



Australian Government

Australian Institute of Family Studies

# Evaluation of the 2006 family law reforms

December 2009

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Lawrie Moloney, Kelly Hand, Lixia Qu

and the Family Law Evaluation Team

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This report was commissioned by the Australian Government Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs.

A summary of this report, *Evaluation of the 2006 Family Law Reforms: Summary report*, is available from the Australian Institute of Family Studies <[www.aifs.gov.au](http://www.aifs.gov.au)>.

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Suggested citation:

Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). *Evaluation of the 2006 family law reforms*. Melbourne: Australian Institute of Family Studies.

ISBN 978-1-921414-22-0

Edited by Lan Wang, Lauren Di Salvia and Neil Conning  
Typeset by Lan Wang

Printed by Print Bound

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# Acknowledgements

This report was commissioned by the Australian Government Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs.

The authors would like to acknowledge and thank all of those who participated in or assisted with the evaluation, including: the Family Court of Australia, the Federal Magistrates Court, the Family Court of Western Australia, the Child Support Agency, family relationship service providers, Family Relationship Services Australia, Council on the Aging New South Wales, Mensline Australia and the Family Law Section of the Law Council of Australia. We also acknowledge the helpful assistance of staff from the Australian Government Attorney-General's Department and the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs.

While many staff at Australian Institute of Family Studies contributed to the fieldwork and report, we especially would like to acknowledge Leah Bromfield, Ben Edwards, Daryl Higgins, Melissa Johnstone, Robyn Parker, Antonia Quadara, Nick Richardson, Elly Robinson, Jennifer Russell, Diana Smart, Sarah Williams and Suzie Vassallo.

We would particularly like to acknowledge the major contribution made by Associate Professor Bruce Smyth to the development of the Evaluation Framework and design of a number of the studies. We are also grateful to Professor Richard Chisholm, who assisted in the development of the Evaluation Framework. Associate Professor Smyth and Professor Chisholm also made major contributions to the analysis of the Family Lawyers Survey 2006.

We extend special thanks to Professor Alan Hayes, Director of the Australian Institute of Family Studies, for his expertise, advice, insightful comments on the report and unwavering support at all times.

Of course, the evaluation would not have been possible without the 28,000 people who provided information about their lives or professional experiences during the course of the evaluation, including parents, grandparents, family relationship service staff, lawyers, judicial officers, family consultants and professional staff in the three family courts. Without this generous willingness to participate, the evaluation would not have been possible.



# Executive summary

## Background

In 2006, the Australian Government introduced a series of changes to the family law system. These included changes to the *Family Law Act 1975* (Cth) through the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (*SPR Act 2006*) and changes to the family relationship services system. In broad terms, the aim of the reforms was to bring about “generational change in family law” and a “cultural shift” in the management of parental separation, “away from litigation and towards co-operative parenting”. The changes were partly shaped by the recognition that the focus must always be on the best interests of the child and that many of the disputes over children following separation are driven primarily by relationship problems rather than legal ones and are often better suited to community-based interventions.

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

1. help to build strong healthy relationships and prevent separation;
2. encourage greater involvement by both parents in their children’s lives after separation, and also protect children from violence and abuse;
3. 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
4. establish a highly visible entry point that operates as a doorway to other services and helps families to access these other services.

The changes to the service delivery system included the establishment of 65 Family Relationship Centres (FRCs) throughout Australia, the Family Relationship Advice Line (FRAL) and Family Relationships Online (FRO), funding for new relationship services, and additional funding for existing relationship services. The legislative changes comprised four main elements that:

- require parents to attend family dispute resolution (FDR) before filing a court application, except in certain circumstances, including where there are concerns about family violence and child abuse;
- place increased emphasis on the need for both parents to be involved in their children’s lives after separation through a range of provisions, including the introduction of a presumption in favour of equal shared parental responsibility;
- place greater emphasis on the need to protect children from exposure to family violence and child abuse; and
- introduce legislative support for less adversarial court processes in children’s matters.

In 2006, the Australian Institute of Family Studies (AIFS) was commissioned by the Australian Government Attorney-General’s Department and Department of Families, Housing, Community Services and Indigenous Affairs to undertake an evaluation of the impact of the 2006 changes. The evaluation has involved the collection of data from some 28,000 people involved or potentially involved in the family law system—including parents, grandparents, family relationship service staff, clients of family relationship services, lawyers, court professionals and judicial officers—and the analysis of administrative data and court files. This evaluation provides a more extensive evidence base about the use and operation of the family law system in Australia (and arguably internationally) than has previously been available.

## Findings

### Post-separation relationships

- Among parents who separated after the 2006 changes, 62% reported having a friendly and cooperative relationship with the other parent, 19% a distant relationship, 14% a highly conflictual relationship and 5% a fearful relationship (7% of mothers and 3% of fathers).
- Around two-thirds of these separated mothers and around half of the fathers reported that their child's other parent had emotionally abused them prior to or during separation. One in four mothers and around one in six fathers reported that the other parent had hurt them physically prior to separation. Around one in five parents reported safety concerns associated with ongoing contact with the child's other parent. Safety concerns were strongly associated with a history of physical hurt or emotional abuse.
- Around half of mothers and around one-third of fathers indicated that mental health problems, the misuse of alcohol or drugs, or gambling or other addictions were apparent before the separation.

### Use and effectiveness of new and expanded services

- Overall, pre- and post-separation service use since the 2006 changes increased significantly.
- About half of the parents in non-separated families who had serious relationship problems used services to assist in resolving these problems. There was less use of services to support relationships by couples who had not faced serious problems (about 10%).
- About two-thirds of parents who separated after the 2006 changes had contacted or used family relationship services during or after separation.
- Separated parents who used services were more likely than separated parents who had not used services to have issues that impacted negatively on their relationships—especially family violence, mental health problems or drug and alcohol misuse issues.
- Family dispute resolution services frequently deal with high-conflict complex cases.
- Overall, relationship services clients provided favourable assessments of the services they attended. Pre-separation services were regarded very highly by clients. At the post-separation level, over 70% of FRC and FDR clients said that the service treated everyone fairly (i.e., practitioners did not take sides) and over half said that the services provided them with the help they needed. This can be considered to be a quite high level of satisfaction, given that these cases often involve strong emotions and high levels of conflict, and usually lack easy solutions.
- The considerable increase in the use of relationship-oriented services, both pre- and post-separation, suggests a cultural shift in the way in which problems that affect family relationships are being dealt with.

### Coordination of the family law system and family law pathways

- Progress has been made in moving towards a more coordinated series of services across the family relationship and legal sectors, and FRCs have generally become highly visible gateways to the family law system. Nevertheless, pathways through the system need to be more clearly defined and widely understood. In particular, there is evidence that some families with family violence and/or child abuse issues are on a roundabout between family relationship services, lawyers, courts and state-based child protection and family violence systems.

### Family dispute resolution

- The use of FDR post-reform is 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. Most who did not reach agreement at FDR had sorted out parenting matters a year or so after separation mainly via discussions between themselves.
- There is evidence of fewer post-separation disputes being responded to primarily via the use of legal services and more disputes being responded to primarily via the use of family relationship services. This is further evidence of a cultural shift whereby a greater propor-

tion of post-separation disputes over children are being seen and responded to primarily in relationship terms.

- 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 significant concerns about violence and safety. This suggests the need for continued careful monitoring of screening and intake processes. These cases require sophisticated triage. Recourse to a court-based pathway is not necessarily the option that such families decide to take, for a range of reasons. Decisions about how disputes are resolved in such cases are complex; it cannot be automatically assumed that FDR is inappropriate.
- Protocols between lawyers and FDR practitioners that encourage cooperation are likely to increase the chances of making the best judgments about proceeding or not proceeding with FDR.

## Shared parental responsibility and shared care time

- The philosophy of shared parental responsibility was overwhelmingly supported by parents, legal system professionals and family relationship service professionals. However, many parents did not understand the distinction between shared parental responsibility and shared care time.
- A common misunderstanding is that equal 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 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 sometimes 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. Lawyers were more concerned about this issue than family relationship service professionals.
- More positively, the changes have also encouraged more creativity in making arrangements that involve fathers in children’s everyday routines, as well as special activities in arrangements made either by negotiation or litigation.
- Although only a minority of children had shared care time, the proportion of children with these arrangements has increased. This is part of a longer term trend in Australia and internationally.
- The majority of parents with shared care-time arrangements thought that the arrangements were working well both for parents and the child. While, on average, parents with shared care time had better quality inter-parental relationships, violence and safety concerns were present for some.
- Generally, shared care time did not appear to have a negative impact on the wellbeing of children except where mothers had safety concerns. Irrespective of care-time arrangements, safety concerns had a negative impact on children’s wellbeing. However, the negative impact of mothers’ safety concerns on children’s wellbeing was exacerbated where they experienced shared care-time arrangements.

## Family violence, child abuse, mental health issues and substance misuse

- For a substantial proportion of separated parents, issues relating to violence, safety concerns, mental health, and alcohol and drugs 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 that the 2006 changes have improved the way in which the system is identifying and responding to families where there are concerns about family violence, child abuse and dysfunctional behaviours. In particular, systematic attempts to screen such families in the family relationship services sector and in some parts of the legal sector appear to have improved identification of such issues.
- The link between mothers’ safety concerns and poorer child wellbeing outcomes, especially where there was a shared care-time arrangement, underlines the need for these sectors to have a more explicit focus on identifying the minority of highly vulnerable cases in which

concerns about child or parental safety must take priority in decisions about care-time arrangements.

## The court system and the *SPR Act 2006*

- Total court filings in children's matters have declined, and a pre-reform trend for an increasing proportion of filings being made in the Federal Magistrates Court (FMC) and a corresponding decrease in filings in the Family Court of Australia (FCoA) has continued since the 2006 changes.
- Legal system 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 cases are being heard in the most appropriate forum.
- The FCoA, the FMC and the Family Court of Western Australia (FCoWA) have each adopted a different approach to the implementation of Division 12A of Part VII of the *Family Law Act 1975*. The 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.
- While family consultants and most judges believed that 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. 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.
- The new substantive parenting provisions introduced into Division 12A of Part VII by the *SPR Act 2006* were seen by lawyers and judicial officers to be complex and cumbersome to apply in advice-giving and decision-making practice. 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 was concern that legislation that should be comprehensible to its users—parents—has become more difficult to understand, even for professionals. There was also concern that the complexity of the new provisions, together with the presumption of equal shared parental responsibility, have to some extent diverted attention from the primacy of the best interests of the child, particularly in negotiations over parenting arrangements.

## Conclusion

The evaluation evidence is 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 is 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.

Many separated families are affected by family violence, safety concerns, mental health problems and issues linked to the misuse of addictive substances. These families are the predominant users of post-separation services and the legal sector. Resolution of post-separation issues for such families presents a challenge for the family law system. A key challenge faced by the system is determining for which vulnerable families FDR may be helpful and for which it is not appropriate.

Effective responses to families where complex issues exist entail ensuring they have access to appropriate services to not only resolve their parenting issues but also to deal with the wider issues that affect them. Such responses involve identifying the relevant issues and assisting family members to use the services, advice, and dispute resolution and decision-making processes that best fit their circumstances.

Effective responses should ensure that the parenting arrangements that are developed in families with complex issues are appropriate to children's needs and do not put their short- or long-term wellbeing at risk. The evidence of poorer wellbeing for children where mothers have 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 to make 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 importance of having a range of services that can effectively respond. This requires a family law system that operates in a coordinated, timely and child-focused manner. 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.





In 2006, the Australian Government introduced a series of changes to the family law system. These included the implementation of changes to the *Family Law Act 1975* (Cth) (*FLA 1975*) through the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (*SPR Act 2006*)<sup>1</sup> 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 reforms aimed to “represent generational change in family law” and to bring about “a cultural shift” in the management of parental separation, “away from litigation and towards co-operative parenting”.<sup>2</sup>

The policy objectives of the 2006 reforms were to:

1. help to build strong healthy relationships and prevent separation;
2. encourage greater involvement by both parents in their children’s lives after separation, and also protect children from violence and abuse;
3. help separated parents agree on what is best for their children (rather than litigating), through the provision by governments and other organisations of useful information and advice, and effective dispute resolution services; and
4. establish a highly visible entry point that operates as a doorway to other services and helps families to access these other services.<sup>3</sup>

In 2006, the Attorney-General’s Department (AGD) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)<sup>4</sup> commissioned the Australian Institute of Family Studies (AIFS) to evaluate the impact of the changes. The purpose of the evaluation was to assess the extent to which, by 2009, the reform package has been effective in achieving its policy objectives, where evidence was available to do this. The information collected in the course of the evaluation and associated research will also provide a baseline against which further changes can be compared.

This report presents the findings of the Institute’s evaluation of the impact of these changes some two to three years after the commencement of the “roll-out” of the reforms.

This chapter provides a brief overview of the family law system in Australia and the development of the 2006 family law reforms, a detailed description of the reforms and a discussion of the evaluation methodology adopted.

## 1.1 Background to the 2006 family law reforms

### 1.1.1 The *Every Picture Tells a Story* report

The impetus for the 2006 reforms came from the recommendations of an inquiry by the House of Representatives Standing Committee on Family and Community Affairs (2003; the *Every Picture Tells a Story* report).

<sup>1</sup> As this report is oriented towards 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. However, given that different amendments to the *FLA* are discussed in this report, references are based on the amending Acts where appropriate and relevant.

<sup>2</sup> Family Law Amendment (Shared Parental Responsibility) Bill 2005, Explanatory Memorandum, p. 1.

<sup>3</sup> For further details, see the 2007 Evaluation Framework, reproduced in Appendix B.

<sup>4</sup> At the time, the department was called the Department of Families, Communities and Indigenous Affairs (FaCSIA); however, for simplicity, it is referred to as FaHCSIA throughout this report, except when referring to publications issued under a previous departmental name.

An earlier report by the Family Law Pathways Advisory Group (2001; *Out of the Maze*) made a number of recommendations for changes to the way in which relationship breakdown was dealt with in Australia. The Australian Government's response (Family Law Pathways Taskforce, 2003) led to the then Attorney-General and the then Minister for Children and Youth Affairs to make a reference in June 2003 to the Standing Committee on Family and Community Affairs, requiring it to consider three questions in relation to family law matters (House of Representatives Standing Committee on Family and Community Affairs, 2003). These were:

- (a) given that the best interests of the child are the paramount consideration:
  - (i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted;
  - (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents; and
- (b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children. (p. xvii)

The Standing Committee (2003) undertook a range of public hearings and received 1,716 submissions. In *Every Picture Tells a Story*, it made 29 recommendations. These included recommendations for legislative reforms, systemic change, a re-evaluation of the child support system and the implementation of measures to improve public understanding of the system and provide support for positive parenting and family relationships. The most relevant aspects of the recommendations for this report are summarised in the following sections, together with an explanation of whether or not they were implemented.

## Recommendations for legislative change

The committee did not recommend in favour of a rebuttable presumption of equal time with each parent. Rather, it suggested a range of changes to Part VII of the *FLA 1975*, central among them being the introduction of two presumptions. The first was a presumption *in favour of* equal shared parental responsibility (Rec. 1). The second was a presumption *against* shared parental responsibility in circumstances where there was entrenched conflict, family violence, substance misuse or established child abuse, including sexual abuse (Rec. 2). These recommendations reflected the committee's finding that "violence and abuse issues are of serious concern" (¶ 2.22).

As described in Section 1.2.5, the committee's recommendation in relation to the equal shared parental responsibility presumption was implemented (*SPR Act 2006* s61DA), with the issues of family violence and child abuse being dealt with by the creation of provisions outlining circumstances in which the presumption may be not applied (s61DA(2)) or rebutted (s61DA(4)), together with other provisions in relation to family violence and child abuse.<sup>5</sup>

Further changes reflecting the recommendations of the committee include the recognition in an Objects<sup>6</sup> clause of the need to ensure that parents are given an opportunity for "meaningful involvement in their children's lives" (*SPR Act 2006* s60B(1)(a)), the inclusion of an explicit obligation to consult on major long-term issues where there is an order for shared parental responsibility (Rec. 3, *SPR Act 2006* s65DAC), and changes to the language of "contact" and "residence" (Rec. 4). While the committee favoured the adoption of terminology such as "parenting time", the terminology implemented is based on the "person with whom a child is to live" (*SPR Act 2006* s64B(2)(a)) and "the time a child is to spend with another person" (e.g., *SPR Act 2006* s64B(2)(b)).

<sup>5</sup> These included s60CC(2)(b), which makes "the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence" one of two primary considerations in the list of "matters" a court should consider in determining what is in the child's best interests (s60CA). A similar provision is included in the Objects: s60B(1)(b).

<sup>6</sup> The "Objects and Principles" clause at the start of Part VII, "Children", of the *FLA* (which deals with children's matters) are intended to outline the principles that guide the court's application of specific provisions (*B and B: Family Law Reform Act 1995* (1997) FLC 92-755 ¶ 9.54).

## Recommendations for systemic change

The committee's recommendations in relation to systemic change reflected a number of concerns. Key among them were the need for a system with clearer entry points and pathways so that separated families could more easily access services appropriate for their needs (e.g., Recs 10, 11) and the need for a mechanism whereby allegations of family violence and child abuse could be investigated in a timely manner by suitably qualified professionals (Rec. 16).

A central plank in its vision for a reformulated family law system was the creation of a Families Tribunal (Rec. 12). The role for this non-adversarial, multidisciplinary body was envisaged to be twofold. First, it would have a role in determining parenting disputes (Rec. 12), with only those involving entrenched conflict, family violence, child abuse and substance misuse to be decided by the courts. Second, it would have an investigatory role for allegations of family violence and child abuse (Rec. 16). Under the committee's proposal, participation of legal advocates and experts in decision-making proceedings in this tribunal would be at the sole discretion of the tribunal (Rec. 12), and its decisions would be reviewable by courts only on the grounds of natural justice or *ultra vires* (beyond power) (Rec. 17).

The Families Tribunal proposal was not implemented. Beyond the already existing services and protocols, the 2006 reform package made no provisions for the investigation of allegations of family violence and child abuse in the federal family law context. Nor did the reform package change the jurisdiction of the courts beyond establishing the legal framework for family dispute resolution (FDR) with exceptions.<sup>7</sup> According to the Australian Government's (2005) response to the *Every Picture Tells a Story* report, the Families Tribunal recommendation was not implemented because "it considered] the committee's objectives [could] be better met through the new network of Family Relationship Services and through changes to court processes" (p. 12).

The reform package did, however, establish and provide additional or ongoing support for a number of family relationship and dispute resolution services, described in more detail in Section 1.2. These included the establishment of the FRCs and a national advice line.

In addition, the report recommended a simplification of the structure of courts exercising *FLA* jurisdiction to create one "federal court with family law jurisdiction with an internal structure of magistrates and judges" (Rec. 18). This was not implemented.<sup>8</sup>

## Recommendations concerning child support

In relation to child support, the committee recommended that a re-evaluation of the Child Support Scheme be undertaken by a ministerial taskforce. Largely on the basis of the resulting Ministerial Taskforce on Child Support (2005) report, *In the Best Interests of Children: Reforming the Child Support Scheme*, the Australian Government introduced a new Child Support Scheme, which entailed a new formula for the assessment of child support payments.

The changes to the Child Support Scheme aim to better balance the interests of both parents and be more focused on the needs and costs of children. Compared with the formula used in the initial scheme, the new formula takes greater account of the costs of children, each parent's income and the time they spend caring for children. The recommendations of the taskforce were implemented in three stages, with the final changes coming into full effect in July 2008.

<sup>7</sup> The nature of FDR, the issuing of certificates to permit individuals to proceed to court, and the circumstances in which exceptions to the requirement to attempt FDR are made, are described in detail in Chapter 5.

<sup>8</sup> However, in 2008, the Attorney-General, the Hon. Robert McClelland MP, requested the AGD and Des Semple & Associates to conduct a review of the courts. The report of the review, *Striking the Right Balance: Future Governance Options for Federal Family Law Courts in Australia*, was released in November 2008 (Des Semple & Associates & AGD, 2008; the Semple report). After further consultation, the Government announced in May 2009 that it would substantively implement the recommendations of the Semple report by creating a single Family Court with two divisions (Attorney-General for Australia, 2009). The first division of this court will hear appeals and the more complex first-instance matters and the second division will hear all other first-instance matters.

## 1.2 The family law system after 1 July 2006

This section describes the key changes made to the family law system as a result of the 2006 reforms.<sup>9</sup> From 1 July 2006, the family law system comprised a range of government-funded and private organisations delivering family law services—including relationship assistance and advice, mediation or family dispute resolution (including that offered by legally qualified FDR practitioners), legal advice and court-based services—as well as the courts themselves and the supporting legislation. There was also an education campaign to inform people about the changes and how they might be affected by them.

### 1.2.1 Legislative and service delivery elements of the reforms

The legislative reforms comprised four main elements that:

- require parents to attend family dispute resolution before filing a court application, except in certain circumstances, including where there are concerns about family violence and child abuse (*SPR Act 2006* s60D);
- place increased emphasis on the need for both parents to be involved in their children's lives after separation through a range of provisions, including the introduction of a presumption in favour of equal shared parental responsibility (*SPR Act 2006* s61DA, see also s60B(1)(a), s60CC(2)(a));
- place greater emphasis on the need to protect children from exposure to family violence and child abuse (*SPR Act 2006* s60B(1)(b), s60CC(2)(b)); and
- introduce legislative support for less adversarial court processes in children's matters (*SPR Act 2006* Division 12A of Part VII).

The amendments to the *SPR Act 2006* were accompanied by changes to the service delivery system. In addition to the FRCs, new services included Family Relationships Online (FRO) and the Family Relationships Advice Line (FRAL), a national telephone service.

### 1.2.2 The family relationships sector

The 2006 reforms were partly shaped by the recognition that many of the disputes over children following separation and divorce have their origins in, and are maintained by, family relationship difficulties, especially ongoing relationship issues between former partners. Many of the difficulties were recognised as being essentially relationship problems rather than legal ones. As such, they were seen to be better suited to community-based interventions that address disputes at this level.

The main systemic change implemented as a result of the 2006 reform process was the establishment of 65 FRCs throughout Australia and a national advice line. The first FRCs commenced operation from 1 July 2006 and, with one exception, the full complement was operational by July 2008. These centres aim to provide assistance for families at all relationship stages. They are staffed by independent professionals who, in a welcoming, safe and confidential environment, offer impartial referral, advice and information aimed at strengthening family relationships. They also act as a key service for the provision of FDR. A range of other services have been introduced or expanded as part of the Family Relationship Services Program (FRSP) and the following have been included in the evaluation:

- The **Family Relationship Advice Line (FRAL)** is a national telephone service established in July 2006 to assist families affected by relationship or separation issues. It provides information on family relationship issues and advice on parenting arrangements after separation. It also comprises a legal advice component and a telephone dispute resolution component.
- The **Telephone Dispute Resolution Service (TDRS)** was established in July 2007 and is a component of the Family Relationship Advice Line. It offers dispute resolution options to family members for whom face-to-face meetings are not appropriate or possible due to issues such as distance.

<sup>9</sup> The family law reform package announced as part of the 2005–06 Budget included funding to develop and implement a community education campaign to raise awareness of changes to the law and the reforms to the family law system. The national campaign focused on changes to the law, where additional information could be sought, and promotion of the Family Relationship Advice Line (FRAL) and Family Relationships Online (FRO) website. Advertising began around June 2006 and ceased in late 2007.

- **Family Relationships Online (FRO)** provides information about family relationships and separation and the range of services that can assist them to manage relationship issues, including services that help parents develop appropriate post-separation arrangements for children.
- The range of **family dispute resolution (FDR)** and regional family dispute resolution (RFDR) services was increased. These services are staffed by independent practitioners who assist members of families, including separated families, to manage or resolve some or all of their disputes with each other.
- The number of **Children's Contact Services (CCS)** has nearly doubled across Australia. Children's Contact Services assist children of separated parents to establish and maintain a relationship with their other parent or with family members. The services aim to provide a safe, reliable and neutral place to assist parents with the changeover of children. They also provide supervised visits to assist separated parents to manage contact arrangements, especially where there are concerns about safety.
- The **Parenting Orders Program (POP)** was expanded and works to assist separating families who are in high conflict over parenting arrangements. It uses a variety of child-focused and child-inclusive interventions, working intensively with all members of the family, where possible, to assist parents or carers to understand the effects of their conflict on the children. Family members, including children, receive a range of services as part of this program, such as counselling, FDR and group education programs.
- **Family relationship counselling services** have also been bolstered under the reforms. These services provide a broad range of assistance to family members, including helping people with relationship difficulties to better manage the personal or interpersonal issues relating to children and family during marriage, separation and divorce. The family counselling brief includes assistance in managing feelings of hurt, problems between partners or other persons in the family, new living arrangements, issues relating to the care of children and financial adjustments.
- **Mensline Australia** provides 24-hour counselling, information and referral services for men (and women who are concerned about men they know) with family and relationship concerns. The service is provided over the telephone and through electronic and other media. Under the 2006 changes, Mensline received increased funding to assist men who are contemplating separation or who have separated. Many of these men in turn have concerns about post-separation parenting arrangements.
- **Men and Family Relationships Services (MFRS)** have been funded to provide a broad range of assistance to men and their families. These services—which aim to help men to develop and maintain strong family relationships, or deal with conflict or separation—include family relationship counselling, relationship education and skills training for men, community development and community education activities, and information and referral. All family members, including partners, ex-partners, children, step-children, brothers, sisters, aunts, uncles, cousins and grandparents can use these services.
- **Specialised Family Violence Services (SFVS)** were given additional funding to use a whole-of-family approach to support those who have experienced or witnessed family violence, and to help those who use violent behaviour to change. These services consider the individual needs of each family member and provide assistance by referring clients to complementary services such as counselling, behaviour change groups and information sources.
- **Family Relationship Education and Skills Training (EDST)** has been designed to assist couples and families, including those with children, to develop skills to foster positive, stable relationships with their partner or family. Service providers run groups or courses for a broad audience or tailor programs for certain individuals, such as retirees or step-families. These services have an additional emphasis on access to home education resources, such as the *Keys to Living Together* series, as well as assisting couples to address relationship issues before serious problems develop.

### 1.2.3 The Child Support Agency

The Child Support Agency (CSA) is part of the Australian Government Department of Human Services and its role is to register child support cases, assess the level of child support payable based on the child support formula and collect child support payments. The CSA and FaHCSIA have been responsible for implementing the changes to the Child Support Scheme.



In June 2008, the CSA had almost 1.5 million customers (i.e., paying and receiving parents) and was transferring child support payments for over 1.1 million children. Separated parents can have one of three different types of support arrangements. The first is termed “self-administration”, which involves a “private arrangement” between parents that covers both the amount of child support payment and its transfer. “Private collect” involves cases that are both registered with and assessed by the CSA; however, parents’ payment transfers are made without the involvement of the CSA. “CSA collect” involves the CSA both assessing liability and collecting and transferring child support payments (CSA, 2009, pp. 1, 12).

## 1.2.4 The legal sector

### Court structure

There are three main courts exercising *FLA* jurisdiction: the Family Court of Australia (FCoA), the Federal Magistrates Court (FMC) and the Family Court of Western Australia (FCoWA).<sup>10</sup>

The FCoA was established in 1976 as a specialist family law court. It hears financial and parenting disputes at first instance, as well as determining appeals from its own first-instance decisions, those of the FMC and those of the FCoWA.<sup>11</sup>

The FMC began operation in 2000. Although the bulk of its work involves family law matters (Des Semples & Associates & AGD, 2008, ¶ 17), it also has jurisdiction in a range of federal law areas, including bankruptcy, migration and industrial relations. While it was originally intended that the FMC should hear less complex family law matters than the FCoA, some of the key formal distinctions between the jurisdictions of the two courts were altered over time so that by 2006 there was close to concurrent family law jurisdiction (Des Semples & Associates & AGD, 2008, ¶ 19–20). According to the Semples report, about 79% of family law applications are lodged in the FMC (¶ 18), apart from divorces and consent orders. The FMC handles most divorces,<sup>12</sup> while the FCoA deals with most applications that are initiated as consent orders, with these matters being dealt with by registrars.<sup>13</sup>

Western Australia has its own Family Court, which is invested with federal family law jurisdiction under s41 of the *FLA*. Accordingly, family law jurisdiction in WA is exercised mainly by the FCoWA, which has magistrates and judges hearing matters. The content of the substantive law that is applied in Western Australia to post-separation parenting arrangements—the *FLA* in relation to the children of married and formerly married couples and the *Family Court Act 1997* (WA) in relation to ex-nuptial children<sup>14</sup>—is no different to that which applies in the rest of Australia.<sup>15</sup>

### Legal services

The provision of legal services in the family law area is undertaken by a wide range of legal practitioners in private and publicly funded practice. Family lawyers in private practice operate either as solicitors (who provide advice and may engage in negotiation and litigation on behalf of the client) and barristers (who also provide advice and negotiation support, but specialise in court-based advocacy services).<sup>16</sup>

Other important sources of family law services are those provided by publicly funded legal aid commissions and community legal centres (CLCs). They receive state and federal funding to

10 Jurisdiction in a limited range of family law matters is also exercised by state and territory courts of summary jurisdiction: *FLA* s39(5) and (9). State-based courts also have jurisdiction in financial and property disputes between separated de facto couples, although these matters became the subject of federal regulation on 1 March 2009 with the implementation of the *Family Law Amendment (De Facto Financial and Other Measures) Act 2008* (Cth). For an account of the constitutional context of family law jurisdiction, see Fehlberg, Behrens, and Kaspiew (2008, Chapter 2).

11 *FLA* ss94, 94A, 96. Under s96(1) of the *FLA*, an appeal lies from a court of summary jurisdiction to either the FCoA or the Supreme Court of the relevant state or territory.

12 Family Court of Australia, Practice Direction No. 6 of 2003.

13 Family Law Rules 2004 Rule 10.15(1A), Rule 18.05(1).

14 Appeal from decisions where powers are being exercised under the state legislation are heard by the Western Australian Court of Appeal: *Family Court Act 1997* (WA) s210A.

15 However, in some areas, state laws give the court powers that are not available to family court decision-makers in other jurisdictions: see *Family Court Act 1997* (WA) s36.

16 This division is only relevant to states that have a split profession.

provide services in a range of areas, including family law. The programs operated by these commissions vary, but they typically encompass free advice-giving services over the telephone or face-to-face clinics, duty lawyer services based in courts, legally assisted mediation services and casework services where a matter is deemed suitable under legal aid guidelines. Assessment of suitability takes into account both the financial circumstances of the applicant and the nature of the matter for which legal assistance is sought. In some instances, casework services are provided by in-house legal aid commission lawyers and in other instances legal aid funds private practitioners to do the work.

In most cases (apart from situations in which parents are ordered to meet the costs by the court), legal aid funds the services of independent children's lawyers (ICLs), who have specialist accreditation auspiced by legal aid.<sup>17</sup> Some ICL practitioners are in-house, while others have ICL accreditation but are based in private practice.

Community legal centres receive government funding to provide a range of free legal services. These centres are located in each state and territory and are based in capital cities and regional areas. Some operate specialist services—for example in the area of tenancy law—while others operate on a more general basis. Specialist CLCs that provide advice exclusively to women operate in all states. These are funded in part to provide a service to women who may be eligible to receive advice and other services from legal aid commissions but are precluded from doing so. This occurs in instances where an ex-partner has obtained legal aid assistance (even if just obtaining telephone advice); ethical rules prevent legal services from being involved with both parties in a dispute (i.e., when they have a conflict of interest), which means the other party may not use the service, although both parties may still apply for a grant of legal aid.

CLC services may also provide free telephone advice, free legal advice in face-to-face clinics, duty lawyer services in courts, and casework services where clients meet criteria under the financial guidelines and those applied by the centre.

### 1.2.5 The legislative framework

In broad terms, the *SPR Act 2006* made changes in three key areas. First, it laid the legislative foundation for FDR with exceptions (*SPR Act 2006* s60I). Second, it changed the substantive framework governing parenting arrangements in Part VII of the *FLA*. Third, it introduced in Division 12A of Part VII a series of principles, together with duties and powers for judicial officers, for conducting child-related proceedings. The following sections provide an overview of the key elements of the changes in each of these areas.

#### Family dispute resolution with exceptions

The *SPR Act 2006* enshrined in statute the requirement for most separated parents in dispute over parenting arrangements to attend FDR. Previously, requirements for parties to attempt to resolve most disputes outside of court were imposed by the Family Court Rules.<sup>18</sup> Under s60I of the *SPR Act 2006*, parties are required to attend FDR to resolve disagreements over parenting arrangements prior to lodging an application with a court. Exceptions to this requirement include:

- applications for orders that are to be made with the consent of the parties (s60I(9)(a)(i));
- applications for orders in proceedings in which a certificate issued by an FDR practitioner has already been filed (r12CAB of the *Family Law Regulations 1984* (Cth)); and
- circumstances in which there are reasonable grounds to believe that:
  - there has been child abuse by one of the parties to the proceedings (s60I(9)(b)(i));
  - there would be a risk of abuse to the child if there was a delay in an application being made to the court (s60I(9)(b)(ii));
  - there has been family violence by one of the parties to the proceedings (s60I(9)(b)(iii));
  - there is a risk of family violence by one of the parties to the proceedings (s60I(9)(b)(iv));
 and

<sup>17</sup> These lawyers are appointed by the court in certain cases where it is determined that the child's interests should have independent representation. Their role is spelt out in *FLA* Division 10 of Part VII.

<sup>18</sup> The Family Law Rules 2004 R1.03, R1.05. Rule 1.05 of the Federal Magistrates Court Rules 2001 provides that in a particular case the FMC may apply the Family Law Rules if it considers its own to be insufficient, and R10 of the Federal Magistrates Court Rules allows the FMC to make orders in relation to primary dispute resolution at the first court date.



- the application is made in circumstances of urgency (s60I(9)(d)).

In these circumstances, the parties may lodge an application in court. However, judicial officers also retain the discretion to refer such parties to FDR (s60I(10)). Further, there is an obligation on courts to ensure such parties have obtained information about how they may be assisted by FDR, even where any of the above mentioned issues are relevant (s60J).

If attempts to reach an agreement in FDR are unsuccessful or a matter is judged at the outset not to be suitable for mediation (see s60I(8)), then an FDR practitioner may issue a certificate to their clients that will then enable them to access the court system. There are five grounds for issuing such certificates:

- one party attended FDR but the other party did not (s60I(8)(a));
- a matter was considered inappropriate for FDR by the practitioner (s60I(8)(aa));
- FDR was attended by both parties and a genuine effort was made to resolve the dispute (s60I(8)(b));
- the parties attended FDR but one party or both parties did not make a genuine effort to resolve the dispute (s60I(8)(c)); and
- the parties began FDR but the FDR practitioner became aware it would be inappropriate to continue FDR (s60I(8)(d)). This ground was added in 2009 and was inserted by Item 1 of Schedule 4 to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* (Cth).

The requirement to attend FDR was phased in over a two-year period. From 1 July 2007, new applicants into the court system were required to attend FDR unless they satisfied one of the exceptions, including establishment of circumstances of urgency. This requirement applied from 1 July 2008 to all litigants, even if they had previous court orders.

## Parenting arrangements

The *SPR Act 2006* changed the substantive law applicable to the resolution of parenting disputes. Two aspects of these changes are particularly significant. First, there is strengthened legislative support for shared parenting after separation with the introduction of a presumption in favour of equal shared parental responsibility (s61DAA). Second, greater emphasis was given to the need to protect children from harm from exposure to abuse, family violence and neglect (e.g., s60B(1)(b), s60CC(2)(b)). The provisions reflecting these aspects are described below, after a brief overview of key aspects of the legislative framework that were applicable prior to 1 July 2006.

### The *Family Law Reform Act 1995* (Cth)

The *SPR Act 2006* reflects the second generation of shared parenting reforms enacted by Australian legislature. The first-generation reforms were implemented in 1996, through the *Family Law Reform Act 1995* (Cth) (*Reform Act 1995*). These amendments were aimed at breaking down “ownership notions” and counteracting the popular belief that “the child is a possession of the parent who is granted custody”.<sup>19</sup> The 1995 changes had two key aspects.

First, the concept of “parental responsibility” was introduced, which was automatically vested in each parent, regardless of marital status or whether the parent had ever lived with the child (s61C). This referred to “all the duties, powers, responsibilities and authority which by law, parents have in relation to children” (s61B). Under the previous regime, parental responsibility was divided into (a) guardianship (decision-making power in relation to long-term issues), which was unrelated to whom the child lived with; and (b) day-to-day decision-making authority, which accompanied orders about whom the child lived with. Thus, the *Reform Act 1995* was designed to break the nexus between living arrangements and parental responsibility and imposed an obligation on parents, regardless of marital or relationship status, to “share duties and responsibilities concerning the care, welfare and development of their children” (s60B(2)(c)).

The second key area of change was in relation to the way arrangements for children to spend time with their parents were described and made under the legislation. In keeping with the goal of breaking down notions of ownership, the *Reform Act 1995* changed the terminology

<sup>19</sup> Explanatory Memorandum, *Family Law Reform Act 1994*, General Outline, ¶ 3.

from “custody” to “residence” (s64B(3)), and “access” to “contact” (s64B(4)). Further, the child’s “right to know and be cared for by both their parents” (s60B(2)(a)) and their “right to contact on a regular basis with both their parents and other people” significant to their care welfare and development (s60B(2)(b)) were inserted through a new Objects provisions in the Act. These changes reflected Australia’s obligations as a signatory to the UN Convention on the Rights of Child (Office of the United Nations High Commissioner for Human Rights, 1990).

Notwithstanding the changes to the legal formulation of parental responsibility, residence and contact, the guiding principle under the *Reform Act 1995* remained focused on the interests of the child, and the wording of the “paramountcy principle”<sup>20</sup> was changed from “welfare” to “best interests” (s65E). The factual issues relevant to determining children’s best interests were set out in a statutory list (s68F), which included: the wishes of the child, the nature of the relationships in the family, the likely effects of changes in the child’s circumstances, the practical difficulty and expense of a child having contact with a parent, parental capacity and parents’ attitudes to the child, and the need to protect the child from harm and family violence.

### *The Shared Parental Responsibility Act 2006 (Cth)*

The 2006 amendments to the *FLA* also focused on changing the legislative provisions governing parental responsibility and time arrangements, while retaining the child’s best interests as the paramount consideration in parenting matters (s60CA). The intention was to “increase the visibility” of this provision (Explanatory Memorandum, ¶ 44). Further changes were introduced to ensure that greater emphasis was placed on protecting children from harm (Explanatory Memorandum, ¶ 35, 36, 48, 49).

The Objects provisions were expanded, with the addition of an Object providing for children to have the “meaningful involvement” of both parents in their lives (s60B(1)(a)) and a provision enunciating children’s right to be protected from harm through exposure to abuse, violence or neglect (s60B(1)(b)). These two aims were restated as the two “primary considerations” (s60CC(2)) in the reformulated list of factual matters relevant to best interests determinations, which now has a partially hierarchical structure that includes a series of “additional considerations” (s60CC(3)), expanding what was the s68F welfare checklist in the previous framework.

In terms of parental responsibility, the new framework introduced a presumption in favour of “equal shared parental responsibility” (s61DA), with a nexus between the application of the presumption and considerations in relation to time arrangements (s65DAA). The presumption may be rebutted by evidence satisfying a court that it would not be in a child’s best interests for both parents to have equal shared parental responsibility (s61DA(4)), and it is not applicable where there are reasonable grounds to believe a child’s parent, or another person in the parent’s household, has engaged in child abuse or family violence (s61DA(2)). Where the presumption is applied and orders for shared parental responsibility are made, the courts are obliged to consider making orders for children to spend equal or substantial and significant time with each parent (s65DAA). They are required to consider whether such arrangements are “reasonably practicable” (s65DAA(1)(b)) and in the child’s best interests (s65DAA(1)(a)). The insertion of these provisions reflected the Government’s intention to emphasise the importance of a child having a meaningful relationship with both parents and having both parents exercising decision-making responsibility for children (Explanatory Memorandum, ¶ 120).

Also pertinent to the strengthened emphasis on shared parenting in the post-1 July 2006 Part VII of the *FLA* are:

- a shift away from the notion of a “right to contact” (*Reform Act 1995* s60B(2)(b)) to the concept of “meaningful involvement” (*SPR Act 2006* s60B(1)(a));
- a child “spending time” (*SPR Act 2006*, e.g., s60B(2)(b)) with each parent rather than one parent being a “residence” parent (*Reform Act 1995* s64B(3)) and the other having “contact” (*Reform Act 1995* s64B(4)); and
- the explicitly stated obligation for parents to make decisions jointly (*SPR Act 2006* s65DAC(2)) and to consult on major long-term issues in relation to a child (*SPR Act 2006* s65DAC(3)) where a court order provides for two or more persons to share parental responsibility.

<sup>20</sup> Prior to the *Reform Act 1995* (Cth), the paramount, or most important, principle in decision-making was the “welfare of the child” (*FLA* s64(1)(a)).

## Protecting children from family violence and child abuse

As noted earlier, the need to protect children from family violence and child abuse was given increased emphasis in the new scheme through recognition in the Objects (s60B(1)(b)) and in the primary considerations of the *SPR Act 2006* (s60CC(2)). Importantly, matters in which there are reasonable grounds to believe that there has been family violence and child abuse are exceptions to two key aspects of the legislation: the requirement to attend FDR prior to filing a court application (s60I(9)(b)) and the application of the equal shared parental responsibility presumption (s61DA(2)) (as noted above). However, courts still retain discretion to refer parties in such circumstances to FDR (s60I(10)) and may make orders for shared parental responsibility where the presumption is not applied or rebutted (*Goode and Goode* (2006) FamCA 1346).

Provisions further underpinning the increased emphasis on protection from exposure to family violence and child abuse include:

- an obligation on the court to take prompt action where documents are filed alleging child abuse or family violence in connection with an application under Part VII of the *SPR Act 2006* (s60K); and
- a power for the court to make orders for state and territory agencies (i.e., child protection agencies) to provide information about notifications, assessments and reports relevant to child abuse or exposure to family violence in relation to a child to whom *FLA* proceedings relate (s69ZW).

Other new provisions relevant to the issue of family violence and child abuse include s117AB, which obligates a court to make a costs order where a party is found to have “knowingly made false allegations or statements” in proceedings under the *FLA*. While this provision does not specifically refer to family violence and abuse, its enactment was intended to address concerns that allegations of family violence may be “easily made” in family law proceedings (Explanatory Memorandums ¶ 215).

## Conducting child-related proceedings

Another significant aspect of the 2006 legislative reforms was the implementation of a series of provisions designed to ensure that child-related court proceedings are conducted in a more child-focused and less adversarial way (Explanatory Memorandum, ¶ 327). These changes were based on the FCoA’s Children’s Cases Program, which piloted a set of case management practices designed to reduce adversarialism and increase child focus in court proceedings involving children (Harrison, 2007).

Division 12A of Part VII of the *SPR Act 2006* articulates in legislation the duties and powers of the court—and the principles that guide the application of these duties and powers—to manage proceedings relating to parenting orders. Key principles include:

- the court must consider the needs of the child and the impact of proceedings upon them in determining the conduct of the proceedings (s69ZN(3));
- the court is to actively direct, control and manage the proceedings (s69ZN(4));
- the proceedings should be conducted in a way that safeguards the child against family violence, child abuse and neglect, and the parties to the proceedings against family violence (s69ZN(5));
- the proceedings are to be conducted in a way that promotes cooperative and child-focused parenting by the parties (s69ZN(6)); and
- proceedings are to be conducted without undue delay and with as little formality and legal technicality as possible (s69ZN(7)).

The duties articulated in Division 12A include:

- deciding which issues may be disposed of summarily and which require full investigation (s69ZQ(1)(a));
- deciding the order in which issues should be decided (s69ZQ(1)(b)); and
- giving directions and making orders regarding procedural steps (s69ZQ(1)(c)), subject to deciding whether a step is justified on the basis of likely benefits considered against the cost of taking it (s69ZQ(1)(d)).

Powers set out in Division 12A include the ability, at any stage after a matter has commenced and prior to final determination, to:

- make a finding of fact (s69ZR(1)(a));
- determine a matter arising from the proceedings (s69ZR(1)(b)); and
- make an order in relation to an issue arising out of the proceedings (s69ZR(1)(c)).

### 1.2.6 The influence of law on negotiated and litigated outcomes

The impact of the changes to the family law system needs to be understood in the context of broader social trends. Since the establishment of the *FLA* in 1975, there have been significant social changes that have interacted with the family law system. As outlined in Appendix A, key changes include:

- an increased level of paid employment of women, although the employment rate of mothers remains much lower than that of fathers, and mothers are much more likely than fathers to be employed part-time;
- some decrease in the rate of paid employment of men;
- in recent decades, an increase in the amount of time that fathers spend with their children, although fathers continue to spend much less time with children than do mothers;
- an increase in the proportion of children growing up in single-parent families;
- increasing awareness of issues of violence, child abuse and other dysfunctional<sup>21</sup> behaviours in families generally, and the impact these have on family law processes;
- an increased emphasis on child development and the impact that poorly handled separation processes can have on this aspect of childhood; and
- increasing awareness of the importance of fathers in their children's lives.

The discussion in Appendix A, on family law and social change, and the preceding discussion of the 2006 amendments to the *FLA*, raise the issue of how legislation influences outcomes reached by negotiation and litigation. The relationship between these two issues in any area of law is neither simple nor uni-directional. This is especially so in an area such as family law in the contemporary Australian environment, for several reasons. First, only a very small minority of matters ever proceed to judicial determination. Most are settled either without any engagement with legal or relationship services, or after legal advice has been obtained and perhaps legal assistance with negotiation has occurred, or after legal action has been initiated but settlement negotiations have taken place (see Chapter 4). Second, in the current system there are numerous sources of legal and non-legal advice and assistance, with FRCs being a new initiative in the family law landscape. These services and the professionals who work in them have an important role to play in forming parents' understanding of their options. Third, the norms established by the legal framework (i.e., the "best interests" criteria in relation to children) are open-ended and the application of legal principles to the facts of any particular case are influenced by the way in which judicial discretion is exercised in the small minority of cases that are decided by judges.<sup>22</sup>

In such cases, the legislative framework and the principles established in case law have a direct influence on judicially determined outcomes, although the interpretation of the law can vary between decision-makers and courts (see Dewar & Parker, 1999; Parkinson, 2007). More complex is the question of what influence the legislative framework has on outcomes that are not litigated but are arrived at in private negotiations. The *SPR Act 2006* imposes a range of obligations on judges, legal practitioners and FDR practitioners to act in ways consistent with the aims

<sup>21</sup> The Encarta World English Dictionary defines "dysfunctional" as: (a) failing to perform the function that is normally expected; (b) unable to function emotionally as a social unit; and (c) unable to function normally as a result of disease or impairment. In this evaluation, the term refers to behaviours that are outside what might normally be expected and that have the potential to negatively affect one or more family members. Use of the term makes no assumptions with respect to aetiology. As the definition suggests, the behaviour may have its origins in a mental health problem or another impairment, in difficulties with social relationships, or in causes that are unknown.

<sup>22</sup> The 2006 amendments reduced the scope of judicial discretion though the introduction of the presumption of equal shared parental responsibility (s65DAA). However, as noted, the child's "best interests" remain the overriding criterion (s60CA). Eminent commentators offer varying approaches to the potential interpretation of the legislation: see Chisholm (2007) and Parkinson (2007).

of the Act. For example, courts have an obligation to consider ordering parents to attend FDR, even when one of the exceptions applies to their situation (s60I(10)). Advisers—defined as legal practitioners, family counsellors, FDR practitioners or family consultants (s63DA(5))—have an obligation to inform people they could consider entering into a parenting plan and making arrangements for children to spend equal or substantial and significant time with each parent (s63DA). Moreover, legal practitioners have a very clear obligation to explain to their clients the nature of the law and its applicability to their particular situation. However, practitioners’ understandings of the law vary and the extent to which such advice or other principles in legislation and case law influence non-litigated parenting agreements is uncertain.

There is a body of research and theory that has engaged with this question in the past several decades, with a range of studies and articles having been published in Australia and internationally (e.g., (Batagol & Brown, in press; Byas, 2004; Dewar & Parker, 1999; Ingleby, 1992; Mnookin, 1979; Sarat & Felstiner, 1995; Trinder, 2003). These sources suggest that, apart from the law, a wide range of factors influence arrangements made by negotiation, including the nature and quality of legal advice and negotiating assistance, a desire to avoid the transaction costs—financial and emotional—that accompany litigation, and the social, cultural and economic backgrounds of the parties involved in the negotiations. A further important influence is posited to be the endowment of power, from various sources, including law, that each party brings to negotiations (Mnookin, 1979). Other studies suggest that for some parents, legal principles are irrelevant (e.g., Byas, 2004; Trinder, 2003).

An influential theory in the area of family law, emanating from the work of Mnookin and Kornhauser (1979), has posited that individuals bargain “in the shadow of the law”—that is, that the legal rules applicable to a particular dispute influence outcomes in private negotiations, along with other factors, including individuals’ values. This theory suggests that in privately resolved disputes litigated outcomes establish benchmarks that inform those involved in negotiations about the reasonable parameters for settlement.

Empirical research has demonstrated that links between the law and the outcomes negotiated in its shadow are complex and less than clear. In the specific context of Australian family law and the predecessor of the *SPR Act 2006* (the *Reform Act 1995*), Dewar and Parker (1999) suggested the aptness of the shadow metaphor was complicated by the fact that different understandings of “what the law says” were being applied in different practice contexts. On the basis of research examining the impact of the *Reform Act 1995*, Dewar and Parker found that “understandings and interpretations of the new provisions were fragmented between and even within the different professional interpretive communities [e.g., court counsellors, lawyers, judges, registrars]” (p. 113). Moreover, they argued that even if such a shadow existed, it was mediated by too many other factors (such as legal aid policies, court processes or personal professional styles) to have a decisive effect.

In summary, this discussion indicates that the link between legislation and human behaviour is complex, with a range of factors potentially influencing whether parties reach arrangements through discussion, negotiation or litigation. The large-scale quantitative data collections and smaller scale qualitative data collections on which this present evaluation is based provide a broader and more detailed picture of the parenting arrangements that have been made—with and without legal assistance, and in and outside of courts—than has ever been available previously.

### 1.3 Evaluation methodology

As outlined earlier, the purpose of this evaluation is to examine the extent to which the legislative and service sector changes brought about by the 2006 family law reforms were fulfilling the four core policy objectives of the reform package. This section provides an overview of the approach adopted. More detailed descriptions of the methodology employed for each component of the evaluation, including questionnaires and data collection instruments, are provided in Appendix C.



### 1.3.1 Key questions guiding the evaluation

The four policy objectives of the reforms (see page 1) encompassed a range of more specific goals, so a series of questions were developed against which the success or otherwise of the reforms might be evaluated.<sup>23</sup> The questions that were used to guide the evaluation are:

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 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 *SPR Act 2006* working in practice?
9. Have the reforms had any unintended consequences—positive or negative?

### 1.3.2 The evaluation design and data sources

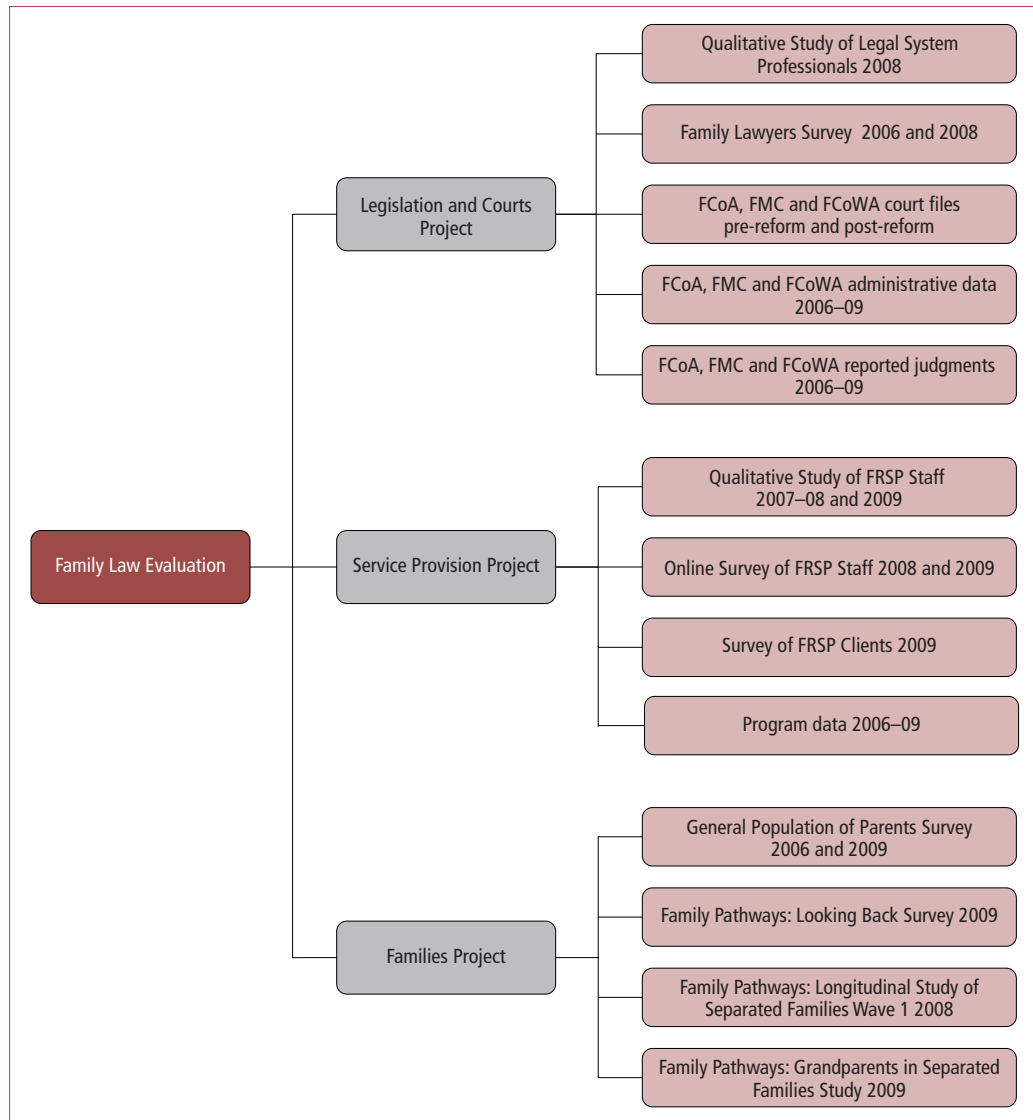
In recognition of the wide-ranging nature of the objectives, and in order to achieve a rigorous evaluation design, the evaluation methodology entailed a multidisciplinary approach utilising a broad range of data sources generated through a variety of collection methods. Information was collected from a wide range of people and services involved in the family law system. The evaluation design was based on three main projects, each focusing on a particular aspect of the reforms. The three projects were:

- the **Legislation and Courts Project (LCP)**, which examined the implementation of the legislative reforms;
- the **Service Provision Project (SPP)**, which examined changes to the service delivery system; and
- the **Families Project**, which examined, in the main, experiences of separated families.

Through the studies in these projects, the impact of the reforms was examined from a number of angles. The evaluation was designed so that, as far as possible, there were multiple sources of information on key evaluation questions. This form of “triangulation” allows conclusions to be drawn with more confidence because, wherever possible, no single source of evidence is relied upon exclusively. Some of the studies also provide scope for pre- and post-reform comparison.

Each of the three projects was based on a variety of data sources, including a large-scale longitudinal study of 10,000 separated parents, two quantitative studies based on general samples of parents, analysis of data from pre- and post-reform court files, surveys with staff and clients of services funded under the FRSP and several qualitative studies looking at the experiences of grandparents and legal system and service sector professionals (see Figure 1.1). In addition, administrative data from family relationship services and the courts were used in the evaluation. Specifically, information was obtained from:

<sup>23</sup> In the 2007 Evaluation Framework (see Appendix B), it was noted that it may not be possible to answer some of the questions and that some changes (if they occur) may take much longer than others to surface, with some being “generational”. In response to new issues that have emerged during the course of the evaluation, some refinements have been made to the original evaluation questions. The questions set out in this section are a distillation of the original research questions and are presented in this way at this point for conciseness.



**Figure 1.1** Data collected in the course of the evaluation

- parents who had separated prior to the 2006 reforms (baseline or pre-reform data)—2,005 parents;
- parents who separated after the 2006 reforms—10,002 parents;
- nationally representative surveys (pre-reform and post-reform) of all parents (including separated parents)—5,000 parents in each survey;
- grandparents who had an adult child who had separated—562 grandparents;
- clients of services funded as part of the family law system—3,251 clients;
- relationship service providers, including managers and staff employed in different types of relationship services—1,668 service providers;
- surveys of family lawyers (pre- and post-reform)—367 lawyers pre-reform and 319 lawyers post-reform;
- surveys of judicial officers, registrars, lawyers and family consultants—184 legal professionals;
- administrative program data related to government-funded family relationship services;
- administrative data from the FCoA, the FMC and the FCoWA;
- published judgments; and
- court files from the FCoA, the FMC and the FCoWA (pre- and post reform)—739 pre-reform and 985 post-reform, a total of 1,724 court files.

Input about the impact of the reforms on parents and children was also sought from a range of groups representing parents in the family law system.<sup>24</sup> The information provided by these groups provided an important way of checking whether there were issues that were identified by the representative groups that needed to be explicitly considered in the evaluation using the survey and administrative data.

### 1.3.3 Evaluation challenges and issues

Many challenges present themselves in any evaluation of the impact of a policy initiative. Determining causality and the associated issue of identifying competing explanations for any changes are critical issues. For instance, social forces other than those set in motion by a single policy initiative may help explain outcomes. The evolving social forces relevant to the present evaluation include trends in relationships and in the responsibilities assumed by fathers and mothers, along with increasing social awareness of and concern about family violence (see Appendix A).

Furthermore, the evaluation focuses on the first three years of the operation of the reforms, a period in which some key aspects of the changes were still being implemented. Some changes are likely to evolve gradually and the pace of some may increase or decrease in response to changing social attitudes. Further, some social changes may be “generational”.

This evaluation provides a comprehensive means of assessing the extent to which change is occurring in a range of important areas, including: the advice that legal practitioners give to parents; the way in which relationship service practitioners go about their role; the extent to which clients believe that services have provided appropriate assistance; the pathways that parents use in arriving at their parenting arrangements; the nature, workability, stability and safety of different parenting arrangements; the quality of the relationship between separated parents; and, most importantly, the wellbeing of children whose parents separate.

