicators of the success or otherwise of the reforms in achieving these objectives was developed. These were translated into the following evaluation questions:

1. To what extent are the new and expanded relationship services meeting the needs of families?
   a. What help-seeking patterns are apparent among families seeking relationship support?
   b. How effective are the services in meeting the needs of their clients, from the perspective of staff and clients?

2. To what extent does family dispute resolution (FDR) assist parents to manage disputes over parenting arrangements?

3. How are parents exercising parental responsibility, including complying with obligations of financial support?

4. What arrangements are being made for children in separated families to spend time with each parent? Is there any evidence of change in this regard?

5. What arrangements are being made for children in separated families to spend time with grandparents? Is there any evidence of change in this regard?

6. To what extent are issues relating to family violence and child abuse taken into account in making arrangements regarding parenting responsibility and care time?

7. To what extent are children’s needs and interests being taken into account when these parenting arrangements are being made?

8. How are the reforms introduced by the Family Law Amendment (Shared Parental Responsibility) Act 2006 (SPR Act 2006) working in practice?

9. Have the reforms had any unintended consequences—positive or negative?

The AIFS Evaluation of the 2006 Family Law Reforms was based on an extensive research program and provides a comprehensive evidence base on the operation of the family law system. The Evaluation included three main projects: the Legislation and Courts Project, the Service Provision Project and the Families Project. Each of these projects comprised a number of sub-studies, with 17 separate studies contributing to the Evaluation overall (see the text box at top right and Appendix for further information). The research design focused on examining the extent to which key aspects of the objectives underpinning the reforms had been achieved. The Evaluation involved the collection of data from 28,000 people involved in the family law system, including parents, grandparents, family relationship services staff, clients of family relationship services, lawyers, court professionals and judicial officers. It also involved the analysis of administrative data and court files. This article outlines the key research questions and findings from the Evaluation—references in parentheses throughout are to tables, figures and sections in the full Evaluation report. The full Evaluation report (Kaspiew et al., 2009) is available from the AIFS website <www.aifs.gov.au>.

A point that transcends the specific evaluation questions and has implications for the findings across all of the evaluation questions arises from the new empirical evidence from the Evaluation about the characteristics of separated families, particularly those who access services across the system. A significant proportion of families who actively engage with the family law system have complex needs, involving issues such as family violence, child abuse, mental health problems and substance abuse. For example, 26% of mothers and 18% of fathers reported experiencing physical hurt prior to separation, and 39% of mothers and 47% of fathers reported experiencing emotional abuse before, during and after separation (LSSF W1 2008, Table 2.2). Families with complex needs are the predominant clients both of post-separation services and the legal sector; however, there is also a proportion of families who do not engage with the system to any significant extent. While some of these families appear not to be characterised by any significant complexity in terms of family violence, mental health issues or substance abuse issues, there is a sub-group of non-users of the system for whom these issues are relevant.

**Evaluation question 1:** To what extent are the new and expanded relationship services meeting the needs of families?

- **a.** What help-seeking patterns are apparent among families seeking relationship support?
- **b.** How effective are the services in meeting the needs of their clients, from the perspective of staff and clients?

There is evidence of fewer post-separation disputes being responded to primarily via the use of legal services and more being responded to primarily via the use of family relationship services. This suggests a cultural shift whereby a greater proportion of post-separation disputes over children are being seen and responded to primarily in relationship terms.
About half of the parents in non-separated families who had serious relationship problems used early intervention services to assist in resolving those problems (GPPS 2009; Table 3.13). There was less use of these services to support relationships by couples who had not faced serious problems (about 10%) (GPPS 2009; Table 3.12). Client satisfaction with early intervention services (funded as part of the federal Family Relationships Services Program) was high, with upwards of 88% of clients providing positive ratings for the “overall quality” of early intervention services. Favourable assessments for overall quality were made by 91% of Specialised Family Violence Service clients, 86% of Men and Family Relationships Services clients, 88% of counselling service clients and 95% of the Education and Skills Training service clients (Survey of FRSP Clients 2009; Table 3.28).

Overall, clients of post-separation services also provided favourable ratings. More than 70% of FRC and FDR clients said that the service treated everyone fairly (i.e., practitioners did not take sides) and more than half said that the services provided them with the help they needed (Survey of FRSP Clients 2009; Table 3.28). This rate can be considered to be quite high, given the strong emotions, high levels of conflict and lack of easy solutions that these matters often entail.

Family relationship service professionals generally rated their own capacity to assist clients as high (Online Survey of FRSP Staff 2009; Tables 3.21 & 3.22). They also spoke of considerable challenges associated with the complexity of many of the cases they are handling and of waiting times linked largely to resourcing and recruitment issues, especially in some of the FRCs.

Consistent with an important aim of the reforms, family relationship service professionals generally placed considerable emphasis on referrals to appropriate services. At the same time, ensuring that families are able to access the right services at the right time represents one important area where there is a need for ongoing improvement. Pathways through the system need to be more clearly defined and more widely understood. There is still evidence that some families with family violence and/or child abuse issues are on a roundabout between relationship services, lawyers, courts and state-based child protection and family violence systems. For example, compared with parents who did not report family violence, parents who reported family violence were much less likely to report that their parenting arrangements had been sorted out some 18 months after separation (LSSF W1 2008; Table 4.14) and were more likely to report using multiple services. While complex issues may take longer to resolve, resolutions that are delayed by unclear pathways or lack of adequate coordination between services, lawyers and courts have adverse implications for the wellbeing of children and other family members.

There is a need for more proactive engagement and coordination between family relationship service professionals and family lawyers and between family law system professionals and the courts. This need is especially important when dealing with complex cases.

**Evaluation question 2: To what extent does FDR assist parents to manage disputes over parenting arrangements?**

The use of FDR post-reform was broadly meeting the objectives of requiring parents to attempt to resolve their disputes with the help of non-court dispute resolution processes and services.

About two-fifths of parents who used FDR reached agreement and did not proceed to court (LSSF W1 2008; section 5.3.3). Almost a third did not reach agreement and did not have a certificate issued (under s60I(8) of the SPR Act 2006, family dispute resolution practitioners may issue these certificates to indicate that one or both parties has attempted to resolve a matter through FDR). However, most of these parents reported going on to sort things out mainly via discussions between themselves. About one-fifth were given certificates from a registered family dispute practitioner that permitted them to access the court system. Most of these parents mainly used courts and lawyers and approximately a year after separation most had neither resolved matters nor had decisions made.

Family Relationship Centres have also become a first point of contact for a significant number of parents whose capacity to mediate is severely compromised by fear and abuse, and there is evidence that FDR is occurring in some of these cases (Survey of FRSP Clients 2009; Tables 5.8 & 10.3), even though matters where there are concerns about family violence or child abuse are exceptions to the requirement to attend FDR (SPR Act 2006, s60I(9)). This may reflect an inadequate understanding of the exceptions
to FDR by those making referrals. At the same time, the complexities of this process need to be acknowledged. There are decisions that need to be made on a case-by-case basis, including decisions about who is best placed to make a judgment concerning whether there are grounds for an exception and the extent to which professionals should respect the wishes of those who qualify as an “exception” but nonetheless opt for FDR.

Clearer inter-professional communication (between FDR professionals, lawyers and courts) will not provide prescriptive answers to such questions but would assist in developing strategies to ensure that there is a more effective process of sifting out matters that should proceed as quickly as possible into the court system. Progress on this front, however, also requires earlier access to courts and greater confidence on the part of lawyers and service professionals that clients will not get “lost in the family law system”.

**Evaluation question 3:** How are parents exercising parental responsibility, including complying with obligations of financial support?

In lay terms, parental responsibility has a number of dimensions, including care time, decision-making about issues affecting the child, and financial support for the child. Shared decision-making is most likely to occur where there is shared care time.

Shared decision-making was much less common among parents who reported a history of family violence or had ongoing safety concerns for their children (LSSF W1 2008; section 8.1.3). Nonetheless, the exercise of shared decision-making was reported by a substantial proportion of parents with a history of violence. For example, shared decision-making about the child’s education was reported by 25% of fathers and 15% of mothers who said that their child’s other parent had hurt them physically and whose child was in a care arrangement involving most or all nights with the mother. Where a history of physical hurt was reported and the child was in a shared care arrangement, 54% of fathers and 42% of mothers reported shared decision-making over education.

In contrast to the systematic variation in decision-making practices reported by parents with different care-time arrangements, legal orders concerning parental responsibility demonstrated a strong trend, pre-dating the reforms, for decision-making power to be allocated to both parents. Prior to the reforms, court orders provided for shared parental responsibility in 76% of cases, compared with 87% after the reforms (QSCF 2009; Table 8.2). Generally, fathers’ compliance with their child support liability did not vary according to care-time arrangements. The only exception is that fathers who never saw their child were less likely to comply with their child support obligations. (LSSF W1 2008; Figures 8.17 & 8.18). Father payers with equal care time and those who never saw their child were more inclined to believe that child support payments were unfair, compared to father payers with other care-time arrangements (LSSF W1 2008; Figure 8.23). Child support compliance among fathers and mothers was higher where there was shared decision-making compared to where one parent had all of the decision-making responsibilities (LSSF W1 2008; Figure 8.19).

**Evaluation question 4:** What arrangements are being made for children in separated families to spend time with each parent? Is there any evidence of change in this regard?

Although only a minority of children were in shared care-time arrangements, the proportion of children with these arrangements has increased; a trend that appears to pre-date the reforms. In the LSSF W1 2008, 16% of focus children were in shared care arrangements (applying a definition based on a 35–65% night split between parents). A near equal time split (48–52% of nights) applied to 7% of children, with another 8% spending more time with their mother than their father and 1% spending more time with their father than their mother (LSSF W1 2008; section 6.5.1) Incremental increases in shared care are part of a longer term trend in Australia and internationally. Australian Bureau of Statistics data show increases in shared care arrangements across age groups between 1997 and 2006–07 (Figure 1 below). Shared care for children in the 5–11 year age group rose from 1% in 1997 to 5% in 2006–07. Increases were less marked for children in other age groups, although estimates for these age groups should be used with caution due to small sample sizes. In relation to 12–14 year olds, for example, less than 1% of children were in shared care arrangements in 1997, compared with 3.7% in 2006–07.

Judicially determined orders for shared care time increased post-reform, as did shared care time in cases where parents reached agreement by consent. Data from the QSCF 2009 show that orders for shared care in matters decided by judges (again applying a definition based on a 35–65% night split) rose from 2% prior to the reforms to 13% after the reforms (Table 6.8). A less significant increase was evident among cases in which the parties reached agreement, with a pre-reform proportion of 10% compared with 15% post reform (Table 6.9).

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**Figure 1  Proportion of children in different age groups who experienced equal care-time arrangements, by age of child, 1997, 2003 and 2006–07**

Notes: Omitted from analysis are data for children who lived with grandparents or guardians and for those whose overnights stays were not stated. * These estimates had a relative standard error of 25% to 50% and should be used with caution. ** These estimates have a relative standard error greater than 50% and are considered to be too unreliable for general use.

The majority of parents with shared care-time arrangements thought that the parenting arrangements were working well both for parents and the child (LSSF W1 2008; Figure 7.21). While, on average, parents with shared care time had better quality inter-parental relationships, violence and dysfunctional behaviours were present for some. For example, 16% of mothers and 10% of fathers with shared care (more nights with mother) reported relationships with “lots of conflict”, and 8.4% of mothers and 3.5% of fathers with such arrangements reported relationships that were fearful (LSSF W1 2008; Figures 7.27 & 7.28).

Generally, shared care time did not appear to have a negative impact on the wellbeing of children. Irrespective of care-time arrangements, mothers and fathers who expressed safety concerns described their child’s wellbeing less favourably than those who did not hold such concerns (LSSF W1 2008; section 11.3.2). However, the reports of mothers suggest that the negative impact of safety concerns on children’s wellbeing is exacerbated where they experience shared care-time arrangements (LSSF W1 2008; Figure 11.11 & 11.12).

**Evaluation question 5: What arrangements are being made for children in separated families to spend time with grandparents? Is there any evidence of change in this regard?**

Just more than half of the parents who separated after the 2006 changes to the family law system felt that time with grandparents had been taken into account when developing parenting arrangements, and just over half the grandparents confirmed this view. Parents who separated prior to the 2006 changes to the family law system were less likely to recall having taken into account grandparents when developing parenting arrangements (LSSF W1 2008; LBS 2009; Figure 12.12).

Nevertheless, the reports of both parents and grandparents suggest that relationships between children and their paternal grandparents often become more distant when the child lives mostly with the mother (reflecting the most common care-time arrangement) (GPPS 2006; GPPS 2009; Figures 12.7 & 12.8). The parents in most families in the studies would have separated before the reforms were introduced. The level of impact of the reforms on the evolution of grandparent–grandchild relationships is an important area for future research.

There appeared to be a growing awareness among both family relationship service staff and family lawyers of the potential value and importance to children of taking into account grandparents when developing parenting arrangements. While grandparents were seen, in most cases, to have the potential to contribute much to the wellbeing of children, there was also an appreciation by family relationship service professionals of the complexity of many extended family situations (Qualitative Study of FRSP Staff 2008–09; section 12.7.2). This was associated with recognition that, in some cases, too great a focus on grandparents when developing parenting arrangements might be counter-productive.

The overall picture, however, is of grandparents being very important in the lives of many children and their families, with some evidence that the legislation has contributed to reinforcing this message. Clearly, grandparents can also be an important resource when families are struggling during separation and at other times. But as complexities increase, dispute resolution and decision-making in cases involving grandparents are likely to prove to be more difficult and time-consuming.

**Evaluation question 6: To what extent are issues relating to family violence and child abuse taken into account in making arrangements regarding parenting responsibility and care time?**

For a substantial proportion of separated parents, issues relating to violence, safety concerns, mental health, and alcohol and drug misuse are relevant. The evaluation provides evidence that the family law system has some way to go in being able to respond effectively to these issues. However, there is also evidence of the 2006 changes having improved the way in which the system is identifying families where there are concerns about family violence and child abuse. In particular, systematic attempts to screen such families in the family relationship service sector and in some parts of the legal sector appear to have improved identification of such issues.

Families where violence had occurred, however, were no less likely to have shared care-time arrangements than those where violence had not occurred (LSSF W1 2008; Figures 7.29 & 7.30). Similarly, families where safety concerns were reported were no less likely to have shared care-time arrangements than families without safety concerns (16–20% of families with shared care time had safety concerns). Safety concerns were also evident in similar proportions of families with arrangements involving children spending most nights with the mothers and having daytime-only contact with the father (LSSF W1 2008; Figure 7.31 [see Figure 2 below]). The pathways to these arrangements included decisions made without the use of services and decisions made with the assistance of family relationship services, lawyers and courts (Kaspiew et al., 2009, pp. 232–233).
Mothers and fathers who reported safety concerns tended to provide less favourable evaluations of their child’s wellbeing compared to other parents (LSSF W1 2008; section 11.3.2). This was apparent for parents with all care-time arrangements, including the most common arrangement, where the child lives mainly with mother. But the poorer reported outcomes for children whose mothers expressed safety concerns were considerably more marked for those children who were in shared care-time arrangements.

There is also evidence that encouraging the use of non-legal solutions, and particularly the expectation that most parents will attempt FDR, has meant that FDR is occurring in some cases where there are very significant concerns about violence and safety (Survey of FRSP Clients 2009; Table 10.3).

Significant concerns were expressed by substantial minorities of lawyers and family relationship service professionals who expressed the view that the system had scope for improvement in achieving an effective response to family violence and child abuse (FLS 2008; Online Survey of FRSP Staff 2009; e.g., Figure 10.5). Some problems referred to were evident before the reforms, such as difficulties arising from a lack of understanding among professionals, including lawyers and decision-makers, about family violence and the way in which it affects children and parents (FLS 2008; QSLSP 2008; section 10.4.1). While the legislation (SPR Act) sought to place more emphasis on the importance of identifying concerns about family violence and child abuse (e.g., s60B(1)(b); 60CC(2)(b)), other aspects of the legislation were seen to contribute to a reticence among some lawyers and their clients about raising such concerns; for example, s117AB, which obligates courts to make a costs order against a party found to have “knowingly made a false allegation or statement” in proceedings, and s60CC(3)(c), which requires courts to consider the extent to which a parent has facilitated the other parent’s relationship with the child.

The link between safety concerns and poorer child wellbeing outcomes, especially where there was a shared care-time arrangement, underlines the need to make changes to practice models in the family relationship services and legal sectors. In particular, these sectors need to have a more explicit focus on effectively identifying families where concerns about child or parental safety need to inform decisions about care-time arrangements.

These findings point to a need for professionals across the system to have greater levels of access to finely tuned assessment and screening mechanisms applied by highly trained and experienced professionals. Protocols for working constructively and effectively with state-based

Relationships between children and their paternal grandparents often become more distant when the child lives mostly with the mother.
systems and services (such as child protection systems) also need further work. Clearly, however, the progress that continues to be made on improved screening practices will go only part of the way towards assisting victims of violence and abuse.

**Evaluation question 7: To what extent are children’s needs and interests being taken into account when parenting arrangements are being made?**

This question is central to the objectives of the reforms and therefore a number of the evaluation questions are relevant to assessing the extent to which children’s needs and interests are being taken into account. Particularly relevant is the question of the extent to which issues relating to family violence and child abuse are taken into account when making arrangements regarding parenting responsibility and care time.

This is an area where the evaluation evidence points to some encouraging developments, but also highlights some difficulties. Many parents are using the relationship services available and there is evidence from clients and service professionals that this is resulting in arrangements that are more focused on the needs of children than in the past. Nonetheless, in a proportion of cases this is not occurring as well as it could.

There is evidence that many parents misconstrue equal shared parental responsibility as allowing for “equal” shared care time (FLS 2008; QSLSP 2008; Qualitative Study of FRSP Staff 2008-09; section 9.3). In cases in which equal or shared care time would be inappropriate, this can make it more difficult for relationship service professionals, lawyers and courts to encourage parents to focus on the best interests of the child (discussed further below).

The SPR Act 2006 introduced Division 12A of Part VII—Principles for conducting child related proceedings— which was supported by new case management practices in the Family Court of Western Australia (FCoWA) and the Family Court of Australia (FCoA). The court that handles most children's matters, the Federal Magistrates’ Court (FMC) had largely retained it own case management regime based on the “docket” system.

**Evaluation question 8: How are the reforms introduced by the SPR Act 2006 working in practice?**

The philosophy of shared parental responsibility is overwhelmingly supported by parents, legal system professionals and service professionals (LSW W1 2008; FLS 2008; Figures 6.1, 6.2 & 9.1). However, many parents and some professionals do not understand the distinction between shared parental responsibility and shared care time, or the rebuttable (or non-applicable) presumption of shared parental responsibility (FLS 2006; QSLSP 2008; section 9.2). A common misunderstanding is that shared parental responsibility allows for "equal" shared care time, and that if there is shared parental responsibility, then a court will order shared care time. This misunderstanding is due, at least in part, to the way in which the link between equal shared parental responsibility and care time is expressed in the legislation. This confusion has resulted in disillusionment among some fathers, who find that the law does not provide for 50–50 “custody”. This in turn can make it challenging to achieve child-focused arrangements in cases in which an equal or shared care-time arrangement is not practical or not appropriate. Legal sector professionals in particular indicated that in their view the legislative changes had promoted a focus on parents’ rights rather than children’s needs, obscuring to some extent the primacy of the “best interests” principle (s60CA). Further, they indicated that, in their view, the legislative framework did not adequately facilitate making arrangements that were developmentally appropriate for children.

However, the changes have also encouraged more creativity in making arrangements, either by negotiation or litigation, that involve fathers in children’s everyday routines, as well as special activities. Advice-giving practices consistent with the informal “80–20” rule (i.e., what was seen as the typical arrangement where the child spends 80% of the time with the mother and 20% of the time with the father post-separation) have declined markedly since the reforms (FLS 2006 & 2009; section 9.4.2). For example, lawyers indicated that advice that “mothers who have had major child care responsibilities would normally obtain residence of their children” was given much less frequently in 2008 than in 2006: pre-reform, 82% of participants in the FLS 2006 said they gave this advice almost always or often, compared with 44% in 2006. Similarly, advice indicating that a normal contact pattern was “alternate weekends and half school holidays” was given much less frequently after the reforms: pre-reform, 26% of the FLS 2006 sample said they “rarely or never” gave such advice, compared with 64% in 2008.

In an indication of the impact of the measures designed to reduce reliance on legal mechanisms to resolve disputes, total court filings in children’s matters have declined by 22%; and a pre-reform trend for filings to increase in the FMC, with a corresponding decrease in the FCoA, has gathered pace (QSCF 2009; section 13.2).

Legal sector professionals had concerns arising from the parallel operation of the FMC and FCoA, including the application of inconsistent legal and procedural approaches and concerns about whether the right cases are being heard in the most appropriate forum (FLS 2006; QSLSP 2008; section 14.1). The FCoA, the FMC and the FCoWA have each adopted a different approach to the implementation of Division 12A of Part VII (FLS 2006; QSLSP 2008; section 13.1). FMC processes have changed little (although this court is perceived to have an active case management approach pre-dating the reforms) and the FCoA and FCoWA have implemented models with some similarities, including limits on the filing of affidavits and roles for family consultants that are based on pre-trial family assessments and involvement throughout the proceedings where necessary. Excluding WA, the more child-focused process available in the FCoA is only applied to a small proportion of children’s matters, with the majority of such cases being dealt with under the FMC’s more traditional adversarial procedures.

While family consultants and most judges believed the FCoA’s model is an improvement, particularly in the area of child focus, lawyers’ views were divided, with many expressing hesitancy in endorsing the changes (QSLSP 2008; FLS 2006; FLS 2008; section 14.3). Concerns include...
a lack of resources in the FCoA leading to delays, more protracted and drawn-out processes, and inconsistencies in judicial approaches to case management. Similar concerns were evident to a lesser extent about the WA model. It appears that while these models have significant advantages, some fine-tuning is required. This is an area where the Evaluation provided only a partial picture, as these issues were considered as part of a much larger set of evaluation questions.

The new substantive parenting provisions introduced into Part VII of the FLA by the SPR Act 2006 tended to be seen by lawyers and judicial officers to be complex and cumbersome to apply in advice-giving and decision-making practice (QSLSP 2008; FLS 2006; section 15.1). Because of the complexity of key provisions, and the number of provisions that have to be considered or explained, judgment-writing and advice-giving have become more difficult and protracted. There is concern that legislation that should be comprehensible to its users—parents—has become more difficult to understand, even for some professionals.

Evaluation question 9: Have the reforms had any unintended consequences—positive or negative?

The majority of parents in shared care-time arrangements reported that the reforms worked well for them and for their children. But up to one-fifth of separating parents had safety concerns that were linked to parenting arrangements; and the data on child wellbeing from the LSSF W1 2008 show that shared care time in cases where there are safety concerns expressed by mothers correlates with poorer outcomes for children (Figures 11.11 & 11.12).

Similarly, the majority of parents who attempted FDR reported that it worked well. Most had sorted out their arrangements and most had not seen lawyers or used the court as their primary dispute resolution pathway. But many FDR clients had concerns about violence, abuse, safety, mental health or substance misuse. Some of these parents appeared to attempt FDR where the level of their concerns was such that they were unlikely to be able to represent their own needs or their children's needs adequately. It is also important to recognise that FDR can be appropriate in some circumstances in which violence has occurred (section 5.3.2).

Further unintended consequences are also evident. A majority of lawyers perceived that the reforms have favoured fathers over mothers (FLS 2006; FLS 2008; Figure 9.8) and parents over children (FLS 2006; FLS 2008; Figure 9.9). There was concern among a range of family law system professionals that mothers have been disadvantaged in a number ways, including in relation to negotiations over property settlements (FLS 2008; QSLSP 2008; section 9.6.2). There was an indication from lawyers that there may have been a reduction in the average property
settlements allocated to mothers. Financial concerns, including child support liability and property settlement entitlements, were perceived by many lawyers and some family relationship professionals to have influenced the care-time arrangements some parents sought to negotiate (FLS 2006; QSLSP 2008; Qualitative Study of FRSP Staff 2008–09; section 9.6). The extent to which these concerns are generally pertinent to separated parents is uncertain. The evaluation indicates that a majority of parents are able to sort out their post-separation parenting arrangements quickly and expeditiously; however, there is also a proportion whose post-separation arrangements appear to have been informed by a “bargaining” rather than “agreeing” dynamic. For these parents, it appears the reforms have contributed to a shift in the bargaining dynamics. This is an area where further research is required.

Many separated families are affected by issues such as family violence, safety concerns, mental health problems and substance misuse issues, and these families are the predominant users of the service and legal sectors.

Conclusion

The evaluation evidence indicates that the 2006 reforms to the family law system have had a positive impact in some areas and have had a less positive impact in others. Overall, there has been more use of relationship services, a decline in filings in the courts in children’s cases, and some evidence of a shift away from an automatic recourse to legal solutions in response to post-separation relationship difficulties.

A significant proportion of separated parents are able to sort out their post-separation arrangements with minimal engagement with the formal system. There is also evidence that FDR is assisting parents to work out their parenting arrangements.

A central point, however, is that many separated families are affected by issues such as family violence, safety concerns, mental health problems and substance misuse issues, and these families are the predominant users of the service and legal sectors. In relation to these families, resolution of post-separation disputes presents some complex issues for the family law system as a whole, and the evaluation has identified ongoing challenges in this area. In particular, professional practices and understandings in relation to identifying matters where FDR should not be attempted require continuing development. This is an area where collaboration between relationship service professionals, family law system professionals and courts needs to be facilitated so that shared understandings about the types of matters that are not suitable for FDR can be developed and so that other options can be better facilitated.

Beyond effective screening, possible ways forward include:

- development of protocols for cooperation between family relationship service professionals and independent children’s lawyers;
- development of protocols for cooperation between family relationship service professionals and lawyers acting as advocates for individual parents;
- a considerably improved capacity in courts to solicit or provide high-quality assessments that will assist them to make safe, timely and child-focused decisions, especially at the interim stage; and
- consideration of whether (and, if so, how) information already gained via sometimes extensive screening procedures within the family relationship service sector can be used by judicial officers or by those providing court assessments to assist in the process of judicial determination.

While communication in relation to privileged and confidential disclosures made during assessment and FDR processes raises some complex questions, investigation of how such communication could potentially occur may be an avenue for achieving greater coordination and ensuring expeditious handling of these matters. Currently, much relevant information may be collected by family relationship service professionals in screening and assessment processes, but this information is not transmissible between professionals in this sector and professionals in the legal sector, or between other agencies and services responsible for providing assistance. Effectively, families who move from one part of the system to the other often have to start all over again. For families already under stress as a result of family violence, safety concerns and other complex issues, this may delay resolution and compound disadvantages.

Effective responses to families where complex issues exist mean ensuring such families have access to appropriate services to not only resolve their parenting issues but also deal with the wider issues affecting the family. Such responses involve identifying concerns and assisting parents to use the dispute resolution mechanism that is most appropriate for their circumstances.

Effective responses should ensure that the parenting arrangements put in place for children in families with complex issues are appropriate to the children’s needs and do not put their short- or long-term wellbeing at risk. Further examination of the needs and trajectories of families who are unsuitable for FDR would assist in identifying the measures required to assist these families (to some extent, LSSF W2 2009 [forthcoming] may assist with this). A key question is the extent to which such families then access the legal/court system and whether there are barriers or impediments (e.g., financial or personal) to them doing so.

The evidence of poorer wellbeing for children where there are safety concerns—across the range of parenting arrangements, but particularly acutely in shared care-time arrangements—highlights the importance of identifying families where safety concerns are pertinent and assisting them in making arrangements that promote the wellbeing of their children.

This evaluation has highlighted the complex and varied issues faced by separating parents and their children and the diverse range of services required in order to ensure the best possible outcomes for children. Ultimately, while
there are many perspectives within the family law system, and many conflicting needs, it is important to maintain the primacy of focusing on the best interests of children and protecting all family members from harm.

Endnotes
1 The Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) (SPR Act 2006) amended the Family Law Act 1975 (Cth) (FLA 1975). As this report is oriented toward a broad audience rather than a specifically legal one, references to provisions introduced by the SPR Act will be preceded by “SPR Act”, for the sake of simplicity and clarity. Technically, of course, such provisions are FLA provisions.
3 For further details, see the 2007 Evaluation Framework, reproduced in the full evaluation report (Kaspiew et al., 2009).

References
Family Law Act 1975 (Cth)
Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)
Explanatory Memorandum to the Family Law Amendment (Shared Parental Responsibility) Bill 2005 (Cth)

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Appendix
The Legislation and Courts Project
The LCP was designed to gather data on the impact that the legislative changes have had on: (a) advice-giving practices; (b) negotiation and bargaining among those who sought the advice and assistance of lawyers; (c) how the main new legislative provisions were applied in court decisions; and (d) how court filings were affected by the reforms. A further priority was to examine what, if any, unintended consequences may have arisen as a result of the changes.

The LCP encompassed five components:
1. the Qualitative Study of Legal System Professionals (QSLSP) 2008;
2. the Family Lawyers Surveys (FLS) 2006 and 2008;
3. analysis of FCoA, FMC and FCoWA judgments, 2006–09;
4. analysis of FCoA, FMC and FCoWA court files, pre- and post-1 July 2006; and
5. analysis of FCoA, FMC and FCoWA administrative data, 2004–05 to 2007–08.

Qualitative Study of Legal System Professionals 2008
The QSLSP 2008 involved interviews and focus groups with family law system professionals in order to gather data on professionals’ experiences of the reforms. A total of 184 professionals participated in interviews and/or focus groups between April and October 2008. In order to gain insights from as many angles on the legal system and court process as possible, participants were drawn from the following professional groupings: FCoA judges; federal magistrates; FCoWA judges and magistrates; FCoA registrars; family consultants operating in the FMC, FCoA and FCoWA; barristers; and solicitors from private practice, legal aid and community legal centres.

The Family Lawyers Surveys
The purpose of the FLS 2006 was to provide baseline (pre-reform data) about lawyer practices and attitudes at the time of the implementation of the reforms. The FLS 2008 substantially repeated and extended the FLS 2006, thereby allowing pre- and post-reform shifts to be gauged. The FLS 2008 allowed important insights from the QSLSP 2008 to be tested in a quantitative format.

The two surveys were conducted online, with the first taking place in mid-2006 and the second from mid-November 2008 to early February 2009. Both samples were recruited with the assistance of the Family Law Section of the Law Council of Australia. The first comprised 367 participants. The second comprised 319 participants.
The aim of this component was to gather systematic quantitative data from court files (FCoA, FMC and FCoWA). Part 1 involved the collection of data from matters initiated and finalised after the reforms (total of 985 files), including matters finalised by consent (752 files) and judicial determination (233 files) in the FCoWA and the Melbourne, Sydney and Brisbane registries of the FMC and the FCoA. Part 2 involved the collection of data from matters initiated and finalised prior to the reforms (739 files: 188 judicial determination files and 551 consent files) in the FCoWA and the Melbourne Registry of the FCoA and the FMC.

The Service Provision Project

This part of the evaluation provided information on the operation and effectiveness of the delivery of family relationship services, including the Family Relationships Advice Line (FRAL), FRCs, and early intervention and post-separation services that were funded as part of the reform package. Information on services was obtained from service providers and clients.

The services included in the evaluation can be categorised as early intervention services (EIS) or post-separation services (PSS). The early intervention services are: Specialised Family Violence Services, Men and Family Relationships Services, family relationship counselling, Mensline, and Family Relationship Education and Skills Training. The post-separation services are: FRCs, FDR, Children’s Contact Services, the Parenting Orders Program, FRAL, and the Telephone Dispute Resolution Service (TDRS; a component of FRAL).

The components of the Service Provision Project were: the Qualitative Study of FRSP Staff; the Online Survey of FRSP Staff; the Survey of FRSP Clients; and analyses of administrative program data (FRSP Online, FRAL, TDRS and Mensline).

Qualitative Study of FRSP Staff

This component of the SPP collected information via in-depth interviews with managers and staff of family relationship services funded under the new and expanded service delivery system. The purpose of this aspect of the evaluation was to evaluate the roll-out of the new and expanded services. It also helped to identify any other issues that needed to be explored by other components of the evaluation.

Two data collections were undertaken. The first was undertaken between August 2007 and April 2008 and the second took place from February to November 2009. These studies provide information about the extent to which changes have occurred in the operation and performance of the service sector during the roll-out period.

The Qualitative Study of FRSP Staff 2007–08 involved interviews with organisational Chief Executive Officers, managers and staff (137 participants in 57 interviews) from the first 15 FRCs, 8 early intervention services, 8 post-separation services, Mensline and FRAL. The Qualitative Study of FRSP Staff 2008–09 involved interviews with managers and staff from all of these services, with the addition of staff from a further 10 FRCs, a further 10 post-separation services and the TDRS.

The Families Project

The Families Project comprised a number of studies of families (both cross-sectional and longitudinal):

- the General Population of Parents Survey 2006 and 2009;
- Family Pathways: The Longitudinal Study of Separated Families Wave 1 2008 and Wave 2 2009;
- Family Pathways: Looking Back Survey 2009; and

This series of individual studies included surveys of parents in general and of parents who had experienced separation. Other components focused on grandparents with a grandchild living in a separated family. Together, this suite of studies sought to understand how changes to the family law system and changes to the Child Support Scheme affected the lives of families, particularly separated parents and their children.

Family Pathways: The Longitudinal Study of Separated Families

The LSSF is a national study of 10,000 parents (with at least one child less than 18 years old) who separated after the introduction of the reforms in July 2006. The study involves the collection of data from the same group of parents over time. These parents had: (a) separated from the child’s other parent between July 2006 and September 2008; (b) registered with the Child Support Agency (CSA) in 2007; and (c) were still separated from the other parent at the time of the first survey. Where the separated couple had more than one child together who was less than 18 years old at the time of the survey, most of the child-related questions that were asked focused on only one of these children (here called the “focus child”).

The LSSF W1 2008 took place between August and October 2008, up to 26 months after the time of parental separation. The final overall response rate for LSSF W1 2008 was 60.2%. An equal gender split was achieved. The majority of participants were aged between 25 and 44 years (74%) and were born in Australia (83%).

Family Pathways: Looking Back Survey

The LBS 2009 is a national study of 2,000 parents with at least one child under 18 years old, who separated from their partner between January 2004 and June 2005, prior to the introduction of the reforms. The study involved a one-off interview with parents who were registered with the CSA in 2007.

Parents were interviewed for this study between March and May 2009; 3.7 to 5.2 years after separation. The final overall response rate was 69% and an almost equal gender split was achieved. The majority of participants were aged between 25 and 44 years (72%) and were born in Australia (83%).

The cross-sectional study design provided a snapshot of the reflections of separated parents about what life was like for them during and after separating in the pre-reform period and about the pathways they followed.
Care-time arrangements after the 2006 reforms
Implications for children and their parents

Ruth Weston, Lixia Qu, Matthew Gray, Rae Kaspiew, Lawrie Moloney, Kelly Hand
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The 2006 family law reforms were developed in the context of concerns that many children in separated families were losing their opportunity to grow up with the love and support of both their parents. The reforms were designed, ultimately, to strengthen family relationships regardless of the parents’ relationship status, and to protect and promote children’s wellbeing by:

- encouraging greater involvement of both parents in their children’s lives after parental separation, where this is in the children’s best interests;
- helping parents who are unable to otherwise do so to come to an agreement on the nature of arrangements that are best for the children, rather than taking their case to court; and
- placing increased emphasis on protecting the children from family violence, abuse or neglect.

The Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) (SPR Act 2006) introduced a presumption in favour of parents having equal responsibility for making decisions on issues that have long-term implications for their child’s welfare (s61DA)—where there are no reasonable grounds to believe that a child’s parent, or someone else in the parent’s household, has engaged in child abuse or family violence (s61DA(2)). The legislation specifies that the court must be satisfied that such an order is in the child’s best interests (s61DA(4), s60CA). Where parenting orders provide parents with equal shared parental responsibility pursuant to the presumption, the court must consider making orders that the child spend equal time with both parents, or “substantial and significant” time with them, where this is practicable and in the child’s best interests (s65DAA).

Some empirical studies have suggested that, after parental separation, on average, children benefit from being in the care of each parent for substantial periods of time, but others have suggested that care-time arrangements are not related to child wellbeing (see Amato & Gilbreth, 1999; Bauserman, 2002; Kushner, 2009; Gilmore, 2006). A key question, therefore, is: Under what circumstances are children’s wellbeing positively or negatively affected by arrangements that entail spending significant amounts of time with both parents? A variety of potentially relevant circumstances have been discussed in the literature; for example, distance between the two homes; inter-parental relationship dynamics, safety issues and a history of family violence, abuse or neglect; how much involvement each parent has had in their children’s lives prior to separation; the quality of the parent-child relationship; parenting competence or styles; the flexibility of the arrangements; and age-related developmental needs of the children.

Regarding the latter issue, concerns have been expressed about the appropriateness of shared care time for very
young children (e.g., McIntosh & Chisholm, 2008; McIntosh, Smyth, & Kelaher, 2010). Here, shared care time is typically defined as the children spending at least 30–35% of nights with each parent.

A great deal of concern has also been expressed about children experiencing shared care-time arrangements where the relationship between parents is marked by high acrimonious conflict (see Amato, Meyers, & Emery, 2009; Bauserman, 2002; McIntosh, Smyth, Wells, & Long, 2010). Two issues are especially pertinent here. The first relates to the many studies suggesting that children's exposure to high conflict is damaging to their wellbeing (see Amato, 2005; Grych, 2005; Potter, 2010). The second is the suggestion that the more time children spend with each parent, the greater will be their exposure to inter-parental relationship dynamics (e.g., Amato et al., 2009; Bauserman, 2002). This second concern has been more difficult to establish empirically.

In terms of decision-making processes, it seems reasonable to suggest that high levels of acrimonious conflict would be more prevalent among parents who contest their case in court than among parents who come to arrangements between themselves. This will not always be the case; for example, an agreement may arise out of coercion.

The quality of parent–child relationships and parenting styles or competence also appear to be very important factors that shape the impact on child wellbeing of time spent with the non-resident parent. Children need to spend time with a parent in order for high-quality relationships to develop or be maintained but, of course, where this parent has poor parenting skills or is neglectful or abusive towards the child, the experience is very likely to impair the relationship and compromise the child's wellbeing (see Amato & Gilbreth, 1999; Gilmore, 2006; Kushner, 2009).

In addition, a considerable amount of evidence supports the view that, among other factors, arrangements need to be somewhat flexible in order to work well for parents and the children (see Cashmore et al., 2010; McIntosh & Chisholm, 2008; McIntosh, Smyth, Wells, & Long, 2010; Smart, 2004). McIntosh, Smyth, Wells, & Long maintained that inflexible arrangements may be a proxy for underlying problems in the inter-parental relationship. In fact, it seems reasonable to suggest that, at least in some cases, one parent's attempts to impose a rigid regime may primarily reflect a desire to assert control over the life of the other parent and possibly the child(ren). Control of the other, and the sense of entitlement that may motivate this control, appear to be two of the core elements associated with chronic and ongoing family violence (Gilchrist, 2009).

A key problem with interpreting the research findings to date is that, for the most part, different care-time arrangements tend to be adopted by families that differ systematically in some of their characteristics. For instance, there is some evidence that fathers are more likely to have substantial involvement in their children's lives where they and their children's mother have a cooperative relationship (e.g., Cashmore et al., 2010; Sobolewski & King, 2005). However, it is difficult to establish the existence or direction of any causal links between such variables.

In practice, the scheduling of time with each parent is commonly linked with the significance of specific days or periods (week days, weekends, school holidays and festive days).

This article examines four issues:

1. the prevalence of different care-time arrangements in families that experienced parental separation after July 2006;
2. parents' views about the flexibility and workability of their arrangements;
3. characteristics of families with different care-time arrangements; and
4. the strength of the relationship between child wellbeing on the one hand, and care-time arrangements and family dynamics on the other.

The analysis is based on a survey of 10,002 parents who participated in the first wave of the Longitudinal Study of Separated Families conducted in 2008 (LSSF 2008). This survey, which was part of the Australian Institute of Family Studies' (AIFS) evaluation of the 2006 changes to the family law system, took place up to 26 months after parental separation (with the average duration of separation being 15 months). All parents were registered with the Child Support Agency (CSA) in 2007, and attention was directed to the care-time arrangements of the first child listed for each family in the CSA database (here called “the focus child” or “the child”). Most of these children were of preschool age: 41% were less than 3 years old and 18% were 3–4 years old, 29% were 5–11 years old, and 7% and 5% were 12–14 and 15–18 years old respectively. The sample comprised similar proportions of fathers and mothers (see Kaspiew et al., 2009 for detailed information about the survey).
Consistent with the CSA Child Support liability cut-offs, children with 35–65% of nights in the care of each parent were considered to have “shared care-time arrangements”. This set of arrangements was also subdivided as follows:

- 53–65% of nights per year with their mother and 35–47% of nights with their father (shared care time involving more nights with the mother);

- 48–52% of nights per year with each parent (equal care time); and

- 35–47% of nights with their mother and 53–65% of nights with their father (shared care time involving more nights with the father).

In practice, the scheduling of time with each parent is commonly linked with the significance of specific days or periods (weekdays, weekends, school holidays and festive days such as Christmas Day, Father’s or Mother’s Day, and birthdays). For example, a child who stays overnight with one parent every Friday and Saturday of the year, along with every Sunday for half the weeks in a year, would be classified as having a shared care-time arrangement (i.e., they spent, on average, 2.5 nights every week per year or 35% of nights per year with this parent).

Table 1 lists the full set of care-time arrangements examined and shows the proportion of children of different age groups who experienced each, as indicated by the parents.

One-third of the children never stayed overnight with their father, with 11% never seeing their father, and 23% seeing their father during the daytime only. Conversely, only 2% of children never stayed overnight with their mother, with 1% never seeing their mother and the other 1% seeing their mother during the daytime only.

Around 45% of children stayed overnight with their mother most nights; that is, 66–99% of nights (with most of these children being in the care of their mother for 66–86% of nights, and in the care of their father for 14–34% of nights). Almost 79% of the children spent most or all nights with their mother and only 5% of children spent most or all nights with their father.

Overall, 16% of children experienced a shared care-time arrangement, and similar proportions of children (7–8%) had either equal care time or shared care time involving more nights with their mother. Only 1% of all the children

<table>
<thead>
<tr>
<th>Detailed care-time arrangements</th>
<th>Groups</th>
<th>0–2</th>
<th>3–4</th>
<th>5–11</th>
<th>12–14</th>
<th>15–17</th>
<th>All children</th>
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<tbody>
<tr>
<td>Father never sees child</td>
<td>a</td>
<td>16.2</td>
<td>8.4</td>
<td>5.3</td>
<td>10.6</td>
<td>13.0</td>
<td>11.1</td>
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<tr>
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<td>34.4</td>
<td>15.5</td>
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<td>14.0</td>
<td>22.6</td>
<td>22.5</td>
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<tr>
<td>87–99% with mother (1–13% with father)</td>
<td>c</td>
<td>13.8</td>
<td>13.9</td>
<td>13.7</td>
<td>14.3</td>
<td>18.3</td>
<td>14.1</td>
</tr>
<tr>
<td>66–86% with mother (14–34% with father)</td>
<td>d</td>
<td>25.4</td>
<td>37.1</td>
<td>37.2</td>
<td>31.1</td>
<td>18.7</td>
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<td>7.8</td>
<td>3.3</td>
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<td>9.3</td>
<td>11.8</td>
<td>10.7</td>
<td>6.4</td>
<td>7.0</td>
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<tr>
<td>35–47% with mother (53–65% with father)</td>
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<td>0.4</td>
<td>1.7</td>
<td>2.3</td>
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<tr>
<td>14–34% with mother (66–86% with father)</td>
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<td>0.8</td>
<td>1.9</td>
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<td>1–13% with mother (87–99% with father)</td>
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<td>Mother sees child in daytime only</td>
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<td>1.2</td>
<td>1.7</td>
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<tr>
<td>Mother never sees child</td>
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<td>2,538</td>
<td>627</td>
<td>560</td>
<td>7,718</td>
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</table>

Selected combined care-time groups

100% of nights with mother  | a + b  | 50.6| 23.9| 17.3 | 24.6  | 35.6  | 33.6        |

Most nights with mother | c + d  | 39.2| 51.0| 50.9 | 45.4  | 37.0  | 45.1        |

Shared care time (35–65%)  | e + f + g | 7.5 | 20.3| 25.7 | 20.2  | 10.8  | 16.1        |

Most nights with father | h + i  | 1.3 | 2.6 | 4.1  | 5.8   | 7.9   | 3.0         |

100% nights with father  | j + k  | 1.4 | 2.2 | 2.1  | 4.2   | 8.7   | 2.3         |

Father or mother never sees child | a + k  | 16.6| 9.4 | 6.2  | 13.1  | 17.3  | 12.1        |

Notes: Based on analysis of focus child’s care-time arrangements. Percentages may not add up to 100% due to rounding.
Source: LSSF 2008
experienced shared care time involving more nights with their father than mother.

The prevalence of the different care-time arrangements varied considerably according to the child’s age. Although most children in all age groups spent more time with their mother than their father, shared care time was most commonly experienced by children aged 5–11 years (26% compared to 8–20% for other age groups), and the proportion who spent most or all nights with their father increased progressively with age (from 3% of those aged under 3 years to 17% of those aged 15–17 years).

Figure 1 shows that shared care time in general was unusual for children less than 3 years old (applying to 8% of these children). Children aged 3–4 years were nearly three times as likely as those less than 3 years old to experience shared care time (20%), while children aged 5–11 years were the most likely of all age groups to experience this arrangement (20%). Thereafter, shared care time declined progressively with age, applying to 20% of all children aged 12–14 years, and 11% who were 15–17 years old—a trend that appears to result mainly but not entirely from the increasing proportion of teenage children who, as they mature, spend most or all nights with their father.

Perceived flexibility of the arrangements

Parents in the LSSF were asked whether their parenting arrangements were “very flexible”, “somewhat flexible”, “somewhat inflexible” or “very inflexible”. However, perceptions of flexibility varied with the nature of the care-time arrangement, and the respondent’s own level of care time and gender.

Parents with the majority of care time were more likely than those with the minority of care time to believe that arrangements were flexible. For example, where the father saw the child during the daytime only, 65% of fathers and 81% of mothers described the arrangements as “very” or “somewhat” flexible. Among parents with shared care time, fathers were more likely than mothers to believe that arrangements were flexible (80–82% vs 71–75%). The parents who were most likely to describe their arrangements as flexible were fathers with shared care time and those who cared for their child most nights (80–82% vs 31–76% of other fathers), and mothers who cared for their child most nights and those whose child saw the father during the daytime only (81% vs 56–75% of other mothers).

Perceptions about the workability of the arrangements

Parents were asked to indicate how well their arrangements were working for themselves, their child and their child’s other parent. The response options were “really well”, “fairly well”, “not so well” and “badly”. The following analysis focuses on the proportions of fathers and mothers with each care-time arrangement who considered that their arrangements were working well (i.e., “really well” or “fairly well”): (a) for father, mother and child (taken separately); (b) for each party combined (e.g., worked well for all three parties; worked well for mother and child but not father); and (c) for the child, according to his or her age. Around 28% of all parents expressed uncertainty
about how well the arrangements were working for at least one of the three parties (most commonly, the child’s other parent).

**Workability for father, mother and child, taken separately**

Figure 2 shows that parenting arrangements were most likely to be seen as working well for the father where the child experienced shared care time or spent most or all nights with him. The greater the number of nights that the child spent with the mother compared with the father, the less likely were parents to see the arrangements as working well for the father. The gender difference in evaluations was apparent for the care-time arrangements where the child spent the majority of or all the nights with the mother, with fathers being less likely than mothers to see the arrangements as working well for the father.

Figure 3 shows that the greater the number of nights that children spent with fathers relative to mothers, the less likely were mothers to report that the arrangements were working well for them, the fathers more likely than mothers to believe that the arrangements worked well for the father. Although most parents with shared care time believed that the arrangements were working well for them, the fathers were more likely than the mothers to believe that these arrangements were working well for the mother.

Parent with shared or greater care time were more likely than those with minority or no care time to believe the arrangements were working well for their child (Figure 4). Fathers who never saw their child and mothers who saw their child in the daytime only were the least likely to provide a favourable assessment (especially the former group).

**Workability for father, mother and child, taken together**

As noted above, more than one-quarter of parents expressed uncertainty about how well the arrangements were working for one of the three parties. In addition, few indicated that the arrangements worked well for their child alone (< 5%) or for both parents but not their child (10%). Figures 5 and 6 show the proportions of fathers and mothers (respectively) who provided each of the other six possible combinations of answers, according to their care-time arrangement. The following trends emerged:

- Most parents in all groups except those whose child never saw one parent believed that their parenting arrangements were working well for all three parties.
- Parents with shared care-time arrangements were the most likely of all groups to believe that their arrangements were working well for all parties (70–80%). This view became less prevalent as care time was less equally shared.
Fathers who never saw their child most commonly indicated that their parenting arrangements were not working well for them or for their child, but were working well for the mother.

 Mothers whose child never saw the father, on the other hand, most commonly believed that the arrangements were working well for their child, although they agreed with the fathers that the arrangements were working well for the mother but not for the father.

Likewise, fathers whose child never saw the mother also tended to believe that the arrangements were working well for their child. In addition, they generally considered that the arrangements were working well for them but not for the mother.

Workability of parenting arrangements according to the age of the child

Given concerns about the suitability of care-time arrangements for children less than 3 years old, the proportion of parents (fathers and mothers combined) in each care-time group who indicated that the arrangements were working well for the child were derived according to age of the child (Figure 7). More than half the parents in each group provided favourable assessments. Among parents with a shared care-time arrangement involving more nights with the mother than the father, 92–93% whose child was less than 3 years old or 12–14 years old believed that the arrangements were working well for their child. Across all age groups of children, such favourable assessments were provided by more than 80% of parents with equal care time (and were provided by 90% of parents with equal care time whose child was 15–17 years old). Parents with a child aged 3–4 years or 5–11 years who never saw his or her father were the least likely to believe that the arrangements were working well for the child (reported by 54–57% of these parents).

Circumstances of families with different care-time arrangements

To what extent do circumstances of the families themselves suggest that the arrangements in place are in the child’s best interests? Tables 2 and 3 show, among other issues, the proportions of fathers and mothers who indicated that: (a) they lived close to, or very distant from, the other
parent; (b) the other parent had been very involved in their child’s life before they separated; (c) their current relationship with the other parent was either friendly or cooperative, or highly conflictual or fearful;7 (d) there had been a history of family violence (physical or emotional), or of physical violence alone; and (e) they held safety concerns (for them or their child) arising from ongoing contact with the other parent.8 These issues seem relevant considerations when making decisions about achieving arrangements that are in the child’s best interests.

Other issues listed in Table 2 focus on: (a) socio-economic status indicators for the respondent (personal income and educational attainment); (b) the parents’ relationship status at the time of separation or the child’s birth; and (c) whether the parenting arrangements had been sorted out, and if so, the main pathway taken for doing so.

Taken together, these results suggest that the profiles of families with different care-time arrangements differed in several respects.

Where the child experienced shared care time

Fathers were twice as likely as mothers to indicate that they had a shared care-time arrangement (22% vs 12%). On average, these parents tended to have higher socio-economic status, as measured by their educational attainment and incomes, and those with equal care time were also considerably more likely than all other groups to have been married to the child’s other parent. Not surprisingly, they were the most likely of all groups to

| Table 2 Profile of fathers, by care-time arrangements, 2008 |
|---------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
|                                 | Mother 100% &  | Mother 100% &  | Mother 66-99% & | Mother 53-65% & | Mother 35-47% & | Mother 1-34% &  | Mother 53-65% & | Mother 35-47% & | Mother 66-99% & | Mother 100% &  |
|                                 | father never  | father daytime  | father 1-34% &   | father 35-47% & | father 53-65% & | father 100% &    | father 53-65% & | father 35-47% & | father 66-99% & | father 100% &  |
|                                 | sees           | only            | father            | father            | father            | father            | father            | father            | father            | father            |
| Median annual personal income ($) | 35,000         | 40,000          | 49,000            | 50,000            | 52,000            | 45,000            | 35,000            | 30,000            | 35,000            |
| %                               | 35,000         | 40,000          | 49,000            | 50,000            | 52,000            | 45,000            | 35,000            | 30,000            | 35,000            |
| Educational attainment          |                |                 |                  |                  |                  |                  |                  |                  |                  |
| Degree or higher qualification  | 7.3            | 12.7            | 13.1             | 15.7             | 19.4             | 16.1             | 11.6             | 6.4              | 4.6              |
| Year 11 or lower (no post-school qualification) | 39.1 | 34.7 | 31.1 | 23.9 | 20.5 | 28.8 | 36.6 | 43.8 | 53.4 |
| Relationship status at separation |                |                 |                  |                  |                  |                  |                  |                  |                  |
| Married to other parent         | 38.7           | 36.5            | 56.6             | 58.4             | 71.8             | 59.1             | 54.9             | 58.7             | 51.5             |
| Never married to mother nor living with mother when child was born | 20.6 | 24.2 | 9.7 | 5.7 | 1.8 | 3.6 | 5.3 | 4.3 | 6.8 |
| Other parent was "very involved" in child’s day-to-day activities before separation | 73.4 | 83.2 | 78.3 | 71.1 | 62.0 | 46.8 | 41.7 | 37.0 | 29.5 |
| Distance between the two homes   |                |                 |                  |                  |                  |                  |                  |                  |                  |
| Less than 10 km/15 minutes       | 18.6           | 32.7            | 35.8             | 51.5             | 56.6             | 51.9             | 36.5             | 35.1             | 14               |
| 500+ km/6+ hrs                   | 29.5           | 8.7             | 7.1              | 0.4              | 0.1              | 1.0              | 7.0              | 6.7              | 29.8             |
| Experienced family violence before/during separation |                |                 |                  |                  |                  |                  |                  |                  |                  |
| Physical hurt or emotional abuse | 69.8           | 44.1            | 50.0             | 57.7             | 56.4             | 60.7             | 61.5             | 73.9             | 74.1             |
| Physical hurt before separation  | 26.5           | 12.1            | 14.9             | 17.9             | 15.5             | 22.9             | 23.5             | 33.4             | 25.1             |
| Holds safety concerns linked with ongoing contact * | 37.8 | 11.9 | 12.8 | 16.2 | 17.9 | 20.0 | 23.8 | 24.8 | 36.3 |
| Current quality of relationship with other parent |                |                 |                  |                  |                  |                  |                  |                  |                  |
| Friendly/cooperative             | 24.0           | 67.3            | 68.9             | 68.8             | 64.7             | 67.1             | 58.4             | 53.5             | 30.8             |
| Highly conflictual/fearful       | 43.3           | 15.0            | 15.0             | 13.2             | 14.7             | 11.8             | 16.2             | 24.9             | 30.0             |
| Had sorted out parenting arrangements | 29.5 | 62.2 | 76.5 | 81.4 | 86.4 | 84.7 | 79.0 | 67.9 | 59.7 |
| Main pathway for reaching parenting arrangements * |                |                 |                  |                  |                  |                  |                  |                  |                  |
| Just happened                    | 28.3           | 17.1            | 10.6             | 8.9              | 6.7              | 5.6              | 14.8             | 22.5             | 42.1             |
| Discussions with other parent    | 48.3           | 69.6            | 73.5             | 66.9             | 67.5             | 69.9             | 65.2             | 41.8             | 26.6             |
| Counselling, FDR etc./lawyers/courts | 20.2 | 11.1 | 14.2 | 22.0 | 24.1 | 24.2 | 15.1 | 30.1 | 23.7 |

Notes: For each variable, the differences across care-time groups are statistically significant (p < .05). Data have been weighted. * Safety concerns related to child and/or respondent. * Percentages for “main pathway” are based on those who had sorted out their arrangements.

Source: LSSF 2008
report that they lived less than 10 km or a 15-minute drive from the other parent (52–57% of fathers and 55% of mothers). Almost all the others lived within 50 km or a one-hour drive (data not shown).

Based on the reports of respondents about their child’s other parent, parents with shared care-time arrangements were more likely to have been “very involved” in their child’s day-to-day life before separation than were those with a minority of care nights or no care nights. This pattern of results for parents with shared care time, compared with parents with a minority of care nights, is consistent with the intent of the reformed Act, which, under section 60B(1), aimed to ensure “that children have the benefit of both of their parents having a meaningful involvement in their lives” and which, under section 60CC(2), supported “the benefit to the child of having a meaningful relationship with both of the child’s parents”.

While the majority of respondents in most groups described their inter-parental relationship as either friendly or cooperative, parents with a shared care-time arrangement were among those most likely to report such positive relationships. Nevertheless, the mothers with these arrangements were less likely to report positive relationships than mothers who cared for their child most nights and those whose child saw the father during the daytime only (especially the latter group). In fact, 22–24% of mothers and 12–15% of fathers with shared care-time arrangements described the relationship as being highly conflictual or fearful.
Although parents with shared care time were among the least likely to express concerns about their own or their child’s safety linked with ongoing contact with the other parent, a substantial minority did so (16–20%). Furthermore, approximately one-quarter of mothers and 16–23% of fathers indicated that they had been physically hurt prior to separation, and fathers and mothers with a shared care-time arrangement were more likely to indicate that they had experienced some form of family violence prior to separation than parents whose child was in the care of the mother for 66–99% of nights and those whose child saw the father during the daytime only.

While most parents in most care-time groups believed that they had sorted out their parenting arrangements, those with shared care time (and mothers with 66–99% of care nights) were the most likely to report this (81–86% of fathers and 78–84% of mothers). As for most of the other groups, these parents most commonly indicated that they had arrived at their arrangements mainly through discussions with the other parent (67–70% of fathers and 58–61% of mothers) and they were the least likely to state that the arrangements had “just happened” (6–10% of fathers and 5–6% of mothers). Although applying to a minority, these parents were among the most likely of all groups to have used some form of formal assistance in sorting out their parenting arrangements.

Where the child never saw the father

Approximately 8% of fathers and 13% of mothers indicated that their child never saw the father. Along with those whose child saw his or her father during the daytime only, parents whose child never saw the father were the youngest of all groups, the least likely to have been married to the child’s other parent and the most likely to have either never lived with the other parent or to have separated before their child was born. Their child was in most cases less than 3 years old at the time of the survey. According to respondents’ reports about the other parent, most mothers and few fathers whose child never saw the father had been very involved in the child’s everyday activities before separation.

Parents whose child never saw the father were also among those least likely to have post-school qualifications and the median personal income of the fathers was among the lowest, while that for mothers fell between the levels derived for other female groups. Together with those whose child never saw the mother, these parents were the least likely to live within 10 km of each other and a substantial minority lived 500 km, or more than six hours’ drive, from the child’s other parent.

Both the mothers and fathers in this group were inclined to report that their relationship with their child’s father was either conflictual or fearful rather than friendly or cooperative. In addition, they were among those who were most likely to report that their partner had physically hurt them prior to separation and to express safety concerns linked with any ongoing contact with the other parent.

Whereas most parents believed that they had sorted out their parenting arrangements, fewer than one-third of fathers in this group and only half the mothers held this view. Of respondents who said they had sorted out their arrangements, these fathers and mothers were considerably more likely than most groups to report that the arrangements “just happened”.

For the most part, child wellbeing did not vary significantly with care-time arrangements, once some of the differences in a selection of other circumstances of families were controlled.
Where the child saw the father during the daytime only

Approximately 17% of fathers and 26% of mothers said that the child saw his or her father during the daytime only. Like the parents whose child never saw the father, these parents tended to be relatively young and to have not been living with the other parent when the child was born. This child was most likely to be less than 3 years old at the time of the survey. The parents appeared to be of a slightly higher socio-economic status than those whose child never saw the father, as measured by their educational attainment and median personal income, but they were not as well off as some of the other groups. However, they were considerably more likely than those whose child never saw the father to live within 10 km of the other parent or within a 15-minute drive, and most lived within 20 km or up to a 30-minute drive (data not shown).

Regarding pre-separation parental involvement, mothers’ reports suggested that fathers with daytime-only care time were just as likely to have been very involved in their child’s life as fathers who cared for their child for a minority of nights, but less likely to have been very involved than fathers who cared for their child most or all nights. The fathers’ reports suggested that most mothers whose child saw the father during the daytime only were very involved prior to separation.

Unlike parents whose child never saw his or her father, both fathers and mothers whose child saw the father during the daytime only believed that their relationship with the other parent was friendly or cooperative and these parents were among the least likely of all groups to consider the relationship to be highly conflictual or fearful. On the whole, parents in this group were no more likely than most of the others of the same gender to report safety issues or a history of family violence. Finally, while most parents in this group believed that they had sorted out their parenting arrangements, the mothers were more likely than the fathers to report this.

Where the child spent most or all nights with the father

Only 7% of fathers and 3% of mothers indicated that their child spent most or all nights with his or her father (i.e., 66–100% of nights). The parents with these arrangements tended to be among the oldest, and although their child was typically less than 12 years old at the time of the survey, teenage focus children were more commonly represented in these families than in others.

These parents were among those who were most likely to have left school before completing Year 12, have not obtained any post-school qualification and have low incomes. A substantial minority of the mothers indicated that they were living with at least one full sibling of their focus child (25–29%, data not shown in Tables 2 and 3); that is, the focus child lived mostly or entirely with the father, while at least one of the child’s full siblings lived with the mother. (It is important to note that all female respondents represented in this group either cared for their child for 1–34% of nights or during the daytime.)

Between one-third and nearly one-half of those whose child spent daytimes only, or a minority of nights, with the mother lived a short distance from the other parent (within 10 km or a 15-minute drive)—a situation that applied to only 14% of fathers whose child never saw the mother. Approximately 30% of fathers in the latter group indicated that the mother lived at least 500 km or a 6-hour drive away. This is the same proportion as that of fathers who indicated that they never saw their child.

Respondents’ reports about the other parent suggested that fathers with most or all care nights were more likely than other fathers to have been very involved in their child’s everyday activities prior to separation, while the opposite was the case for mothers; that is, the mothers in such care-time arrangements were considerably less likely than other mothers to have been very involved in their child’s everyday activities prior to separation.

Where the child never stayed overnight with his or her mother, the inter-parental relationship appeared to be poor relative to most other groups. Rates of safety concerns (for the respondent or child) relating to ongoing contact with the other parent were relatively high, especially among fathers whose child never saw the mother. These parents were also among the most likely to indicate that their child’s other parent had physically hurt them prior to separation.

Unlike fathers who never saw their child, most fathers whose child never saw the mother believed that they had sorted out their parenting arrangements, although they were less likely than several other groups of fathers to believe this. The same applied to parents whose child saw his or her mother during the daytime only.
Among those who had sorted out their arrangements, the two groups of fathers with 100% of care nights were more inclined than most male groups to indicate that they had used formal help (family relationship services, lawyers or the courts) to assist with this endeavour. In fact, across all groups of fathers, the proportion of fathers who reported that they mainly used a court to sort out their arrangements was highest among fathers whose child saw the mother during the daytime only (12% vs 2–9%, data not shown). Nevertheless, only a small minority of parents indicated that they had mainly sorted out their arrangements via use of a court.

**Implications for children’s wellbeing**

A central issue behind investigations of care-time patterns, and family diversity more generally, concerns the implications they have for the wellbeing of children. The family law reforms, after all, were aimed at protecting children and promoting their wellbeing.

Parents’ were asked to assess different aspects of their child’s wellbeing. Most of the questions that were asked varied according to whether the child was aged less than 4 years or at least 4 years, but in general they covered overall health, learning, getting along with other children, general progress, and behavioural and emotional problems.13 The analysis compared assessments of the child’s wellbeing made by parents with the most common arrangement (where the child spent 66–99% of nights with the mother and 1–34% of nights with the father)—here called the ‘reference group’—with the assessments provided by the following groups: (a) parents whose child never saw the father; (b) those whose child was with the father in the daytime only; (c) those with shared care time involving more nights with the mother than the father; (d) those with equal care time; and (e) those whose child spent 53–100% of nights with the father. The last group includes the small subsample whose child had a shared care-time arrangement involving more nights with the father than mother.

For the most part, child wellbeing did not vary significantly with care-time arrangements, once some of the differences in a selection of other circumstances of families were controlled.14 There were three exceptions to this general rule. Compared with the reference group:

- fathers who never saw their child provided less favourable assessments on three measures (learning, conduct problems and emotional symptoms);
- fathers with a shared care-time arrangement provided more favourable assessments on three measures (general health, learning and overall progress); and
- mothers whose child spent most or all nights with the father tended to view their child’s wellbeing less favourably on four measures (general health, peer relationships, overall progress and conduct problems).