As indicated above, the evaluation itself was being conducted in an evolving operational and social context. Operational changes include the staged implementation of the following key aspects of the reforms:

- FDR with exceptions (s60I) became fully applicable to all applications relating to family law children’s matters on 1 July 2008.
- Court processes were in a state of flux at 1 July 2006, with a backlog of pre-reform matters being cleared from court lists immediately prior to the periods in which some data collection (interviews and focus groups with family law system professionals) was taking place. Further, the docket system (whereby each judge is responsible for the case management of their own cases) was being implemented in the FCoA as the LCP data collection was proceeding.
- The service delivery roll-out was completed in 2008, meaning that the full complement of FRCs only became operative on 1 July 2008.<sup>25</sup>

The evaluation has attempted to take account of these factors. Indeed, the two qualitative studies of managers and staff in relationship services have capitalised on this timing issue by examining the adjustments that were being implemented across the roll-out period.

The next sections provide a brief outline of each of the three evaluation projects and their respective components. Detailed information about each project and the methodologies used are available in Appendix B.

### 1.3.4 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 ex-

<sup>24</sup> The groups were: Dads in Distress Inc., Lone Fathers Association of Australia, National Council of Single Mothers and Their Children Inc. (NCSMC Inc.), The Shared Parenting Council of Australia, Sole Parents’ Union, and Women’s Legal Service Australia.

<sup>25</sup> One service commenced operation later in 2008 due to accommodation issues.



amine what, if any, unintended consequences may have arisen as a result of the changes. The LCP encompassed five components:

- the Qualitative Study of Legal System Professionals (QSLSP) 2008;
- the Family Lawyers Survey (FLS) 2006 and 2008;
- analysis of FCoA, FMC and FCoWA judgments, 2006–09;
- analysis of FCoA, FMC and FCoWA court files, pre- and post-1 July 2006; and
- analysis of FCoA, FMC and FCoWA administrative data, 2004–05 to 2007–08.

## Qualitative Study of Legal System Professionals

The QSLSP 2008 conducted interviews and focus groups with family law system professionals in order to gather data on their experience 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.<sup>26</sup> The discussions focused primarily on the impact of the changes made to Part VII of the *FLA* by the *SPR Act 2006*. The data obtained in this study provide valuable insights into how the law is being applied in advice-giving practices and litigation and what impact it has had on the bargaining dynamics in family law more generally.

## The Family Lawyers Surveys

The purpose of the FLS 2006<sup>27</sup> 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.

Together, the two surveys examined such issues as:

- the level of support among family lawyers for the underlying philosophical concepts in the legislation;
- systemic matters, including referral patterns and views of some aspects of the service delivery system (including FRCs and FDR);
- the operation of key aspects of the substantive provisions governing parenting arrangements in the *SPR Act*, including the impact of the changes on advice-giving practices;
- the level of understanding parents and system professionals have of the application of the presumption of shared parental responsibility and the operation of the exceptions;
- the adequacy with which the system handles family violence and child abuse; and
- the extent to which the child support reforms have affected negotiations over parenting arrangements.

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.

## FCoA, FMC and FCoWA judgments

The aim of this component was to examine how key aspects of the *SPR Act 2006* were interpreted in judgments. A primary focus was tracking and analysing key full bench appeal judgments, as these represent binding interpretations of the law. The development of appellate jurisprudence is contingent on a number of practical eventualities. Primarily, individual litigants

<sup>26</sup> Quotes in this report are attributed to “judicial officers” and may refer to judicial officers from any of these three courts except where specific court practices are being discussed (Chapter 13 and Chapter 14).

<sup>27</sup> This study was designed and implemented by Bruce Smyth, Lawrie Moloney and Richard Chisholm.

must be prepared to mount and fund an appeal. Such decisions may be influenced by a range of factors, including whether resources—both financial and personal—are available to the individual litigant, and the advice given by their legal advisers as to what their chances of success may be. Further, the way an appeal is framed and argued influences, to a significant extent, the way in which an appeal bench frames its decision. In the area of family law, first-instance judgments are heavily dependent on the way in which a court exercises its discretion in making orders reflective of factual findings and the way in which orders may be framed to meet the best-interests criteria. The grounds for interfering with a first-instance judgment on an appellate basis are comparatively narrow. For these reasons, the development of appellate jurisprudence occurs on an ad hoc basis and this is reflected in the comparatively small number of full bench judgments on significant points of law relevant to this evaluation that are reported here.

Apart from full bench appeal judgments, there were two other categories of judgments relevant to this component. First, appeals from the FMC heard by a single judge of the FCoA appeal bench were analysed to shed further light on how key aspects of the legislation are being interpreted. Second, a range of first-instance judgments from the FCoA, the FMC and the FCoWA were analysed to assess how the legislation was being applied in judicial decision-making and to illustrate the way in which key legislative provisions are being applied in practice.

### FCoA, FMC and FCoWA court files

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.

Information collected in both Part 1 and Part 2 data collections included:

- orders that were made concerning parental responsibility and the allocation of the child's time between parents; and
- basic demographic information about the applicants, respondents and children: age, gender, occupation, region and country of birth.

The data collection for Part 1 was more extensive in order to gain detailed insight into how the legislative framework was being applied. The additional information included:

- the nature of the orders sought by the applicant/respondent for time arrangements and parental responsibility;
- the extent to which each party's application was reflected in the orders made;
- the nature of any factual issues, including those concerning family violence and child abuse, that were raised in proceedings and the evidence that was used to support them;
- similarities and differences in the outcomes and procedural profiles of the matters handled in the three courts;
- the application of the courts' costs jurisdiction;
- whether an ICL was appointed; and
- whether a family report was done.

### FCoA, FMC and FCoWA administrative data

The purpose of this component was to obtain and analyse administrative data held by courts to inform the evaluation's analysis of broader trends in the use of court services in the context of the 2006 reforms. The FCoA, the FMC and the FCoWA supplied a range of reports extracted from their CaseTrack database covering each financial year from 2004–05 to 2007–08. These reports included pre- and post-reform data concerning the following issues:

- applications for final orders (categorised by children only, property and children, and property only cases);
- application for consent orders (categorised by children only, property and children, and property only cases—data available for FCoA only);

- orders for ICLs;
- matters involving self-represented litigants (data available for FCoA and FMC only);
- applications for enforcement orders;
- lodged Notices of Child Abuse and Family Violence (Form 4); and
- number of Magellan Cases started (financial year 2007–08).<sup>28</sup>

### 1.3.5 The Service Provision Project

This part of the evaluation provides information on the operation and effectiveness of the delivery of family relationship services, including 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 (a component of FRAL).

The components of the Service Provision Project are: 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 CEOs, 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 2009 study involved interviews with managers and staff<sup>29</sup> from all of these services, with the addition of staff from a further 10 FRCs, a further 10 post-separation services and the Telephone Dispute Resolution Service.

The Qualitative Study of FRSP Staff 2007–08 collected data relating to the following issues:

- the purpose of the service, target population and the type of environment in which it operates;
- the extent to which the service has been implemented as planned and reasons for any deviation from plans;
- the extent to which the service is being used by various sub-groups in the target population;
- the extent to which cooperative links have been made with other service providers and/or programs; and
- service providers' views of the aims of the service, its operation and its overall effectiveness.

The Qualitative Study of FRSP Staff 2007–08 focused, to a considerable extent, on experiences connected with the initial roll-out of services. The Qualitative Study of FRSP Staff 2009 was more

<sup>28</sup> Magellan is the case management system used in the FCoA for matters involving allegations of serious sexual or physical abuse.

<sup>29</sup> The CEOs of organisations responsible for the management of individual services were not specifically sampled for the second wave of the qualitative study; however, they were welcome to take part if they wished.

focused on assessing ongoing issues that emerged from the 2007–08 interviews. These issues included:

- family violence and child protection/child abuse and neglect;
- responses to the introduction of “shared parental responsibility”;
- responses to the requirement to attend dispute resolution unless certain exceptions apply;
- appropriateness of referrals into the services;
- relationships with legal services and courts; and
- community networking.

### Online Survey of FRSP Staff

The principal aim of the Online Survey of FRSP Staff was to provide information on: (a) the effectiveness and appropriateness of the new and expanded services established as part of the family law reforms; and (b) the perceptions of staff across the FRSP concerning the impact that the reforms are having on their day-to-day work with families.

The surveys were delivered predominantly online, with hard copies of the survey being made available for those for whom Internet access was problematic.

The first Online Survey of FRSP Staff focused on staff working in services that had commenced operation on 1 July 2006, or that had been in operation prior to this date. Data collection for the Online Survey of FRSP Staff 2008 took place between January and April 2008, with 532 completed questionnaires received from respondents employed in a range of service types and roles. The number of individuals invited to participate in this wave, as reported by participating organisations, was estimated to be 1,873. Based on this figure, the response rate is estimated to have been 28%.

The second Online Survey of FRSP Staff took place between April and June 2009. All staff employed in the types of FRSP services funded under the reforms were invited to take part. A total of 854 responses were received from an estimated population of 2,447.<sup>30</sup> Based on this figure, the response rate is estimated to have been 35%.

The main areas covered in both surveys were:

- background information about the service;
- professional background information about the respondent, including the job they performed;
- respondents’ perceptions about the efficacy of the service, including:
  - efficacy of the assessment of client/caller needs;
  - networks/working relationships with the community;
  - networks/working relationships (including referrals) with other services, including the legal profession and the courts;
  - the ability of the service to respond to client/caller needs; and
  - how well the service screened for and responded to family violence and child abuse;
- respondents’ perceptions of the impact of the family law reforms on service delivery to families, including any unintended consequences; and
- respondents’ perceptions about the impacts of the reforms on the clients/callers, including children and cases involving family violence.

The survey collected a mixture of qualitative and quantitative data. A number of questions were modified between the first and second waves to reflect key developments regarding the reforms that had occurred between the waves, as well as to provide data that can be compared, whether directly or thematically, across the waves and also between the family relationships and legal sectors.

### Survey of FRSP Clients

The Survey of FRSP Clients 2009 was undertaken during September and October 2009. Clients who had attended services between January 2008 and April 2009 and had agreed to be contacted

<sup>30</sup> This figure is based on estimates provided by organisations invited to take part.

by the service provider for research purposes were invited to complete the survey online or via a telephone interview.<sup>31</sup>

The survey sought to explore the extent to which the new and expanded services have contributed to the core policy objectives of the reforms and explored the following broad research questions:

1. Has attending the service helped clients to build strong, healthy relationships?
2. For those parents who have separated, has attending the service helped to encourage greater involvement by both parents in their children's lives?
3. Has attending the service helped separating parents agree on parenting arrangements for their children?
4. How easy or difficult was it to access the service (including referral pathways)?

## Analyses of administrative program data

In addition to the perceptions of service delivery and the reforms collected from service staff and clients, program data were also collected and analysed from FRSP Online (which collects data about service delivery from all services funded under the Family Relationship Services Program), FRAL (including the TDRS) and Mensline.<sup>32</sup> These data provide the context to the information collected from service providers and clients, allowing for the numbers of clients seeking assistance and their presenting needs to be mapped during the course of the evaluation period.<sup>33</sup>

### 1.3.6 The Families Project

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

- the General Population of Parents Survey (GPPS) 2006 and 2009;
- Family Pathways: The Longitudinal Study of Separated Families Wave 1 (LSSF W1) 2008 and Wave 2 (LSSF W2) 2009;
- Family Pathways: Looking Back Survey (LBS) 2009; and
- Family Pathways: The Grandparents in Separated Families Study (GSFS) 2009.

This series of individual studies included surveys of parents in general and of parents who have 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.

## The General Population of Parents Surveys

Two nationally representative telephone surveys were undertaken, each of 5,000 randomly selected participants from the general population of parents with at least one child under the age of 18 years. The first GPPS was conducted in mid-2006 and was designed to provide baseline data against which post-reform data can be compared. A second GPPS was conducted in early 2009 using a new sample of participants. Among other issues, the surveys examined parents' views about the quality of their relationships with their partners and their children, help-seeking behaviour and grandparents' involvement with their children.

## Family Pathways: The Longitudinal Study of Separated Families

The Longitudinal Study of Separated Families is a national study of some 10,000 parents (with at least one child under 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

<sup>31</sup> The survey was restricted to clients aged 18 years or older.

<sup>32</sup> De-identified unit record data were provided from FRSP Online. Summary data by quarter were provided for FRAL and Mensline.

<sup>33</sup> Data were provided for the period from 1 July 2007 to 1 April 2009.

2008;<sup>34</sup> (b) registered with the Child Support Agency in 2007;<sup>35</sup> and (c) were still separated from this parent at the time of the first survey. Where the separated couple had more than one child together who was under 18 years 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”).<sup>36</sup>

The LSSF W1 2008 took place between August and October 2008, up to 26 months after the time of parental separation.<sup>37</sup> The final overall response rate for LSSF W1 2008 was 60.2%.<sup>38</sup> An equal gender split was achieved. The majority of participants were aged between 25 and 44 years (74%) and were born in Australia (83%).

A second wave of interviews for the LSSF was conducted between September and November 2009. In addition, adolescent children of parents participating in the LSSF were also surveyed following Wave 2. This adolescent survey obtained information about their experiences and opinions relating to parental separation. The second wave of data from the LSSF and the adolescent survey data will be used in a subsequent report to be undertaken in 2010.

Information collected as part of this study will contribute to understanding the long-term effects of family law policy and will provide a picture of what life is like over time for separated parents across a broad range of family arrangements, from shared care through to less frequent contact.

### Family Pathways: Looking Back Survey

The LBS 2009 is a national study of some 2,000 parents with at least one child under 18 years old who separated 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, some 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.

### Family Pathways: The Grandparents in Separated Families Study

The GSFS 2009 focused on grandparents with at least one grandchild aged 2–10 years old whose parents had separated between January 2004 and December 2008. The key purpose of this study was to examine grandparents’ perceptions of the family law reforms and the impact of parental separation on the relationship between grandparents and their grandchildren.

The study involved three components: an initial Victorian-based survey that collected data from as many grandparents in Victoria as possible; focus group interviews with 50 grandparents who had completed the initial survey; and a national online survey. Following recruitment advertisements placed in Victorian-based newspapers, grandparents completed a brief survey (online, by telephone or through a mail-out). A selection of eligible grandparents were then invited to take part in a focus group study. The focus groups were designed to explore—in greater depth than was possible with the survey—grandparents’ experiences before and after the separation of their children and their views about the impacts of the family law reforms. Following completion of the initial Victorian-based survey, further recruitment advertisements were placed in national publications inviting grandparents Australia-wide to complete a slightly modified version of the online survey.

<sup>34</sup> All except 4% of the sample had separated between July 2006 and December 2007.

<sup>35</sup> The survey included both “private collect” and “agency collect” parents.

<sup>36</sup> The focus child was the first child aged under 18 years listed in the CSA database.

<sup>37</sup> The average length of time since separation for the sample was 15 months.

<sup>38</sup> Response rate is defined as interviews completed as a proportion of interviews and refusals.



## 1.4 Structure of this report

Chapter 2 provides an overview of families using the family law system, including socio-economic and demographic characteristics and the extent to which these families reported experiencing a range of family dysfunctions, including violence, substance misuse and mental health issues. Chapter 3 focuses on the use and effectiveness of family relationship services and how the patterns of service use have changed since the 2006 changes to the family law system. Chapter 4 examines the pathways used by separated parents to sort out their parenting arrangements and how these have change following the 2006 changes. Chapter 5 considers the operation of FDR, including the appropriateness of referrals into FDR services and how the exceptions to attempting FDR are working.

Chapter 6 examines community opinions about different care-time arrangements (including shared care time) and describes the prevalence of different arrangements and the extent to which shared care time has changed since the 2006 changes to the family law system. Chapter 7 describes how the characteristics of families, the quality of inter-parental relationships, and the presence of family violence vary according to care-time arrangements. Parents' views about the flexibility and workability of different care-time arrangements are also examined in this chapter. Chapter 8 examines the question of parental responsibility and the extent to which parents share such responsibility. The chapter focuses on decision-making about issues affecting the child and financial support and also the nature of parental responsibility orders made by courts.

Chapter 9 considers how the legislative provisions about parental responsibility and care time operate, from the perspective of family lawyers and other service providers. In Chapter 10, the focus is on how the family law system deals with families where there are concerns about family violence or child safety and in Chapter 11 the links between reports of family violence, child safety concerns and child wellbeing are examined. The focus of Chapter 12 is grandparenting and the 2006 changes to the family law system.

Chapters 13, 14 and 15 focus on the legal and court systems. Chapter 13 examines the impact the 2006 changes have had on the FCoA, the FMC and the FCoWA. Issues examined are how the case management system in each court operates, changes in filing patterns and the implications of having the FCoA and the FMC operating in parallel. Chapter 14 examines how Division 12A of Part VII, "Principles for conducting child-related proceedings", has been implemented by the courts. Chapter 15 discusses the application of the 2006 changes to the legislation.

Finally, Chapter 16 summarises the key evaluation findings and conclusions based on these.

# 2 Characteristics of separated parents: Challenges and issues for family relationships and wellbeing

This chapter provides an overview of the families that are actual or potential users of the family law system. It begins with an outline of the socio-economic and demographic characteristics of parents who separated post-1 July 2006, using data from the Longitudinal Study of Separated Families Wave 1 (LSSF W1) 2008. It then examines the extent to which parents in these families reported experiences of family violence, concerns about child safety, mental health problems, and issues with alcohol and other drugs or other addictions.

The issues of family violence and child safety are discussed throughout this report, but the primary purpose of the discussion in this chapter is to examine what the evaluation data (primarily from the LSSF W1 2008) reveal about:

- the characteristics and needs of the families who use or may use family law system services;
- the reported prevalence of family violence safety concerns (including child safety) among separated families;
- links between reports of family violence and safety concerns and the quality of the parents' relationship after separation;
- the reported "incidence" of alcohol and drug misuse prior to separation; and
- the reported "incidence" of mental health problems prior to separation.<sup>1</sup>

The data presented in this chapter establish that family violence affects a substantial proportion of separated parents. Such families are the predominant users of both the family relationship services system and the legal and court systems. For this reason, the data in relation to these matters will inform discussion in a number of areas related to the family law reforms, and are presented here as a precursor to subsequent analyses in the remainder of this evaluation report.

When examining family violence, some complex definitional<sup>2</sup> and methodological issues arise. The term "family violence" is used in this evaluation report because it is the term also used in the main legislative (*Family Law Act 1975* (Cth) s4)<sup>3</sup> and practice instruments (see Winkworth & McArthur (2008) that inform legal and professional approaches in this area. Where legal and service system professionals are asked for their views about family violence, these are the instruments that are likely to influence their responses and understandings.

In gathering data from parents, the interview instruments included questions on the socio-economic and demographic characteristics of parents, and their experiences of physical harm prior to separation and of a variety of behaviours amounting to emotional abuse before and during separation. Where parents reported experiencing physical harm, they were asked whether the children had witnessed any abuse or violence. All parents were asked whether they had current concerns for the safety of their child when in the care of the other parent.

1 Many of the "incidence" rates reported with respect to excessive drug and alcohol use and, more particularly "mental health" problems are necessarily subjective. What for one person might be regular and contained social drinking, for example, might for another be an issue with alcohol. Similarly, a person who links a former partner's behaviour with mental health problems may or may not have a basis in fact for such a statement. In the absence of a formal diagnosis, few individuals would be qualified to make this judgment. In addition, some might relate violence to a "mental health problem", whereas others would see it as an entirely separate issue unrelated in any way to a mental health issue and for which the violent person is fully responsible.

2 For a discussion on definitional issues, see Fehlberg, Behrens, and Kaspiew (2008, p. 185) and Australian Bureau of Statistics (ABS; 2006).

3 The statutory definition is excerpted in Appendix D.



It should be noted that data on family violence collected according to the method applied in this study, in common with other large-scale quantitative studies, provide insight into the number of parents who report experiencing particular behaviours covered in the survey instruments. However, such reports do not provide a means of distinguishing between, for example, aggressive and defensive acts, nor do they provide insight into the subjective experience of the violence from the perspective of either the alleged target or the alleged perpetrator.<sup>4</sup> Nevertheless, the implications of the presence of a history of family violence and current safety concerns for child wellbeing are addressed in Chapter 11.

## 2.1 Socio-economic and demographic characteristics of separated parents

This section provides an overview of the socio-economic and demographic characteristics of mothers and fathers who separated post-1 July 2006, using data from the LSSF W1 2008. The characteristics examined were: parents' ages, age of youngest child with the other parent, educational attainment, labour force status, being of Aboriginal or Torres Strait Islander (ATSI) descent, being born outside of Australia, relationship status at time of separation and whether currently living with a partner. These characteristics were measured at the time of the interview (after separation), with the exception of relationship status at separation. Some of the characteristics do not change over time (being born outside of Australia and being ATSI, while others change only slowly (educational attainment) and will therefore be the same, or very similar, to what they were at the time of separation. Labour force status, on the other hand, often changes following separation.

The average age of separated mothers was 33 years and separated fathers 35 years (Table 2.1). The most common age ranges for these separated parents were 25–34 years (38% of fathers and 39% of mothers) and 35–44 years (37% of fathers and 34% of mothers).

About half of the parents had a child (with the other parent) aged less than three years (47% of fathers and 50% of mothers). Relatively few had a youngest child (with the other parent) aged 12 years or older (7% of fathers and 7% of mothers).

About one-third of separated mothers and fathers had a highest level of educational attainment of Year 11 or less (32% of fathers and 33% of mothers). For the other levels of education, 13% of fathers and 14% of mothers had a degree or higher level qualification, 40% of fathers and 33% of mothers had a non-degree post-school qualification, and 16% of fathers and 20% of mothers had a highest level of educational attainment of Year 12. The education levels were lower than those found among parents who were together (see Tables 3.13 and 3.14 in Chapter 3).

Turning to labour force status, 84% of separated fathers and 52% of separated mothers were in paid employment. These employment rates are lower than those found among parents who have not separated. Around 4% each of mothers and fathers in the LSSF W1 2008 were of ATSI descent. The proportion of separated fathers born outside of Australia was 19% and the proportion of mothers was 15%. A substantial minority of parents reported that they had not been living together at the time that the relationship ended (12% of fathers and 15% of mothers). Of this group who were not living together when the relationship ended, only 20% of the fathers and 23% of the mothers reported that they had ever lived together. More fathers (14%) than mothers (6%) had re-partnered in the first year or two following separation.

## 2.2 Separated parents' reports of experiencing family violence

The following sections examine the incidence of family violence (including in the presence of children) before and during separation, and how many parents reported the presence of concerns about personal or child safety relating to ongoing contact with the other parent. The source of these data is LSSF W1 2008, supplemented by data from the Survey of Family Relationship Services Program (FRSP) Clients 2009.

<sup>4</sup> For discussions about the advantages and disadvantages of different types of data collections methods and the extent to which they provide detailed insight into family violence see, for example, Taft and Flood (2001).

**Table 2.1 Socio-economic and demographic characteristics of separated parents, 2008**

	Fathers	Mothers
	%	
<b>Age</b>		
< 25 years	11.8	19.9
25–34 years	37.7	39.4
35–44 years	36.9	34.2
> 44 years	13.7	6.6
Mean age (in years)	35.2	32.5
<b>Age of youngest child with the other parent</b>		
0–2 years	46.6	50.3
3–4 years	18.6	17.0
5–11 years	27.5	25.5
12–14 years	4.8	4.7
15–17 years	2.5	2.5
<b>Educational attainment</b>		
Degree or higher qualification	13.1	13.8
Other post-secondary qualification	39.5	33.2
Year 12 (no post-secondary qualification)	15.9	19.9
Year 11 or lower (no qualification)	31.5	33.1
<b>Labour force status (after separation)</b>		
Full-time	74.0	16.4
Part-time	10.0	35.6
Not employed	16.0	48.0
<b>Indigenous</b>	3.7	4.2
<b>Born outside of Australia</b>	18.6	15.4
<b>Relationship status (at separation)</b>		
Married	52.8	48.9
Cohabiting	35.6	35.8
Other <sup>a</sup>	11.6	15.2
<b>Currently living with a partner</b>	14.0	6.0
<b>Number of respondents</b>	<b>4,983</b>	<b>5,019</b>

Notes: Data have been weighted. <sup>a</sup> Mainly those who had not lived with the other parent since the birth of the child. Most of these parents (80% of fathers, 77% of mothers) had never lived together.

Source: LSSF W1 2008

## 2.2.1 Family violence before or during separation

Parents who were involved in LSSF W1 2008 were asked about whether they had experienced family violence.<sup>5</sup>

Table 2.2 shows the proportion of fathers and mothers who reported having experienced family violence. Family violence is categorised as physical hurt or emotional abuse. The physical hurt measure includes those who experienced both physical hurt and emotional abuse, because the majority of parents who reported having experienced physical hurt also reported having experienced emotional abuse.

5 Parents were asked whether the other parent had emotionally abused them before or during the separation, with options for nominating different types of emotional abuse being available (multiple forms could be nominated). The measure of emotional abuse covers the other parent: (a) preventing the respondent from contacting family or friends, using the telephone or car, or having knowledge of or access to family money; (b) insulting the respondent, with the intent to shame, belittle or humiliate; (c) threatening to harm the child/children, harm other family/friends, harm the respondent, harm pets, or harm themselves; and (d) damaging or destroying property. Parents were then asked: “Before you separated, were you ever physically hurt by (child’s other parent)?” If they said “yes” to this question, they were asked whether the children had heard or seen any abuse or violence.

**Table 2.2 Experience of physical hurt before separation, or emotional abuse before or during separation, fathers and mothers, 2008**

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

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

Source: LSSFW1 2008

Nearly two-thirds of the mothers and just over half the fathers indicated that their partner had either emotionally abused them or physically hurt them, with emotional abuse alone being considerably more commonly reported.<sup>6</sup> Similar proportions of fathers and mothers said that they had experienced emotional abuse alone, although this was slightly more common among mothers than fathers. Table 2.2 shows that mothers were considerably more likely than fathers to indicate that their child's other parent had physically hurt them. In addition, given that virtually all respondents who had been physically hurt by their child's other parent also reported that this parent had engaged in one or more emotionally abusive behaviours, it is important to appreciate that emotional abuse was more widespread than suggested by the figures for experiencing emotional abuse alone.

A relatively high proportion of parents (72% of mothers and 63% of fathers) who reported having experienced physical hurt before separation by the other parent also reported that their children had witnessed violence or abuse (not shown in table).

Information about the experience of different types of emotional abuse is provided in Figure 2.1. Just over half the fathers (52%) and nearly two-thirds of mothers (64%) indicated that they had been recipients of emotional abuse either before or during the separation, with most of the forms of abuse mentioned being experienced by a substantially higher proportion of mothers than fathers. Insults that were designed to shame, belittle or humiliate these parents represented the form of emotional abuse most commonly experienced.<sup>7</sup> In addition, 75% of fathers and 84% of mothers who indicated that they had experienced such insults also said that they had been recipients of at least one other form of emotional abuse.

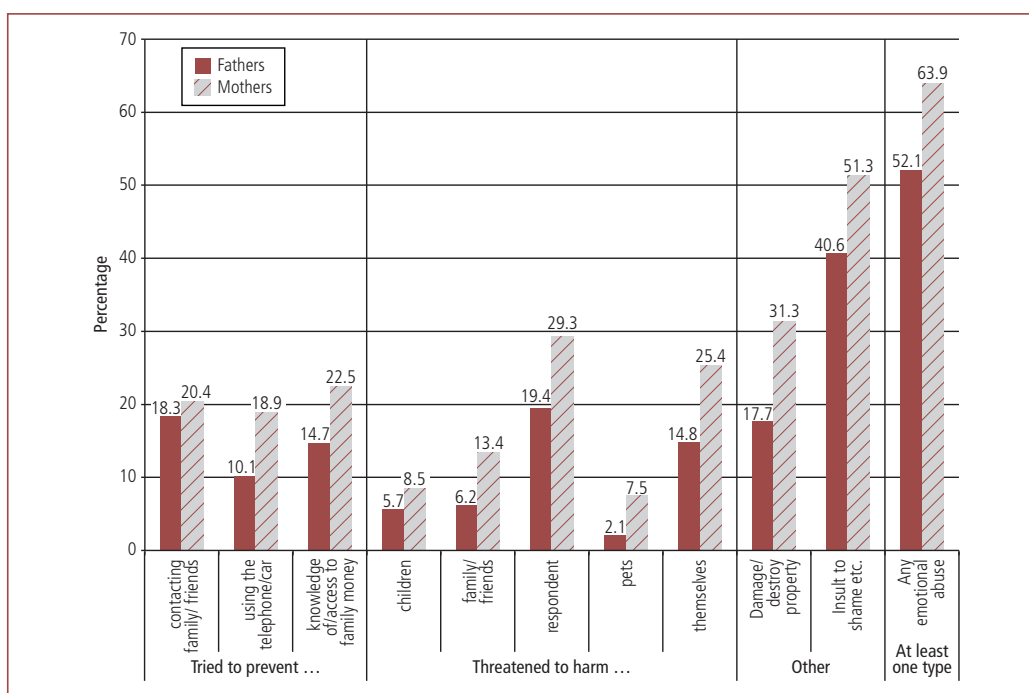
After insults, mothers most commonly reported fathers threatening to damage or destroy property, and threatening to harm them or to self-harm. Somewhat less common were mothers' reports of fathers' attempts to prevent knowledge of or access to money, followed by preventing contact with family or friends, or use of the telephone or car. The least commonly mentioned experiences reported by mothers were fathers' threats to harm the children, pets or family or friends. Fathers also reported these issues, but in most cases were considerably less likely to do so. Mothers were more likely to report having experienced multiple types of emotional abuse than were fathers.

One in four mothers and around one in six fathers said that the other parent had hurt them physically, and among those who reported such experiences, the majority indicated that their children had seen or heard some of the abuse or violence.

The Survey of FRSP Clients 2009 also revealed high rates of family violence in separated families. Table 2.3 shows that 33% of clients reported being physically hurt by the person about

6 Since the question about emotional abuse covered the periods both before and during separation, and the question about physical hurt only covered the period before separation, the reports of the incidence of physical hurt and emotional abuse are not directly comparable.

7 Although insults in general could be interpreted to include serious and light-hearted matters, it is probable that respondents who reported such experiences were generally referring to more serious matters. There are two reasons for this interpretation. Firstly, this question restricted insults to those that were seen as entailing malevolent intentions (to shame, belittle or humiliate) and, secondly, this question was embedded in a list of clearly abusive behaviour.



Source: LSSF W1 2008

**Figure 2.1** Experience of different forms of emotional abuse before or during separation, fathers and mothers, 2008

**Table 2.3** Family violence reported by clients who attended an FRSP service to sort out issues about their children after a relationship break-up or separation, 2008

Before you went to the service, did [the person you went to the service about] ever:	%
try to control you by either preventing you from contacting friends and family or preventing you from using a car, or having knowledge about or access to money	49.7
threaten to harm you, themselves or others (including pets)	43.4
seriously put you down or insult you	76.9
physically hurt you	32.8
<b>Number of respondents</b>	<b>1,327</b>

Notes: Responses are reported only for clients who indicated that they attended the service to sort out issues about their children after a relationship break-up or separation. Response categories for each item were "yes", "no" and "prefer not to say". Responses of "prefer not to say" represented only a small number of responses (< 4%). They are included in totals for calculating the proportion of "yes" responses above.

Source: Survey of FRSP Clients 2009

whom they attended the service and 77% reported being seriously put down or insulted. The participating client reported the other party making threats to harm them, themselves (i.e., the other party) or others (including pets) in 43% of cases. Controlling behaviour on the part of the other party had been experienced by 50% of clients participating in the survey.

## 2.2.2 Current safety concerns

Parents who participated in the LSSF W1 2008 were asked to indicate whether they currently held safety concerns for themselves and/or their focus child as a result of ongoing contact with the child's other parent.<sup>8</sup>

<sup>8</sup> The question on safety concerns identified whether the concerns related to the respondent alone, the focus child alone, or both the respondent and child. Those who reported that they held such concerns were also asked to indicate: (a) whether their concerns related to contact with the child's other parent, the new partner

Around one in five parents (17% of fathers and 21% of mothers) reported safety concerns associated with ongoing contact with their child's other parent (Table 2.4). In total, 15% of fathers and 18% of mothers expressed concerns about the safety of their child—either alone or in addition to concerns about personal safety—and 4% of fathers and 12% of mothers were concerned about their personal safety (combining concern for child and concern for self).

**Table 2.4 Current safety concerns, fathers and mothers, 2008**

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

Source: LSSF W1 2008

The concerns of most of these respondents, especially mothers, related to the other parent; fathers were more likely than mothers to refer to concerns about the other parent's new partner and/or another adult. For 92% of mothers who expressed concerns, the other parent was the source of the concern, compared with 68% of fathers. Only 6% of fathers and 3% of mothers had a concern that another child may pose a threat to the safety of their child.

Fathers' and mothers' actions in relation to contact arrangements that were linked with safety concerns also differed: 50% of mothers and only 24% of fathers who held safety concerns indicated that they had attempted (or managed) to limit contact for safety reasons. Among fathers and mothers who cared for their child for 66–100% of nights and who held safety concerns about ongoing contact with the child's other parent, 17% of fathers and 56% of mothers indicated that they had attempted to limit contact with the other parent (not shown in Table 2.4).

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

In order to gain insight into other issues that might affect separating families, parents involved in LSSF W1 2008 were asked whether three sorts of issues were relevant to their relationship prior to separation. These were mental health problems, issues with alcohol or other drug use or another addiction.<sup>9</sup>

of that parent, another adult, and/or another child; and (b) whether respondents had ever limited or tried to limit their child's contact with his or her other parent because of these concerns. As noted in Chapter 7, where the child never saw his or her father, 7% of fathers and 24% of mothers indicated that the question tapping safety concerns did not apply to them. These respondents were treated as having no current safety concerns.

9 The LSSF W1 2008 question was: "Before finally separating, were there ever issues with: Alcohol or drug use? Mental health problems? Another addiction?" The respondents who mentioned that another addiction was apparent were then asked to indicate the nature of this addiction. Gambling was the most commonly cited of the range of addictions mentioned.

Given that respondents may well be reluctant to acknowledge that they themselves were prone to such problems, they were not asked about which family member(s) exhibited such problems. The question was thus designed to maximise the chance that any such issues prevailing in the family would be acknowledged.

Half the mothers and around one-third of the fathers indicated that at least one of these issues (mental health, use of alcohol or drugs, gambling or other addictions)<sup>10</sup> was apparent before separation (Table 2.5). The two matters specified in the question—issues with mental health problems and use of alcohol or other drugs—were the most prevalent, with mothers being more likely than fathers to indicate the presence of each of these issues. This gender difference was more marked in relation to concerns about the use of alcohol or other drugs than for mental health problems. Few mothers and fathers identified gambling or addictions other than alcohol or other drugs. There was a significant overlap between reports of mental health issues and addiction (e.g., alcohol and drug use) issues, for both fathers and mothers (not shown in the table).

**Table 2.5 Mental health problems and addiction issues, before separation, father and mother reports, 2008**

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

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

Source: LSSF W1 2008

## 2.4 Co-occurrence of family violence, mental health problems and addiction issues

Table 2.6 shows the extent to which parents who reported that mental health problems or addiction issues existed prior to separation also indicated that they had experienced family violence. Parents who said that both mental health and addiction issues had existed were the most likely to report that the other parent had physically hurt them (43% of fathers and 50% of mothers), followed by parents who reported either mental health problems alone or addiction issues alone (26% of fathers in each case, and 29% and 34% of mothers respectively). Only 9% of fathers and 13% of mothers who said that there had been no mental health or addiction problems indicated that the other parent had physically hurt them.

Parents who reported that neither mental health nor addiction issues had existed prior to separation were also less likely than the other parents to say that they had experienced emotional abuse alone. Overall, experiences of family violence were reported by 85% of fathers and 92% of mothers who said that both mental health and addiction issues had been present before

<sup>10</sup> In the remainder of this chapter, we use the term “addiction issues” to cover the question of “issues with alcohol or drug use” and the subsequent question relating to other addictions. The more generic term “substance misuse” is also used in sections of the evaluation. As noted in footnote 1, a respondent’s judgment that such an issue exists is inevitably subjective. Just as statements about mental health would need external diagnostic support before they could be formally verified, statements about addiction issues or substance misuse also have a technical meaning, the confirmation of which falls outside the scope of this evaluation. Considering the relevant item in LSSF W1 2008 (see footnote 9), the common sense view is that respondents are likely to have linked the question about the use of drugs and alcohol with the question about “other addictions”. More broadly, a respondent’s perception that there is an issue or a problem in one or more of these areas is very likely to have been an important aspect of his or her understanding of the separation and an important driver of any dispute resolution behaviours.

**Table 2.6 Experience of family violence, by mental health and addiction issues, before separation, mothers and fathers, 2008**

	Mental health and addiction issues	Mental health and no addiction issues	Addiction and no mental health issues	No issues
	%			
Fathers				
Physical hurt	43.2	26.0	25.5	9.2
Emotional abuse alone	42.2	50.2	44.3	31.3
Neither	14.6	23.8	30.2	59.4
Total	100.0	100.0	100.0	99.9
Number of respondents	520	669	611	3,118
Mothers				
Physical hurt	50.2	29.3	34.4	12.8
Emotional abuse alone	42.2	51.7	44.5	32.9
Neither	7.6	19.0	21.0	54.3
Total	100.0	100.0	99.9	100.0
Number of respondents	937	575	1,016	2,431

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

Source: LSSF W1 2008

separation, compared with 41% of fathers and 46% of mothers who said that neither of these problems had been present. In other words, family violence seemed to be pervasive among families in which both mental health and addiction issues were thought to be present.

At the same time, it is important to point out that, among those who did not report family violence of either sort, around one in five (18–22%) said that mental health problems or addiction issues were apparent prior to separation (Figure 2.2).

Parents who experienced family violence prior to separation were particularly likely to indicate that there had been issues in the pre-separation relationship involving mental health problems or use of alcohol or other drugs (or other addictions). In fact, most respondents who said that they had been physically hurt also indicated that issues pertaining to mental health problems or addictions were apparent prior to separation, with mothers being more likely to report this than fathers (reported by 75% of mothers who had been physically hurt, and by 64% of relevant fathers). In addition, most mothers (58%) who reported emotional abuse alone and 44% of their male counterparts said that such other dysfunctional issues were apparent in the pre-separation relationship.

## 2.5 Quality of relationships between parents after separation

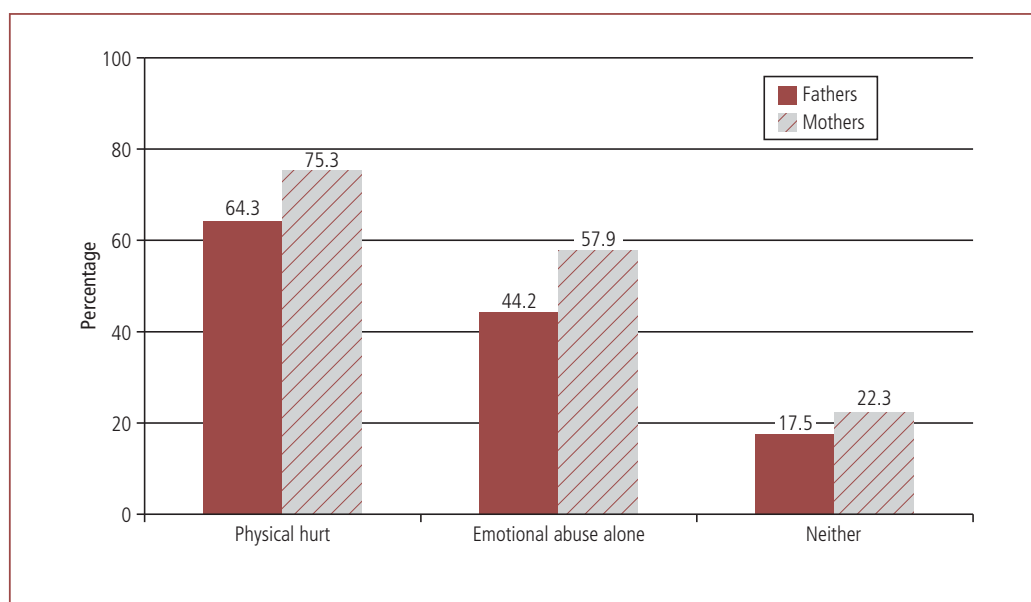
In order to gain insight into the quality of post-separation relationships and to assess the extent to which a reported experience of family violence may affect this, parents involved in the LSSF W1 2008 were asked to indicate the quality of their current relationship with their child's other parent. These data develop further understanding of the issues relevant to families who use the family law system.

Table 2.7 shows the proportions of fathers and mothers who described their current relationship in these different ways. A solid majority of separated mothers and fathers indicated that they had a friendly or cooperative relationship with the other parent, while almost a fifth rated their relationship as distant and a little under a fifth rated it as either very conflicted or fearful, although almost twice as many mothers than fathers considered the relationship to be fearful.

### 2.5.1 Post-separation relationships and pre-separation family violence

Where no family violence was reported, post-separation relationships were particularly likely to be friendly or cooperative (reported by 84–85% of fathers and mothers). The data indicate





Source: LSSFW1 2008

**Figure 2.2** Having mental health and addiction issues before separation, fathers' and mothers' reports, by experience of family violence, 2008

**Table 2.7** Quality of current inter-parental relationship, fathers' and mothers' reports, 2008

	Fathers	Mothers
	%	
Friendly	35.7	34.2
Cooperative	27.8	27.5
Distant	19.2	18.8
Lots of conflict	14.0	13.1
Fearful	3.4	6.5
Total	100.1	100.1
Number of respondents	4,860	4,927

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

Source: LSSFW1 2008

that experience of emotional abuse did not preclude post-separation friendly and cooperative relationships for half the fathers and more than half the mothers in the sample (Table 2.8).

Even physical violence was not incompatible with these sorts of relationships for significant minorities of fathers and mothers. However, roughly a quarter of both mothers and fathers who had reported physical violence or emotional abuse had developed a distant relationship with their former partners. Two-fifths of mothers and fathers who reported physical violence were either in highly conflicted or fearful relationships at the time of the survey, as were one-fifth who had reported emotional abuse alone. The fact that fear characterised roughly a tenth of the fathers and roughly a fifth of the mothers who had reported physical violence suggests that post-separation parenting arrangements would need to be assessed and handled with special care. On the other hand, the fact that high conflict was reported by only a very small percentage of parents who had not experienced violence or abuse in their relationships points strongly to the fact that the experience of a past or present abusive dynamic is very likely to characterise high-conflict family law clients.



**Table 2.8** Quality of inter-parental relationship, by experience of family violence, before separation, fathers and mothers, 2008

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

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

Source: LSSF W1 2008

## 2.5.2 Post-separation relationships and current safety concerns

While it has already been shown that pre-separation family violence has repercussions for inter-parental relationship dynamics after separation (which in some cases would be marked by continuing threatened or actual violence), current safety concerns are particularly pertinent, as they may well compromise the wellbeing of the parent and child. Table 2.9 shows the proportions of respondents with and without current safety concerns for themselves or their focus child who said that they had been victims of family violence or that there had been issues relating to mental health problems or alcohol or other drug use prior to separation.

The majority of parents who had safety concerns reported that they had been either physically hurt or emotionally abused by their child's other parent (90% of fathers and 95% of mothers). The proportion of parents with safety concerns who reported having experienced family violence is much higher than the proportion of parents without safety concerns who reported having experienced family violence. For example, among fathers with safety concerns, 44% reported having been physically hurt, compared to 11% of fathers without safety concerns. Among mothers with safety concerns, 42% reported having been physically hurt, compared to 19% of those without safety concerns.

Regardless of whether they held safety concerns, the proportion of parents who indicated that prior to separation there had been mental health problems or addiction was quite high. However, these problems were more commonly reported by parents who held safety concerns than by other parents (fathers: 62% with safety concerns compared to 30% without; mothers: 77% with safety concerns compared to 43% without).

Around half the fathers and just over half the mothers (49% and 54% respectively) with concerns about their own or their child's safety indicated that their current inter-parental relationship was marked by either conflict or fear, with mothers who held safety concerns being more likely than fathers with such concerns to report that their relationship was a fearful one (reported by 24% of mothers and 14% of fathers) (Figure 2.3). Highly conflicted or fearful relationships were reported by only 11% of fathers and mothers who did not hold safety concerns.

## 2.6 Summary

While the family law system deals with families from all sectors of society, separated parents have, on average, a lower level of education and lower income and are more likely to have a preschool-aged child when they separate than parents who stay together.

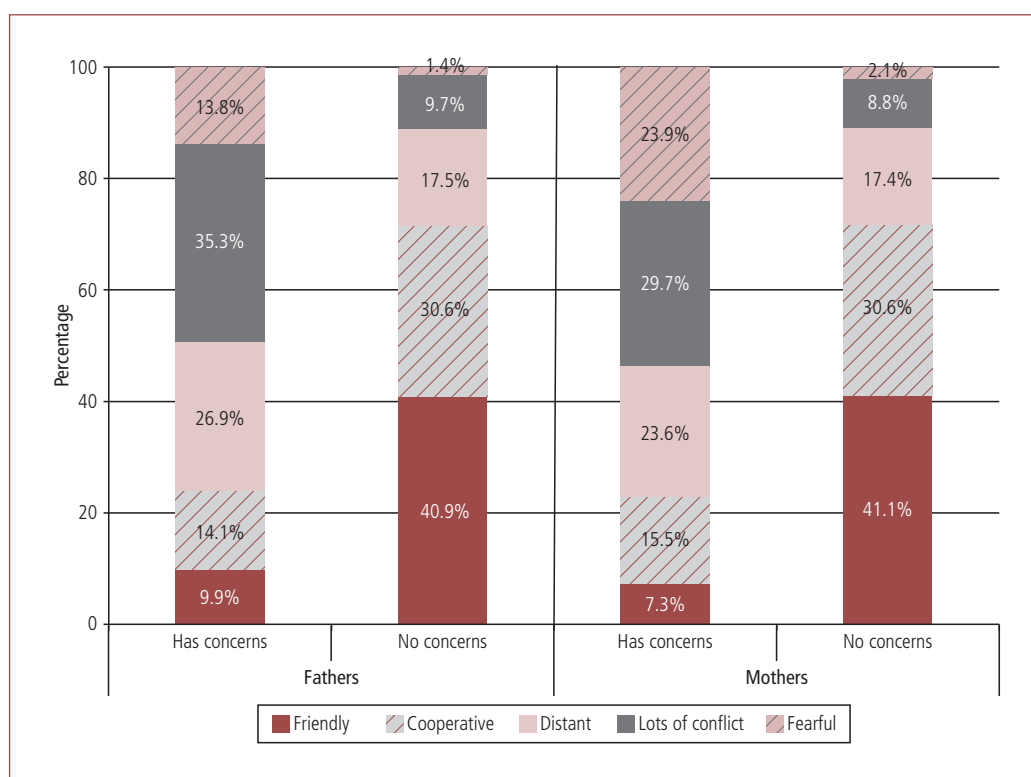
In relation to family violence, the following patterns are relevant among families in the LSSF W1 2008. Around two in three mothers and just over half the fathers indicated that their child's other

**Table 2.9 Family violence and mental health/addiction issues, before separation, by current safety concerns, fathers and mothers, 2008**

	Fathers		Mothers	
	Has safety concerns	No safety concerns	Has safety concerns	No safety concerns
	%		%	
Family violence				
Physical hurt	44.3	11.2	52.5	18.9
Emotional abuse alone	45.5	34.4	42.0	38.2
Neither	10.2	54.4	5.5	42.9
Total	100.0	100.0	100.0	100.0
Mental health/addiction issues				
At least one of these issues existed	61.9	29.6	76.8	43.1
No such issues existed	38.1	70.4	23.2	57.0
Total	100.0	100.0	100.0	100.1
Number of respondents	833	3,953	1,033	3,886

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

Source: LSSFW1 2008



Note: Percentages may not total exactly 100% due to rounding.

Source: LSSFW1 2008

**Figure 2.3 Quality of inter-parental relationship, by whether parent had safety concerns, fathers and mothers, 2008**

parent had emotionally abused them through at least one of the means examined in this study, including the use of humiliating/belittling insults, property damage, threats to harm respondents or others, and other forms of controlling behaviours. One in four mothers and around one in six fathers said that the other parent had hurt them physically and, among those who reported such experiences, most indicated that their children had seen or heard some of the abuse or violence. It must be noted here that these data do not distinguish between, for example, aggressive and defensive acts, nor indicate the severity of the violence. Nor do they provide insight into the subjective experience of the violence from the perspective of either the alleged target or the alleged perpetrator.

Half the mothers and around one-third of the fathers indicated that mental health problems, the use of alcohol or other drugs, gambling or other addictions were apparent before separation. The gender difference was more marked in relation to concerns about the misuse of alcohol or other drugs than for mental health problems, with nearly twice as many mothers as fathers reporting problems with alcohol and drug use before separation. Gambling or other addictions were mentioned by fewer than 5% of parents.

Around one in five parents reported safety concerns associated with ongoing contact with their child's other parent. In total, 15% of fathers and 18% of mothers expressed concerns about the safety of their child—either alone or in addition to concerns about personal safety—and 4% of fathers and 12% of mothers were concerned about their personal safety, regardless of their views about their child's safety.

Where no family violence had been reported, post-separation relationships were particularly likely to be friendly or cooperative (reported by 84% of fathers and 85% of mothers). Roughly a quarter of both mothers and fathers who had reported physical or emotional violence had developed a distant relationship with their former partners. In addition, two-fifths of mothers and fathers who reported having experienced physical violence were in highly conflicted or fearful relationships at the time of the survey, as were one-fifth who had reported emotional abuse alone. High conflict was reported by a very small percentage of parents who had not experienced violence or abuse in their relationships. This suggests that the experience of a past or present abusive dynamic is a very common characteristic of high-conflict family law clients.

A solid majority of separated mothers and fathers (62% and 64% respectively) were nonetheless at the time of the survey in friendly or cooperative relationships with each other, whereas almost a fifth rated their relationship as distant and a little under a fifth rated it as either very conflicted or fearful. Almost twice as many mothers (7%) than fathers described the relationship as fearful. Reports of fathers and mothers with respect to dimensions other than fearful were quite similar.

Most respondents who said that they had been physically hurt also indicated that issues pertaining to mental health problems or addiction were apparent prior to separation, with mothers being more likely to assert this than fathers (reported by 75% of mothers and 64% of fathers who had been physically hurt). In addition, most mothers (58%) who reported emotional abuse alone and 44% of their male counterparts said that these issues were apparent in the pre-separation relationship.

Of those who held current safety concerns for themselves or their focus child, 90% of fathers and 95% of mothers reported that they had been either physically hurt or emotionally abused by their child's other parent. Nevertheless, around one in five mothers and just over one in ten fathers who did not hold safety concerns also indicated that they had been physically hurt prior to separation. For some of these parents, separation may have relieved them of such concerns.

Regardless of whether they held safety concerns, the proportion of parents who indicated that, prior to separation, there were mental health problems or issues related to alcohol or other drugs was quite high. However, these problems were more commonly reported by parents who held safety concerns than by other parents.

# 3

## Use and effectiveness of new and expanded family relationship services

The changes to the family law system involved changes to the family relationship services delivery system and included the establishment of 65 Family Relationship Centres (FRCs) throughout Australia, the Family Relationship Advice Line (FRAL) and Family Relationships Online (FRO), and funding for new services and additional funding for existing services. The changes were designed to create a more coordinated and more effective family law system (see Chapter 1). Families were to be encouraged to make appropriate use of both early intervention and post-separation services.<sup>1</sup>

This chapter is relevant to all four policy objectives of the 2007 Evaluation Framework (see Appendix B) and addresses three key evaluation questions:

- What are the patterns of use of services?
- Have the patterns of service use changed since the 2006 changes to the family law system?
- How effective have the new and expanded services been?

Data collected from separated and non-separated parents, and Family Relationship Services Program (FRSP) clients and staff are used to provide a comprehensive picture of the use and effectiveness of these services by parents and other adults.<sup>2</sup>

While the evaluation considers the new types of services (the FRCs and FRAL), it does not specifically compare and contrast the impacts of additional funding to existing services and the impact of funding for additional outlets of these services. The focus is on the use and effectiveness of the family relationship services system as a whole.

This chapter uses data from the:

- General Population of Parents Survey (GPPS) 2009;
- Longitudinal Study of Separated Families Wave 1 (LSSF W1) 2008;
- Looking Back Survey (LBS) 2009;
- Survey of Family Relationship Services Program (FRSP) Clients 2009;
- Online Survey of FRSP Staff 2008 and 2009;
- Qualitative Study of FRSP Staff 2007–08 and 2009; and
- FRSP Online database 2006–09.

The chapter includes an overview of FRSP services and the demographic characteristics of clients using them. It then examines data on service use by parents who have not separated but are seeking relationship support, as well as exploring the use of services both during and after separation. Service professionals' views on operational aspects of their services are also examined, as are issues arising from working with Indigenous clients. Finally, we consider the effectiveness of family relationship services in meeting clients' needs before presenting a series of concluding comments.

1 Chapter 4 evaluates family law system pathways and the extent to which clear and visible entry points to relevant services is occurring. Chapter 5 evaluates the operation of family dispute resolution (FDR) services.

2 Most data in this chapter are based on surveys of parents with at least one child under the age of 18 years. However, in the Survey of FRSP Clients, around a quarter of the respondents indicated that they did not have a child in this age group. Some of these respondents would not have been parents. See Appendix B for a more detailed description of the survey.

## 3.1 Clients using FRSP services

The FRSP's data collection system provides information on the number of clients using services, basic demographic characteristics and reasons for using the service. In the analysis of these data, individuals are represented only once within service types, to the extent that it is possible.<sup>3</sup> A client who attends multiple types of services appears separately in the data for each type of service they attend. Thus, the numbers relate to the number of clients using each service type, but the total number of clients summed across all service types will be greater than the total number of individuals using FRSP services.

### FRSP Online

The FRSP requires service providers to collect data relevant to their service delivery. Providers fulfil this requirement via the FRSP Online web-based application, administered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). FRAL, Mensline and the Telephone Dispute Resolution Service (TDRS) have separate data collection systems.

FaHCSIA provided de-identified data collected through FRSP Online to AIFS for analysis as part of the Evaluation of the Family Law Reforms. The data comprised snapshots of several database tables as at October 2009. These tables included details of:

- individual registered clients in the system—a client “attached” to more than one organisation was included multiple times, once for each organisation;
- sessions or appointments when services were delivered to clients—details included service type, date, and fee charged per person;
- attendances of registered clients at sessions;
- activities that result in the delivery of services to (possibly multiple) clients—activities were classified as cases, courses or community development and could have one or more sessions; and
- client roles—details of a client in relation to a particular activity, including presenting needs, marital status, education and employment.

The results presented here are mainly distributions of registered clients aged 15 years and over. Some of the supplied client records were omitted from these distributions because:

- they were flagged as inactive;
- there were no matching session data in the 2006–07 to 2008–09 reference period;
- the service type was out of scope for the evaluation for all matching sessions;
- there were other mismatches between database tables;
- the age of the client (at first session) was under 15 years (some demographic fields were not applicable to those under 15); or
- the age of the client could not be determined.

FaHCSIA also provided the summary data in Table 3.3, which shows counts of clients from FRSP Online, regardless of age. This table includes both registered and unregistered clients, where unregistered clients are those who attend the service but do not have their personal details recorded on the FRSP Online database and do not have a unique identifier within the database. Therefore, the same person may be included more than once in unregistered clients counts.

Source: FRSP Online Training Manual, Version 1.0; FRSP Online system documentation; FRSP Online data extract, October 2009

The FRSP services noted below are categorised as early intervention services (EIS) and post-separation services (PSS).

The early intervention services included are:<sup>4</sup>

- Specialised Family Violence Services (SFVS);
- Men and Family Relationships Services (MFRS);

<sup>3</sup> While, in principle, each client has a unique ID that should relate to all of the services they use, in practice an individual may have more than one ID. This would occur if they registered multiple times, particularly if they registered with multiple organisations.

<sup>4</sup> The EIS clients include a proportion of separating or separated people.

- counselling;<sup>5</sup> and
- Education and Skills Training (EDST).

The post-separation services included are:

- Family Relationship Centres (FRCs);
- Family Dispute Resolution (FDR) (including Regional Family Dispute Resolution (RFDR));
- Children's Contact Services (CCS); and
- Parenting Orders Program (POP).

### 3.1.1 Socio-economic and demographic characteristics of FRSP clients

Table 3.1 shows that, on average, clients in all early intervention and post-separation services types were in their 30s, with the average age ranging from 34 years (for EDST clients) to 39 years (for FDR and counselling clients).

**Table 3.1 Socio-economic and demographic characteristics of registered FRSP clients aged 15 years or over, by type of service attended, 2008–09**

	EIS				PSS			
	SFVS	MFRS	Counsel- ling	EDST	FRC	FDR	CCS	POP
Age (years)	37	38	39	34	37	39	36	37
	%				%			
ATSI	7.7	8.0	2.6	3.0	3.0	1.8	3.9	2.0
Gender								
Male	48.8	80.5	41.6	41.4	49.8	49.0	48.4	47.8
Female	51.2	19.5	58.4	58.6	50.2	51.0	51.6	52.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Country of birth								
Australia	83.7	83.9	80.8	81.9	83.5	83.5	85.7	83.0
Born outside of Australia	16.3	16.1	19.2	18.1	16.5	16.5	14.3	17.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Marital status								
Married or de facto	46.4	55.1	61.3	37.8	21.8	22.4	21.0	20.3
Divorced or separated	31.9	24.1	21.5	11.2	61.8	67.3	48.3	61.1
Never married and not de facto	18.3	18.2	14.4	49.3	14.0	8.5	27.4	15.3
Widowed	0.8	1.0	1.0	0.7	0.3	0.3	0.5	0.4
Other relationship	2.6	1.6	1.8	0.9	2.1	1.4	2.9	2.9
Total	100.0	100.0	100.0	99.9	100.0	99.9	100.1	100.0

Notes: FDR includes RFDR clients. Registered clients without complete data (due to database mismatches) are excluded from this table. Clients with missing/not stated marital status are excluded from the distribution of that item. Age and marital status are as at the client's first session at the type of service during the reference year. Table is restricted to registered clients aged 15 years and over. Percentages may not total exactly 100.0% due to rounding.

Source: FRSP Online data extract, October 2009

A much higher proportion of Aboriginal and Torres Strait Islander (ATSI) clients made use of SFVS and MFRS (8% for both services) than other services. Rates of usage of other services by

<sup>5</sup> Some counselling programs are also funded under the PSS program. However, for the purpose of this report they have been grouped within the EIS only.

Indigenous clients ranged from 2% for FDR and POP services to 4% for CCS. Between 14% and 19% of clients of each service were born outside of Australia.