Of course, those who never saw their child would have been less informed than other parents about their child’s wellbeing, and parents’ evaluations may have been coloured to some extent by their level of satisfaction or dissatisfaction with their arrangements.

Across all care-time arrangements, children’s wellbeing appeared to have been compromised where there had been a history of family violence, where parents held safety concerns (for them or their child) associated with ongoing contact with the other parent, and where the inter-parental relationship was either highly conflictual or fearful. Children in shared care-time arrangements appeared to be no worse off than other children where there had been a history of family violence or a negative inter-parental relationship. However, mothers’ assessments suggested that, where there were safety concerns, children in shared care fared worse than those who lived mostly with their mother.15

These findings are consistent with those of Cashmore et al. (2010), who concluded that shared care time tends to work well for the parents who choose it and for their children, although this is not always the case. Importantly, the generally positive findings about shared care time related more to the characteristics of families that chose these arrangements than to the nature of the arrangement. On the basis of two separate studies, McIntosh, Smyth, Kelaher, Wells, and Long (2010) also concluded that the workability of shared care time depended on the circumstances and characteristics of the families that adopt this arrangement. One set of analysis conducted by McIntosh and colleagues16 used data covering four time points from an intervention study of 169 families participating in child-focused mediation and child-inclusive mediation.17 The second set of analysis used data from the Longitudinal Study of Australian Children (LSAC) in order to compare links between post-separation care-time arrangements and the wellbeing of children aged less than 2 years old, 2–3 years old, and 4–5 years old.18

These authors noted that, compared with other children under the age of 2 years old who had a parent living elsewhere, those of this age who spent one or more nights...
Summary and conclusions

This large-scale, national study of parents who had separated after the 2006 family law reforms were introduced suggests that traditional care-time arrangements, involving more nights with the mother than father, remain the most common some 15 months after separation. In fact, approximately 80% of the children spent 66–100% of nights with the mother, with one-third spending all nights with her. In interpreting the significance of these findings, it is important to note that most children in the study were less than 5 years old.

Of the children who never stayed overnight with their father, two-thirds saw their father during the daytime and the other one-third did not see him at all, and of the three shared care-time arrangements examined—more nights with mother, equal care time, and more nights with father—the last of these was by far the least common.

Equal care-time arrangements were most common for children aged 5–11 years and 12–14 years, followed by those aged 3–4 years, then children aged 15–17 years; that is, children under 3 years old were the least likely to experience such arrangements. Nevertheless, across all age groups, equal care time was considerably less common than some of the other circumstances, including those in which the child never saw his or her father.

Fathers with shared care time (whether equal or unequal) were more likely than the mothers with these arrangements to maintain that their parenting arrangements were flexible, while, among other parents, this view was more likely to be held by those with the majority of care time than those with the minority of care time.

Three sets of analysis were conducted regarding fathers’ and mothers’ views about the workability of arrangements for themselves, their child and the other parent. The first set focused on how well the arrangements were working for each party separately, while the second focused on how well they were working for all three parties taken together. The third set focused on the workability of arrangements for children of different ages. Here, the reports of respondents (fathers and mothers combined) with each care-time arrangement were compared, according to the age of their child.

The first set of analysis showed that parents with the majority of care time were more likely than those with the minority of care time to believe that the arrangements were working well for them, with the greatest differences being apparent for those whose child never saw the father. Fathers with shared care time were more likely than their female counterparts to believe that their arrangements were working well for them, and a similar though less marked trend emerged in relation to views about how well the arrangements were working for the child. Among respondents who provided an assessment of the workability of arrangements for their child’s other parent, those with the most care time were the least likely to see the arrangements as working well for the other parent.

The second set of analysis showed that most fathers and mothers in all groups, except those whose child never saw one parent, believed that the arrangements were working for all three parties, with those with shared care time being the most likely to believe this. These views became less prevalent as care time was less equally shared.

Finally, across all the age groups of children, most parents believed that their arrangements were working for their child. Few of the children under 3 years old spent more nights with the father than mother, and where these children experienced a shared care-time arrangement, they were more likely to spend more nights with the mother (i.e., 53–65% of nights with the mother and 35–47% with the father) than to have an equal care-time arrangement. Nevertheless, among parents of such young children with these two categories of shared care time, the vast majority said that their arrangements were working well for their child.

Families with different care-time arrangements varied considerably across a range of circumstances. For example, there was a close link between post-separation care-time arrangements and respondents’ reports about the other parent’s level of involvement in the child’s everyday activities prior to separation. From this perspective, post-separation care time increased with increases in pre-separation involvement.

While there were clear socio-demographic similarities between parents whose child never saw the father or saw him during the daytime only (e.g., they tended to be relatively young and were less likely than others to have been living with the child’s other parent when the child was born), they differed on several dimensions. For example, those whose child never saw the father tended
to live further away from the other parent and to have a more problematic relationship with this parent.

Respondents with a shared care-time arrangement tended to have relatively high socio-economic status, and to live fairly close to the other parent. While most parents with shared care-time arrangements reported friendly or cooperative relationships in some areas, they were more inclined to report problematic family dynamics compared with parents whose child spent a minority of nights with the father or saw him during the daytime only (especially the latter group).

For the most part, pre-separation experiences of violence and current safety concerns associated with ongoing contact with the other parent were more commonly reported by parents whose child never saw the father or had limited or no time with the mother than by other groups of parents. Although this is consistent with the aim of the family law system to protect children's wellbeing, there was also evidence that there were some children in shared care-time arrangements who had a family history entailing violence and a parent concerned about the child's safety, and who were exposed to dysfunctional inter-parental relationships. This finding is inconsistent with the aims of the reforms.

Parents assessed their child’s wellbeing across several dimensions, covering general health, learning or education, and social, emotional and behavioural adjustment. Assessments of the wellbeing of children in the largest group (those living with their mother for 66–99% of nights) were compared with those provided for children with other care-time arrangements. Here, the children who spent 53–100% of nights with the father were combined into a single group.

Children with shared care-time arrangements appeared to fare as well as (or perhaps marginally better than) children who spent most nights with their mother, while children who never saw their father appeared to fare worse than this reference group. While a history of family violence and highly conflictual inter-parental relationships appeared to be quite damaging for children, there was 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. It remains possible, however, that the measures adopted in this analysis were insufficiently sensitive to detect existing effects in these areas.

Safety concerns relating to ongoing contact also appeared to be detrimental to children’s wellbeing. Furthermore, this effect appeared to be more marked, according to mothers’ reports, for children in shared care-time arrangements than for those who were in the care of their mother most of the time. These findings are consistent with those of Cashmore et al. (2010). Although caution needs to be exercised in inferring causal connections based on cross-sectional data, the results are consistent with the notion that the circumstances that lead to mothers’ safety concerns are more detrimental to children with shared care-time arrangements than to those who are in the care of the mother for most of the time.

To date, shared care time appears to be mostly, but by no means entirely, adopted by families for whom such arrangements work well. A concern is that increasing proportions of separated parents for whom it will not work well may also adopt this approach. The extent to which shared care time has changed over the years will be examined in a forthcoming issue of Family Matters.
Endnotes
1 In his second reading of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, the then Attorney-General, the Hon. Philip Ruddock, stated: “With these reforms to the law and the new family law system, the government wants to make sure as many children as possible grow up in a safe environment, without conflict and with the love and support of both parents” (p. 10).

2 There were around 1,800 focus children whose mother and father both participated in the first wave of the LSAC and provided details about their child’s care-time arrangements. To prevent children who had both parents participating in the survey being counted twice in the analysis, data provided by one of these parents were randomly removed when the analysis focused on the child. When the analysis focused on the parent, the data provided by both parents were included.

3 All except one of the groups retained in this analysis comprised at least 100 members. In fact, there were more than 2,000 fathers and mothers (taken separately) whose child was in the care of the mother for 66–99% of nights. The smallest group that was retained consisted of mothers who saw their child during the daytime only (n=49).

4 The questions about flexibility and workability of parenting arrangements were asked immediately after the nature of care-time arrangements was ascertained. It is thus very likely that parents focused exclusively on their care-time arrangements when answering these questions. Given time constraints, the meanings of “flexibility” and “workability”, and the extent to which flexibility was influenced by the needs of the child, were not ascertained.

5 The following proportions of parents were not able to provide an assessment of how well the parenting arrangement worked for their child: 11% of respondents whose child never saw their parent and 1–6% of those participating in care-time arrangements. Excluded from Figure 7 are care-time arrangements when estimated by the age of the focus child for which there were fewer than 40 respondents.

6 Owing to the small number of cases, percentages were not derived regarding these time points were: at intake for divorce mediation, three months after mediation and one and four years after mediation.

18 This component study was conducted by McIntosh, Smith, & Kelaher (2010). The LSAC consists of two age cohorts of children. In Wave 1 (conducted in 2004), approximately half the children were infants (aged 3–19 months) and half were 4–5 years old. The authors focused on: (a) data for the infant cohort in 2004; (b) data for the infant cohort when aged 2–3 years old (collected in 2006); and (c) data for the infant cohort when aged 4–5 years (collected in 2008), in combination with data collected in 2004 for the older cohort (aged 4–5 years at the time).

References


Shared post-separation parenting
Pathways and outcomes for parents

Belinda Fehlberg, Christine Millward and Monica Campo

This article presents key findings from the first year of our Post-Separation Parenting and Financial Settlements study, conducted at the Melbourne University Law School and funded by the Australian Research Council. We focus on 32 in-depth interviews conducted in 2009 with parents in post-separation shared care arrangements, drawn from a qualitative sample of 60 (see Sample and Method boxes at the end of this article). For this study, we defined “substantial” shared care as a child spending at least 30% of their time with each parent and “equal” shared care as a child spending at least 45% of their time with each parent.

The background to our project was the significant amendment to the Family Law Act 1975 (Cth) (FLA Part VII, via the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth). The changes were complex but key goals appeared to have been to encourage separated parents, if safe to do so, to continue to take a significant role in their children’s lives, parent cooperatively and agree on parenting arrangements outside the legal system (Explanatory Memorandum, 2005, p. 16).

Before the 2006 changes to the Act, shared care had been found to work best where parents were cooperative, child-focused and flexible; had reached agreement without legal assistance; had “exercised their responsibilities jointly and co-operatively before their separation; and fathers had taken an active care-giving role” (Rhoades, Graycar, & Harrison, 2000 [1.3]; see also Smyth, Caruana, & Ferro, 2004). Post-reform, shared care remains unusual in the broader community—about 16% of the 10,000 recently separated parents who participated in the Australian Institute of Family Studies (AIFS) Longitudinal Study of Separated Families Wave 1 described themselves as being in this circumstance (Kaspiew et al., 2009, p. 116). However, early data from the Family Court of Australia (FCoA, 2009) and the AIFS’ Evaluation of the 2006 Family Law Reforms (the Evaluation) show that court orders for shared care are now made “in a higher percentage of contested cases than occur in the general population” (Kaspiew et al., 2009, pp. 132–133). This is a cause for concern, as parents with adjudicated orders would seem unlikely to be able to communicate and cooperate in the manner evident in workable shared care arrangements pre-2006.

At the time we began our research, little was known about families entering shared parenting arrangements post-2006. The AIFS Evaluation has since provided significant quantitative data on post-separation parenting, including shared parenting arrangements following the reforms. The Family Courts Violence Review (the Chisholm Review), released on the same day as the Evaluation, also addressed the operation of the 2006 changes in the course of identifying significant failure of the family law system in supporting victims of family violence (Chisholm, 2009). A number of other reports on the 2006 changes have been released since then and we refer to these at various points in this article. Our study adds to this burgeoning
knowledge base by providing in-depth analysis drawn from a small, purposive sample (see Sample and Method boxes on page 38).

The aim of this article is thus to summarise, with reference to the AIFS Evaluation as well as other recent research, our key 2009 findings concerning pathways into, and experiences of, shared post-separation parenting in a range of situations, including both conflicted and amenable arrangements. We do this by first considering our parents’ pathways into shared parenting arrangements and then exploring parents’ descriptions of their shared care arrangements.

In taking this approach, we make no claim that these experiences are representative of the population of separated parents with shared care arrangements. We also emphasise that our analysis in this article is only of shared care arrangements; and some of the patterns we identify might also be found in other parenting arrangements. Additionally, as the Sample box indicates, our sample was largely recruited from newspaper advertising. While we took care in stating in our advertisement that the goal of the study was to “better understand decisions about parenting and finances after separation”, it is possible that the parents most likely to respond had strong views about their shared care arrangements. Nevertheless, the variety of experiences we describe does exist and can deepen our understanding of shared care arrangements. Our qualitative data can throw light on what some of the quantitative trends mean in the everyday lives of families who fit those trends, while also perhaps identifying and exploring other experiences.

Pathways to care arrangements

Of our sample of 32 parents with shared care arrangements, half had attended family dispute resolution (FDR) or mediation services, and 10 had parenting court orders (6 Federal Magistrates Court [FMC] consent, 1 Family Court of Australia [FCoA] consent, 1 FMC contested, 2 FCoA contested). The focus of this section is our shared care parents’ experiences of FDR and mediation, as well as family law court pathways.

In our sample, parents who did not seek any professional assistance consistently described consensual shared care arrangements ($n=8$). They described mutual willingness to cooperate and communicate in a child-focused and flexible way, and the 2006 $FLA$ amendments did not seem to have shaped their decisions:

[Substantial care was] just how it worked out because we weren’t arguing or fighting or anything, and both had a really good relationship

Requirements to attend pre-filing FDR and the equal time amendments led several mothers in our sample to feel under pressure to agree to shared care in FDR or mediation and to believe … that there was no point in resisting because shared time was what the court would order if they litigated.

with [our daughter] and it’s not about us, it’s about her, so we just try and do what’s best for her, basically. So it’s been easy, really easy.

The presence of this cooperative group as well as parents who expressed (to varying degrees) less satisfaction with their shared parenting arrangements meant our sample was quite diverse.

As mentioned, half of our 32 parents with shared care arrangements had used mediation or FDR services. Reasons for doing so included wanting to avoid or reduce conflict over parenting arrangements or to save on the financial costs of the legal system:

We thought it made a lot more sense to do that rather than throw money at lawyers.

Others sought mediation or FDR to assist negotiations and found it assisted them to preserve amicable post-separation relationships while also providing structure and formality for their negotiations—in some cases resulting in a “Parenting Plan” to clarify and record arrangements:

It sounded better when it came from somebody else’s voice, as opposed to the dialogue that we had between us … When that third party agreed that what we had come up with was okay, then [my ex-partner] thought that then [it] was okay.

Mediation and FDR were of most assistance to parents who described low levels of post-separation conflict and said that they and their ex-partner had voluntarily sought it so they could negotiate more effectively.

Our sample also included several mothers and fathers who sought mediation or FDR because they needed help to try to resolve conflict with an ex-partner who they said was uncooperative. In two cases, the mother described the father as being highly controlling and intimidating. Neither of these mothers said that mediation or FDR had helped in this situation. Rather, they said their ex-partner had dominated the mediation process, so that they felt pressured into agreeing to shared care during mediation:

The mediators … swayed to the strongest personality.

[The mediator] was mapping it all out to make this arrangement but [my child’s father] just decided he didn’t want to do any of that. [The mediator] signed us off. She tried; she wasn’t getting anywhere.

A few mothers and fathers in our sample said they or their ex-partner intended to seek court orders and that they attended FDR because they were required to do so before going to court ($FLA$ s60D). Parents who mediated where one or both were determined to go to court were likely to describe mediation as a waste of time:

I thought we had reached a resolution but we obviously hadn’t reached the resolution that [my ex-husband] wanted. So he got his piece of paper that released him, because he had attended mediation and said that he had, you know, made an effort. He was then released to go on to court.

Requirements to attend pre-filing FDR ($FLA$ s60D) and the equal time amendments ($FLA$ s65DAA) led several mothers in our sample to feel under pressure to agree to shared care in FDR or mediation and to believe (sometimes on the advice of professionals, including mediators and solicitors) that there was no point in resisting because shared time was what the court would order if they litigated. One mother, for example, said she agreed to equal shared care after the mediator “pulled me aside and said, ‘Look here, …
the Dads’ groups in Canberra are very strong … there’s all this new legislation; when you go to court the default will be 50–50 and you can’t do a thing about it.’ That’s basically what she said to me.”

In contrast, fathers appeared less malleable, both on mothers’ and their own descriptions. They were less likely than mothers to attend mediation and FDR, or were likely not to engage in the process when they did attend. Fathers were more likely to describe themselves and to be described as having been able to resist agreement in mediation or FDR, or to utilise these processes to work towards the outcomes they preferred.

The observations of parents in our sample shed light on the broader AIFS Evaluation suggestion that the 2006 changes have diminished mothers’ bargaining positions and have put them “on the back foot” when negotiating parenting arrangements (Kaspiew et al., 2009, pp. 101–102; 219–221).

As noted earlier, and consistent with the wider community pattern of sorting out post-separation parenting arrangements without court involvement (Kaspiew et al., 2009, pp. 65–75), only 10 of our 32 shared care parents had parenting orders from a family law court (seven by consent). Our sample included cases in which consent orders were sought to formalise a mutual agreement and also to provide evidence to the Child Support Agency (CSA) for child support assessment purposes, or to Centrelink, so that Family Tax Benefit (FTB) sharing could be claimed.

While parents describing consent orders had formally agreed to the orders made, they often maintained that they had not been happy about doing so. Mothers were particularly likely to describe consent orders as a defeat because they had felt pressured into agreeing to substantial care. One mother, for example, said her husband “took me to court as a result of the new legislation that had come through. He saw that as an opportunity to increase the time he has with the children”. She also said that her solicitor was “scared during the negotiation process … that the judge might rule a 50–50”, and that as a result she had agreed to consent orders for substantial shared care. Cases like this in our sample (of which there were several) were consistent with the AIFS Evaluation suggestion that women’s bargaining positions have been compromised by the 2006 reforms, and that they often agree to shared parenting arrangements out of fear that a more adverse outcome would result if the matter was adjudicated (Kaspiew et al., 2009, pp. 101–102; 219–221).

The descriptions of parents in our sample consistently suggested that the 2006 shared parenting changes have led professionals (including both FDR practitioners and family lawyers) and parents to expect that courts are now more likely to order shared care (as is in fact the case, as noted in our introduction; see also Kaspiew et al., 2009, pp. 132–133; Chisholm, 2010, p. 121). For example, in one contested parenting dispute in our sample, the mother said that the father had sought 50-50 shared care of their 3-year-old child. The mother had been the child’s primary carer prior to the contest. After unsuccessful mediation, the case went to court, and the mother was deeply upset and angered by the legal process. She said she had felt bullied by her ex-husband, his lawyers and her own lawyers to agree to equal care. The mother only felt she had been listened to after a psychologist’s report opposing equal care was prepared. The federal magistrate took the report into account and ruled that the mother was to have 70% care, although this meant that the father, who lived several hours’ drive away from the mother, was still awarded substantial time with the child.
More than half our shared carers (n = 17) reported violence by the other parent toward them, mostly prior to separation. Mothers described physical, sexual, psychological, verbal and financial abuse and fathers described verbal and financial abuse of a less serious nature (this is a gendered pattern consistent with Kaspiew et al., 2009, pp. 27–29; Bugshaw et al., 2010, pp. 3–4). Mothers in our sample who described family violence and who went to court were consistently advised not to raise it by their solicitors. One mother, for example, described an equal shared care arrangement agreed to by consent. Her husband had mental health problems and had been physically violent during their marriage. She said she had sought court orders for “full custody” because she was concerned about the emotional and physical wellbeing of her children while with their father, but had agreed to equal shared time after her solicitor advised her that unless she could establish that he was violent towards the children rather than her, there was “not a whole lot I can do” and that “even if I had reported it, it probably would not have made much of a difference anyway, because the courts want that shared care”. Thus, the combined effect of the lawyer’s emphasis on the need for concrete supporting evidence of harm (e.g., police reports) and the priority being attached by courts to shared care post-2006 meant that she felt silenced and helpless. This mother’s observations are consistent with observations made in the AIFS Evaluation (Kaspiew et al., 2009, pp. 247–248) as well as the Chisholm Review (2010, pp. 47–49) and more recent reports (Bugshaw et al., 2010, p. 6; Laing, 2010, pp. 10–11).

Descriptions of shared parenting arrangements

The majority of our shared care sample described their relationship at the time of interview as cooperative (ranging from amicable to businesslike). However, a substantial minority did not, with about one third (n = 11; 7 substantial carers and 4 equal carers) describing their relationship with the other parent as being hostile.

The most positive shared care experiences among our sample were reported by parents who described their relationship with the other parent as cooperative and child-focused. One mother, for example, described her and her ex-partner’s substantial shared care arrangement of their preschool-aged daughter as follows:

It’s good. If she misses [her father] and she wants to see him then we pop over and see him and have dinner or something there. He’ll come over here if he wants to see her. So it’s really flexible, and it’s about her.

Parents in this group worked hard at maintaining communication with the other parent and avoided exposing children to parental conflict. Among our sample, positive shared care arrangements post-separation were more likely to be described in cases where fathers’ active involvement in children’s care pre-separation was also described. These patterns are consistent with pre-2006 research (e.g., Smyth et al., 2004; Smyth & Weston, 2004).

Most mothers and fathers in our sample said mothers were the main carers of children before separation. Many parents therefore struggled to adapt to shared care, as this involved mothers’ sense of loss of their primary role and fathers taking on a largely unfamiliar role. In our sample, mothers usually remained the main managers and facilitators in children’s lives, even in equal shared care arrangements:

I am the one who does all the driving around during the week to school and back. I feed them dinner on Friday night before he picks them up, and bath them and all of that, and give them breakfast and all of that when he drops them back off. He is really only providing for them for two days [per week] in regards to food.

While many mothers were, on both mothers’ and fathers’ reports, supportive of the father–child relationship, many were also anxious about the parenting skills of their ex-partners and worried that young children were not cared for adequately by fathers. Some said that fathers were less committed than the mothers were to maintaining children’s daily routines; for example, making sure children did their homework and went to bed on time. Some mothers said this was due to fathers’ inexperience, while in other cases the father appeared unwilling to follow the mother’s advice. Although some fathers had concerns about the mother’s lack of organisation or competence, this was always in cases where the father was the primary carer due to the mother’s mental health or substance abuse issues (none of which were shared care cases).

Mothers seemed to feel more keenly than fathers that shared care arrangements led to significant disruption, emotional stress and lack of adaptation for their children, particularly where there was ongoing parental conflict. Fathers focused less on these issues, although some spoke of emotional difficulties for their children after parental separation and said that counselling had taken place:

It was very upsetting for the children at first. Both of them ended up seeing the school counsellor at various times—my youngest son displayed physical signs of distress … he became aggressive and angry …

Some mothers were concerned about children’s health when children were with their father (diet, medical treatments or medicines, and amount of sleep) and some worried about physical safety if fathers were drinking alcohol, were depressed or had been violent in the past.

Some of the mothers’ heightened concerns may relate to differences in parenting styles between mothers and fathers—there is certainly research suggesting that fathers can be more “authoritarian”, “permissive” or “disengaged” than mothers and these parenting styles can have some adverse effects (see Wake et al., 2007; Russell et al., 1998). According to psychologists, these parenting styles differ in terms of strictness and amount of punishment given; levels of indulgence or leniency; and levels of responsiveness and communication, which can sometimes lead to neglect (Cherry, 2010). However, the maternal concerns over pre-separation paternal violence and depression probably go well beyond differences in parenting styles.
Several shared-care parents in our sample, especially but not only mothers, were also concerned that a third party (for example, the other parent’s new partner or the other parent’s mother) was looking after their children when the children were with the other parent:

Their Dad would just get every Tom, Dick and Harry to pick them up, drop them off. He was never around.

What was happening was that she’d employ nannies to look after them because she wasn’t around; she’d be overseas or interstate or whatever.

Such concerns were usually raised by parents who had been the primary carer before separation. They were also more likely to arise when fathers juggled full-time paid work and substantial shared care of their children. Some mothers also described fathers as having new partners who asserted their authority over children and failed to consult the children’s mother about important matters, such as ear piercing and haircuts.

Generally, our research was consistent with recent research by Jennifer McIntosh and colleagues (2010, p. 13), which suggests that fathers with shared care arrangements are more satisfied than mothers with shared care. Previous research has suggested that shared parenting may well be viewed by fathers as “fairest” to them (Smyth & Weston, 2004, p. 8), and our study also provides support for that view. Mothers, on the other hand, were more likely to focus on the impact of shared care arrangements on their children’s daily lives, and in high-conflict cases were likely to feel that shared care arrangements allowed their ex-partner to control them and left them no autonomy in decision-making:

So currently it either has to be on a weekend or after 5:00 pm, which is just so inconvenient. After 5:00 pm, activities just do not fit our life—the children get too tired … but he has booked activities on the weekends, and if I don’t take them to those activities he withholds them from things in his week.

Conclusions

Following the 2006 family law changes, the FLA includes a presumption of equal shared parental responsibility (FLA s61DA), which does not apply where there is a risk of family violence or child abuse, or where it is not in the child’s best interests. It is only when court orders provide that the parents are to have equal shared parental responsibility that the court must also consider ordering shared time (FLA s65DAA). However, there are several cases in our data that illustrate observations in the AIFS Evaluation (pp. 207–210) and the Chisholm Review (p. 8) concerning community and professional misunderstanding about what the FLA actually says. Our sample includes several cases in which mediators and lawyers were described as advising mothers that shared care is now virtually inevitable. It included cases where fathers who worked full-time and had not been very involved in their children’s lives prior to separation were described and described themselves as being encouraged to seek shared care, and cases where mothers (but not fathers) described themselves as feeling pressured into shared care. There were also several examples of mothers who described violence in their relationships with their partners, and said they were discouraged from raising it due to the increased emphasis on maintaining the children’s relationships with both parents, in combination with the perception post-2006 that family courts will order shared care regardless of circumstances. These instances add depth to some key findings of the AIFS Evaluation, the Chisholm Review and other recent reports (Bagshaw et al., 2010; Laing, 2010), and provide support for current federal government moves to amend the FLA to better address family violence (Family Law Amendment (Family Violence) Bill 2010).

The diversity of our sample (for further information, see Fehlberg, Millward, & Campo, 2009) also suggests that shared parenting arrangements are entered into by a more diverse group of parents now than was the case prior to the 2006 changes. Most obviously, our shared carers did not consistently describe cooperative arrangements—one-third reported a hostile relationship with the other parent at the time of interview. The utilisation of shared care in high-conflict separations and the harm to children arising from this is a clear theme in McIntosh and colleague’s
Sample

The sample of 32 interviews were taken from a wider sample of 60 interviews with volunteer parents, separated or divorced, who were resident in Victoria, Australia.

Our sample is rich and varied but is not statistically representative of separated families in Australia.

Table 1 Summary of childhood and early adulthood indicators used in the study

<table>
<thead>
<tr>
<th>Characteristics of the 32 shared-care parents</th>
<th>No. with characteristic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Substantial shared carers (≥ 30–44% of time each)</td>
<td>18</td>
</tr>
<tr>
<td>Equal shared carers (≥ 45% of time each)</td>
<td>14</td>
</tr>
<tr>
<td>Fathers</td>
<td>12</td>
</tr>
<tr>
<td>Mothers</td>
<td>20</td>
</tr>
<tr>
<td>Age of parent</td>
<td></td>
</tr>
<tr>
<td>20–39 years</td>
<td>10</td>
</tr>
<tr>
<td>40–49 years</td>
<td>19</td>
</tr>
<tr>
<td>50+ years</td>
<td>3</td>
</tr>
<tr>
<td>Previously married</td>
<td>22</td>
</tr>
<tr>
<td>Not previously married</td>
<td>10</td>
</tr>
<tr>
<td>Ages of children</td>
<td></td>
</tr>
<tr>
<td>2–11 years</td>
<td>25</td>
</tr>
<tr>
<td>12–16 years only</td>
<td>7</td>
</tr>
<tr>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>Victorian rural/regional area</td>
<td>8</td>
</tr>
<tr>
<td>Inner Melbourne suburbs (inc. Northern suburbs)</td>
<td>10</td>
</tr>
<tr>
<td>Outer Melbourne suburbs (inc. Eastern/Southern suburbs)</td>
<td>14</td>
</tr>
<tr>
<td>Employment</td>
<td></td>
</tr>
<tr>
<td>Full-time (3 men, 5 women)</td>
<td>8</td>
</tr>
<tr>
<td>Part-time (7 men, 10 women)</td>
<td>17</td>
</tr>
<tr>
<td>Not employed/studying (2 men, 5 women)</td>
<td>7</td>
</tr>
<tr>
<td>Attended mediation/FDR</td>
<td>16</td>
</tr>
<tr>
<td>Parenting orders from a court (7 consent, 3 contested)</td>
<td>10</td>
</tr>
<tr>
<td>Abuse/violence during previous relationship (3 financial only)</td>
<td>17</td>
</tr>
<tr>
<td>Current relationship with ex-partner is hostile</td>
<td>11</td>
</tr>
</tbody>
</table>

Method

- Interviewees were recruited in early 2009 via newspaper and online advertisements (the majority); brochures left at a major provider of mediation and FDR services; and mail-outs accompanying final orders from the Family Court of Australia and the Federal Magistrates Court.
- Eligibility criteria of parents:
  a. at least one child under 16 years of age from a previous relationship;
  b. separated from their child’s other parent after June 2006 (most had been separated for 1–3 years; a few longer, but around two years on average); and
  c. not currently involved in family law court proceedings.

Interviewees included non–Australian born parents, but all interviews were conducted in English.

Only one parent was interviewed per family, mainly for reasons of confidentiality and sensitivity. Children were not interviewed, mainly due to ethical and sampling challenges, including obtaining parental consent.

research post-2006 (McIntosh & Chisholm, 2008; McIntosh et al., 2010), but does not emerge as clearly in the AIFS Evaluation, which the authors suggest may result from methodological differences (Kaspiew et al., 2009, p. 273; see also Social Policy Research Centre, 2010, p. xi).

In our sample, it seemed that differences between mothers’ and fathers’ experiences and perceptions of shared care were related to patterns of care pre- and post-separation—most of our shared care mothers took the main responsibility for children’s schooling, medical and other needs both before and after separation. Our fathers seemed generally more satisfied with shared care arrangements than mothers, but were also more focused on time allocations and viewed shared time as being the fairest outcome for them and the children. In contrast, our mothers acknowledged the importance of fathers being active in children’s lives, and promoted ongoing contact with fathers, but were more obviously focused on children’s best interests and safety. A similar pattern emerged in previous research (e.g., Rhoades et al., 2000), and in the recent AIFS Evaluation (pp. 217–219, 267–273) and other recent studies (McIntosh et al., 2010).

Mothers’ concerns for children included, in a minority of cases, the risk of physical and psychological harm due to fathers’ past violence, mental illness, substance misuse or neglect, and, as noted above, this seemed to go beyond different parenting styles. More often, mothers were concerned that children’s social participation and recreational activities could be disrupted and emotional instability result from constant re-adjustment to two homes. Fathers were less inclined to express concerns for children’s wellbeing when the children were with their mothers.

The range of concerns expressed by mothers in our qualitative sample did not necessarily amount to the “safety” concerns that were found to be associated with poor outcomes for children’s wellbeing in the AIFS Evaluation (Kaspiew et al., 2009, Chapter 11). However, we would argue that they are nevertheless significant as they suggest that, from the point of view of those who have usually been and remain children’s main carers, shared care arrangements caused significant upheaval and uncertainty for their children and affected their capacity to parent well.

While our sample described a highly diverse range of experience and levels of satisfaction with shared care arrangements, the cases in which shared care operated most smoothly were those in which the law seemed to have played no role in dictating arrangements. This group
appeared very similar to those who utilised shared care before the changes. Our data also provided examples of parents who were utilising shared care in circumstances that did not appear suited to this model and it was clear that the shape and interpretation of the current law had influenced these arrangements.

While caution must be taken in drawing conclusions from very small samples such as ours, our data suggest the value of re-focusing on what works best for each child when making post-separation parenting arrangements.

References

Legislation and associated sources

Family Law Act 1975 (Cth)
Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)
Explanatory Memorandum to the Family Law Amendment (Shared Parental Responsibility) Bill 2005 (Cth)

Other sources


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In recent years there has been much interest in the impacts on children, both positive and negative, of different patterns of parenting after separation, especially where the care of children is shared equally or substantially between both parents. This article summarises key findings from two recent Australian studies of outcomes for two potential risk groups: school-aged children living in separations characterised by high inter-parental conflict (Study 1), and infants and preschoolers in the general population of separated families (Study 2). Both studies were commissioned by the Australian Government Attorney-General’s Department.

In Australia, the Family Law Amendment (Shared Parental Responsibility) Act 2006, together with other aspects of family law reform—most notably recent child support reform, have ushered in an era wherein a child’s experience of care by his/her parents post-separation has become sharply defined by the amount of overnight time spent with each parent (McIntosh & Chisholm, 2008; Smyth, 2009). The Act now stipulates that in courts with family law jurisdiction in Australia, in dealing with cases where the presumption of equal shared parental responsibility is not rebutted, judicial officers “must consider” the merits of making orders that the child spend “equal time”—or, if not equal, then “substantial and significant time”—with each parent. In addition, all “advisors” in the family law system (dispute resolution and legal practitioners, and family consultants) also have an obligation to inform parents that, in developing a parenting plan, they could consider that the child spend equal or substantial and significant time with each parent if reasonably practicable and in the best interests of the child.

One impetus for the current studies arose from concerns about the rapid progression of family law reforms supporting more widespread shared parenting arrangements post-separation, ahead of evidence about potential risks for specific groups within the family law population. While the question of how shared overnight care supports, disrupts or otherwise influences the development of very young children would seem central for policy-makers, practitioners and parents alike, enquiry into the efficacy of shared parenting to date has not had a strong developmental focus. Both studies reported in this paper sought to generate data that might assist parents and those from whom they seek assistance (mediators, lawyers and judicial officers) to reflect, from a more informed perspective, on what kinds of living arrangements may or may not support the developmental needs of the children concerned, and what factors could usefully guide the decision-making process about those arrangements. The infant study brings a fine developmental lens to the practical questions being asked about infants in shared overnight care. For school-aged children involved in high-conflict divorce, our longitudinal study traces the place of children’s living arrangements in their development over time.
This paper distils the original published synopsis of these two studies. That synopsis and the reports of the full study are available online from the Australian Government Attorney General’s Department. In the remainder of this article, we briefly summarise the studies, key findings and limitations, and touch on some possible implications.

Study 1: School-aged children in high conflict separation

About Study 1

Study 1 drew on data originally collected in an intervention study that compared outcomes for families who participated in (a) child-focused mediation, and (b) child-inclusive mediation. Data were collected from respondents at four points in time across a four-year period: (a) at intake into divorce mediation, (b) three months post-mediation, (c) one year post mediation, and (d) four years post-mediation.

Children, mothers and fathers from 169 families were involved in face-to-face interviews at as many of these time points as possible. For the purposes of the current analyses, the two intervention group samples were combined into a single high-conflict sample, yielding complete parenting pattern data over a four-year period for 133 families (including 260 children). Complete repeated measures data were available at all four points in time for 106 mothers, 93 fathers and 144 children.

These data were used to explore the following questions:

- What was the demography of various parenting patterns over time in this high-conflict sample?
- How satisfied over time were parents and children with their respective care patterns?
- In what ways did care patterns account over time for children's closeness to their parents, perception of and reaction to parental conflict, and their psycho-emotional wellbeing?
- How did the flexibility or rigidity of arrangements influence the above outcomes?

Cases were grouped in three ways. The first group was determined by the pattern of post-separation care over four years, yielding four categories:

- **continuous primary care** (children always spent between one overnight per month and 35% of overnights with each parent);
- **continuous shared care** (children always spent at least 35% of overnights with each parent);
- **changed arrangements** (one or more substantial changes to the care schedule since its inception); and
- **no or rare overnight contact** with one parent by the fourth year of parental separation.

The second grouping described the way in which the most recent care arrangement evolved. This also resulted in one of four patterns:

- a continuous, unchanging schedule;
- a change from shared to primary care;
- a change from primary to shared care; or
- a loss of regular contact.

Finally, the parenting arrangement was classified according to the flexibility of the arrangement in response to the changing needs of family members (as defined by parents), resulting in one of two forms: sometimes/usually flexible arrangements, or rarely/never flexible arrangements (the latter described as rigid arrangements).

<table>
<thead>
<tr>
<th>Pattern of post-separation parenting over four years</th>
<th>Families</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuous primary care</td>
<td>54 (41%)</td>
</tr>
<tr>
<td>Continuous shared care</td>
<td>36 (27%)</td>
</tr>
<tr>
<td>Began with shared care; moved to primary care</td>
<td>23 (18%)</td>
</tr>
<tr>
<td>Began with primary; moved to shared care</td>
<td>18 (14%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>131 (100%)</td>
</tr>
</tbody>
</table>
Key findings of Study 1

Patterns of parenting over four years post-mediation

While it was not unusual for shared care to be the agreed outcome between parents following mediation of their parenting dispute, over time, shared care arrangements tended to revert to those in place prior to mediation (which were typically primary residence with mother). Not surprisingly, given the many logistical and relational challenges, shared care was a less stable pattern than primary residence. Four years after mediation, 41% had maintained primary residence, 27% had maintained a shared care arrangement (at least 35% of nights with each parent), and 32% of families had changed their care pattern.

Parents who participated in child-inclusive mediation (where school-aged children’s needs and views were assessed separately, and incorporated into the mediation) were more likely to maintain the same arrangement over time than parents who received child-focused mediation (where children’s needs and views were not assessed), and were more likely to have remained in a primary care arrangement. In contrast, families who exercised shared care prior to mediation were more than twice as likely to maintain this pattern as those families who moved to shared care after mediation.

The demography of shared care in a high-conflict mediation sample

Analysis of the characteristics of families with different parenting arrangements revealed some consistent patterns. Families who sustained shared parenting over three to four years were more likely than other care groups to have the following profile: male children, younger children at separation, smaller sibling groups, fathers with tertiary education, mothers with high incomes and tertiary education, co-located households with close proximity between parents, fathers who had been active carers during their children’s infancy, and mothers who had re-partnered. At intake, these families also reported lower levels of parental conflict and acrimony, higher levels of parental alliance (i.e., worked together and respected each other as parents), warmer father–child relationships, and higher levels of paternal parenting competence and paternal availability than other groups. In short, a cooperative parental relationship was found to be one of the key ingredients for sustaining shared care over time. This finding is in accord with many other studies (for overviews, see McIntosh & Chisholm, 2008; Smyth, 2009).

Families who sustained shared care over the four-year study period also differed from the other care groups in the following ways: fathers continued to report more positive regard for the mother, while mothers’ acrimony toward the father remained stable (i.e., it declined over time in all other groups); and fathers in sustained shared care were more confident in their parenting to begin with, and remained more confident in their own parenting over time. By contrast, families who moved from shared care to primary care tended to be characterised by the following: mothers reported high acrimony towards the father at intake; children reported poor emotional availability of the father at intake; fathers had low formal education; and children were aged 11 or over at intake (i.e., were approaching their teens).

Some families sustained a rigidly fixed shared care arrangement; that is, the living schedule was “never or rarely flexible/accommodating to changing family needs”. Relative to the other care groups, the rigid shared care group was more litigious (i.e., operating from a court or consent order), and was characterised by higher marital and post-separation levels of conflict and acrimony and lower levels of cooperation. Mothers in this group reported feeling more threatened by their former partners than mothers in other groups, while fathers tended to have low regard for mothers’ parenting skills.

Almost all of the 18 families in which fathers lost contact with children were characterised by high, sustained levels of marital and post-separation conflict at all points in the study. This finding is consistent with prior work in which conflict and acrimony have been found to be important precursors to “father absence”.

Satisfaction with parenting arrangements over time

Satisfaction with care arrangements was associated at a number of levels with type of care arrangement. Fathers with shared care arrangements were the most satisfied of all groups with their living arrangements, despite reporting higher levels of conflict about parenting and poorer dispute management. In contrast, four years after parents mediated their parenting dispute, children in shared care (whether rigid or flexible arrangements) were the least satisfied with the parenting arrangements of all care groups; they were also the most likely to report wanting a change in their arrangement. Where shared arrangements were rigidly enforced, children became significantly more dissatisfied with the arrangement over time than did the flexible shared care group; these children were the least satisfied of all the groups with their living arrangements. Mothers and fathers were equally content when primary care and shared arrangements were reported to be flexible. Rigidity in shared care arrangements significantly affected mothers’ but not fathers’ report of contentment with the parenting arrangements.

Children’s adjustment and wellbeing

Over four years, the type of care arrangement had different impacts on the wellbeing of the children involved and on their experience of their parents. After adjusting for initial levels of conflict, children in the shared care groups reported higher levels of inter-parental conflict four years after mediation than children in the primary residence or changing care groups. Reports of inter-parental conflict over time were similar to those from children in the “no or rare contact” group. Children in the sustained shared care group were more likely than those in other care arrangements to report ongoing feelings of being caught in the middle of their parents’ conflict. Over the four-year study, the greatest decrease in children’s scores for feeling “caught in the middle” was for children in the primary
parenting group. By comparison, children’s reports of distress about their parents’ conflict did not vary according to the overnight care pattern. Similarly, neither the nature of a child’s living arrangement at any single point in time, nor the pattern of care across time, independently predicted the child’s total mental health scores after four years (as measured by the Strengths and Difficulties Questionnaire, Goodman, 1997).

After four years, stable living arrangements and greater amounts of overnight time were independently associated with the child’s report of greater emotional availability by his/her mother, but not by his/her father. Fathers’ availability was predicted by a history of warm and responsive parenting pre-separation and not by the amount of time he currently cared for the children overnight. We note that in this sample mothers were the primary caregiver in the children’s early years, and this may well have a bearing on these observed outcomes.

Children’s experience of living in shared care over four years was associated with greater difficulties with attention, concentration and task completion by the fourth year of this study. Boys in rigidly sustained shared care were the most likely to have hyperactivity/inattention scores in the clinical/borderline range; however, children who were already vulnerable to hyperactivity/inattention tended to remain that way over time, regardless of the overnight care arrangement.

**Strengths and limitations of Study 1**

The strengths of Study 1 lie in its prospective, repeated measures, multiple perspectives design, enabling us to tap into family life at different points in the separation process, and to look across time at the developmental trajectories of the children concerned. Large, all-inclusive studies are typically broad and shallow, and are not well placed to obtain detailed information on family dynamics and child outcomes. Moreover, cross-sectional or retrospective data alone cannot provide the same long-range view or analytic power. Uniquely, Study 1 collected extensive data over time from children and their parents, affording the opportunity to explore the study questions from the vantage point of all family members. That said, the data are from a small non-random select group of cases—high-conflict families seeking help from community mediation services.
Study 2: Overnight care patterns and the psycho-emotional development of infants and preschoolers

About Study 2

Study 2 draws on data collected as part of the Longitudinal Study of Australian Children (LSAC). LSAC follows the development of 10,000 children and families from around Australia, exploring the interaction of children’s social, economic and cultural environments with their ongoing adjustment and wellbeing. The study began in 2004 with two cohorts—families with 4–5 year old children (K cohort) and families with infants up to one year old (B cohort). The samples are followed up every two years. Three age groups were examined in Study 2: infants under two years (B1 cohort), older infants 2–3 years old (B2 cohort), and 4–5 year olds (B3 and K1 cohorts combined).

Four research questions guided the study. Relative to rare overnight and primary care overnight patterns, and controlling for related contextual variables (including low socio-economic status [SES], single-parent status, social support, parenting qualities, and co-parenting conflict and cooperation):

1. Does higher frequency shared overnight care parenting differentially affect the infant/child’s growing ability to self-regulate his/her emotions and behaviours, and to focus and attend?
2. Does shared parenting differentially affect the infant/child’s physical and psychosocial health status?
3. What is the demographic profile of families who largely share the care of their very young children?
4. What parenting qualities, co-parent relationship characteristics and socio-demographic characteristics moderate or mediate relationships between parenting arrangements and the above outcomes?

Three patterns of overnight care were examined. We distinguished higher frequency overnight stays from lower frequency overnight care, and included a third group of children who had some daytime contact, but rarely if ever had overnight care. Consistent with current Australian policy, we adopted the terms “shared care” to reflect the highest frequency of overnight-stay groups, and “primary care” to reflect situations in which the young child lived primarily with one parent while having steady but lower frequency overnight contact with the non-resident parent. Tables 2 and 3 show the sample sizes for the groups of interest.

Key findings of Study 2

Infants less than two years old

For this infant group, overnight time with the parent living elsewhere (PLE) was defined as:

- rare (if any) overnights—overnight stays occurred less than once per year but with some daytime contact;
- primary care—an overnight stay occurred at least once a month but less than five nights a fortnight; and
- one or more nights a week—with the non-residential parent. This category was used as the reference category in the statistical modelling.

Spending one or more nights each week with the non-resident parent had an independent effect on infant irritability. Examples of irritability include the infant being fretful on waking up and/or going to sleep, difficulty amusing self for a length of time, continuing to cry in spite of several minutes of soothing, and crying when left to play alone. Infants in the reference category had higher levels of irritability than those in primary residence arrangements. Infants primarily in the care of one parent had the lowest irritability scores of the three overnight care groups, according to resident parent reports.

In addition, infants in one or more nights a week care arrangements demonstrated more vigilant visual monitoring and maintenance of proximity with the primary parent than was the case by infants with rare (if any) overnight care. This effect held when parenting and SES were taken into account. They also demonstrated a trend towards higher rates of wheezing than infants in primary care (p = .08). Frequency of overnight care was unrelated to differences observed in global health, global developmental concerns, or degree of negative response to the LSAC interviewer.

Young children aged 2–3 years

For children aged 2–3 years, overnight time with the PLE was defined in the following ways:

- rare (if any) overnights (as for children aged under two);
- primary care—an overnight stay occurred at least once a month but less than five nights a fortnight; and
- shared care—based on the policy definition, in which care occurred five or more nights a fortnight—that is, 35% or more overnights a year. This category was used as the reference category in the statistical modelling.

In the 2–3 year old sample, after parenting, parent relationship and SES controls were included in the statistical model. Broadly, frequency of overnight care was unrelated to differences observed in conflict with day carers or degree of negative response shown to the LSAC interviewer. However, with respect to relating to the primary carer, two independent effects of shared care arrangements were identified.

### Table 2 Sample sizes for overnight care group: Infants less than 2 years old

<table>
<thead>
<tr>
<th>Overnight care definition</th>
<th>Infants (B cohort, Wave 1 2004)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rare (if any) overnights</td>
<td>164</td>
</tr>
<tr>
<td>Primary care</td>
<td>21</td>
</tr>
<tr>
<td>One or more nights a week</td>
<td>63</td>
</tr>
</tbody>
</table>

### Table 3 Sample sizes for overnight care groups: Children aged 2–3 years and 4–5 years

<table>
<thead>
<tr>
<th>Overnight care definition</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2–3 years</td>
</tr>
<tr>
<td>Rare (if any) overnights</td>
<td>360</td>
</tr>
<tr>
<td>Primary care</td>
<td>201</td>
</tr>
<tr>
<td>Shared care</td>
<td>26</td>
</tr>
</tbody>
</table>
First, children in shared care engaged in lower levels of persistence (i.e., the ability to play continuously, stay with routine tasks, examine objects thoroughly, practice new skills, and return to an activity after a brief interruption) compared with children in the other two care arrangements. Second, there was evidence of more problematic behaviours on the Brief Infant-Toddler Social Emotional Assessment (BITSEA) Problems Scale than the primary care group (and a trend with respect to the rare (if any) overnights group; $p = .08$). Specifically, the shared care group relative to the primary care group showed more distressed behaviours in the context of parent–child interaction and caregiving. Examples of distressed behaviours include crying or hanging on to the parent when he/she tries to leave; worrying a lot, or seeming very serious; not reacting when hurt; often becoming very upset; gagging or choking on food; refusing to eat; hitting, biting or kicking the parent.

**Children aged 4–5 years**

For children aged 4–5 years, overnight time with the PLE was defined in the same way as for children aged 2–3 years (outlined previously): rare (if any) overnights, primary care and shared care. The final category was used as the reference category in the statistical modelling. In the 4–5 year old sample, after parenting, parent relationship and SES controls were included in the statistical model, results indicated that independent effects of care arrangements on emotional and behavioural regulation outcomes for children were not evident. The vast majority of variation between overnight care groups in the 4–5 year old group was accounted for by factors other than overnight care patterns, with particular emphasis on the impact of interparental conflict and lack of warmth in parenting on children’s self-regulatory capacities (e.g., ability for a child to calm him or herself) at this stage.

**Strengths and limitations of Study 2**

The LSAC is currently the most comprehensive data set of child outcomes in Australia, and was designed to allow the exploration of pressing policy questions about children growing up in Australia. It is important to remember that shared care in Australia remains a minority pattern of post-separation parenting. As a consequence, obtaining detailed information from a large, representative sample of separated parents sharing the care of infants and very young children is a formidable challenge, even for surveys of substantial scientific rigour such as this. In the context of a general population sample, the numbers of infants and young children in shared overnight arrangements in our analyses were inevitably small, particularly at the policy definition of 35% of nights per year. As a consequence, some findings are treated speculatively. Moreover, LSAC data from non-resident parents were scarce and therefore excluded, while longitudinal tracking of infants’ care arrangements over time was also not possible because there were insufficient numbers for a meaningful analysis.

**Integrated findings of the two studies**

These two studies targeted different age groups and different populations, and the specificity of each set of findings is important to retain. These results are largely consistent with the backdrop of literature detailed in the full report of each study; nonetheless, the findings have important points of correspondence in what they say about the “equipment” involved in translating a shared time arrangement post-separation into a durable and developmentally supportive experience for the children concerned. This “equipment” comes in several potentially mutually reinforcing forms.

### 1. Socio-economic equipment

Both studies highlight the conditions and socio-economic factors that help to make shared care work. Consistent with prior research (e.g., Johnston, Kline, & Tschann, 1989; Smyth, 2004; Steinman, 1981), shared parenting appeared to confer benefits to children where it is supported by resources linked to education and employment, and a host of interconnected relationship factors. The data suggest that parents who had good shared care arrangements lived near each other, tried to respect the competence of the other parent, and were flexible and accommodating rather than rigid in their approach. The sum of these component
parts is likely to create an important “domino effect” for children’s contentment and wellbeing.

2. Relationship equipment

Children read their parents’ emotions as they move between households, and experience each parent’s emotional availability and capacities. The relationships within each household, and the space between, become the soil within which children develop post-separation, with outcomes significantly determined by the richness or toxicity of that soil. Consistent with two decades of international research from the high-conflict divorce arena, these two new Australian studies show that, for school-aged children, nurturing relationships with each parent and supportive relationships between parents had greater bearing on many outcomes than the actual parenting arrangement itself. While children in shared care arrangements reported more inter-parental conflict than children in other arrangements, and lower contentment with their arrangements, neither a child’s living arrangement at any single point in time, nor their pattern of care across time, independently predicted total mental health scores after four years.

3. Maintenance equipment

The manner in which children’s living arrangements were maintained, however, did have an impact on children’s emotional wellbeing over time. Rigid arrangements, often fuelled by acrimony and poor cooperation and set out in court orders, were associated with higher depressive and anxiety symptoms in school-aged children, as reported by both parents, and this form of living became something children often sought to change. Many of the above themes are encapsulated in a conclusion reached by Ahrons (2004), built on interviews with children reflecting back on their parents’ divorce:

Parents agonise, argue, negotiate and litigate over the minutia of how much time their children will spend with each of them … But … especially as they get older, children want flexibility in their living arrangements … They want to have their needs considered more by their parents and be able to transition between households on their schedules, not their parents’ … [They were] far less concerned about the specific number of days per week or month they spent living with one parent or the other than … about how their parents’ relationship infused the emotional climate surrounding their transitions between parental households … At whatever developmental stage, children want to know that their parents will care for and love them while they continue their daily lives with as few interruptions and stresses as possible (pp. 66–67).

4. Developmental equipment

As important as the above three factors appear to be for children’s outcomes in shared care arrangements, a key contribution of the second study is in identifying the “developmental stage” as a factor that, in many respects, may trump these other influences during the preschool years. Thus, regardless of socio-economic background, parenting or inter-parental cooperation, shared overnight care of children less than four years of age had an independent and significantly deleterious impact on several emotional and behavioral regulation outcomes.

Central to the infant study were questions about the impact of parenting patterns on the degree of confidence a very young child develops about the care he/she receives, and the resulting extent to which the child settled into a self-regulating pathway; was able to physically thrive and engage in stage-appropriate relatedness and to regulate their emotions across a number of psychosocial domains. Consistent with the findings of Solomon and George (1999), young infants less than two years of age living with a non-resident parent for only one or more nights a week were more irritable, and were more watchful and wary of separation from their primary caregiver than young children primarily in the care of one parent. Children aged 2–3 years in shared care (at the policy definition of five nights or more per fortnight) showed significantly lower levels of persistence with routine tasks, learning and play, than children in the other two groups. Of concern, but as predicted by attachment theory, they also showed severely distressed behaviours in their relationship with the primary parent (often very upset; crying or hanging on to the parent; and hitting, biting or kicking), feeding-related problems (gagging on food or refusing to eat) and not reacting when hurt, which are consistent with high levels of attachment distress. The second report details this body of work as an important context for understanding the pathways of disruption indicated by these findings.

The relationships within each household, and the space between, become the soil within which children develop post-separation, with outcomes significantly determined by the richness or toxicity of that soil.

By kindergarten or school entry at around age 4–5 years, these effects were no longer evident. Thus, once children can self-soothe and organise their own behaviour, are capable of representational thought and anticipation, have adequate receptive language, anticipate and communicate about past and future events and emotional states—in other words, by the time the child truly “knows what tomorrow is” and can manage themselves within it—then they are better able to straddle households in a frequently shared overnight arrangement. Schore and McIntosh’s (in press) perspective from the neurobiology of attachment further explains this finding:

Attachment in the first year of life, when the brain circuits for attachment are still setting up, is different from attachment in the third or fourth year of life, when the system is going, so to speak. That is, to stress a developmental system while it is organising in the first year will have a much more negative impact in response to the same stressor than if you did it when the child was four.

Implications for policy and practice

Legislative reform is often a blunt instrument for shaping human behaviour—although the radiating message(s) transmitted by such reform should not be underestimated in the context of parenting disputes over children (Smyth, 2009). Anecdotally, there is little doubt that a number of separating parents in Australia (particularly non-resident fathers) have interpreted the 2006 family law reforms to
mean that 50–50 care is the new default (e.g., see Kaspiew et al., 2009).

While the “best interests of the child” continues to be the paramount stated consideration for judicial decision-makers, children’s needs at different developmental stages appear to remain relatively under-acknowledged by policy and legislation. Education and information have important roles to play in bringing developmental issues to the fore in the crafting of child-responsive arrangements—with or without the help of professionals. The findings set out above point to some key learnings:

■ As with all relationships, parent–child contact after separation takes work (Trinder, Beek, & Connelly 2002). Shared care, as one of many possibilities, involves many logistical and relationship challenges; it is a skilful undertaking.

■ Shared care is likely to be especially developmentally challenging for infants and preschool children. While a cooperative parenting relationship can make many things possible, the developmental needs of the young child and the additional demands involved in meeting those needs means that the challenges are even greater.

■ Neither the existing literature nor our recent findings support using shared care (at least 35% shared overnights) as the starting point for discussions about parenting arrangements for infants and young children under four years.

■ For older children—where parents can work together, are attuned to the child and can respond to their needs—the benefits of a shared overnight arrangement can be more evenly weighed.

■ All possibilities in relation to developing child-responsive arrangements should be re-evaluated at regular intervals in the context of each child’s developmental progress and emotional needs.

■ Flexibility and responsiveness, and the corresponding capacities they entail within parents, are key to children doing well. These qualities have benchmark relevance for deciding post-separation living arrangements.

Where some families are ready for shared care, others may need time and support to evolve towards this care arrangement. For a smaller, but nonetheless significant group, shared parenting will never be appropriate. It follows that the legal and social science professions need to operate from a clear map of the known challenges involved in shared parenting, identifying the extent to which shared parenting arrangements provide the child concerned with a developmentally sound and viable
vehicle for specific phases of their journey. Signposts are needed to assist professionals and parents to identify pragmatic, developmental and relationship equipment needed for the skilled task of shared care. Flowing on from this is the need to develop sound interventions that assist some families to mend faulty equipment, or to grow the necessary prerequisites, to “prepare to share”. Equally important are support and educative resources for families who may have tried shared care but wish to move to another arrangement, or for whom shared care is not likely, short- or long-term, to be a viable option. In other words, pathways to, from and around shared care need to be carefully mapped, and supported by developmentally sensitive legislation.

The promotion of more positive relationships, and the creation of age-appropriate, child-responsive parenting arrangements through educational dispute resolution appears paramount, and we hope that existing services and programs can be further tailored to incorporate new learning about shared parenting identified through these two studies. Child-inclusive family dispute resolution (McIntosh, Long, & Wells, 2008) remains a promising tool across the family law arena for providing early screening of school-aged children’s needs and views with respect to post-separation living arrangements.

Infants and very young children are among the least able in society to articulate their needs, desires or experiences of the world. In the study of their outcomes, standard ways of assessing their wants and wellbeing do not apply. The challenge for practice, research and policy is to be able to find ways of hearing the voices of very young children. There remains significant need for data sources that help to articulate the sum of the parts of early care-giving experiences that most affect the developmental security of very young children in separated families, and thus enable the infants’ pre-verbal experiences to be better understood and acted upon within the family law arena. There is much still to be understood. Effective models of developmental consultation for infant and preschool family law matters are still needed.

Taken together, the results of these two new studies return the focus squarely to the importance of the questions we ask on behalf of children about post-separation living arrangements. The task continues to be to determine those arrangements and attitudes that will maximally support each child within his/her unique developmental context.

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living arrangement becomes developmentally challenging rather than supportive.

Endnotes
1 Sweeping changes to the Australian Child Support Scheme were recently introduced, featuring a dramatically different system for the calculation of child support. These changes were recommended by the Ministerial Taskforce on Child Support, and were implemented in three stages during 2006–08. The reform package became fully operational on 1 July 2008, when a new formula for estimating child support liability came into effect. Among other things, the new scheme seeks to support shared parenting.
2 See <tinyurl.com/37u759m>.
3 This paper uses unit record data from LSAC (Australian Institute of Family Studies [AIFS], 2010). The study is conducted in partnership between the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), AIFS and the Australian Bureau of Statistics (ABS). The findings and views reported in this paper are those of the authors and should not be attributed to FaHCSIA, AIFS or the ABS.

References

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The effect of family violence on post-separation parenting arrangements
The experiences and views of children and adults from families who separated post-1995 and post-2006

Dale Bagshaw, Thea Brown, Sarah Wendt, Alan Campbell, Elspeth McInnes, Beth Tinning, Becky Batagol, Adiva Sifris, Danielle Tyson, Joanne Baker and Paula Fernandez Arias

In 2009, the Australian Attorney-General commissioned research into family law and family violence in Australia, with a focus on the relationship between people’s experiences of family violence and decisions made about post-separation parenting, with and without assistance from service providers in the family law system. The study included adults and children who had separated after 1995 and after the introduction of the Family Law (Shared Parental Responsibility) Amendment Act (Cth) in 2006.

This article reports key findings of two national online surveys with adults and children in relation to post-separation parenting, which formed part of the larger research. Adult respondents described how family violence affected their parenting arrangements and their use of family services to assist with parenting decisions. There were gender differences in the reported experiences of and responses to violence, with women reporting more serious forms of violence than men. Many adults felt dissatisfied with service providers’ acknowledgement and appreciation of the impact of family violence on adult and child victims. Adults were most dissatisfied with services for decision-making regarding planning for their children’s care post-separation. Their concern for their children’s safety was supported by children’s own reports. The study raised many questions about how well family law policies, as expressed in the legislation and implemented in the national service system, respond to violence in families such as those who were involved in this research.

Background to the research

In 2006, the Australian Government introduced legislation amending the Family Law Act 1975 (Cth), despite considerable debate about the changes. The amended legislation was aimed at creating a more meaningful relationship between children and parents following parental separation. To this end, it incorporated new concepts of shared parental responsibility and equal shared time, new policies relating to discouraging adversarial and legalistic approaches to dispute resolution, and new services to support the new concepts and policies, including a new national network of family relationship centres. There was significant support for the changes and they were endorsed by the Labor opposition (e.g., Ludwig 2006); however, there was also much criticism of the changes, especially regarding the degree of protection the changes would offer women and child victims of family violence (e.g., see Chisholm, 2006).
The research that is the subject of this paper (Bagshaw et al., 2010), along with research on the impact of shared parenting on children (Cashmore et al., 2010), was commissioned by the Australian Government’s Attorney-General’s Department in 2009 and was undertaken by researchers from the University of South Australia, Monash University and James Cook University. Other reports examining the question of family violence in the federal family law context released in the past year include a report on court processes by Professor Richard Chisholm (2009), a report on improving responses to family violence in the family law context by the Family Law Council (2009) and the report of an inquiry into laws dealing with family violence by the Australian Law Reform Commission (2010).

The overall aim of our research was to examine the impact of family violence (domestic violence and child abuse) during and after parental relationship breakdown from the perspective of children and parents, and the impact of the Family Law Amendment (Shared Parental Responsibility) Act 2006, specifically in relation to the effect that a history or existence of violence within the relationship had on:

- the decisions that people make about accessing the courts and dispute resolution services;
- decisions people make while using courts and dispute resolution services; and
- post-separation parenting arrangements.

The researchers are from three Australian states and from the disciplines of psychology, social work, sociology, criminology, law and education. They gained the views of a total of 1,153 adults (90%) and children (10%) who had experienced parental separation from 1995 to the present, allowing a comparison of respondents from the periods before and after the 2006 amendments (Bagshaw et al., 2010).

This article summarises findings from two national online surveys, which formed a part of the research, in relation to the third research question: the effect that a history or the existence of violence within a relationship had on post-separation parenting arrangements, from the perspective of adults and children.

Research design

In the larger study, the researchers used an explanatory approach (Weinbach, 2005), beginning with an extensive review of the literature. They collected quantitative and qualitative data via national online surveys (931 adults and 105 children) and telephone interviews (105 adults and 12 children) involving voluntary, anonymous, self-selected children and adults who had separated post-1995, and who had experienced family violence. This section focuses on the design of the online surveys. It is important to note that some respondents only answered some of the questions, which accounts for the discrepancy in numbers in some of the statistics and tables in this article.

The literature review informed the development of questions for the two online surveys—one for adults and another for children—which were implemented nationally. Survey Monkey was used to construct the online survey, enabling the researchers to sort quantitative data into categories and convert it into tables and graphs. Survey questions also sought qualitative responses. Bagshaw and Chung (2000a) and others have argued that quantitative data alone cannot measure or show the more complex, non-physical aspects or the subtle nature of the abuse of power and control in family violence, hence the survey was designed so that respondents could make qualitative comments. As Chisholm (2009) has pointed out, “understanding of family violence requires examination not only of physical actions but of the context and meaning of the actions to those involved” (p. 36).

A content analysis strategy (Grinnell, 1997) was used to identify major themes in the respondents’ qualitative comments. Given that prior studies suggest that men and women’s constructions and experiences of violence can differ (see Bagshaw & Chung, 2000a, 2000b; Mulroney & Chan, 2005; Richardson & May, 1999), the responses of the men and women surveyed were also compared.

The adult survey was divided into nine main sections. The first three sections asked for background information, the nature of the respondents’ relationships with their ex-partners and the overall impact of family violence and family law on their parenting relationships post-1995 and post-2006. Section four asked about respondents’ experiences of and satisfaction with the family services they had accessed during and since their separation. Section five asked more specific questions of parents about their children and parenting post-separation, pathways to parenting arrangements, their understandings of family

Of women who had ended their prior relationship, 65% of them had done so because of family violence.
Overall, women were more likely than men to feel that their allegations of violence by their ex-partner were believed and taken seriously, but approximately half of both the men and women felt their allegations were not taken seriously.

The University of South Australia’s Human Research Ethics Committee (HREC) and Monash University’s Standing Committee on Research on Humans approved the research for the overall project and the instruments used at each phase of the research. Approval was also granted by the ethics committee of James Cook University. At the request of some of the services, the study was also approved by
the University of Tasmania, the Research Committee of the Australian Association of Social Workers, and the Family Court of Australia’s Research and Ethics Committee.