Marital status varied in understandable ways: those who used post-separation services were most commonly classified as divorced or separated, and those who used three of the four intervention service types (SFVS, MFRS and counselling) were most commonly recorded as partnered. The EDST clients (many of whom would be attending pre-marriage education programs), on the other hand, were most commonly classified as never married and not de facto.

For all of the post-separation services, about half the clients were male and half female. In terms of the early intervention services about half the clients of the SFVS were male and about 40% of the counselling service and EDST clients were male, while the majority (81%) of the MFRS clients were male.

Table 3.2 summarises education and employment data for services covered by the FRSP data collection system. The table suggests that parents with a higher level of educational attainment and employed parents were more likely to use EDST and counselling services and were less likely to use SFVS, MFRS or CCS. Those who used SFVS and CCS were the least likely to be employed, while EDST and FDR clients were the most likely to be employed.

**Table 3.2 Educational attainment and labour force status, by type of service attended, registered clients aged 15 years and over, 2008–09**

	EIS				PSS			
	SFVS	MFRS	Counsel- ling	EDST	FRC	FDR	CCS	POP
	%				%			
Highest level of education								
Primary or incomplete secondary	45.6	47.7	29.2	18.7	36.3	29.2	44.6	33.4
Year 12	21.9	20.8	21.3	19.0	22.6	24.1	24.2	22.8
Certificate/ diploma	18.9	18.0	22.6	22.7	24.0	23.5	18.0	24.2
Degree or higher	13.6	13.5	27.0	39.6	17.1	23.2	13.3	19.7
Total	100.0	100.0	100.1	100.0	100.0	100.0	100.1	100.1
Employment status								
Employed	54.5	60.6	69.3	78.0	72.1	75.8	51.4	65.6
Unemployed	18.4	17.7	9.2	6.7	9.7	8.0	16.9	12.3
Not in the labour force	22.3	17.4	17.2	12.0	15.6	14.1	27.5	18.9
Student	4.9	4.3	4.3	3.3	2.6	2.1	4.2	3.2
Total	100.1	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Notes: FDR includes RFDR clients. Registered clients without complete data (due to database mismatches) are excluded from this table. Clients with missing/not stated education or employment status are excluded from the respective distributions. Highest level of education and employment status are as at the client's first session at the type of service during the reference year. Percentages may not total exactly 100.0% due to rounding.

Source: FRSP Online data extract, October 2009

### 3.1.2 Number of clients using FRSP services

Table 3.3 provides information on the number of clients using each of the FRSP services in 2006–07, 2007–08 and 2008–09. In 2008–09, the services with the largest number of clients were counselling services (101,214 clients), FRCs (60,199 clients) and EDST (49,593 clients). The services with the smallest number of clients were POPs (8,194 clients) and SFVS (6,906 clients).

There was an increase in the number of clients for all FRSP services types over the period 2006–07 to 2008–09. In percentage terms, the increase was greatest for FRCs (336% increase).



The growth in the number of clients accessing services was expected given that the number of services increased over the three years (including the FRCs).

**Table 3.3 Number of and percentage change in clients, by FRSP service type, 2006–07 to 2008–09**

	EIS				PSS			
	SFVS	MFRS	Counsel- ling	EDST	FRC	FDR	CCS	POP
	Number of clients				Number of clients			
<b>2006–07</b>								
Registered clients	2,217	8,269	60,841	21,477	11,883	13,787	7,895	2,669
Unregistered clients	1,266	15,557	2,680	10,397	1,940	512	3,110	447
<b>Total clients</b>	<b>3,483</b>	<b>23,826</b>	<b>63,521</b>	<b>31,874</b>	<b>13,823</b>	<b>14,299</b>	<b>11,005</b>	<b>3,116</b>
<b>2007–08</b>								
Registered clients	3,473	10,913	76,518	26,899	31,995	21,745	10,703	4,978
Unregistered clients	2,351	15,006	4,461	13,816	3,996	1,061	4,964	1,058
<b>Total clients</b>	<b>5,824</b>	<b>25,919</b>	<b>80,979</b>	<b>40,715</b>	<b>35,991</b>	<b>22,806</b>	<b>15,667</b>	<b>6,036</b>
<b>2008–09</b>								
Registered clients	3,464	12,317	78,177	24,629	45,352	17,511	13,003	5,200
Unregistered clients	3,442	15,612	23,037	24,964	14,847	4,936	10,293	2,994
<b>Total clients</b>	<b>6,906</b>	<b>27,929</b>	<b>101,214</b>	<b>49,593</b>	<b>60,199</b>	<b>22,447</b>	<b>23,296</b>	<b>8,194</b>
<b>% change from 2006–07 to 2008–09</b>								
Registered clients	56.2	49.0	28.5	14.7	281.7	27.0	64.7	94.8
Unregistered clients	171.9	0.4	759.6	140.1	665.3	864.1	231.0	569.8
<b>Total clients</b>	<b>98.3</b>	<b>17.2</b>	<b>59.3</b>	<b>55.6</b>	<b>335.5</b>	<b>57.0</b>	<b>111.7</b>	<b>163.0</b>

Notes: FDR includes RFDR. If a client used both FDR and RFDR then they were counted twice in the FDR figures. The number of such clients are very small. Table includes clients of all ages, including those aged under 15 years of age.

Source: FRSP Online Reporting Portal, 4 December 2009.

In contrast to the increased use of FRCs and FDR services, the number of calls handled by FRAL fell from 99,086 in 2006–07 to 81,878 in 2008–09, a decrease of 17% (Table 3.4). Nevertheless, the number of callers remains substantial. The decreases in the number of calls to FRAL is likely to be explained by several factors, including the fact that parents' understanding of the changes to the family law system has improved (which may reduce the need for initial information), and the fact that as services such as FRCs have become more established and better known, referral networks may have become more localised, resulting in fewer parents needing to call a national information and advice line.

**Table 3.4 Number of calls to FRAL, 2006–07 to 2008–09**

Period	Number calls
2006–07	99,086
2007–08	91,435
2008–09	81,878
<b>% change from 2006–07 to 2008–09</b>	<b>–17%</b>

Source: FaHCSIA, September 2009

The number of calls to Mensline was relatively stable over the period 2006–07 to 2008–09, at just under 40,000 calls per year (Table 3.5). Outbound calls are made to clients who have joined the Call Back Service (CBS) provided by Mensline. Under this service, callers can receive up to six telephone counselling sessions over a six-week period. The service is free and is suitable for people who have issues/concerns that are more long-term and require more than one telephone call to assist. Over the period investigated, the number of calls that Mensline staff made to clients increased by 45% (from 2,249 in 2006–07 to 3,262 in 2008–09).

**Table 3.5 Number of calls made to and by Mensline, 2006–07 to 2008–09**

	Answered calls	Outbound calls (including CBS)
2006–07	39,736	2,249
2007–08	38,169	4,501
2008–09	37,837	3,262
% change from 2006–07 to 2008–09	–4.8%	45.0%

Source: Mensline Australia summary statistics

There was a large increase in the number of active referrals (warm transfers) from FRAL parenting advisors and FRCs to the TDRS.<sup>6</sup> The number of warm transfers from a FRAL parenting advisor to TDRS increased by around 300% (from 809 in 2007–08 to 3,263 in 2008–09). Over this period, the number of warm transfers from FRC to TDRS increased by 132%, from 537 to 1,245.

In 2008–09, there were 13,441 calls made to TDRS that were answered. About a quarter of these calls resulted in the caller undergoing an intake session, and just over one in twenty commenced FDR.

The Family Relationships Online website<sup>7</sup> provides information about family relationship issues, including how to access a range of services that can assist in managing relationship issues, such as agreeing on appropriate arrangements for children after parents separate. FRO also provides downloadable resources about a range of issues related to family relationships and family law.

In June 2009, there were 21,233 visits to the FRO, from 11,378 individual IP addresses. This suggests that many FRO users access the site more than once. In June 2009, the average time spent on the site was just under four minutes.<sup>8</sup>

In June 2009, the three most commonly downloaded resources were:

- *An Introduction to Parenting Plans* (FRO Factsheet)—536 visits;
- *Help for Parents After Separation: A Program to Make Parenting Orders Work* (AGD brochure)—211 visits; and
- *Questions and Answers About Separation for Children* (AGD booklet)—197 visits.

### 3.1.3 Reasons for attending the service

The Survey of FRSP Clients conducted in late 2009 provides information on the main reason why clients attended a service.<sup>9</sup>

Table 3.6 shows that for the early intervention services, there is some variation in the main reason given for attending a service. Two-thirds of respondents who used counselling services and

<sup>6</sup> Data from TDRS administrative data were provided to AIFS by FaHCSIA. The TDRS commenced operation in July 2007. Demographic data was not collected for the TDRS.

<sup>7</sup> Family Relationships Online, <www.familyrelationships.gov.au>.

<sup>8</sup> Data provided to AIFS by AGD.

<sup>9</sup> Respondents were asked for the main reason they attended the service. The reasons that the respondent could choose from were to: “sort out issues about [their] children after a relationship break-up or separation”; “sort out general family relationship issues [with their spouse, former spouse, children or other family members]”; “deal with personal problems”; “sort out issues about [their] grandchildren”; and “some other reason”. Clients who had attended CCS, POP and FDR services were not given the option of selecting the reasons to “deal with personal problems” and “some other reason” because these were not reasons for which the services could be used.

over half of those who had attended SFVS or MFRS (54–58%) indicated that their main reason for using these services was to sort out general family issues, while nearly one-fifth of these three groups (18–19%) went to the service mainly to deal with personal problems. In addition, one-fifth of MFRS clients, 14% of SFVS clients and only 9% of the clients of counselling services said that they mainly went to the service to sort out issues about their children after a relationship break-up or separation. Just over a quarter of the clients of EDST services indicated that the main reason for attending the service was to sort out general family relationship issues, but the majority (61%) went for reasons other than those listed in the table.<sup>10</sup>

**Table 3.6 Main reason indicated by client for attending early intervention service, by type of service attended, 2009**

	SFVS	MFRS	Counselling	EDST
	%			
Sort out issues about their children after a relationship break up or separation	14.0	19.5	9.0	7.4
Sort out general family relationship issues	57.9	53.7	66.0	26.0
Deal with personal problems	19.3	17.5	17.8	4.5
Sort out issues about their grandchildren	1.8	0.0	0.7	1.0
Some other reason	7.0	9.4	6.5	61.1
<b>Total</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>57</b>	<b>149</b>	<b>898</b>	<b>599</b>

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

Source: Survey of FRSP Clients 2009

Between 72% and 85% of respondents who used a post-separation service said that the main reason for attending the service was to sort out issues about their children after a relationship break-up or separation (Table 3.7). Clients who attended an FDR service were more likely than those who used other post-separation services to say that their main reason for attending the service was to sort out a general family relationship issue (26% of FDR respondents compared to 11–15%).

**Table 3.7 Main reason indicated by client for attending a post-separation service, by type of service attended, 2009**

	FRC	FDR <sup>a</sup>	CCS	POP
	%			
Sort out issues about their children after a relationship break-up or separation	77.5	72.2	79.6	85.2
Sort out general family relationship issues	12.3	26.3	15.4	11.4
Deal with personal problems	0.5	–	–	–
Sort out issues about their grandchildren	7.9	1.3	5.0	3.4
Some other reason	1.8	0.2	0.0	0.0
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>796</b>	<b>456</b>	<b>203</b>	<b>93</b>

Note: <sup>a</sup> Excludes TDRS clients.

Source: Survey of FRSP Clients 2009

Table 3.8 shows the main relationship focused upon by callers to Mensline during the three periods investigated. During each of these periods, information on this issue was not available for 33–39% of calls. Most of the calls made each year appeared to concern a previous relationship or current partner. Of all calls (including those for which no information about the issues discussed was available), approximately one-quarter concerned a previous relationship and just

<sup>10</sup> Many of these respondents, when asked to specify what the “other” reason was, indicated that they had attended a marriage or relationship education program.

over one-fifth concerned a current partner. Of the calls for which information about the issue discussed was available, close to 40% concerned a previous partner and around 35% concerned a current partner (data not shown in Table 3.8). That is, around three-quarters of all calls with known information about the issue discussed concerned either a current or previous partner.

**Table 3.8 Main relationship discussed by caller, Mensline, 2006–07 to 2008–09**

	2006–07	2007–08	2008–09
	%		
Separated partner	26.4	25.8	23.3
Current partner	22.4	22.9	21.2
Children	6.3	7.1	6.4
Social or work relationship	1.8	5.8	5.1
Extended family member	2.2	2.6	2.4
Single	5.5	2.6	2.4
Data not available	35.1	33.3	39.3
<b>Total</b>	<b>99.7</b>	<b>100.1</b>	<b>100.1</b>
<b>Total number of answered calls</b>	<b>39,736</b>	<b>38,169</b>	<b>37,837</b>

Notes: Percentages may not total exactly 100.0% due to rounding. Information about relationships discussed may not have been collected where calls reflected a crisis situation.

Source: Mensline Australia summary statistics

Table 3.9 reveals that interpersonal issues were by far the most common issues recorded for each period (representing close to 40% of all calls, including calls for which the main issue discussed was not recorded). In total, 63–68% of all calls for which the main issue was recorded concerned interpersonal matters (data not shown in Table 3.9). The other main issues that were recorded covered legal/material/financial matters, physical/mental health matters, safety matters, issues relating to sex, and work issues.

**Table 3.9 Main issue discussed by caller, Mensline, 2006–07 to 2008–09**

	2006–07	2007–08	2008–09
	%		
Interpersonal	43.6	42.2	38.1
Parenting	5.6	6.8	6.6
Legal/material/financial	5.2	5.5	4.3
Physical/mental health	4.7	5.4	5.5
Safety	3.5	4.2	3.6
Sexual	1.2	1.9	1.9
Work	0.6	0.7	0.7
Data not available	35.5	33.3	39.3
<b>Total</b>	<b>99.9</b>	<b>100.0</b>	<b>100.0</b>
<b>Total number of answered calls</b>	<b>39,736</b>	<b>38,169</b>	<b>37,837</b>

Notes: Percentages may not total exactly 100.0% due to rounding. Information about relationships discussed may not have been collected where calls reflected a crisis situation.

Source: Mensline Australian summary statistics

Consistent with the trends in the nature of calls to Mensline, Table 3.10 indicates that easily the most prominent presenting needs from callers to FRAL were issues concerned with separation and relationships. Many of the other needs listed in the table—court/legal, violence/abuse, finances, miscellaneous abuse, mental health, emergency/crisis, child abduction, dispute resolution and accommodation—are likely to be subcategories of this dominant one. The percentage of these needs remained relatively stable over time, with a modest increase in needs about separation between 2006–07 and 2007–08 and a small reduction in the need for assistance in the court/legal area.

**Table 3.10 Caller presenting needs, FRAL, 2006–07 to 2008–09**

	2006–07	2007–08	2008–09
	%		
Separation	52.1	58.1	58.9
Relationship	35.2	35.5	33.4
Court/legal	21.2	20.5	18.3
Violence/abuse	7.9	8.6	8.2
Finances	5.6	5.0	4.2
Miscellaneous abuse	3.1	3.3	3.0
Mental health	2.4	2.5	2.5
Emergency/crisis	1.2	1.1	0.9
Child abduction	0.9	0.9	0.8
Dispute resolution	0.8	2.2	1.6
Accommodation	0.7	0.5	0.4
Presenting needs not recorded	21.4	18.0	19.3

Note: Percentages may total to more than 100.0% as more than one presenting need could be recorded.

Source: FRAL call management system data

The FRSP Online database provides information on clients' number of presenting needs.<sup>11</sup> As Table 3.11 indicates, the majority of clients across all service types had either one or two presenting needs. Among early intervention services, in 2008–09, 61% of SFVS clients, 56% of MFRS clients, 70% of counselling clients and 92% of EDST clients had either one or two presenting needs. Clients of SFVS and MFRS were the most likely to have multiple presenting needs (23% in both services had five or more presenting needs respectively) in 2008–09, while EDST clients

**Table 3.11 Number of presenting needs recorded, individual registered clients aged over 15 years, 2006–07 and 2008–09**

	EIS				PSS			
	SFVS	MFRS	Counselling	EDST	FRC	FDR	CCS	POP
<b>2006–07</b>								
1	45.3	35.6	50.7	85.3	48.6	56.6	49.0	60.4
2	15.3	20.1	18.9	6.7	19.3	21.8	25.3	16.3
3	12.3	14.4	12.3	2.9	11.4	9.8	11.7	8.6
4	9.4	10.9	7.3	1.5	7.7	5.1	8.6	5.9
5+	17.8	19.1	10.8	3.8	13.1	6.8	5.5	8.8
Total	100.1	100.1	100.0	100.2	100.1	100.1	100.1	100.0
<b>2008–09</b>								
1	51.8	38.9	41.5	81.4	43.5	54.6	49.6	63.4
2	12.2	16.8	17.7	7.1	13.0	18.9	18.4	12.4
3	7.9	12.8	12.5	3.2	11.2	8.8	11.0	6.7
4	5.6	8.8	8.6	2.4	8.6	5.8	6.6	6.6
5+	22.6	22.7	19.6	6.1	23.7	11.9	14.4	11.0
Total	100.1	100.0	99.9	100.2	100.0	100.0	100.0	100.1

Notes: FRSP Online records presenting needs as an attribute of a client's role in a particular client activity. For a given client and type of service, a presenting need is included in the count of needs if the need was recorded for the client in relation to any activity that included a session at that type of service during the reference year. Totals include a very small number of clients (fewer than 0.05%) with no recorded presenting needs. FDR includes RFDR clients. Registered clients without complete data (due to database mismatches) are excluded from this table. Percentages may not total exactly 100.0% due to rounding.

Source: FRSP Online data extract, October 2009

<sup>11</sup> The FRSP Online presenting needs classification lists over 60 needs. The broad areas covered by the list of presenting needs includes: relationships, parenting, family violence/abuse, children, health, drug and alcohol issues, legal issues and communication issues.

were the least likely to have multiple presenting needs (6% had 5 or more). For post-separation services, in 2008–09, 57% of FRC clients, 74% of FDR clients, 68% of CCS and 76% of POPs had either one or two presenting needs. Only a minority of clients had five or more presenting needs, varying from 24% for FRCs, 12% for FDR, 14% for CCS to 11% for POPs. While it is unclear exactly why the number of presenting needs is lower for the service types that are typically attended later in family law pathways, it is possible that the greater specialisation of services such as FDR, CCS and POP mean that a narrower set of needs is focused on and hence recorded.

There was an increase in the proportion of clients with five or more presenting needs for all early intervention and post-separation service types over the period 2006–07 to 2008–09. The increase was particularly pronounced for counselling (increase from 11% to 20%), FRCs (13% to 24%), FDR (7% to 12%) and CCS (6% to 14%). The increase in the number of presenting needs that clients had may reflect an increase in the “complexity” of the issues facing families attending services, better assessment and screening practices by services, better recording of this presenting needs data by services, and/or an increase in the number of categories for recording client needs in FRSP Online.

## 3.2 Service use by parents who are not separated

### 3.2.1 Use of services and types of services used

This section provides information on the use of services by parents with a partner for “relationship support” or because they thought that their relationship might be “in real trouble”. The types of services used are described and the characteristics distinguishing between parents who use and do not use services are examined.

The data in this section are from the General Population of Parents Survey (GPPS) 2009.<sup>12</sup> The information collected from parents in this survey was about the use of services since their current relationship started and therefore includes information on service use prior to the 2006 changes to the family law system.

Parents participating in the GPPS 2009 who had a partner were asked whether they had thought at any stage that their current relationship might be “in real trouble”. The answer to this question determined the nature of the question about service use. A series of prompts was provided if respondents did not mention use of certain services.<sup>13</sup>

Overall, 27% of parents living with a partner said that they thought at some stage that their relationship might be in real trouble (including that it was currently in real trouble) and 73% said that they had never thought that their relationship might be in real trouble.

The parents who said that their relationship had never been in real trouble were asked if they had nonetheless used any services to support their relationship. About 13% of mothers and fathers who said that their relationship had never been in real trouble had used services to “support their relationship” (Table 3.12). Just under half (45%) of fathers and just over half of mothers (55%) whose relationship had been in real trouble at some stage had used relationship services.

<sup>12</sup> In a small number of cases in the GPPS 2009, the parents’ partner was not the other parent of their children.

<sup>13</sup> In the GPPS 2009, parents were asked: “At any stage, have you thought your relationship might be in real trouble?” Those who answered “no” are classified as having not experienced relationship difficulties and those who answered “yes” as having experienced relationship difficulties. Parents who had not experienced relationship difficulties were asked whether they had nevertheless sought help or advice or used any services to support their relationship (other than from friends or family members) and, if so, which types of services they had used. Respondents who had experienced relationship difficulties were asked whether they had ever sought any help or advice or used any services to resolve problems in their relationship (other than from friends or family members) and were then probed whether they had used a range of services. Interviewers classified respondents’ answers to either question using the same set of pre-determined categories. Specific attention was given to seven services that may have been used: (a) Family Relationship Centres, (b) other counsellors (marriage guidance or similar professional), (c) family violence or services, (d) other relationship services, (e) general practitioners or other health professionals, (f) lawyers, and (g) religious leaders or elders. Interviewers asked respondents about whether they had used each of these services if they had not already mentioned using them. These “prompt questions” were also asked of respondents who said that they had not sought help or advice. The proportion of respondents who had used services was then readjusted to include those who, through this prompting, indicated that they had used a service.

**Table 3.12 Use of services to support relationships or resolve problems, parents living with a partner, fathers and mothers, 2009**

	Support relationship			Resolve problems		
	Fathers	Mothers	All	Fathers	Mothers	All
	%			%		
Had sought help with relationship issues	12.5	12.6	12.6	45.3	54.9	50.7
Type of service (if used)						
FRC <sup>a</sup>	13.8	11.8	12.8	19.4	22.4	21.2
Marriage and relationship counsellor <sup>a</sup>	34.9	50.7	43.1	62.5	62.7	62.6
Family violence service <sup>a</sup>	0.5	1.0	0.8	1.7	2.2	2.0
Other relationship service <sup>a</sup>	5.3	4.9	5.1	4.3	9.7	7.6
GP or other health professional <sup>a</sup>	27.5	34.0	30.9	36.6	38.4	37.7
Lawyer <sup>a</sup>	0.5	2.5	1.5	3.5	4.1	3.9
Religious leader/elder <sup>a</sup>	32.3	24.6	28.3	16.4	11.6	13.5
Welfare agency/community support service	2.1	3.0	2.6	3.9	3.3	3.5
Telephone service (e.g., FRAL, Lifeline, MensLine)	1.6	0.0	0.8	1.7	1.9	1.8
Internet, TV, newspaper, magazine or self-help book	3.2	0.5	1.8	1.7	2.8	2.4
Other	0.0	0.5	0.3	0.9	1.1	1.0
Use of two or more services (if used)	20.6	24.1	22.4	37.9	44.7	42.1
Number of respondents	1,537	1,648	3,185	512	660	1,172

Notes: Respondents could report having used more than one type of service and therefore column percentages may sum to more than 100.0%. <sup>a</sup> Respondents were prompted about use of these services if they did not initially mention using them. Includes pre- and post-reform respondents.

Source: GPPS 2009

The services used most frequently by parents who had used services to support their relationship were marriage and relationship counsellors (43%), general practitioners (GPs) or other health professionals (31%), religious leaders/elders (28%) and FRCs (13%). The proportion of parents using other services to support their relationship was much smaller. It should be remembered, however, that the respondents were specifically asked about whether they had used each of the services listed in Table 3.12, with the exception of a welfare agency/community support service, telephone service, or Internet, media or self-help book.

Overall, there was a similar pattern in the types of services used by parents to assist in resolving relationship problems (i.e., who thought their relationship might be in trouble), with 63% of those who had used services having used marriage and relationship counsellors, 38% a GP or other health professional, 21% an FRC, and 14% a religious leader/elder. Parents who had used services to help deal with a relationship problem were more likely to have used two or more services than those who had used services to support a relationship (42% and 22% respectively).

### 3.2.2 Characteristics associated with the use of services

The extent to which parents who used services differed from those who did not use services was examined in relation to: their age, educational attainment level and current marital status, and two aspects of their residential location—remoteness from service centres, and level of socio-economic advantage or disadvantage. The results of this analysis are set out in Table 3.13 (for service use to support the relationship) and Table 3.14 (for service use to resolve difficulties in the relationship).

In general, use of services was more likely for: older parents compared with younger parents (a difference that was most marked among mothers who had experienced relationship difficulties); those with higher rather than lower levels of education; fathers who were married, compared with fathers who were cohabiting; parents who lived in a more geographically accessible area (especially among mothers who experienced relationship difficulties); and those who lived



in a more socio-economically advantaged area (especially among parents who experienced relationship difficulties).<sup>14</sup>

**Table 3.13 Socio-economic and demographic characteristics of parents, by whether services used to support relationship, partnered fathers and mothers, 2009**

	Fathers		Mothers	
	Didn't use services	Used services	Didn't use services	Used services
Age of parents (years)	42.7	43.1	38.8	39.2
	%		%	
Highest level of education				
Degree or higher	41.2	49.7	40.2	44.6 **
Other post-secondary qualification	27.7	27.0	24.2	33.7
Year 12 (no post-secondary qualification)	15.4	11.6	18.9	10.4
Year 11 or lower	15.8	11.6	16.7	11.4
Current relationship status				
Married	88.5	95.2 **	88.1	86.7
Cohabiting	11.5	4.8	11.9	13.3
Accessibility remoteness index for postcode (higher score = less accessible)				
Mean	1.01	0.91	1.28	1.24
SEIFA socio-economic advantage and disadvantage for postcode (lower score = relatively disadvantaged)				
Mean	1,025.80	1,031.40	1,012.70	1,019.40
Number of respondents	1,320	189	1,403	203

Notes: SEIFA = Socio-Economic Indexes for Areas. Other post-secondary qualifications include trades, certificates and diplomas. Includes pre- and post-reform respondents. Differences between the used and not-used groups for fathers and mothers were separately tested using the chi-squared test for categorical variables and t-test for continuous variables. \*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$ .

Source: GPPS 2009

**Table 3.14 Socio-economic and demographic characteristics of parents, by whether services used to resolve relationship problems, partnered fathers and mothers, 2009**

	Fathers		Mothers	
	Didn't use services	Used services	Didn't use services	Used services
Age of parent (years)	42.7	44.2	39.1	49.9 *
	%		%	
Highest level of education				
Degree or higher qualification	34.2	41.7	32.2	34.0
Other post-secondary qualification	31.7	30.9	29.9	33.2
Year 12 (no post-secondary qualification)	14.4	14.8	17.1	16.6
Year 11 or lower	19.8	12.6	20.8	16.3
Current relationship status				
Married	81.8	87.9	82.2	86.7
Cohabiting	18.2	12.1	17.8	13.3
Accessibility remoteness index for postcode (higher score = less accessible)				
Mean	1.09	0.78	1.29	0.92 *
SEIFA socio-economic advantage and disadvantage for postcode (lower score = relatively disadvantaged)				
Mean	1,009.20	1,026.7 *	1,001.40	1,022.8 **
Number of parents	280	232	298	362

Notes: SEIFA = Socio-Economic Indexes for Areas. Includes pre- and post-reform respondents. Differences between the used and not-used groups for fathers and mothers were separately tested using the chi-squared test for categorical variables and t-test for continuous variables. \*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$ .

Source: GPPS 2009

<sup>14</sup> Some of these trends did not reach statistical significance for both sets of analysis, although the overall direction of relevant results across the two sets of analysis was consistent.

### 3.3 Service use by parents who separate

The first set of analyses in this section focus on use of services prior to separation, as reported by parents in the GPPS 2009. The second set of analyses focus on contact with or use of services after separation among parents who separated after the July 2006 reforms were introduced. Attention is then directed to changes in contact with or use of services

#### 3.3.1 Service use by parents in the GPPS 2009 prior to separation

Respondents in the GPPS 2009 who had separated from the other parent of at least one of their children were asked the same question regarding service use that was asked of those who said they had experienced “real trouble” in their relationship but had not separated.<sup>15</sup>

#### 3.3.2 Characteristics of parents in the GPPS 2009 who used services prior to separation

Among separated parents in the GPPS 2009, the socio-economic and demographic characteristics associated with a higher likelihood of having used a relationship service prior to separation were: being slightly older; having a higher level of educational attainment (especially among mothers); and being married rather than cohabiting (especially among mothers) (Table 3.15).

**Table 3.15 Socio-economic and demographic characteristics, by whether used services to resolve relationship problems before separation, separated fathers and mothers, 2009**

	Fathers		Mothers	
	Didn't use services	Used services	Didn't use services	Used services
Age of parent (years)	42.8	45.9 ***	39.2	40.8 *
	%		%	
Education				
Degree or higher qualification	25.4	30.7	20.2	27.1 **
Other post-secondary qualification	32.4	40.2	26.2	36.5
Year 12 (no post-secondary qualification)	19.0	15.3	21.1	13.4
Year 11 or lower	23.2	13.9	32.6	23.1
Relationship status at separation				
Married	68.5	73.7	44.5	72.1 ***
Cohabiting	24.5	23.4	38.1	21.8
Other (separated before child was born)	7.0	2.9	17.4	6.1
Number of respondents	143	137	218	280

Notes: Includes pre- and post-reform respondents. Differences between the used and not-used groups for fathers and mothers were separately tested using the chi-squared test for categorical variables and t-test for continuous variables. \*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$ .

Source: GPPS 2009

15 Respondents in the GPPS 2009 who had separated from the other parent of at least one of their children were asked: “Before you separated from [child's] other parent, other than from family or friends, did you ever seek any help or advice or use any services, to resolve problems in your relationship?” If two or more children were born of different relationships that ended in separation, then the question focused on the most recent of these relationships. Just over half of the parents (54%) sought help before separating from a relationship in which a child was born. Mothers were more likely than fathers to have reported using services prior to separation (56% and 49% respectively). Currently separated parents were only slightly more likely to seek help at this time than those who had difficulties in the relationship but stayed together. Among parents who had experienced relationship difficulties, 54% of the fathers and 75% of the mothers who had sought help to deal with these difficulties subsequently separated.

### 3.3.3 Contact with or use of services during and after separation: The post-reform sample

Parents in the LSSF W1 2008, all of whom had separated post-reform, were asked three questions that identified whether they had contacted or used services during or after the separation.<sup>16</sup>

These post-reform separated parents either contacted or made use of one or more services before or after the separation (Table 3.16), that is about one-third made no use of services. Forty-four per cent of parents had used one or two services and a just under a quarter of parents had used three or more services. Mothers were a little more likely than fathers to have used three or more services (28% and 21% respectively).

**Table 3.16 Number of services used during or after separation, fathers and mothers, 2008**

	Fathers	Mothers	All
	%	%	%
None	33.8	30.4	32.1
One	23.4	21.3	22.4
Two	21.3	20.8	21.1
Three or more	21.4	27.5	24.4
Total	99.9	100.0	100.0
Number of respondents	4,983	5,019	10,002

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

Source: LSSF W1 2008

### 3.3.4 Characteristics of post-reform separated parents who contacted or used services

Table 3.17, which is based on the post-reform sample from the LSSF W1 2008, outlines the characteristics of those separated parents who did and did not contact or use services. Compared with the post-reform separated mothers and fathers who did not contact services, those who did so were somewhat older and significantly more likely to be married rather than cohabiting, and better educated. They also had a higher personal annual income than those who did not contact or use services. They were considerably less likely to have very young children (0–2 years) and were more likely to have children in the middle years (5–11 years).

Parents who contacted services were also much more likely to have reported the experience of some form of family violence, mental health problems or alcohol and drug issues or other addictions before the separation, as well as distant, highly conflicted and even fearful relationships. In addition, they were much less likely to report their post-separation relationship as being friendly. In other words, although the previously married parents and the better educated parents were more likely than others to have contacted services, those who had contacted services were more likely than other parents to have experienced significant problems and needs.

<sup>16</sup> Parents in the LSSF W1 2008 were classified as having either contacted or used a service if any of the following applied: (a) their answer to the following question confirmed that they had contacted a service other than family members or friends during or after separation: “At the time of, or after the separation, did you contact any of the following: a counselling, mediation or dispute resolution service; a domestic violence service; a lawyer; a legal service (including legal advice line, private or legal aid); the courts; family; other [specify]?”; (b) they indicated that they had mainly used formal services (as outlined in the first three response options) when answering the following question: “Which best describes how arrangements for [child] were mainly reached? Did you mainly use: counselling, mediation or dispute resolution services; a lawyer; the courts; discussions with [other parent]; nothing specific, it just happened; something else [specify]?” (the present tense was used for parents who said that they were in the process of sorting out their arrangements); and (c) they indicated that they had attempted FDR or mediation either alone or with the other parent when answering the following question: “Can I just check, have you and [other parent] attempted family dispute resolution or mediation?”

**Table 3.17 Socio-economic, demographic and relationship characteristics of post-reform parents, by whether used services during or after separation, separated fathers and mothers, 2008**

	Fathers			Mothers	
	Didn't use services	Used services		Didn't use services	Used services
Age of parent (years)	32.6	36.5***		29.1	34.0***
	%			%	
Age of child					
0–2 years	54.9	29.7 ***		62.0	32.6 ***
3–4 years	14.9	20.0		14.0	18.6
5–11 years	21.6	36.2		17.7	34.4
12–14 years	4.3	7.8		3.4	8.3
15–17 years	4.3	6.3		2.9	6.1
Education					
Degree or higher	7.3	16.2 ***		5.8	17.5 ***
Other post-secondary qualification	35.3	41.5		27.8	35.5
Year 12 (no post-secondary qualification)	18.0	14.7		21.5	19.1
Year 11 or lower	39.4	27.5		44.9	27.9
Marital status at separation					
Married	33.5	62.7 ***		24.8	59.5 ***
Cohabiting	45.1	30.7		46	31.4
Other	21.4	6.6		29.2	9.2
Experience of family violence					
Physical hurt	6.9	21.8 ***		11.8	32.1 ***
Emotional abuse alone	24.5	42.5		28.2	43.8
No violence reported	68.6	35.7		60	24.1
Mental health problems or alcohol/drug issues					
Yes	21.7	42.2 ***		31	58.5 ***
Quality of relationship with other parent					
Friendly	54.7	25.9 ***		55.9	24.7 ***
Cooperative	28.0	27.7		27.3	27.6
Distant	11.8	23.0		11.7	21.9
Lots of conflict	4.3	18.9		4.2	17.0
Fearful	1.3	4.5		0.9	8.9
Country of birth					
Australia-born	81.0	81.6		84.9	84.4
Born outside of Australia	19.0	18.4		15.1	15.6
Indigenous status					
Indigenous	5.5	2.8 ***		6.3	3.3 ***
Non-Indigenous	94.5	97.2		93.7	96.7
Personal annual income					
Mean	\$49,160	\$61,270***		\$27,058	\$33,291***
SD	\$56,539	\$73,109		\$14,956	\$37,655
Median	\$40,000	\$48,000		\$24,784	\$26,500
Number of respondents	1,504	3,479		1,379	3,640

Notes: Fewer than 10% of fathers and mothers did not report their personal income. Parents were classified as having used any services if any of the following applied: (a) they confirmed that they had contacted any services other than family members or friends during or after separation; (b) they indicated that "counselling, family dispute resolution", "a lawyer" or "the courts" was the best way to describe how arrangements for the focus child were reached; or (c) they had attempted FDR or mediation themselves or with the other parent. Data have been weighted. Differences between the used and not-used groups for fathers and mothers were separately tested using the chi-squared test for categorical variables and t-test for continuous variables. \*  $p < .05$ , \*\*  $p < .01$ , \*\*\*  $p < .001$

Source: LSSF W1 2008

### 3.3.5 Changes in types of services contacted or used since the 2006 reforms

This section examines whether the pattern of service use changed following the 2006 reforms to the family law system. Two sources of data were used:

- the LSSF W1 2008, which provides data on parents separating after 1 July 2006; and
- the Looking Back Survey (LBS) 2009, which provides data on parents separating before 1 July 2006.

Data from the LBS 2009 and the LSSF W1 2008 were used to examine the extent to which there were changes in the types of services contacted or used by parents who separated in 2004 or 2005 (pre-reform) and those who separated after 1 July 2006 (post-reform).<sup>17</sup> As Table 3.18 indicates, gender differences were notable for both pre- and post-reform groups with respect to domestic violence services contacted or used, but post-reform separated parents were also somewhat more likely to make contact with or use domestic violence services, possibly reflecting a greater awareness of these services and/or their greater availability. Differences between men and women were also prominent with respect to the use of legal services in the pre-reform sample, with over half the mothers nominating this service compared to a little under two-fifths of the fathers. But gender differences with respect to contact with or use of legal services evened out considerably in the post-reform sample.

**Table 3.18 Types of services contacted or used during or after separation, fathers and mothers, pre- and post-reform**

	Pre-reform			Post-reform		
	Fathers	Mothers	All	Fathers	Mothers	All
	%			%		
Counselling, mediation or dispute resolution service <sup>a</sup>	68.6	65.7	67.1	75.4	71.3	73.3
Lawyer	75.0	72.6	73.8	66.7	66.9	66.8
The courts	40.7	40.0	40.3	29.2	29.2	29.2
Legal service (advice line, private or legal aid)	37.8	53.0	45.5	26.0	31.7	28.9
Domestic violence service	4.8	17.3	11.1	6.0	21.9	14.2
Child Support Agency	1.6	3.6	2.6	1.2	2.3	1.7
Centrelink	0.4	4.2	2.3	0.6	2.3	1.4
Police	0.9	2.0	1.5	0.9	1.9	1.4
Other	4.3	6.7	5.5	4.8	5.3	5.1
<b>Number of respondents</b>	<b>757</b>	<b>848</b>	<b>1,605</b>	<b>3,479</b>	<b>3,640</b>	<b>7,119</b>

Notes: <sup>a</sup> Includes parents in the "other" category who said they went to a counsellor, psychologist or mental health professional (less than 2%). Multiple responses were allowed and therefore percentages sum to more than 100%.

Source: LSSF W1 2008 and LBS 2009

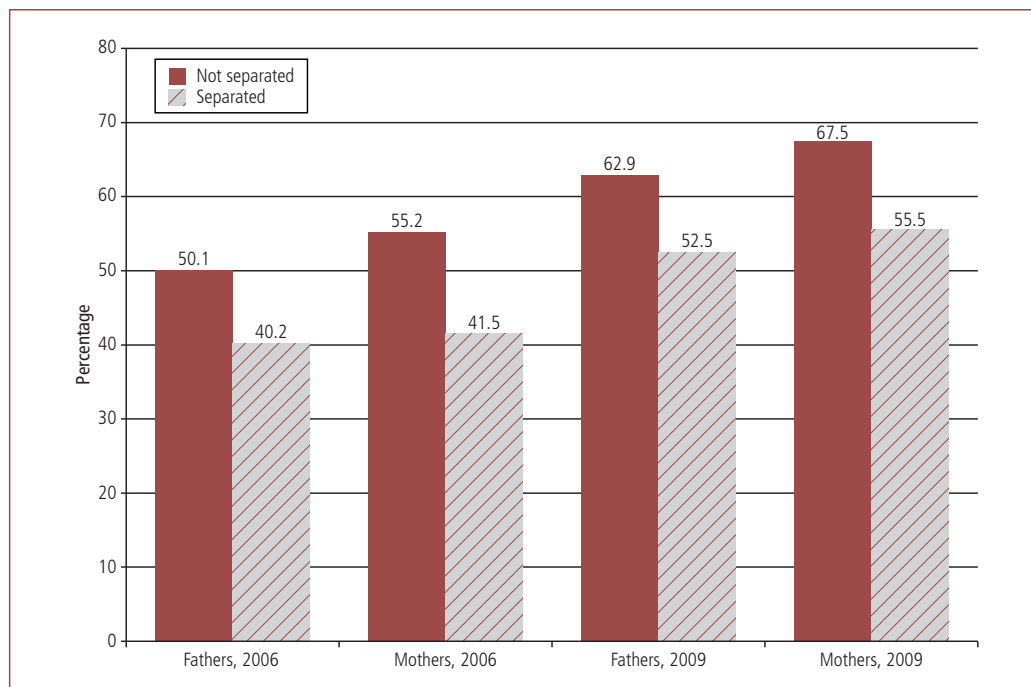
Post-reform separated parents who contacted or used services were somewhat more likely to nominate counselling, mediation and dispute resolution and somewhat less likely to mention lawyers than their pre-reform counterparts. While substantial proportions in both groups contacted or used courts and legal services, pre-reform separated parents were considerably more likely to do so than their post-reform counterparts.

These data point in the direction of addressing policy objective 3 (2007 Evaluation Framework, Appendix B). Some caution needs to be exercised in making such a claim, however, as the differential service use might to some extent reflect the differing amounts of time that had passed. It might be, for example, that as time passes, the more difficult and entrenched cases increasingly "drift" towards legal services and courts.

17 In the LSSF W1 2008, use of services was derived from the questions described in footnote 16. In the LBS 2009, respondents were first asked: "At the time of, or after your separation in [year], did you contact any of the following: [list of services]?" Second: "Now, I'd like to ask a few questions about some of the things that you might have used to sort out the parenting arrangements for [focus child] in [year]. Which of the following best describes how you mainly decided on the arrangements? Was it through: [list of main pathways]?" Third: "Just to check, when you were deciding the parenting arrangements for [focus child], did you and [focus parent] attempt some form of mediation or dispute resolution?"

### 3.3.6 Parental expectations concerning use of lawyers regarding separation

Figure 3.1 shows that there was an increase between 2006 and 2009 in the proportion of parents (separated and not separated) agreeing that it was important to consult a lawyer if thinking of separating. However, separated parents in each survey were less likely than non-separated parents to endorse the statement.<sup>18</sup>



Source: GPPS 2006 and 2009

**Figure 3.1** Agreement with the statement: “If you are thinking of separating, it is important to consult a lawyer”, by separation status, fathers and mothers, 2006 and 2009.

The increase in the proportion of parents saying that it was important to consult a lawyer is not consistent with the decrease in the proportion of separating parents who actually used lawyers (based on analysis of data from the LSSF W1 2008 and the LSB 2009 (Table 3.18)). When attempting to reconcile these apparently conflicting findings, it is important to keep in mind that the question in the GPPS surveys was about what the respondent *thought* they would do and the responses are therefore hypothetical. In addition, uncertainties surrounding the precise nature of the changes in legislation that were encouraging parents to make use of non-legal services, may have led many of those who were asked the question to suggest that they would probably need to seek legal advice in order to be clear about these changes. Media attention around issues such as the “shared parenting presumption” (as it was frequently portrayed) may have further added to the uncertainty. Furthermore, as noted above, the lower apparent use of lawyers among the post-reform sample compared with the pre-reform sample may have resulted from their shorter interval between separation and interview.

## 3.4 Staff assessments of their service’s operation

This section provides information on the assessment by FRSP staff of a range of aspects of the service in which they work. This information was collected as part of the Online Survey of FRSP Staff 2009.

<sup>18</sup> Parents in both the GPPS 2006 and GPPS 2009 were asked to indicate their level of agreement or disagreement with the statement: “If you are thinking of separating, it is important to consult a lawyer”. Response options were: “strongly agree”, “agree”, “mixed feelings”, “disagree” and “strongly disagree”. A few respondents (1–3% in each survey) volunteered that they were too uncertain to answer this question. These responses have been combined with expressions of “mixed feelings”.

More particularly, some of the issues considered are the service professionals' views about:

- the accessibility of their service; and
- the operational aspects of their service, including whether:
  - their service helps clients in conflict to reduce or overcome their problems;
  - the service successfully engages men;
  - the intake process is effective in identifying the needs of clients;
  - staff have the skills required to meet clients' needs;
  - limited resources restrict their service's capacity to meet the needs of clients; and
  - the waiting list is too long.

### 3.4.1 Accessibility of FRSP services

Table 3.19 summarises data on service professionals' views about various dimensions of the accessibility of their services. A requirement of FRCs is that they be accessible by public transport. A large majority of relevant service professionals—especially those in FRCs—agreed or strongly agreed that their services were accessible by public transport. A substantial majority of staff thought that opening times were adequate, and even larger majorities (ranging from 88% for EIS to 98% for FRCs) rated the fee structures as being appropriate. The high level of agreement by FRC staff with the statement that the fee structure for the service makes it affordable for most clients is almost certainly a reflection of the fact that FRCs offer three free hours of dispute resolution and other services for clients. Fewer respondents (though still a substantial majority) were prepared to give a good rating to parking facilities for FRCs and EIS.

**Table 3.19 Agreement (agree or strongly agree) with statements about the accessibility of their service, service professionals' perceptions, by type of service, 2009**

	FRCs	FRAL	All EIS	All PSS	All services
	%				
This service is easily accessed by public transport. <sup>a</sup>	94.7	–	82.9	81.1	86.3
There is adequate parking at this service. <sup>a</sup>	68.1	–	70.4	81.3	72.4
The fee structure for the service makes it affordable for most clients. <sup>a</sup>	98.4	–	88.2	92.4	92.6
The hours of operation of the service are appropriate for the target client/caller groups.	94.0	88.9	83.5	81.8	86.6
Adequate outreach is provided by the service for the target client groups. <sup>a</sup>	78.4	–	63.1	56.9	66.9
There has been sufficient advertising and promotion of this service.	68.8	59.3	63.4	59.0	63.6
There are language barriers for some groups in the catchment area to use this service.	50.0	65.4	45.8	41.1	47.9
There are cultural barriers for some groups in the catchment area to use this service.	65.5	63.0	53.5	48.9	56.8
<b>Number of respondents</b>	<b>248</b>	<b>81</b>	<b>335</b>	<b>190</b>	<b>854</b>

Notes: The response categories were: "strongly agree", "agree", "disagree", "strongly disagree", "can't say/don't know" and "not applicable". "Strongly agree" and "agree" categories are reported together. The sample size differs between items because of exclusion of cases with "not applicable" responses and missing information for individual items. Percentages exclude "not applicable" responses and missing data. <sup>a</sup> FRAL respondents were not asked to respond to this statement.

Source: Online Survey of FRSP Staff 2009

Relatively high numbers of FRC staff agreed or strongly agreed that outreach was being provided to the target groups. Smaller majorities in other services may reflect differing priorities and different service models with regard to this aspect of service delivery.



Language and cultural barriers were seen to be a problem by large minorities or small majorities of staff. This is likely to reflect the reality that many services are simply unable to cover the range of languages in their area except through interpreter services, which is inevitably a compromise.

### 3.4.2 Operational aspects of FRSP service delivery

Table 3.20 reports on service professionals' assessments of a range of operational aspects of service delivery: helping clients in conflict to significantly reduce or overcome their problems, engaging men, having an effective intake, and having an appropriate skill base.

A high proportion of service professionals provided a positive rating of the operational aspects of the service delivery in the service for which they work. Waiting lists and limited resources were a particular concern for staff in some FRCs and PSS. Generally, staff pointed out that the effectiveness of the service they offered could be significantly blunted if clients had to wait weeks and sometimes months before they were able to access help. Limited resources were also of concern to a large minority of EIS.

**Table 3.20 Agreement (agree or strongly agree) with statements about operational aspects of service delivery, service professionals' perceptions, by types of service, 2009**

	FRCs	FRAL	All EIS	All PSS	All services
	%				
This service helps clients in conflict to significantly reduce or overcome their problems. <sup>a</sup>	92.3	81.1	95.7	92.9	92.7
This service successfully engages men.	97.5	92.5	92.8	93.6	94.4
The intake process at this service is effective in identifying the needs of clients. <sup>b</sup>	98.0	–	91.9	94.7	94.5
The staff at this service have the skills required to meet clients' needs.	97.5	91.4	97.3	98.4	97.0
Limited resources at this service restrict our capacity to meet the needs of clients.	43.8	24.7	45.0	55.7	45.1
The waiting list at this service is too long. <sup>b</sup>	40.2	–	27.3	42.3	35.1
Number of respondents	248	81	335	190	854

Notes: The response categories were: "strongly agree", "agree", "disagree", "strongly disagree", "can't say/don't know" and "not applicable". "Strongly agree" and "agree" categories are reported together. Percentages exclude "not applicable" responses and missing data. The sample size differs between items because of exclusion of cases with "not applicable" responses and missing information for individual items. With the exception of the items detailed below (<sup>a</sup> & <sup>b</sup>), the exclusion for most items is less than 3%. <sup>a</sup> The highest proportion of missing cases occurred from FRAL respondents (8.6%) about their ability to help clients reduce or overcome their problems. <sup>b</sup> FRAL respondents were not asked this statement.

Source: Online Survey of FRSP Staff 2009

### 3.4.3 Effectiveness of FRSP service delivery

Table 3.21 considers service professionals' views on how their service meets key aspects of service delivery referred to in the policy objectives. Generally speaking, positive responses were made by a large majority of staff with respect to almost all aspects of service delivery. The highest percentage of positive responses came from the early intervention services, the main focus of which is on the prevention of relationship breakdown. FRAL's relatively low rate of "favourable" responses for some issues and possible concerns with respect to strategies to increase father engagement may simply reflect the fact that the brief of the majority of FRAL workers, other than those providing TDRS, is essentially one of information provision and referral. The qualitative data derived from the Qualitative Study of FRSP Staff 2007–08 and 2009, suggest that FRAL workers felt comfortable with respect to their interpersonal engagement with men.

**Table 3.21 Agreement (agree or strongly agree) that service can meet different aspects of service delivery, service professionals' perceptions, by type of service, 2009**

	FRCs	FRAL	All EIS	All PSS	All services
	%				
This service employs specific strategies to increase father engagement in the service. <sup>a</sup>	74.2	54.1	81.0	77.2	75.6
This service is child-focused.	97.9	96.3	94.1	98.9	96.5
Clients have unrealistic expectations about how this service can assist them.	56.1	61.7	32.1	59.0	47.9
This service is able to assist clients seeking a reconciliation after separation. <sup>b</sup>	76.6	74.3	85.8	73.9	79.4
This service assists clients to improve their parenting skills.	89.2	76.0	97.2	94.5	92.4
This service assists clients to improve their relationships with extended family members. <sup>c</sup>	73.9	76.0	93.5	80.7	83.7
This service assists clients to improve their relationship with their partners. <sup>c</sup>	70.7	72.6	97.8	75.5	83.4
This service assists clients to improve their relationship with their former partners.	90.3	81.8	90.4	91.3	89.7
<b>Number of respondents</b>	<b>248</b>	<b>81</b>	<b>335</b>	<b>190</b>	<b>854</b>

Notes: The response categories were: "strongly agree", "agree", "disagree", "strongly disagree", "can't say/don't know" and "not applicable". "Strongly agree" and "agree" categories are combined in this table. Percentages exclude "not applicable" responses and missing data. The highest proportion of missing cases was for All PSS respondents (25%) for cases where clients were seeking a reconciliation after separation.

Source: Online Survey of FRSP Staff 2009

A majority of staff members in all services except the early intervention services felt that clients had unrealistic expectations about the help their service could provide. The fact that the main work of these services covers post-separation issues may account for this observation. Yet despite this perception, there was strong endorsement among EIS respondents for the services' capacity to assist in issues that have an impact on separation—relationships with former partners, parenting skills and remaining child-focused.

Table 3.22 provides information on the views of FRSP staff about their service's capacity to work effectively with differing types of clients. The table shows the proportion of staff members who assessed their service's capacity in this area as "excellent" or "good". The families with whom respondents were least likely to feel confident in engaging were those from culturally and linguistically diverse (CALD) and Indigenous backgrounds, and for FRAL in particular, people with a disability. In addition, a relatively low proportion of respondents expressed confidence about working with clients from rural or remote areas and those with mental health issues. Relatively high percentages felt they had the capacity to work well with a range of family types and situations that might have traditionally been thought of as potentially challenging (such as same-sex couples and families who reported violence or child abuse). For almost every family type, FRAL staff members were less likely to rate their skill levels as highly as those in the other services.

### 3.5 Family relationship services and Indigenous clients

Providing appropriate services to Indigenous people has been identified as one of the priorities for the FRSP (FaCSIA, 2006). Various strategies have been used to promote the use of family relationship services by Indigenous families. These include outreach programs in remote areas, the employment of Indigenous advisors and practitioners within services and the development of programs within services that are specifically framed around the needs of local Indigenous communities (Armstrong, 2009, FaCSIA, 2007). Similar strategies have been employed in the courts

**Table 3.22 Positive rating (good or excellent) of service's capacity to work well with different types of clients, service professionals' perceptions, by type of service, 2009**

	FRCs	FRAL	All EIS	All PSS
	%			
Carers of people with a disability	56.3	40.3	65.0	66.7
Indigenous families	59.3	46.9	56.0	63.1
CALD families	62.9	38.3	53.6	59.6
People with a disability	66.7	46.3	62.0	69.7
Clients/callers from rural or remote areas	69.7	61.7	66.3	58.7
Low-income earners	98.3	86.4	88.8	91.4
Same-sex couples/families	84.9	69.1	81.8	85.1
Families experiencing child abuse and/or neglect	85.2	79.0	85.1	87.4
Families experiencing family violence	91.8	82.7	87.7	91.3
Men/fathers	92.5	87.7	89.0	93.6
Grandparents	86.6	87.7	84.3	88.7
Step-parents	74.0	85.2	88.2	87.4
Clients with mental health issues	69.9	61.7	68.1	73.2
Women/mothers	97.5	92.6	90.5	95.7
Children	91.9	74.1	83.0	91.7
Adolescents	80.9	74.1	76.5	83.4
<b>Number of respondents</b>	<b>248</b>	<b>81</b>	<b>335</b>	<b>190</b>

Notes: The response categories were: "excellent", "good", "average", "poor", "very poor", "can't say/don't know" and "not applicable". "Good" and "excellent" categories are reported together. Percentages exclude "not applicable" responses and missing data.

Source: Online Survey of FRSP Staff 2009

around Indigenous engagement (Akee, 2006; Family Court of Australia & Federal Magistrates Court, n.d.; Ralph, 2006).

This section considers the progress that has been made during the course of the evaluation of family relationship service delivery for Indigenous clients, using data from the:

- FRSP Online database 2006–09;
- Online Survey of FRSP Staff 2009; and
- Qualitative Study of FRSP Staff 2007–08 and 2009.

The section begins with an overview of the extent to which Indigenous people have made use of FRSP services and then focuses on service professionals' views about the factors that affect Indigenous clients' use of their services.

While the data presented in this section provide some information on the use of the family law system by Indigenous Australians, it is important to recognise that the numbers of Indigenous respondents in the surveys is often too small to allow detailed analyses of Indigenous people's experiences of the family law system.

### 3.5.1 Change in use of FRSP services by Indigenous clients

Section 3.1.1 outlined the proportion of all clients in each of the EIS and PSS types who were Indigenous. The present section, on the other hand, provides information on the extent to which the proportion of FRSP clients who were Indigenous changed over the period 2006–07 to 2008–09.<sup>19</sup> Table 3.23 shows that the proportion of registered FRSP Online clients aged 15 years or over who identified as being of Indigenous origin increased slightly for all service types

<sup>19</sup> This information is derived from FRSP Online administrative data. In order to determine whether a client was of Indigenous origin, they were identified on the database as being from either an Aboriginal or Torres Strait Islander background or both. The data presented here are based on registered clients aged 15 years or over.

between 2006–07 and 2008–09, with the exception of FRCs, where the proportion of clients who were Indigenous remained relatively constant across the three years. Over the period investigated, the number of Indigenous people using FRSP services increased by 3,047, from 2,259 in 2006–07 to 5,306 in 2008–09.

As discussed in Section 3.1.1, larger proportions of Indigenous clients were recorded as making use of MFRS and SFVS (8% for both in 2008–09) than other service types. This trend was consistent across the three years of the evaluation. These services also experienced a much greater increase in use by Indigenous clients compared to other services.

**Table 3.23 Proportion of FRSP clients identifying as being Indigenous, by type of service, registered clients aged 15 years or over, 2006–07 to 2008–09**

	EIS				PSS			
	SFVS	MFRS	Counselling	EDST	FRC	FDR	CCS	POP
	%				%			
2006–07	4.4	5.4	1.5	1.4	2.9	1.4	3.6	1.2
2007–08	6.7	5.8	2.2	2.4	2.6	1.9	3.6	1.6
2008–09	7.7	8.0	2.6	3.0	3.0	1.8	3.9	2.0

Notes: FDR includes RFDR clients. Registered clients without complete data (due to database mismatches) are excluded from this table.

Source: FRSP Online database

### 3.5.2 FRSP professionals' capacity to work with Indigenous families

As discussed in Section 3.4.3, service professionals who participated in the Online Survey of FRSP Staff 2009 were asked to assess their service's ability to work with Indigenous families. While close to half or more assessed their service's capacity to work with Indigenous clients as good or excellent, respondents were more inclined to provide favourable assessments regarding other groups (Table 3.22). Fifty-six per cent of EIS professionals 63% of PSS professionals and believed they had good or excellent capacity to work with Indigenous families. This view was expressed by 59% of FRC professionals and 47% of FRAL professionals.

### 3.5.3 FRSP professionals' engagement of Indigenous clients

Data from the Qualitative Study of FRSP Staff 2007–08 and 2009 suggest that many services have been actively working to engage Indigenous clients with their services since the reforms. This was particularly the case for FRCs and other new services. Service professionals interviewed for these qualitative studies described a variety of approaches to engaging Indigenous clients, from inviting Indigenous community leaders to be part of their reference groups and hiring Indigenous advisors and practitioners, to visiting remote Indigenous communities in order to provide outreach services. Active engagement of Indigenous clients was most frequently described by those in services that had received funding for Indigenous outreach and workers.

Perhaps reflecting the relatively small increase in the proportions of clients attending FRSP services, most service professionals spoke of the engagement of Indigenous clients as being a slow process that could not be hurried along or forced. While many of the 2009 interviewees felt that progress had been made in engaging ATSI clients with their service, they believed that there was still much work to be done and that time was needed for trust to develop.