Links to supportive services such as the Children and Teens First website (which provides information about a wide range of services in Australia) and Kids Helpline were provided in each of the surveys.¹

Responses to the online surveys

Adults who responded to the survey were from capital cities (48.2%), regional towns and cities (34.8%), rural areas (16.5%) and remote areas (0.6%), from all Australian states, and from a spread of age groups from under 20 to over 60 years of age: 43% of women and 54% of men were aged between 40 and 49 years. The cultural background of the adult respondents was typical of the general population, with 3.2% coming from Indigenous backgrounds, 10.5% from the United Kingdom, 1.8% from New Zealand, 7% from Europe, 1.4% from Asia, 0.2% from Africa, 0.5% from North America, 0.8% from South America, 1.1% from another English-speaking country, 1.1% from another non-English speaking country and 72.3% identifying as “other Australians”. They voluntarily chose to respond to the survey, and consequently the sample is unlikely to be representative of the general community and the findings cannot be generalised.

Respondents included men and women who had attended a Family Relationship Centre (FRC) or another family dispute resolution (FDR) service, men and women who had used the court system (instead of or as well as an FRC or other service), men and women who had not used either system (but who may or may not have accessed other services), and children of parents where family violence had occurred or was continuing.

A total of 931 adults responded to the survey; however, some did not respond to all of the questions so the numbers and percentages of responses varied in relation to each of the questions. Of the 913 who identified their sex, 74.2% were women and 25.8% per men. This was not surprising, as the stated focus of the survey was on family violence and family law and the empirical research shows that victims of family violence are more likely to be women than men (ABS, 2006; Bagshaw & Chung, 2000a, 2000b; Family Law Council, 2010).²

Of 559 women, roughly one-third (28.2%) had separated post-1995 and had only used services pre-2006 (the first cohort); one-third (30%) had separated post-2006 and had not used services prior to that time (the second cohort); and one-quarter (24.4%) had been in the system for the longest period of time, both post-1995 and post-2006 (the third cohort). The majority of the 183 men identified as being part of the pre-2006 cohort (31.4%), followed by those in the post-2006 cohort (26.7%). Almost one-fifth of these male respondents (19.5%) had been in the system both post-1995 and post-2006.

Roughly 10% of the total number of survey respondents (n=105) began the children’s survey and 65% of these children (n=68) completed it. The respondents to this survey were aged between 5 and 25 years, with a mean age of 13 years. Of the 88 respondents who identified their sex, 53.4% (n=47) were girls and 46.6% (n=41) were boys. Seven young adults above the age of 18 (8.3%) chose to complete the survey retrospectively and the researchers decided to include their responses in the data analysed, as their experiences had occurred within the time period under study.

Effect of family violence on parenting arrangements: Key findings from the adult survey

Most respondents to the adult survey were people who said family violence (domestic violence and child abuse) was an issue in their relationship with their ex-partner (82% of women; 56% of men). However, the percentages varied across the three cohorts, with the highest percentage of men and women identifying violence as an issue in the third (both post-1995 and post-2006) cohort (89.7% of women; 63% of men).

In our research findings, all forms of violence needed to be explicitly named and understood, along with the central issues of power and control, which can be subtle and hard to detect (Cook & Bessant, 1997). The following definition of domestic violence—included in the Partnerships Against Domestic Violence Statement of Principles and agreed by the Australian Heads of Government at the 1997 National Domestic Violence Summit—most accurately depicts the experiences of the adults who responded to our survey:

Domestic violence is an abuse of power perpetrated mainly (but not only) by men against women both in relationships and after separation. It occurs when one partner attempts physically or psychologically to dominate and control the other. Domestic violence takes a number of forms. The commonly acknowledged forms are physical and sexual violence, threats and intimidation, emotional and social abuse and economic deprivation. (Australian Government, 1997, p. 1)

Family violence and gender

Most adults surveyed (68.7% women; 52.2% men) stated that family violence had affected their parenting arrangements after separation. However, the triggers for the violence, and the nature and impact of the violence were different for the men and women who provided qualitative responses.

Of women who had ended their prior relationship, 65% of them had done so because of family violence. The largest proportion of women who said they found that family violence made parenting arrangements difficult was in the cohort that had been accessing services for the longest period of time (post-1995 and post-2006); the largest proportion of males stating that violence was a problem was in the post-2006 cohort. We acknowledge that some of the most unhappy users of family law services were probably among those that chose to respond to the survey.

Both women (54%) and men (46%) nominated implementing parenting arrangements and making decisions about children (47% men, 55% women) as

Men reported using different and fewer family services than women, although a higher percentage of men reported using family services after 2006 than before 2006.
contexts where violence against them was frequently or mostly occurring. However, in no context did a majority of men agree that violence was frequently or mostly occurring against them; in contrast, the majority of women said that violence was frequently or mostly occurring against them; in particular when making parenting arrangements and decisions about children.

The qualitative responses to the adult survey showed that women and children were far more likely than men to be victims of severe abuse and threats, giving rise to fear and intimidation. This supports the findings of other recent studies (e.g., Kaspiew et al., 2009; Moloney et al., 2007a, 2007b).

While a small number of men identified themselves as victims of family violence, men and women constructed their experiences of family violence differently (see Richardson & May, 1999). They reported different definitions, meanings, experiences and effects of violence and different responses to it and to their violent partners. This is also consistent with the findings of other studies (Bagshaw & Chung, 2000a & 2000b; Mulroney & Chan, 2005; James, Seddon, & Brown, 2002). In their qualitative responses, women commonly reported violence towards them by men as being unprovoked, more often physical (including destruction of property) and sexual. They described the violence in many different ways as an extreme form of social, emotional, psychological and financial control, and frequently spoke about intimidation and threats that tended to escalate. For example, one woman spoke about the frequency of violence: “It started out as yelling, then progressing to pushing and throwing and the silent treatment, then moved onto rape and physical destruction of property”.

Some women felt powerless over arrangements to share care of the children with the fathers and felt they had been pressured into unfair agreements. For example, one woman who used services before the 2006 reforms said: “The power he held over me during the relationship continued afterwards in regard to parenting arrangements and finances”. She said that she was bluffed into thinking she must agree to “equal time”. Another said: “I made decisions based on my fear of him”.

The qualitative data from the male respondents who reported ongoing violence from female ex-partners to themselves and their children did not include physical or sexual violence or threats of harm to the children. Rather, male victims reported ongoing harassment and psychological abuse from their female ex-partners. The majority of these men, while distressed, said they were not fearful of their former partner, nor did they report feeling powerless. For example, one man said: “My ex-wife is very violent to me but I have been able to block her access to the children and so it is not such a problem”. However, a few men said they were fearful and some felt powerless because they believed their ex-partner was using accusations of violence to stop them having access to their children.

Women generally rated harms arising from violence much higher than did men. They reported serious violence by men (ex-partners, children’s fathers, step-fathers and male relatives) towards themselves and their children, both before and after separation. Women reported life-threatening acts but men did not. One in three women, compared to only one in seven men, reported extreme physical or sexual harm. Continuation of violence from ex-partners after separation was commonly reported by women and included threats (including of murder and/or physical harm to the respondent and the children), property damage and financial losses, harassment by letter or phone, and stalking. Furthermore, women were more likely than men to report experiencing fear on a continuing basis before, during and after separation, and this constant fear affected their mental health.

Mental health, alcohol and substance abuse, criminal activity and family violence

One-quarter of the women and just more than one-quarter of the men surveyed said that mental health problems and/or misuse of alcohol or other drugs, and/or criminal activity were a factor in their concerns for the safety of their children following separation. Evidence suggests that parental capacity is compromised by the effects of alcohol and drug abuse (Dawe, Harnett, & Frye, 2008); in particular when combined with mental health problems and family violence.

It was clear from the analysis of the survey data that mental illness can be a cause of, context for, or consequence of separation and can be caused by and/or exacerbate family violence. This finding is supported by other researchers (see Laing, 2004; McInnes, 2008; Kaspiew et al., 2009). Some parents (both men and women) said that their partner’s mental illness was not taken into account when making parenting arrangements. However, some women also claimed that their mental illness was caused by family violence and this was not acknowledged when parenting
arrangements were decided, either depriving them of the primary care of their children or allowing for the violence to continue.

**Disclosing violence**

Being a victim of violence and being too afraid to tell anyone was a problem for approximately two in five of all of the women surveyed and one in three of the men. The post-2006 cohort data showed that men’s and women’s experience of violence from their ex-partner, and being too afraid to tell anyone, affected approximately two in five men and women.

Only 60% of the respondents who attended FRCs said they disclosed their experiences of family violence and only 10.5% of those who reported violence to a FDR service were given a certificate of exemption (see s60I of the Family Law Act) from using the service. In this context, women were more likely than men not to disclose violence and twice as likely to report that family dispute resolution proceeded if family violence was disclosed.

A minority of respondents whose ex-partner had used violence were advised by their lawyer not to raise it. In general, men (30%) were twice as likely than women (16%) to say they had been advised not to disclose their ex-partner’s violence. In the post-2006 cohort, 34% of men and 18% of women said they had been advised not to disclose their ex-partner’s violence.

The qualitative responses of both men and women in the survey who decided or were advised not to disclose violence indicated that many were faced with the “victim’s dilemma”, described by Chisholm (2009, p. 29) as being the choice of “balancing the risk to the child from not taking protective action against the risk to the child of doing so unsuccessfully, with the consequence that the child spends more time with the perpetrator”.

The findings of our study support the dominant theme in Chisholm’s (2009) report, namely that in every component and at every point in the family law system, disclosure and understanding of family violence should be encouraged and facilitated, and effective actions should be taken to support the safety of all parties.

**Disbelief and disregard for the effects of violence**

Most women who disclosed that they or their children were victims of violence said they could not get the help they needed from services (in particular, from solicitors and the courts) to protect themselves and their children. Often they were not believed and, when they were, they said they still received no protection for themselves and their children. For example, one mother said: “The judge said that he [my ex-partner] was violent … [the judge] agreed that he was violent … but [the judge] ordered overnight contact”.

Overall, women (34%) were more likely than men (19%) to feel that their *allegations* of violence from their ex-partner were believed and taken seriously, but approximately half of both the men and women felt their allegations were not taken seriously. In the data from the post-2006 cohort, only 19.5% of men and 28% of women felt their allegations were believed and taken seriously. The 2006 law reforms, which introduced penalties for false statements, fostered beliefs that allegations of violence were likely to be viewed as false if evidence could not be provided (see also Chisholm, 2009). Chisholm (2009, pp. 49–50) and Australian Institute of Family Studies researchers (Moloney et al., 2007a, p. 1) also noted, however, that claims that mothers make false allegations as a form of revenge or to take tactical advantage in disputes over children have been, and still are, widespread in the community in spite of having “largely been debunked by the research community”.

Overall, men (24%) in our study were more likely than women (15%) to feel that their *denials* of family violence were believed, which may be because there tend to be more allegations of violence made by women than by men. However, men (41%) were also more likely than women (30%) to feel their denials of violence were *not* taken seriously. In the post-2006 cohort, 27% of the men and 15% of the women felt their denials of family violence were taken seriously.

We support Chisholm’s (2009, p. 50) view that, given that there is “no good evidence” that allegations of violence are likely to be fabricated by men or women, all allegations and denials of family violence should be treated seriously and should be thoroughly investigated by family violence experts before parenting arrangements are made. One reason for investigating denials is that it is well documented that male perpetrators of violence tend to minimise or deny their violence (e.g., see Bagshaw & Chung, 2000a & 2000b).

**Levels of satisfaction with family services in relation to parenting arrangements**

Participants were asked questions about their experiences of family relationship services, pathways through the family law system and their level of satisfaction with the family law services they used. The services most commonly used were outside of the family law system and included: family and friends (78%), Centrelink (68%), health services (58%), counsellors in private practice (54%), the police (54%) and lawyers in private practice (74%). The family law services most highly utilised included the Child Support Agency (73%), the Family Court of Australia (55%), Family Relationship Centres (42%) and legal aid services (40%).

The survey showed the highest dissatisfaction rate to be with services they used to assist them with decisions about children’s matters arising from separation: overall, 64% of respondents (68% of men; 62% of women) were strongly dissatisfied with these services. Satisfaction with these services marginally decreased after the 2006 reforms and satisfaction rates with family violence services marginally increased for couples who separated after the 2006 reforms. However, on the whole, the respondents were also highly dissatisfied with their use of family violence services (57% of men; 55% of women), which were self-defined by the participants and included a broad range of services they employed to address issues of family violence. Both male and female respondents named police services, the Family Court of Australia and child protection services as those they were least satisfied with. They were most satisfied with domestic violence services (external to the family law system), general medical practitioners and Centrelink. After the 2006 reforms, men’s satisfaction with family violence services decreased by 6%. However, post-2006, men expressed a 9% increase in satisfaction.
with services used to assist with decision-making about children’s matters.

Men reported using different and fewer family services than women, although a higher percentage of men reported using family services after 2006 than before 2006. Two dominant themes emerged from men’s qualitative responses to a question about how family violence had affected their use of professional services. Firstly, some men felt alienated from family violence services because of reluctance on the part of police and other family service providers to consider that men could be legitimate victims of family violence and women could be perpetrators of violence. Secondly, some men stated they were fighting false allegations of abuse against them and so had to continually convince services of their innocence. Overall, the combination of low service usage and high dissatisfaction with family services among men indicates that family service providers and government regulators may need to consider how best to respond to the needs of men who experience family violence after separation.

The impact of family violence on parenting arrangements for the post-2006 cohort

In the post-2006 cohort, all women reported ongoing violence to themselves and to the children, as well as continuing fear, ongoing threats, harassment and stalking—all of which made parenting difficult. In comparison with the other two cohorts (post-1995, and both post-1995 and post-2006), respondents in this cohort mentioned using mediation, FRCs, private counselling and legal services from solicitors, barristers and courts more frequently for decisions about their parenting arrangements.

There were also more frequent references by women from this cohort to financial blackmail or threats from their ex-partners, similar to the report of this mother:

My ex used our son as a bargaining tool. He would threaten to have more access if I did not agree to a particular financial arrangement ... He also logged my emotional and psychological states ... He refused to let my son be babysat by my parents to stop me from going to university ... He did not want me to continue studying.

One third of the women in this cohort reported financial threats and pressure, ranging from being made homeless by being forced to leave the family home, or having their ex-partner obstruct a court-ordered settlement, withhold assets held by the bank and withhold clothes and furniture. Some of the threats were linked to the desire of men to obtain more time with their children.

Recent reports suggest that the presumption created by the 2006 reforms in favour of equal shared parental responsibility have actually created widespread misunderstanding of the operation of the law. They suggest that separating parents and some of their advisers have believed that the term “equal shared parental responsibility” means that they are entitled to equal time; that is, 50–50 shared care arrangements for their children (Chisholm, 2009; Family Law Council, 2009; Kaspiew et al., 2009). We also found that these factors had some influence on parenting decisions, especially for women who separated after the 2006 changes to the Family Law Act. Their qualitative comments referred repeatedly to “50–50 arrangements”, “equal time”, “50% parenting” and the like. Women spoke of pressure to agree to such arrangements, including pressure from lawyers, despite the arrangements being contrary to the interests and safety of the children. Some men also felt that their expectations about equal time parenting arrangements were discounted by the court because of systemic bias on the part of family law professionals (e.g., due to a perception that some men do not make good fathers).

The so-called “friendly parenting” provision contained in section 60CC(3)(c) of the Family Law Act means that, in essence, when making a parenting order, one of the factors the court is now required to take into account is “the willingness and ability of each of the child’s parents to facilitate and encourage a close and continuing relationship between the child and the other parent”. Many respondents who accessed services post-2006 said they did not disclose violence to the court for fear that if their allegations were unproven they would be viewed as an “unfriendly parent” and the children they were trying to protect would be exposed to the perpetrator for longer periods (see the earlier reference to the “victim’s dilemma”).

In the qualitative responses from this post-2006 cohort, women consistently said that fear of losing the primary care of their children was a major factor influencing decision-making, while for the men it was fear of losing contact with their children. One-fifth of women who accessed services post-2006 said they felt “forced” to agree or were “bullied” into agreeing to equal time parenting arrangements. In qualitative responses, a large proportion of all respondents (in particular, women who had accessed services from 2006 onwards), said concerns for their safety and the safety of their children were not heard or considered when parenting decisions were made. A larger proportion of women than men also stated that their children were “not safe” when with the other parent.

More respondents in this post-2006 cohort had used services to assist with parenting arrangements than in the other two cohorts. One person said, “the Family Relationship Centre worked well and mediation there was helpful”. However, some thought that the FRC pre-mediation and information sessions did not focus on family violence and they thought this needed to be more firmly addressed. More parents in this post-2006 cohort than in the other cohorts had been granted intervention orders to prevent contact between the violent parent and the victims, and more reported that these were effective in stopping the violence, but they did not say why. Overall, domestic violence orders had been applied for by 28 men and 239 women, and police had attended breaches in 156 cases. When police prosecuted breaches of women’s orders, there was a higher rate of success (44%) than for breaches of men’s orders (37%).

The family courts were seen more negatively than positively by the respondents in the post-2006 cohort in relation to parenting decisions. Some of this was linked to the notion of shared parental responsibility (often confused with shared parenting), which many suggested...
had detracted attention from the violence. As one mother said: “I have felt pressured by the court to give the father contact even though he is unsafe; the court believes he must have access every weekend”. Another mother said: “My concerns [as to his violence] were ignored by the court. He says he has overcome his anger problem. However, since then he has attempted to force me into a deserted isolated car park, but as I did not go and he did not assault me, I cannot take any action. His intimidation of me and the children did not count in court”.

Fathers in this cohort expressed similar problems of being a father with a violent female ex-partner. One thought the legal system, solicitors and courts, had “virtually ignored” him and his son’s problems as a result of psychological, sexual and financial abuse from a partner who was the breadwinner and who had had a number of admissions to a psychiatric facility. Like some other men, he reported that his ex-partner made allegations of violence against him to ensure agreement with her parenting plans. Many of the men in this cohort reported that their ex-partners had mental health or substance abuse problems.

The impact of violence on parenting arrangements for the post-1995 and post-2006 cohort

The cohort who used services both post-1995 and post-2006 (i.e., who had experienced the two different systems) reported different consequences of family violence than did the post-1995 cohort and post-2006 cohort. For the majority in this cohort, family violence (in particular, physical violence by men toward women and children) had continued after the separation, causing them to use court and court-related services—such as contact centres, the police and child protection services—for many years. This cohort was the most frustrated and dispirited, with most women reporting being highly anxious and fearful, and most men being angry and detached. Most described the services they used as unhelpful and believed that the violence they had reported had been given little or no consideration.

Respondents in this cohort described how they tried for years to convince services that they and/or their children were being threatened by violence. Women reported more success in this than men, but spoke of years of exhaustion, high anxiety levels, fear and long-term psychological problems for their children. As one mother reported: “The children don’t sleep well … They now accept his violence as normal, but they are always afraid he will come over and kill us”. Three-quarters of these women spoke of great fear, in particular that they and/or their children would be killed by their former partner. They made comments such as, “I fear for my life and for my daughter’s life”, “I fear for my daughter’s life”, “I live in fear” and “I am surprised every day that we are still alive”. These women described former partners as extremely violent, with criminal histories of violence, and who abused drugs or alcohol. For some women the continued substance abuse meant their male partners drifted away and for this they were grateful. A typical comment was, “I now have sole care of my children due to his drug use and consequent absence”. The most difficult period for this group of women was
when their children were under 12 years of age; as the children became older, some mothers said their response to their fathers’ direct abuse was to cut their ties with him, regardless of court orders and parenting agreements.

The men in this cohort reported similar long-term violence against them that was not believed, but they responded differently. They did not speak of ongoing fear or of resenting their ex-partners’ greater power, but rather of their frustration and anger with their situation. They were angry with their former partner and with the services they accessed. Some reported that their ex-partner had made false allegations of violence against them and were angry about the long amount of time that services took to investigate them. For half of these men, the result was that, despite investigations that supported their views, they lost their relationship with the children; sometimes walking away was the easiest thing to do. However, none of the women did this.

All members of this cohort used services for their parenting decisions and almost all were involved with the Federal Magistrates Court or the Family Court of Australia. Despite the availability of new family services post-2006, this group had not been referred to them or moved to use them.

**Adult respondents who did not use formal family services for parenting arrangements**

Just over 10% ($n=92$) of adults who responded to a question about the use of formal services said they had made their own decisions following separation without using formal family services to assist with parenting arrangements. More than one-quarter of those said that they preferred to resolve their parenting disputes privately because their separation was amicable, there was no disagreement, they wanted to avoid what they perceived as an adversarial legal system or family violence had ceased. However, a little less than 19% of those who did not access formal services said they made that choice because family violence made their use of services dangerous or impossible. Family violence victims said they felt bullied into making agreements or they rejected formal services because they would provide further avenues for abuse. This finding supports previous reports (see Kaye, Stubbs, & Tolmie, 2003) and warrants further consideration.

### The effect of family violence on children: Key findings from the adult and children’s survey

**Adult survey responses**

The AIFS study (Kaspiew et al., 2009, p. 5) reported that among those parents who separated after the 2006 changes to the *Family Law Act*, around one in five parents said they held safety concerns associated with ongoing contact with their child’s other parent, and more than 90% of these parents had either been physically hurt or emotionally abused by the other parent.

As mentioned in the previous section, in the qualitative responses to the adult survey a large proportion of the parents who separated post-1995 indicated that their children were not safe when with the other parent. They also stated that their concerns for the safety of their children were not heard or considered when parenting decisions were made. As Table 1 indicates, of those who responded to a question about whether they thought their children were safe when with the other parent, women in the two cohorts that covered the time period post-2006 were more likely to strongly disagree.

In the qualitative responses to the adult online survey, 25% of the adults reported that the violence to their children pre- and post-separation was very serious and included head injuries, overdoses of sedatives requiring hospital admission, abduction of children and confirmed sexual abuse of children. In qualitative responses from 256 mothers to questions about the nature and effects of family violence on their children post-separation, there were many repeated and overlapping statements about men’s (fathers, step-fathers and male relatives) abusive behaviours toward their children, and some of these were extreme. They described acts of psychological, emotional, verbal, sexual and physical abuse and neglect to which child victims were exposed as a result of inappropriate parenting arrangements. They also described many negative consequences for their children. Women frequently reported that they and their children felt frightened or terrified. Women were most distressed about children younger than four, who had the most serious injuries, including drug overdoses and head injuries.

### Table 1 Numbers and percentages of men and women from three cohorts in relation to whether they thought that their children were safe when with their other parent

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<tbody>
<tr>
<td></td>
<td>% (n)</td>
<td>% (n)</td>
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<td>% (n)</td>
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<tr>
<td>Strongly disagree</td>
<td>27.3% (15)</td>
<td>27.5% (11)</td>
<td>15.8% (6)</td>
<td>17.3% (32)</td>
<td>28.9% (37)</td>
<td>37.7% (57)</td>
<td>39.4% (50)</td>
<td>35.5% (144)</td>
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<tr>
<td>Disagree</td>
<td>14.5% (8)</td>
<td>17.5% (7)</td>
<td>26.3% (10)</td>
<td>13.51% (25)</td>
<td>25.0% (32)</td>
<td>18.5% (28)</td>
<td>22.8% (29)</td>
<td>21.9% (89)</td>
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<tr>
<td>Neutral</td>
<td>20.0% (11)</td>
<td>17.5% (7)</td>
<td>15.8% (6)</td>
<td>13% (24)</td>
<td>25.0% (32)</td>
<td>24.5% (37)</td>
<td>16.5% (21)</td>
<td>22.17% (90)</td>
</tr>
<tr>
<td>Agree</td>
<td>30.9% (17)</td>
<td>22.5% (9)</td>
<td>28.9% (11)</td>
<td>20% (37)</td>
<td>11.7% (15)</td>
<td>13.2% (20)</td>
<td>14.2% (18)</td>
<td>13.1% (53)</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>7.3% (4)</td>
<td>15.0% (6)</td>
<td>13.2% (5)</td>
<td>8.1% (15)</td>
<td>9.4% (12)</td>
<td>6.0% (9)</td>
<td>7.1% (9)</td>
<td>7.39% (30)</td>
</tr>
<tr>
<td>Totals</td>
<td>55</td>
<td>40</td>
<td>38</td>
<td>133</td>
<td>128</td>
<td>151</td>
<td>127</td>
<td>406</td>
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Note: Percentages may not add up to 100.0% due to rounding.
By contrast, in the qualitative responses from 59 fathers to questions about the nature and effects of family violence on their children post-separation, there was very little repetition or overlap, partly because there were fewer and less detailed responses and the men tended to focus more on the mothers’ emotional and psychological abuse of children, and abuse from the mother’s current male partner.

Ten per cent of mothers said they gained no contact orders with their violent fathers (mostly with a relative) reported being constantly threatened and harassed. A small number of mothers successfully avoided their children having contact with the perpetrator; in some cases by consent and in others because he was mentally ill and lost connection with the children.

Adult survey respondents were asked to mark on a five-point scale the extent to which direct abuse by one or both of the parents had harmed their children. The findings showed that:

- of 502 respondents to this question, 70.9% (75 men; 281 women) thought their children were “considerably” or “extremely” harmed emotionally/psychologically;
- of 499 respondents to this question, 50.7% (54 men; 199 women) thought their children were “considerably” or “extremely” harmed socially (e.g., through disrupted peer relationships);
- of 501 respondents to this question, 48.1% (53 men; 188 women) thought their children were “considerably” or “extremely” harmed educationally;
- of 490 respondents to this question, 24.9% (19 men; 103 women) thought their children were “considerably” or “extremely” harmed physically; and
- of 485 respondents to this question, 13.8% (15 men; 52 women) thought that their children were “considerably” or “extremely” harmed sexually.

In addition, prior research indicates that children witnessing domestic violence is a form of child abuse and can have traumatic and longlasting effects on children (Laing, 2000; Perry, 2001; Postmus & Merritt, 2010; Shea Hart, 2004; Shea Hart & Bagshaw, 2008; Streeck-Fischer & Van der Kolk, 2000; Zerk, Mertin, & Proeve, 2009). Of 628 adults who responded to a question about children witnessing family violence, 58.9% (76 men and 295 women) said they had engaged in abusive behaviours with their ex-partner and their children had seen and heard the abuse. In addition, 11.9% said their children had seen the abuse and 15.9% said their children had heard the abuse. Only 13.1% said they had neither seen nor heard the abuse.

Finally, when parents were asked whether they thought their children’s concerns and wishes were considered when parenting decisions were made, more than half (53.8%; n = 86) of the men, and nearly half (49.1%; n = 219) of the women who responded said that they “disagreed” or “strongly disagreed”. Conversely, more than one-quarter of the men (26.3%, n = 42) and 28.7% (n = 128) of the women indicated that they agreed or strongly agreed with this statement.

Children’s survey responses

Research suggests that parental arguments and fights can affect children’s emotional health—especially their feelings of self-worth, agency and efficacy—and can lead to adjustment difficulties in later life (e.g., see Carpenter & Stacks, 2009; Postmus & Merritt, 2010). Of the 65 children who answered a survey question about whether or not they had heard their parents argue pre- and post-separation, 52.3% (n = 34) said they saw or heard their parents argue prior to separation. Significantly, 18 children reported that they were usually hurt or frightened following their parents’ arguments. One child wrote: “You won’t let me give you more answers so I did lots of things you put, but mum killed my dog and my bird and I am not allowed to use a phone and no one can help me”. Another child reported being held by her father while he was hitting her mother.

While 67.8% (n = 40 of 59) of children reported that they felt frightened or scared when their parents fought post-separation, 52.5% (n = 31) also felt helpless because they could not stop the fights and 28.8% (n = 17) also thought that the arguments and fights were their fault. This is a much higher percentage than those who reported feeling frightened or scared when their parents fought pre-separation and the reasons for this warrant further investigation. Prior research indicates that children can feel far more vulnerable after separation (in particular where there is family violence) and need far more protection, attention and support from sources other than parents where violence is an issue (Bagshaw, 2007). Parents also need education to understand the effects that conflict and violence have on their children post-separation (Bagshaw et al., 2006).

In relation to parenting arrangements, most children surveyed (66.2%; n = 51 of 77) said that they would have liked to have made a decision about their residence and contact arrangements following separation; in particular those who had been exposed to or were direct victims of family violence. These findings are supported by other national and international research that indicates that children want to be consulted on issues that directly affect them (Bagshaw, 2007; Campbell, 2008; Cashmore & Parkinson, 2009; Neale, 2002; Smart, 2001). Children in our study said they wanted their decisions to be communicated to another adult—such as a judge or magistrate (37.7%), a lawyer (28.6%), or a counsellor or mediator (24.7%)—which suggests that children and young people might find it easier to communicate their choices to a professional adult rather than to members of their families, especially where those children have experienced family violence. While some respondents would have liked their mothers (26%) or fathers (19.5%) to ask them about where they might live, these low frequencies reflect the literature that suggests that parents can put their children in difficult positions if they ask them for their “wishes”.

Of the children in our sample who reported continued exposure to parental conflict after separation, 42.4% (n = 28) sought help from a friend, 39.4% (n = 26) from siblings and the same percentage from children’s counsellors, 9% (n = 6) from court personnel and 25.8% (n = 17) from other people. There were 19.7% (n = 13) who “didn’t talk to anyone”, which is a concerning finding. When asked what actions were most helpful, 49 children responded...
and 19 said that people who helped them listened to their concerns and gave good advice. Distracting activities (such as games and visits to people) also helped ($n=6$) and emotional support such as hugs, “always being there” and reassurance were valued ($n=17$).

Forty-three children suggested various kinds of help that other children might need when their parents separate. These included a need to “be believed” rather than simply being listened to (39.5%; $n=43$), general support from people who care, effective counselling, effective parents who protect them and do not fight, a need to have a voice and to have their needs and wishes considered, and an effective court (“not to have the court make [their] life worse”; “for the stupid court to actually listen”).

Children were asked how safe they felt now (after the separation) when with each of their parents. Children who responded were more than twice as likely to feel “very safe” (67.2%; $n=43$) or “mostly safe” (16.9%; $n=11$) when with their mother than when with their father. Nearly three times more children reported feeling “not at all safe” (38.7%; $n=24$) or only “a bit safe” (6.3%; $n=8$) when with their fathers than when with their mothers.

Even though the sample size is small, these findings support other research that suggests that family violence (domestic violence and child abuse) can lead to children feeling unsafe in the company of a violent parent, some for many years following the violence (Carpenter & Stacks, 2009; Harne, 2003; Zerk, Mertin, & Proeve, 2009).

Overall, our findings support those of other researchers who have also found that family violence can damage children and their relationships with one or both of their parents after separation; in particular if appropriate and timely assistance is not offered to the children and families affected (Bagshaw et al., 2006; Family Transitions, 2010; McIntosh, 2003; McIntosh & Chisholm, 2008; Perry, 2001; Postmus & Merritt, 2010; Shea Hart, 2004; Shea Hart & Bagshaw, 2008; Streeck-Fischer & Van der Kolk, 2000).

Conclusions

This article reports on the findings from the analysis of data from two national online surveys (one for adults and one for children), which collected quantitative data and also allowed for qualitative comments about family violence and its impact on parenting and parenting arrangements post-1995 and post-2006. The surveys formed one part of the Family Violence and Family Law study commissioned by the Australian Attorney-General’s Department. The findings are based on the analysis of data from a self-selected sample of respondents to opt-in surveys and, while they are indicative of the experiences of the participants in the research, they are not generalisable to the broader population.

For most adult respondents, family violence posed problems in relation to decisions about their parenting arrangements that had to be dealt with after separation and within the family law socio-legal service system. The research findings reflect those in the Chisholm report (2009), which focused on assessing the appropriateness of legislation, practices and procedures that apply in family violence cases—in particular in the courts—and which were largely based on submissions and meetings with stakeholders. Our study reports on the lived experiences of a sample of men, women and children who had separated since 1995 and since 2006, and for whom family violence was and was not an issue. It therefore adds value to the other reports that have also recently been published in relation to the impact of the 2006 changes to the Family Law Act (e.g., Cashmore et al., 2010; Chisholm, 2009; Family Law Council, 2010; Kaspiew et al., 2009).

In our adult sample, there were clear gender differences in the reported motives for, experiences of and responses to violence; a finding that supports those of other studies (e.g., Richardson & May, 1999; Bagshaw & Chung, 2000a & 2000b; James, Seddon & Brown, 2002; Mulroney & Chan, 2005). Women and children were far more likely than men to be victims of severe abuse, intimidation and threats, giving rise to fear and intimidation.