In order to promote the use of their services among Indigenous communities, service professionals consistently spoke of the importance of spending time finding out what support their local Indigenous community may need rather than imposing their own ideas. This approach was not just based on a sense of what is "right", but was also strongly seen as the only approach that works:

We're finding that at the moment for us, we're working on disseminating information, rather than ... well, getting our name out there rather than pushing the service as such,

so that our community is starting to know more about us and starting to be more comfortable about what we do. (FRC manager, 2009)

It's all around relationship stuff, but I guess what's happened in the past, and what's going to have to happen in the future is just building up that rapport with those communities, and putting it back on them to let them tell us how they'd like us to work. (FRC Indigenous advisor, 2007)

According to several participants in the qualitative studies, a significant barrier to Indigenous clients' involvement, particularly in post-separation services, is the perceived lack of relevance of the family law system by much of the Indigenous community:

I mean, I think it's great to try and keep the dispute out of court, but I think it's largely irrelevant for Aboriginal people, particularly in some communities where surviving life itself is a priority. (FRC manager, 2009)

Conventional approaches to FDR were not seen as being particularly relevant to some Indigenous people, where ideas about family and the responsibility for the care of children are quite different from those assumed within conventional FDR processes:

Aboriginal people's uptake of FDR services is generally less than non-Indigenous people. I always say this quote: "An FDR practitioner was talking to an older Aboriginal man in [a remote area], and the man said to him, 'I didn't get married in a whitefella way, why would I get divorced in a whitefella way?'" I think that sums up lots of Aboriginal people who live in remote areas involvement with the program—that it's not seen as particularly relevant, the FDR service. Again, the conventional family dispute resolution service. (FRC manager, 2009)

Service professionals also reported that family breakdown and family relationships were also seen to be private matters by many members of their local Indigenous communities:

[The perspective of many Indigenous clients is:] "It's family business and we keep it internally and we deal with it ourselves, we don't actually go to other people to ask for help". (FRC manager, 2009)

While employing Indigenous workers was seen as a positive strategy in terms of engaging and working with Indigenous clients, it was also noted by some services that not all Indigenous clients wished to work with an Indigenous worker, particularly in small communities where they may be related:

Some people, even if they don't know [the Indigenous workers], they worry that their business becomes everybody's business ... And to be fair, I mean we get that from other clients as well, you know: small town, worried about who will say what. I mean you've got to de-sensitise people to that ... But yeah, it is interesting because the kind of thing that we're putting Indigenous advisors in place to provide a culturally appropriate service to Indigenous people, and yet Indigenous people choose not to. (FRC senior practitioner, 2009)

The [Indigenous] worker does some work in the counselling program just with everyday clients, whoever walks through the door, and some of our other counsellors and staff also work with Aboriginal clients. We don't just say, "Righteo, Aboriginal client, go stand over there with the Aboriginal worker", but we make them aware that we have that option. Some people select that because we have it. Some people deliberately don't select it ... Some people who see themselves as Aboriginal don't want to access the Aboriginal worker. But then there's a lot of cultural factors in those communities where, you know, just as there are different subgroups, different services are seen to be aligned with different subgroups. (Counselling manager, 2009)

Service professionals also noted that it was important to make sure their practice was appropriate to the needs and sensitivities of Indigenous clients:

We always screen for violence. But the thing is, initially we used the forms that were developed by [name of FRC]. But there was a lot of feedback from Aboriginal clients that they were really inappropriate, that the phrasing was inappropriate, and that they felt it

was intrusive and they just invoked a sense of shame; you know, like, “Is there domestic violence?” So what we do here is, we’ll say, “Are there any concerns for your safety? Are there any concerns for your children’s safety?” So just that reframing stuff ... “Was there ever a time when you felt unsafe?” And again, just the basic [Violence Restraining Order] questions, I mean they’re quite straightforward. (FRC manager, 2009)

In summary, many service professionals reported actively working to engage Indigenous clients with their services. However, they acknowledged that there are potential barriers. There was a strong sense of optimism that, with appropriate strategies such as having culturally appropriate service models and practitioners in place to support the involvement of Indigenous clients in their services, in time these barriers could be overcome. However, a powerful theme from these interviews is that this process cannot be rushed, as attempting to push their way into communities without building trust is likely to result in a loss of engagement in the longer term.

## 3.6 Client satisfaction

This section explores the effectiveness of family relationship services in meeting the needs of families, based on the views of service users, using data from the GPPS 2009. Parents participating in the GPPS 2009 who had used services were asked whether they would recommend the service to others in similar circumstances. The question involved a simple “yes” or “no” response.

### 3.6.1 Recommending services to others

Over 80% of parents whose relationship had never been in trouble and who had used services to support their relationship said that they would recommend the service to others in similar circumstances (Table 3.24).

**Table 3.24 Whether parents who had used the service to support a relationship would recommend the service to others in similar circumstances, fathers and mothers, 2009**

	Fathers		Mothers		All	
	%	Number of respondents	%	Number of respondents	%	Number of respondents
FRCs	–	26	–	24	84.0	50
Marriage and relationship counsellor	85.9	64	82.7	98	84.0	162
GP or other health professional	82.7	52	84.1	69	83.5	121
Religious leader/elder	86.9	61	92.0	50	89.2	111

Notes: There were too few respondents in the survey who attended a FRC to allow statistically reliable estimates to be produced for fathers and mothers separately.

Source: GPPS 2009

In addition, over 70% of non-separated parents who had used services to help resolve relationship problems said that they would recommend the service to others (Table 3.25). The parents who were most inclined to say that they would recommend the service they used to others were those who had attended marriage guidance or had consulted religious leaders/elders (84%). Those who used an FRC were least likely to indicate that they would recommend this service to others (73%).

While 64–72% of all separated parents who had used services to attempt to resolve relationship problems prior to separation said that they would recommend the service to others (Table 3.26), these proportions were lower than those for parents who used services and remained together (73–89%) (Tables 3.24 and 3.25).

Table 3.27 considers the extent to which separated parents would recommend this same range of services to assist in negotiations after they had separated. FRCs and counsellors were recommended most often, but lawyers and GPs were also frequently recommended.

**Table 3.25 Whether non-separated parents who had used services to resolve relationship problems would recommend the service to others in similar circumstances, fathers and mothers, 2009**

	Fathers		Mothers		All	
	%	Number of respondents	%	Number of respondents	%	Number of respondents
FRCs	73.3	45	72.8	81	73.0	126
Marriage and relationship counsellor	84.6	143	83.0	224	83.7	367
GP or other health professional	76.5	85	77.7	139	77.2	224
Religious leader/elder	84.2	38	83.3	35	83.8	80

Notes: There were too few respondents in the survey who attended a FRC to allow statistically reliable estimates to be produced for fathers and mothers separately.

Source: GPPS 2009

**Table 3.26 Whether separated parents who used services to resolve problems before separation would recommend the service used to others in similar circumstances, fathers and mothers, 2009**

	Fathers		Mothers		All	
	%	Number of respondents	%	Number of respondents	%	Number of respondents
FRCs	65.0	40	74.4	78	71.2	118
Marriage and relationship counsellor	63.2	87	77.3	167	72.4	254
GP or other health professional	73.0	37	70.7	99	71.3	136
Lawyer	–	19	62.8	43	64.5	62
Religious leader/elder	–	18	70.7	41	64.4	59

Notes: There were too few fathers in the survey who used a lawyer or religious leader/elder to allow statistically reliable estimates to be produced for fathers.

Source: GPPS 2009

**Table 3.27 Whether separated parents who used services post-separation would recommend the service used to others in similar circumstances, mothers and fathers 2009**

	Fathers		Mothers		All	
	%	Number of respondents	%	Number of respondents	%	Number of respondents
FRCs	–	23	83.9	56	82.3	79
Marriage and relationship counsellor	–	19	83.1	59	80.8	78
GP or other health professional	–	14	79.6	49	76.2	63
Lawyer	71.2	73	80.8	130	77.3	203

Notes: There were too few fathers in the survey who used these services (apart from lawyers) to allow statistically reliable estimates to be produced for fathers.

Source: GPPS 2009



### 3.6.2 Effectiveness of service delivery

The Survey of FRSP Clients 2009 asked respondents to rate a range of aspects of their experience with the service they attended. Ratings from which the respondent could choose were: “excellent”, “very good”, “good”, “fair” or “poor”. Respondents could also say that the particular aspect of the service was not applicable to them. Ratings of “excellent”, “very good”, “good” are hence classified as “favourable” ratings. The aspects of the services asked about were the:

- waiting time to get an appointment at the service;
- affordability of the service;
- extent to which everyone was treated fairly (no one took sides);
- ability of the service to provide clients with the help they needed; and
- overall quality of the service.

Table 3.28 indicates that each issue (taken separately) was rated favourably by most respondents across all service types. The proportion of clients rating waiting times favourably was lowest for POPs (62%), FDR services (65%) and FRCs (66%). For other types of services, waiting times were rated favourably by around three-quarters or more of parents, with a highest level of satisfaction being for EDST (89%), SFVS (86%) and MFRS (85%). The waiting times were rated more favourably for the early intervention services than for the post-separation services (with the exception of CCS).

**Table 3.28 Clients' favourable ratings of service delivery, by type of service, 2009**

	PSS				EIS				All services
	FRC	FDR	CCS	POP	SFVS	MFRS	Coun-selling	EDST	
	%				%				
Waiting time to get an appointment at the service	66.3	64.7	81.6	61.8	86.0	85.2	79.1	88.7	75.6
Affordability of the service	89.4	67.3	86.3	85.1	94.5	85.0	75.6	84.7	81.1
Extent to which everyone was treated fairly (no one took sides)	73.3	72.6	76.7	78.7	91.2	90.2	90.5	97.8	83.9
Ability of the service to provide clients with the help they needed	55.5	53.9	73.0	58.0	80.7	76.7	80.6	88.9	71.0
Overall quality of the service	70.0	67.9	82.7	84.4	91.2	86.3	88.2	94.8	81.6
Number of respondents <sup>a</sup>	789	447	201	89	57	142	893	556	3,174

Notes: “Not applicable” responses were excluded in calculating the percentages reported. <sup>a</sup> Number of respondents for each aspect of the service varies depending on percentage of “not applicable” responses. The number of respondents reported here is for the first item above (satisfaction with waiting time).

Source: Survey of FRSP Clients 2009

The service type for which the lowest proportion of clients provided favourable ratings of affordability was FDR (67%), followed by counselling (76%). This probably reflects the fact that FDR and counselling routinely charge for the services provided. Some FRC services are free, including the first 3 hours of FDR, information referral and preparation for FDR.

Perhaps not surprisingly, a very high proportion of clients of the early intervention services considered that these services had treated everyone fairly. The lowest level of agreement that everyone was treated fairly was provided by clients of FDR services and FRCs (73% for each service).

The area in which clients were least satisfied was in the ability of the service to provide them with the help they needed, particularly for post-separation services and particularly for FRCs and FDR services (56% and 54% respectively providing favourable ratings).

While the majority of clients rated the overall quality of the services favourably, FRC and FDR clients were the least satisfied with the overall quality of the service they had attended (70% of FRC clients and 68% of FDR clients provided favourable ratings, compared with 82–94% of clients of other services).

Taken as a whole, these client satisfaction ratings are quite positive, particularly when it is considered that a substantial proportion of clients have mental health issues, substance misuse issues, and/or a highly conflictual relationship with the other parent, or there are violence issues or safety concerns (see Chapter 2), all of which tend to make it more challenging for services to meet the needs of a client.

Table 3.29 summarises clients' ratings of the aspects of their experience with early intervention services for the following groups: (a) mothers with resident children, (b) fathers with resident children, (c) fathers with non-resident children, (d) other women, and (e) other men. Across all the groups, clients rated all aspects of the service delivery favourably. Except in relation to affordability, fathers with non-resident children were a little less inclined to provide favourable ratings, although the majority viewed these issues favourably. The "other men" and "other women" were the most inclined of the five groups to view the service they had used in a favourable light.

**Table 3.29 Clients' favourable ratings of service delivery, by gender and family circumstances, early intervention services, 2009**

	Mother with resident children	Father with resident children	Father with non-resident children	Other women	Other men
	%				
Waiting time to get an appointment at the service	79.4	78.9	75.0	88.7	87.5
Affordability of the service	78.4	76.1	81.6	82.1	83.4
Extent to which everyone was treated fairly (no one took sides)	91.2	92.0	86.7	96.1	94.4
Ability of the service to provide clients with the help they needed	80.9	78.8	72.7	88.2	85.6
Overall quality of the service	89.8	87.6	80.5	93.1	92.7
Number of respondents	598	227	76	460	256

Source: Survey of FRSP Clients 2009

Table 3.30 provides information on clients' ratings of the aspects of their experience with post-separation service for the following groups: (a) mothers with resident children, (b) fathers with resident children, and (c) fathers with non-resident children.<sup>20</sup> Fathers with resident children who used post-separation services were a little less likely to rate each of the aspects of the service delivery favourably than mothers with resident children. Fathers with non-resident children were the least likely to rate the ability of services to meet their needs favourably and to rate waiting time and the overall quality of the service favourably. Nonetheless, two-thirds of these fathers provided a favourable rating of the overall quality of the service. It is clear from this table that waiting time is an issue for a significant minority of clients. It is also clear that, while the overall quality of the service was rated positively by between two-thirds and almost three-quarters of these parents, and fairness was rated positively by an even greater proportion, considerably fewer (between 51% and 60%) felt that the service was able to provide them with the help they needed. This again reflects the complexity and often extended nature of issues faced by many separating families.

<sup>20</sup> There were too few mothers with non-resident children who responded to the Survey of FRSP Clients to allow statistically reliable estimates to be produced for this group.

**Table 3.30 Clients' favourable ratings of service delivery, by gender and family circumstances, post-separation services, 2009**

	Mother with resident children	Father with resident children	Father with non- resident children
	%		
Waiting time to get an appointment at the service	69.2	66.5	61.9
Affordability of the service	83.7	74.8	80.8
Extent to which everyone was treated fairly (no one took sides)	75.6	72.0	70.1
Ability of the service to provide clients with the help they needed	60.1	55.6	51.0
Overall quality of the service	74.0	70.7	66.6
<b>Number of respondents</b>	<b>786</b>	<b>281</b>	<b>307</b>

Source: Survey of FRSP Clients 2009

### 3.7 Summary

This chapter has addressed the patterns of use and effectiveness of the new and expanded family relationship services, as well as the extent to which service use has altered since the 2006 changes to the family law system. In addition, the chapter also examines what, if any, changes were apparent with respect to separated parents' expectations of consulting a lawyer and the use of family relationship services by Indigenous clients.

The average age of clients using the early intervention services was similar to the average age of those using post-separation services. The main differences in age were that clients at EDST services were somewhat younger and those using counselling services were somewhat older.

For early intervention services, about half the clients for the SFVS were male, about two-fifths of the clients for counselling and EDST services were male and the majority of the MFRS clients were male (81%). For all of the post-separation services, about half the clients were male and half female. There was little difference in the proportion of clients who were born outside of Australia across service types.

The services with the largest number of clients were counselling services (101,214 clients), FRCs (60,199 clients) and EDST (49,593 clients). The services with the smallest number of clients were POPs (8,194 clients) and SFVS (6,906 clients). There was an increase in the number of clients for all FRSP services types over the period 2006–07 to 2008–09. In percentage terms, the increase was greatest for FRCs (336% increase). The growth in the number of clients accessing services was expected given that the number of services increased over the three years (including the FRCs).

Over the same period, the total number of FRAL calls dropped by 17%, although between 2007–08 and 2008–09, the number of TDRS incoming calls rose by 307%. The number of FDR cases handled over this period also increased almost fivefold, although only off a fairly low base of 112 cases in the first year.

The number of inbound calls to Mensline dropped by 20% and the number of answered calls dropped by 5%. On the other hand, the number of outbound calls, including Call Back Service calls, increased by 45%, suggesting a change in the way in which Mensline provides its service.

Clients who attended early intervention services did so for a range of reasons. The majority of clients who attended counselling services did so to sort out relationship problems, but about 18% did so to address personal problems, while 9% used these services to sort out issues around their children post-separation. Most clients attending post-separation services did so mainly to sort out issues about their children after a relationship break-up or separation.

There is significant use of services (a little over 50%) by parents in non-separated families to assist them in resolving problems, but there is less use of services (13%) for the more preventative purpose of supporting relationships in which there had not been problems. Relationship counsellors, and GPs/health professionals feature prominently as service providers for parents in non-separated families. FRCs are also used, as are religious leaders/elders, especially for supporting relationships.

There was also extensive contact with or use of services by parents who separate. Prior to the reforms, the most commonly contacted separation-related services in order of frequency were lawyers, followed by counselling and dispute resolution support, legal services and then the courts. After the 2006 reforms, the most commonly contacted services in order of frequency were counselling and dispute resolution support, followed by lawyers, the courts and then legal services. Contact with courts dropped from 40% pre-reform to 29% post-reform. Following the 2006 changes, however, a greater proportion of parents thought it was important to consult a lawyer if they were thinking of separating. This may reflect the fact that the reforms themselves were new and may also have generated a greater level of legal uncertainty.

These data could be explained by the fact that, as time passes (the pre-reform parents had been separated for considerably longer), the more difficult and entrenched cases increasingly “drift” towards legal services and courts. On the other hand, there is some evidence that fewer post-separation disputes are being seen primarily as legal problems requiring legal interventions, while a greater proportion of disputes are being primarily associated with the resolution of difficulties in managing post-separation relationships.

Though the data cannot be seen as being conclusive at this point, there is a suggestion nonetheless of a modest culture shift with respect to use of services and the courts. This observation is further reinforced by evidence suggesting quite significant increases in the use of FRSP services between 2006 and 2009. The extent to which this represents a true culture shift away from dependence on legal processes will become clearer when the data from Wave 2 of the LSSF are examined.

It is clear that those using family relationship services were much more likely than those not using services to have reported the experience of some form of family violence, mental health problems or drug and alcohol issues, as well as distant, conflicted and even fearful relationships. In addition, service users who had separated were much less likely to report their current inter-parental relationship as being cooperative. In other words, post-separation services appear to be attracting family members who have significant relationship difficulties.

The majority of clients across all services had either one or two presenting needs. The proportion with five or more presenting needs varied from 24% at FRCs to 6% at EDST, reinforcing data reported in Chapter 5 and elsewhere that FRCs seem to be dealing with a proportion of highly complex situations.

Service professionals were generally confident about their capacity to work with different family types. However, language and cultural barriers were seen to be a problem by a considerable number of staff. This is likely to reflect the reality that many services are simply unable to cover the range of languages in their area except through interpreter services. Family relationship service professionals expressed a commitment to working sensitively and effectively with Indigenous clients. Many also emphasised the fact that it necessarily takes time and repeated contacts to earn the trust and confidence of Indigenous clients.

Service professionals rated the capacity of their organisations to deliver relevant services as being generally high, though at the same time, a majority of post-separation professionals felt that clients have unrealistic expectations about how the service can help them.

Satisfaction rates with early intervention services were high on all measures, with large majorities of clients being willing to recommend them to others. Post-separation services were less favourably rated on a number of dimensions, but FRCs and FDR services still attracted overall favourable ratings by a majority of clients.

Most clients who used services to support relationships or resolve the relationship problems would recommend the service to others. The fact that FRCs and GPs/health professionals were endorsed a little less often as services to resolve relationship problems suggests that this is not seen as the main function of these services. FRCs were endorsed most often with respect to assisting in negotiating with the other parent over post-separation children’s matters. On the other hand, the ability of FRCs and FDR services to provide clients with the help they needed was rated lower than other face-to-face FRSP services. This seemingly contradictory finding perhaps reflects the inherent difficulty of the main work being done by these services. In many cases, the problems presented by separated parents in dispute over their children are manifold. And in many cases, the issues confronting these family members and their practitioners do not suggest immediate or simple solutions.



# 4

## Pathways towards parenting arrangements

This chapter examines the pathways used by separated parents, both pre- and post-reform, to access both early intervention and post-separation services to sort out their parenting arrangements. It is relevant to policy objective 4 of the 2007 Evaluation Framework (Appendix B) concerning the availability of a highly visible entry point that operates as a doorway to other services. Data for the analyses were collected from the Longitudinal Study of Separated Families Wave 1 2008 (LSSF W1 2008) and the Looking Back Survey (LBS) 2009.

The evaluation looks at separated parents who had either already sorted out their parenting arrangements or were in the process of doing so, and which services clients had used to: a) sort out parenting arrangements, b) resolve relationship issues, c) address personal issues, and d) resolve grandparenting issues.

It also examines the referral pathways and processes used where there were reports of family violence, as well as separated parents' satisfaction with the process of reaching agreement about parenting, both pre- and post-reform. Finally, pathway coordination and referrals by service providers and legal system professionals are considered.

### 4.1 Negotiating and deciding parenting arrangements after separation

#### 4.1.1 Main pathways used to sort out parenting arrangements

Information on the main pathways used by those who had sorted out their parenting arrangements pre-reform comes from the LBS 2009. Information on the main pathways used by those who had sorted out their parenting arrangements post-reform comes from the LSSF W1 2008 sample. The pre-reform information was collected between 4 and 5 years after separation, whereas the post-reform information was collected, on average, 15 months after separation. The former may be subject to a greater level of recall error.

Among parents who separated after 1 July 2006:<sup>1</sup>

- most parents (71% of fathers and 73% of mothers) reported that they had sorted out their parenting arrangements for the focus child;
- 19% of fathers and 16% of mothers indicated that they were in the process of doing so; and
- 10% of fathers and mothers reported that nothing had been sorted out.<sup>2</sup>

Both pre- and post-reform, the majority of respondents saw “discussions between themselves” as the key driver of post-separation parenting decisions (Table 4.1). A substantial minority of parents said that their parenting arrangements “just happened”. The proportion of parents who said that the arrangements were mainly arrived at through discussions or they “just happened” increased from 71% pre-reform to 81% post-reform. There was a corresponding decrease in the proportion of parents who said that lawyers or courts were the main family law pathway employed to sort out parenting arrangements, from 18% pre-reform to 9% post-reform. There

<sup>1</sup> Estimates from the LSSF W1 2008. The majority of parents in this survey had separated in 2007 (82%), while 13% had separated in the second half of 2006 and 5% had separated in 2008. The interviews were conducted over the period August and October 2008.

<sup>2</sup> The response options were: “Yes, parenting arrangements have been sorted out”, “No, still in the process of sorting things out”, and “No, nothing is sorted out”. It is assumed here that parents who selected the third option were implying that they had not yet commenced sorting out their parenting arrangements.

was little change in the proportion of parents saying that using counselling, mediation or family dispute resolution (FDR) were the main ways in which they sorted out their parenting arrangements.

**Table 4.1 Parents who had sorted out arrangements: Main family law pathway used, fathers and mothers, pre- and post-reform**

	Pre-reform <sup>a</sup>			Post-reform		
	Fathers	Mothers	All	Fathers	Mothers	All
	%			%		
Counselling, mediation or FDR	5.9	6.2	6.0	6.9	7.7	7.3
Lawyer	10.3	11.0	10.6	6.1	5.4	5.8
Courts	8.3	7.2	7.8	2.4	3.3	2.8
Discussions	57.6	50.7	54.1	62.7	69.0	65.8
Nothing specific, it just happened	13.1	20.5	16.8	18.7	12.4	15.6
Other	4.9	4.5	4.7	3.2	2.2	2.7
<b>Total</b>	<b>100.1</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Number of observations</b>	<b>958</b>	<b>1,040</b>	<b>1,998</b>	<b>3,597</b>	<b>3,546</b>	<b>7,143</b>

Notes: <sup>a</sup> Pre-reform information relates to parenting arrangements sorted out in the year of the separation. Data have been weighted. Percentages may not total 100.0% due to rounding.

Source: LSSFW1 2008 and LBS 2009

Table 4.2 provides information on the main pathways being used by parents who separated post-1 July 2006 but who were still in the process of sorting out parenting arrangements at the time of the survey. There is evidence of a higher rate of use of services by these parents as their main dispute resolution or decision-making pathway when compared with parents who separated post-1 July 2006 who had already sorted out parenting arrangements. There was less use of informal discussion/processes (although this remained easily the largest main pathway), more use of counselling/mediation, and more use of lawyers and the courts as the main pathway towards sorting out arrangements.

**Table 4.2 Main family law pathway being used by parents who were in the process of sorting out arrangements, fathers and mothers, post-reform**

	Fathers	Mothers	All
	%	%	%
Counselling, mediation or FDR	14.3	13.0	13.6
Lawyer	13.3	14.8	14.1
Courts	11.1	14.2	12.8
Discussions	44.1	43.9	44.0
Nothing specific, it just happened	14.0	11.1	12.4
Other	3.2	3.1	3.1
<b>Total</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>
<b>Number of observations</b>	<b>817</b>	<b>913</b>	<b>1,730</b>

Notes: Percentages may not total exactly 100.0% due to rounding. Data have been weighted.

Source: LSSFW1 2008

#### 4.1.2 Types of services used to sort out parenting arrangements

Table 4.3 provides information on the extent to which separated parents who had sorted out their parenting arrangements used multiple service types. The table also provides information on the extent to which those whose main pathway towards resolving parenting arrangements was discussion with the other parent or for whom it just happened also made use of these services.



A significant minority of post-reform parents who settled matters mainly through discussions or for whom it just happened (44% and 48% respectively) did not use relationship services, lawyers or the courts (Table 4.3). This represents 37% of the total number of separated parents for whom matters were resolved. The remainder of both the discussions and just happened groups each made use of an average of 1.8 service types (11% making use of three or more services). The service types most frequently used by both these groups were counselling, mediation or FDR, followed by lawyers.

**Table 4.3 Services contacted/used during/after separation, by main pathways used by parents who had sorted out arrangements, post-reform**

	Counselling, mediation or FDR	Lawyer	Courts	Discussions with other parent	Nothing specific, just happened
	%				
Contacted/used no services	0.0	0.0	0.0	44.1	48.4
Service contacted/used					
Counselling, mediation or FDR	100.0	67.1	76.1	37.8	30.3
Lawyer	76.0	100.0	90.2	31.2	27.7
Courts	32.2	54.3	100.0	9.8	8.9
Legal service (advice line, private or legal aid)	36.1	31.8	40.1	12.5	13.6
Domestic violence service	14.7	25.8	27.2	4.3	6.0
Child Support Agency	0.3	0.9	1.2	1.3	1.6
Centrelink	0.4	0.4	2.7	1.2	0.9
Police	1.1	2.0	5.8	0.5	0.5
Other	5.0	5.0	6.6	2.5	2.7
Contacted/used three or more services	55.5	58.2	84.9	11.4	10.6
Mean number of services contacted/used (of those who contacted/used)	2.7	2.9	3.5	1.8	1.8
Number of observations	542	445	227	4,605	1,101

Source: LSSF W1 2008

Two-thirds (67%) of those who nominated lawyers as their main pathway to resolving matters also used counselling or other relationship support services, and a little over half also used the courts. About three-quarters of those who nominated counselling, mediation or FDR as their main pathway to resolution also made use of lawyers, while about a third also made use of the courts. Those who nominated the courts as their main pathway towards resolution also made considerably more use of other services than any other group. These parents were likely to have been experiencing a higher degree of complexity with respect to their families or their disputes.

The key finding from this table is that by far the largest group of post-reform separated parents who had resolved matters did so mainly through discussions with each other. But almost 38% of this group also reported using counselling, mediation or FDR, while just over 31% reported using a lawyer. Similarly, 30% of those for whom the resolution just happened had also made use of counselling, mediation or FDR, while 28% had also used a lawyer.

Table 4.4 provides a similar analysis with respect to those post-reform parents who at the time of the survey were still in the process of sorting out parenting arrangements. For those parents who were still in the process of settling parenting matters mainly through discussions or for

whom things mainly just happened, roughly a quarter (26% and 22% respectively) had made no use of the services listed or the courts. The remainder of the discussions group made use of an average of 2.1 service types (23% used three or more service types), while the remainder of the just happened group made use of an average of 2.3 service types (29% used three or more service types). Compared with those parents who had sorted out their parenting arrangements, parents who were still in the process of sorting out arrangements made greater use of almost all services and the courts.

**Table 4.4 Parents who were in the process of sorting out arrangements: Services contacted/used during/after separation, by main pathways used, post-reform**

Main pathway used Other service used	Counselling, mediation or FDR	Lawyer	Courts	Discussions with other parent	Nothing specific, just happened
	%				
Contacted/used no services	0.0	0.0	0.0	25.7	22.1
Service contacted/used					
Counselling, mediation or FDR	100.0	85.0	91.2	58.1	55.8
Lawyer	73.4	100.0	92.0	48.3	50.4
Courts	28.0	47.2	100.0	13.1	19.1
Legal service (advice line, private or legal aid)	39.3	34.5	38.1	21.2	28.2
Domestic violence service	17.3	21.1	31.5	10.5	13.2
Child support agency	1.2	0.3	0.4	1.2	1.8
Centrelink	0.9	0.7	0.8	0.8	1.0
Police	1.6	2.4	3.0	0.9	1.5
Other	6.9	3.8	8.1	3.5	5.2
Contacted/used three or more services	51.2	64.4	92.7	22.9	28.9
Mean number of services contacted/used (of those who contacted/used)	2.7	3.0	3.7	2.1	2.3
Number of observations	240	258	240	728	207

Source: LSSF W1 2008

Of parents who were in the process of sorting out parenting arrangements and who nominated lawyers as their main pathway to resolving matters, 85% also used counselling or other relationship support services, compared to 67% for parents who had sorted out parenting arrangements. In addition, a little under half of those who had used a lawyer said they were using the courts (47%), slightly fewer than was the case in the group who had sorted out their arrangements. Just under three-quarters (73%) of the group who were still sorting out arrangements who nominated counselling, mediation or FDR as their main pathway also made use of lawyers, while 28% made use of the courts (similar to the pattern reported by parents who had sorted out arrangements). In addition, those who nominated the courts as their main pathway towards resolution also made considerable use of other services (an average of 3.7 services), as was the case with the parents who had sorted out parenting arrangements (3.5 services).

Considered together, Tables 4.3 and 4.4 reveal a pattern of quite extensive service use by a majority of those parents who had sorted out parenting arrangements, even among those who reported their main pathway towards resolution as being discussions between themselves or for whom it just happened. For those who were still sorting things out, roughly three-quarters of those whose main pathway was discussions or for whom it just happened made some use of services. In addition, the percentage of significant service use (three or more service types)

by this group was more than double that of parents who had already sorted out their parenting arrangements.

Community-based services and lawyers were important for a significant minority of parents who had sorted out arrangements, and for more than half of those who were still sorting matters out. For both groups, there was considerable overlap in the use of community-based services and lawyers.

Although a little over half the total sample of post-reform parents had made some use of counselling or dispute resolution services, a much smaller percentage—especially among those who had sorted out parenting arrangements—reported these processes as being their *main* pathway towards resolution or decision-making. This possibly suggests that while some parents regard dispute resolution and related services as playing an important role in the management of issues that are not sorted out reasonably quickly, the majority see these services as adjunct to their resolution or dispute management process.

It is possible that most parents, including those who use FDR and similar services, believe that the “work” of sorting out parenting arrangements mainly requires the efforts they make themselves. If this were the case, such a perception would be consistent with placing the primary service delivery emphasis on client self-determination, a philosophy that underpins community-based counselling and community-based mediation theory and practice. Such an interpretation, if correct, does not diminish the importance that FDR may play in the overall management of the dispute. We revisit this issue in Chapter 5, which focuses more specifically on FDR.

Finally, this section provides information on the predictions of the 10% of post-reform parents who reported at the time of the survey that nothing had been sorted out. Table 4.5 reveals that up to 28% of fathers and up to 22% of mothers were unable to make a prediction about how matters would be resolved. Roughly equal percentages of the other fathers in this group believed that arrangements were likely or not likely to be sorted out, with no particular pathway being seen as significantly more or less helpful in this regard. Mothers who made a prediction were considerably more pessimistic, with more than half believing that sorting things out was unlikely or very unlikely via all pathways except discussions. Although no pathway towards settlement clearly stood as the preferred one, having discussions was the method most favoured by both mothers and fathers.

**Table 4.5** Parents who had nothing sorted out regarding parenting arrangements: Likelihood of reaching arrangements involving selected pathways, post-reform

	Extremely likely/ fairly likely	Very unlikely/ unlikely	Unsure/don't know	Number of observations
	%			
<b>Fathers</b>				
Counselling, mediation or FDR	35.7	36.2	28.0	475
Lawyer	39.1	38.3	22.7	473
Courts	37.4	38.7	23.9	474
Discussions	43.6	40.8	15.6	475
<b>Mothers</b>				
Counselling, mediation or FDR	26.7	51.4	21.9	568
Lawyer	27.1	56.3	16.6	567
Courts	23.8	56.1	20.1	567
Discussions	40.9	43.3	15.8	564
<b>All</b>				
Counselling, mediation or FDR	31.0	44.1	24.9	1,043
Lawyer	32.8	47.7	19.5	1,040
Courts	30.3	47.8	21.9	1,041
Discussions	42.2	42.1	15.7	1,039

Source: LSSF W1 2008

## 4.2 Referral pathways

### 4.2.1 Referral pathways to Family Relationship Services Program services

Referral pathways provide insight into the extent to which the family law system is operating in a coordinated way. This section provides information on the referral pathways operating within the family law system after the 2006 reforms and the changes to the service sector.

Table 4.6 provides information from the Survey of Family Relationship Services Program (FRSP) Clients 2009 on their reported referral pathways to early intervention and post-separation services.<sup>3</sup> Early intervention services (EIS) include Specialised Family Violence Service (SFVS), Men and Family Relationships Service (MFRS) and Education and Skills Training Services (EDST). Post-separation services (PSS) include FRCs, FDR services, Children's Contact Services (CCS) and the Parenting Orders Program (POP).

Doctors (general practitioners [GPs])/health professionals were the most frequent referral gateway into early intervention services, generally followed by mediator/counsellors, telephone help lines (such as Parentline or Lifeline), FRCs and lawyers.

Doctors/health professionals, mediator/counsellors, and lawyers/legal aid were major referrers into FRCs and FDR services. For CCS and the POP, telephone services, other FRCs and domestic violence services were also major referrers. Not surprisingly perhaps, domestic violence services and courts also referred relatively often to Children's Contact Centres and the Parenting Orders Program.<sup>4</sup> Courts (such as the Family Court of Australia [FCoA]) were also among a "second tier" of referrers to FRCs and FDR, as were telephone help lines and other FRCs. Family Relationships Online (FRO) had the lowest referral rates for all services.

**Table 4.6 Referral pathways, by type of FRSP service attended, 2009**

Referrer	Service attended	EIS				PSS			
		SFVS	MFRS	Counselling	EDST	FRC	FDR	CCS	POP
		%				%			
Family Relationship Advice Line (FRAL)		10.5	2.0	2.2	1.0	4.6	2.9	9.9	14.0
Other telephone service		17.5	12.8	6.8	4.0	8.3	6.8	18.2	23.7
[Another] FRC		15.8	10.7	5.1	3.3	7.7	8.1	22.7	24.7
Domestic violence service		8.8	4.7	2.1	1.2	4.1	3.9	13.8	17.2
Other mediator/counsellor (or similar)		24.6	16.8	14.4	9.2	20.1	21.9	25.1	32.3
FRO		0.0	0.7	0.8	0.0	2.1	0.7	3.0	2.2
Doctor (GP)/health professional		24.6	28.9	17.4	8.2	17.8	19.5	22.7	24.7
Religious leader/elder		7.0	12.8	5.2	3.8	6.5	7.0	8.9	5.4
Lawyer/legal aid		10.5	12.1	6.3	3.8	16.1	16.0	24.1	36.6
Courts		14.0	5.4	2.1	2.5	11.1	7.7	14.8	11.8
Other service		7.0	2.7	5.2	3.5	4.3	3.9	6.9	9.7
<b>No. of respondents</b>		<b>57</b>	<b>149</b>	<b>898</b>	<b>599</b>	<b>796</b>	<b>456</b>	<b>203</b>	<b>93</b>

Note: Clients could report being referred by multiple services and therefore column percentages sum to more than 100%

Source: Survey of FRSP Clients 2009

<sup>3</sup> The Survey of FRSP Clients 2009 captured referral pathways using the question: "Before you went to the [service], did you go to any of the following services to try to sort out the issues that you needed help with at the [service]?" Where clients indicated that they attended a particular service, they were then asked, "Did [the service] refer you to or suggest you go to [the service the survey was primarily asking about]."

<sup>4</sup> It is likely that some clients who have been ordered by a court to attend a CCS or POP may see the referral as coming from their lawyer, given that lawyers would in some cases facilitate these court orders.

Table 4.7 (on page 72) provides information on the extent to which clients of FRSP early intervention services (SFVS, MFRS, counselling, and EDTS) had attended a range of other services prior to attending the early intervention service. Information is also provided on the extent to which early intervention service clients who had attended other services were referred to that early intervention service by those other services.

A little under half (44%) of the SFVS clients who responded to the survey had also visited doctors or health professionals for the issue they brought to the SFVS. The same proportion had used mediators/counsellors. Telephone help lines had been used by 44% (FRAL and other telephone services), domestic violence services by 21% and an FRC by 19%. Lawyers and courts had been used by 18% and 16% of the respondents respectively.

Somewhat lower percentages but similar patterns of previous service use (with the exception of domestic violence service) were observed among the MFRS clients who responded to the survey. In this case, 42% had visited a doctor/health professional, while 31% had made use of a mediator/counsellor. Telephone help lines other than FRAL were again the next most common service to be used (26%). An FRC was used by 19% of these respondents, while lawyers and courts were used by 18% and 11% respectively. MFRS clients were also the most likely group to make use of a religious leader/elder (15%).

The pattern of previous service use is similar for counselling service clients, but again at lower average rates. Doctors/health professionals were used by 34%, mediators/counsellors by 23%, telephone help lines by 13%, lawyers by 10% and an FRC by 9%.

As EDST services are primarily aimed at prevention, it is perhaps not surprising that the 599 clients who had used EDST had not attended other services frequently for the issue(s) they were dealing with, though they used the largest range of services (average of 18). Mediators/counsellors (13%), religious leaders/elders (13%) and doctors/health professionals (12%) were the most common services attended by these respondents.

Table 4.8 (on page 73) provides information on the extent to which clients of FRSP post-separation services (FRC, FDR, CCS and POP) had attended a range of other services prior to attending the post-separation service. Information is also provided on the extent to which post-separation service clients who had attended other services were referred to the FRSP post-separation service by the other services attended.

Among FRC or FDR clients who responded to the survey, around half had also seen a lawyer/legal aid, about a third had also used a counsellor/mediator, and about a quarter had visited a doctor/health professional. Roughly a sixth had used the courts, an FRC, a telephone help line or FRAL.

Courts and lawyers/legal aid feature very prominently as services used by those who attended CCS and the POP, as do mediators/counsellors and FRCs. Doctors/health professionals, domestic violence services and telephone help lines were also accessed by roughly a quarter of those using CCS and POP.

## 4.2.2 Referrals from the Family Relationships Advice Line

This section focuses on FRAL, which was designed as a key early gateway for information and advice about and referrals into the family law system. Information on how referrals led to FRAL and where callers to FRAL were referred for 2006–07, 2007–08 and 2008–09 is provided in Table 4.9 (on page 74).<sup>5</sup>

The largest category of referrals to FRAL recorded across the three years (a little over a fifth) came via people becoming aware of FRAL through the media, suggesting that the service has been well publicised. The Child Support Agency (CSA) was the second most commonly reported referral source, constituting roughly 10% of those referred each year. After CSA, courts and tribunals were the next most frequent source of referral (between 6% and 7%), followed by family and friends (between 5% and 7%).

<sup>5</sup> It will be seen that the highest frequency in this table is “referral not recorded”. In particular, “referrals out” is not recorded for more than half the calls in this category across the three years. This could mean that no referral was made or that a referral was made but no record was kept.

**Table 4.7 Services attended, by type of early intervention service attended and whether referred to by other service, 2009**

	Attended SFVS		Attended MFRS		Attended counselling		Attended EDST	
	Attended services other than SFVS	Referred to SFVS by the service	Attended services other than MFRS	Referred to MFRS by the service	Attended services other than counselling	Referred to counselling by the service	Attended services other than EDST	Referred to EDST by the service
		%		%		%		%
FRAL	14.0	75.0	7.4	27.3	5.2	42.6	1.5	66.7
Other telephone service	29.8	58.8	25.5	50.0	12.8	53.0	6.0	66.7
[Another] FRC	19.3	81.8	18.8	57.1	8.9	57.5	5.0	66.7
Domestic violence service	21.1	41.7	6.7	70.0	3.9	54.3	2.3	50.0
Other mediator/counsellor (or similar)	43.9	56.0	30.9	54.3	22.8	62.9	13.4	68.8
FRO	1.8	0.0	2.0	33.3	1.7	46.7	0.3	0.0
Doctor (GP)/health professional	43.9	56.0	42.3	68.3	33.6	51.7	11.9	69.0
Religious leader/elder	8.8	80.0	14.8	86.4	7.8	67.1	12.5	30.7
Lawyer/legal aid	17.5	60.0	18.1	66.7	9.7	65.5	7.5	51.1
Courts	15.8	88.9	10.7	50.0	3.5	61.3	6.3	39.5
Other service	7.0	100.0	14.1	19.0	9.1	57.3	6.3	55.3
<b>Number of respondents</b>	<b>57</b>		<b>149</b>		<b>898</b>		<b>599</b>	

Source: Survey of FRSP Clients 2009

**Table 4.8 Services attended, by type of post-separation service attended and whether referred to by other service, 2009**

	Attended FRC		Attended FDR		Attended CCS		Attended POP	
	Attended services other than FRC	Referred to FRC by the service	Attended services other than FDR	Referred to FDR by the service	Attended services other than CCS	Referred to CCS by the service	Attended services other than POP	Referred to POP by the service
	%		%		%		%	
FRAL	19.1	24.3	11.6	24.5	16.7	58.8	18.3	76.5
Other telephone service	18.1	45.8	14.0	48.4	23.6	77.1	26.9	88.1
[Another] FRC	11.6	66.3	19.3	42.0	34.5	65.7	47.3	52.2
Domestic violence service	7.2	57.9	6.1	64.3	25.6	53.8	22.6	76.1
Other mediator/counsellor (or similar)	31.4	64.0	37.1	59.2	40.9	61.4	45.2	71.5
FRO	6.4	33.3	3.1	21.4	4.4	66.7	3.2	68.8
Doctor (GP)/health professional	23.7	75.1	26.1	74.8	26.6	85.2	26.9	91.8
Religious leader/elder	7.9	82.5	8.1	86.5	13.8	64.3	5.4	100.0
Lawyer/legal aid	49.4	32.6	54.4	29.4	73.9	32.7	72.0	50.8
Courts	19.7	56.1	15.6	49.3	63.1	23.4	59.1	20.0
Other service	8.3	51.5	7.5	52.9	10.8	63.6	10.8	89.8
<b>Number of respondents</b>	<b>796</b>	<b>796</b>	<b>456</b>	<b>456</b>	<b>203</b>	<b>203</b>	<b>93</b>	<b>93</b>

Source: Survey of FRSP Clients 2009



**Table 4.9 Referral pathways into and out of the Family Relationship Advice Line, 2006–07 to 2008–09**

	2006–07	2007–08	2008–09
	%	%	%
<b>Caller referred to FRAL from:</b>			
Family Relationship Centre	1.2	2.6	4.3
Centrelink	2.3	2.6	2.5
Media	20.9	22.4	21.8
Court/tribunal	6.3	7.2	6.7
CSA	11.1	12.3	9.8
Family/friend	6.6	6.8	5.4
Legal service/practitioner	2.7	3.7	3.4
Family relationship service	1.6	2.2	2.7
Other service	8.7	8.2	6.8
Referral not recorded	39.1	32.4	37.2
<b>Total</b>	<b>100.6</b>	<b>100.6</b>	<b>100.5</b>
<b>Caller referred from FRAL to:</b>			
Family Relationship Centre	11.3	23.8	25.5
Legal service/practitioner	16.8	14.7	13.3
Court/tribunal	4.8	2.9	3.0
Dispute resolution service	9.9	11.9	10.5
Centrelink	0.8	0.9	0.8
Child Support Agency	0.9	0.9	0.7
Counselling	6.2	4.8	4.0
Other FRSP service	2.0	2.3	2.2
Other referral made	2.8	3.8	4.3
Referral not recorded	58.0	50.5	52.3
<b>Total</b>	<b>113.6</b>	<b>116.6</b>	<b>116.7</b>
<b>Number of calls</b>	<b>86,466</b>	<b>72,351</b>	<b>66,622</b>

Note: Percentages are greater than 100.0% as more than one referral was made in some cases.

Source: FRAL Call Management System Data 2006–09

The relatively high rates of referral to FRAL provided by the CSA reflect arrangements between FRAL and CSA for the CSA to transfer to FRAL those callers who indicate they have some issues regarding post-separation parenting.<sup>6</sup>

In terms of referrals outwards, for the first year of its operation, FRAL referred most often to legal services/practitioners (17%), then to FRCs (10%), dispute resolution services (11%), counselling (6%) and courts or tribunals (5%). But unlike referrals to FRAL, referrals from FRAL changed over time to reflect a greater emphasis on community-based services, especially FRCs (from 11% in 2006–07 to 26% in 2008–09), and a somewhat lower rate of referrals to lawyers (down from 17% to 13%) and courts (from 5% to 3%).

The increase in referrals to FRCs was probably a result of FRCs becoming more available during this period (from 15 in 2006–07 to 40 in 2007–08 and 65 in 2008–09).<sup>7</sup> It may also be linked to the fact that after July 2007, FDR parents were required to attend FDR before filing a court application, except in certain circumstances, such as cases in which there were concerns about violence.

It is clear that FRAL is an important gateway into the family law system. Direct observations of the work of information officers by the evaluation team also suggest that calls are handled competently and with sensitivity. The large number of callers to FRAL, especially in its first year of operation, means that even small percentages of referrals to and from FRAL translate into

<sup>6</sup> Information obtained from qualitative interviews with FRAL staff.

<sup>7</sup> In the qualitative interviews, FRAL information officers reported that one of the difficulties associated with their first year of service was that the demand for FRCs could not be met because many centres had not yet become operational.

substantial numbers of clients. The decreasing (though still substantial) numbers of callers over the three-year period may indicate that FRAL was an especially important gateway in the early days of the changes to the family law system. It is possible that since then information about the reforms has been more widely distributed.<sup>8</sup> In addition, as services such as FRCs have become more established and better known, and as family pathway networks have become better established, some referral protocols may have become more localised.

In addition, despite the fall in absolute numbers of callers over the three years, the data show an increased proportion of outward referrals being directed to FRCs. Although this trend is consistent with the aims of the reforms, caution must be exercised with respect to any conclusions reached, due to the significant number of callers for whom the referral pathway is unknown.

### 4.2.3 Referrals and reasons for attending a service

This section examines whether the types of services attended by clients prior to attending an FRSP service differ according to the reason for attending the service. The reasons for attending that are considered in this evaluation are: sorting out parenting arrangements, resolving relationship issues, and personal/other reasons. Just over half (55%) of the clients who had used an FRSP service to sort out parenting arrangements had also consulted a lawyer/legal aid service, while over a third (36%) had used a mediator/counsellor, a little over a quarter (27%) had made use of a court, and the same proportion had visited a doctor/health professional (Table 4.10). FRCs (20%), telephone help lines (19%) and FRAL (16%) had also been reasonably frequently used by these clients.

**Table 4.10 Use of and referrals from other services, by reason for attending the FRSP service, 2009**

	Sort out parenting arrangements <sup>a</sup>		Resolve relationship issues <sup>a</sup>		Personal/ other reasons <sup>a</sup>	
	Other services attended	Referred to by other service <sup>b</sup>	Other services attended	Referred to by other service <sup>b</sup>	Other services attended	Referred to by other service <sup>b</sup>
	%		%		%	
FRAL	16.3	32.9	6.6	43.2	2.9	42.9
Other telephone service	19.2	54.9	14.5	53.1	7.7	63.6
[Another] FRC	20.2	56.0	11.6	58.1	4.6	81.8
Domestic violence service	10.9	57.2	4.8	51.9	3.5	72.0
Other mediator/counsellor (or similar)	36.2	62.0	27.6	62.3	12.7	68.1
FRO	4.6	29.5	2.4	40.7	0.6	100.0
Doctor (GP)/health professional	26.6	76.8	29.4	59.1	20.0	55.9
Religious leader/elder	9.4	79.2	8.2	78.0	11.3	28.4
Lawyer/legal aid	55.2	32.4	17.1	52.9	9.0	53.1
Courts	27.2	38.5	7.5	60.7	5.5	41.0
Other service	8.7	55.2	9.3	57.7	6.4	50.0

Notes: <sup>a</sup> Respondents were asked to indicate what best described the main reason for attending the service. The reasons listed were: sort out issues about your children after a relationship break-up or separation, sort out issues about seeing your grandchildren, sort out general family relationship issues (with your spouse, former spouse, children or other family members), deal with personal problems, and other: specify. <sup>b</sup> Respondents who indicated they had been to another service/other services prior to attending the service the survey was primarily asking about were asked: "Did the [service client attended before the survey service] refer you to or suggest you go to this [service]?" Only those respondents who indicated that they had previously gone to another service were asked about each of these other services.

Source: Survey of FRSP Clients 2009

<sup>8</sup> This is not the same as saying that all aspects of the reforms are better understood. Indeed, reports suggest that there is evidence that this is not the case with respect to concepts such as shared parental responsibility.

The pattern of prior service use for clients who were aiming to resolve relationship issues or address personal/other issues was somewhat different. Those whose purpose was to resolve relationship issues were most likely to have consulted a doctor/health professional (29%) or a mediator/counsellor (28%). However, 17% had also consulted a lawyer/legal aid, while 15% had used a telephone help line and 12% had been to an FRC. Those who had accessed services for personal/other reasons were also most likely to have had prior contact over the issue with a doctor/health professional (20%), a mediator/counsellor (13%), or a religious leader/elder (11%).

There frequently appeared to be a link between having used a service and having been referred by that service. For example, doctors/health professionals consistently referred clients to other services at least half and up to three-quarters as often as they themselves were accessed. Referral implies that another service may have something to add to the service already being provided. In cases in which clients were sorting out parenting arrangements, a relatively small proportion of lawyers referred them to other services, and when the issue was a personal/other reason, a relatively small proportion of religious leaders/elders made referrals. This probably reflects the fact that referrals are less likely when the professionals see the issue as being within their own area of expertise.

#### 4.2.4 Location of mediation or FDR pre- and post-reform

Information was collected as part of the LBS 2009 on where mediation or FDR took place for parents who separated before the 2006 changes to the family law system. The locations are categorised as mediation services, through a lawyer, court or other location. The LSSF W1 2008 provided information on the location of FDR for parents who separated after the 2006 changes. The main locations are categorised as: FRCs, legal aid, lawyer, court, or private counsellor/counselling service. A range of other locations that were less often reported were also coded. Table 4.11 provides detailed information on the locations coded in the data.

**Table 4.11 Where family dispute resolution or mediation took place, pre- and post-reform**

	Pre-reform <sup>a</sup>	Post-reform <sup>b</sup>
	%	%
FRC	–	63.4
Mediation service	62.8	–
Legal aid	–	5.0
Lawyer	13.3	3.2
Courts	21.2	3.3
Private counsellor/counselling service	–	7.5
Family mediation centre	–	1.0
Psychologist	–	1.7
Over the phone	–	1.0
Lifeline	–	0.5
Private mediator/mediation service	–	1.6
Community centre	–	2.3
Other	3.7	4.1
Don't know	0.8	5.5
<b>Number of observations</b>	<b>523</b>	<b>2,975</b>

Notes: <sup>a</sup> Parents who had attempted FDR or mediation and reported that parenting arrangements for the focus child were mainly through a counselling, mediation or dispute resolution service were asked: "Where did this mediation or dispute resolution take place? At a lawyer, court or mediation services?" Parents could provide multiple responses. Thus, the sum of percentages may exceed 100%. <sup>b</sup> Parents who said that they and the other parent attempted FDR or mediation were asked: "Was this at a Family Relationship Centre or somewhere else?" The results presented include recoding of the verbatim responses. Data have been weighted.

Sources: LBS 2009 and LSSF W1 2008

The pre-reform data on the location of mediation or FDR are from parents who said that parenting arrangements were mainly sorted out through counselling, mediation or dispute resolution.

The post-reform data refer to the location at which FDR or mediation took place whether or not the parenting arrangements had been sorted out.

Prior to the 2006 changes to the family law system, the most common location at which FDR or mediation took place was in community-based mediation services (63%), followed by significantly smaller proportions in the court (21%) or with a lawyer (13%).

Among parents who separated after the 2006 reforms and who attempted mediation or FDR, 63% said that it took place at FRCs. This is very similar to the proportion of parents saying that mediation took place within a mediation service prior to the 2006 changes. Post-reform, parents reported that mediation took place through lawyers or legal aid 8% of the time (compared with 13% in the pre-reform sample) and through the court 3% of the time (compared with 21% in the pre-reform sample).<sup>9</sup>

Most of the other responses that could be coded fell into the categories of counselling/psychology or other health and welfare-based services. Two categories (over the phone and private mediation) were more ambiguous with respect to the nature of the service being provided. These services could have been provided by a lawyer or by a relationship or health professional. It is important to note that these questions were asked slightly differently across the two studies; therefore caution must be exercised in attributing any differences between them to the pre-reform and post-reform legislative environment.<sup>10</sup>

In summary, for those who reported the resolution of post-separation disputes over children, the data do suggest a significant shift away from court-based mediation/FDR services and towards community-based mediation/FDR and related services following the reforms. Such an interpretation would be consistent with the onward referral data from FRAL presented in Section 4.2.2.

### 4.3 Pathways and family violence

This section examines the relationship between the main pathway used to sort out or attempt to sort out parenting arrangements, and the reporting of physical hurt or emotional abuse.

Of the post-reform separated parents who had sorted out their parenting arrangements, a total of 17% reported physical hurt prior to or during separation and 35% reported emotional abuse alone. Table 4.12 shows that, compared with parents who used discussions to sort out their parenting arrangements or for whom it just happened, those who sought assistance from courts, lawyers or counselling/mediation/FDR were much more likely to have reported some form of physical hurt or emotional abuse.

<b>Table 4.12 Main pathways used, by parents' reports of family violence, parents who had sorted out parenting arrangements, post-reform</b>						
	<b>Counselling, mediation or FDR</b>	<b>Lawyer</b>	<b>Courts</b>	<b>Discussions</b>	<b>Nothing specific, just happened</b>	<b>All pathways <sup>a</sup></b>
	<b>%</b>					
Physical hurt	24.9	37.0	48.0	12.2	16.7	16.8
Emotional abuse alone	52.5	47.1	43.2	32.0	34.3	35.4
No violence reported	22.7	15.9	8.9	55.8	49.1	47.8
<b>Total</b>	<b>100.1</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>
<b>No. of observations</b>	<b>535</b>	<b>442</b>	<b>225</b>	<b>4,548</b>	<b>1,086</b>	<b>7,097</b>

Notes: <sup>a</sup> Includes parents who reported other pathways. Percentages may not total exactly 100.0% due to rounding.

Source: LSSFW1 2008

9 This difference probably reflects in part the change in the nature of the services now offered by Family Consultants within the courts. Family Consultants attempt to assist separated parents to resolve issues, but they also have a significant assessment and reporting function and are probably less likely to be seen by parents as "mediators".

10 The pre-reform respondents were given only three options, although they could choose multiples if they wished. In fact, only about 2% nominated more than one service. The post-reform respondents were asked about whether they used a specific service—FRCs. In the event that they did not use this service, they were then asked to nominate in their own words what service they used.

For those who nominated the courts as their main pathway, the percentages reporting physical hurt and emotional abuse were high (48% and 43% respectively). Among those who used lawyers and counselling/mediation/FDR as their main pathway, a lower percentage reported physical hurt and emotional abuse. While the rates of family violence were highest for parents whose main family law pathway was a formal one, a large majority of parents used informal pathways (“discussions between themselves” or “nothing specific, it just happened”). Parents using these informal pathways as their main dispute resolution route had lower rates of family violence.

Table 4.13 shows a similar pattern for those still in the process of sorting out parenting, with those mainly using courts, lawyers and counselling/mediation/FDR, in that order, being more likely to report physical or emotional abuse. At the same time, compared with the group who had sorted out arrangements, these parents reported elevated levels of physical hurt for all pathways (especially for those who had discussions or for whom it just happened). And except for those who used mainly lawyers, these parents also reported elevated levels of emotional abuse.

**Table 4.13 Main pathways used by parents’ reports of family violence, parents who were in the process of sorting out parenting arrangements, post-reform**

	Counselling, mediation or FDR	Lawyer	Courts	Discussions	Nothing specific, just happened
	%				
Physical hurt	32.9	43.0	49.9	26.7	27.6
Emotional abuse alone	45.6	44.5	43.6	41.7	46.7
No violence reported	21.6	12.5	6.5	31.6	25.7
<b>Total</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>No. of observations</b>	<b>239</b>	<b>253</b>	<b>236</b>	<b>722</b>	<b>204</b>

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

Source: LSSFW1 2008

Table 4.14 summarises the data regarding the extent of family violence experienced by parents at various stages of sorting out parenting arrangements. It is clear that mothers generally reported violence, especially physical violence, more often than fathers. It is also clear that matters were much more likely to be sorted out when there had been no family violence reported.

A history of physical or emotional violence is not necessarily a barrier to sorting things out, but respondents who reported that they were still in the process or that nothing was sorted out were twice as likely to also report physical violence.

**Table 4.14 Reports of family violence, by whether parenting arrangements had been sorted out, mothers and fathers, post-reform**

	Sorted out			In process			Nothing sorted out		
	Fathers	Mothers	All	Fathers	Mothers	All	Fathers	Mothers	All
	%			%			%		
Physical hurt	11.8	21.7	16.8	29.5	36.9	33.0	27.6	38.5	33.3
Emotional abuse alone	33.4	37.4	35.4	42.9	45.6	44.1	45.2	39.5	42.2
No violence reported	54.8	40.9	47.8	27.6	17.5	22.9	27.2	22.0	24.5
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>No. of respondents</b>	<b>3,525</b>	<b>3,572</b>	<b>7,097</b>	<b>918</b>	<b>824</b>	<b>1,742</b>	<b>437</b>	<b>510</b>	<b>947</b>

Source: LSSFW1 2008

The Survey of FRSP Clients 2009 asked respondents whether they had experienced family violence.<sup>11</sup>

Across all post-separation services, the majority of clients reported having experienced family violence (physical violence or emotional abuse), with only a minority of clients not reporting having experienced some form of family violence (Table 4.15). This is true for both female and male clients, although female clients were more likely to report having experienced family violence than male clients. Female clients were more likely to report having experienced physical violence, particularly those using the CCS and POP services.

Female CCS clients were the most likely to report having experienced physical violence (64%), followed by female POP clients (54%). A smaller proportion of female FRC and FDR clients (30% and 27% respectively) reported having experienced physical violence.

While many female and male early intervention services clients reported having experienced family violence, the proportion reporting family violence was much lower than that of post-separation services clients.

**Table 4.15 Reports of experience of family violence, by type of FRSP service used, 2009**

	EIS			PSS			
	MFRS	Couns- elling	EDST	FRC	FDR	CCS	POP
	%			%			
Females							
Physical violence	14.7	18.4	15.9	30.4	26.7	64.3	54.0
Emotional abuse alone	55.9	38.1	25.8	47.7	50.0	25.4	36.0
No violence reported	26.5	40.0	53.6	15.3	17.7	6.4	6.0
Unknown	2.9	3.4	4.6	6.7	5.6	4.0	4.0
Total	100.0	99.9	99.9	100.1	100.0	100.1	100.0
Number of respondents	34	472	151	451	266	126	50
Males							
Physical violence	14.7	13.0	16.4	22.9	21.1	27.0	32.4
Emotional abuse alone	37.3	35.1	30.9	49.0	48.7	54.1	48.7
No violence reported	44.0	47.1	50.9	21.9	28.7	13.5	16.2
Unknown	4.0	4.8	1.8	6.1	1.6	5.4	2.7
Total	100.0	100.0	100.0	99.9	100.1	100.0	100.0
Number of respondents	75	208	55	310	185	74	37

Notes: The sample size for SFVS was too small to allow statistically reliable estimates when the data is split by gender, so SFVS respondents were excluded from the table. Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

Table 4.16 provides information on the relationship between referral pathways and reports of having experienced family violence for post-separation services clients. The main points to be taken from this table are that:

- clients referred by courts were the most likely to report having experienced physical violence; and
- there is relatively little difference in the extent to which clients report having experienced physical violence for the other referral pathways.

<sup>11</sup> Respondents were asked: "Before you went to the service did [your current partner/ex-partner/the family member you went to the service about/your grandchild's/grandchildren's parents] ever: a) try to control you by either preventing you from contacting friends or family, or preventing you from using a car or having knowledge about or access to family money; b) threaten to harm you, themselves or others (including pets); c) seriously put you down or insult you; d) physically hurt you?" Response categories were: "yes", "no" and "prefer not to answer".

**Table 4.16 Post-separation services clients' experience of family violence, by referral pathways, 2009**

	FRC	Other coun- selling/ mediation <sup>a</sup>	Lawyer	Courts	Doctor	Other <sup>b</sup>	No pathway indicated
	%						
Physical violence	34.1	29.3	33.3	45.1	31.7	31.6	25.1
Emotional abuse alone	46.3	49.6	49.9	41.7	57.3	53.8	44.7
No violence reported	16.3	13.7	11.9	7.2	7.3	9.4	24.5
Unknown	3.3	7.4	4.9	6.0	3.7	5.1	5.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>99.9</b>	<b>100.0</b>
<b>No. of respondents</b>	<b>123</b>	<b>393</b>	<b>555</b>	<b>235</b>	<b>82</b>	<b>117</b>	<b>701</b>

Notes: Table excludes clients who used services for personal or other reasons (they were not asked about experience of abuse). Percentages may not total exactly 100.0% due to rounding. <sup>a</sup> Referral pathways include: "other telephone service", "domestic violence service", "other mediator/counsellor (or similar)". <sup>b</sup> Referral pathways include: "FRO", "religious leader/elder" and "other service".

Source: Survey of FRSP Clients 2009

Table 4.17 provides information on the relationship between referral pathway and reports of having experienced family violence for clients of early intervention services. Referrals included between 22% and 33% of clients who had reported physical violence. Similarly, all referrals included between 36% and 49% of clients who had experienced emotional abuse without physical violence. Courts were considerably more likely to refer cases with a form of reported violence than any other referral category.

While the overall rates of family violence reported by early intervention services clients were lower than those reported by post-separation services clients, this appears to have been largely driven by the much lower rate of family violence reported by clients who did not indicate a referral pathway (i.e., were self-referred). The rates of family violence reported by clients who were referred to early intervention services were not dissimilar to those reported by post-separation services clients.

**Table 4.17 Early intervention services clients' experience of family violence, by referral pathways, 2009**

	FRC	Other coun- selling/ mediation <sup>a</sup>	Lawyer	Courts	Doctor	Other <sup>b</sup>	No pathway indicated
	%						
Physical violence	30.0	29.4	32.7	33.3	21.6	24.1	12.5
Emotional abuse alone	48.0	38.7	49.0	60.0	35.8	43.0	32.7
No violence reported	16.0	28.9	18.4	6.7	39.6	27.8	50.2
Unknown	6.0	3.1	0.0	0.0	3.0	5.1	4.6
<b>Total</b>	<b>100.0</b>	<b>100.1</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>No. of observations</b>	<b>50</b>	<b>194</b>	<b>49</b>	<b>30</b>	<b>134</b>	<b>79</b>	<b>584</b>

Notes: Table excludes clients who used services for personal or other reasons (they were not asked about experience of abuse). Percentages may not total exactly 100.0% due to rounding. <sup>a</sup> Referral pathways include: "other telephone service", "domestic violence service", "other mediator/counsellor (or similar)". <sup>b</sup> Referral pathways include: "FRO", "religious leader/elder" and "other service".

Source: Survey of FRSP Clients 2009



## 4.4 Satisfaction with pathways

This section addresses questions of client satisfaction with the varying dispute resolution and decision-making pathways. Respondents to the LSSF W1 2008 were asked how various aspects of the process used to sort out their parenting arrangements worked. Parents were asked to indicate their views about the following statements:

- The process worked/is working for you.
- The process worked/is working for the other parent.
- The process worked/is working for the child.
- The result was what I expected.
- I had an adequate opportunity to put my side forward.
- The other parent had an adequate opportunity to put her/his side forward.
- The child's needs were adequately considered.

Table 4.18 describes the extent to which post-reform separated parents agreed or strongly agreed with a range of statements about the process of reaching a parenting agreement, according to whether they had sorted out the parenting arrangements or not. A large majority of post-reform parents who had sorted things out felt that the process they had used had been satisfactory with respect to key areas such as how it worked for them, for their former partner and for their child(ren). There was a much less positive response from those who were still working things out. Assessments of these dimensions did not vary greatly by gender, although fathers were more likely than mothers to see the process as working for the other parent—especially in the group still working things out.

**Table 4.18 Parents agreement (agree or strongly agree) about the process of reaching a parenting agreement, by whether parenting arrangement sorted out, mothers and fathers, post-reform**

	Sorted out			In the process of sorting out		
	Fathers	Mothers	All	Fathers	Mothers	All
	%			%		
The process worked/is working for you.	81.5	85.4	83.4	42.0	48.8	45.1
The process worked/is working for the other parent.	86.6	82.9	84.8	64.2	50.1	57.8
The process worked/is working for the child.	81.3	88.0	84.5	48.5	53.9	50.9
The result was what I expected.	82.0	82.9	82.4	—	—	—
I had an adequate opportunity to put my side forward.	81.5	85.9	83.6	—	—	—
The other parent had an adequate opportunity to put her/his side forward.	95.6	93.4	94.5	—	—	—
The child's needs were adequately considered.	88.2	92.2	89.7	—	—	—

Notes: Parents who volunteered "don't know" were treated the same here as those who responded "disagree", "strongly disagree" or "neither agree or disagree". Data have been weighted.

Source: LSSF W1 2008

Table 4.19 reports on similar data from the pre-reform sample of parents. The information relates to the process used to sort out parenting arrangements in the year they separated. Parents were asked for their views on a smaller number of aspects of the process:

- The process worked for you.
- The process worked for the other parent.
- The child's needs were adequately addressed.

Compared with the post-reform respondents, a smaller percentage of pre-reform parents (68%) felt that the main processes they used worked for them or that the child's needs were adequately

addressed (73%). At the same time, pre-reform respondents reported as often as their post-reform counterparts that the process worked for their former partner (82%).

**Table 4.19 Parents agreement (agree or strongly agree) about the process of reaching parenting agreement soon after separation, mother and fathers, pre-reform**

	Mothers	Fathers	All
	%		
The process worked for you.	68.3	76.4	72.1
The process worked for the other parent.	81.7	73.2	77.7
The child's needs were adequately addressed.	73.4	80.7	76.9

Notes: Parents who volunteered "don't know" were treated the same here as those who responded "disagree", "strongly disagree" or "neither agree or disagree". Data have been weighted.

Source: LBS 2009

Table 4.20 provides information on parents' views about the process of reaching parenting agreements, by main family pathway. The table indicates that mothers and fathers who had sorted out their parenting arrangements via discussions were both very likely to report that arrangements worked for them (90% and 86% respectively) and worked for their children (92% and 85% respectively). This group was also most likely to report that the result was what they expected. These are encouraging figures, suggesting an absence of coercion for most of those who sort matters out via discussions. Counselling/mediation/FDR was endorsed next most often with respect to these dimensions. Lawyers were rated considerably lower on most dimensions, especially by fathers.<sup>12</sup> The courts were least often seen as meeting the needs of parents and

**Table 4.20 Parents agreement (agree or strongly agree) about the process of reaching parenting agreements, by main family law pathway, fathers and mothers who have sorted out parenting arrangements, post-reform**

	Counselling, mediation or FDR	Lawyer	Courts	Discussions
	%			
Fathers				
The process worked for you.	74.3	56.2	45.3	86.0
The process worked for the other parent.	80.9	70.2	51.7	90.1
The process worked for the child.	74.4	56.2	56.4	85.2
The result was what I expected.	69.6	63.2	53.1	86.2
I had an adequate opportunity to put my side forward.	82.4	56.6	54.6	84.6
The other parent had an adequate opportunity to put her/his side forward.	96.8	89.2	88.0	96.3
The child's needs were adequately considered.	85.4	60.6	57.8	92.1
Mothers				
The process worked for you	71.9	69.1	54.7	89.6
The process worked for the other parent.	65.1	70.8	60.2	87.0
The process worked for the child.	78.5	70.0	53.4	92.1
The result was what I expected.	68.1	68.6	59.2	86.8
I had an adequate opportunity to put my side forward.	84.5	75.9	60.0	88.0
The other parent had an adequate opportunity to put her/his side forward.	93.6	88.7	81.6	94.3
The child's needs were adequately considered.	87.2	75.2	63.7	94.3

Notes: Parents who volunteered "don't know" were treated the same here as those who responded "disagree", "strongly disagree" or "neither agree or disagree". Data have been weighted.

Source: LSSF W1 2008

<sup>12</sup> Mothers who used lawyers as their main pathway reported more frequently than mothers who used counselling/mediation/FDR that the results worked for the other parent. They also reported slightly more frequently than mothers who used counselling/mediation/FDR that the results were what they expected.

their children and also to result in an outcome that differed from what the parent expected. Of course, the nature of the cases that end up in court are likely to be the most complicated and the most contested, and therefore the outcome could be expected to be less easy to anticipate.

When similar questions were asked of the pre-reform parents overall, a smaller proportion provided a favourable response to how well the family pathways had worked than did post-reform parents (Table 4.21). Pre-reform fathers followed the same pattern of responses to pathways as the post-reform parents. That is, discussions were endorsed most often, followed by FDR, then lawyers and then the courts. With respect to pre-reform mothers, however, a slightly higher percentage felt that engagement with lawyers worked for them compared to the proportion who engaged with FDR. On the other hand, when compared with using lawyers, a slightly higher percentage of mothers felt that their children's needs were addressed through FDR. Indeed, more mothers than fathers felt that their children's needs had been addressed across all pathways.

**Table 4.21 Parents agreement (agree or strongly agree) about the process of reaching parenting agreement soon after the separation, by main pathways used, mothers and father, pre-reform**

	FDR	Lawyer	Courts	Discussions
	%			
<b>Fathers</b>				
The process worked for you.	62.6	51.0	34.6	76.9
The process worked for the other parent.	72.7	62.9	65.0	88.5
The child's needs were adequately addressed.	71.4	52.2	39.4	82.4
<b>Mothers</b>				
The process worked for you.	66.5	72.7	55.8	81.3
The process worked for the other parent.	62.0	64.7	46.2	80.3
The child's needs were adequately addressed.	77.1	68.9	59.4	86.8

Notes: Parents who volunteered "don't know" were treated the same here as those who responded "disagree", "strongly disagree" or "neither agree or disagree". Data have been weighted.

Source: LBS 2009

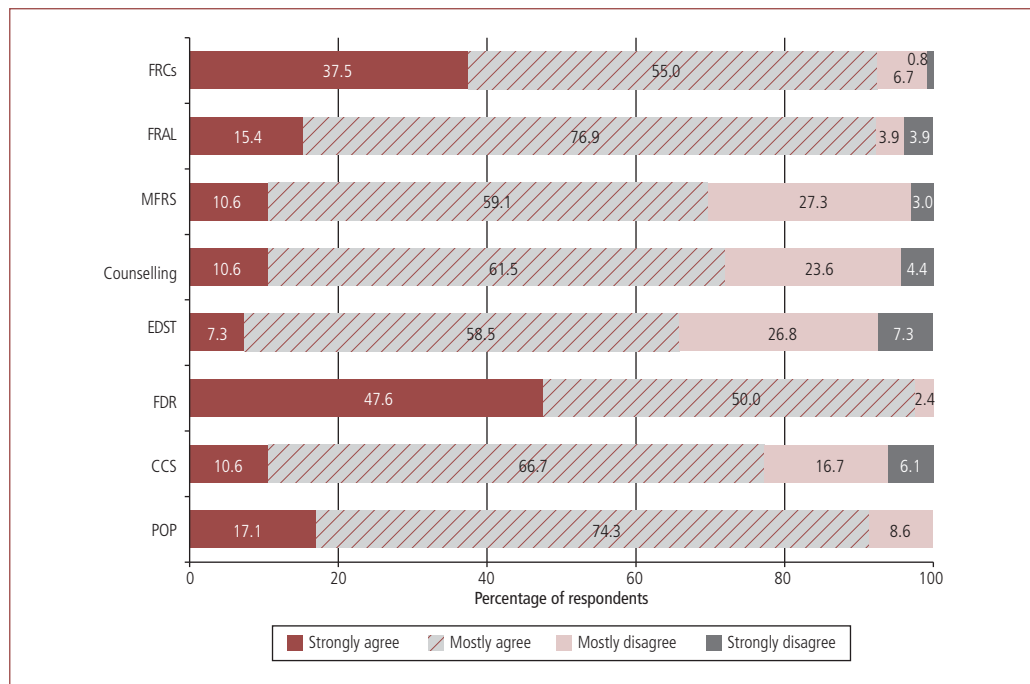
## 4.5 Pathway coordination

### 4.5.1 Service providers' and family lawyers' assessments

One of the core concerns expressed in the Out of the Maze report (Family Law Pathways Advisory Group, 2001) was that family law has not been conceived of as a system. This eventually led, as described previously, to government support for a range of new and expanded community-based services, with an emphasis on the development of referral protocols both between the services and between the services and the legal sector. The issue of how FRCs and fit with the rest of the system bears particularly upon the fulfilment of the original reform objective of achieving a family law system with a "highly visible entry point which operates as a doorway to other services" (2007 Evaluation Framework, policy objective 4).

This section begins by examining assessments by service professionals as to whether or not they have adequate information about the family law reforms to assist clients and whether the services have the capacity to refer clients to and work constructively with other agencies.

Very few FRC and FDR service professionals or workers from FRAL or POP felt that they did not have adequate information about the family law reforms to assist clients (Figure 4.1). Even though a substantial majority of staff from other services strongly or mostly agreed that they had adequate information, significant minorities disagreed. It may be that those services that see themselves as being furthest away from the day-to-day operations of family law are a little less confident about the level of information they have at their disposal with which to assist clients to understand the reforms, although this would not be expected to apply to Children's Contact Services. Differences between some of these services need to be treated with caution, however, due to the relatively modest numbers involved. For example, the percentage of CCS staff who disagree with the statement at some level translates to 15 of the 66 staff surveyed.



Notes: Responses from SFVS respondents are not reported due to small numbers ( $n = 16$ ). A small number of "can't say/don't know" responses were reported for this item and are excluded from these analyses. Percentages may not total exactly 100% due to rounding.

Source: Online Survey of FRSP Staff 2009

**Figure 4.1** Service providers' views on whether they have adequate information about the family law reforms to assist clients, 2009

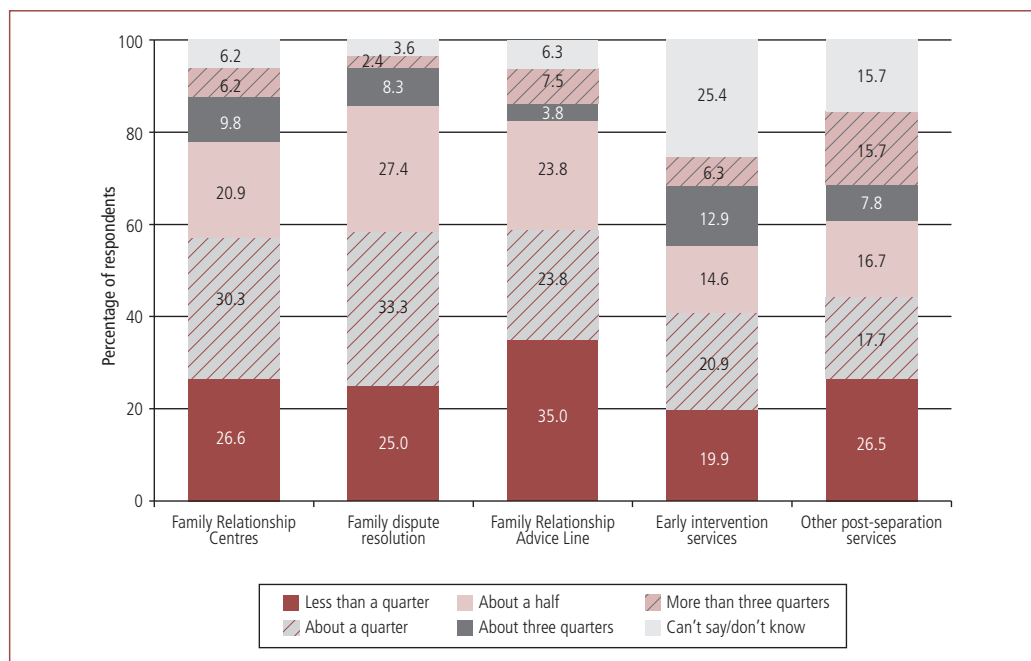
Figure 4.2 summarises service providers' assessments of clients' understanding of their requirement to attend FDR. While there is a great deal of variation in staffs' assessments of the proportion of their clients who have some misunderstanding about when they are required to attend FDR, the most common view was that a substantial proportion of clients have at least some misunderstanding.

For example, among staff in FRCs, 27% thought that less than a quarter of clients misunderstood the requirements to attend FDR, 30% thought this applied to about a quarter of clients, 21% to about a half of clients and 16% to three-quarters or more of clients.

Table 4.22 provides information on service providers' assessments of their service's referral processes and ability to work with other agencies. Service professionals are generally confident about their own service's referral processes and protocols and about their ability to work with other organisations and agencies. FRC service professionals reported the highest level of agreement to these two statements (98% and 96% respectively), reflecting perhaps the emphasis on both these aspects of service delivery in their operational framework. FRAL respondents were least likely to indicate that FRAL worked well with other agencies and organisations. This resonates with findings from the Qualitative Study of FRSP Staff, in which FRAL information officers in particular expressed a wish to have a more in-depth understanding of what many of the services to which they referred clients actually did. This knowledge is likely to develop further over time, although it is the nature of this aspect of the service that it will frequently be somewhat removed from day-to-day knowledge of the organisations to which it is making referrals.

Table 4.23 (on page 86) provides information on service providers' assessment of their capacity to work with a wide range of relevant services. Although patterns of responses varied across the service types, most, though not all, respondents rated their own service's ability to work with the others services as "good" or "excellent". The other response options were "average", "poor", "very poor", "can't say/don't know" or "not applicable".

Respondents generally reported that their service's ability to work with other FRSP-funded services and general services was "good" or "excellent". These patterns were not observed, however, in responses about legal services. Compared to FRC, EIS and PSS respondents, FRAL



Note: Percentages may not total exactly 100% due to rounding.

Source: Online Survey of FRSP Staff 2008

**Figure 4.2 Service providers' views on proportion of clients who have some misunderstanding about when they are required to attend FDR, 2008**

**Table 4.22 Service providers' agreement (agree or strongly agree) of their service's referral processes and ability to work with other agencies, 2009**

	All EIS	PSS			All services
		FRCs	FRAL	Other PSS <sup>a</sup>	
	%		%		%
Service has good referral protocols and processes	91.0	97.5	87.7	88.2	91.9
Service works well with other organisations and agencies <sup>b</sup>	92.2	96.0	77.8	89.4	91.3
Number of observations	335	248	81	190	854

Notes: "Strongly disagree", "disagree" and "can't say/don't know" categories are included in the total number of observations. Respondents who provided a response of "not applicable" are excluded. A small number of missing cases were reported and are therefore excluded from analysis. <sup>a</sup> POP and CCS. <sup>b</sup> A higher proportion of "can't say/don't know" responses (over 12.3%) were reported for this item for FRAL.

Source: Online Survey of FRSP Staff 2009

respondents were significantly more likely to report their ability to work with legal services as "poor" or "very poor". PSS respondents were the most likely of the four service types to rate their ability to work with the different legal services as "excellent", and the least likely to report a rating of "very poor" or "poor".

Variation between service types was also found for children's services (which includes the Child Support Agency, state and territory government child protection agencies and schools), with FRAL participants being less likely to provide a response of "excellent" compared to FRC, EIS and PSS respondents. However, few respondents across the four service types reported their service's ability to work with the children's services as being "very poor" or "poor".

For tailored services—which include Indigenous-specific services, local community groups, disability services, migrant or ethnic services, mental health services, and drug or alcohol services—the most frequently occurring responses were "average" or "good". Responses varied somewhat according to the four service types for tailored services, with FRAL respondents

**Table 4.23 Service professionals providing favourable ratings regarding their own service's ability to work with different services, by service type, 2009**

	All EIS	PSS			All services
		FRCs	FRAL	Other PSS <sup>a</sup>	
	%		%		%
FRSP services and FRAL					
FRCs	81.7	89.5	77.2	89.0	85.2
FRAL	53.9	75.9	—	65.1	64.1
EIS	91.4	94.3	56.6	87.6	88.3
PSS	82.0	89.0	64.5	94.0	85.1
General services					
Centrelink	68.9	71.8	80.8	68.5	70.9
Lifeline	78.6	80.2	63.0	73.9	76.6
Housing services	64.5	58.8	56.3	63.3	61.7
Welfare services	74.9	77.0	59.2	75.1	74.1
Police	75.0	72.0	58.3	75.3	72.7
Violence services					
Other family violence services	83.8	90.7	63.0	83.1	83.8
Sexual assault services	73.6	70.0	41.2	71.0	69.2
Children's services					
CSA	56.1	75.9	56.8	69.9	65.4
State government child protection agencies	75.7	79.7	46.6	81.4	75.5
Schools	77.1	63.3	30.8	66.7	66.8
Tailored services					
Indigenous-specific services	58.8	69.8	45.7	60.0	61.3
Local community groups	80.8	89.0	42.7	81.5	80.2
Disability services	68.4	61.5	41.7	69.5	64.2
Migrant or ethnic services	58.7	74.5	40.3	60.8	62.2
Mental health services	73.2	73.5	46.6	74.3	71.1
Drug or alcohol services	70.9	72.7	46.5	71.7	69.4
Legal services					
Private family lawyers	56.1	65.2	20.9	79.5	61.4
Legal Aid	57.8	78.4	39.4	81.2	67.7
Courts	57.2	72.2	34.8	80.1	65.2
Other legal services	52.9	73.0	30.6	78.6	62.8
Number of observations	335	248	81	190	854

Notes: Respondents who provided a response of "not applicable" were excluded from the analyses. <sup>a</sup> POP and CCS.

Source: Online Survey of FRSP Staff 2009

being less likely to report their ability to work with these services as being "excellent", compared to EIS, PSS and FRC respondents.

For each of the services listed, a large proportion of respondents did not provide a rating for their service's ability to work with the listed services. Instead, they provided a response of "can't say/don't know" or "not applicable". This possibly suggests an absence of a cross-service relationship in these cases, which may in turn reflect the focus of the service or an absence of the service in that area.

Table 4.24 reveals that most respondents indicated some level of agreement with statements aimed at tapping how well the FRCs and FRAL were functioning. However, more than half of EIS respondents gave a response of "can't say/don't know" to the statements about FRAL, perhaps suggesting that they had limited knowledge of these services. Not surprisingly, FRCs and FRAL respondents were each most likely to indicate agreement to the statements about their own service type.

In terms of the capacity of FRCs to provide a gateway to other services and to appropriately refer families, EIS and PSS service professionals were less likely than FRC and FRAL respondents

to indicate agreement (but for both, a large majority did agree). EIS respondents were also less likely to agree that FRAL appropriately refers families, but again, the majority in all but PSS agreed.

Table 4.25 summarises responses from a range of service types regarding the extent to which FRCs are perceived to be working in an integrated manner with the remainder of the family law system.

It is encouraging, but perhaps not surprising, that FRC service professionals were significantly more likely to indicate agreement with the statement that “The Family Relationship Centres have been able to work well in an integrated way” (84%). This is in contrast to responses from service professionals from FDR services and other service professionals, who were quite likely to indicate uncertainty with a response of “can’t say/don’t know” response.

**Table 4.24 Service professionals’ agreement (agree or strongly agree) with perceptions of FRCs and FRAL, 2009**

	All EIS	PSS			All services
		FRCs	FRAL	Other PSS <sup>a</sup>	
	%		%		%
FRCs provide a “gateway” to the services that families need.	76.2	96.4	85.2	78.5	83.6
FRCs provide appropriate information relevant to family relationships and separation.	81.5	97.9	75.3	81.1	85.6
FRCs appropriately refer families to the services they need.	65.7	96.8	55.6	69.1	74.8
FRAL provides appropriate information relevant to family relationships and separation.	42.1	74.7	98.8	53.9	60.1
FRAL provides appropriate advice on family separation issues.	40.0	69.9	100.0	49.7	57.0
FRAL appropriately refers callers to the services they need.	35.7	67.8	95.1	47.8	53.9
<b>Number of observations</b>	<b>335</b>	<b>248</b>	<b>81</b>	<b>190</b>	<b>854</b>

Notes: “Strongly disagree”, “disagree” and “can’t say/don’t know” categories are included in the total number of observations. Respondents who provided a response of “not applicable” are excluded. A small number of missing cases were reported and are therefore excluded from analysis. “Can’t say/don’t know” responses ranged from 9.1% to 16.5% across all services for items about FRCs. FRAL, FRC and PSS service professionals responded “can’t say/don’t know” from 11.1% to 37% of the time for items about FRAL. More than half of EIS respondents reported “can’t say/don’t know” in response to all items about FRAL. <sup>a</sup> POP and CCS.

Source: Online Survey of FRSP Staff 2009

**Table 4.25 Agreement that FRCs have been able to work well in an integrated way, family lawyers and service professionals, pre- and post-reform**

	FLS		All EIS	PSS			
	2006	2008		FRC	FDR	FRAL	Other PSS <sup>a</sup>
	%						
Strongly agree	1.4	1.3	6.3	20.9	3.6	2.5	8.7
Mostly agree	27.4	30.7	44.5	63.1	50.0	59.3	53.4
Mostly disagree	26.0	34.2	16.1	9.0	15.5	8.6	11.7
Strongly disagree	9.3	20.4	5.4	1.2	8.3	0.0	4.9
Can’t say/don’t know	35.9	13.5	27.8	5.7	22.6	29.6	21.4
<b>Totals</b>	<b>100.0</b>	<b>100.1</b>	<b>100.1</b>	<b>99.9</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>
<b>No. of observations</b>	<b>366</b>	<b>319</b>	<b>317</b>	<b>244</b>	<b>84</b>	<b>81</b>	<b>103</b>

Notes: “Not applicable” responses are excluded and represent less than 3.5% of the total number of observations across all services. Percentages may not total exactly 100.0% due to rounding. <sup>a</sup> POP and CCS.

Source: FLS 2006 and 2008; Online Survey of FRSP Staff 2009



The table also shows responses from the Family Lawyers Survey (FLS) 2006 and 2008 to a question concerning the FRCs' integration with the rest of the system. In 2006, the pattern of responses indicated a significant level of concern about the integration of FRCs, with 35% of respondents either strongly or mostly disagreeing with the proposition that the FRCs would be able to work in an integrated way with the rest of system.

This perception increased in the 2008 survey, with 55% of respondents strongly or mostly disagreeing with the proposition that the FRCs had been able to work in an integrated way with the rest of the family law system. In 2006, 36% of respondents declined to make a prediction, instead choosing the "can't say or refused to say" option, while in 2008, only 14% indicated they could not say. The response pattern does indicate, however, that a minority of family lawyers both predicted integration would occur (28% in 2006) and said it had occurred (32% in 2008).

## 4.5.2 Family lawyers' referral patterns

Table 4.26 provides information on the proportion of family lawyers who refer to differing services. Information is provided from the pre-reform (2006) and post-reform (2008) survey.

**Table 4.26 Proportion of clients referred to services by family lawyers, by type of service 2006 and 2008**

	Legally trained mediators	Community- based mediators <sup>a</sup>	Community- based or other relationship services <sup>b</sup>	FRCs
	%			
Pre-reform (2006)				
None	28.0	34.4	8.5	—
Less than a quarter	40.2	30.9	32.3	—
About a quarter	15.9	13.4	26.4	—
About half	7.5	12.5	17.0	—
About three-quarters	2.9	4.7	6.5	—
More than three-quarters	5.5	4.1	9.4	—
Total	100.0	100.0	100.1	—
Post-reform (2008)				
None	20.2	51.1	7.7	10.7
Less than a quarter	36.8	25.6	37.3	26.1
About a quarter	16.6	11.7	25.4	23.6
About half	11.4	6.5	15.4	18.7
About three-quarters	5.2	1.9	6.8	8.4
More than three-quarters	9.8	3.2	7.4	12.6
Total	100.0	100.0	100.0	100.1

Notes: <sup>a</sup> Community-based mediators may or may not be legally trained. <sup>b</sup> Includes services such as counselling, anger management and parent education. Analysis excludes "can't say" responses. Proportion of respondents who answered "can't say" ranged from 2.5% for referrals to community-based or other relationship services in 2008 to 4.2% for legally trained mediators in 2006. Percentages may not total 100.0% due to rounding.

Source: FLS 2006 and 2008

Between 2006 and 2008, there was a modest fall in the proportion of lawyers who reported that they never referred clients to legally trained mediators (28% to 20%) and a noticeable increase in the proportion of family lawyers who never sent clients to community-based mediators (34% to 51%).

Data from both the 2006 and 2008 surveys suggest that most lawyers refer only a quarter or fewer of their clients to any service. Table 4.26 shows that 26% of lawyers surveyed post-reform referred half or more of their clients to legally trained mediators, while only 12% referred half or more to community-based mediators. However, 30% of post-reform lawyers referred half or more clients to community-based relationship services, compared to 40% to FRCs.

It is difficult to interpret the meaning of these patterns with confidence, as they do not tell us about the nature of the referrals. There could be several reasons for referrals to FRCs, for example, although it would not be unreasonable to assume that many of these would be for FDR or at least for assessment for FDR. More will be said of this in Chapter 5. Referral to FRCs for FDR could well account for the higher proportion of post-reform lawyers who referred no clients to community-based mediators. Certainly it is clear that FRCs have had an impact on lawyers, with only 11% reporting that they did not refer any clients to this service.

### 4.5.3 Perceptions of legal system professionals and family relationship practitioners

Perceptions about pathways were gathered from legal system professionals via interviews conducted during the Qualitative Study of Legal System Professionals (QSLSP) between early April and late October 2008. They represent insights gained a little over half-way through the evaluation period and are considered somewhat exploratory and tentative in nature. Relevant perceptions from the community-based family relationships sector, sought in the Qualitative Study of FRSP Staff 2009, are also included in this section.

Most legal system professionals agreed in principle with key pathways objectives of the reforms, notably: to create new services to support non-court based resolution of parenting disputes and, in the context of protecting children from harm from exposure to family violence and child abuse, to promote child-focused dispute resolution. Participants regularly (but not uniformly) suggested that, outside of the court and legal system (and to some extent within it), the legislation may be having a positive impact on children in separated families.

Many legal sector professionals endorsed the concept of FRCs, seeing them as another avenue of support and information for separated parents. The initiative of raising the profile of FDR by the expansion of services and the creation of a nationally badged network of FRCs, with greater opportunity for consistency in service provision, was seen as a positive development. Several participants saw that compulsory FDR gave separating parents the right message about the importance of agreeing about arrangements for their children, and that FDR service providers played an important role in educating clients about changes to the law and the effects of conflict on children.

The perception of many legal system professionals, nonetheless, was that there were significant difficulties with respect to the interface between the community-based sector (with the main emphasis being on FDR) and providers of legal services. One respondent went so far as to suggest being “shut out” from FRCs. Data from FRC staff suggest that relationships with lawyers and courts varied from highly cooperative, especially where active family law pathways groups were operating, to non-existent or, occasionally, hostile.

There is some evidence, however, of changes taking place that parallel more recent thinking around the sort of relationships that should exist between services such as FRCs and lawyers.

As one FRC manager put it:

I guess as time has travelled on, when the FRCs were developed, my understanding was keep the solicitors away and the two shall never cross paths. As time has gone—and I guess it’s my approach to working too—I can see more connections occurring between the private solicitor sector, community legal centre sector, and the FRC. I think there’s more collaboration to the client outcome. But there’s also still some resistance with people within those areas. You know, my belief is that we should have more of an integrated service delivery model. I think that would work better for the client.

Concerns were expressed by legal system professionals about delays in some FRCs and related services and about the quality and durability of some of the agreements being reached.<sup>13</sup> Some of the difficulties in maintaining FRC services have reflected difficulties in the recruiting or retaining of staff.<sup>14</sup> On the question of delays, many dispute resolution practitioners and service

<sup>13</sup> Though the evidence on durability presented in Chapter 5 is encouraging.

<sup>14</sup> Difficulties spoken of in this regard included low salaries, heavy workloads for the earlier FRCs, working in relatively remote areas, competition between services, and the problems associated with “jump-starting” a national service.

managers also pointed out that, frequently, a “rush to mediate” is not in the interests of a longer-term or durable solution. As one FRC staff member put it:

Well I just want to clarify, we hear a lot of talk about waiting lists. I'd prefer to use the term “waiting time” ... So if you want to come in for your initial meeting, we call it an “intake”—it's three days, it's quick.

An FDR practitioner put it this way:

Sometimes, if we can, we resolve the urgent financial and urgent contact issues, but some people need a bit of time to deal with their emotional journey, so we just go at the pace that works for people. It'll be like: “Try this and let's make our appointment in a month or six weeks”. And we always check in every session: “How is parenting going, are there any urgent matters”, all that sort of thing.

Family law professionals also suggested that the complexity of the legislation, combined with the complexity of the system delivering family law services (particularly the existence of two courts, the Family Court of Australia and the Federal Magistrates Court), were contributing to the prevalence of a range of inconsistent interpretations and practices in the application of the legislation. Inconsistent practices and approaches within and between the courts, together with resourcing and operational constraints, particularly in the Family Magistrates Court, were in turn seen to impair the ability of the system to provide clear pathways capable of delivering appropriate and child-focused outcomes.

Finally, there was a perception that inconsistent practices within and between courts themselves were contributing to significant uncertainty about the requirements of s60I (FDR with exceptions). The key pathways issues of capacity to mediate and the reasons for referral to an FRC are discussed further in Chapter 5. But as one FDR practitioner put it:

Even when a legal practitioner has referred someone to the Family Relationship Centre and they assume that they're just coming through to get their stamp and move forward ... Most of the time they come in and make a pretty big effort to get it resolved because they see the benefit ... If I can get it sorted out here, then it saves myself a lot of time, a lot of money and a lot of headaches.

## 4.6 Summary

### 4.6.1 Pathways and satisfactions

The pre- and post-reform data on separated parents indicate that the main pathway for resolving parenting issues was discussions between parents or, less often, a sense that it “just happened”. Most parents who had reached agreements or were in the process of reaching agreements via discussions between themselves, felt the process worked for them, for their former partners and for their children. Pre-reform parents reported using lawyers and courts to resolve matters or make decisions considerably more often than did post-reform parents. This may reflect a change in service use. It could also possibly reflect the fact that these parents had been separated for longer. It may be that during one of the additional transition points during this period, courts or lawyers were used to assist with the resolution of disputes.

A little under three-quarters of the post-reform parents had sorted parenting matters out within a year or so of separation. A substantial minority appeared to have made little or no use of key services such as counselling, FDR, lawyers or courts. The remainder used, on average, 1.8 service types, with 11% using three service types or more.

Less than a fifth of post-reform parents were still sorting things out a year or so after separation, while for 10% “nothing was sorted out” at that time. Although post-reform parents who were still sorting things out made greater use of FDR, lawyers and courts than those who had resolved parenting issues, they still saw themselves as relying mainly on discussions or on things just happening.

It appears that many separated parents did not contest parenting arrangements to any significant extent. Despite commonly held understandings of separation as being a stressful life event, most parents were finding mainly informal ways of negotiating arrangements for their children and were generally satisfied with the negotiation processes.

About half the post-reform parents who had sorted out parenting arrangements in the first year or so made some use of counselling or FDR services. About three-quarters of the parents who were still sorting parenting matters out also made use of these services.

It is important to recognise, however, that while for a relatively small percentage of parents who sorted things out, dispute resolution services played the main role in the resolution or management of their parenting issues, the majority seemed to see these services as mainly supporting their own efforts. Such a perception would be consistent with placing the primary emphasis on client self-determination, a philosophy that underpins community-based counselling and community-based mediation theory and practice.

About half of the post-reform parents who had sorted things out also reported violence. Of this group, twice as many parents reported emotional abuse rather than physical violence. About three-quarters of those parents still sorting things out, or for whom nothing had been sorted out, reported violence. A third of these parents reported physical violence and a little over two-fifths reported emotional abuse with no physical violence. Clearly violence generally, and physical violence especially, inhibited the resolution of parenting matters. On the other hand, despite a history of some sort of violence or abuse, many parents managed to resolve matters, mainly through discussions with their former partners, and not infrequently supported by services. Furthermore, a large proportion of these parents reported that the process had worked for them and for their children.

Broadly speaking, the data suggest that mediation/FDR, lawyers and courts were mainly working better, if not at least as well, for both parents and children in the post reform environment than in the pre-reform environment.

Both pre-reform and post-reform mothers and fathers who sought assistance were most often satisfied with FDR processes and least often satisfied with the courts. With one exception,<sup>15</sup> lawyers were rated in between, although they were generally closer to the courts in the level of satisfaction they provided.

## 4.6.2 Service coordination

Family relationship service providers generally felt they had enough information about the family law reforms, although professionals in the early intervention services were the least confident in this regard. These same service providers all believed that a considerable number of their clients were unclear about the requirements to attend FDR. They also felt generally confident, however, about their referral processes and protocols, and frequently, though by no means universally, rated positively their capacity to work with other FRSP-funded services and a wide range of other services.

FRAL staff rated its capacities in these areas least positively. This rating contrasts with the enthusiasm for the work that was noted in the qualitative data, as well as the competence that was observed in staff handling of incoming calls. It may be that the relative isolation of a telephone service and the relatively brief nature of many of the calls generate a range of uncertainties about the nature of services external to FRAL. It may also be that FRAL workers refer a considerable number of clients within its own organisation, which includes Centrelink.

FRC staff consistently showed enthusiasm and awareness of the key issues, and FRCs appear to have achieved the goal of becoming highly visible gateways. Only about half of the other service providers and only about a third of practising lawyers saw the FRCs as an integral part the family law system, though this was not, of course, a key objective of the reforms. Many family lawyers expressed a reluctance to refer clients to services generally. When they did refer, however, lawyers were most inclined to refer to FRCs.

<sup>15</sup> Pre-reform mothers rated lawyers as a process that worked for them slightly more often than FDR. Though the reverse was the case with respect to how the process worked for their children.



# 5

## Family dispute resolution

As outlined in Chapter 1, a key aspect of the 2006 changes to the family law system was to require parties who could not otherwise agree on post-separation parenting arrangements to attend family dispute resolution (FDR) to attempt to resolve disagreements over parenting arrangements prior to lodging an application with a court. Chapter 4 provided an overview of pathways to FDR and other services. This chapter examines operational aspects of FDR and relates to policy objectives 2 and 3 of the 2007 Evaluation Framework (Appendix B) concerning encouraging greater involvement by both parents in children's lives after separation, and also protecting children from violence and abuse; and helping separated parents agree on what is best for their children.

After briefly summarising circumstances that prompt exceptions and the issue of certificates, and key factors that inform contemporary practice, this chapter documents agreement rates, the content of agreements, and rates of satisfaction with the FDR process. It was found that most respondents from a large representative survey of parents who had used FDR (the Longitudinal Study of Separated Families Wave 1 [LSSF W1] 2008) had sorted out disputes by the time of the survey—an average of one year after separation. The data also show how agreement rates, satisfaction with and the viability of FDR are strongly linked to how practitioners manage and are perceived to manage questions of violence and family dysfunction.

In addition, the chapter provides an evaluation of the appropriateness of referrals into FDR services and the ongoing judgments that must be made by FDR practitioners in balancing the safety of parents and children with effective child-focused processes. The circumstances in which certificates are issued are also examined.

Information on FDR was obtained from the following sources:

- Family Pathways: The Longitudinal Study of Separated Families Wave 1 2008 (LSSF W1 2008);
- Family Pathways: Looking Back Survey (LBS);
- Family Lawyers Survey (FLS) 2006 and 2008;
- Qualitative Study of Family Relationship Service Program (FRSP) Staff;
- Online Survey of FRSP Staff 2009;
- Survey of FRSP Clients 2009; and
- FRSP Online Database 2006–09.

### 5.1 A note on FDR with exceptions and certificates

For parents in dispute over their children following separation, exceptions to the requirement to participate in FDR include:

- applications for orders that are made with the consent of the parties (s60I(9)(a)(i));
- circumstances in which there are reasonable grounds to believe that:
  - there has been child abuse by one of the parties to the proceedings (s60I(9)(b)(i));
  - there would be a risk of abuse to the child if there was a delay in an application being made to court (s60I(9)(b)(ii));
  - there has been family violence by one of the parties to the proceedings (s60I(9)(b)(iii));
  - there is a risk of family violence by one of the parties to the proceedings (s60I(9)(b)(iv));
  - and
  - the application is made in circumstances of urgency (s60I(9)(d)); and

- applications for orders in proceedings in which a certificate issued by an FDR practitioner has already been filed (r.12CAB of the Family Law Regulations 1984).

In circumstances where these exceptions apply, the parties may lodge an application in court without attempting FDR, although judicial officers also retain the discretion to refer the parties back to FDR.

If attempts to reach an agreement in FDR are unsuccessful or a matter is judged at the outset not to be suitable for this form of intervention, then an accredited FDR practitioner may issue a certificate to their clients that will then enable them to access the court system.<sup>1</sup> There are five grounds for issuing such certificates:

- a party attended FDR but the other party refused or failed to attend;
- a matter was considered inappropriate for FDR by the practitioner;
- FDR was attended by both parties and a genuine effort was made to resolve the dispute;
- the parties attended FDR but a party or parties did not make a genuine effort to resolve the dispute; and
- the parties began FDR, but it was considered by the practitioner that it would not be appropriate to continue FDR.

## 5.2 A note on terminology and changing practice

Section 10F of the *SPR Act 2006* defines family dispute resolution as a “process (other than a judicial process) (a) in which a family dispute resolution practitioner helps people affected by separation and divorce to resolve some or all of their disputes with each other; and (b) in which the practitioner is independent of all the parties involved in the process.

In analysing the data that follow, it should be borne in mind that parents may not distinguish between FDR delivered by accredited FDR practitioners and a range of other “family mediation” services, or even between FDR and more directed negotiations between lawyers. Indeed, some parents are more likely to recall who provided the service and with what result than what the service was called or via which organisation or profession it was delivered. It is also important to note that although the principles and accreditation arrangements informing FDR have become increasingly standardised (see footnote 1), procedures continue to vary according to the nature of the dispute and the philosophy that guides the practitioner and their organisation.

Historically, “divorce mediation” began as a process predominantly facilitated by a mediator who implicitly or explicitly assumed from the outset that parents were capable of representing their children and capable of representing themselves (e.g., Haynes, 1981). But the data on levels of violence, safety concerns and other dysfunctional behaviours identified in this chapter and Chapter 10 strongly suggest that many parents currently participating in FDR would not have been suitable candidates for these earlier mediation models. Since the mid- to late 1990s therefore, mediators in family disputes over children (more recently called FDR practitioners) have continued to develop approaches and strategies aimed at safely widening the scope of the work and permitting a larger percentage of separating and separated families to make use of these processes. Increasingly sophisticated intake procedures have been developed that are aimed at determining readiness and capacity to mediate.<sup>2</sup> Methods of formally addressing

1 Since 1 July 2009, FDR practitioners who wish to issue certificates need to meet accreditation standards set out in the new Family Law (Family Dispute Resolution Practitioner) Regulations 2008. The new standards include competency-based qualifications developed for the family relationships sector. The three pathways to accreditation are: (a) completion of the full Vocational Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent); (b) an appropriate qualification or accreditation under the National Mediator Accreditation Scheme and competency in the six compulsory units from the Vocational Graduate Diploma of Family Dispute Resolution (or the higher education provider equivalent); or (c) to have been included in the Register before 1 July 2009 and to have gained competency in the three specified units (or the higher education provider equivalent). The three specified units that require competency are to: (a) respond to family and domestic violence in family work; (b) create a supportive environment for the safety of vulnerable parties in dispute resolution; and (c) operate in a family law environment.

2 More specifically, under regulation 25 of the Family Law (Family Dispute Resolution Practitioner) Regulations 2008, before providing FDR, practitioners must be satisfied that an assessment has been conducted of the parties to the dispute and FDR is appropriate. In determining whether FDR is appropriate, the FDR practitioner must be satisfied that consideration has been given as to whether the ability of any party to negotiate freely in the dispute is affected by any of the following matters: the history of family violence, if any, among the



power imbalances during the process itself have also been developed, including imbalances that arise out of certain categories of past or present violence (Cleake, Bickerdike & Moloney, 2006; Kelly, 2007).

Early forms of divorce mediation were also characterised by an emphasis on mediator control of the process and a corresponding “neutrality” or low level of investment in the specifics of the dispute.<sup>3</sup> Mediator responsibility for the process remains a characteristic of most mediation models. But under the family law reforms, FDR practitioners are not neutral with regard to outcomes for children. Rather, they are required to actively support the best interests of the child. They typically do this by providing information before and during the process about the intentions of the legislation, about the disadvantages (in most cases) of litigation, and especially about the seriously negative consequences for children of entrenched and high parental conflict, violence or other seriously dysfunctional behaviours.

In addition, while attempting to maximise the autonomy of parents—arguably a key aim of all mediation models—contemporary FDR practitioners also attempt to actively represent children, either directly by working with child consultants (child-inclusive practice) or indirectly through child-focused practice.<sup>4</sup> At the same time, it is suggested by a number of researchers (e.g., McIntosh & Moloney, 2006; Parkinson & Cashmore, 2008) that in high-conflict disputes, the successful representation of children’s needs also requires an appreciation of and willingness to engage with the less functional aspects of the parental relationship. This is because the generally emotionally laden narratives by which former couples justify or oppose the separation or the consequences of the separation, often distract them from focusing on their children’s needs.

FDR practitioners position themselves somewhat differently regarding the emphasis they place on acknowledging these narratives and acknowledging the accompanying emotions. Some practitioners believe that when these things are present, they must at least be acknowledged before progress can be made with respect to the parenting dispute. Some practitioners go further and may offer a form of “therapeutic mediation”.<sup>5</sup> Others see themselves as being more “practically” focused, believing that working with such “underlying” issues is not part of their brief and that if such interventions are required, the work lies in the domain of professionals other than FDR practitioners.<sup>6</sup>

Finally, it is also important to appreciate that for some separating or separated families, dispute resolution can be the by-product rather than the primary purpose of the help that was originally sought (Lidchi, 2003). Thus, while parents may have originally sought services such as relationship counselling or family therapy, these interventions may nonetheless result in the setting up of formal or informal agreements about future parenting.

It should be kept in mind therefore, that although the focus of the evaluation is on services supported by the Family Relationship Services Programs, parents’ responses are likely to reflect a variety of dispute resolution experiences. In addition, while many of the LSSF W1 2008 respondents were likely to have experienced FDR within FRSPs, for some, FDR (or what they deem as FDR) will have occurred elsewhere.

## 5.3 Operation and outcomes of FDR

### 5.3.1 Agreement rates, nature of agreements and satisfaction

According to data from the LSSF W1 2008, among parents who separated post-1 July 2006, 31% of fathers and 26% of mothers reported that they and the other parent had “attempted family dispute resolution or mediation”. The actual question was: “Can I just check, have you and [focus parent] attempted family dispute resolution or mediation?” We refer to this as the “narrow” definition of FDR. By this we mean that these parents reported that they “attempted” FDR or mediation. Those who answered “yes” to the question of whether at any time they had

parties; the likely safety of the parties; the equality of bargaining power among the parties; the risk that a child may suffer abuse; the emotional, psychological and physical health of the parties; and any other matter that the FDR practitioner considers to be relevant to the proposed FDR.

3 Some contemporary models, such as “transformative mediation” (Bush & Folger, 2005), would still favour such an approach.

4 For a more in-depth explanation of these terms and their application, see Moloney and McIntosh (2004).

5 See Smyth and Moloney (2003) for a review of these forms of intervention.

6 This has also led to hybrid models of FDR and counselling, such as that evaluated by Jaffe & Jacobs (2008).

contacted or used a counselling, mediation or dispute resolutions service were deemed to have engaged in dispute resolution in its more broadly defined sense. When respondents were asked this broader question, 50% answered in the affirmative.

According to data from the LBS, among parents who separated prior to July 2006, 28% of fathers and 24% of mothers reported that they and the other parent attempted “some form of mediation or dispute resolution” when they “were deciding the parenting arrangements for [focus child]”. The actual question was: “Just to check, when you were deciding the parenting arrangements for [focus child], did you and [focus parent] attempt some form of mediation or dispute resolution?”

The LSSF W1 2008 provides information on the extent to which agreement was reached when FDR was attempted and, if no agreement was reached, whether a certificate was issued that allowed the parties to proceed to a relevant court should they have wished to do so.

Table 5.1 shows that, among parents from the LSSF W1 2008 study who reported that they had completed FDR, just under two-fifths reported reaching an agreement. The actual question to those who “had attempted family dispute resolution or mediation” and for whom FDR or mediation was not ongoing was: “What was the outcome?” The core options were “an agreement was reached” or “no agreement”.

Just over a fifth did not reach agreement but were issued with a certificate that would have enabled them to proceed to court had they wished to do so. Almost one-third reported not reaching agreement and not being issued with a certificate. These are the first estimates on this issue gathered from a large representative survey.

Table 5.2 uses data from the Survey of FRSP Clients, which was conducted in 2009 to analyse the outcomes from FDR for clients who tried to develop parenting arrangements. The information is presented for mothers and fathers separately and for mother and fathers combined, and according to whether the FDR took place in an FRC or FDR service. Over half the clients (57%) reported that they reached full or partial agreement about their focus child as a result of FDR that took place in either FRCs or FDR services during 2008 or 2009. Certificates were issued in 19 % of these cases. A total of 35% of the parents<sup>7</sup> in the survey who made use of FDR reported that no agreement had been reached. Overall, agreement and non-agreement rates did not vary appreciably by type of service (FRCs or FDR services).

The estimates of the rates of agreement resulting from FDR are lower in the LSSF W1 2008 than in the Survey of FRSP Clients 2009. However, differences in data collection methodologies and questions between the surveys mean that the results of the two surveys are not directly comparable.<sup>8</sup>

Whether or not FDR results in “agreement” is an important outcome of FDR, but it is also important to examine the longer term “dispute management trajectory”. The LSSF W1 2008 provides data on whether, at the time of the survey, the dispute had been sorted out, was in the process of being sorted out, or was not sorted out. The durability of agreements and the extent to which the dispute management trajectories differ between those who receive and do not receive certificates is examined in Section 5.3.3

The Survey of FRSP Clients provides information on the living arrangements agreed to, the extent to which these arrangements represented a change from the pre-FDR situation, and

<sup>7</sup> This consists of 21.1% who reached no agreement but for whom a certificate was not issued, and 22% who reached no agreement and for whom a certificate was issued.

<sup>8</sup> There are significant caveats attached to comparing the LSSF W1 2008 and the Survey of FRSP Clients data. Data from LSSF W1 2008 are drawn from a random sample of parents who separated between 2006 and 2008. Data from the Survey of FRSP Clients came from users of services during 2008 and 2009 who volunteered to provide feedback on their experiences. In the client survey sample of parents who used FDR, fathers with one or more children mainly in their care appear to be over-represented. They comprise 26% of the parents with at least one child mainly in their care compared to only 8% of such parents in the LSSF W1 2008. In addition, many of the key questions used in the two studies are not formally comparable. For example, the Survey of FRSP Clients distinguished between full and partial agreements at FDR, while the LSSF W1 2008 did not. With regard to parenting arrangements, the LSSF W1 2008 asked quantifiable questions about the focus child, while the client survey first asked a more general question regarding how many children under 18 the parent had when s/he first used the service and how many of these children at the time were living mainly with that parent, and then asked questions about the focus child. Finally, the LSSF W1 2008 is based upon reports of whether FDR was attempted, whereas, as the name implies, the data from the survey of FRSP clients is restricted to those who experienced FDR in an FRSP service.

**Table 5.1 Outcomes of FDR, 2008**

	Outcome
	%
An agreement reached	39.4
No agreement and a certificate issued	21.0
No agreement and no certificate	30.6
No agreement and not sure if certificate issued	2.6
Other	6.4
<b>Total</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>2,618</b>

Note: Excludes those who reported "Don't know" or did not answer the question (less than 2%), and those who were still in the process of coming to an agreement (10%).

Source: LSSF W1 2008

**Table 5.2 FDR outcomes for clients who tried to sort out parenting arrangements, mothers and fathers, by where FDR took place, 2009**

	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%	%	%	%	%	%	%	%	%
<b>Certificate not issued</b>									
No agreement	11.2	10.4	10.9	12.6	13.4	13.0	12.1	12.1	12.1
Partial agreement	26.0	20.4	23.6	27.0	16.5	22.6	26.4	20.1	23.7
Full agreement	15.8	15.4	15.6	9.8	17.3	13.0	13.7	15.4	14.4
<b>Certificate issued</b>									
No agreement	22.7	22.6	22.7	22.4	22.8	22.6	22.6	22.3	22.4
Partial agreement	11.5	14.0	12.6	16.1	11.8	14.3	12.7	12.9	12.8
Full agreement	3.6	6.3	4.8	8.1	8.7	8.3	5.0	6.9	5.8
<b>Not sure if certificate issued</b>	9.2	10.9	9.9	4.0	9.5	6.3	7.5	10.4	8.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>	<b>100.1</b>	<b>99.9</b>
<b>Number of respondents</b>	<b>304</b>	<b>221</b>	<b>525</b>	<b>174</b>	<b>127</b>	<b>301</b>	<b>496</b>	<b>364</b>	<b>860</b>

Notes: Excludes grandparents. Parenting Orders Program (POP) clients included in the total but not presented separately as the number of respondents in this category was too small to allow statistically reliable estimates to be presented ( $N = 34$ ). The measure of parenthood is based on reported number of children, and on reported number of resident children at the time of first attending the service. Those who have one child or more, but none living with them, are defined as non-resident mothers or fathers. Children includes step- or other children. Responses of non-resident mothers ( $N = 14$ ) are not reported because the sample was too small to allow statistically reliable estimates to be presented. Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

satisfaction rates with respect to the agreements made. Table 5.3 examines the living arrangements that were agreed to during FDR, how this varied between mothers' and fathers' reports, and whether FDR took place in an FDR service or FRC. Fathers were considerably more likely than mothers to report that the agreement specified that the focus child was living about the same time with each parent (33% compared to 18% respectively). Both fathers and mothers who went to FDR services were more likely to report this arrangement (39% and 25% respectively) compared to those who went to FRCs (32% and 14% respectively). However, these differences were minimal for fathers.

Only 8% of fathers compared to 73% of mothers reported that the agreement was for the focus child to live mostly with them. In this case, the gender pattern was similar for FRCs and FDR services. The lower percentages reported by both mothers and fathers who attended FDR services can be accounted for by the higher rates of reported sharing of the parenting.

An important question with respect to a key aim of the reforms is the extent to which these reported arrangements represented a change in the arrangements that existed before FDR took

place. Table 5.4 reveals that for mothers who reached an arrangement at FDR, 11% reported that the focus child spent increased time with them, 43% reported the child spent increased time with the child's father, and 47% reported that the outcome was the same as before FDR commenced. Fathers' reports were fairly consistent with this, with 44% reporting the child spent more time with them, 16% reporting the child spent more time with the mother, and 41% reporting no change. Compared with FRC fathers, FDR fathers were somewhat more likely to report no change and/or the child spending more time with the mother, and less likely to report the child having increased time with the father.

Table 5.5 summarises data on three key aspects of the FDR process experienced by FRSP clients: (a) whether the arrangement worked for the parent; (b) whether each parent thought it worked for the child; and (c) whether the FDR process was likely to help in making future decisions about the children. Over half (57%) of parents thought the agreement worked for them. Fathers were a little more positive than mothers (61% compared to 54%), although this was entirely accounted for by differential reports in the FRC sample.

Interestingly, compared with the question of whether or not it worked for them, more parents (61%) thought that the parenting agreement worked for their child, with the increase in endorsement coming largely from mothers (58–63%), while fathers' support stayed about the same (around 62%). There was no significant difference between FRCs and FDR services on this dimension.

Parents were most likely to agree (strongly or otherwise) with the statement that the children's needs were taken into account. Fathers who attended FRCs or FDR services and mothers who attended FDR services were slightly more likely than mothers who attended FRCs to agree or strongly agree with this statement (73% and 73% compared to 68%). The proposition that the agreement would help in future negotiations over the child was endorsed by 44% of parents, with fathers being somewhat more positive in this regard than mothers.