More women than men who responded to the adult online survey in our study accessed family law services to assist with their parenting arrangements, and most respondents...
(women and men) were dissatisfied with them. The most frequent complaint that men and women had about all of the services that they accessed post-2006, with the exception of domestic violence services, was the disbelief or disregard perceived by victims when they reported family violence, and a consequent lack of assistance that ranged from the violence and associated problems being ignored, to their being labelled as “alienating” parents, to being offered unsuitable parenting proposals (with a sense of coercion about them), to actual further harm. There were many reports, in particular from mothers, of inappropriate parenting arrangements that seriously compromised their children’s safety, including arrangements that exposed children to serious psychological, emotional, sexual and physical abuse—mainly from a parent, but also from a step-parent or relative. The fact that nearly half \( (n=31\) of 65) of the children who completed the survey reported feeling “not at all safe” when with one of their parents is a concerning finding. Nearly three times more of these children reported feeling “not at all safe” when with their fathers than when with their mothers.

The reported high level of non-disclosure of violence in our sample needs to be taken into account by legislators and service providers in the family law system. Only 60% of victims who attended said they disclosed family violence to an FRC. Women were more likely than men not to disclose violence and twice as likely to report that FDR proceeded if family violence was disclosed. Only 10.5% of those who reported violence to an FDR service were given an exemption from using the service. This may be because some made an informed choice to proceed with family dispute resolution and that appropriate safeguards were in place; however, this finding warrants further investigation.

Many respondents who accessed services post-2006 said they did not disclose violence to the court for fear that if their allegations were unproven they would be viewed as an “unfriendly parent” and the children they were trying to protect would be exposed to the perpetrator for longer periods. Only 34% of women and 19% of men who reported violence felt that their reports were believed. These and other findings of this research support the recommendation in the Chisholm report (2009) that in every component and at every point in the family law system, disclosure and understanding of family violence should be encouraged and facilitated, and effective actions should be taken to support the safety of all parties. The researchers agree with the recommendation made by Chisholm (2009) and the Family Law Council (2010) that consideration should be given to amending section 60CC(3)(c) of the Family Law Act to ensure as far as possible that children are protected at all times from violence and abuse and parents are not discouraged from exposing violent behaviour for fear that they will be regarded as an “unfriendly parent”.

Adult survey respondents were asked to comment on the impact of specific aspects of the 2006 reforms (shared parental responsibility, shared care of children, false statements and relocation) and to identify ways in which the Family Law Act and the family law system could be improved. There was a high level of uncertainty about the new concepts; for example, shared parental responsibility was frequently confused with shared care. The most commonly cited recommendations for change were the need for: improved responses to the needs and wishes of children; changes to the “presumption of 50–50 shared care”, improved understanding of and responses to family violence, and improvements to investigative practices and processes associated with separation matters in the Family Court.

A dominant and repetitive theme in the qualitative responses from adults (women in particular) indicated that many of the family law professionals they came into contact with failed to recognise and/or understand the subtle, complex and controlling aspects of family violence and its effect on victims. Many suggested that more education and training of all family law professionals (lawyers and judges in particular) is needed so that the non-physical aspects of violence are recognised; disclosures of violence are facilitated, believed and investigated; and parenting decisions ensure that their children are safe and are not exposed to danger when with the other parent. Some suggested that all allegations of violence should be investigated by family violence “experts”, such as those employed in domestic violence services external to the family law system (who they felt did understand the nature and effects of family violence), before parenting decisions are made.

The adults and children who responded to the online survey also proposed many other changes to family law legislation and to the socio-legal services system, which are detailed in the report of the research (Bagshaw et al., 2010). These included the need for children to be consulted and listened to in relation to parenting arrangements—especially when there are allegations of violence—and to be given feedback if parenting arrangements are contrary to their stated wishes; the need for ongoing and mandatory education on the nature and effects of family violence for the entire family law system; the need for more support services for victims of violence, in particular for children exposed to family violence; and the need for policy and legislative changes to give priority to the protection of victims of family violence; in particular, changes that enhance children’s physical, sexual, psychological, emotional, social and developmental safety.

**Endnotes**

1 See Bagshaw et al. (2010). Volume 1 of the research report is available online and in hard copy and provides an overview, summary and discussion of the findings. Volume 2 (the appendices) includes the survey questions and a more detailed analysis of each section of the survey, illustrated with tables and graphs. Available on the Attorney-General’s Department website: <tinyurl.com/2969xu>.
References


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Research assistants Dr Joanne Baker was located at the University of South Australia and is now a lecturer at Flinders University. Paula Fernandez Arias is at Monash University.
Due to major family law and child support changes implemented during 2006–08, it is now more likely than ever before that mothers will be assessed to pay child support when parents separate. There is, however, a lack of research around mothers who are liable to pay child support to their ex-spouse or partner. This article looks at 11 cases in which mothers were described as being liable to pay child support in 2009. The cases were drawn from a sample of 60 interviews with parents participating in our Post-Separation Parenting and Financial Settlements project—a qualitative, longitudinal study being conducted at the Melbourne University Law School and funded by the Australian Research Council (see Sample and Method boxes at the end of this article for details). Our analysis suggests that there are systemic and cultural factors that come into play in cases involving mothers liable to pay child support to fathers, which arise from women’s lower wealth and income levels and their greater responsibility for children’s daily care and activities, both before and after separation.

The changes were complex, but one important goal was to encourage separated parents to share the parenting of their children (Fehlberg & Behrens, 2008). To promote this, the new child support formula introduced in 2008 allows a reduction in child support liability if a minority-care parent has the child(ren) for at least 14% of the time (lowering the pre-existing threshold from 30% of nights). A parent is now deemed to have 24% of costs if they have 14–34% of care of children, but can only claim the Family Tax Benefit if their care level reaches 35% or above (Child Support Agency [CSA], 2010a). The new formula also takes both parents’ incomes into account when assessing child support liability and allows the same “self-support” amount for each parent. Previously, primary carers (usually mothers) were allowed to earn much more than minority carers (usually fathers) before their income was relevant in reducing how much child support the payer was liable to pay.

Following the 2008 changes, there has been an increase in the proportion of mothers liable to pay child support to their ex-partner; although indications are that mother payers are still very much in the minority. Of the official CSA caseload, which includes cases where the CSA assesses and collects child support (CSA Collect) and assesses but does not collect child support (Private Collect), only 12% of all CSA payers are female, but 23% of paying parents in new cases registered in 2009 were female (CSA, 2009, p. 27).
Previous research on mothers as payers

There has been very little research conducted on mothers as payers of child support. A review of studies from the late 1990s and early 2000s carried out by Maria Vnuk (2010, p. 70) found that child support was less likely to be paid when the father was the “resident” (or primary care) parent. Vnuk suggests that this could be due to either to lower expectations (or liability) for mothers to pay or to lower compliance levels of mothers, but that most studies cannot disentangle these causes (Vnuk, 2010, p. 71). Furthermore, compliance data from the CSA, which assesses child support liability for the majority of Australia’s separated couples, is based only upon the CSA Collect cases (which are in the minority when compared to Private Collect cases) and no separate figures are available for fathers’ versus mothers’ compliance rates (CSA, 2009, p. 64).

The AIFS Evaluation of the 2006 Family Law Reforms (the Evaluation) found that fairly low proportions of mothers were liable to pay child support to fathers. Based on a 2008 survey of 10,000 parents derived from the CSA database and who had separated after 1 July 2006, the Evaluation found that 80% of fathers reported a liability to pay child support and 5% reported that they received it, while the reverse pertained to mothers (Kaspiew et al., 2009, p. 192). The Evaluation also found that, where there was an amount of child support to be paid, the proportion of mothers saying no child support was paid was about the same whether they were payees or payers (12% and 13% respectively). However, the proportion of fathers saying nothing was paid was much higher when they were payees rather than payers (21% and 2% respectively) (Kaspiew et al., 2009, pp. 194–195). Mothers’ more consistent reports may indicate greater accuracy compared with fathers.

Unfortunately, it is not possible to discern a gendered compliance pattern from official CSA data, as the majority of parents collect or pay child support privately (CSA, 2009, p. 14); Private Collect cases are those for which the CSA does not collect child support. This trend has accelerated in recent years, so that 72% of new cases registered in 2009 were Private Collect (CSA, 2009, p. 28). The CSA assumes that child support liability is paid in full in all Private Collect cases (otherwise, it is assumed, they would ask the CSA to collect for them) (CSA, 2009, p. 55). The CSA also has no compliance data on Self-Administer cases, where the CSA neither assesses nor collects child support. Official CSA figures do indicate that women who are minority carers are more likely to have a Private Collect arrangement than men minority carers (58% compared with 48%), but for all the previously stated reasons the actual compliance rate of men versus women is unknown (CSA, 2009, p. 32).

Given the uncertainty about the extent of mothers’ liability and compliance in paying child support, the following analysis draws on the data from our small qualitative study to explore in greater depth the reasons why mothers in our sample paid or did not pay child support. We do this by first providing an overview of cases in our sample where the mother was liable to pay, followed by five illustrative case studies involving payer mothers. We interviewed only one parent per family and the views presented are from both mother payers’ and father payees’ perspectives. Our discussion suggests a more complex picture of incidence, compliance and parental reasoning than previous research has indicated.

Incidence of mother payers in our sample

In our sample of 60 families, 11 had mothers who were liable to pay child support. In four of these families we interviewed the mother payer and in the remaining seven families we interviewed the father payee. The 11 families had a range of parenting arrangements, including:

- father (but not mother) “above primary care” (86–100%);
- substantial shared care (each parent had more than 30% care); and
- equal shared care arrangements (each parent had 46–55% care).

Father with primary care

Specifically, four of the 11 families involved respondent fathers with 90–100% care of children (fathers were interviewed in each of these cases). This group included two cases in which the father said the mother was unemployed and was paying him the minimum amount, which is currently set by the CSA as $360 per annum or $30 per month (CSA, 2010a) (see also Case study 2). In the third case, the father similarly said the mother was liable to pay the minimum amount, but that no child support was paid by her, nor expected by him, because he had retained the house and contents and the mother suffered from mental illness. In the fourth case, the father said the mother was a high income earner and paid the assessed amount of $300 per week in child support, as well as making other direct payments for their teenage children, including paying for flights for them to visit her, and contributing to their medical and car maintenance costs.

Substantial shared care

For the next four families where mothers were liable to pay child support, the parents substantially shared the care of their children (three mothers and one father were interviewed). Only one case involved a mother having minority (43%) care of children. This mother and another mother (see Case study 4) with substantial shared care said they were paying direct costs for the children instead of periodic child support, and having these direct payments credited against their child support liability. The CSA allows third party payments to be credited as child support where the paying parent directly pays a third party on behalf of the receiving parent for items such as clothing, school fees, medical and dental care, and both parents agree that these payments were made “in lieu of periodic child support” (CSA, 2010c). In the third substantial shared care case, the father said that he and his ex-partner had privately agreed that neither would pay child support and they had notified the CSA. In the fourth case, the mother said she was assessed to pay $20 per week but was disputing this...
since she had majority care (57%) and claimed her self-employed ex-husband was greatly under-reporting his true income (Case study 5).

**Equal shared care**

The final three families where mothers were liable to pay child support involved equal shared care of the children (two fathers and one mother were interviewed). In the first case, the father said the mother was paying periodic child support of $300 per fortnight as well as many direct costs, such as private school fees and medical insurance, since she had a much higher income than him (see Case study 1). In the second case, the mother said that she and her ex-husband had agreed that she would pay half the mortgage as well as the child care and school fees instead of periodic child support payments: “We still roughly worked out the amount that I needed to pay, and came to our own arrangements”. In the third case, the father said that the parents had, after some dispute, agreed that neither parent would pay child support (see Case study 3).

**Mothers’ lesser liability to pay child support**

Consistent with CSA data and the AIFS Evaluation, among our overall sample it was evident that mothers were much less likely to be liable to pay child support than fathers.

The first reason why mothers in our sample were less liable to pay was because they generally had lower personal incomes than did fathers. Overall, mother interviewees in our study had, on average, personal incomes of about $42,000 per annum, compared with father interviewees, who had an average personal income of $55,800 per annum.

For 9 of our 11 mother payer families it was also possible to compare incomes of ex-partners because respondents either knew their ex-partner’s exact taxable income from CSA letters (often shown to interviewers) or gave an estimate based on their knowledge of their partner’s income when the relationship was intact and/or their ex-partner’s occupation and work hours. In five of these nine cases, the mother payer’s yearly income was between $38,000 and $168,000 higher than the father payee’s income (according to four fathers and one mother interviewed) and this included two couples who had agreed not to exchange any money. In a sixth case (a mother interviewee), there was a more moderate difference, with the mother’s income being $18,000 more than the father’s income. However, in the remaining three mother-liable cases (one mother and two fathers interviewed), the mother’s yearly income was actually reported to be lower than the father’s income by between $6,000 and $30,000: two mothers were unemployed or on a government pension and the father had 100% care, while one mother with equal shared care had just lost her main job and, despite only working 5–10 casual hours per week, continued to pay the children’s school and child care costs.

In our overall sample of 60 families, mothers liable to pay child support also had lower incomes than fathers liable to pay child support (including liable fathers who had agreed that no exchange would take place). Table 1 compares these personal income levels. Although income ranges are very broad (especially for Group 4), Table 1 indicates that personal incomes of mothers in the sample who were liable to pay child support (Group 4) were on average lower than those of fathers liable to pay (Group 1). In only seven of our 32 shared care cases were mothers potentially liable to pay fathers due to higher personal incomes.

The other main (and related) reason why mothers in our sample were less liable to pay child support was that most were primary carers of children. Of our 60 families, 24 involved mothers with primary or “above primary” care (6 with 100% care and 18 with 70–99%), 17 involved mothers with majority care in substantially shared arrangements (57–70% care), one case involved father majority shared care of 57%, 14 involved equal shared care and four involved fathers with “above primary” care (90–100% care). So, fathers were the primary carers in only four of the 28 primary care situations. This is consistent with the AIFS Evaluation—which found that almost 79% of children spent most or all nights with their mother after separation and only 5% spent most nights with their father (Kaspiew et al., 2009, p. 118)—as well as with CSA data, which show that 88% of receiving parents are mothers (CSA, 2009, p. 32).

**Table 1** Comparisons of mean income levels for mother and father payers and receivers of child support

<table>
<thead>
<tr>
<th>Gender and child support liability groups</th>
<th>N</th>
<th>Mean personal income ($)</th>
<th>Income range ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fathers liable to pay child support (or no exchange due to 50–50 care)</td>
<td>13</td>
<td>64,690</td>
<td>25,000–127,000</td>
</tr>
<tr>
<td>2. Fathers liable to receive child support</td>
<td>7</td>
<td>39,286</td>
<td>17,000–88,000</td>
</tr>
<tr>
<td>3. Mothers liable to receive child support (or no exchange due to 50–50 care)</td>
<td>36</td>
<td>42,597</td>
<td>7,000–85,000</td>
</tr>
<tr>
<td>4. Mothers liable to pay child support</td>
<td>4</td>
<td>38,000</td>
<td>0–76,000</td>
</tr>
<tr>
<td><strong>Total: 60</strong></td>
<td><strong>Overall (rounded): 46,140</strong></td>
<td><strong>Overall: 0–127,000</strong></td>
<td></td>
</tr>
</tbody>
</table>
Compliance of mother payers

In our small study of 60 families, mothers did not exhibit lower child support compliance than fathers, in contrast with suggestions from studies cited by Vnuk (2010, p. 70). One of our 11 liable mothers was not complying, compared with six of our 49 liable fathers, and three liable mothers compared with six liable fathers had any liability disregarded via varying degrees of consensus.

More specifically, in 7 of the 11 cases where mothers were liable to pay, they were complying by paying either periodic child support or direct costs or both. As described above, three mothers preferred to pay costs of children directly and a further two paid direct costs as well as periodic payments. Paying direct costs appeared to relate to mothers’ ongoing responsibility for children’s lives (including school and after-school activities, medical costs, and incidentals such as clothing), regardless of the post-separation parenting arrangement in place. As our case studies will illustrate, mothers sometimes also believed it was in their children’s interests to organise financial support in this way due to concerns about the father’s previous financial irresponsibility (see Case study 4).

Of the remaining four cases in which apparently liable mothers were not paying child support, three cases relied upon interviews with the fathers concerned and all three fathers reported agreeing to disregard the mother’s liability: two due to the combined effect of shared care arrangements and fathers’ feelings of guilt for leaving the mothers, and the other because the “above primary care” father had retained the house and contents and the mother suffered from mental illness.

When our data are understood in this way, it appears that in only one case was the mother truly not complying, and she was in dispute over her own and her ex-husband’s child support income. She also had other reasons for objecting to the CSA assessment (see Case study 5).

Our data involving father payers were also complex and revealed a slightly lower level of compliance. Of the 49 families where fathers were liable to pay child support, three ex-couples had privately agreed that neither parent should pay due to 50–50 shared care. In addition, three mothers were not pursuing the father formally via the CSA because they had received a higher percentage of the property or their ex-partner was struggling financially. So, according to these mothers, child support was not expected or “liable” to be paid. Of the remaining 43 cases where fathers were expected to pay child support, 37 were complying. Most fathers (n = 33) were paying periodic child support, but four were paying direct costs instead, such as a mortgage, airfares each school holidays or school or crèche fees (two father and two mother interviews). In six cases, however, fathers were reported by mothers to be non-compliant. Three Private Collect mothers said they received less than the amount stipulated or that payments were sporadic or late. This sort of behaviour was felt to be

Consistent with CSA data and the AIFS Evaluation, among our overall sample it was evident that mothers were much less likely to be liable to pay child support than fathers.
a way to “control” them or make life financially difficult. The remaining three mothers reported that the father had a CSA order to pay but was paying nothing at all. All three of these ex-couples were in formal disputes over income levels, and one case involved an ongoing dispute over Centrelink benefits.

Illustrative case studies

The following case studies illustrate in greater depth the sorts of circumstances surrounding mothers as payers. They include one mother described as paying above the required CSA level, one described as paying the minimum (unemployed) rate, one with agreement that she would not pay, one who said she paid direct bills instead of periodic child support and, finally, the mother who said she was not complying at all.

Case 1: Mother paying periodic child support as well as direct costs—father report

“Andy”, a professional casual worker, said that he separated three years ago from his ex-partner, “Jill”, a full-time business woman. The separation was amicable. Andy and Jill agreed to an equal shared care arrangement for their two young children, although in reality Andy probably has the children closer to 60% of the time because he often “baby-sits” for Jill when she is required to travel interstate for work.

During their relationship, Andy and Jill jointly owned and ran a successful business. When they separated, they agreed that Jill would retain and conduct the business, which was also their major asset. As a result, Andy received only a small percentage of the property pool. Jill was assessed by the CSA to pay Andy periodic child support largely based on their income discrepancy. Andy lives on Centrelink benefits and casual employment, while Jill has a high annual income from the business (although Andy says that Jill under-reports her income to the CSA).

The CSA assessment has fluctuated frequently in the three years since the couple’s separation due to changes in both their incomes and also as a result of the CSA formula changes in 2008. The most recent CSA assessment stipulated that Jill was liable to pay Andy more child support than she had been paying; however, Jill and Andy had decided to disregard this and arranged for Jill to pay child support on the basis of the previous year’s assessment. This was partly because Jill more than makes up the extra money by directly paying the children’s private school fees, medical, dental and clothing costs, and many other incidental costs.

Andy described an arrangement that compensated for the inequitable property division and his perception that Jill was under-reporting her income to the CSA. While Andy referred to himself as the “poor parent”, he had traded off a larger share of the property in exchange for Jill paying for almost all the children’s costs. The arrangement also seemed related to the parents’ cooperative parenting arrangement and their parenting roles prior to separation. Andy described Jill as being more career-oriented and much more involved in the business than he ever was, while he took on the primary caregiver role for the children. Andy was comfortable with these ongoing roles. While he said that immediately after separation he was “out of pocket” due to being with the children more often and therefore paying more of their daily costs, by the time of interview three years later, the financial arrangements seemed to have become more equitable due to the parents’ ability to communicate with each other, including on money issues:

So I don’t feel bad about her paying for bits and pieces here and there … because, like I tried to explain to her, … because I’ve got them the majority of the time, I end up clobbering most of the expenses, and because she’s not overly focused on what they’re doing, they’re not her priority really … But I think just as things settled down and we came to understand what parenting role we each could play … I’m not sure about the huge income difference—for me it’s not too bad because these days if I lean on Jill she’ll normally pay for something I can’t afford to.

In Andy’s case, the parents were cooperative and had their children’s best interests at heart. While Andy said that self-employed Jill was minimising her income, he also appeared to believe that she was complying fully (or more) with her financial obligation to support their children.

Case 2: Mother paying the minimum amount—father report

“Karl” said that he and his ex-wife “Eva” had separated after a 10-year marriage. They had two children who...
were teenagers by the time of interview. After separation, Eva had been the full-time carer of the children but had recently moved in with a new partner while her home unit was being renovated by Karl. As a result, the children had recently moved in full-time with Karl (who had not re-partnered). Both Karl and Eva were unemployed (although Karl drew income from several investment properties). Eva had been privately paying child support to Karl for a few months, at the minimum CSA assessment rate (currently $6.82 per week) due to being unemployed.

When Eva had full care of the children, Karl said he paid no child support to Eva because he had allowed her to live “rent free” in one of the several properties he owned. Karl considered that this was enough financial assistance. In fact, Eva’s property share had not been formalised by transferring to her the title deed and was a small percentage of the total pool. A few years later she said she needed some money. Instead of going to court, Karl agreed informally to buy her another car and to renovate her unit. He cashed in his superannuation, bought her a car and is still renovating her unit:

Karl: I had to pay minimum but then what I said to them [was], “Listen we’ve got this verbal agreement that she can stay in there rent free, which is very good” … No, because she’s under the rent-free thing [and] that’s the way we agreed doing it, so, you know, it balances out in a way, … [she was] actually better off with the rent-free.

Interviewer: But now she’s got to pay you the unemployed rate [of child support] as well; the minimum rate?
Karl: Yeah that’s right … It’s not much.

Karl’s case demonstrates a long-term state of flux of parenting arrangements and child support obligations, and (as in the first case study involving Andy and Jill) the ways in which some parents manage to tailor their financial arrangements to suit their individual circumstances (see Moloney, Smyth, & Fraser, 2009), as well as the interplay in some parents’ minds between their use of property and their expectations about paying or receiving child support.

Case 3: Parents had agreed that the mother would not pay any child support—father report

“Jason” described himself as self-employed, having a low income and living in rural Victoria. He and his ex-wife, “Alison”, a professional worker employed full-time, had been separated for two years. They had agreed to an equal shared-care arrangement of their young child, and had also divided their modest property by negotiation through their solicitors. They had both re-partnered and while Jason described their current relationship as amicable, he also described ongoing conflict regarding parenting, property and child support arrangements since separation.

Initially, Jason and Alison agreed that since they shared the care of their child, they would also share the costs: “When [my child] was with me I looked after her, any swimming lessons or kinder fees or whatever we just split 50–50.” However, one year after separation, Alison applied for a CSA assessment, in Jason’s view because she thought he would be liable to pay her child support. However, the CSA assessed that Alison should pay Jason—Alison’s taxable income was more than Jason’s since he reported running his business at a loss. Alison then lodged CSA objections on two occasions, claiming that Jason was not accurately reporting his business income. On the second occasion:

[S]he was nice enough to go around with a digital camera and take photos of all my plant and equipment etc. … Next thing, she’s objected again and I’ve got a bloody thousand-page document with photos of nearly everything I own, and she’s managed to photocopy lots of my bank statements and stuff—God knows where she got them from—and all this stuff. So we have to go through it all again and they give us another case manager person and she’s saying, “Well, your taxable income in that year was [$X]. Because you work for yourself you try and hide everything in the business so you don’t pay tax … so really you’re making [a lot more money]”. And I said, “No I’m not”, and she’s going, “Well you bought this and this”, and I’m going, “Yeah, that’s all in the business; the business turns over X amount of dollars a year, and I pay an accountant lots of money to make it so I don’t pay tax”.

After a couple of months of arguing the point on the phone I said, “That’s it. No, I don’t have to pay her money, she doesn’t have to pay me money”, and finally she rung me and we were both happy with that, and recorded it, and [the CSA] did that.

Jason said that the current “zero–zero” position would only last until later in the year, when they would have to negotiate again through their solicitors. It appeared here that Jason was referring to entering into a binding child support agreement, which can be made “for any amount that both parents agree to” (CSA, 2010b):

I said, “I’m not paying the solicitor any more; you organise it because you’re going to be the one having to give me money again”. To this day she hasn’t done so, so come September I’m waiting to go through it all again—it’s hey’s of fun.

Jason’s case was a complex Private Collect case. He described himself as wanting to keep the peace and behave fairly by waiving his ex-wife’s child support liability. Yet his version of events suggested his ex-wife would have told the story very differently, emphasising to a much greater extent the difficulties that Jason’s self-employed status placed her in when it came to obtaining a fair child support assessment and disputing what she saw as an unfair CSA assessment. Like Andy, Jason had been the primary caregiver prior to separation and Alison had worked full-time, financially providing for the family, which suggests that she might well be assessed to pay child support. However, unlike Andy’s case, the parties were of modest financial means and the circumstances of the marriage breakdown were more acrimonious, with Jason feeling guilty for leaving Alison. These factors may also help explain why Alison was unwilling to accept her child support liability and took steps to inform the CSA that Jason was minimising his income. Alison, like several mothers we interviewed in 50–50 care arrangements, may also have been taking more responsibility for child-related costs (such as clothing, dental, medical and educational costs) than Jason revealed in the interview—his references to costs paid or shared by him were certainly less specific than Andy’s or the descriptions given by most mothers in our sample. There were strong indications that Jason’s case involved the “differential reporting” of child support arrangements described in other recent research (Smyth et al., 2010). Conversely, as our earlier section on “Incidence” suggests, there were also cases in our sample where father payers indicated that mother payers were paying more than required by the formula.
Case 4: Mother paying direct costs/bills instead of periodic child support—mother report

“Anne” described herself as a full-time professional on a reasonably high salary who had re-partnered. She said that her ex-husband, “Mario”, had been mostly unemployed since just after their separation two years previously. Anne was the majority carer in a substantially shared arrangement for their two young children, formalised in a Parenting Plan. Their modest property had been divided 50–50 pursuant to Federal Magistrates Court consent orders drafted by Anne’s solicitor, and which were structured in a way that took into account Mario’s financial irresponsibility during the marriage, and allowed Anne to remain in the family home.

In the first few months following separation, Mario paid Anne periodic child support in addition to paying half of both the mortgage on their home and their joint health insurance. Then, after he lost his job, Anne became obliged to pay Mario child support. Anne, however, never made any periodic child support payments; instead, she kept receipts for all the child-associated costs she incurred and sent these to the CSA for credit as third party payments (see earlier):

I had to pay him, but I never did pay at all. What I chose to do was I would send every receipt, every piece of information that the Child Support Agency needed to credit me for money spent on the children, in terms of uniforms, school fees, dental appointments, the ENT appointments. All of those things that I was paying the full amount for. I would send that to them and they would credit me for it, so Mario didn’t actually physically get any money from me. I just channelled it towards paying for things for the children.

Anne was also aware that, over this period, Mario was working for “cash-in-hand” but that this “doesn’t go through the cash system [and] it sort of doesn’t count”.

Anne’s case illustrates a mother who preferred to pay direct costs for children rather than periodic child support. Her decision not to pay Mario directly was largely due to his track record of significant financial irresponsibility during their marriage. Before the separation, Mario had, without Anne being aware, incurred thousands of dollars worth of credit card debt and personal loans. Anne had also said that he used to have a drug problem and that after the property settlement she gave cash amounts to Mario’s parents to help with the children rather than directly to Mario. By paying the direct costs of the children herself, she aimed to ensure that her child support was actually spent on the children. Mario did not object to the CSA about these arrangements.

Case 5: Mother was not paying any child support at all—mother report

“Lynn”, who had come to Australia quite recently, was a full-time student and mother of a young child. She said that she had separated from her ex-husband, “Leonard”, a business owner, three years ago. During their short marriage, she described Leonard as having been emotionally and
verbally abusive, as well as financially abusing her; in particular, forcing Lynn to borrow money in her name for his business and a new car. After separation, Lynn had received no share of their property (which was all in Leonard's name) as she had no funds to enter a dispute. She also continued to pay off loans taken out in her name to buy the business and car that Leonard had kept.

Leonard's coercion and control continued following the separation and Lynn described herself as having been pressured from a 100% care arrangement into a substantial shared care arrangement for their child (she could not afford the legal fees to challenge Leonard in court and was advised by her solicitors that the court would decide on equal shared care anyway, so believed there was no point contesting). Lynn believed that Leonard wanted an equal shared care arrangement partly because he wanted to claim the Family Tax Benefit and avoid child support liability, even though he had never paid Lynn any child support when he was assessed and directed to do so.

Following the change to substantial shared care, Lynn was assessed by the CSA as being liable to pay Leonard periodic child support. At the time of interview, Lynn was not complying with this assessment because she disputed Leonard's income estimate, claiming that he made a lot more money from his business than he disclosed. Moreover, her own income estimate was based on her previous year's earnings when she was in full-time employment, whereas her current situation was that she was a full-time student earning no income (although she had re-partnered).

Lynn was extremely angry about the current child support assessment, especially given Leonard's financial abuse during their marriage and non-compliance with the CSA assessment when he was liable to pay. She had lodged an objection to the current assessment and was awaiting a CSA review:

There is a current child support calculation figure there, but as I say I didn't agree … I don't agree at the moment so we are in dispute and the Child Support Agency is trying to [make me pay … $X a month]. I asked them why, [and] because … my income is higher … much, much higher than him … they have this strange formula. I still contribute. I don't understand—seriously, I don't … The figures are based on last financial year's figure, so when I rang I said to them, "Listen, I'm not working at the moment. Whatever figure you've got with you, it's last year". And then I have to prove to them I'm not working. I'm doing this at the moment; I just feel it's ridiculous they only use the old figure. They should have a, you know, updated figure, and it just seems very silly; very, very silly.

While Lynn was not complying with a CSA assessment to pay child support to her ex-husband, she also emphasised both obvious and deeper reasons for her non-compliance. In common with several cases in our sample, there was a dispute about her and her ex-husband's income levels and she accused her husband of deliberate income minimisation. Also relevant was the connection in Lynn's mind between the injustice of being expected to pay child support given the other financial disadvantages she suffered as a result of Leonard's financial abuse.

Discussion

The available evidence indicates that mother payers are not the norm but are now more common following major changes implemented between 2006 and 2008 to post-separation parenting law and the child support scheme. Our study, though small, comprises in-depth cases studies from the perspective of both payer and payee mothers and fathers, which shed light on the variety of situations in which mothers are liable to pay child support and their compliance with that liability.

Among our mothers and fathers, the reasons for non-liability to pay child support were similar (low incomes and high care levels). Reasons for minimisation or dispute were also similar for mother and father payers. For example, we had cases involving CSA Collect mothers and fathers who refused to pay the assessed amount because they disputed the assessed amounts. Our CSA Collect cases also included both mothers and fathers who had the children for less than 30% of time but paid the minimum, unemployed, rate of child support.

Moreover, consistent with CSA data, most cases (n=40) in our small study were Private Collect, and our mother payers were particularly likely to be Private Collect. Most (eight mother payer cases) involved Private Collect arrangements that were being complied with via periodic or direct payments (or both), or where there was mutual agreement for the mother not to pay.

Among our mothers and fathers, the reasons for non-liability to pay child support were similar (low incomes and high care levels).
It appeared that Private Collect via direct payment of children’s costs was attractive for mother payers because they were closely focused on children’s daily life and needs and generally organised children’s weekly activities and school life, almost regardless of the type of parenting arrangement in place (e.g., Case study 4). Private Collect cases where the parents had agreed that the mother would not pay the father the child support amount assessed by the CSA comprised a diverse group, with this outcome apparently being influenced by a range of factors, including guilt at ending the relationship on the part of the father (e.g., Case study 3), the mother’s illness, a more favourable property settlement to the father, and the father’s decision not to insist on technical compliance in order to keep the peace and achieve or preserve what he viewed as a generally fair outcome to himself and the children (e.g., Case study 1).

Previous research has suggested that reasons for non-compliance with child support obligations may differ between mothers and fathers. Vnuk (2010, p. 71) described an Australian study that found that fathers’ non-compliance related to ability to pay (affordability), “access” to children and the “quality” of the parental relationship. In our study, some liable fathers had financial difficulties affecting their ability to pay and, according to mothers, some of our non-compliant fathers considered that the mothers could cope alone due to government assistance. Some respondents were also resentful because they had been left by their spouse or partner, and strained, conflicted relationships particularly seemed to prevent fathers’ compliance. The amount of time spent with children also seemed to affect some fathers’ compliance, but this did not seem to prevent mothers from paying child support. Where issues of substance abuse and financial irresponsibility by father payees had led three mothers to pay direct costs of children’s care and activities instead of periodic child support (see Case study 4), the fathers’ decisions to pay direct costs were more related to housing. Several liable fathers owned investment properties where mothers and children were living “for free” (such as Eva in Case study 2) or helped pay a mother’s mortgage.