**Table 5.3 Living arrangements specified by FDR agreement, mothers and fathers, by where FDR took place, 2009**

	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
Child lives mostly or entirely with respondent	79.1	8.3	48.7	63.3	6.3	39.4	73.1	8.2	45.2
Child lives mostly or entirely with the other parent	2.1	47.2	21.5	0.9	41.8	18.1	2.0	44.8	20.4
Child lives about the same with each parent	13.6	31.9	21.5	24.8	39.2	30.9	17.5	33.2	24.3
Child lives mostly or entirely elsewhere (i.e., with neither parent)	0.0	0.7	0.3	0.0	0.0	0.0	0.0	0.9	0.4
Agreement or plan did not specify arrangement	5.2	11.8	8.1	11.0	12.7	11.7	7.5	12.9	9.8
<b>Total</b>	<b>100.0</b>	<b>99.9</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>	<b>100.1</b>	<b>100.0</b>	<b>100.1</b>
<b>Number of respondents</b>	<b>191</b>	<b>144</b>	<b>335</b>	<b>109</b>	<b>79</b>	<b>188</b>	<b>308</b>	<b>232</b>	<b>540</b>

Notes: Only includes respondents who specified that they had reached agreement on either "all" or "some aspects" of a parenting plan. POP clients are included in the combined service calculations, but are not presented separately as the number of cases where agreements were made was too small ( $N = 17$ ). Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

**Table 5.4 Impact of FDR parenting agreement on time the focus child spent with the client, mothers and fathers, by where FDR took place, 2009**

Agreement resulted in:	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
Increased time with the respondent	11.0	48.6	27.2	11.0	34.2	20.7	10.7	43.5	24.8
Increased time with other parent	43.5	14.6	31.0	41.3	20.3	32.5	42.5	16.0	31.1
No change in time spent with either parent	45.6	36.8	41.8	47.7	45.6	46.8	46.8	40.5	44.1
<b>Total</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>191</b>	<b>144</b>	<b>335</b>	<b>109</b>	<b>79</b>	<b>188</b>	<b>308</b>	<b>232</b>	<b>540</b>

Notes: Includes only respondents who specified that they had reached agreement on either "all" or "some aspects" of a parenting plan. POP clients are included in the combined service calculations, but are not presented separately as the number of cases was too small ( $N = 17$ ). Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Clients 2009

**Table 5.5 Parents' agreement (agree or strongly agree) about aspects of parenting agreement/processes, mothers and fathers, by where FDR took place, 2009**

	FRCs			FDR			Total		
	Mothers	Fathers	Total	Mothers	Fathers	Total	Mothers	Fathers	Total
	%			%			%		
The parenting agreement at the service worked for you.	51.6	62.2	56.2	57.1	57.1	57.1	53.8	60.7	56.8
The parenting agreement at the service worked for the child(ren).	58.0	62.2	59.8	62.6	61.8	62.3	59.7	61.7	60.6
The child(ren)'s needs were taken into account.	68.3	73.2	70.4	73.1	73.4	73.3	70.2	72.5	71.2
The parenting agreement will help me (and my ex-partner) to make decisions together about our children into the future.	40.3	47.2	43.3	44.4	48.0	45.9	41.7	46.7	43.8
<b>Number of respondents <sup>a</sup></b>	<b>186</b>	<b>142</b>	<b>328</b>	<b>108</b>	<b>75</b>	<b>183</b>	<b>302</b>	<b>225</b>	<b>527</b>

Notes: Includes only respondents who specified that they had reached agreement on either "all" or "some aspects" of a parenting plan. "Not applicable" responses are excluded from calculations (less than 3% of respondents). POP clients are included in the combined service calculations, but are not presented separately as the number of cases was too small ( $N = 17$ ). Number of respondents differ slightly between the items as a result of "Not applicable" responses. Percentages may not total exactly 100.0% due to rounding. <sup>a</sup> Refers to the final aspect of the parenting agreement/process shown in the table.

Source: Survey of FRSP Clients 2009

### 5.3.2 Family dysfunction, dispute resolution and certificates

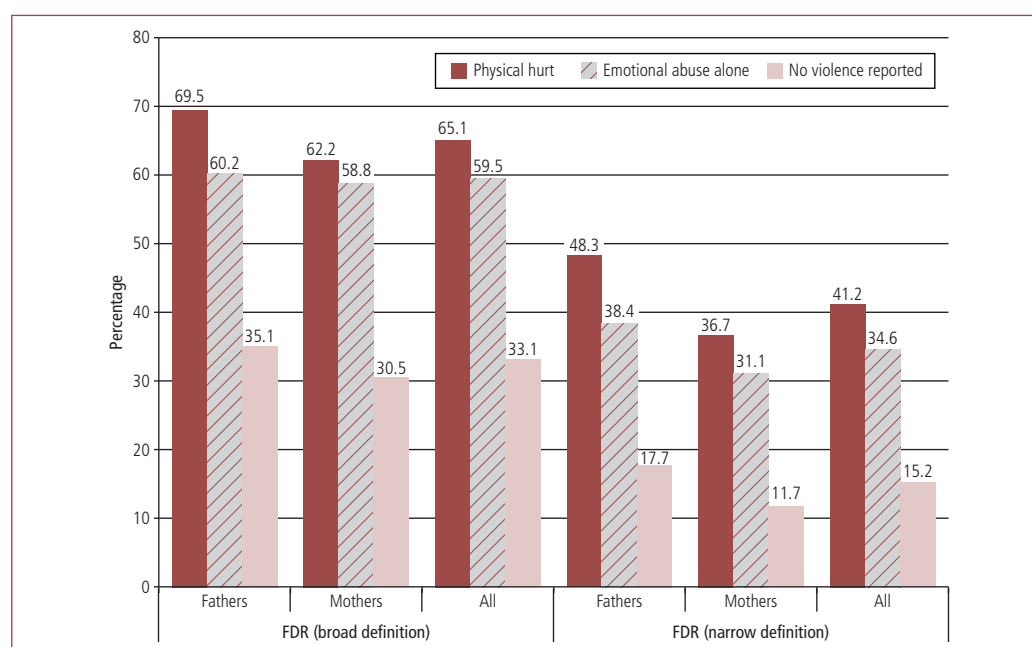
Figure 5.1 shows how the level of use of counselling, FDR or mediation during or after separation varied according to whether the parent said that they: experienced physical violence pre-separation, experienced emotional abuse but not physical violence pre-separation, or reported no violence.

Parents who reported that they had experienced physical violence from their partner were a little more likely (65%) to have either “contacted or used counselling, mediation or FDR” (the broader definition of FDR referred to in Section 5.3.1) than those who reported having experienced emotional abuse alone (60%) and those who did not report experiencing violence (33%). While, as discussed in Chapter 2, fathers were less likely than mothers to report experiences of family violence, those fathers who said they had experienced family violence were as likely if not more likely than mothers who had experienced violence to have contacted or used counselling, FDR or mediation.

Focusing on the narrow definition of FDR (i.e., FDR or mediation was clearly reported as having been attempted), the overall pattern is similar. Parents who reported experiencing violence (physical or emotional) were much more likely to have attempted FDR (41% of those who experienced physical violence and 35% of those who had experienced emotional abuse only) than those who did not report experiencing violence (15%).

Table 5.6 provides information on the outcomes of FDR according to whether family violence had been experienced. The highest rate of agreement was reached in cases in which there had been no reports of violence (48%), and the lowest rate of agreement was reached in cases in which there had been physical abuse (36%). Similarly, the highest proportion of certificates issued with no agreement were in cases in which physical abuse had been reported (26%), and the lowest proportion was when there were no reports of physical violence or emotional abuse (10%).

Table 5.7, derived from Survey of FRSP Clients data, explores selected dysfunctional dynamics in FDR—the impact of reported fear and threats and the capacity to negotiate—and the extent to which they inhibit the process of reaching agreement. The table suggests that behaviours of a former partner that generated fear had a significant negative impact on agreement rates for both women and men. On the other hand, client assessments of whether or not these issues



Notes: “Broad definition” includes those who went to a counsellor, psychologists or mental health professional. “Narrow definition” refers to parents who attempted FDR.

Source: LSSFW1 2008

**Figure 5.1** Fathers and mothers who contacted or used counselling, FDR or mediation, by experience of family violence, 2008

were addressed at FDR appear to have had little effect on agreement rates. Feeling afraid of the other partner in the session negatively affects the mothers' capacity to reach agreement (the data for fathers on this variable were too small to allow for a test of significance), while abuse or threats outside the session were closely linked with the fathers' capacity to reach agreement.<sup>9</sup>

**Table 5.6 Agreement rates and issue of certificates, by experience of family violence inflicted by other parent, 2008**

	Violence reported		No violence reported
	Physical hurt	Emotional abuse alone	
	%	%	
An agreement reached	35.5	38.2	47.9
No agreement and a certificate issued	26.3	22.3	10.1
No agreement and no certificate	28.6	30.8	34.1
No agreement and not sure if certificate issued	3.0	2.5	2.2
Other	6.7	6.3	5.7
<b>Total</b>	<b>100.1</b>	<b>100.1</b>	<b>100.0</b>
<b>Number of respondents<sup>a</sup></b>	<b>817</b>	<b>1,215</b>	<b>561</b>

Notes: Excludes parents who responded "don't know" or didn't answer the question (less than 2%) and those who had not completed FDR (10%). Percentages may not total exactly 100.0% due to rounding. <sup>a</sup> Total includes a small number of parents who did not respond to the questions on family violence.

Source: LSSF W1 2008

**Table 5.7 Agreement rates, mothers and fathers, by fear, abuse or threats and ability to negotiate, 2009**

	Behaviour of (other) is cause of fear		Issues addressed		Feel afraid of (other) while in sessions		Abuse or threats outside sessions		Ability to negotiate parenting arrangement affected	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
	%	%	%	%	%	%	%	%	%	%
<b>Mothers</b>										
Full or partial agreement	49.5	72.4	45.9	54.3	56.8	67.9	56.9	65.4	58.2	55.8
No agreement	50.5	27.6	54.1	45.7	43.2	32.1	43.1	34.6	41.8	44.2
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>212</b>	<b>254</b>	<b>135</b>	<b>70</b>	<b>185</b>	<b>280</b>	<b>144</b>	<b>321</b>	<b>153</b>	<b>129</b>
<b>Fathers</b>										
Full or partial agreement	42.9	67.4	45.0	40.7	54.8	65.6	49.4	69.6	51.9	48.3
No agreement	57.1	32.6	55.0	59.3	45.2	34.4	50.6	30.4	48.2	51.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>49</b>	<b>304</b>	<b>20</b>	<b>27</b>	<b>42</b>	<b>311</b>	<b>81</b>	<b>270</b>	<b>54</b>	<b>58</b>

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

Source: Survey of FRSP Clients 2009

<sup>9</sup> Chi-square tests of statistical significance show that for mothers there are statistically significant agreement rates at the 5% level for "Behaviour of (other) is cause of fear" and "Feel afraid of (other) while in sessions" and at the 10% level for "Abuse or threats outside sessions". For fathers, there are statistically significant outcomes at the 5% level for "Behaviour of (other) is cause of fear" and "Abuse or threats outside sessions".



Table 5.8 examines the same dimensions as above with respect to their association with the issuing of certificates. This table suggests a strong correlation between mothers' reporting of fear, both generally and inside the sessions, and the issuing of a certificate. There is a weaker though still statistically significant correlation between fathers' reporting of abuse or threats outside the sessions and the issuing of a certificate<sup>10</sup>.

While the data above suggest that FDR practitioners are responsive to such dysfunctional behaviours (in the sense that they issue relatively more certificates and oversee relatively fewer agreements), they raise a number of questions about the numbers of parents who "attempt FDR" rather than taking a litigation or legally negotiated pathway despite being in circumstances of threats, fear or abuse. Clearly there are cases in which no certificates are issued or in which agreements are made despite the reporting of fear, abuse and threats. Some of these may represent the "least worst" alternative for those mothers or fathers and their children. However, qualitative feedback from the Survey of FRSP Clients suggests that this is not always the case:

Although we worked out a parenting plan, I felt pushed into decisions I was uncomfortable with due to time and the mediators just wanting a quick result. I also had issues regarding violence to me by my ex-partner while we were still together, but they were disregarded because they were in "the past" and they said they didn't want to take sides, even though it happened in front of our children and we were in mediation about the children. This was distressing for me, but I felt like it didn't matter to anyone else. (FRC client survey respondent, female)

For me, there were not enough sessions in the process. I was so scared and intimidated by my ex-husband that I had trouble thinking clearly. As a consequence of this, I felt bulldozed into making an agreement. I needed to be able to go away again and have some time to think each step over clearly; this was not allowed. I also had to sit through a face-to-face session with my ex-husband before they'd believe that I was worried about him and then allow us to be separated on the second session. I felt that my concerns were swept aside and the focus was on my ex-husband's needs/wants. This may have been due to time constraints, but my concerns were not followed through on. (FRC client survey respondent, female)

I found the counsellor very biased towards the female ex-partner. After attending several sessions, I was made to feel as though I was the problem and I left feeling disheartened and disappointed at being let down by the system. With my self-esteem battered, I felt unable to pursue the matter through the courts as I now believe that the system is biased towards the female, so it would not be worth the expense of fighting a court battle (that I cannot afford as I am paying child support because she won't allow my child to stay overnight for more than once per week!) I want shared care; she doesn't; and I get no say in it. (FDR client survey respondent, male)

### 5.3.3 Post-FDR trajectories

In assessing outcomes, there is a temptation to focus somewhat simplistically on binary variables such as: Is this case appropriate for FDR or not? or Was agreement reached or not? From the perspective of the practitioner, however, successful FDR involves positive responses to a sometimes complex range of questions. For example, at the level of inward referral, there is the question of whether FDR is the best pathway for this situation at this time. Other triage questions revolve around the best sequencing of FDR; for example, how much time should be devoted to the assessment phase, to an educational component, to single vs joint sessions, to the amount of time between sessions, to whether or not a child consultant should be involved, and so on.

Returning to the LSSF W1 2008 outcome data presented in Table 5.1, the complexity of the process becomes clearer when we examine further the three categories of agreement, non-agreement with a certificate, and non-agreement without a certificate, against the parents' reports

<sup>10</sup> Chi-square tests of statistical significance show that for mothers there are statistically significant in the proportion of cases with a certificate issued at the 5% level in agreement rates for "Behaviour of (other) is cause of fear" and "feel afraid of (other) while in sessions" and at the 10% level for "abuse or threats outside sessions". For fathers, there are statistically significant outcomes at the 5% level for "behaviour of (other) is cause of fear" and "abuse or threats outside sessions".

**Table 5.8 Issue of certificates, mothers and fathers, by fear, abuse or threats and ability to negotiate, 2009**

	Behaviour of (other) is cause of fear		Issues addressed		Feel afraid of (other) while in sessions		Abuse or threats outside sessions		Ability to negotiate parenting arrangement affected	
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
	%		%		%		%		%	
Mothers										
Certificate issued	54.3	34.0	55.7	54.4	55.6	35.7	50.4	41.1	51.1	48.4
No certificate issued	45.7	66.0	44.4	45.6	44.4	64.3	49.6	58.9	48.9	51.6
Total	100.0	100.0	100.1	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Number of respondents	212	254	135	70	185	280	144	321	153	129
Chi-square significance (p-value)	0.000		0.869		0.000		0.074		0.662	
Fathers										
Certificate issued	57.1	46.0	57.1	61.5	52.6	45.9	57.5	43.6	61.2	48.1
No certificate issued	42.9	54.0	42.9	38.5	47.4	54.2	42.5	56.4	38.8	51.9
Total	100.0	100.0	100.0	100.0	100.0	100.1	100.0	100.0	100.0	100.0
Number of respondents	49	304	20	27	42	311	81	270	54	58
Chi-square significance (p-value)	0.178		0.787		0.432		0.036		0.185	

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

Source: Survey of FRSP Clients 2009

of whether or not parenting arrangements had been sorted out at the time the survey was conducted, and what pathways were mainly relied upon.

Table 5.9 shows that of those who reported reaching agreement in FDR, almost three-quarters reported that parenting arrangements had been sorted out by the time of the survey. Only 6% reported that nothing had been sorted out yet, while 19% reported that they were “in the process” of sorting things out. In other words, for 6% of those who reached agreement in FDR, none of the matters agreed to appear to have “stuck”, while for 19%, it appears that FDR did not cover all of the issues at the time, or some issues were being re-negotiated, or new issues had emerged.

**Table 5.9 State of parenting arrangements, by outcome from FDR, 2008**

	Agreement reached	No agreement and certificate issued	No agreement and no certificate issued
	%		
Arrangement sorted out	74.4	36.3	65.2
Arrangement in process of sorting out	19.3	46.9	23.0
Nothing sorted out	6.3	16.8	11.9
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>
<b>Number of respondents</b>	<b>1,013</b>	<b>554</b>	<b>880</b>

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

Source: LSSFW1 2008

Of the group who reported not reaching agreement at FDR but who did not receive a certificate, a considerable majority (65%) had nonetheless sorted things out at the time of the survey, while 23% were still sorting things out. For 12% nothing had been sorted out. The “sorted out” profile of this group with no agreement and no certificate is considerably closer to that of the “agreement” group than to that of the group with no agreement but with a certificate.

Finally, although 36% of the parents in the “certificate” group went on to report that things had been sorted out at the time the survey was conducted, 47% reported that things were still being sorted out and 17% that nothing had been sorted out.

The next two tables shed further light on these parents’ post-FDR trajectory by examining the main reported pathways for sorting things out among the three agreement groups.

Table 5.10 shows that, of the 74% of parents who had reported reaching agreement at FDR and said at the time of the survey that the parenting arrangements had been sorted out, only 7% used lawyers and only 3% used the courts as their main pathway towards resolution. Most of the remainder attributed the sorting out mainly to what might generically be called facilitative practices, that is, counselling/mediation/FDR or discussions between themselves.

**Table 5.10 Main pathway used to sort out parenting arrangements, parents who have sorted out parenting arrangements, by outcome from FDR, 2008**

	Agreement reached	No agreement and certificate issued	No agreement and no certificate issued
		%	
Counselling, mediation, FDR	48.3	8.9	5.7
Lawyer	7.3	25.6	13.3
The courts	2.6	29.6	7.3
Discussion	35.4	22.8	60.5
Nothing specific, just happened	4.8	7.6	9.2
Other	1.7	5.4	4.0
<b>Total</b>	<b>100.1</b>	<b>99.9</b>	<b>100.0</b>
<b>Number of respondents</b>	<b>760</b>	<b>207</b>	<b>525</b>

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

Source: LSSFW1 2008

Of the 65% who did not reach agreement and did not receive a certificate, the majority (61%) attributed the sorting out of matters to discussions between themselves. Lawyers were seen as the main pathway for only 13% and courts for 7% of this group.

These reports again contrast strongly with responses from those reached no agreement and who received a certificate. Of the 36% of this group who had sorted things out, a majority (55%) did so via courts or lawyers as their main pathway. They were far less likely than the other groups to have sorted things out mainly via discussions or via some form of facilitated process.

Table 5.11 suggests that a similar pattern emerges for those parents who were still in the process of sorting things out, with courts and lawyers again being nominated most frequently as their main resolution pathway by the no agreement/certificate group (67%), while the equivalent responses for the agreement and the no agreement/no certificate groups were 30% and 33% respectively.

In summary, most parents who reach agreement at FDR/mediation report that lawyers or courts do not play a key role after the agreement had been reached. The data also suggest that although a little over half the separated parents who report that they “attempted FDR or mediation” did not develop a formal agreement as a direct result of this process, most nonetheless went on to reach agreement and most did so via discussions between themselves as the main pathway. This lends support to the idea that FDR processes can be an important step in a complex set of other formally facilitated as well as non-facilitated negotiations and can help to sow the seeds for future reconciliation of differences. Examples of this from the client feedback part of the Survey of FRSP Clients include the following:

**Table 5.11 Main pathway being used to sort out parenting arrangements, parents in process of sorting parenting arrangements, by outcome from FDR, 2008**

	Agreement reached	No agreement and certificate issued	No agreement and no certificate issued
	%		
Counselling, mediation, FDR	26.8	4.0	7.5
Lawyer	15.2	30.0	15.8
The courts	14.9	37.2	17.1
Discussion	34.4	19.5	42.5
Nothing specific, just happened	6.1	5.8	13.8
Other	2.6	3.5	3.4
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>
<b>Number of respondents</b>	<b>189</b>	<b>252</b>	<b>178</b>

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

Source: LSSFW1 2008

A great deal of our success was the flexibility of the FRC to accommodate our situation. We did not neatly fit the criteria or processes normally adopted and the workers were great at meeting our needs, which in the end resulted in a positive and sustainable agreement regarding our child. (FRC client survey respondent, female)

All I can say is the services the FRC offers is very good and I feel like the experience with attending the FRC has made a huge difference in my life and my child's life. It has made me aware of the things that I didn't know before. (FRC client survey respondent, male)

After the initial contact at the centre, most of our mediation was done via phone hook-up. This worked well for me with young children at home. Although my ex-husband didn't take any part after the first contact, I continued for a few more sessions and found the advice very helpful. Thank you. (FRC client survey respondent, female)

Both the mediators who were present at every session had a very mature, professional and succinct understanding of what each of our individual issues were. Having a male and female mediator gave us a chance to see things from both perspectives (husband and wife). I am glad I went to mediation, and even though we decided to separate under the same roof, our children are happy and we now have a clear perspective of what each of our expectations are in the relationship. (FDR client survey respondent, female)

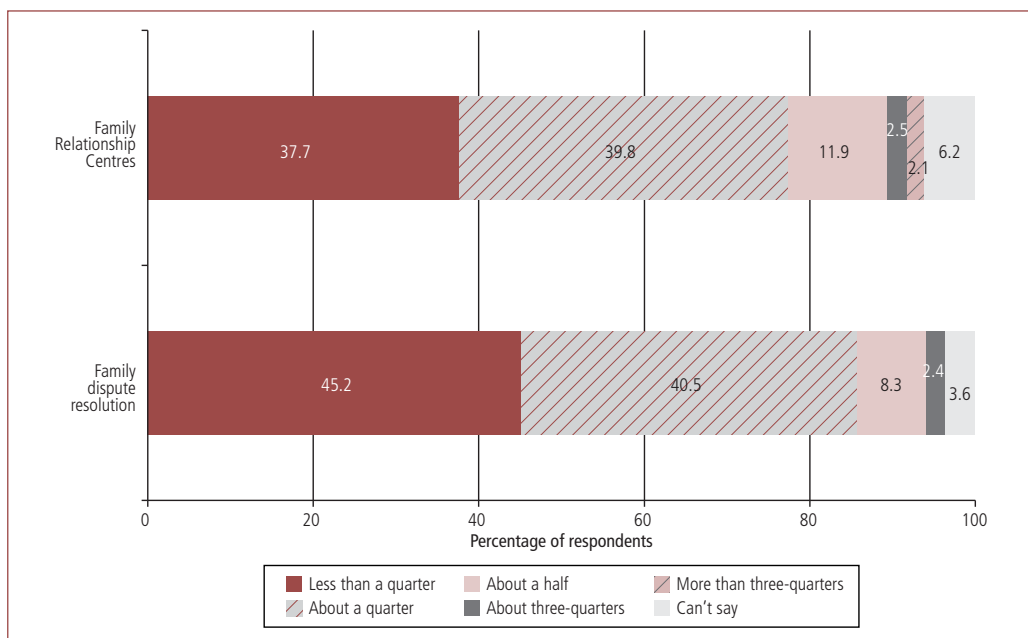
It would appear that the key predictor with respect to whether things were likely to be sorted out at the time the LSSFW1 2008 parents were surveyed was not agreement or non-agreement at FDR, but whether or not a certificate had been issued. Before further considering the role that certificates may be playing in the FDR process, we turn to the analysis of outcomes reported by parents in the Survey of FRSP Clients who attempted to develop parenting arrangements using FDR.

The above data suggest that FDR is capable of directly or indirectly assisting a majority of separating parents who use the service to reach agreements. A majority of those who reach agreements believe that the agreements "work for them" and somewhat higher proportion report that the agreement works for their children. At the same time, although the majority report favourably on the experience, a good deal of FDR takes place in conditions in which there is fear and abuse both inside and outside the sessions; and significant minorities of clients express concerns about the process. The issuing of certificates is also not infrequently associated with such behaviours.

The following figures summarise the views of FRC staff and FDR practitioners regarding the appropriateness of referrals into the FDR process. Figure 5.2 shows that 78% of FRC staff surveyed thought that FDR was inappropriate because of family violence for up to a quarter of parents who came to their services in relation to children's matters. In the case of FDR services, the equivalent figure rose to 86%. This issue is examined in more detail in Chapter 10, which focuses more fully on family violence.

Figure 5.3 shows that a considerable majority of FRC and FDR staff (64% and 73%) thought that FDR was inappropriate for less than a quarter of separated families with whom they engaged because of child abuse or neglect issues. A further fifth (23% and 20%) thought this figure was about a quarter, although very few thought it was higher.

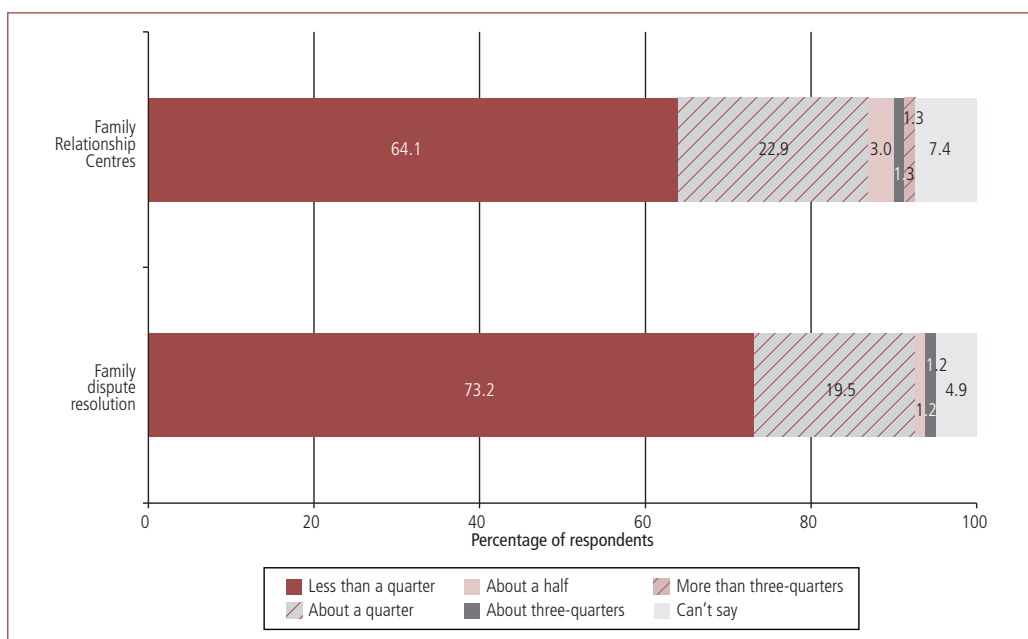
In the view of these service providers, FDR was not appropriate for a significant proportion of families coming to their service in relation to children's matters, because of family violence or issues of child abuse and neglect. At the same time, this proportion was substantially lower than the proportion of parents using FDR who reported violence as an issue. Practitioners appear



Note: Percentages may not total exactly 100% due to rounding.

Source: Survey of FRSP Staff 2009

**Figure 5.2** Service providers' views about the proportion of clients for whom FDR was inappropriate due to family violence, 2009



Source: Survey of FRSP Staff 2009

**Figure 5.3** Service providers' views about the proportion of clients for whom FDR was inappropriate due to child abuse or neglect, 2009

to be discriminating here between a history of violence or child abuse that, while never acceptable, does not preclude the possibility of FDR, and forms of violence and child abuse that should not, at least at that point in time, proceed to FDR.

It is important to recognise that the data presented earlier, which link certificates to the trajectory of a case, do not, of course, suggest a causal connection between the issue of a certificate and the final outcome. Indeed, the data demonstrate that a considerable number of certificates are issued precisely because one or more family members present with highly dysfunctional behaviours.

Thus, a key issue that arises in separation-related disputes over children is at what point and by whom should seriously dysfunctional behaviours and dysfunctional dynamics be assessed and acted upon? The intention of the legislation is that they should be subjected to speedy assessment and speedy decisions within the court system. This pathway is constrained by the issue of the availability of resources—especially independent assessment resources—within the courts themselves, and by the (probably related) decision-making difficulties within the courts, previously discussed by Moloney et al. (2007).

The question of how and when appropriate triage should take place received considerable attention from professionals in FRCs and FDR services during interviews conducted in 2009. On numerous occasions, FDR practitioners spoke on the one hand of the advantages of FDR as broadly conceived (such as helping to change attitudes and connecting family members with other appropriate services), and on the other hand of the amount of time involved in the consideration of certificates in cases in which FDR would be inappropriate, if not dangerous, or in which clients presented with an agenda that clearly precluded constructive engagement around their parenting responsibilities.

Their observations could be summarised as follows:

- FRCs do not provide certificates “as a matter of course”:

We make it quite plain to clients and we make it quite plain to lawyers that our role is not to write out certificates. (FRC manager, 2009)

- Some clients and/or their legal advisors nonetheless see the primary function of FRCs and/or FDR practitioners to be that of issuing certificates. Among other things, this attitude predisposes clients who present with this attitude towards not engaging in the range of services and referral options that an FRC can provide:

Some clients are told by their lawyers to “go down to the FRC and get your bus pass stamped” (FDR practitioner, 2009)

- Some clients and/or their legal advisors also believe a certificate should be issued as a default option, even if FDR has been engaged in and agreement has been reached:

There are still clients who will insist on receiving a genuine effort certificate, for example. [Interviewer: Even if they’ve actually got an agreement?] Yes, indeed. In fact, we’d love to produce another certificate. Certificate G is our proposal—“G for good”—so that for people who really want a certificate and we give them a good certificate for having attempted mediation and having focused in on their children’s needs, etc. We’ve actually drafted one, but half in jest, which we’d love to be able to send out to our clients who really want a certificate but have actually reached agreement, but for some reason they feel that the need is to have that certificate. We coach them away from it, of course. (FDR practitioner, 2009)

- Clients who are clearly in the “exceptions to FDR” category are not infrequently referred to the FRCs by lawyers (and to a lesser extent by courts):

The difficulty with exemption is that solicitors will send them to us because it’s easier for them to get a not-appropriate certificate from us than it is for a solicitor to go and do a whole lot of paperwork to put that to the court. (FRC manager, 2009)

Look, it depends on the legal practitioner, but the majority of practitioners would say, “Go and get a certificate”, because from their perspective it’s more proof. Even though the client is then having to retell their story. I get the feeling—this is what I hear anecdotally—that solicitors were looking at the exemptions ... they are putting stuff through. But I hear anecdotally things are actually getting ... the magistrate was saying, “Well why

wasn't there mediation? Why didn't you go to Family Relationship Centre?" So there are mixed messages there for solicitors. (FDR practitioner, 2009)

It's about solicitors, like that's [assessing family violence] not their realm of expertise. I think that's quite good because we are lucky that we don't have waiting lists, but I know some of the other FRCs do. So that's a real problem. If you've got an FRC with a wait list of three months for a first appointment and as a solicitor you've got a client who you could put an exemption through, and there are safety issues, you'd want to do that wouldn't you? (FRC manager, 2009)

We also considered the empirical evidence for the assertion from practitioners in FRCs and FDR services that referrals of seriously dysfunctional clients may be leading to an increase in the number of certificates that needed to be issued. It was noted in Table 5.2 that certificates were issued in 41% of the cases in the Survey of FRSP Clients, almost twice the frequency of those reported in the LSSF W1 2008 (21%; Table 5.1). Our initial thought was that as more than half the parents in the LSSF W1 2008 sample had separated before July 2007, the date after which certificates were required if court action was to be taken, many of these respondents who wished to proceed to court would not require a certificate. However, although we do not know how many are in this category (because the data do not contain information on precise dates of service delivery), we have reason to believe that the number of parents making use of FDR before July 2007 was relatively small. This is because when the data in Table 5.1 was subdivided into four categories of parents—those who separated in 2006, in the first half of 2007, the second half of 2007, and in 2008—it was found that all groups had roughly equal percentages who reported receiving a certificate. Clearly, receiving a certificate meant the service was delivered after July 2007.

It was also found that less than 9% of the sample had separated in 2006. In addition, although roughly half of the parents reported on in Table 5.1 separated in the first half of 2007, statistically speaking we would not have expected many of them to have commenced and completed FDR before the middle of the year. Thus, the absence of a need for a certificate due to FDR taking place before July 2007 is not likely to account for many of the parents reporting that they did not reach agreement and did not receive a certificate.

Another possible explanation for what seemed to be a relatively high percentage of parents from the Survey of FRSP Clients being in the "certificate" category is that even though Table 5.1 speaks to what has been described as the narrow definition of FDR, as noted in Section 5.2, we cannot be certain about how many LSSF W1 2008 respondents were referring specifically to FDR services provided by registered FDR practitioners. Experiencing "FDR" or mediation from a person or service not authorised to issue certificates might account for some of the "no agreement/no certificate" parents, but we have no way of telling how many might be in that category.

On balance, however, we believe that perceptions from FRCs that the rate of issuing of certificates has increased, and that this is in part connected with an absence of triage by lawyers and other professionals prior to referral for FDR, is likely to be correct.

It has become clearer that the implementation of "FDR with exceptions" is a complex process. Implementing the exceptions provision assumes that the person consulted by the client has the skills to make a reasonable judgment about eligibility (and perhaps just as importantly, has the time to carefully "hear" the client's story). The more conservative approach frequently seems to be to let an FRC or an FDR practitioner make such a judgment and use the certificate system as a substitute for an claiming an exception. This represents a post-reform change that clearly places a greater set of responsibilities and resource demands on practitioners in the family relationships sector. It is a process that must also at times be confusing for clients.

In the words of one FRC manager:

Prior to reforms, traditional mediation clients were far more likely to have a good understanding of what mediation is and to know that this is a very good outcome if I can get it here rather than go through courts.

A practitioner echoed this observation by noting one of the post-reform conundrums:

Now, of course, we've got people thinking that they *have* to do it [FDR] and we've got all those people that would not be really understanding of the process. However, having said that, I have a very strong belief that we're also about information-giving and



referral-making and role-modelling good communication and good conflict resolution for the client.

Another practitioner also spoke of the broader aims of FDR:

So even if they don't come to an agreement, I believe it's been a successful mediation if they can have a dialogue and they can turn around some of their methods of bad communication. I think that's definitely an up side for some of these clients who are not likely to come to agreements, but they can still gain something from going to mediation.

It is probably a truism to observe that FDR is more likely to succeed when all professionals involved in the case, including those who have an advocacy role for a particular parent, are committed to the process of reaching a solution that is in the best interests of the child.

For FRCs that had been in operation for a longer period of time, many interviewees noted what they saw as a greater understanding and acceptance of their role among lawyers. Practitioners also noted that misunderstandings about the role of the FRC among lawyers were more likely to occur when the lawyer did not specialise in family law.

They used to send people along just to get your certificates. Now they are really in the picture of what we do, so they go: "Look go to the Family Relationship Centre. You have got so many issues, and they are not all legal issues, so you need to go around there and they will sort you out". (FRC manager)

I think it's actually improving because I think solicitors now are beginning to understand possibly to some extent what our service is. First, there was rivalry because there was competition stuff. I think that once they realise that we're not here to take work off them, then a lot of them have gotten better. A lot of them actually use our service because they see the advantages of it. So they'll send their clients here. (FRC manager)

Table 5.12 provides information on the extent to which those contacting or using counselling, FDR or mediation during or after separation (the broad and narrow definitions of FDR) also had contact with a lawyer.

**Table 5.12 Parents who had contacted or used a lawyer, by whether contacted or used counselling, FDR or mediation, or had attempted FDR, 2008**

Contacted/used a lawyer during or after separation	Contacted/used counselling, FDR or mediation		Attempted FDR	
	No	Yes	No	Yes
	%		%	
No	74.4	34.8	65.8	25.6
Yes	25.6	65.2	34.2	74.4
Total	100.0	100.0	100.0	100.0
Number of respondents	4,756	5,246	6,956	2,938

Source: LSSFW1 2008

The table shows that of parents who contacted or used counselling, FDR or mediation during or after separation, 65% also contacted or used a lawyer and 35% had not contacted or used a lawyer. Focusing on the narrow definition of FDR, 74% of those who had attempted FDR also had contact with or had used a lawyer.

Conversely, the majority of parents who had not used counselling, FDR or mediation services had also not contacted a lawyer (74%). There is a similar pattern when the narrow definition of attempting FDR is used, with 66% of those who did not attempt FDR also not using a lawyer.

These figures suggest that in many cases, there is potential for constructive interaction between family lawyers and FDR practitioners, especially in circumstances in which difficult allegations have been raised. On the other hand, data from the 2006 and 2008 Family Lawyers Surveys, considered in more detail in Chapter 9, suggest that, although there are signs of an increase in lawyers' confidence in FRCs, this confidence comes off a low initial base. In addition, and

perhaps more telling, is the increase between 2006 and 2008 in the number of lawyers who had insufficient knowledge of FRCs to offer an opinion on their operations.

## 5.4 Summary

FDR appears to work well for many parents and their children. Among parents who had separated after the reforms, 31% of fathers and 26% of mothers reported that they had “attempted family dispute resolution or mediation”. About two-fifths of this group reached an agreement and most of these agreements were still in place at the time the LSSF W1 2008 was conducted (about a year after separation). Most parents who had not reached agreement at FDR had sorted out their dispute at the time the survey was conducted. Whether or not FDR resulted directly in an agreement, the majority of parents who had attended FDR and who had sorted out their disputes felt that they had done so mainly through discussions between themselves. This is consistent with a key aim of FDR, which is to empower disputants to take charge of their dispute. Parents who had not reach agreement at the time of FDR and who were issued with a certificate were the least likely to have sorted matters out or to have had a decision made about their dispute.

Most disputes referred to FDR and FRCs appear to be complex. Indeed, FRCs have become an early point of entry for a significant number of parents whose capacity to mediate is compromised to a greater or lesser extent by their past or present experience of violence, and/or other dysfunctional behaviours. FRCs are regarded by a proportion of lawyers as the most logical entry point for effective triage and effective referral of complex cases. There is also evidence that referral of difficult cases, either to FRCs or to an FDR service, is sometimes regarded as a type of insurance policy. Thus, although some of the cases clearly meet the criteria for an exception under s60I(9), lawyers are not always confident that courts will see the situation this way. Such cases are frequently issued with certificates by FDR practitioners, affording them “entry” into the court system. At the same time, some parents who would probably meet the exception criteria commence and/or complete FDR.

There are no easily predictable “best” pathways for this problematic end of the dispute spectrum. Some clients reported that they felt pressured into FDR or into reaching an agreement. Others with seemingly similar complex family dynamics did not provide this feedback. The new skills-based training for accrediting FDR practitioners is designed to increase capabilities in this area. Effective screening is an essential aspect of this training but effective screening does not always provide an answer to the critical question of “what next”?

The data indicate considerable overlap between client use of lawyers and client use of FDR. The data also suggest continuing concerns by lawyers about FDR and the service sector in general. Clearly, the advocacy role that lawyers must play on behalf of their clients is at times in tension with the aims of FDR. Put simply, the aims of both legal and service professionals are capable of complementing or colliding with each other

Active engagement between FDR practitioners, family lawyers and other family law professionals is likely to lessen the risk of re-creating between the professionals themselves many of their own clients’ experiences of high conflict and low trust. More broadly, any initiatives designed to promote a shared commitment to responsible FDR between lawyers and FDR professionals, and between lawyers and other service sector professionals, are likely to improve the efficacy of services generally, FDR in particular, and the family law system in general.

It should be noted in this regard that the evaluation provides good examples, most especially from regional centres, of lawyers, FDR professionals and other service professionals working cooperatively towards achieving post-separation arrangements between ex-partners that were likely to promote healthy and developmentally appropriate outcomes for children.

## 6

# Care-time arrangements: Community opinions, prevalence and durability of different arrangements, and trends across the years

As outlined in Chapter 1, a key objective of the 2006 family law reforms was to encourage greater involvement of both parents in children's lives following separation, provided that the children are protected from family violence or child abuse (see policy objective 2, 2007 Evaluation Framework, Appendix B). "Involvement" entails such matters as: (a) taking primary or immediate care of the children for significant periods of time (care time), including over-night where possible;<sup>1</sup> (b) making a significant contribution to decisions affecting children's general lifestyle and welfare; and (c) providing financial support for the children. The concept of "parental involvement" thus overlaps with the exercise of "parental responsibility", although involvement may be understood as "what happens", whereas "responsibility" conveys notions of accountability or obligation. This chapter focuses on care-time arrangements.

After separation, most children live with their mother, although the proportion of older children who live with their father is higher than that of younger children who live with their father. There is some evidence that a more equal apportionment of care time between parents has increased (Australian Bureau of Statistics [ABS], 2008).

The concept of "shared care time" (which is to be distinguished from other aspects of shared parental care) typically refers to circumstances in which children spend a similar number of nights with each parent. Prior to the introduction of the new Child Support Scheme, this was usually taken to represent at least 30% of nights with each parent, but the Child Support Agency (CSA) now classifies 35–65% of nights with each parent as reflecting shared care time.

It appears that the sharing of care time has been less prevalent in Australia than in the United Kingdom or the United States (see Smyth, 2009),<sup>2</sup> and is less durable than arrangements in which children live mostly or entirely with their mother (Smyth, Weston, Moloney, Richardson, & Temple, 2008). While some concern has been expressed about the appropriateness of very young children spending much the same time with each parent (e.g., McIntosh & Chisholm, 2008), little is known about the views of parents in general concerning this issue.

Key evaluation questions examined in this chapter are:

- What are the opinions of parents in the general population regarding whether children of separated parents generally "do best" when both parents remain involved in the children's lives and the appropriateness of shared care-time arrangements for children of different ages?
- What is the prevalence of different care-time arrangements in families that experienced parental separation after the 2006 changes to the family law system were introduced?
- How much confidence can we place in these findings about the prevalence of care-time arrangements?

1 In this report, the term "care time" is used to describe the face-to-face contact that separated parents have with their children and includes both overnight stays and daytime-only contact.

2 International comparisons are difficult to make, given various differences in the studies (e.g., the cut-off points used for defining shared care time, the populations focused upon (e.g., divorced parents compared to all separated parents), the sampling techniques adopted, and the year of data collection. The following rates are examples of those mentioned by Smyth (2009): a study by Peacey & Hunt (2008), conducted in 2006–07, suggested that 9–17% of separated parents in the UK with a child under 18 years old have roughly equal care time (i.e., their focus child spent at least 3 or more days and nights per week, or around half the year, with each parent; Melli and Brown (2008) indicated that estimates for the US put *post-divorce* shared parenting, involving the child spending more than 30% of time with each parent, at around 20% (32% in Wisconsin in 2001).

- Are some patterns of care-time arrangements more durable than others?
- What are the patterns of care-time arrangements apparent in the samples of court files?
- To what extent does the post-reform picture of care-time arrangements, as indicated in court files and surveys of separated parents, differ from arrangements that were apparent before the reforms were introduced?

This chapter provides information on the opinions of parents in general about the importance of separated parents both being involved in their children's lives. It also provides information on parents' views about the appropriateness for children of different ages spending about the same amount of time with each parent after separation. Attention is then directed to what happens in practice for families that experienced parental separation after the reforms were introduced (after 1 July 2006). The prevalence of different patterns of care-time arrangements for children in these families is examined, along with the meaning of daytime-only care—that is, how frequently parents whose time with the child is restricted to the daytime see their child. This is followed by an analysis of the post-reform care-time arrangements that have resulted from children's proceedings filed in the courts.<sup>3</sup> Next, the durability of the different care-time arrangements is assessed. The extent to which there have been changes over the years in patterns of care time is then examined, using surveys of parents and court data.

The analyses in this chapter are based on the following data:

- the General Population of Parents Surveys (GPPS), conducted in 2006 and 2009;
- Wave 1 of the Longitudinal Study of Separated Families (LSSF W1), conducted in 2008;
- the Looking Back Survey (LBS), conducted in 2009;
- samples of pre- and post-reform court files relating to children's proceedings filed in the Family Court of Australia (FCoA), the Federal Magistrates Court (FMC) and the Family Court of Western Australia (FCoWA);
- the CSA administrative dataset;
- the ABS Family Characteristics Surveys (FCS), conducted in 1997 and 2003; and
- the ABS Family Characteristics and Transitions Survey (FCTS), conducted in 2006–07.<sup>4</sup>

## 6.1 Opinions of parents about post-separation parental involvement and equal care time for children

The first issue examined in this chapter concerns the extent to which the opinions of parents in general are consistent with the objective of the reform concerning encouragement of greater involvement by both parents in children's lives after separation, where children are protected from family violence and abuse.

The reforms have sparked considerable debate about the appropriate amount of time that young children should spend with each parent. For instance, drawing on attachment theory and research, McIntosh and Chisholm (2008) emphasised that a very young child's development of a secure attachment to one parent (or caregiver) is vital to their emotional health in the longer term. Secondly, they argued that the creation of secure attachment itself requires that the infant experience reliable care with one parent/caregiver on a continuous basis and that shared care-time arrangements involving the infant moving from one parent to the other on a frequent basis can disrupt their development of attachment, especially where parents have an acrimonious relationship.<sup>5</sup> In contrast, Burrett and Green (2008), in a review of the literature, concluded that there is no evidence that overnight time between fathers and young children is harmful to the infant–mother attachment. The impact of care time on children's wellbeing is the focus of Chapter 11.

3 Details on how the cases included in the sample were selected are provided in Appendix B.

4 Details of each of these sets of data (except the FCS 1997 and 2003 and the FCTS 2006–07) can be found in Appendix B. In the present chapter, the various sets of data will be briefly described when the results that are based on them are introduced.

5 While McIntosh and Chisholm (2008) highlighted possible attachment concerns for very young children, most of their concerns focused on potential risks for children's healthy emotional development associated with shared care time where the relationship between the parents is marked by continuing high levels of acrimonious conflict and where the parents seem to lack the capacity to attune to their children needs.

What are the opinions of the general population of Australian parents regarding such matters? Data from the GPPS 2006 and GPPS 2009 are used to gauge parents' opinions about whether children "do best" after parental separation when both parents stay involved in their lives, and data from the GPPS 2009 are used to gauge their views about the appropriateness of children of different ages (or developmental stages) spending much the same time with each parent (here called "equal care time").<sup>6</sup>

### 6.1.1 Views about the benefits for children of continuing parental involvement

Participants in the GPPS 2006 and GPPS 2009 were asked to indicate their level of agreement or disagreement with the statement that "Children generally do best after separation when both parents stay involved in their lives". Response options were: "strongly agree", "agree", "mixed feelings", "disagree" and "strongly disagree". In addition, 5% of the participants volunteered that they were uncertain about this matter and these answers were combined with "mixed feelings" as they appeared to overlap with a middle-of-the-road stance.

Two sets of analysis are presented. The first set summarises the patterns of answers provided by fathers and mothers in the two surveys, while the second shows the extent to which such answers vary according to whether or not the respondents themselves have separated from the other parent of at least one of their children.

#### Views of fathers and mothers in general

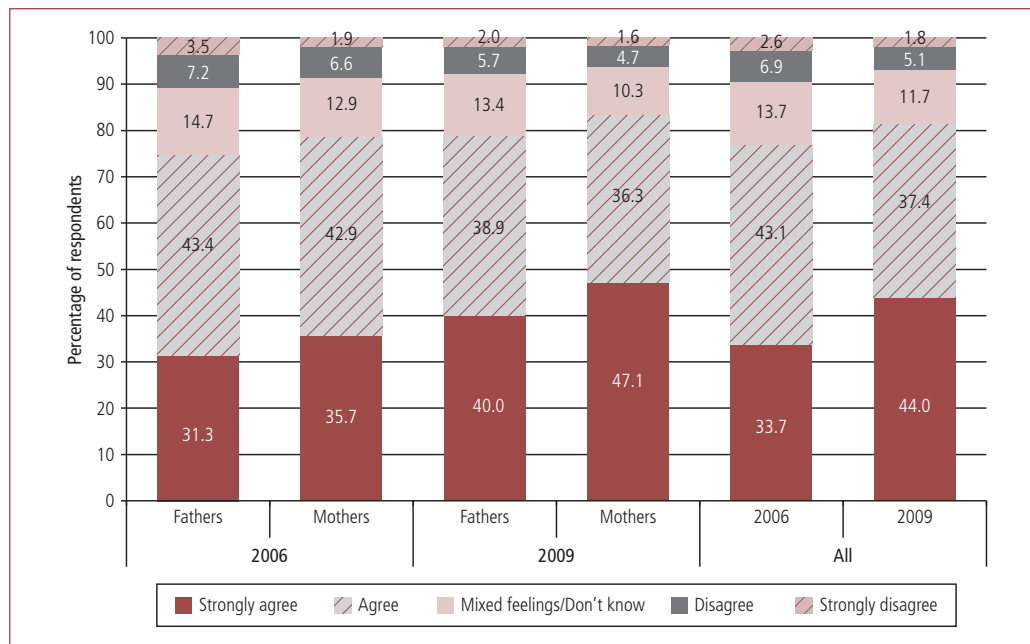
Figure 6.1 shows the patterns of answers provided by fathers and mothers who participated in the GPPS 2006 and those who participated in the GPPS 2009.

- Consistent with the intent of the family law reforms, most fathers and mothers agreed or strongly agreed that the continuing involvement of both parents is beneficial for children (75% and 79% respectively in 2006, and 79% and 83% respectively in 2009).
- A slightly higher proportion of mothers than fathers indicated that they strongly agreed with the statement (GPPS 2006: 36% compared to 31%; GPPS 2009: 47% compared to 40%).
- Furthermore, the proportion of fathers and mothers who strongly agreed with this statement was higher in the 2009 survey than in the 2006 survey. Specifically, strong agreement was expressed by 31% of fathers in the GPPS 2006 and 40% of fathers in 2009, and by 36% of mothers in the GPPS 2006 and 47% in 2009.
- While the latter trend suggests that fathers' and mothers' agreement with the notion that the continuing involvement of each parent is generally beneficial for children has become more clear-cut, future surveys are needed to show whether the differences in patterns of answers across time reflect continuing, stable or fluctuating trends.

#### Views of separated and non-separated fathers and mothers

Given that most parents agreed with the statement about the benefits of continuing parental involvement for children, Figure 6.2 focuses on the proportions of parents who agreed or strongly agreed with the statement. Here, attention is directed to the views of separated and non-separated fathers and mothers in the two surveys. These data are relevant to the evaluation because they provide information on community attitudes.

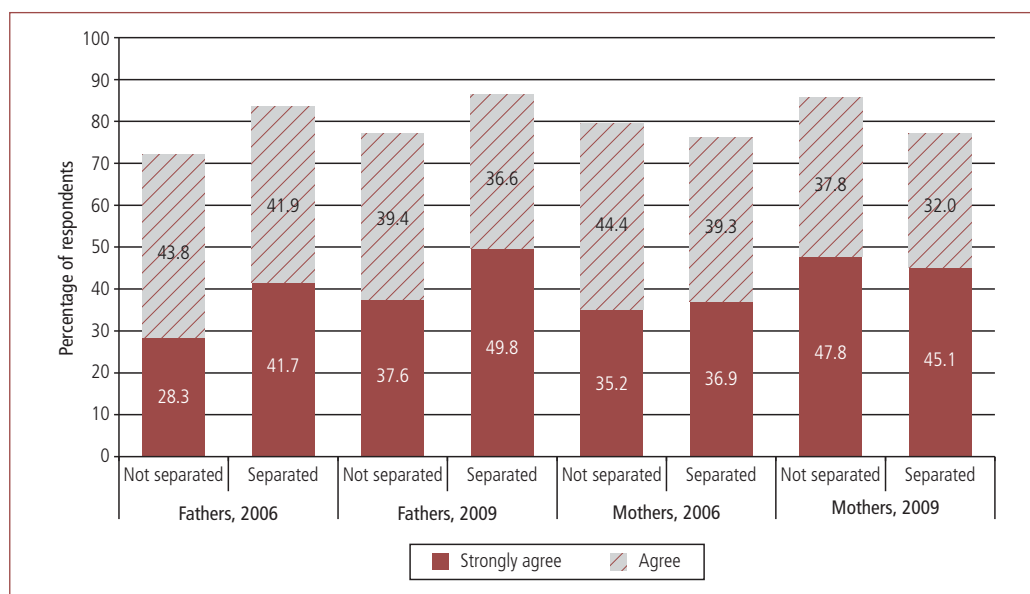
<sup>6</sup> The GPPS 2006 and GPPS 2009 were national telephone surveys of 5,000 parents who had at least one child under the age of 18 years (not necessarily living with the them). Both samples were selected randomly from the population of parents who lived in private dwellings with a landline telephone. The question on the appropriateness of equal care-time arrangements for children was asked in the GPPS 2009 only. "Equal care time" in this section refers to arrangements in which children spend approximately half the time with each parent, whereas "shared care time" in this chapter refers to arrangements in which the child spends 35–65% of nights with each parent. That is, "shared care time" covers a broader set of arrangements that also encompasses "equal care time".



Note: Percentages may not total exactly 100% due to rounding.

Sources: GPPS 2006 and 2009

**Figure 6.1** Parents' views about whether children do best when both parents stay involved in their lives after separation, fathers and mothers, 2006 and 2009



Source: GPPS 2006 and GPPS 2009

**Figure 6.2** Parents' views about whether children do best when both parents stay involved in their lives after separation, non-separated and separated fathers and mothers, 2006 and 2009

While most parents supported the idea that the continuing involvement of both parents in their children's lives is beneficial for the children, the proportion of parents who agreed or strongly agreed with the statement varied according to their gender and whether they had separated or not:

- Separated fathers were more likely than non-separated fathers to believe that the continuing involvement of both parents was beneficial for children (2006: 84% compared to 72%; 2009: 86% compared to 77%).



- Such a belief was expressed by a lower proportion of separated than non-separated mothers, especially in the 2009 survey (2006: 76% compared to 80%; 2009: 77% compared to 86%).
- Therefore, agreement with the statement was more commonly expressed by non-separated mothers than non-separated fathers (2009: 86% compared to 77%), and less commonly expressed by separated mothers than separated fathers (2009: 77% compared to 86%).

Strong agreement with the statement was more apparent in the 2009 survey than in the 2006 survey for all groups. Specifically, the following proportions of parents expressed strong agreement in the GPPS 2006 and GPPS 2009 respectively:

- non-separated fathers: 28% and 38%;
- non-separated mothers: 35% and 48%;
- separated fathers: 42% and 50%; and
- separated mothers: 37% and 45%.

Such trends may reflect a small cultural shift in views towards an increased conviction that continuing involvement of both parents is beneficial for children after parental separation. It will be important to check whether support for the idea that the continuing involvement of both parents is beneficial for children after separation is sustained over time or whether it continues to increase.

In the meantime, it is important to note that a substantial proportion of separated and non-separated parents (38–50%) indicated strong endorsement of this view in 2009.

### 6.1.2 Views about the appropriateness of equal care time for children of different ages

Participants in the GPPS 2009 were asked to indicate whether they considered that equal care time for children of different ages (or developmental stages) was “totally appropriate”, “sometimes appropriate”, “sometimes inappropriate”, or “totally inappropriate”, where there were no safety issues.<sup>7</sup> The ages (or stages) covered children under 3 years old, 3–4 years old, children in primary school, and those in secondary school.<sup>8</sup>

#### Views of fathers and mothers in general

Figure 6.3 shows the patterns of answers provided by all fathers and mothers (regardless of whether they had or had not experienced separation).

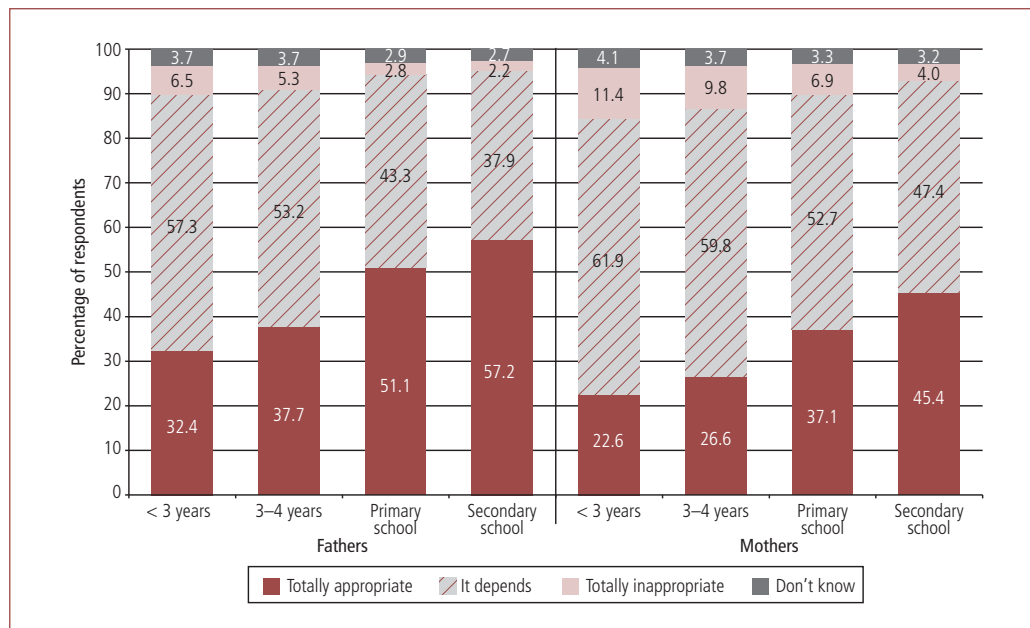
The proportion of fathers and mothers who believed that equal care time was “totally appropriate” for children increased according to the children’s age (fathers: from 32% to 57%; mothers: from 23% to 45%). Only 2–7% of fathers and 4–11% of mothers believed that equal care time was totally inappropriate for children across different age groups, with the proportions stating this decreasing very marginally with children’s increasing age.

For children under 3 years old and 3–4 years old, both fathers and mothers most commonly believed that the appropriateness of equal care time depended on other factors. That is, such an arrangement was seen as sometimes appropriate or inappropriate. Mothers also most commonly held this view for children in primary school, and for children in secondary school were equally divided between seeing it as “totally appropriate” or as depending on other factors. Fathers most commonly believed that equal care time was totally appropriate for children in primary and secondary school.

<sup>7</sup> The question was: “When parents separate, one possible arrangement can be for children to spend approximately half the time with each parent. Assuming there are no safety issues, how appropriate do you think this is when the children are: (a) under 3 years old; (b) 3–4 years old; (c) at primary school; and (d) at secondary school”. (Where requested, the meaning of “no safety issues” was explained as there being “no concerns about family violence or abuse”. Four response options were provided: “totally appropriate”, “sometimes appropriate”, “sometimes not appropriate”, and “totally inappropriate”.) Given that there is only a very subtle difference between the views “sometimes appropriate” and “sometimes not appropriate”, these categories were combined in the analysis and are here summarised as “it depends”; that is, the appropriateness depends on other factors.

<sup>8</sup> A small proportion of parents indicated that they were unsure about this matter. This response option was not suggested to them by the interviewer.





Note: Percentages may not total exactly 100% due to rounding.

Source: GPPS 2009

**Figure 6.3** Parents' views about the appropriateness of equal care time for children, by different age groups, fathers and mothers, 2009

For each age group, fathers were more likely than mothers to believe that equal care-time arrangements were “totally appropriate” (e.g., for children under 3 years: 32% compared to 23%; for children aged 3–4 years: 38% compared to 27%). Only 3–4% of parents volunteered that they were too uncertain to provide answers to these questions.

A key message suggested by these results is that, even for children under 3 years old, the vast majority of mothers and fathers believed that equal care time was at least sometimes (if not totally) appropriate for children.

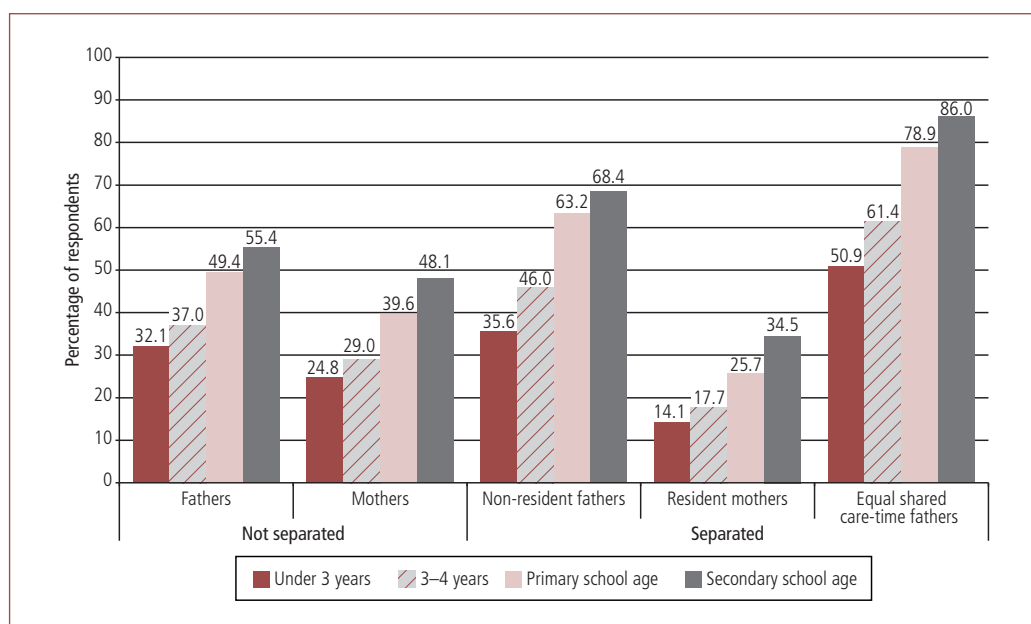
### Views of separated and non-separated fathers and mothers

In addition to opinions about care-time arrangements varying according to whether or not parents had separated, they also varied among separated parents according to the different care-time arrangements they had for their focus child. Figure 6.4 captures the views of non-separated fathers and mothers; fathers who indicated that their child mostly lived with their mother; mothers who indicated that this child mostly lived with them; and fathers who reported that the child spent much the same time with each parent.<sup>9</sup>

For all five groups of parents, the proportion who said that equal time is totally appropriate increased with the age of the child. Across the four age groups, fathers were more inclined than mothers to consider such arrangements to be totally appropriate. Also across the four age groups, separated fathers who had equal care time with their child were clearly the most likely of all groups to believe that such arrangements were totally appropriate, followed by separated fathers whose child lived mostly with their mother. Separated mothers whose child lived mostly with them were the least likely to consider that equal care time for children in each age group was totally appropriate.

For children under 3 years old, only a minority of parents (other than fathers with equal care time) accepted that equal care-time arrangements were totally appropriate and the separated and non-separated groups of mothers were less likely to accept this idea than were the various

<sup>9</sup> Parents participating in the GPPS 2009 were asked whether their child lived mainly with them, with their other parent or somewhere else. A separate code was also established for responses indicating that the child lived much the same time with each parent. There were too few mothers who reported that the child lived mostly with the father ( $n = 18$ ) or that the child lived with each parent for much the same time ( $n = 31$ ) to provide reliable estimates for these groups.



Source: GPPS 2009

**Figure 6.4** Parents who thought that equal care time was totally appropriate for children, by different age groups, non-separated and separated fathers and mothers, 2009

groups of fathers. The parents least likely to consider such arrangements to be totally appropriate for children under 3 were separated mothers whose child lived with them most of the time (14%), followed by non-separated mothers (25%), then non-separated fathers (32%) and separated fathers whose child mostly lived with their mother (36%). By contrast, around half of the separated fathers with equal care time considered such arrangements for children under 3 years old to be totally appropriate.

## 6.2 Prevalence of different care-time arrangements: Reports of parents who separated post-reform

This section focuses on the care-time arrangements reported by parents who participated in LSSF W1 2008.<sup>10</sup> Four issues are examined: (a) the prevalence of various care-time arrangements experienced by children of different ages; (b) similarities and differences in the trends suggested by the reports of fathers and mothers; and (c) the meaning of daytime only care.

Care-time arrangements can be extremely complex and the categories adopted, which are set out below, are based on the overall proportion of nights per year that the focus child spent with each parent, as reported by the parents. These categories are consistent with those used in the child support formulae:<sup>11</sup>

- 100% of nights with mother—the father may or may not have daytime contact with the child;
- 1–13% of nights with the father and 87–99% of nights with the mother;

<sup>10</sup> The LSSF W1 2008 is a survey of 10,000 parents who separated after 1 July 2006 (i.e., after the reforms were introduced) and who were registered with the CSA in 2007 (agency collect and private collect parents). Of these parents, 82% had separated in 2007, 13% had separated in the second half of 2006, and 5% had separated in 2008. One of the children born of the separated relationship was selected as the “focus child” and trends outlined for children refer to the sample of “focus children”. Both the mother and father of nearly 1,800 of these children participated in the study. This sample of parents was called the “former couples sample”. Given that these parents had separated for no more than 28 months when interviewed, this sample differs considerably from samples of separated parents from other studies. For example, 58% of the focus children in the LSSF W1 2008 were under 3 years old, whereas in the Family Characteristics and Transitions Survey 2006–07 sample, only 15% of children with a parent living elsewhere were under 5 years old.

<sup>11</sup> There are a variety of government policies that may influence care arrangements, including Centrelink rules for qualification for a range of child and parenting-related payments (e.g., Family Tax Benefit and Parenting Payments).

- 14–34% of nights with the father and 66–86% of nights with the mother;
- 35–47% of nights with the father and 53–65% of nights with the mother;
- 48–52% of nights with each parent;
- 35–47% of nights with the mother and 53–65% of nights with the father;
- 14–34% of nights with the mother and 66–86% of nights with the father;
- 1–13% of nights with the mother and 87–99% of nights with the father; and
- 100% of nights with father—the mother may or may not have daytime contact with the child.

In addition, two variants of the first and last categories (involving 100% of nights with one parent) were examined: where the child never saw the other parent, and where the child saw this parent during the daytime only.

The gender of the parent who had the majority or minority of care nights, “no care time” or “daytime-only care” is also taken into account, because the circumstances linked with a mother having minority or no care time may differ from those in which the father has minority or no care time.

For succinctness, children who spend 66–99% of nights with one parent are described as spending “most nights” with this parent and only “a minority of nights” with the other parent.

Consistent with the CSA child support liability cut-offs, children with 35–65% of nights in the care of each parent are considered to have “shared care-time arrangements”.<sup>12</sup> This set of arrangements is also subdivided as follows: (a) 53–65% of nights per year with their mother and 35–47% of nights with their father; (b) 48–52% of nights per year with each parent; and (c) 35–47% of nights with their mother and 53–65% of nights with their father. In the present report, these three variants of shared care time are respectively referred to as “shared care time involving more nights with the mother”, “equal care time” and “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, Fathers or Mothers 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).

Prior to the implementation of the new child support formula, children were typically considered to have shared care-time arrangements when they stayed overnight with each parent for 30–70% nights per year. Despite the broad range of time encompassed by that definition, the 30–70% cut-off has been termed “equal-time parenting”, “shared-time parenting”, “50/50 shared care” and “near-equal shared care” (Smyth, 2009). These terms are not generally used in this reCare-time arrangements for children of different ages

Table 6.1 shows the prevalence of different care-time arrangements experienced by children of different ages.<sup>13</sup>

One-third of 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% of children never seeing their mother and the other 1% of children seeing their mother during the daytime only.

Just over 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).<sup>14</sup> 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.

<sup>12</sup> The CSA has used the term “shared care” to cover such arrangements.

<sup>13</sup> There were nearly 1,800 focus children whose mother and father both participated in the LSSF W1 2008. To prevent children who had both parents participated in the survey being counted twice in the calculation of statistics, when the focus of analysis is the child the reports regarding arrangements that were provided by one of these parents was randomly removed. When the focus of analysis is the parent, then both parents are included in the calculation of the statistics.

<sup>14</sup> In subsequent sets of analyses, these two arrangements are combined for the purposes of simplicity, as are those involving most nights with the father. It is important to note, therefore, that most focus children who

**Table 6.1 Care-time arrangements: Proportion of nights per year that children spent with each parent, by age of child, 2008**

Proportion of nights per year with each parent		Age of child (years)					All chil-
		0–2	3–4	5–11	12–14	15–17	dren
		%					%
Detailed care-time arrangements							
Father never sees child	(1)	16.2	8.4	5.3	10.6	13.0	11.1
Father sees in daytime only	(2)	34.4	15.5	12.0	14.0	22.6	22.5
87–99% with mother (1–13% father)	(3)	13.8	13.9	13.7	14.3	18.3	14.1
66–86% with mother (14–34% father)	(4)	25.4	37.1	37.2	31.1	18.7	31.0
53–65% with mother (35–47% father)	(5)	5.0	9.3	11.6	7.8	3.3	7.8
48–52% with each parent (i.e., equal care time)	(6)	2.1	9.3	11.8	10.7	6.4	7.0
35–47% with mother (53–65% with father)	(7)	0.4	1.7	2.3	1.7	1.1	1.3
14–34% with mother (66–86% with father)	(8)	0.8	1.9	2.8	3.5	3.7	1.9
1–13% with mother (87–99% with father)	(9)	0.5	0.7	1.3	2.3	4.2	1.1
Mother sees child in daytime only	(10)	1.0	1.2	1.2	1.7	4.4	1.3
Mother never sees child	(11)	0.4	1.0	0.9	2.5	4.3	1.0
Total		100.0	100.0	100.1	100.2	100.0	100.1
Number of observations		2,684	1,309	2,538	627	560	7,718
Selected combined care-time groups							
100% nights with mother	(1)+(2)	50.6	23.9	17.3	24.6	35.6	33.6
Most nights with mother	(3)+(4)	39.2	51.0	50.9	45.4	37.0	45.1
Shared care time (35–65%)	(5)+(6)+(7)	7.5	20.3	25.7	20.2	10.8	16.1
Most nights with father	(8)+(9)	1.3	2.6	4.1	5.8	7.9	3.0
100% nights with father	(10)+(11)	1.4	2.2	2.1	4.2	8.7	2.3
Father or mother never sees child	(1)+(11)	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 total exactly 100.0% due to rounding.

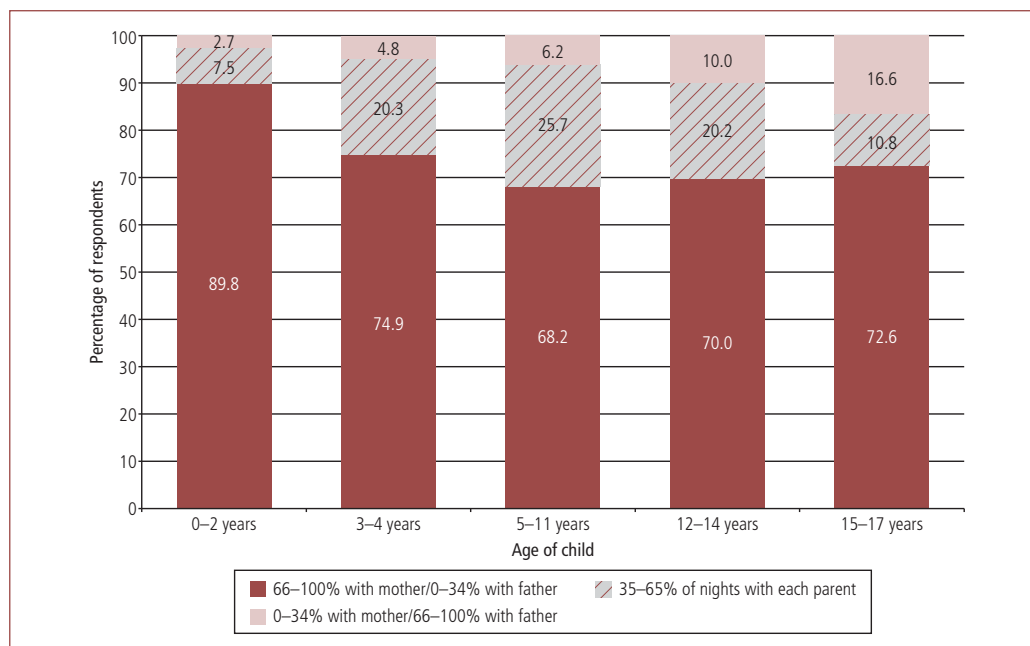
Source: LSSFW1 2008

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 experienced shared care time involving more nights with their father than mother.

In total, 87% of the children spent more nights with their mother than father (including shared care time involving more nights with the mother), 7% spent equal care time with each parent, and 7% spent more nights with their father than mother (including shared care involving more nights with the father).

The prevalence of the different care-time arrangements varied considerably according to the child's age—an issue that is further clarified in Figure 6.5. For example: the proportion of children who spent most or all nights with their father increased progressively with the child's age (from 3% of those aged under 3 years to 17% of those aged 15–17 years), while shared care time was most commonly experienced by children aged 5–11 years (26% compared to 8–20%). However, most children in all age groups spent more time with their mother than father, with 68–90% of children spending at least two-thirds of nights with their mother.

stayed with their mother for 66–99% of nights spent 14–34% of nights (rather than 1–13% of nights) with their father.



Notes: Based on analysis of focus child's care-time arrangements. Percentages may not total exactly 100% due to rounding.

Source: LSSF W1 2008

**Figure 6.5** Care-time arrangements: Proportion of nights per year that children spent with each parent, by age of child, 2008

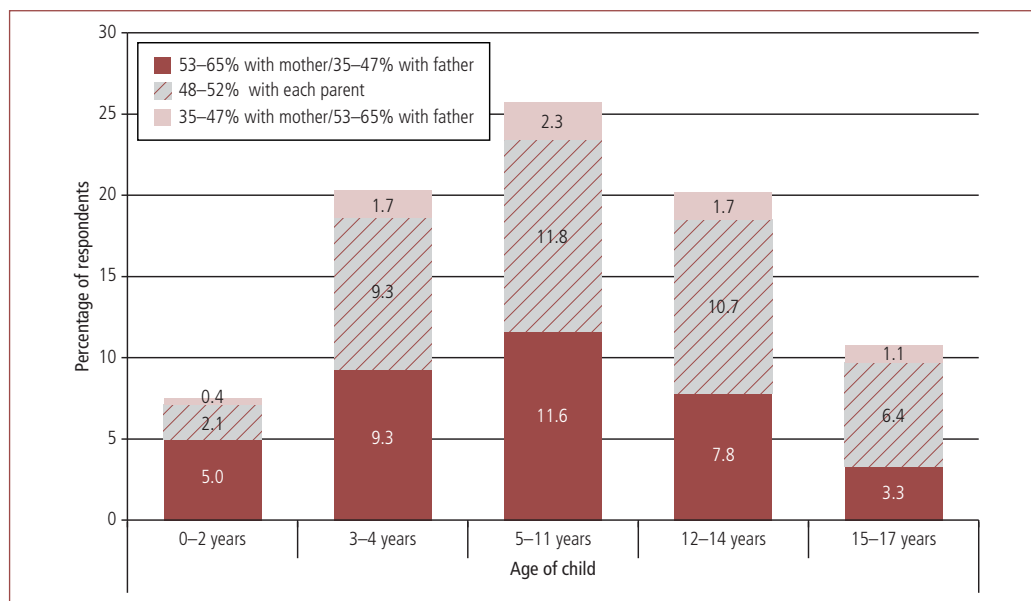
### Shared care-time arrangements for children of different ages

As noted above, shared care-time arrangements in general varied according to children's age. Specifically, Figure 6.6 shows that:

- shared care time in general was unusual for children under 3 years old (applying to just 8% of all the children);
- children aged 3–4 years were nearly three times as likely as those under 3 years old to experience shared care time (20%);
- as already indicated, children aged 5–11 years were the most likely of all age groups to have shared care-time arrangements (26%); and
- 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 (see Figure 6.5).

The experience of equal care time as opposed to shared care time involving more nights with the mother than father also varied according to children's age, as shown in Figure 6.6:

- No more than 2% of children in each age group experienced shared care-time arrangements involving more nights with their father than mother.
- Although only a small proportion of children under 3 years old experienced shared care-time arrangements, of these children, 67% spent more nights with their mother than father, 28% experienced equal care time, and only 5% spent more nights with their father than mother.
- Children aged 3–4 years and 5–11 years with shared care-time arrangements were just as likely to experience equal care time as to experience shared care time involving more nights with the mother than father. Each of these circumstances was experienced by 9% of all children aged 3–4 years, and 12% of all children aged 5–11 years.
- Of children aged 12–14 years, 11% experienced equal care time and 8% experienced shared care time involving more nights with the mother than father, while 6% of children aged 15–17 years experienced equal care time and 3% experienced shared care time that entailed more nights with their mother than father.



Note: Based on analysis of the focus child.

Source: LSSFW1 2008

**Figure 6.6 Shared care-time arrangements, by age of child, 2008**

In summary, while most parents in the Australian community believe that equal care time can be appropriate for some children under 3 years old, such a practice was rare among parents who separated after 1 July 2006 and had registered with the CSA. Even the broader category of shared care time (involving 35–65% of nights with each parent) was very unusual. And while parents in general appear to believe that the appropriateness of equal care time increases with increasing age of children, this arrangement was less commonly experienced by children aged 15–17 years than by children aged 5–14 years. Unlike the circumstances for children in other age groups, any shared care time experienced by children under 3 years old was more likely to entail a greater number of nights with the mother rather than equal nights with each parent.

### Age-related trends for children who never saw one parent

In general, the pattern of age-related results for children who never saw one parent is the reverse of that outlined above for children with shared care-time arrangements (Table 6.1). The youngest and oldest groups were the most likely to never see one parent, with this parent being far more likely to be the father than mother.

The proportion of children who never saw one parent (combining children who never see their mother and those who never see their father) decreased with increasing age until age 5–11 years, then increased progressively with age. The percentages of children experiencing these circumstances were:

- 17% of children aged 0–2 years;
- 9% of children aged 3–4 years;
- 6% of children aged 5–11 years;
- 13% aged 12–14 years; and
- 17% aged 15–17 years.

Only 0–4% of children in each of these age groups never saw their mother, while 5–16% never saw their father.

### 6.2.1 Daytime-only care

While the preceding sections largely focused on the proportion of nights the child spent with each parent, Table 6.1 shows that children who never stayed overnight with their father were more likely to see their father during the daytime rather than never see him (23% compared to 11%), while only 1% saw their mother during the daytime only, and another 1% never saw their

mother. The amount of daytime-only care may vary considerably, as may the circumstances contributing to, or associated with, daytime-only care and no care time. This section examines how often parents with daytime-only care saw their child.

Table 6.2 shows the frequency of daytime-only care reported by fathers and mothers who only saw their child during the daytime and by fathers and mothers whose child only saw the other parent during the daytime.<sup>15</sup>

**Table 6.2 Frequency of daytime-only care, child has daytime-only care with one parent, reports by fathers and mothers, 2008**

	Father has daytime-only care (mother 100% of nights)	Mother has daytime-only care (father 100% of nights)
	%	
Fathers' reports		
52+ days per annum (at least once a week)	72.8	52.3
26–51 days per annum (at least once a fortnight)	8.4	11.1
12–25 days per annum (at least once a month)	10.0	22.2
Less often	8.8	14.5
Total	100.0	100.1
Number of observations	711	115
Mothers' reports		
52+ days per annum (at least once a week)	67.9	66.8
26–51 days per annum (at least once a fortnight)	11.3	9.4
12–25 days per annum (at least once a month)	11.7	11.5
Less often	9.1	12.4
Total	100.0	100.1
Number of observations	1,164	49

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

Source: LSSFW1 2008

When a child has daytime-only care with a parent, the majority of children see the parent with whom they have daytime-only care at least 26 days per year (i.e., on average, once a fortnight or more often, most commonly at least once a week) (Table 6.2). Those who were most likely to report such frequent contact were fathers with daytime-only care (73%), followed by mothers who reported that they or their child's father had daytime-only care (67–68%). A relatively low proportion of fathers whose child had daytime-only care with his/her mother indicated at least weekly meetings (on average) between the child and mother (52%). In other words, the reports of mothers and fathers were more consistent where the child saw the father during the daytime only than where the child saw the mother during the daytime only.

While it appears that most parents who saw their child during the daytime only did so on average at least once a week, it is also important to note that a substantial minority saw their child around once a month or less frequently. This was indicated by over one-third of fathers whose child saw the mother during the daytime only (37%), by around one-quarter of mothers who had such time with their child (24%), and by 19–21% of mothers and fathers whose child spent time with the father during the daytime only. These results highlight the importance of understanding both the number of nights a child is in the care of each parent and patterns of daytime-only care.

## 6.2.2 Validity of findings on care-time arrangements

The results concerning daytime-only care outlined above indicate some gender differences in patterns of reporting. In this section, trends in the care-time arrangements suggested in the

<sup>15</sup> Where attention was given to the care-time arrangements of children of different ages, the information provided by one parent in the sample of former couples was randomly removed. It makes sense to include the reports of both parents where attention is directed to the characteristics and views of the parents. Unless otherwise specified, the results outlined in the rest of this chapter are therefore based on the information provided by all parents.



LSSF W1 2008 by all fathers and mothers and by those parents who were “former couples” are discussed. The latter sample comprised both the mother and father of nearly 1,800 focus children. These comparisons provide insight into the validity of the general trends in care-time arrangements outlined above.

## Reports of all fathers and mothers

The overall patterns of care-time arrangements suggested by the reports of all fathers and mothers were similar. For example, 43–46% of fathers and mothers reported that the child spent most nights with the mother. Secondly, both fathers and mothers were more likely to report that the child never stayed overnight with the father than with the mother (fathers: 26% compared to 3%; mothers: 39% compared to 13%). Thirdly, of the three shared care-time arrangements, both fathers and mothers were more likely to report that the child spent more nights with the mother than father (6–11% compared to 1–2%).

Nevertheless, consistent with previous research (e.g., Parkinson & Smyth 2003), fathers’ estimates of the time the child spent with them were higher than mothers’ estimates of the time the child spent with his or her father. For example, fathers were less likely than mothers to report that the child never stayed overnight with the father.<sup>16</sup>

## Reports of fathers and mothers in the former couples sample

A reasonably high degree of consistency was apparent in the reports of each partner in the former couples sample. For the nine different care-time categories that are mostly used in this chapter and elsewhere, almost 80% of former partners provided care-time estimates that fell within the same arrangement category, while only 3% provided estimates that were more than two categories apart. This high level of consistency in the reports of former partners, along with the consistency in the overall trends indicated by all fathers and mothers, suggests that the broad trends regarding the prevalence of different arrangements have high validity.<sup>17</sup>

## 6.3 Care-time arrangements in post-reform court files

This section provides information on the patterns of care-time arrangements apparent in a sample of court files for children’s matters initiated and finalised after 1 July 2006.<sup>18</sup> The sample includes matters that were finalised by consent (752 files) and judicial determination (233 files) in the FCoWA and the Melbourne, Sydney and Brisbane registries of the FMC and FCoA. The files relating to matters that were finalised by consent included cases in which proceedings were not issued (i.e., a judicial decision was not sought—328 files) and cases in which proceedings had been issued but the matters were subsequently settled by consent (424 files).

Analysis in this section is based on files where information was available that identified the parent with whom the child was living.<sup>19</sup> However, in a significant number of files, no information was available about the number of hours the child was to spend with his or her other parent. Some of these files included arrangements where the child’s time with the other parent was “as

16 These results are provided in Appendix E. This apparent “gender difference” may in fact result from a tendency for parents (regardless of gender) to overestimate their own total care time and underestimate the care time of the other parent (sometimes termed “bias in reporting”). Another possible explanation for these trends is that parents who rarely or never see their child are less likely than other parents to participate in surveys.

17 See Appendix E for details.

18 The sample consists of files that were initiated after 1 July 2006 and finalised by 14 November 2008. The files that were in scope were children’s matters and children and property matters. Within a file there may be more than one child for whom issues were in dispute and the arrangements may have varied for the different children. The analysis reported here is based on parenting arrangements for all children represented in any file. In other words, the results refer to trends for children rather than families. Detailed information on how the court files analysed were selected is provided in Appendix B.

19 In these files, 1,501 of the 1,672 children subject to proceedings had information that identified the person with whom the child was living. The analysis reported in this section is restricted to the 1,416 children who were living with their mother and spending time with their father or children who were living with their father and spending time with their mother. (i.e., analysis of 85 children with some other arrangement, such as living with parent and spending time with grandparent or other person, or living with their grandparents are not reported here).

agreed”, while in others no reference was made to how many hours the child was to spend with the other parent.

For files where contact hours were recorded,<sup>20</sup> care-time arrangements were categorised as follows:

- the child lives with mother (66–100% of hours) and spends 0–34% of hours with father;
- the child lives with father (66–100% of hours) and spends 0–34% of hours with mother; and
- the child spends 35–65% of hours with each parent.<sup>21</sup>

For cases where there was no information on contact hours, the following four categories were created:

- the child lives with mother and spends time with father as agreed;
- the child lives with father and spends time with mother as agreed;
- the child lives with mother—no information available on time with father; and
- the child lives with father—no information available on time with mother.

Table 6.3 provides an overview of the care-time arrangements for all children who were subject to proceedings with final arrangements. The prevalence of the different care-time arrangements is calculated both as a proportion of children where contact hours are specified and as a proportion of all children. These two sets of calculations show, for instance, the prevalence of shared care time among children for which contact hours are specified and the prevalence of shared care time among all children. The second measure is a “lower bound” estimate because it assumes that the children with unspecified contact hours were not involved in shared care-time arrangements.

**Table 6.3 Care-time arrangements for children subject to proceedings with final arrangements, post-1 July 2006**

	Cases where contact hours specified	All cases
	%	
Number of contact hours specified		
Live with mother—spend 0–34% with father	66.1	41.2
Live with father—spend 0–34% with mother	11.0	6.9
35–65% time with each parent	22.9	14.2
Total	100.0	62.3
Number of children	867	867
Number of contact hours not specified		
Live with mother—time with father as agreed	–	24.4
Live with father—time with mother as agreed	–	4.3
Live with mother—no information on time with father	–	8.0
Live with father—no information on time with mother	–	1.1
Total	–	37.8
Number of children	–	549
Total number of children		1,416

Notes: Time arrangements are based on future arrangements in last order or judgment on file. Excluded from this table are children for whom information on who they were living with was missing or who lived with someone other than their mother or father. In addition, children who were living with either their mother or father but who had contact hours with a person other than a parent are excluded. The number of such children is small. Weighted percentages.

Source: FCoA, FMC and FCoWA post-1 July 2006 court files

<sup>20</sup> Of the 1,416 children, hours were specified for 867 children.

<sup>21</sup> Time arrangements were analysed by combining information collected about the person with whom the child spends time (e.g., mother, father or another person such as grandparent or parent's new partner) and the percentage of contact hours, standardised to a 4-week block from the last order or judgment on file.

Of the files in which contact hours were specified, 66% indicated that the children lived with their mother and spent 0–34% of nights with their father, 23% recorded shared care-time arrangements, and 11% recorded that the children lived with their father and spent 0–34% of nights with the mother. When calculated as a proportion of all children, these files suggest that 41% of the children lived with their mother and spent 0–34% of nights with their father, 14% had shared care-time arrangements and 7% lived with their father and spent 0–34% of nights with their mother.

Table 6.4 shows how care-time arrangements varied according to the type of case (judicial determination, consent after proceedings or pure consent). Among children where contact hours were specified, the highest rate of shared care time was apparent in judicial determination cases (34%), followed by the pure consent cases (26%), then in cases in which consent occurred after the proceedings had been initiated (19%). However, the picture is quite different if the rate of shared care-time arrangements in each type of case is calculated as a proportion of all children of that type. Using this measure, shared care-time arrangements were most common in the pure consent cases (17%) and there was little difference in the prevalence of shared care-time arrangements in judicial determination cases (13%) and in cases in which consent occurred after proceedings were initiated (13%).

**Table 6.4 Care-time arrangements for children subject to proceedings with final arrangements, by type of case, post-1 July 2006**

	Judicial determination		Consent after proceedings		Pure consent	
	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases
	%		%		%	
Number of contact hours specified						
Live with mother—spend 0–34% with father	47.8	17.7	69.7	47.4	65.7	42.7
Live with father—spend 0–34% with mother	18.3	6.8	11.7	8.0	8.8	5.7
35–65% time with each parent	33.9	12.6	18.5	12.6	25.5	16.5
Total	100.0		99.9		100.0	
Number of contact hours not specified						
Live with mother—time with father as agreed	–	26.0	–	20.8	–	27.6
Live with father—time with mother as agreed	–	10.5	–	3.4	–	3.0
Live with mother—no information on time with father	–	25.1	–	6.4	–	3.8
Live with father—no information on time with mother	–	1.2	–	1.4	–	0.7
Total	–	99.9	–	100.0	–	100.0
Number of children	98	253	417	622	352	541

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

Source: FCoA, FMC and FCoWA post-1 July 2006 court files

Table 6.5 shows the care-time arrangements that were apparent in the files derived from the different courts (FCoA, FMC and FCoWA). Among cases in which contact hours were specified, the prevalence of shared care time was very similar in the FCoA and the FCoWA files (24% and 25% of children respectively), and slightly lower in the FMC files (20%). When calculated as a proportion of all children, the prevalence of shared care time was still very similar in the FCoA and FCoWA files (16% and 15% respectively) and remained lower in the FMC files (12%).

**Table 6.5 Care-time arrangements for children subject to proceedings with final arrangements, by court, post-1 July 2006**

	FCoA		FMC		FCoWA	
	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases
	%		%		%	
Number of contact hours specified						
Live with mother —spend 0–34% with father	66.9	44.9	69.9	41.5	56.2	32.2
Live with father—spend 0–34% with mother	8.8	5.9	10.2	6.0	18.4	10.6
35–65% time with each parent	24.2	16.3	19.9	11.8	25.4	14.6
Total	99.9		100.0		100.0	
Number of contact hours not specified						
Live with mother —time with father as agreed	–	25.0	–	24.2	–	23.4
Live with father —time with mother as agreed	–	3.5	–	5.0	–	4.7
Live with mother —no information on time with father	–	3.3	–	11.0	–	12.4
Live with father —no information on time with mother	–	1.1	–	0.5	–	2.1
Total		100.0		100.0		100.0
Number of children	286	430	307	504	274	482

Notes: Time arrangements are based on future arrangements in last order or judgment on file. Excluded from this table are children for whom information on who they were living with was missing or who lived with someone other than their mother or father. In addition, children who were living with either their mother or father but with contact hours with a person other than a parent are excluded. The number of such children is small. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA post-1 July 2006 court files

## 6.4 Durability of different care-time arrangements

Care-time arrangements may be adjusted because it becomes clear that they have been unsuitable for the child or for one or both parents from the outset or because the arrangements have become less suitable to the various parties as their circumstances change (for instance, the children have grown older).

As noted above, Australian research by Smyth et al. (2008)<sup>22</sup> has suggested that shared care-time arrangements (which were defined by the authors as 30–70% of nights with each parent) are less durable than those in which the children live mostly or entirely with their mother. According to their analysis, children who spent over 70% of nights with their mother when first assessed were the most likely to be in the same arrangement three years later. The second most durable of the three arrangements involved the children spending over 70% of nights with their father.<sup>23</sup> This study also suggested that moves from shared care-time arrangements mostly involved a switch to spending more time with the mother. While earlier research in the US has suggested a similar trend, more recent research in Wisconsin suggests that the “maternal drift” may have abated (see Berger, Brown, Joung, Melli, & Wimer, 2008).

<sup>22</sup> This study was based on the Household, Income and Labour Dynamics in Australia (HILDA) survey and the Caring for Children After Parental Separation (CFC) survey. HILDA is a general household panel survey of Australian families funded by the Australian Government through FaHCSIA. The CFC was conducted by AIFS.

<sup>23</sup> Shared time was taken to represent the “in-between” configuration, where children spent 30–70% of nights with each parent.

The LBS 2009 throws further light on this issue. It should be noted that parents in this study had separated prior to the 2006 reforms and some 4–5 years prior to interview (conducted in early 2009). Table 6.6 refers to five different care-time arrangements that parents reported for the immediate post-separation period and at the time of the survey.

As observed by Smyth et al. (2008), the most common arrangement in the LBS 2009—involving the child spending most or all nights with the mother—was the most stable of the four arrangements. Of the children who experienced this arrangement upon separation, 87% were in the same arrangement at the time of the survey, some 4–5 years after separation. But equal care time (48–52% of time with each parent) appeared to be a more durable arrangement than both shared care time that involved more nights with the mother than father and arrangements that entailed most or all nights with the father. Sixty per cent of the focus children with equal care time at separation had the same arrangement at the time of the survey, compared with around half of the children who, at the time of separation, experienced either shared care time involving more nights with their mother than father, or who lived mostly or entirely with their father.

The results also suggest that, of the children who experienced either of the two shared care-time arrangements in Table 6.6 at separation (i.e., equal or shared care time involving more nights with their mother than father), those who were in different arrangements at the time of the survey were typically living mostly or entirely with their mother. This move to live with the mother applied to 28–32% of all children who were experiencing either of these two shared care-time arrangements upon separation.

**Table 6.6 Care-time arrangements at separation and at interview, 2004–05 and 2009**

Care-time arrangement at interview (2009)	Care-time arrangement at separation (2004–05)				
	Mainly or entirely with mother (66%+ nights)	Shared time: 53–65% of nights with mother	Shared time: 48–52% of nights with each parent	Shared time: 53–65% of nights with father	Mainly or entirely with father (66%+ nights)
Mainly or entirely with mother (65%+ nights)	87.4	31.6	27.8	–	16.6
Shared time: 53–65% of nights with mother	7.0	49.1	5.0	–	9.2
Shared time: 48–52% of nights with each parent	3.7	14.6	59.8	–	16.3
Shared time: 53–65% of nights with father	0.3	4.2	2.2	–	7.1
Mainly or entirely with father (65%+ night)	1.5	0.5	5.2	–	50.8
<b>Total</b>	<b>99.9</b>	<b>100.0</b>	<b>100.0</b>	<b>–</b>	<b>100.0</b>
<b>Number of children</b>	<b>1,200</b>	<b>104</b>	<b>103</b>	<b>18</b>	<b>108</b>

Notes: Where both parents of a focus child were interviewed, the reports of only one parent were randomly omitted from the analysis. The number of children in the survey with 53–65% of nights with father was too small to allow statistically reliable estimates to be produced for this group. Percentages may not total 100.0% due to rounding.

Source: LBS 2009

Those who began by living mostly or entirely with their father when their parents separated tended to move to either an equal care-time arrangement or to living mostly or entirely with their mother. These moves applied to 16% and 17% of all children who were originally living mostly or entirely with their father.

In short, of the four care-time arrangements examined here, spending most nights with the mother appeared to be the most stable arrangement, followed by equal care time with each parent (48–52% of nights). Secondly, where children experienced changes in care arrangements, those who began with shared care arrangements upon parental separation tended to move to live mostly or entirely with their mother.

Although these results rely on the memory of parents concerning events that occurred during a typically highly stressful period, the care-time arrangements for children are clearly such

major issues that it seems reasonable to assert that they would not be greatly affected in any systematic way by distortions of memory. That is, it seems likely that the general trends outlined above hold. Furthermore, while the arrangements of some children may have changed more than once since the time of separation, it seems unlikely that such upheavals in children's circumstances would be sufficiently common to challenge these general trends.

## 6.5 Extent of change in care-time arrangements since the 2006 reforms

Attitudes and expectations concerning fathers' roles in families have changed in recent times (see Appendix A). Fathers are expected to take on a greater share of the couple's home-making responsibilities than was the case in past decades and increased attention has been given to potentially damaging impacts on children, especially sons, of growing up in a family in which the father is either absent or "uninvolved".<sup>24</sup> These concerns contributed to the shaping of the family law reforms.

A key question, then, is whether there has been any detectable shift post-reform in the proportion of fathers who are involved in their children's lives after parental separation. This question is by no means easy to answer, given that there was already pre-reform evidence that paternal involvement after parental separation was increasing (see Appendix A).<sup>25</sup>

This section first uses data from surveys of parents conducted in different periods to assess the extent to which changes have occurred in the proportion of children who never see one parent and in the proportion of children who experience shared care-time arrangements (i.e., 35–65% of nights with each parent), with particular attention given to the extent to which changes have occurred in the prevalence of equal care-time arrangements (i.e., 48–52% of nights). Secondly, CSA administrative data are used to provide further insight into pre- and post-reform changes in the prevalence of shared care-time arrangements among separated families who have registered with the CSA. Finally, pre- and post-reform court files are compared to gauge the level of change in shared care-time arrangements in parenting matters in the FCoA, FMC and FCOWA. Both consent and judicially determined orders are examined.

### 6.5.1 Surveys of parents

Data from four surveys of parents were used in this analysis: the three comparable ABS surveys (Family Characteristics Surveys 1997 and 2003, and Family Characteristics and Transitions Survey 2006–07) and the LSSF W1 2008.<sup>26</sup> Unlike the parents in the LSSF W1 2008, all parents in the three ABS surveys provided information about the care-time arrangements of all children under 18 years old who usually resided with them (and who had a parent living elsewhere). Most of the parents in the FCTS 2006–07 would have been separated before the 2006 family law reforms were introduced. Most respondents in the ABS surveys were mothers, and this chapter has already shown that mothers' estimates of the time the child spends with their father tend to be lower than fathers' estimates of the time their children spend with them.<sup>27</sup>

The LSSF W1 2008 is the only one of these four surveys that was based exclusively on parents who had separated after the reforms were introduced. As noted above, the respondents in the LSSF W1 were representative of parents who were registered with the CSA in 2007 and who separated between July 2006 and September 2008.<sup>28</sup> Around 95% had been separated for 6–24 months when they were interviewed.<sup>29</sup> Furthermore, unlike the ABS surveys, roughly half the

<sup>24</sup> Consistent with these trends, Appendix A provides evidence that fathers' engagement in child care has increased but is not nearly as great as the child care provided by mothers.

<sup>25</sup> The present chapter focuses on only one of the key aspects of involvement—spending time with the child. Other important aspects include the provision of financial support and decision-making about issues affecting the child in the longer term. These aspects of involvement are examined in Chapter 8.

<sup>26</sup> The ABS results are based on unpublished customised tables.

<sup>27</sup> This difference may be more a function of systematic differences in the reports provided by parents with the majority versus minority of care time, rather than of differences in the reports of fathers versus mothers.

<sup>28</sup> Most respondents in the LSSF W1 2008 separated between July 2006 and December 2007.

<sup>29</sup> The other relevant survey, the LBS 2009, was not used in this analysis because any differences in the results of this survey and those of the LSSF W1 may be a function of the different durations of separation apparent among parents in these two surveys. Parents in the LBS had separated between January 2004 and June 2005,



respondents in the LSSF W1 2008 were fathers, and the sample included parents who reported that they cared for their child for less than half the time or not at all.<sup>30</sup>

In assessing levels of change, it is important to bear in mind that most separated parents have been separated for a substantial period. Care-time arrangements may be quite different for children whose parents have separated recently, compared with all children whose parents have separated. For example, if equal care time is increasing, then repeated surveys that derive samples based on the entire population of separated families at the time each survey is undertaken (e.g., the FCS 1997 and 2003 and FCTS 2006–07) are likely to show fairly small progressive increases in the proportion of children with such care-time arrangements. This would occur because each sample focuses on children under the age of 18 years whose parents had separated up to nearly 18 years prior to the survey in question.<sup>31</sup> On the other hand, if equal care time is increasing in prevalence, then samples derived from the population of recently separated families (rather than all separated families), such as LSSF W1 2008 sample, would include a considerably higher proportion of children with equal care time.

## Where the child never sees one parent

According to the three ABS surveys, the proportion of children who never saw one parent ranged from 27% (in the 2003 survey) to 30% (in the 1997 and 2006–07 surveys) and there was no evidence of change over the ten-year period.<sup>32</sup>

Figure 6.7 shows the proportions of children in four different age groups who never saw one parent, according to the three ABS surveys. The greatest differences emerged for children under 5 years old. The proportion of children of this age who never saw one parent fell from 26% in 1997 to 22% in 2003, but then increased to 30% in 2006–07. Fluctuating trends were also apparent for children aged 5–11 years and 12–14 years, while much the same proportions of children aged 15–17 years never saw one parent (32–33%), according to all three surveys.

In the two earlier surveys, children under 5 years old were the least likely of all groups to never see one parent. However, this pattern was not apparent in the 2006–07 survey. In the latter survey, the proportions of children who never saw one parent ranged from 28% of those aged 5–11 years to 33% of those aged 12–14 years.

As noted above, the ABS surveys refer to all children under 18 years old whose parents were not living together, including those whose parents separated up to nearly 18 years prior to the survey. Most of the parents in the LSSF W1 2008, on the other hand, had separated 6–24 months prior to interview. These children were considerably less likely than those in the ABS samples to never see the other parent. As shown in Table 6.1, 12% of all focus children in the LSSF W1 2008 never saw one parent, with the proportion of children experiencing this situation being lowest for those aged 5–11 years (6%) and highest for those under 3 years old and those aged 15–17 years (17% in each group).

## Equal care-time arrangements

The LSSF W1 2008 data suggest that, among children whose parents had separated post-reform (in most cases between July 2006 and December 2007), 16% had shared care-time arrangements (with 8% of all children having shared care time involving more nights with the mother than father, 1% having shared care time involving more nights with the father than mother, and 7% having equal care time) (see Table 6.1). Data from the three ABS surveys suggest that, among all children with a parent living elsewhere (regardless of year of parental separation), the pro-

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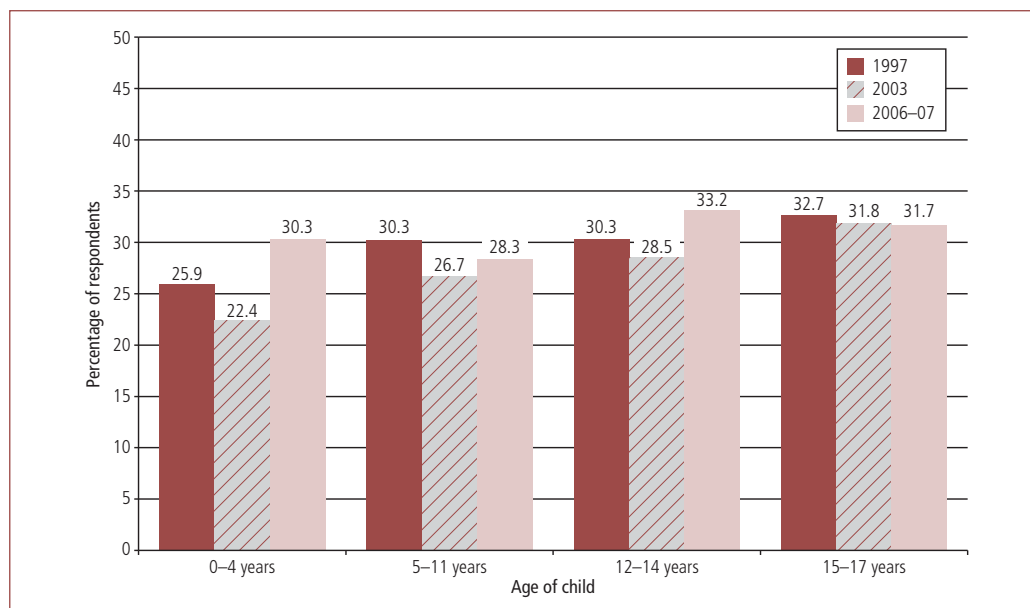
some 4–5 years before they were interviewed and it has already been shown that only 60% of the children represented in this survey who had equal care-time arrangements at separation, and only half of those who had shared care time involving more nights with their mother than father at separation, were in the same arrangement at the time of the survey.

30 In addition, respondents in the LSSF W1 2008 who had more than one child with a parent living elsewhere provided information about the care-time arrangements of only one of their children, whereas the ABS surveys derived information about the arrangements of all children who had a parent living elsewhere.

31 For example, the FCTS 2006–07 would have included parents who separated from around 1990 to the end of 2007, with those with children under 5 years old (whose other parent lived elsewhere) having been separated for up to 4 years prior to the survey.

32 Never seeing one parent includes seeing one parent less frequently than once per year.





Notes: Omitted from this analysis are data for children who lived with grandparents or guardians. Children who saw one parent on fewer occasions than once a year are here classified as never seeing this parent.

Source: ABS FCS 1997 and 2003, ABS FCTS 2006-07

**Figure 6.7** Proportion of children in different age groups who never saw one parent, by age of child, 1997, 2003 and 2006-07

portion who experienced shared care time increased from 3% in 1997 to 8% in 2007.<sup>33</sup> However, it has already been noted that for very young children in particular, any shared care typically involved more nights with the mother than father. To what extent, then, does the increase in shared care-time arrangements reflect increases in equal care time for children of different ages?

Figure 6.8 shows the proportion of children in four different age groups with equal care-time arrangements, according to the three ABS surveys.

Equal care-time arrangements appear to have been increasing with time since the late 1990s for all age groups, with the largest increase being apparent for children aged 5-11 years (from 1% to 5%) and the smallest being apparent for children aged 15-17 years (from less than 1% to 2%). In other words, equal care time arrangements, although very uncommon, were increasing before the 2006 reforms were introduced.<sup>34</sup>

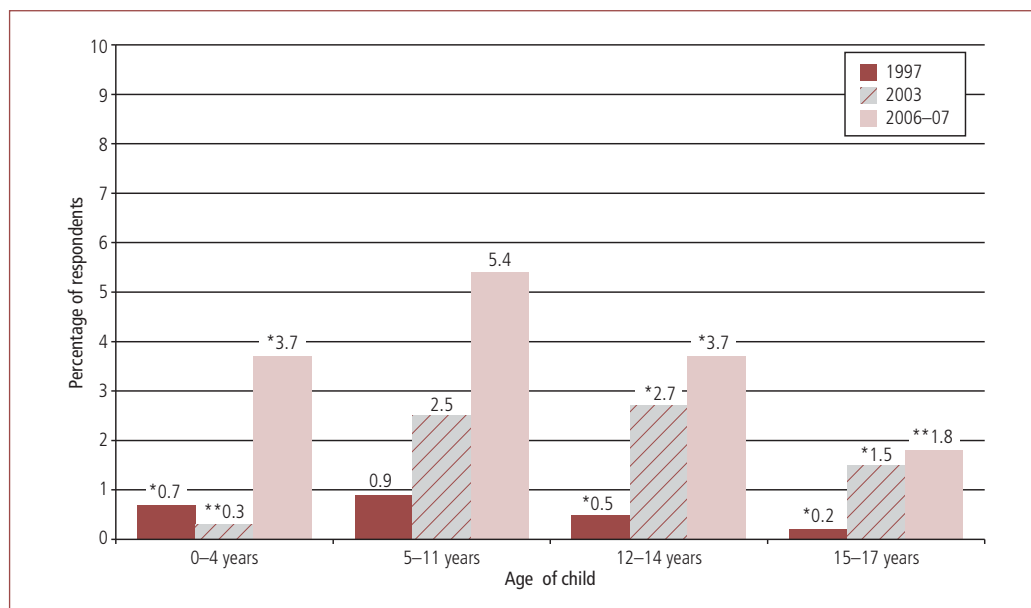
The equal care-time rates revealed in the FCS 1997 were very low, with negligible differences apparent across the age groups (all less than 1%). As a result, further comparisons focus on data from the two more recent ABS surveys:

- According to the FCTS 2006-07, equal care time was more commonly experienced by children aged 5-11 years than by older and younger children, while the FCS 2003 suggested that differences in equal care-time rates for children aged 5-11 and 12-14 years were negligible (both less than 3%)
- In the FCS 2003 survey, children who were under 5 years old were the least likely of all age groups to experience equal care-time arrangements, but according to the FCS 2006-07, a slightly lower proportion of children aged 15-17 years than those under 5 years experienced such arrangements (2% compared to 4%).

As already noted, the ABS surveys are not directly comparable with the LSSF W1 2008 survey. Given the recency of the parental separation experienced by children represented in the LSSF

<sup>33</sup> These estimates are based on customised tables provided by the ABS.

<sup>34</sup> As noted above, the parents of the vast majority of children in the 2006-07 survey would have been separated prior to the reforms. However, the younger the child, the lower would be the dominance of pre-reform separations. Indeed, parents of infants of up to 11 months old would have been separated post-reform (if they had been living together).



Notes: Omitted from analysis are data for children who lived with grandparents or guardians and for those whose overnight 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.

Source: ABS FCS 1997 and 2003, ABS FCTS 2006-07

**Figure 6.8** Proportion of children in different age groups who experienced equal care-time arrangements, by age of child, 1997, 2003 and 2006-07

W1 2008, it is not surprising that the proportion of children with equal care time is considerably greater than that reported for all children with a parent living elsewhere, as recorded in the ABS surveys. The age-related results based on the LSSF W1 2008 have already been reported (see Table 6.1), where it was shown that equal care-time rates were most prevalent for children aged 5-11 years (as was apparent for children represented in the FCTS 2006-07). Specifically, equal care time occurred for 2% of children under three years old, 9% of those aged 3-4 years old, 12% of those aged 5-11 years old, 11% of those aged 12-14 years old, and 6% of those aged 15-17 years old.

Further surveys of all separated parents and of recently separated parents will indicate whether the trend towards increasing rates of equal time gains momentum post-reform.

### 6.5.2 Shared care time apparent in the Child Support Agency administrative database

Using the earlier and broader (30-70%) shared care-time definition and data provided by the CSA (B. Smyth, personal communication, November 2009), it was found that the proportion of existing cases entailing shared care time increased by one percentage point each year from June 2003 (7%) to June 2008 (12%), while the proportion of new cases with shared care-time arrangements increased by one to two percentage points each year (from 9% by June 2003 to 17% by June 2008).<sup>35</sup>

These results suggest that, during the period in which the reforms were rolled out (from July 2006 to June 2008), there was no evidence that the increase in such care-time arrangements had gained momentum. It remains possible, of course, that a lagged effect becomes apparent in the future.

<sup>35</sup> Specifically, Smyth reported that the following proportions of new cases in the CSA system entailed the child being in the care of each parent for 30-70% of nights: 9% in June 2003, 11% in June 2004, 13% in June 2005, 14% in June 2006, 16% in June 2007, and 17% in June 2008.

### 6.5.3 Court data

Table 6.7 shows the prevalence of different care-time arrangements for a sample of pre- and post-reform cases.<sup>36</sup> As outlined in Section 6.3, care-time arrangements can be calculated as a proportion of cases where contact hours are specified in the court files or as a proportion of all cases.

It appears that a higher proportion of children's matters cases resulted in shared care time post-reform than was the case pre-reform. When calculated as a proportion of cases where contact hours were specified, shared care time increased from 16% pre-reform to 23% post-reform and, when calculated as a proportion of all cases, shared care time increased from 9% to 14%.

The extent to which care-time arrangements have changed in cases that result in judicial determination and those that are resolved by consent were also examined (Tables 6.8 and 6.9 respectively). The following trends emerged:

The proportion of judicial determination cases resulting in shared care time increased from 4% pre-reform to 34% post-reform, when calculated as a proportion of cases where contact hours are specified. When calculated as a proportion of all judicial determination cases, shared care time increased from 2% pre-reform to 13% post-reform (Table 6.8).

A smaller increase was apparent in the proportion of consent cases that resulted in shared care time. When calculated as a proportion of cases in which contact hours were specified, shared care time increased from 17% pre-reform to 22% post-reform and when calculated as a proportion of all consent cases, shared care time increased from 10% to 15% (Table 6.9).

**Table 6.7 Care-time arrangements for children subject to proceedings with final arrangements, pre- and post-reform**

	Pre-reform		Post-reform	
	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases
	%		%	
<b>Number of contact hours specified</b>				
Live with mother—spend 0–34% with father	72.2	42.5	66.1	41.2
Live with father—spend 0–34% with mother	12.2	7.2	11.0	6.9
35–65% time with each parent	15.5	9.1	22.9	14.2
<b>Total</b>	<b>99.9</b>		<b>100.0</b>	
<b>Number of contact hours not specified</b>				
Live with mother—time with father as agreed	—	27.3	—	24.4
Live with father—time with mother as agreed	—	5.6	—	4.3
Live with mother—no information on time with father	—	6.9	—	8.0
Live with father—no information on time with mother	—	1.5	—	1.1
<b>Total</b>		<b>100.1</b>		<b>100.1</b>
<b>Number of children</b>	<b>667</b>	<b>1,188</b>	<b>867</b>	<b>1,416</b>

Notes: Time arrangements based on future arrangements in last order or judgment on file. Weighted percentages Pre-reform figures are sampled from the Melbourne and Perth registries. Post-reform figures are sampled from the Melbourne, Perth, Brisbane and Sydney registries. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

<sup>36</sup> The pre-reform figures are from cases sampled from the Melbourne and Perth registries. The post-reform figures are from cases sampled from the Melbourne, Perth, Brisbane and Sydney registries. The sensitivity of the estimates to the inclusion of the additional registries for the post-reform estimates has been tested by comparing the pattern of care-time arrangements from just the Melbourne and Perth registries with the patterns when arrangements from all registries are considered. The estimates from the restricted number of samples are broadly similar to those derived when all of the registries are used. Therefore the data from all of the registries were used when examining the extent to which care-time arrangements had changed.

**Table 6.8 Judicial determination cases: Care-time arrangements for children subject to proceedings with final arrangements, pre- and post-reform**

	Pre-reform		Post-reform	
	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases
	%		%	
<b>Number of contact hours specified</b>				
Live with mother—spend 0–34% with father	65.2	29.5	47.8	17.7
Live with father—spend 0–34% with mother	30.8	13.9	18.3	6.8
35–65% time with each parent	4.0	1.8	33.9	12.6
<b>Total</b>	<b>100.0</b>		<b>100.0</b>	
<b>Number of contact hours not specified</b>				
Live with mother—time with father as agreed	—	18.9	—	26.0
Live with father—time with mother as agreed	—	9.6	—	10.5
Live with mother—no information on time with father	—	22.9	—	25.1
Live with father—no information on time with mother	—	3.3	—	1.2
<b>Total</b>		<b>99.9</b>		<b>99.9</b>
<b>Number of children</b>	<b>95</b>	<b>255</b>	<b>98</b>	<b>253</b>

Notes: Time arrangements based on future arrangements in last order or judgment on file. Weighted percentages. Pre-reform figures are sampled from the Melbourne and Perth registries. Post-reform figures are sampled from the Melbourne, Perth, Brisbane and Sydney registries. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

**Table 6.9 Consent cases: Care-time arrangements for children subject to proceedings with final arrangements, pre- and post-reform**

	Pre-reform		Post-reform	
	Cases where contact hours specified	All cases	Cases where contact hours specified	All cases
	%		%	
<b>Number of contact hours specified</b>				
Live with mother—spend 0–34% with father	72.8	43.9	67.8	45.1
Live with father—spend 0–34% with mother	10.7	6.4	10.3	6.9
35–65% time with each parent	16.5	10.0	21.8	14.5
<b>Total</b>	<b>100.0</b>		<b>99.9</b>	
<b>Number of contact hours not specified</b>				
Live with mother—time with father as agreed	—	28.2	—	24.1
Live with father—time with mother as agreed	—	5.1	—	3.2
Live with mother—no information on time with father	—	5.0	—	5.1
Live with father—no information on time with mother	—	1.3	—	1.1
<b>Total</b>		<b>99.9</b>		<b>100.0</b>
<b>Number of children</b>	<b>572</b>	<b>933</b>	<b>769</b>	<b>1,163</b>

Notes: Time arrangements based on future arrangements in last order or judgment on file. Weighted percentages. Pre-reform figures are sampled from the Melbourne and Perth registries. Post-reform figures are sampled from the Melbourne, Perth, Brisbane and Sydney registries. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

## 6.6 Summary

This chapter focused on the time that separated parents spend with their children. Particular attention was given to the following issues: (a) the opinions of parents in the general population regarding whether children “do best” when both parents remain involved in the children’s lives after separation and the appropriateness of equal care-time arrangements for children of different ages; (b) the prevalence of different care-time arrangements in families that experienced parental separation after the most recent family law reforms were introduced (along with an assessment of the validity of the general trends reported); (c) patterns of care-time arrangements in post-reform court files relating to children’s matters; (d) the durability of different care-time arrangements of parents who separated pre-reform and were interviewed in early 2009; and (e) changes that have been occurring in care-time arrangements, especially shared care-time arrangements, apparent among families and in court files.

While most parents (separated and non-separated) agreed that the continuing involvement of each parent was beneficial for the children (especially separated fathers and non-separated mothers), there was an increase in the proportion providing strong agreement with the statement in 2009 compared to 2006.

Although most parents in the Australian population appear to accept that children spending equal care time (48–52% of nights) with each parent can be appropriate, even for those under 3 years old, and especially for children in secondary school, such arrangements are uncommon—applying to only 2–12% of children of different ages in the LSSF W1 2008. 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. Children under 3 years old were the least likely to experience such arrangements. Nevertheless, 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.

Several sources of data suggest that the prevalence of shared care-time arrangements (35–65% of nights spent with each parent), including equal care time, has been increasing. Administrative data from the CSA indicate that, among parents who have registered with the CSA, shared care-time rates have increased since the reforms were introduced. However, surveys conducted by the ABS suggest that such arrangements, including equal care time, have been increasing since the late 1990s (when equal care time in particular was rare), while there is evidence of a change in the proportion of children never seeing one parent. Future monitoring of trends will throw light on whether the increase in shared care time has been gaining momentum since the reforms were introduced and whether the proportion of children who never see one parent is affected by the reforms.