There were also, however, more subtle differences between mother and father payers in our sample that were both financial and normative. Mothers’ income levels were generally lower than fathers’, and mothers generally had fewer financial assets, such as superannuation and lower earning capacities (which accords with national wealth distribution data analysed by Jefferson & Ong, 2010). There were also fathers who did not see it as the mother’s role to provide them with money: “I don’t want her bloody money” (Jason, Case study 3). Most mothers in our sample had reduced their work commitments in order to take on the main carer role after having children, or had juggled significant work and family responsibilities,
Sample

The sample of 11 cases was taken from a wider sample of 60 interviews with volunteer parents, separated or divorced, who were resident in Victoria, Australia.

Our sample is rich and varied but is not statistically representative of separated families in Australia.

Method

- Interviewees were recruited in early 2009 via newspaper and online advertisements (the majority); brochures left at a major provider of mediation and FDR services; and mail-outs accompanying final orders from the Family Court of Australia and the Federal Magistrates Court.
- In-depth qualitative interviews; 3-year longitudinal design (2009, 2010, 2011)
- Eligibility criteria of parents:
  a. at least one child under 16 years of age from a previous relationship;
  b. separated from their child’s other parent after June 2006 (most had been separated for 1–3 years; a few longer, but around 2 years on average); and
  c. not currently involved in family law court proceedings.
- Interviewees included non-Australian born parents, but all interviews were conducted in English.
- Only one parent was interviewed per family, mainly for reasons of confidentiality and sensitivity.
- Children were not interviewed, mainly due to ethical and sampling challenges, including obtaining parental consent.
- Where possible, we viewed documentary evidence of CSA assessments, court orders and other legal documents, but this was not always available and parents did not always have at hand the most up-to-date documentation.

Characteristics of the 60 parents

<table>
<thead>
<tr>
<th>Characteristics of the 60 parents</th>
<th>Number with characteristic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fathers</td>
<td>20</td>
</tr>
<tr>
<td>Mothers</td>
<td>40</td>
</tr>
<tr>
<td>Age of parent (average age 40)</td>
<td></td>
</tr>
<tr>
<td>20s or 30s</td>
<td>26</td>
</tr>
<tr>
<td>40s</td>
<td>31</td>
</tr>
<tr>
<td>50+</td>
<td>3</td>
</tr>
<tr>
<td>Previously married</td>
<td>42</td>
</tr>
<tr>
<td>Not previously married (2 never lived with partner)</td>
<td>18</td>
</tr>
<tr>
<td>Ages of children</td>
<td></td>
</tr>
<tr>
<td>Preschool (aged 0–4 years)</td>
<td>21</td>
</tr>
<tr>
<td>Primary school (5–11 years)</td>
<td>42</td>
</tr>
<tr>
<td>High school (12–18 years)</td>
<td>18</td>
</tr>
<tr>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>Victorian rural/regional area</td>
<td>17</td>
</tr>
<tr>
<td>Inner Melbourne suburbs (inc. Northern suburbs)</td>
<td>14</td>
</tr>
<tr>
<td>Outer Melbourne suburbs (inc. Eastern/Southern suburbs)</td>
<td>29</td>
</tr>
<tr>
<td>Employment</td>
<td></td>
</tr>
<tr>
<td>Full-time (&gt; 35 hours/week)</td>
<td>15</td>
</tr>
<tr>
<td>Part-time</td>
<td>29</td>
</tr>
<tr>
<td>Not employed/studying</td>
<td>16</td>
</tr>
<tr>
<td>Care arrangement between parents</td>
<td></td>
</tr>
<tr>
<td>Equal shared care (at least 46% of nights/time each)</td>
<td>14</td>
</tr>
<tr>
<td>Substantial shared care (at least 30–45% of nights/time each)</td>
<td>18</td>
</tr>
<tr>
<td>Primary (or &quot;traditional&quot;) care (primary carer more than 70% of the time)</td>
<td>28</td>
</tr>
</tbody>
</table>

perhaps leaving them more likely to feel aggrieved if, post-separation, they were called on to pay child support to an ex-partner—especially if he was still not perceived to be “pulling his weight” financially or in relation to parenting. For these systemic and cultural reasons, our liable mothers did seem to place an emphasis upon directly paying the daily costs of children’s care and activities, while our fathers’ financial contributions were more weighted toward periodic child support, especially since they were less likely than mothers to be managing children’s weekday care, school and activities.

References


Vnuk, M. (2010). Merged of omitted? What we know (or don’t) about separated mothers who pay or should pay child support in Australia. *Journal of Family Studies*, 16(1), 62–70.

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Relocation disputes in separated families prior to the 2006 reforms
An empirical study

Rae Kaspiew, Juliet Behrens and Bruce Smyth

This article reports on the findings of a mixed-method research project that examined relocation cases litigated prior to the 2006 reforms to the family law system. A key finding from the study is that most litigated disputes over relocation between separated partners occur in the context of conflict and fractured inter-parental relationships. The evidence from the study about the types of cases where courts decide whether one party (usually a mother with residence of the child(ren)) should be permitted to move with the child(ren) suggests that relocation post-separation is more a product of conflict than the single source of conflict. This finding applies to the majority of cases examined in the study, with only a minority of cases demonstrating a pattern where a proposed relocation was in itself the single main source of conflict.

The study examined relocation cases decided in a two-year period prior to the introduction of the 2006 family law reform package. The Australian Research Council-funded study was based on an analysis of 190 court judgments made between 2002 and 2004 in the Family Court of Australia (FCoA), and qualitative interviews with 38 parties to relocation disputes litigated in one of the family law courts between 2002 and mid-2005. The research findings pertain to a legal environment in which decision-making was guided by Part VII of the Family Law Act 1975 (Cth) prior to the 2006 amendments (Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)).

At the outset, the aim of the study was to examine the experiences of parents after disputes about relocation in an attempt to understand the impact of judicial decision-making in this context. As the qualitative data collection (interviews) unfolded, the research team decided to augment the study with an additional quantitative component based on analysis of 190 FCoA judgments. This was done for two reasons.

First, the participants who volunteered to be involved in the qualitative study were concentrated into one of four sub-groups (referred to subsequently as litigant status), namely:

- those who had unsuccessfully opposed a relocation (19 fathers, 1 mother)—the largest sub-group; and
- three other sub-groups:
  - unsuccessful applicants for a relocation (3 mothers and 2 fathers);
  - successful applicants for a relocation (6 mothers); and
  - those who successfully opposed a relocation (6 fathers and 1 mother).

Second, not surprisingly, the interviews suggested that the relationships were marked by particularly complex pre-dispute histories, often featuring very difficult relationships and litigation over other issues (including residence and
contact) prior to the relocation proposal. The addition of the judgment analysis component provided a means of assessing, at least to some extent, how typical these patterns were among the cohort of parents who litigated in the FCoA over relocation in the relevant period. This article describes key findings from each part of the study, beginning with the quantitative component based on judgment analysis. This is followed by an examination of the key themes from the qualitative data.

The judgment sample

Sampling and analytic approach

The quantitative component of the study comprised an analysis of judgments from all relocation matters with a final order heard in the FCoA between 2002 and 2004. A total of 200 judgments were identified by the FCoA as being relevant, and were provided to the research team. Ten of these were interim decisions and were excluded for that reason. The final sample comprised 190 judgments. These were analysed and coded by the research team (primarily Juliet Behrens), based on the following data in the court files:

- the nature of each party’s application and the outcome of the case;
- reasons for relocating;
- judicial assessments as to the credibility of each party’s evidence;
- the history of the parent–parent and parent–child relationships, including whether there had previously been litigation over parenting matters; and
- whether there were allegations of family violence or child abuse.

Overview of sample characteristics and findings

The findings from the quantitative study underline the gendered nature of relocation disputes: 88% (n = 167) of the parties applying for orders to relocate were women; only 10% (n = 19) were men. In a further 2% of cases (n = 4) each party was applying for such orders. An outcome supporting the proposed relocation occurred in 57% of cases; 43% of the judgments resulted in an outcome that did not support the proposed relocation.

Most of the parents involved in the relocation disputes had been married (71%, n = 127 cases). A minority of former de facto partners (25%, n = 45 cases) and a still smaller number of former casual partners (3%, n = 5 cases) were among the remaining litigants. In 12 judgments (6%), relationship status was unclear. In the judgments where current relationship status was described, fathers were more likely to have re-partnered (60%, n = 105) than mothers (49%, n = 83).

The quantitative analysis demonstrates the complexity of relationships that characterise the majority of litigated relocation disputes in the FCoA. Approximately 80% of the relationships in the sample could, on the basis of the information in the judgment, be characterised as high-conflict or abusive, with allegations of violence being raised in nearly 70% of cases. There had been prior court proceedings in 69% of cases, with half of these requiring a court-determined outcome. Competing applications for residence of the child or children were being considered by the court in the context of the relocation proceedings in 63% of cases.

Interviews suggested that relationships were marked by particularly complex pre-dispute histories, often featuring litigation over other issues prior to the relocation proposal.
Solid minorities of cases involved only one child (45%, \(n=85\) cases) or two children (35%, \(n=66\) cases), with more children involved in fewer cases: three children were involved in 15% (\(n=28\)) of cases and four or more children were involved in 5% (\(n=10\)) of cases. Most children in the sample had been in the primary care of their mothers (79%, \(n=130\) cases), with small numbers in shared care (10%, \(n=16\) cases) or in care arrangements where the fathers were coded as “quite involved” (10%, \(n=17\) cases). Only 1% (\(n=2\) cases) of the children were in the primary care of the fathers.

Most of the proposed moves involved significant distances, with 61% (\(n=115\) cases) being either international or more than 1,000 km from the existing location. Thirty-nine per cent (\(n=74\) cases) of cases involved distances of less than 1,000 km (this information was unclear in one case).

**Reasons for relocation and factors associated with outcomes**

A range of reasons was offered by applicants/litigants for the proposed relocations in the judgment sample. The main reason stated in the judgment was sufficiently clear in 174 judgments to be amenable to coding (16 lacked sufficient clarity for coding). Two types of reason were frequently emphasised: a desire to be closer to family support (33%) and to be with a new partner (30%). The next most frequently raised reason was to pursue work opportunities in the new location (16%). Rates of occurrence for other reasons were:

- to escape family violence, threats or the drug scene (8%);
- to improve lifestyle in a different community (5%);
- economic reasons (5%); and
- health reasons (2%).

Of the two most commonly cited reasons in support of a relocation, the desire to relocate to a place where the mother’s extended family lived was more likely to be correlated with an outcome supporting relocation (61%) than where the relocation was motivated by plans to join a new partner (54%). A proposal that would see the relocating parent return to their birthplace was successful in 75% of cases in the judgment sample.

Some clear patterns emerged from the analysis of judgments in relation to the factors that are likely to be associated with an outcome permitting relocation. One influential factor arises from the forensic process a court undertakes when it is assessing the evidence, and the merits of competing applications: the credibility of the evidence being given by each party. Not surprisingly, an adverse assessment of credibility was strongly associated with an adverse outcome, and a favourable assessment of credibility was associated with a favourable outcome, where these issues were dealt with sufficiently explicitly in a judgment to allow them to be coded (\(n=177\)). In a large minority of cases (45%, \(n=80\)), the credibility of both parents was accepted. Where adverse credibility findings were made, these were more likely to be made against fathers (28%, \(n=50\)) than mothers (17%, \(n=30\)), and were made against both parents in a small minority of cases (10%, \(n=17\)). In a further 7% (\(n=15\)) of cases, credibility was not dealt with sufficiently explicitly to allow coding. Where adverse credibility findings were made against mothers, permission to relocate was denied in 80% of cases. Where such findings were made against fathers, outcomes denying relocation occurred in 34% of cases.

The pattern of contact between the non–primary care parent and the children was also clearly a salient factor. More time spent with the non–primary care parent was more likely to correlate with a successful outcome for those opposing relocation. Parents with shared care were least likely to have an order facilitating relocation made (39%), followed by those whose children spent more than alternate weekends and half the school holidays with the non–primary care parent (53%). This compares with 60% of primary care parents being able to relocate where no contact occurred or took place on a non-overnight basis, and 61% where it followed a traditional alternate-weekend and half-school-holiday pattern.

In summary, the quantitative data demonstrate that parents involved in relocation disputes litigated in the FCoA mostly have complex and conflicting relationships, with allegations of family violence and prior court proceedings a feature of these cases. Credibility findings, the availability of family support in the new location and past patterns of care appeared to be linked with outcome patterns.

**Quantitative analysis demonstrates the complexity of relationships that characterise the majority of litigated relocation disputes in the FCoA.**

**Interview data**

**Method**

As described earlier, the qualitative data were generated by interviews with 38 parents who had been involved in contested relocation proceedings, with fathers who had unsuccessfully opposed a relocation application being over-represented in the sample (\(n=19\)). The recruitment strategy had four aspects. First, the Family Court of Australia and the Federal Magistrates Court sent out invitations to litigants identified to be in scope to participate in the study on behalf of the research team. Where these letters were returned, the solicitors on the file were contacted by the courts by mail, and asked to forward the invitation to participate. Subsequently, the Family Court of Western Australia undertook a mail-out on behalf of the research team. Finally, in an effort to obtain gender balance in the sample, women’s groups circulated an email to members that included the invitation to participate. Despite these efforts, as described earlier, the achieved sample largely comprised men (27 fathers), particularly those in the unsuccessful opposer category (19 fathers).

Notwithstanding the limitations arising from the nature of the sample, the qualitative data offer some valuable insights into the experiences of parents who litigate over relocation. Some of these insights build further on our understanding of the dynamics of the relationships in which these disputes occur, deepening the knowledge gained from the quantitative data. More significantly, however, the data take our understanding beyond the dispute itself and provide some insight into the lives of the parents in our sample in the aftermath of the dispute. As the
following information demonstrates, in most instances for the parents we spoke with, relocation disputes punctuated a relationship that was fraught with conflict before the dispute and remained so after the dispute.

The interview data were collected through open-ended interviews that were conducted either face-to-face or by telephone. The interviews were structured so as to gather information about three periods of time: prior to, during and after the relocation dispute. The nature of the parent–parent and parent–child relationships were a focus in the interviews, in addition to information about the factors relevant to the relocation proposal and how the participant experienced the court process.

Findings
Consistent with the quantitative sample, the majority of relationships as described by parents in our qualitative sample were marked by significant levels of conflict, with allegations of abuse and family violence relevant in the majority of cases ($n=23$). For most parents, the relocation proposal arose in the context of long-standing conflict, often involving prior litigated court proceedings. A contrasting pattern was evident among a smaller group of parents ($n=7$), for whom the relocation dispute was the primary source of conflict. These parents were less likely than the larger group of conflicted parents to report conflicted relationships prior to the dispute and more likely to report improved relationships after the dispute.

Focusing on an analysis of pre-dispute relationship history and post-dispute relationship trajectory, there were three main patterns evident among the parents in the qualitative sample:

- The first and largest group ($n=24$) were on a “rough road” before, during and after the relocation dispute. These relationships were marked by significant conflict, most featured allegations of family violence and in some instances child abuse, and the relocation dispute appeared to be as much a response to, as a cause of, conflict and difficulty.
- The second, smaller, group of parents ($n=7$) appeared to be following “smoother paths”, with less conflicted relationships prior to and after the relocation dispute, and signs of relationships improving after the dispute.
- The third and smallest group ($n=4$) was the most troubled of all, and these parents appeared to be following “separate pathways”. They cited difficult relationships prior to and during the dispute and a complete, or almost complete, diminution of contact between one parent and the children after the dispute. This group was marked by the severest levels of addiction, mental health problems and family violence.

Across the three groups, our analysis suggests that post-dispute relationship trajectories are influenced less by the outcome of the dispute than the characteristics of the parents and their relationship. A small group ($n=3$) fell outside these patterns, with relationships appearing to deteriorate after relocation (these are not discussed in the following sections). Two of these parents had been in highly conflicted relationships before the relocation.

“Rough roads”
Twenty-four respondents fell into this group, which included two sub-groups: the larger sub-group ($n=15$) was marked by a pattern of unremitting conflict before, during and after the relocation dispute; the smaller sub-group ($n=9$) was distinguished from the majority pattern by some evidence of improvement in the parties’ relationship after the dispute. In addition to unremitting conflict, the characteristics of the cases in this pattern included litigation prior to, and in many instances after, the relocation disputes.

Belle’s account illustrates some common features of the non-improvement sub-group in this pattern:

Belle and her former partner (Salvador) had been together only for a matter of months when she fell pregnant. They separated soon after their son, Rolando, was born. Prior to the birth, the couple had moved around and various moves took place after Rolando’s birth. Belle was the primary caregiver for her son but her former partner exercised contact regularly, at times having the child for sleepovers when he was past infancy. When the child was three years old, Belle suffered a serious illness. Shortly after this time, Salvador filed an application for 50–50 shared time with the child. Belle then filed an application for court orders that would allow her to relocate more than 1,000 km away, to a town where her family lived. Belle reported that the relationship with her former partner was difficult (she said he had anger management problems), but at the time of her illness he was supportive and assisted with the care of their son. Afterward, however, the relationship deteriorated, with conflict and physical struggles occurring at contact changeover times. By the time of the court hearing, changeovers were marked by physical violence: “It was directed at me, but often [Rolando] would be caught in the middle of...
it, like him trying to pull [Rolando] from me, and that kind of thing, or pushing me over to get at [Rolando], or barricading him[self] and [Rolando] in a room …”. Belle’s application to relocate was successful. Initially, Salvador remained in the old location and maintained contact with Rolando. He subsequently moved to a town three hours’ drive away from Belle, and now exercises contact on weekends and school holidays. Changeovers remain difficult and Belle arranges for family and friends to attend on her behalf.

While Belle was a successful applicant in her matter, the “Rough roads” group as a whole included parents in all four litigant categories. Belle’s case was typical in that it involved significant conflict before, during and after the dispute. For others in this group, such conflict was also manifested in other court proceedings, before or after the relocation dispute.

Improvements in relationships in the smaller “Rough roads” sub-group tended to be connected with a variety of different factors, and in this context improvement refers most commonly to a reduction in conflict and less commonly to a positive improvement in the parents’ relationship. In some instances, such improvement appears connected with a retreat from conflict on the part of one parent. In the case of one respondent, Caitlin, she had returned to the old location after two years away, and reported that there had then been some improvements in her relationship with her children’s father, who had remained “very, very cross” while she was away.

In other cases, improvement appears linked with one parent (often the non-resident parent) re-partnering and in some senses “moving on”. In the case of another respondent, Lance, relationships and patterns of contact between him and his three older children stabilised after a long litigation history. This involved Hague Convention proceedings (these occur in international relocation disputes where one party has acted unilaterally) and an unsuccessful international relocation by his former partner, followed by a successful relocation application. Lance has re-partnered and has a new baby. He pays for his older children to fly to Australia to see him regularly and has frequent phone contact with them.

“Smother paths”

The seven cases in the “Smother paths” pattern were characterised by a much less complex relationship and litigation history than those in the other two patterns. Family violence, substance addiction, mental health problems and entrenched conflict were largely absent from these cases, according to the participants’ accounts. Cases in all of the four litigant status groups were also represented in this pattern, which is typified by Ernie’s account:

Ernie separated from his partner, Marsha, when their children were both under five years old. During the relationship, parenting followed a traditional pattern, with Ernie focused on his work and assisting Marsha in her primary caregiving role as much as he could. After separation, there was a stable contact pattern (alternate weekends) until Marsha re-partnered and successfully applied to move more than 1,000 km away. Ernie considered moving, but decided to stay near the rest of his family, including his elderly parents. The children fly to his town for contact for four nights each month and he visits them in their new location whenever he can—three or four times a year. Ernie has also re-partnered and Marsha has a new baby with her new partner.

Like Ernie, the other study participants in this group had maintained regular contact with their children and mainly positive relationships with their former partners. Four of the seven cases in this group involved a relocation, and it was evident that each parent worked to maintain contact with the children and the non-resident parent. In some instances, non-resident parents arranged accommodation in the new location so as to be able to maintain child-focused contact periods. For example, one respondent, Ivan, has rented a unit in the town to which the mother of his children relocated. This enabled him to exercise contact without subjecting the children to lengthy travel and allowed him to be part of the children’s everyday lives: “I make sure I always take them to the birthday parties and the sporting things … the sort of stuff that they do on the weekends. And I’ve got to know their friends and the parents up there …”

“Separate pathways”

All four cases in this pattern were characterised by a complete or almost complete cessation of contact between one parent and the child or children. All involved situations in which one parent had been allowed to relocate by the court, in the context of very difficult relationships involving some or all of these issues: mental illness, addiction issues and family violence.

In two cases, the study participants were fathers who admitted to having problems with drugs and mental illness. One father had not maintained contact with his child, while the other had maintained telephone contact with his children following an international relocation. At the time of interview, 7 years after the relocation, the mother in this case was planning to relocate back to Australia and this father was hopeful of re-establishing relationships with his children.

The third case involved a father who said the mother had a mental illness but had been allowed to relocate more than 1,000 km away, with court orders permitting him to have telephone contact only.

The fourth case involved a mother who reported that her relocation occurred in the context of a relationship where she had been the victim of family violence (the father had been jailed for breaching state protection orders) and her former partner had mental health and substance addiction problems. Although the father had subsequently relocated to within one hour’s drive of her new location, he had not attempted to contact the children.

Discussion

Relocation cases are commonly said to be among the most difficult parenting matters for judges to decide (Family Law Council, 2006), as they potentially involve making determinations that restrict the freedom of movement of one parent or necessitate the diminution of face-to-face contact between a parent and child or children. While the legal literature contains many analyses of the principles
applied in relocation decision-making (e.g., Kordouli, 2006; Parkinson, 2008), empirical examination of the experiences of parents and children in such disputes has been lacking. In general, previous socio-legal research on relocation decision-making has focused on tracking patterns in court orders (e.g., Easteal, Behrens, & Young, 2000; Easteal & Harkins, 2008) in geographically confined samples, and most social science research originates from the US and has limited application to Australia (for a review, see Horsfall & Kaspiew, 2010). The study outlined in this article provides a more in-depth analysis of judgments based on a sample larger than any obtained in other research; it also covers all FCoA registries. In addition, the qualitative data provide new insight into the circumstances of parents after relocation decisions, and the study responds to acknowledgement of a need for empirical evidence of the impact of judicial decisions in the family law area (House of Representatives Standing Committee on Family and Community Affairs, 2003, rec. 19).6

Legal principles relevant to relocation are currently contained in case law. There are no special statutory provisions, although reform has been canvassed (Family Law Council, 2006), most recently through the Australian Law Reform Commission questioning whether special legislative provisions should apply in relocation matters where there has been family violence (Australian Law Reform Commission, 2010). This research provides an empirical basis for further policy development in this area through a systematic examination of the types of cases in which relocation disputes occur and providing some insight into the aftermath of such disputes.

In considering future policy-making, some pertinent and important common themes emerge from the qualitative and quantitative parts of this study. Litigated relocation disputes mostly occur in the context of highly conflicted parental relationships, with a history of allegations of family violence being relevant in the majority of cases. Previous research has highlighted the prevalence of allegations of violence in litigated parenting matters generally (see Kaspiew, 2005; Moloney et al., 2007). For many of the parents with whom we spoke, the relocation proposal appeared to arise, at least in part, as a response to ongoing conflict in the relationship, and the quantitative data confirm the conflicted nature of the majority of the relationships in the judgment sample. Additionally, a range of other potentially overlapping motivations may be relevant in relocation proposals, including a desire to be closer to extended family support, the need to improve employment prospects, or a desire to be closer to a new partner. Consistent with findings of a study that looked at relocation cases post-2006 (Parkinson, Cashmore, & Single, 2010), the qualitative data in particular indicate that reasons are often multi-faceted, with more than one motivation being relevant in any given situation, and relationship-related issues being more relevant than material ones. Further, the qualitative data indicate that, for most of the parents with whom we spoke, relationships that were fractured prior to the dispute tended to remain so afterward and relationships that were less conflicted prior to the dispute tended to return to this condition after the dispute.

Conclusion

The quantitative study of court judgments shows that, in the period covered by the study (2002–04), just over half of the parties who applied to the Family Court of Australia for orders that would allow them to relocate with their children were successful. The majority of applicants for
relocation were women; the majority of litigants opposing relocation were men. Commonly emphasised reasons for relocation in the judgment sample were a desire to be closer to family support and to be with a new partner, with the former reason more often being connected with a successful outcome for the applicant than the latter. One of the clearest factors influencing court outcomes was the assessment of credibility made by the judge, with adverse assessments being linked to adverse outcomes for litigants either seeking or opposing an outcome that would permit relocation. A further significant factor in the context of outcomes was the pattern of contact between the children and the non-resident parent, with greater levels of contact more likely to be associated with an outcome denying relocation.

The qualitative data based on interviews with parents involved in a relocation dispute are particularly valuable for the insights they provide into the trajectory that relationships take in the wake of a relocation dispute, although the restricted nature of the sample means the findings cannot be generalised. The majority of the relationships described by participants in the qualitative study were troubled before, during and after the relocation dispute. As far as the period prior the court decision is concerned, this is consistent with the characteristics of the majority of litigated cases identified in the quantitative part of this study. This is especially clearly demonstrated by the cases in the “Rough roads” and “Separate pathways” patterns, which account for the majority of the cases in the qualitative sample overall. Parents in the “Rough roads” pattern mainly remained enmeshed in troubled relationships after the relocation dispute, with the dispute itself being a manifestation rather than a cause of conflict. Where conflict diminished in the “Rough roads” pattern, this appears mainly attributable to a retreat on the part of one parent or developments in the personal lives of one or both parents that allow them to step away from the conflict. A similar phenomenon is evident to a more significant extent in cases in the “Separate pathways” pattern, with these cases being distinguished by a sustained diminution or cessation of contact between one of the former partners and their children. In each of these cases, the relocation occurred in the context of extremely troubled relationships and personal difficulties.

The relationship trajectories in the “Smoother paths” group provide a contrast to the trends evident among the parents in the other two groups. Even though four out of seven of the cases in this group involved a relocation, parent–child relationships were maintained and parent–parent relationships were stable, albeit strained in some cases. Issues such as family violence, mental illness, entrenched conflict and substance addiction were not evident in parents' stories in this group.

Our findings suggest a need for extreme caution in making assumptions about the types of relocation cases to which the law is applied and consequently a need for caution in framing such law should any changes in legislative policy be contemplated. In particular, the data suggest that it would be wrong to assume when designing law and policy on relocation that judicial decision-making will take place largely in a context where the dispute between the parties is about relocation only.

Endnotes

1 ABC Discovery Project DP06663259. The authors gratefully acknowledge the support of the Australian Research Council, the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court (FMC). Other publications based on aspects of this research include Behrens, Smyth, & Kaspiew (2009), and Horsfall & Kaspiew (2010).
2 Based on litigant status (applicant or opposer) and case outcome (successful or unsuccessful).
3 During the period covered by this sample, the division of child matters between the FMC and the FCoA was relatively evenly balanced (Kaspiew et al., 2009, p. 395). However, it appears that more relocation matters were heard in the FCoA than the FMC (in line with the policy that more complex matters are heard in the FCoA). Letters were sent to 292 FCoA litigants (this included those involved in interim matters that were excluded from the judgment sample) and 108 FMC litigants. The qualitative sample comprised 27 FCoA litigants, 8 FMC litigants and 2 Family Court of Western Australia litigants.
4 Descriptions of the judgment data are based on a valid percentage—that is, cases that were missing, unclear or unknown were excluded from the calculation. Some totals may not amount to 100% due to rounding.
5 Pseudonyms are used throughout this article to maintain the anonymity of the participants.
6 Two other empirical projects were being conducted at the same time as this one. One is an Australian prospective longitudinal study of parents' experiences of relocation outcomes (reached by consent or judicial determination) after the 2006 reforms (see Parkinson, Cashmore & Single, 2010), while the other is a New Zealand study (see Taylor, Gollop, & Henaghan, 2010).

References


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Persistent work–family strain among Australian mothers

Ibolya Losoncz

Achieving work and family life balance was not only the ultimate BBQ-stopper conversation of the last decade; it was also the focal theme of Australian Government policy work and social research (e.g., Alexander & Baxter, 2005; Baxter, Gray, Alexander, Strazdins, & Bittman, 2007; Baxter, 2009; Bowman, 2009; Losoncz & Bortolotto, 2009; Pocock, Skinner, & Williams, 2007; Reynolds & Aletraris, 2007; Strazdins et al., 2008). Of particular interest are mothers of dependent children, whose labour force participation has increased markedly over the last quarter of a century (ABS, 2006). At the same time, most mothers are retaining their primary responsibility for family care and domestic matters (de Vaus, 2009).

One key focus of research on mothers’ labour force participation is work–family strain. Using the 2005 Household, Income and Labour Dynamics in Australia (HILDA) survey data, Losoncz and Bortolotto (2009) found that nearly 30% of Australian mothers in paid work experienced a strong tension between work and family responsibilities. Self-reports from these mothers indicated reduced physical and mental health and low satisfaction with family life and parenthood compared with other working mothers, who reported low work–family tension.

The duration of time spent experiencing high work–family strain is important. While short- and long-term work–family strain are strongly related, they are a different phenomena. The characteristics of mothers experiencing long- versus short-term work–family strain are presumably different and so are their work and family environments. The impact of long-term work–family strain is also likely to be different from the impact of strain that is short-lived. From a policy perspective, different strategies are likely to be needed to assist mothers experiencing temporary versus persistent work–family strain.

The aim of this present paper is to improve our understanding of persistent work–family strain by identifying mothers who are most at risk of experiencing long-term tension between work and family responsibilities, and comparing their characteristics and circumstances with mothers whose experience of work and family tension was relatively brief.

Factors contributing to work–family strain

While Australian research to date has not considered long-term work–family strain specifically, the literature on work and family tension and its predictors has advanced considerably in recent years. Researchers have identified a number of factors related to parents’ experiences of work–family conflict, both in the home and work environment.

A frequently noted factor is long working hours and the negative impact this has on family life, as parents...
are unable to allocate the necessary time and energy to maintain family relationships. For example, Pocock and her colleagues (2007) found a strong and consistent association between long work hours (more than 45 hours per week) and poorer life outcomes. While Gray, Qu, Stanton, and Weston (2004) found that fathers working more than 40 hours per week reported more negative effects of work on family than fathers working 35–40 hours, the association between long working hours and wellbeing was negligible on most other measures. Importantly, the study found that for fathers working very long hours (more than 60 hours per week) an important predictor of their own wellbeing and that of their families was their satisfaction with their work hours. This corresponds with findings from other researchers reporting that workers who have a poor “fit” between their actual and preferred hours are more likely to have poorer work and family life outcomes (Fagan & Burchell, 2002; Messenger, 2004; Pocock et al., 2007).

While long working hours may have a negative impact on family and personal wellbeing, other aspects of work can be equally influential. Quality, complexity and skill level of the job, flexibility and pace of work, job security and control over work schedule are all important contributing factors (Allan, Loudoun, & Peetz, 2007; Galinsky, 2005; Strazdins et al., 2008).

The level of tension between work and family responsibilities also varies among mothers, depending on their characteristics, family types and socio-economic circumstances. Strazdins and her colleagues (2008) found that lone mothers in paid work, particularly those with preschool-aged children, tend to experience more work–family strain than employed mothers with a partner.

Somewhat interestingly, parents from more advantaged families tend to experience more work-to-family strain than their relatively disadvantaged counterparts (Strazdins et al., 2008). This is an interesting association to consider. Typically, socio-economic disadvantage is linked to poor work conditions—a predictor of high work–family tension. In fact, the research by Strazdins and her colleagues confirmed this association, especially among females. Specifically, socio-economically disadvantaged parents were more likely to be employed casually, to feel insecure about their job, and to report lower levels of job control. Job security disparity was particularly marked for mothers. But this positive association between socio-economic disadvantage and poor work conditions did not transfer into higher levels of work–family tension among mothers in relatively disadvantaged families.

From these results, it appears that the higher prevalence of work-to-family strain among advantaged families may be due to the longer hours spent at work by parents in those families. Typically, long work hours are more common in high-skilled jobs, while low-skilled jobs are more likely to be part-time and therefore involve fewer work hours (Gray, Qu, Stanton, & Weston, 2004). Indeed, Strazdins et al. (2008) found that fathers from more economically advantaged families tend to work around two hours more per week, while mothers from advantaged families tend to work three to four hours more per week than their less economically advantaged counterparts.

While the adverse impact of work on family life is more widespread than the other way around (Pocock et al., 2007), the home environment can also influence work performance and the extent to which work is experienced as enjoyable and rewarding. Examples of factors that increase home-to-work spillover include: the care needs of young children and elderly relatives (Barnett, 1994; Barnett & Marshall, 1992a, 1992b); housework and its distribution within families (Coltrane, 2000), and the perceived quality of each parent’s role, both as a spouse and as a parent (Milkie & Peltola, 1999).

Another factor influencing work–family conflict, particularly among mothers, is poor parental identification with family and work preferences (Cinamon & Rich, 2002). Generally speaking, it has been suggested that lifestyle preferences may contribute to the degree of tension between work and family; that is, people whose reality does not match their preference tend to experience higher levels of tension (Brunton, 2006).

It is evident from the above studies that the work and family life experiences of Australian mothers are diverse and shaped by a wide range of factors. To capture the common thread of these experiences, Losoncz and Bortolotto (2009) used cluster analysis to identify major homogenous groups among Australian working mothers. Their research identified six major clusters/groups of working mothers, each with distinctive profiles in terms of their work–family balance experience. A summary on cluster analysis and on the six clusters identified by Losoncz & Bortolotto (2009) is provided in Boxes 1 and 2 respectively. Two of the six clusters, or 36% of mothers, managed their work and family commitments successfully, while two other clusters, or 27% of working mothers, experienced high tension between their work and family commitments. Mothers in the high work–family tension clusters (the “Aspiring and struggling” and “Indifferent and struggling” clusters) were characterised by long working hours, high work overload, perceived lack of support from others, lower self-reported health status, and low satisfaction with family life and parenthood.

The current paper will extend this initial cross-sectional cluster analysis with the aim of exploring long-term work–family strain among Australian mothers. Using the six clusters...
identified through the first six waves of the HILDA survey and longitudinal analysis techniques, the paper will explore the nature and extent of transitioning between clusters, with particular emphasis on the two high work–family tension clusters. Three main themes will be investigated:

1. transition pathways between clusters;
2. predictors of short-term versus long-term work–family strain; and
3. characteristics of mothers experiencing persistent work–family strain.

Data and methods

Data for this analysis was drawn from the first six waves (2001–06) of the HILDA survey, a nationally representative household panel survey focusing on employment, family and income issues. The sample for this study—approximately 1,300 mothers in each wave—was limited to working mothers (partnered and un-partnered) with parenting responsibilities for children aged 17 years or less. The respondents completed a 13-item questionnaire on work–family balance in a self-completion part of the survey. The items were included in the survey to measure three themes relating to the impact of combining work and family responsibilities on self, work and family.  

The focal method in this research is cluster analysis. Cluster analysis groups individuals according to their similarity on selected features—in this instance their responses to the 13 work–life balance statements. A two-stage analysis was applied. In the first (partitioning) stage, a hierarchical procedure was used to investigate if the six clusters identified by Losoncz and Bortolotto (2009) using Wave 5 HILDA data would fit the data in each of the six waves. Cluster analysis applied independently to each wave of data came up with the same set of clusters, with only minimal variation in cluster scores across the six waves. The paper by Losoncz and Bortolotto (2009) provides a detailed account of the development of the six clusters, including data source, measures, formulation and description of clusters.

In the second (fine tuning) stage, respondents were reassigned around the common seed points (across the six waves) of each cluster. The purpose of this second step was to create more homogeneous, or alike, groups and to increase comparability between waves. Other statistical methods employed in this paper included descriptive statistics and analysis of variance (ANOVA).

Mothers in paid work may require more intense assistance during particularly demanding periods of the work–family life cycle, for example, during the time of family break-ups or when their children enter primary school.
Box 2: The six-cluster solution of Australian working mothers

Highly functioning and fulfilled cluster (20%)

Mothers in this cluster highly value their working mother role (statements 1–6 in Box 1) and are successful at managing the practical impact of the work–life nexus (statements 7–13 in Box 1).

Descriptive analysis found that mothers in this cluster have the lowest level of stress at work. The number of hours they spend at work (an average 27 hours per week) is just below the average of the total sample, while the time they spend on domestic tasks is well below the total average. Their partners tend to spend average hours at work and on domestic tasks. Mothers in this cluster reported the highest levels of satisfaction with family relationships, division of household tasks, and support received from others. They also have the highest scores for physical and mental health.

Indifferent yet successful cluster (16%)

Mothers in this cluster place a relatively low value on their working mother role, but they manage the day-to-day impact of the role just as well as mothers in the previous cluster. So, while these mothers tend to be indifferent to the working mother ideal, they are successful at it.

In terms of their characteristics, mothers in this cluster are the most likely to be married, to be self-employed or working for a family business, and to be a casual worker. They work the shortest number of hours (21 hours per week, on average), and the majority are happy with these hours. While they spend the highest number of hours on domestic tasks, their combined paid and unpaid working hours are still the lowest. Mothers in this cluster appear to have a gender-based domestic arrangement with their partners, who spend above-average time at work but below-average hours on domestic tasks. Mothers in this cluster tend to find parenthood a positive experience.

Aspiring and struggling cluster (15%)

Mothers in this cluster place a high value on being a working mother. However, when it comes to the day-to-day aspects of their life, they report a very strong tension between work and family.

This cluster has the highest proportion of mothers working more than 45 hours per week. Mothers in this group spend the longest hours at work (an average 33 hours per week), and average hours on domestic tasks, leading to the highest combined (paid and unpaid) work hours of all the clusters. Even though mothers in this cluster have high occupational status and a high level of job control, they also have the highest level of work overload and stress at work. Mothers in this cluster reported the lowest physical and mental health scores and low satisfaction with family relationships, parenthood and support from others.

Indifferent and struggling cluster (12%)

Mothers in this cluster place a relatively low value on the working mother role and, when it comes to the practical, day-to-day aspects of their life, they report the strongest tension between work and family.

Mothers in this cluster are the most likely to be single or widowed. They work the second longest hours (31 hours per week, on average) and over half of them want to work fewer hours. They reported the second highest level of overload and work stress, low levels of job control and flexibility, and the lowest level of work satisfaction. Mothers in this cluster work the second longest hours and, if partnered, their partners also tend to work above-average hours. At the same time, the average equivalised household disposable income of this cluster is the lowest. Mothers in this cluster reported the lowest satisfaction with family relationships, parenthood and support from others, and low physical and mental health.

Treading water cluster (20%)

Mothers in this cluster are just below the average both in terms of the value they place on their working mother role and the extent to which they are successful at managing the practical impact of the working mother role. So, while they experience considerable tension between work and family life, they are coping with it.

In terms of their characteristics, they reported average values on socio-demographic, work and family indicators. Mothers in this cluster spend average hours at work (29 hours per week, on average) and on domestic tasks. Their partners also tend to work average hours. Mothers in this cluster reported an average level of satisfaction with family relationships, division of household tasks and level of support from others, as well as average physical and mental health scores.

Guilty copers cluster (17%)

Mothers in this cluster place a relatively high value on the working mother role. In terms of managing the practical aspects of the work–life nexus, they reported scores well above the average. However, they often worry about their children while at work, and feel that working leaves them with little energy to be the type of parent they want to be.

Mothers in this cluster were found to be similar in nearly all their characteristics to the overall sample. The only notable difference is the high level of conscientiousness they reported on the Personality Trait Scale (Losoncz, 2009b), which may explain their tendency to worry about their children while at work.

Limitations of the study

A main limitation of the study is that it did not include a sample of mothers who did not join the workforce because of the anticipated or actual tension between work and family responsibilities. As such, it may under-report the proportion of mothers who see their engagement in the workforce as an important aspect of their life, but consider work and family responsibilities too difficult to manage together. This limitation was addressed in part by examining the work–family balance clustering of mothers (re-)entering employment. Work–family balance clustering of mothers just prior to leaving employment was also examined in more detail in a recent social policy note (Losoncz & Graham, 2010).

Results

Extent of transition and transition pathways between clusters

How variable are mothers’ experiences of work–family balance? Is it a short- or a long-term experience for most mothers? One indicator to answer this question is the proportion of mothers remaining in the same cluster from one year to the next. On average, around 40% of mothers stay in the same cluster as in the previous year. However, there is a notable variation in their likelihood of transition depending on the cluster they were in. The least transient group is the “Highly functioning and fulfilled” cluster, where nearly half of the mothers stayed in that cluster for the following year. In contrast, the “Guilty copers” cluster
appears to be the most transient group, with only 32% of mothers remaining in this cluster in the subsequent year (see Figure 1).

The proportion of mothers who indicated that they were in the same cluster for at least four of the six waves represents another indicator of the level of stability of the cluster membership. Mothers in the “Highly functioning and fulfilled” cluster are the most likely to remain in the cluster for an extended period. Of the mothers who were in this cluster for at least one wave, as many as 13% reported to spend an additional three or more waves in the cluster, compared with only 5% in the “Guilty copers” cluster (Figure 2). It appears that irrespective of the methodology used, experiencing low or no tension between work–family responsibilities is more lasting than high work–family tension or feeling guilty about work commitments and its impact on parenting.

Which are the most frequent pathways for mothers moving between clusters? The pathways between clusters are too numerous to be presented in this paper, but there are two emergent patterns worth discussing. First, the cluster distribution of mothers who (re-)entered paid work after caring for a newborn was comparable to the cluster distribution of the total sample (Table 1). Although these mothers were least likely to transit into the two clusters experiencing strong tension in managing their work and family responsibilities, and were most likely to go into the clusters that are most successful at managing their work and family responsibilities, this difference in distribution did not reach statistical significance. Mothers who (re-) entered paid work, who had not previously been caring for a newborn were also less likely to experience strong tension in managing their work and family responsibilities. Instead, they were considerably more likely to go into the “Indifferent yet successful” cluster (24% compared to the sample average of 16%). For this group, the difference in distribution was statistically significant ($\chi^2 (5, N=83,569) = 36.8, p<.05$).

The second noteworthy trend is the low level of direct transition between the clusters in which mothers struggle to manage their work and family responsibilities and the clusters that are most successful at it. Mothers from the “Aspiring and struggling” cluster showed a relatively low transition into the “Highly functioning and fulfilled” cluster (8%), but a much higher transition into the “Indifferent and struggling” cluster (20%). Similarly, transiting from the “Indifferent and struggling” cluster into the “Indifferent yet successful” cluster was much lower (8%) than into the “Aspiring and struggling” cluster (26%).

This indicates that the value that mothers appear to place on their working-mother role is more changeable than their view of the

Figure 1  Proportion of mothers who remained in the same cluster between any two waves

Table 1  Cluster distribution upon entering or re-entering paid work

<table>
<thead>
<tr>
<th>Cluster</th>
<th>Average cluster distribution over 6 waves for total sample</th>
<th>Cluster distribution upon re/entering paid work after caring for a newborn</th>
<th>Cluster distribution upon re/entering paid work after other reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highly functioning and fulfilled</td>
<td>19.7</td>
<td>22.3</td>
<td>19.9</td>
</tr>
<tr>
<td>Indifferent yet successful</td>
<td>15.7</td>
<td>18.4</td>
<td>24.1</td>
</tr>
<tr>
<td>Aspiring and struggling</td>
<td>14.6</td>
<td>10.7</td>
<td>10.0</td>
</tr>
<tr>
<td>Indifferent and struggling</td>
<td>12.5</td>
<td>9.7</td>
<td>10.9</td>
</tr>
<tr>
<td>Treading water</td>
<td>20.4</td>
<td>20.4</td>
<td>18.3</td>
</tr>
<tr>
<td>Guilty copers</td>
<td>17.2</td>
<td>18.4</td>
<td>16.9</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>No. of observations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>206</td>
<td></td>
<td>569</td>
</tr>
</tbody>
</table>

Source: HILDA, Waves 1–6
day-to-day impact of managing their work and parenting roles. It should be noted that the two “middle clusters” ("Treading water" and "Guilty copers") had the highest transition to and from other clusters, supporting the more transitory nature of these experiences.

**Predictors of short-term versus long-term work–family strain**

The relatively small proportion of mothers reporting a transition into a much-improved work–family balance cluster, irrespective of the change in their work-role identification, raises the question of which changes are associated with an improved work and family life balance. To investigate this question, the two high work–family tension clusters were combined, as well as the two low and medium work–family strain clusters. Analysis of year-to-year transition from the two high work–family tension clusters found that about half (49%) of the mothers remained in a high work–family tension cluster in the subsequent year. A further 42% moved to an average work–family tension cluster, and only 9% of mothers transferred to a low work–family tension cluster.

Of particular interest was the relationship status of mothers (i.e., lone or coupled), working hours (paid and unpaid) of adults in the family, and mothers’ report of perceived help from others.

In terms of relationship status, mothers who became un-partnered between the waves were the least likely to report an improved work and family life balance (Figure 3). As many as 64% of these mothers remained in a high work–family tension cluster compared to only 46% of mothers who became partnered between the waves. Furthermore, none of the mothers who became un-partnered between waves transitioned directly into a low work–family tension cluster, contrasting with every other category where a small proportion of mothers did move to a low work–family tension cluster. For example, of the mothers who became partnered between waves, just less than 10% moved to a low work–family tension cluster.

Similarly, of the mothers who remained un-partnered, a small but notable proportion did move to a low work–family tension cluster. These results tend to indicate that it may be the event of the separation itself, rather than being un-partnered, that increases the likelihood of prolonged work–family strain among mothers in paid work.

Average paid working hours per adults in the family, and distribution of paid and unpaid working hours between mothers and their partners, are all significant predictors of transitioning to a low or average work–family tension cluster (Table 2). Families where mothers moved to low work–family tension clusters reported a 3.1-hour reduction in the average paid working hours of adults in the family per week, compared with a 1.6-hour increase by families where mothers remained in a high tension cluster. In terms of the distribution of workload between mothers and their partners, mothers who moved to low work–family tension

![Figure 3](image-url)
clusters reported, on average, a 4.8-hour reduction in their combined paid and unpaid working hours while their partner reported a corresponding 4.6-hour increase in their combined paid and unpaid working hours. In contrast, mothers who remained in high tension clusters reported an average of 3.0-hour increase in their paid and unpaid working hours and their partner reported an additional 1.9-hour increase.

It appears that the change in the balance of paid and unpaid working hours between partners primarily came from a reduction in paid working hours by mothers (although their unpaid working hours did rise slightly) and an increase in both paid and unpaid working hours by fathers. The change in the balance of working hours (paid and unpaid) within the family was also reflected in mothers’ report of support from others. Mothers who moved to a lower work–life tension cluster reported a significant increase in the level of perceived help from others (Table 2).6

Characteristics of mothers experiencing persistent work–family strain

The last section of results reported in this paper looks at the characteristics of mothers who experience persistent work–family strain. Of the 27% of working mothers struggling with managing work and family responsibilities at any one time (i.e., mothers in the “Aspiring and struggling” and “Indifferent and struggling” clusters), one-quarter of those, or 6% of all working mothers, continued to struggle with balancing work and family life for more than four years.

Characteristics and circumstances of these two groups are reported in Table 3. One of the strongest predictors of remaining in a high work–family tension cluster is having a youngest child between the ages of 6 and 11 years in the household. Anecdotal evidence suggests that working mothers tend to find the demands associated with early school years stressful. This finding lends quantitative support to this proposition.

Another statistically significant socio-demographic predictor is the education level of mothers. Mothers with a higher level of education are more likely to experience an extended period of work–family strain. However, mothers’ age, total number of own children under the ages of 5 and 15 years, and household disposable income did not show an observable or statistically significant difference.

Paid and unpaid working hours showed a similar pattern to that presented in the previous section. That is, increasing number of working hours in the household, particularly increasing paid working hours by the mother, was evident among mothers with ongoing work–family strain. Mothers with ongoing work–family strain generally started out with higher paid working hours, which increased even further through subsequent waves. For this group, the increase in paid working hours was not balanced by a reduction in mothers’ hours per week spent doing housework, errands and outdoor tasks, or a reduction in their partner’s working hours. However, there was a notable increase (just over 2 hours per week) in their partners’ hours spent doing housework, errands and outdoor tasks.

Interestingly, job satisfaction, but not life satisfaction, reported by mothers with ongoing work–family strain was significantly higher to start with and increased further through the years. At the same time, their self-reported physical and mental health showed a significant decline.

While just under one-third of working mothers reported struggling with managing work and family responsibilities at any one time, not all of these mothers are at risk of persistent work–family strain. In fact, the majority of these mothers moved onto a more positive experience within a couple of years.
Table 3  Means and frequencies of descriptor indicators by time spent in high work–family tension clusters

<table>
<thead>
<tr>
<th>Socio-demographic characteristics</th>
<th>Remained in high work–family tension (Clusters 3 &amp; 4) for:</th>
<th>1 wave only</th>
<th>4 or more waves (values in first wave)</th>
<th>4 or more waves (values in last wave)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age of youngest child in the household</td>
<td>n.a</td>
<td>11.29</td>
<td>7.50</td>
<td></td>
</tr>
<tr>
<td>0–1 years</td>
<td>23.97</td>
<td>21.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2–5 years</td>
<td>35.54</td>
<td>56.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6–11 years</td>
<td>29.20</td>
<td>15.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 years and over</td>
<td>100.00</td>
<td>100.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant differences</td>
<td>0.005</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education level of mother</td>
<td>n.a</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Degree or higher</td>
<td>30.85</td>
<td>38.75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diploma</td>
<td>9.64</td>
<td>15.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certificate</td>
<td>19.56</td>
<td>13.75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 12</td>
<td>17.08</td>
<td>10.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year 11 or below</td>
<td>22.87</td>
<td>22.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>100.00</td>
<td>100.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Significant differences</td>
<td>0.1</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes: ^ Pearson’s chi-square. * Statistically significant differences at the .05 level.

**Discussion**

This paper contributes to the growing evidence base relating to work and family life balance using cluster analysis. Extending earlier research by the author, the current project examined the transition of mothers between the six work–life balance clusters, identified by Losoncz and Bortolotto (2009), over six years.

The initial cluster analysis by Losoncz and Bortolotto (2009), summarised in this paper, confirmed the diversity in characteristics and circumstances of Australian working mothers. It also offered a typology of working mothers based on the multiple dimensions of their work and family life.

Thirty-six per cent of mothers, making up two of the clusters, reported successfully managing their work and family responsibilities. These mothers tend to have low combined hours of paid and unpaid work and low levels of work stress. A further 27% of mothers experience a strong tension between work and family commitments. Mothers in these two clusters tend to have long working hours and high work overload. Further, they have little or no support from others, often because they are un-partnered, or because their partner’s working hours do...
Another finding from this study is the effect of certain life cycles on work and family life balance. The actual event of separation, rather than being un-partnered in general, is one of the predictors of prolonged work–family strain among mothers in paid work. Another strong predictor is the youngest child in the family being between 6 and 11 years of age. This association may partly be explained by the tendency for mothers to enter full-time work once their child turns six years old (or once they begin school). There is anecdotal evidence that a child’s early school years are associated with increased demands on working parents. Findings from this research lend quantitative support to this proposition. The findings also correspond with the findings of Strazdins and colleagues (2008), which suggests that psychological distress and strain related to conflicting work and family demands are higher among mothers of preschoolers compared to mothers of infants or adolescents. These findings suggest that mothers in paid work may require more intense assistance in relation to particularly demanding periods of the work–family life cycle; for example, during the time of family break-ups or when their children enter primary school.

A particular focus of this paper is mothers experiencing persistent work–family strain. While just under one-third of working mothers reported struggling with managing work and family responsibilities at any one time, not all of these mothers are at risk of persistent work–family strain. In fact, the majority of these mothers moved onto a more positive experience within a couple of years. Nevertheless, just less than one-quarter of these mothers, or 6% of all working mothers, continued to struggle with balancing work and family life for more than four years. These mothers with long-term difficulties managing work and family responsibilities are most likely to require more targeted assistance and, ultimately, external support.

Not surprisingly, mothers transitioning from a high work–family tension cluster are much more likely to transfer to a cluster with an average, rather than a low, level of work–family tension. Transition from a high work–family tension cluster to a low-tension cluster was strongly related to a substantial reduction in the paid working hours of mothers, although their levels of time spent doing household unpaid work (housework, errands and outdoor tasks) did rise slightly, as did their partner’s paid and unpaid working hours. The shift in the balance of paid and unpaid working hours in families where mothers transitioned to a low work–family tension cluster was also reflected in the increased perceived help from others, including partners. This points to the merit of more equally shared responsibilities for work, family and caring within couples, and the importance of support from others within and outside the home, such as grandparents and paid care.

At a more fundamental level, the strong positive relationship between reduced workforce engagement and subsequent improvement in work and family life balance among mothers tends to indicate that balancing caring and work responsibilities is still seen as a responsibility to be undertaken by the mother rather than a responsibility undertaken by both parents. These results correspond with the findings of Strazdins et al. (2008), which suggest that mothers’ employment is conducted in a different “time context” to that of fathers. That is, mothers modulate their work hours according to their children’s ages and partner’s work, and hold down jobs in the context of having partners with heavy work time commitments. The current study suggests when mothers fall short of adjusting their work hours in response to family and external demands they will risk being able to maintain a work and family life balance as well as their physical and mental wellbeing.

But not all mothers want, or are in the position to be able, to adjust their working hours in response to family and external commitments. Indeed, this research suggests that some mothers, particularly mothers with a strong attachment to the workforce and high job satisfaction, persist to work longer hours while experiencing continuing high work–family tension and a decline in their wellbeing. This indicates that approaches rooted in reduced engagement with the workforce that enables mothers to afford time to

Work and family life balance is not a problem specific to individual families. Rather, it is a universal problem shared by many families, and as such it requires institutional and structural changes supported by society as a whole. Not adapt to balance their long working hours. In these families, both parents work long hours while the mother retains responsibility for the majority of unpaid work.

While the same six clusters emerged consistently through the six waves, longitudinal analysis of individual mothers over six years revealed a relatively high transition between clusters. Fewer than 40% of mothers remained in the same cluster in any two waves, while just more than 8% of mothers remained in the same cluster for at least four waves. The observable difference between low and high conflict clusters tends to indicate that low or no work–family conflict is a more durable experience than the work–family strain or feelings of guilt over work commitments and its impact on parenting.

Another finding from this study is the effect of certain life cycle events on work and family life balance. The actual event of separation, rather than being un-partnered in general, is one of the predictors of prolonged work–family strain among mothers in paid work. Another strong predictor is the youngest child in the family being between 6 and 11 years of age. This association may partly be explained by the tendency for mothers to enter full-time work once their child turns six years old (or once they begin school). There is anecdotal evidence that a child’s early school years are associated with increased demands on working parents. Findings from this research lend quantitative support to this proposition. The findings also correspond with the findings of Strazdins and colleagues (2008), which suggests that psychological distress and strain related to conflicting work and family demands are higher among mothers of preschoolers compared to mothers of infants or adolescents. These findings suggest that mothers in paid work may require more intense assistance in relation to particularly demanding periods of the work–family life cycle; for example, during the time of family break-ups or when their children enter primary school.
take on primary responsibility for family domestic matters is not an adequate solution for all mothers and families. This resonates with findings from recent studies suggesting that the relationship between part-time work and work–family balance is often subject to job context. That is, non-career women gain a far greater benefit from part-time work than professional women whose greater work demands constrain the benefits they derive from part-time schedules (Duxbury & Higgins, 2008; Higgins, Duxbury & Johnson, 2000).

These results suggest that existing approaches, such as part-time schedules, flexible working hours, and attempts to reconfigure the balance of paid and unpaid working hours within couples, need to be complemented with new initiatives.

In conclusion, Australian mothers in recent decades have greatly increased their participation in the labour market. Fathers, however, have not increased their participation in unpaid household work to a matching degree. But, without equal sharing of the dual roles of earner and carer between mothers and fathers, mothers will inevitably feel the work–family tension more keenly. Furthermore, institutional and structural changes supporting mothers' increased workforce participation are few and slow coming. Consequently, working mothers faced with the challenge of reconciling family and work commitments are often forced to find individual solutions. However, work and family life balance is not a problem specific to individual families. Rather, it is a universal problem shared by many families, and as such it requires institutional and structural changes supported by society as a whole.

Endnotes
1 For more information, see Watson and Woden (2002).
2 For more information on the 15 items see HILDA W5 Self Completion Questionnaire at www.melbourneinstitute.com/hilda/qaures/q5.html.
3 Mean scores for the 13 work–life balance statements for each cluster over the six waves are available from the author on request.
4 Due to the small cell sample size, a test to establish statistical significance was not run.
5 In HILDA waves 2-6, there were 1,271 episodes where a mother either moved or remained in a high work–life tension cluster. However, a considerable number of these episodes were by the same mother. To avoid double counting analysis only included the first episode. This yielded a sample size of 708 episodes.
6 Measured on a seven-point scale.

References

This research paper uses unit record data from the Household, Income and Labour Dynamics in Australia (HILDA) Survey (Release 6.0). The HILDA Project was initiated and is funded by the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and is managed by the Melbourne Institute of Applied Economic and Social Research (MIAESR). The opinions and/or analysis expressed in this document are those of the authors and do not necessarily represent the views of the Minister for Families, Housing, Community Services and Indigenous Affairs, and cannot be taken in any way as expressions of government policy.

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Roundup of developments in family law

Catherine Caruana

Alternative dispute resolution options in property matters

The Attorney-General, Mr Robert McLelland, has flagged the possibility that alternative dispute resolution mechanisms in the family law context will be boosted (Attorney-General’s Department, 2010). In pre-election statements, Mr McLelland indicated that measures to increase the options available for resolving disputes out of court for parenting and property matters were being examined. He said possible changes could include the requirement to attend family dispute resolution (currently applicable to parenting matters except in circumstances of urgency or where there are concerns about family violence and abuse) being extended to property and spousal maintenance matters. He has also flagged the possibility of extending family dispute resolution to encompass conciliation and arbitration-type processes. Since the election, consultation on these proposals has been continuing.

Restructuring of the family courts

Legislation containing measures to create a simplified and more streamlined family court system, as recommended in the 2008 report Future Governance Options for Federal Family Law Courts in Australia: Striking the Right Balance, has been referred to the Senate Legal and Constitutional Affairs Committee for inquiry and report. The Access to Justice (Family Court Restructure and Other Measures) Bill 2010 removes the family law jurisdiction of the Federal Magistrates Court, creating instead a new division in the Family Court of Australia. Federal magistrates hearing family law matters will be offered commissions in this new lower-level division of the Family Court of Australia and the Federal Magistrates Court will exercise general federal law jurisdiction only.

In the second reading of the Bill on 24 June 2010, the Federal Attorney-General, Robert McClelland, cited findings from the AIFS (2009) Evaluation of the 2006 Family Law Reforms (in particular, concerns about inconsistencies in processes between the Family Court of Australia and the Federal Magistrates Court, as well as the way matters are transferred between the two courts) as being consistent with the aims of the proposed restructure. For more information, go to <www.openaustralia.org/debate/?id=2010-06-24.7.1>.

High Court decision on relocation

In the recent case of MRR v GR [2010] HCA4, the High Court allowed an appeal against a decision by the Federal Magistrates Court that a child spend equal time with each of her parents in Mt Isa, in spite of the mother’s application to relocate to Sydney. The Federal Magistrate’s order, in effect, prevented the mother from leaving Mt Isa, and given that affordable rental accommodation in Mt Isa is scarce, she (and therefore the child on a week-about basis) was living in a caravan park. In ordering that the
Attorney-General’s speech to the Legal Aid NSW annual conference

Australia indicated in a media interview that courts hearing family law disputes over children’s living arrangements after separation should have access to information arising in mediation that indicates a potential risk to the child’s or the parent’s safety, such as that relating to violence, abuse, mental health or drug use issues. Aside from obligations to report such concerns to child welfare authorities, or the police, privilege currently prevents family dispute resolution practitioners from disclosing communications made in family dispute resolution (‘Protect children’, 2010).

Family Courts seeking privileged information

Earlier this year the Chief Justice of the Family Court of Australia indicated in a media interview that courts hearing family law disputes over children’s living arrangements after separation should have access to information arising in mediation that indicates a potential risk to the child’s or the parent’s safety, such as that relating to violence, abuse, mental health or drug use issues. Aside from obligations to report such concerns to child welfare authorities, or the police, privilege currently prevents family dispute resolution practitioners from disclosing communications made in family dispute resolution (‘Protect children’, 2010).

New program: Provision of legal assistance in Family Relationship Centres

The Federal Attorney-General has announced partnership arrangements between Family Relationship Centres (FRCs) and legal service providers (primarily community legal centres, with state and territory legal aid bodies playing a coordination role) that will see legal assistance being provided to FRC clients. The types of legal services provided at FRCs may include legal information sessions for parents, legal advice, assistance with the drafting of parenting plans and consent orders, lawyer-assisted family dispute resolution, and training and mentoring for lawyers and FRC staff. The aims of the program are not just to enhance services provided to clients but also to help to promote a closer and more constructive relationship between lawyers and family relationship services. AIFS has been commissioned to conduct an evaluation of the program. For more information on the program, see the Attorney-General’s speech to the Legal Aid NSW annual family law conference at <tinyurl.com/22w7ea4>.

Appointments to the Family Law Council

Four new appointments to the Family Law Council, including Dr Rae Kaspiew from AIFS, were announced on 14 July 2010. Associate Professor Helen Rhoades from Melbourne University Law School has been appointed Chair of the Council, while Federal Magistrate Kevin Lapthorne, Alison Playford from the Federal Attorney-General’s Department and Dr Kaspiew have been appointed as members of the Council. AIFS has been contributing to the work of the Council for many years in an “observer” capacity. The Family Law Council meets quarterly and advises government on matters related to the Family Law Act, family law more generally and family law legal assistance services.

Family violence in Indigenous communities

A report tabled in the Queensland Parliament in March this year by NSW criminologist Professor Chris Cuneen has found that Aboriginal women, who are six times more likely than non-Indigenous women to be victims of domestic violence, also experience violence of a more serious nature than non-Indigenous women, and are almost twice as likely to be seeking crisis intervention. Protection orders involving Indigenous parties (both aggrieved and respondent) are less likely to result in “no action” being taken and more likely to involve breaches than those involving non-Indigenous parties. Police were the applicants for protection orders in 73% of matters involving an Indigenous aggrieved party, compared to 52% of non-Indigenous matters. In some remote communities police are the applicants in more than 95% of the orders. The author suggests that this, combined with a tendency for Indigenous aggrieved parties and respondents not to turn up at court, indicate both disengagement with the legal system and a lack of services to assist with applications. One of the greatest barriers to women reporting and seeking protection from violence was found to be fear of removal of children by welfare authorities (Cuneen, 2010). To access the report, go to <www.parliament.qld.gov.au/view/legislativeAssembly/tableOffice/documents/TabledPapers/2010/5310T1801.pdf>.

Reform of Queensland adoption laws

Commencing on 1 February 2010, the new Adoption Act 2009 (Qld) brings Queensland’s adoption laws in line with those in other states and territories. Changed eligibility criteria for adoptive parents means that de facto couples can now adopt. The changes also allow for greater openness between all the parties involved in the adoption, provide greater access to information for birth parents and adopted people, and improve the information and support made available to birth parents considering adoption. For more information, go to <www.childsafety.qld.gov.au/legislation/adoption/reform/index.html>.

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NSW relationship register

In May 2010, the State Government of NSW passed legislation (the *Relationship Register Act, 2010*) establishing a relationship register to allow de facto and same-sex couples in “committed, exclusive” relationships access to the same legal entitlements as married couples, similar to registers that exist in other states and territories. The registration process does not create civil unions but removes the necessity of proving the relationship for the purposes of access to entitlements in a range of areas.

Same sex parenting rights: Tasmania

Legislation was passed in Tasmania in late 2009 recognising the parental rights of both members of same-sex couples who have had a child via assisted reproductive technology (ART) processes. The *Relationships (Miscellaneous Amendments) Act 2009* addresses the previously discriminatory situation whereby the non-birth mother had no parental rights in matters affecting the child. In contrast, a male partner of a couple using ART has long been deemed to be the father of the child for legal purposes. The provisions have been backdated to include children born to two mothers via ART since changes to Tasmanian law six years ago (introduced by the *Relationships Act 2003*), which recognised same-sex couples via a registration system.

References


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