A comparison of pre- and post-reform court files concerning children’s matters suggests that the proportion of children who are allocated shared care time has increased considerably. This increase has been greater where the orders have been judicially determined than where they have been made by consent.

Despite the increasing prevalence of shared care-time arrangements, most children spent most or all nights with their mother. In fact, one-third of children focused upon in the LSSF W1 2008 spent all nights with their mother. In interpreting the significance of these findings, it is important to note that most children represented in the LSSF W1 2008 were under 5 years old. Of the children who never stayed overnight with their father, two-thirds saw their father during the day and the other one-third did not see him at all. Furthermore, most children with daytime-only care with their father saw him at least once a week. Such differences highlight the importance of defining care time not only in terms of overnight care but also in terms of daytime care.

Previous research has suggested that shared care time is less durable than the traditional arrangement, where the child spends most or all nights with the mother (representing the most durable arrangement), or the alternative, where the children spends most or all nights with the father. This research has also suggested that any changes in arrangements have most commonly represented moves to the traditional arrangement. Some more recent overseas research has indicated that this so-called “maternal drift” might be abating, so the LBS 2009 was used to shed further light on this issue. According to this analysis, equal care time was the second most durable of the four arrangements. Nevertheless, consistent with previous research, the most durable arrangement remained the traditional one (where the children lived mostly or entirely with their mother), and any changes in most other arrangements typically reflected the

“maternal drift”. It is important to note, however, that while most children of all ages are in the traditional arrangements, children aged 15–17 years were more likely than younger children to spend most or all nights with their father.

Taken together, the various sets of data used in this analysis suggest that traditional care-time arrangements, involving more nights with the mother than father, remain the most common, but shared care time is increasing both among separated families in general and among those whose dispute is litigated, especially families whose dispute is finalised through judicial determination. Secondly, where there is a change from a shared care-time arrangement, there tends to be a move towards the traditional arrangement. Of the three arrangements—more nights with mother, shared care time, and more nights with father—the latter is the least common. Chapter 7 provides insight into reasons for these and other relatively uncommon arrangements.





# Care-time arrangements: Negotiations and family profiles

This chapter examines factors linked with the different care-time arrangements that parents adopt (outlined in Chapter 6) and relates to policy objective 2 of the 2007 Evaluation Framework (Appendix B) concerning encouraging greater involvement by both parents in children's lives after separation, and also protecting children from violence and abuse. Some of these factors help explain the arrangements that have been adopted and some are relevant to judgments about the appropriateness of different arrangements for children; for example: children's ages, distance between homes, and indicators of dysfunctional family dynamics. These matters are clearly important for any assessment of the extent to which a fundamental aim of the reforms—encouraging parental involvement while at the same time protecting children's wellbeing—is being met. The analysis is based on the first wave of the Longitudinal Study of Separated Families 2008 (LSSF W1 2008).

The following questions are addressed in this chapter:

- What are the socio-demographic characteristics and family dynamics of separated families with different care-time arrangements?
- Are some care-time arrangements more likely than others to be taken up by parents who had not yet sorted out their parenting arrangements at the time the LSSF W1 2008 was undertaken?<sup>1</sup> Where arrangements had been sorted out, to what extent did the main means by which they were made vary with care-time arrangements?
- How flexible and workable do parents consider their parenting arrangements to be for themselves, their child, and the child's other parent? Do parents' evaluations vary according to how much time, if any, they spend with their child and according to whether this time involves overnight stays?
- To what extent does frequency of inter-parental communication (another indicator of parental involvement) vary according to the care-time arrangements adopted? To what extent does "out of sight" suggest "out of mind"?
- Finally, to what extent do the arrangements adopted appear to meet the fundamental objectives of the reforms—namely, promoting parental involvement while also protecting children from potential harm associated with such experiences as parental conflict, family violence, and mental health problems, substance misuse problems or other addictions experienced by parents?

## 7.1 Characteristics of parents with different care-time arrangements

This section compares socio-demographic characteristics of respondents in the LSSF W1 2008 with different care-time arrangements. All comparisons focus on nine groups of fathers and seven groups of mothers.<sup>2</sup> The analysis also identifies the proportion of parents whose child

<sup>1</sup> This should not be taken to imply that any differences in arrangements necessarily reflect those that parents tend to adopt before they reach agreement and those that are subsequently adopted through the negotiation process. An alternative explanation is that the type of arrangements that are adopted by parents who quickly reach agreement may differ from those that tend to be adopted when negotiations and decision-making are protracted. Wave 2 of the LSSF will throw light on this issue.

<sup>2</sup> As noted in Chapter 6, there were only 29 mothers (out of around 5,000 mothers) who reported that they never saw their focus child, and 38 who indicated that their child stayed overnight with them for 34–47% of

travels long distances for shared care-time arrangements—an experience that could be disruptive for the children, depending on various other factors, such as the frequency of moves, the duration of periods spent with each parent, the timing of moves relative to the school term, and the children's ages. Pre-separation circumstances, such as reports of the level of each parent's involvement in the child's everyday activities, are also discussed. This information is important for understanding some of the circumstances that influence, or are influenced by, each parent's level of involvement in their child's life. It should be noted that the discussion in some of the following sections does not provide information on all care-time arrangements.

### 7.1.1 Parents' and children's ages

There is a clear relationship between the parents' ages and their care-time arrangements. On average, the youngest parents were those whose child never saw his or her father (mean age: 34 years for fathers and 31 years for mothers).<sup>3</sup> The average age of parents tended to increase with increases in the proportion of nights that fathers cared for their child, although this trend levelled out for fathers with equal or greater care time (mean age of such fathers: 37–38 years). On average, the oldest mothers were those whose child spent most or all nights with his or her father (mean age: 37 years).

As noted in Chapter 6, most children in all age groups spent more nights with their mother than father, with children under 3 years old being the most likely of all groups to spend all nights with their mother. Children of primary school age (5–11 years) were the most likely of all groups to experience equal care time, while children under 3 years old and those aged 15–17 years were the least likely to have such arrangements. Finally, children who were 15–17 years old were more likely than other children to spend most or all nights (66–100%) with their father, although most children in such care-time arrangements were under 12 years old.

### 7.1.2 Country of birth

Parents with equal care time were the least likely of all groups to have been born overseas (12–14%), while those who were most likely to have been born overseas were parents with the unusual arrangement of having the child living with the father but seeing the mother during the daytime only (28% of fathers and 34% of mothers).

### 7.1.3 Indigenous parents

Only a small proportion of parents were Indigenous. The representation of Indigenous fathers varied little across the care-time groups. Although applying to a small minority, mothers with daytime-only care were more likely than other parents to be Indigenous (14%, compared with 1–8% of other mothers and 0–7% of fathers).

### 7.1.4 Parental educational attainment

Care-time arrangements also varied systematically with the parents' level of educational attainment. Figures 7.1 and 7.2 present these trends for fathers and mothers respectively.

Both mothers and fathers with a shared care-time arrangement (whether equal care time or shared time involving more nights with the mother or with the father) were the most likely of all groups to have post-school qualifications. For example, 19% of fathers and 22% of mothers with equal care time had a degree or higher qualification, compared with 5–13% of fathers and 4–14% of mothers without shared care-time arrangements.<sup>4</sup>

Parents whose child spent most or all nights with the mother were more likely to have a low level of education, with 31–39% of these fathers and 30–41% of these mothers having left school before completing Year 12.

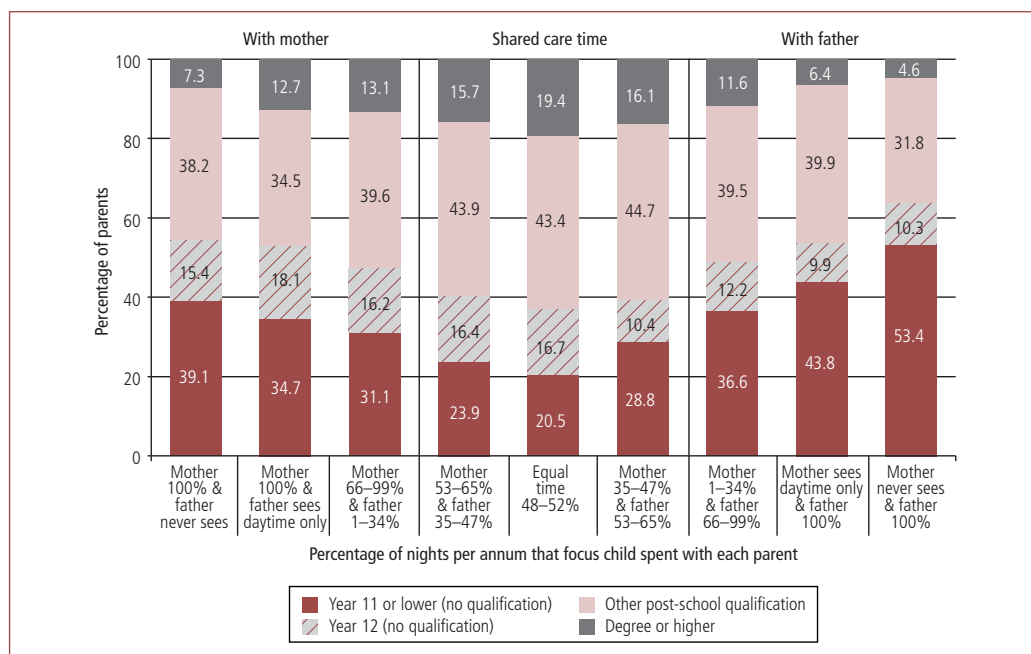
nights (representing one of the three shared care-time arrangements). Trends were not derived for these two small groups of mothers. Similarly, where the various care-time groups are subdivided further, trends are only derived for subgroups that comprised at least 40 respondents.

3 The children of young parents, of course, tend to be quite young, and as shown in Chapter 6 (and in this section), children under the age of 3 years old were the most likely of all groups to be in the care of their mother for 100% of nights.

4 The multivariate analysis suggest that the relationship between education and shared care time continues to hold when controlling other characteristics of parents, age of focus children and main family law pathways used to sort out parenting arrangements (see Appendix E).

Fathers whose child never saw the mother were the most likely of all fathers to have left school before Year 12 (53%), while fathers whose child saw the mother during the daytime only, were the second most likely of all fathers to have left school early (44%).

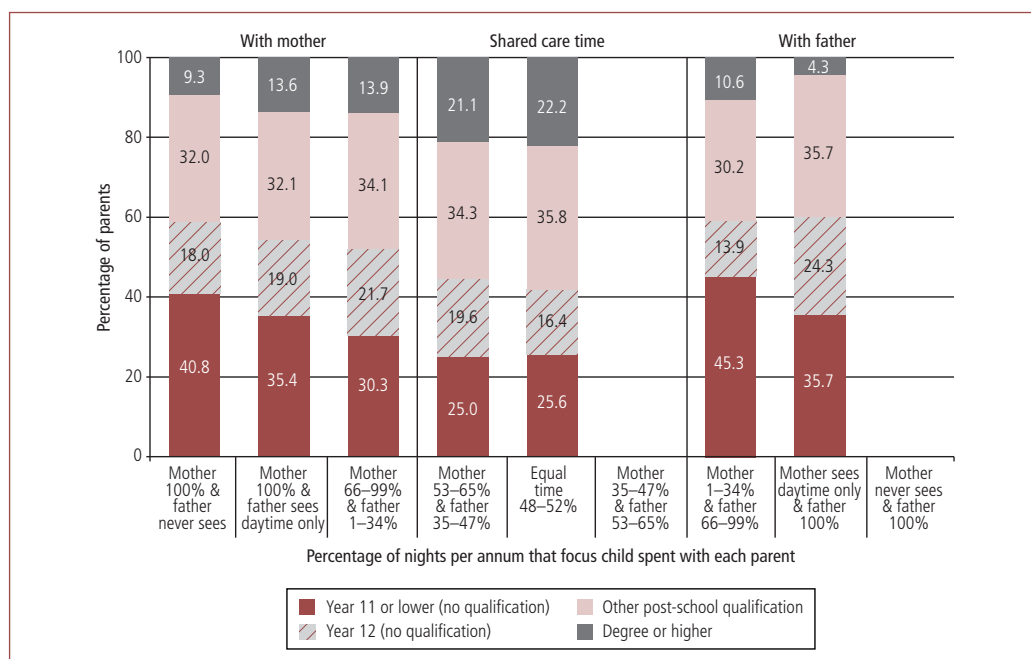
These trends are consistent with those reported by Smyth, Qu, and Weston (2004), which were based on Wave 1 of the Household, Income and Labour Dynamics in Australia (HILDA) survey.



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

Source: LSSFW1 2008

**Figure 7.1 Educational attainment, by care-time arrangement, fathers, 2008**



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

Source: LSSFW1 2008

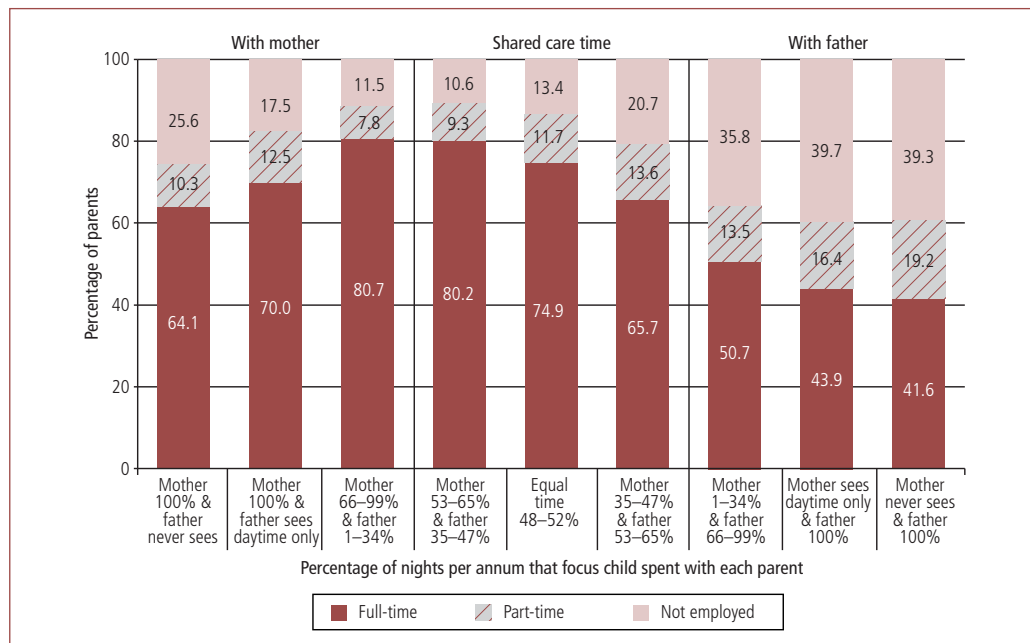
**Figure 7.2 Educational attainment, by care-time arrangement, mothers, 2008**

### 7.1.5 Labour force status

Parents' employment status varied with their care-time arrangements in understandable ways.

#### Fathers

The highest proportions of fathers in full-time paid work (80–81%) were those who cared for their child for 1–34% of nights (the traditional arrangement) or for 35–47% of nights (one of the shared care-time arrangements). The next most likely to be in full-time paid work were those with equal care time (75%). Between 87% and 89% of fathers in these three groups were employed either full-time or part-time (Figure 7.3).



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

Source: LSSF W1 2008

**Figure 7.3** Employment rates, by care-time arrangements, fathers, 2008

The employment rate of fathers decreased as the number of nights they had the child increased beyond equal care time. For example, the following proportions of fathers were in paid work: 79% of fathers with shared care time involving the child spending more nights with the father than with the mother; 64% of fathers with the majority of care nights; and 60–61% of fathers whose child spent all nights with them.<sup>5</sup>

Among fathers whose child never stayed overnight with them, those who never saw their child were less likely to have paid work than those who saw their child during the daytime (74% compared with 83%).

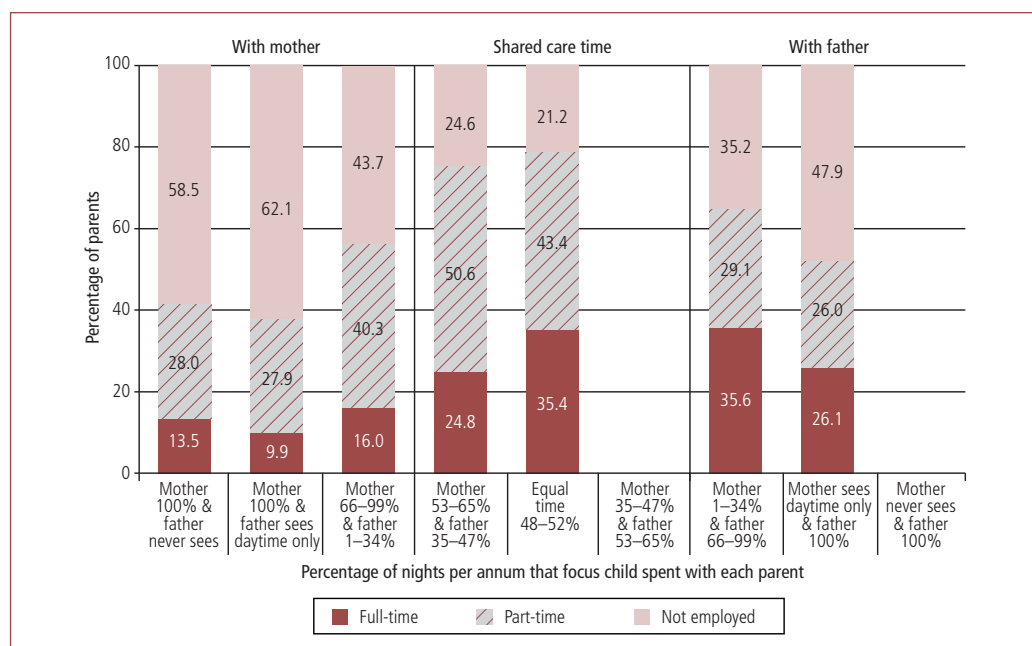
The relatively high employment rates of fathers with shared care time are consistent with the fact that they had relatively high levels of educational attainment. The lower employment rates of fathers who had the child in their care every night are also consistent with the fact that these fathers had relatively low educational levels. In addition, the fall in the employment rates of fathers whose care time increased beyond equal time is consistent with their increased caring responsibilities. That is, their caring responsibilities may have reduced their capacity to work

<sup>5</sup> The relatively low employment rate of fathers with 66–100% of care nights is consistent with data from the ABS Family Characteristics and Transitions Survey 2006–07, suggesting that sole fathers are less likely to be employed than couple fathers with dependent children (69% compared to 93%). Between 60% and 64% of fathers in the LSSF W1 2008 with 66–100% of care nights were employed and almost all would be classified as “sole fathers”—that is, they were not living with a partner (see Section 7.1.6). The parental responsibilities assumed by these fathers may well have combined with their relatively low levels of education (outlined in Section 7.1.4) to contribute to their relatively low employment rate.

or at least to hold a full-time job. Indeed, the part-time employment rate for these fathers was relatively high. In addition, some parents' decisions about care-time arrangements for their child may be influenced by the employment status of each parent. For example, where the child's mother is employed, fathers without paid work may be more likely to care for their child most or all nights.

## Mothers

Across all care-time arrangements, mothers were less likely than fathers to be employed, and more likely than fathers to have part-time work (Figure 7.4).



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

Source: LSSFW1 2008

**Figure 7.4** Employment rates, by care-time arrangements, mothers, 2008

The employment rates of mothers were lowest for those who cared for their child every night (38–42%) and highest for those with shared care time (75–79%). As was the case for fathers, these differences are likely to reflect a combination of the effects of educational attainment levels and the impact of child care responsibilities on their ability to sustain employment, along with the impact that their employment status may have on decisions about care-time arrangements.

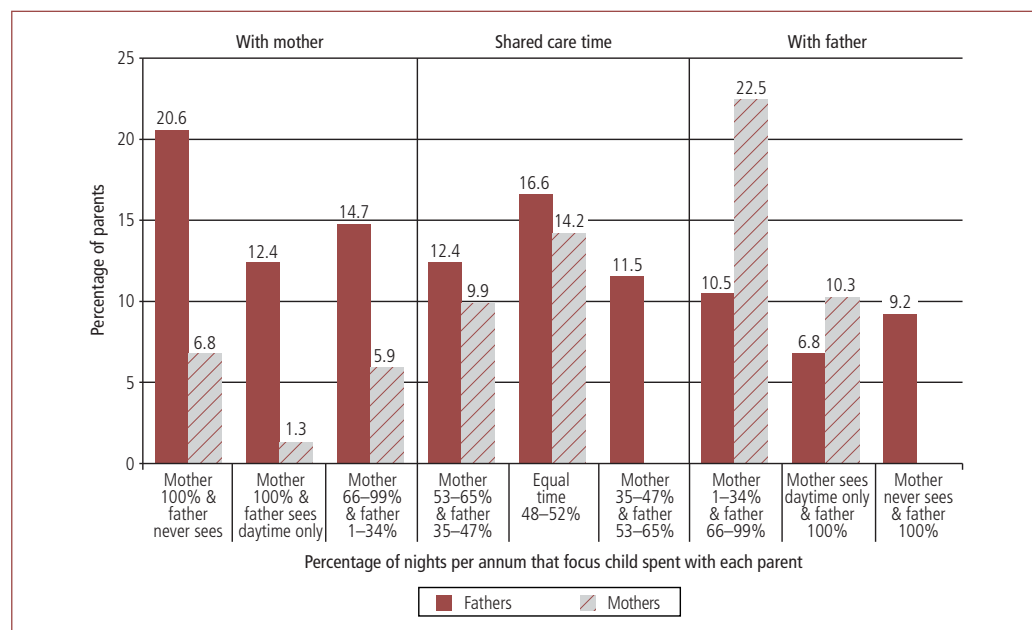
### 7.1.6 Post-separation re-partnering

In total, 14% of fathers and 6% of mothers were living with a partner at the time of the survey. Figure 7.5 shows that those most likely to be doing so were fathers who never saw their child (21%) and mothers who cared for their child for only 1–34% of nights (23%). Between 10% and 17% of parents with shared care-time arrangements had re-partnered, with the highest proportion being fathers and mothers with equal care time (17% of fathers and 14% of mothers).<sup>6</sup>

Despite their relative “freedom” related to not having their child stay overnight, only 10% of mothers with daytime-only care had re-partnered. As already noted, mothers with daytime-only care tended to be older than other mothers, and were more likely than other groups to have been born overseas and to have no post-school qualifications. As shown below, these mothers also tended to have low personal incomes (see Section 7.1.9) and around one-quarter were

<sup>6</sup> A proportion of the mothers living with a partner did not ever live with the other parent. The term “repartnered”, as used in this report, includes both those who had lived with the other parent and who had never lived with the other parent.

living with at least one child who was not the focus child (see Section 7.1.7). Such factors are likely to lower their chances of re-partnering (see Birrell, Rapson, & Hourigan, 2004).



Source: LSSFW1 2008

**Figure 7.5** Proportion of re-partnered parents, by care-time arrangement, mothers and fathers, 2008

### 7.1.7 Presence of other biological children in the household

The fathers who were most likely to have no children in their household were those with the minority of care nights and those whose child never stayed overnight with them (90–94%).

Mothers who cared for their child for a minority of nights were considerably more likely than fathers in this position to be living with a biological child (39% compared with 8%). The same applied to parents who saw their child during the daytime only: mothers with daytime-only care were considerably more likely than fathers with daytime-only care to be living with a biological child (27% compared with 6%).

In total, 25–29% of mothers with daytime-only care and mothers with the minority of nights had a full sibling of the focus child living with them. In other words, at least one of the former couple's children was living mostly (or entirely) with the father and at least one was living mostly or entirely with the mother.

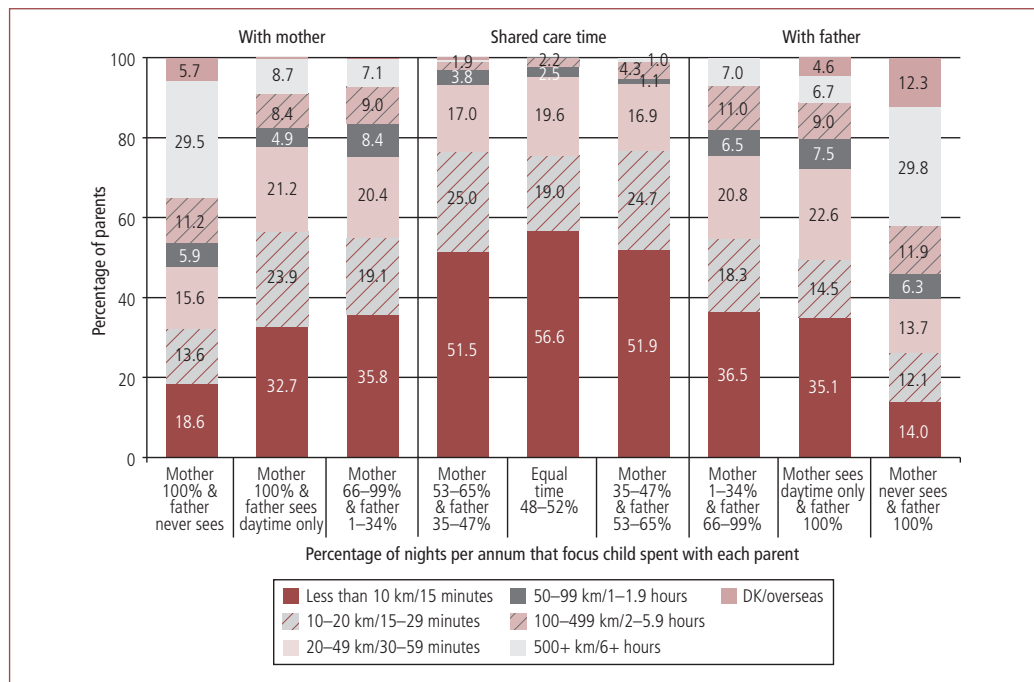
Parents with equal care time were the most likely of all groups to have full siblings of the focus child living with them (61–63% of these parents). The same care time schedules may have applied to all children in many of these families.

### 7.1.8 Distance between the two homes

Parents were asked to estimate the number of kilometres they lived from the other parent, and if they were unable to answer this question, to estimate the length of time it would take to drive to the other parent's home. The kilometres and drive time estimates were then combined.

Figures 7.6 and 7.7 show that most parents in most care-time arrangements indicated that they lived within 50 km of the other parent (or one hour's drive).

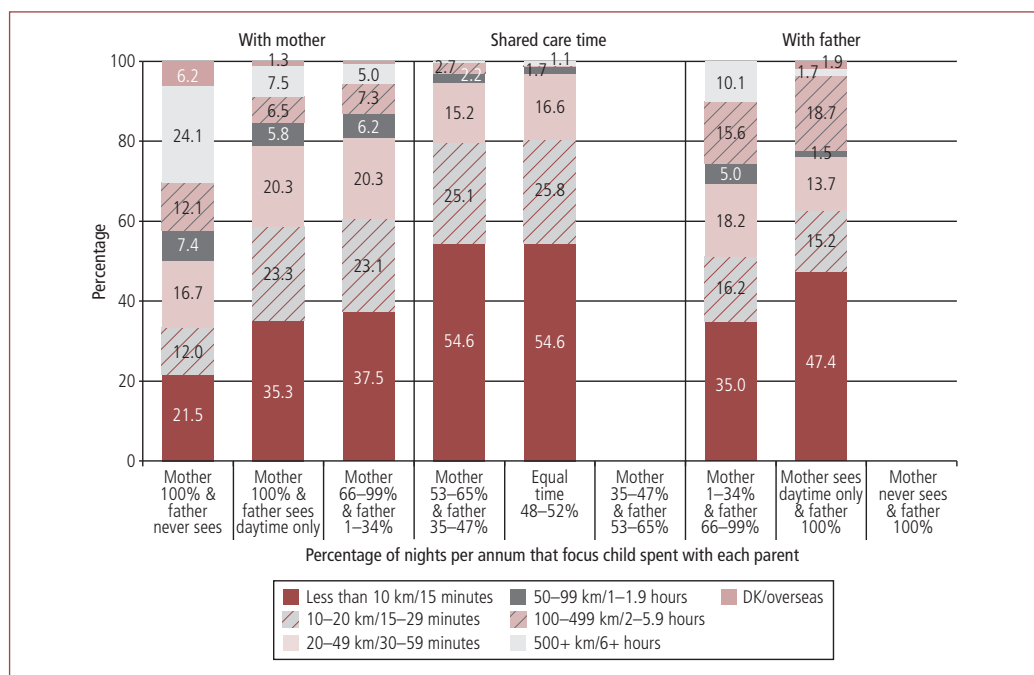
Shared care time was much more common when parents lived near each other than when they lived a considerable distance apart. Among those with shared care-time arrangements, over 50% lived less than 10 km or 15 minutes apart. Three-quarters (76–77%) of these fathers and 80% of these mothers estimated that they lived within 20 km or a 30-minute drive from the other parent, compared with 26–57% of other fathers and 34–63% of other mothers.



Notes: For clarity, values below 1.0% are not included. Percentages may not total exactly 100.0% due to rounding.

Source: LSSF W1 2008

**Figure 7.6** Distance/time parents live apart from each other, by care-time arrangement, fathers, 2008



Notes: For clarity, values below 1.0% are not included. Percentages may not total exactly 100.0% due to rounding.

Source: LSSF W1 2008

**Figure 7.7** Distance/time parents live apart from each other, by care-time arrangement, mothers, 2008

It may be disruptive for children with shared care-time arrangements to travel considerable distances between the two homes, especially given that many of their friends and any extracurricular activities are likely to be located near one of their homes. Only a small proportion of

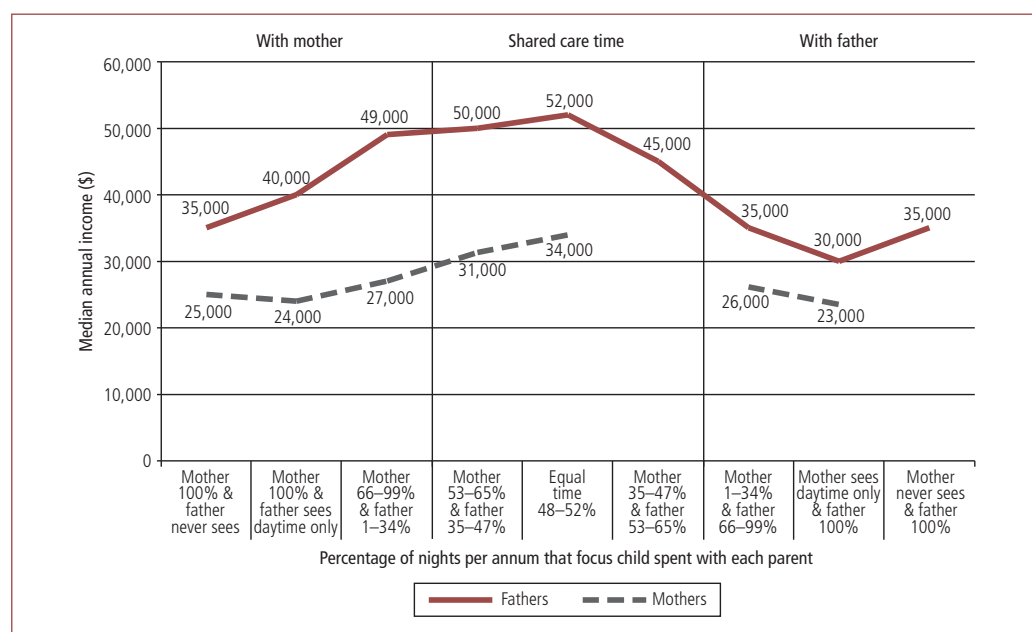


fathers (5–6%) and mothers (3–5%) with shared care time lived at least 50 km apart or at least an hour's drive from the other parent.

Parents whose child never saw one of the parents were the least likely to indicate that they lived near the other parent.

### 7.1.9 Personal income and financial wellbeing

Figure 7.8 shows that mothers and fathers with equal care time and with shared care time involving more nights with the mother had the highest median personal incomes (mothers: \$34,000 and \$31,000 respectively; fathers: \$52,000 and \$50,000 respectively).



Source: LSSF W1 2008

**Figure 7.8** Individual income (median per year), by care-time arrangements, mothers and fathers, 2008

The median incomes of other mothers ranged from \$23,000 for mothers who cared for their child during the daytime only to \$27,000 for mothers who cared for their child most nights (i.e., 66–99% of nights).

Fathers who never saw their child and fathers who cared for their child for most or all nights had the lowest median incomes of all fathers (\$30,000–\$35,000), while those with a minority of care nights (1–34% of nights) had the second highest median income (\$49,000).

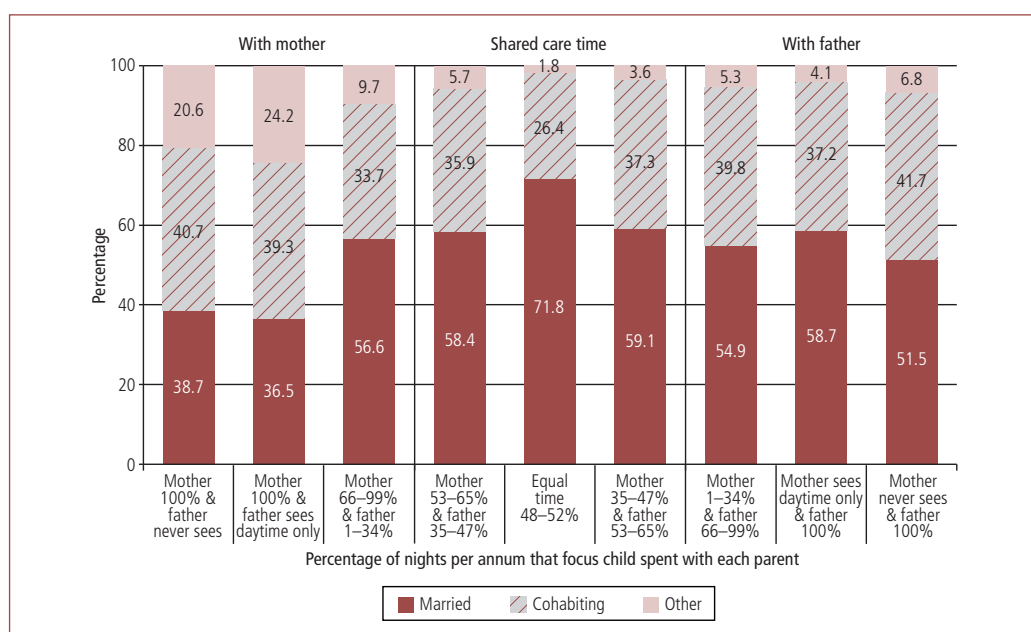
### 7.1.10 Pre-separation circumstances

#### Relationship status pre-separation and average length of relationship

Parents with equal care time were considerably more likely than all other groups to have been married to the child's other parent. Among fathers with an equal care-time arrangement, 72% had been married to the child's mother at the time of separation, 26% had been cohabiting and 2% had not been living with the mother (Figure 7.9). Among mothers, 77% had been married, 21% had been cohabiting and 2% had not been living with the father (Figure 7.10).

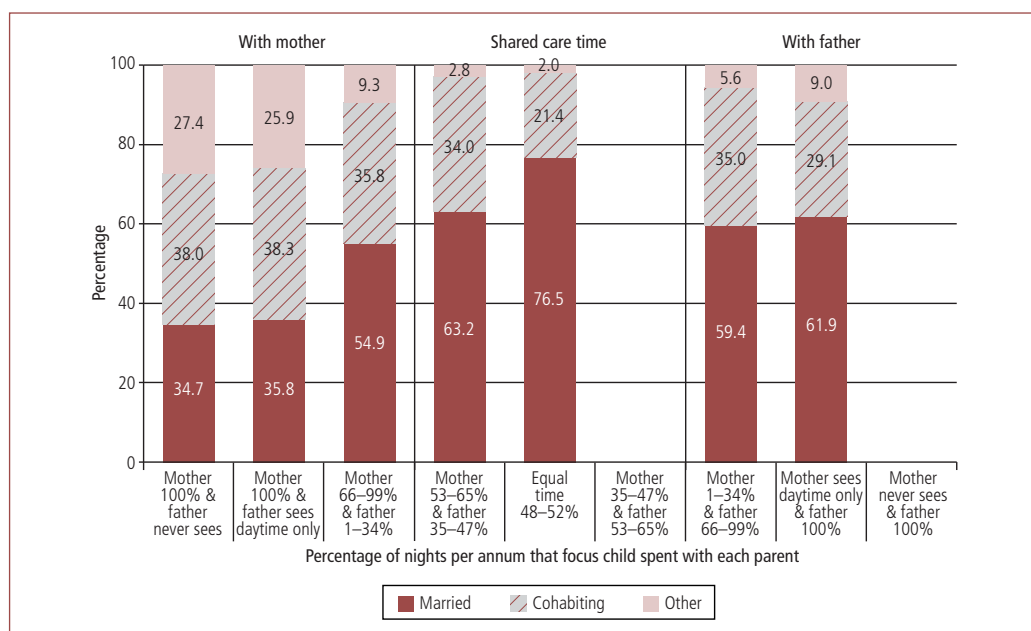
The pattern of relationship status at the time of separation was very similar for parents whose child either never saw the father or saw him during the daytime only. These parents were the least likely of all groups to have been married to the other parent and the most likely to have not been living with this parent when the child was born. In addition, much the same proportions of parents in these two groups had been married to the child's other parent or had been in a cohabiting relationship with this parent. Specifically, 37–39% of these fathers had been

married to their child's mother, 39–41% had been cohabiting with her, and 21–24% had not been living with her when their child was born. Of the mothers, 35–36% had been married to their child's father, 38% had been cohabiting with their child's father, and 26–27% had not been living with him when they gave birth to this child.



Source: LSSFW1 2008

**Figure 7.9 Relationship status at separation, by care-time arrangement, fathers, 2008**



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

Source: LSSFW1 2008

**Figure 7.10 Relationship status at separation, by care-time arrangement, mothers, 2008**

The duration of the parental relationship before separation varied systematically with care-time arrangements. On average, the longer the duration of the relationship, the greater was the proportion of nights that the child spent with the father. For example, the average duration of

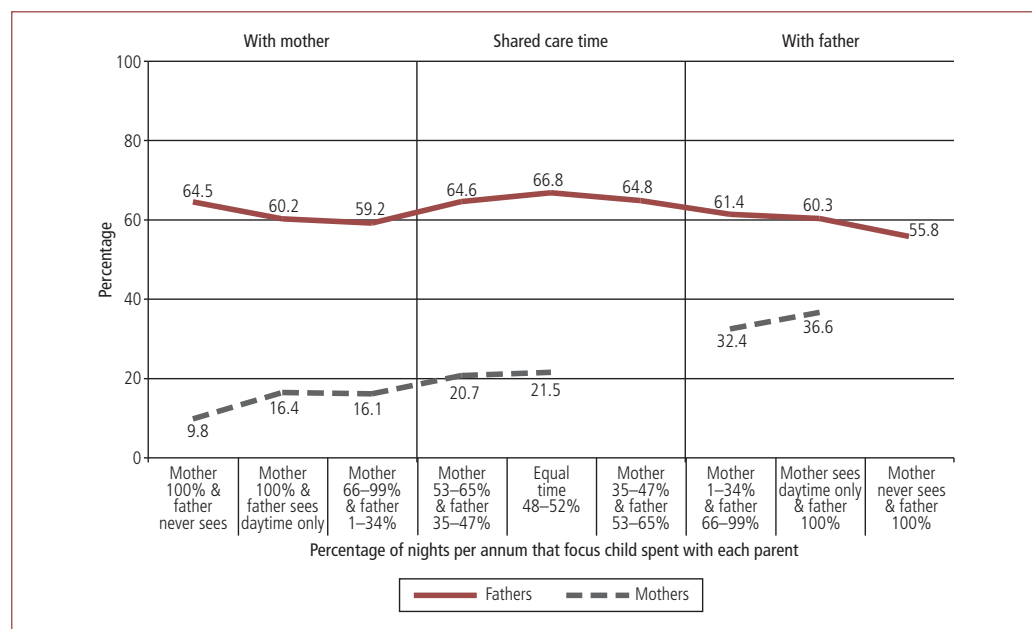
relationships for fathers with no overnight stays was around 7 years, compared with 11 years for fathers with equal care time.

### Parental involvement in their child's activities pre-separation

Maintenance of a pre-existing meaningful and positive relationship with each parent is clearly important to children after parental separation (e.g., see Kelly, 2006) and reflects a key objective of the reforms. However, where a child's relationship with one parent has been a distant one, there would need to be sensitivities around the rate at which children engage with this parent after separation. This section examines the extent to which post-separation care-time arrangements vary with each parent's pre-separation involvement with the child, as reported by respondents.

Parents were asked to indicate how involved they had been in their focus child's day-to-day activities before the separation, and also how involved their child's other parent had been in this child's activities. The response options were: "very involved", "quite involved", "not very involved" and "not at all involved".

Views varied considerably according to the gender of respondents and their care-time arrangements. Figure 7.11 shows the proportions of fathers and mothers with each care-time arrangement who indicated that the father had been "very involved", while Figure 7.12 shows the proportions who indicated that the mother had been "very involved".



Source: LSSF W1 2008

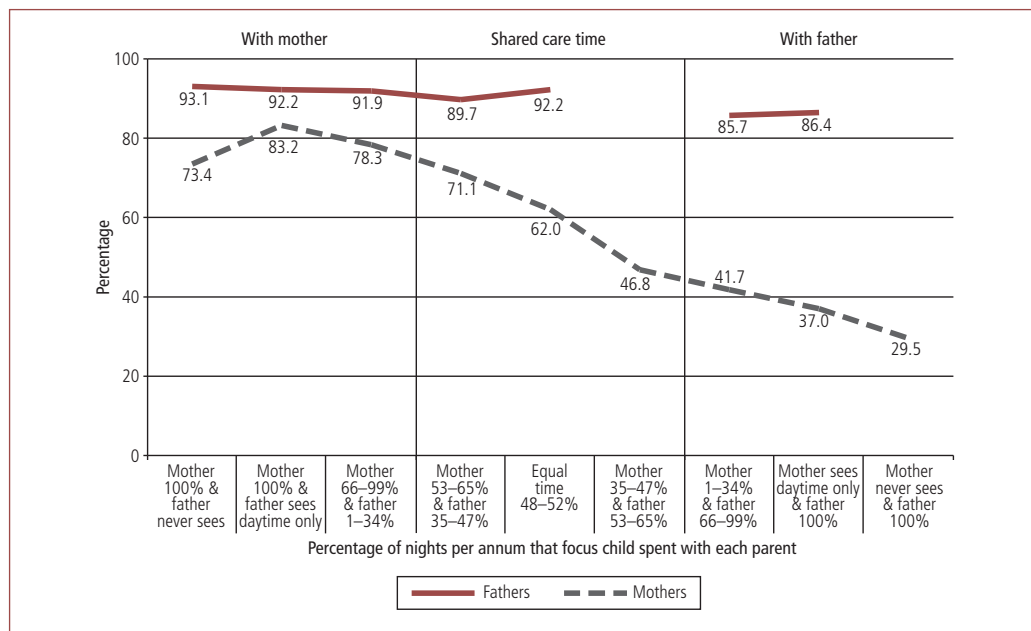
**Figure 7.11** Reports that fathers were "very involved" in the focus child's day-to-day activities pre-separation, fathers and mothers, 2008

Most parents across all groups indicated that they, themselves, had been very involved in their child's day-to-day activities, with mothers being more likely to state this than fathers (86–93% compared to 56–67% respectively).

It is likely that the fairly small variation in self-reported involvement across care-time arrangements is partly explained by a social desirability bias (or "defensiveness") on the part of the respondent—compared with these trends for self-reported involvement, fathers and mothers reports about their child's other parent varied considerably according to care-time arrangements. Nevertheless, it is also possible that the latter assessments were to some extent influenced by systematic bias associated with post-separation care-time arrangements.

Only a minority of mothers in each care-time arrangement saw fathers as being very involved in their child's everyday activities prior to separation (10–37%), but the more nights that the

fathers cared for their child post-separation, the more likely were mothers to report that their child's father had been very involved. For example, this view was expressed by only 10% of mothers whose child never saw the father, by 21–22% of mothers with shared care-time arrangements, and by 32–37% of mothers whose child spent most or all nights with the father. Figure 7.12 suggests that mothers' post-separation care-time circumstances are also related to their level of pre-separation involvement—if reliance is placed on the perspective of fathers. To some extent, the same is true if reliance is placed on the perspective of mothers, for a higher proportion of mothers in all groups with equal or greater care time reported that they had been “very involved” in their child's day-to-day activities prior to separation, compared with mothers with only a minority of nights or no care nights (90–93% compared to 86%).



Source: LSSF W1 2008

**Figure 7.12** Reports that mothers were “very involved” in the focus child's day-to-day activities pre-separation, fathers and mothers, 2008

The difference in the reports of fathers and mothers about mothers' level of pre-separation involvement was relatively small where mothers cared for the child on most nights (66–99% of nights) or where the father saw the child during the daytime only. Among those with such care-time arrangements, 92% of mothers and 78–83% of fathers reported that the mother had been very involved in the child's everyday activities.

In other words, the perspective of each parents' reports about their child's other parent would suggest that care-time arrangements were influenced by mothers' and fathers' pre-separation level of involvement.

However, reports of both pre-separation level of involvement and post-separation care-time arrangements also varied in understandable ways with the child's age. It is therefore very likely that the child's age contributed to the relationship between actual pre-separation involvement and post-separation care-time arrangements. For instance, infants are more likely to be in the care of mothers both before any separation and afterwards. In the LSSF W1 2008, the proportion of fathers who saw their child's mother as having been very involved in the child's life prior to separation decreased as the age of the child increased, from 84% of those whose child was under 3 years old to 62% of those whose child was 15–17 years old (see Appendix E for further details). It has already been shown that, while most children of all ages were in the care of their mothers most or all nights, this was particularly the case for children under 3 years old, while a relatively high proportion of children aged 15–17 years were in the care of their father.

Separated parents in the General Population of Parents Survey (GPPS) 2009 were also asked about each parent's involvement in their focus child's day-to-day activities pre-separation, and both separated and non-separated parents were asked about the current level of involvement of

each parent in their child's everyday activities. Unlike the separated parents in the GPPS 2009, all those in LSSF W1 2008 had separated after the reforms and most had quite young children (58% were under 5 years old).

Table 7.1 shows the patterns of answers provided by non-separated and separated fathers and mothers about the current level of involvement of each parent in their child's everyday activities, and the patterns of answers of separated parents whose focus child lived mostly or entirely with the mother (here called "non-resident fathers" and "resident mothers").<sup>7</sup>

**Table 7.1 Parents' current level of involvement in their focus child's day-to-day activities and level of pre-separation involvement, reports by non-separated and separated fathers and mothers, 2009**

	Non-separated fathers	Non-separated mothers	Non-resident fathers	Resident mothers
<b>Father's current level of involvement</b>				
Very involved	52.7	36.0	21.3	5.2
Quite involved	40.6	50.7	32.2	15.2
Not very involved	6.7	12.7	29.9	36.7
Not at all involved	0.1	0.5	16.7	42.9
<b>Total</b>	<b>100.1</b>	<b>99.9</b>	<b>100.1</b>	<b>100.0</b>
<b>Number of observations</b>	<b>1,789</b>	<b>2,031</b>	<b>174</b>	<b>534</b>
<b>Mother's current level of involvement</b>				
Very involved	84.3	87.3	68.6	80.4
Quite involved	14.5	12.1	22.6	18.4
Not very involved	1.2	0.5	7.6	1.3
Not at all involved	0.0	0.2	1.3	0.0
<b>Total</b>	<b>100.0</b>	<b>100.1</b>	<b>100.1</b>	<b>100.1</b>
<b>Number of observations</b>	<b>1,790</b>	<b>2,035</b>	<b>159</b>	<b>560</b>
<b>Father's involvement before separation <sup>a</sup></b>				
Very involved			65.8	14.1
Quite involved			20.2	21.8
Not very involved			10.5	46.5
Not at all involved			3.5	17.6
<b>Total</b>			<b>100.0</b>	<b>100.0</b>
<b>Number of observations</b>			<b>114</b>	<b>312</b>
<b>Mother's involvement before separation <sup>a</sup></b>				
Very involved			73.0	89.7
Quite involved			24.3	9.9
Not very involved			2.7	0.3
Not at all involved			0.0	0.0
<b>Total</b>			<b>100.0</b>	<b>99.9</b>
<b>Number of observations</b>			<b>111</b>	<b>312</b>

Notes: <sup>a</sup> Excludes parents who did not live with the other parent when the focus child was born. Percentages may not total exactly 100.0% due to rounding.

Source: GPPS 2009

Despite the differences between the two samples in the GPPS and the LSSF, a similar pattern of results emerged in the reports of separated parents whose focus child lived mostly or entirely with the mother. That is, among participants in the GPPS 2009:

7 The classification of care-time arrangements was based on whether the parent indicated that the child lived mostly or entirely with them or the other parent, or whether the child spent roughly equal time with each parent. There were too few mothers with minority care time and mothers with equal care time (fewer than 40 in each category) to enable reliable estimates for these groups. No comparisons were therefore made of the views of fathers and mothers with these arrangements.

- non-resident fathers were much more likely than resident mothers to indicate high paternal involvement in the child's activities prior to separation (66% compared to 14%);
- resident mothers were more likely than non-resident fathers to indicate high maternal involvement in the child's activities prior to separation (90% compared to 73%); and
- the level of agreement between the parents was greater for maternal than paternal involvement.

Compared with these GPPS 2009 trends for separated parents, the views of non-separated mothers and fathers regarding the father's *current* level of involvement in the child's everyday activities were more similar. Specifically:

- 36% of non-separated mothers and 53% of non-separated fathers reported high paternal involvement; and
- 87% of non-separated mothers and 84% of non-separated fathers reported high maternal involvement.

In other words, both non-separated fathers and non-separated mothers were more likely to report high maternal than paternal involvement in their focus child's everyday activities, and mothers were less likely than fathers to report high paternal involvement—a trend that was also found for separated parents in relation to pre-separation involvement.

In summary, the trends emerging from the reports of respondents in the LSSF W1 2008 about the other parent's level of pre-separation involvement in their child's day-to-day activities are clearly consistent with how many nights each parent spends with their child post-separation. Where comparisons were possible, a similar pattern of results emerged for separated parents in the GPPS 2009. Such results are consistent with the hypothesis that pre-separation involvement contributes quite strongly to post-separation care-time arrangements. However, the age of the child would have influenced both the level of maternal (and paternal) involvement in particular and the post-separation care-time arrangement. Furthermore, high paternal involvement was more likely to be reported by non-separated fathers than non-separated mothers in reference to the current situation, and by non-resident fathers than resident mothers in reference to the pre-separation situation. This gender difference was much more marked for the separated parents.

## 7.2 Development of care-time arrangements: Process and evaluations

While parenting arrangements cover more than parenting time (e.g., they include responsibilities for contributing to decisions affecting the child's long-term wellbeing), allocation of care time would be a central issue for many parents. This section, which is based on the LSSF W1 2008, focuses on the relationship between care-time arrangements and the following matters relating to sorting out parenting arrangements:<sup>8</sup>

- whether arrangements had been sorted out;
- the main pathway used;
- their perceived level of flexibility; and
- parents' views about how well or poorly the arrangements were working—for themselves, the other parent and the child (all three parties).

### 7.2.1 Whether parenting arrangements had been sorted out

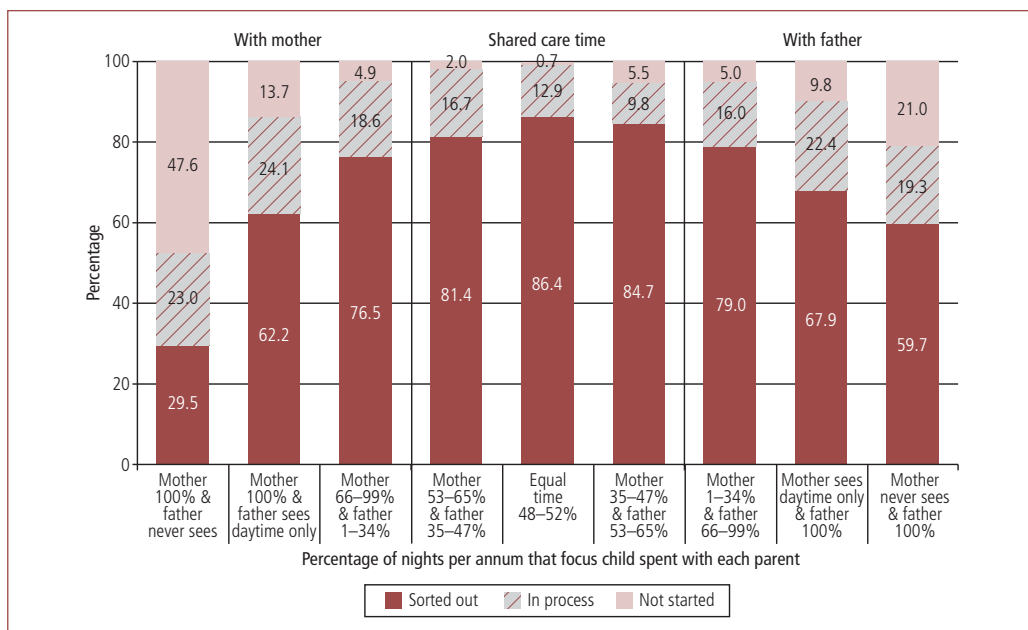
Figures 7.13 and 7.14 show the proportion of fathers and mothers in the LSSF W1 2008 who said that they had sorted out their parenting arrangements, were in the process of doing so, or had not yet begun the process.<sup>9</sup>

Most parents in most of the care-time groups believed that they had sorted out their parenting arrangements, with parents with shared care time being the most likely of all groups to report

<sup>8</sup> The care-time arrangements in this chapter refer to those that were occurring at the time of the survey, regardless of whether parents believed that these arrangements had been sorted out.

<sup>9</sup> The response options were: "everything sorted out", "in the process of sorting things out" and "nothing is sorted out". It is assumed that respondents who chose the latter response had not yet begun to sort out their arrangements.

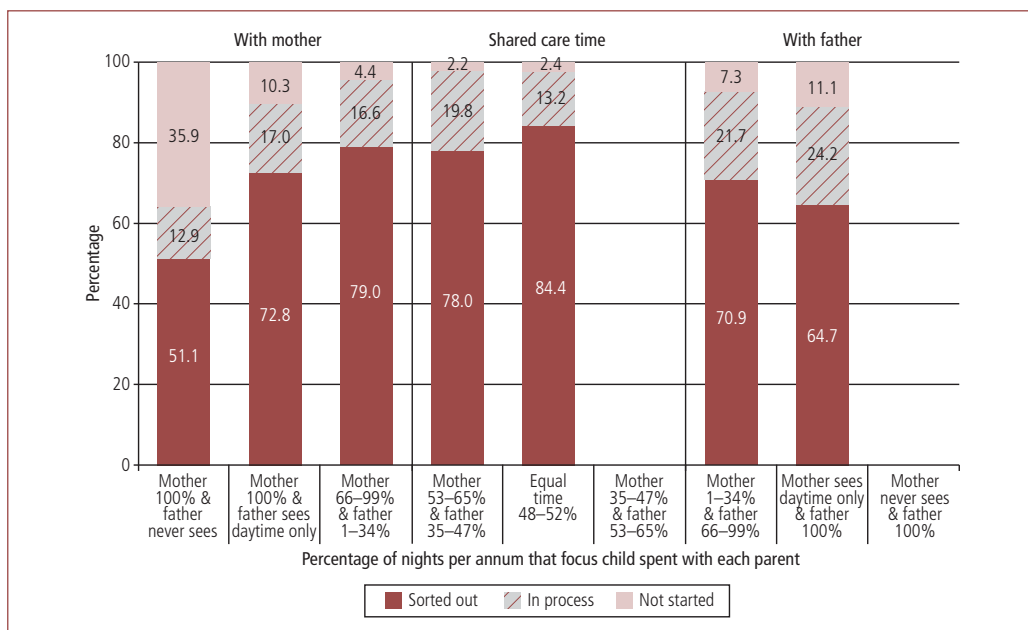
this (81–86% of fathers and 78–84% of mothers). In general, the more unequal the number of nights with one parent, the lower was the likelihood that arrangements had been sorted out. Parents whose focus child never saw his or her father were the least likely to report that arrangements had been sorted out (30% of fathers and 51% of mothers).



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

Source: LSSF W1 2008

**Figure 7.13 Whether parenting arrangements had been sorted out, by care-time arrangements, fathers, 2008**



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

Source: LSSF W1 2008

**Figure 7.14 Whether parenting arrangements had been sorted out, by care-time arrangements, mothers, 2008**



However, parents with 100% of care nights were more likely than their counterparts with no care nights to report that arrangements had been sorted out. Specifically, the following proportions of parents reported that arrangements had been sorted out:

- 51% of mothers whose child never saw the father, compared with 30% of fathers who indicated that they never saw the child;
- 73% of mothers whose child saw his or her father during the daytime only, compared with 62% of fathers with daytime-only care; and
- 68% of fathers who indicated that their child saw the mother during the daytime only, compared with 65% of mothers with daytime-only care.

## 7.2.2 Main family law pathway used to sort out parenting arrangements

Parents who said that they had sorted out their parenting arrangements were asked to indicate the main way in which they had achieved this.<sup>10</sup> The following list of ways of “sorting out” parenting arrangements were mentioned to respondents:

- counselling, mediation or a dispute resolution service;
- a lawyer;
- the courts;
- discussions between themselves;
- no particular way, it “just happened”; and
- some other way.

Figures 7.15 and 7.16 show the patterns of answers provided by mothers and fathers respectively with each of the care-time arrangements. Parents in most groups most commonly reported that they had sorted out their parenting arrangements mainly through discussions with the other parent rather than with the help of relationship services. This was reported by most parents (58–74%) in all except the following four groups:

- fathers and mothers who said that their child never saw his or her father (48% and 34% respectively); and
- fathers who indicated that their child never saw their mother or saw their mother during the daytime only (27–42%).<sup>11</sup>

It has already been noted that the more unequal the number of nights with each parent, the more likely were the parents to indicate that their arrangements had not been sorted out (see Section 7.2.1). In addition, among those who indicated that their arrangements had been sorted out, the tendency for parents to state that their arrangements had “just happened” increased with increasing inequality in care-time arrangements. For example, this was reported by:

- 42% of fathers who said that the child never saw the mother, and 43% of mothers who said that the child never saw the father;
- 28% of fathers who indicated that they never saw their child and 23% who indicated that their child saw the mother during the daytime only; and
- fewer than 10% of parents with shared care-time arrangements.

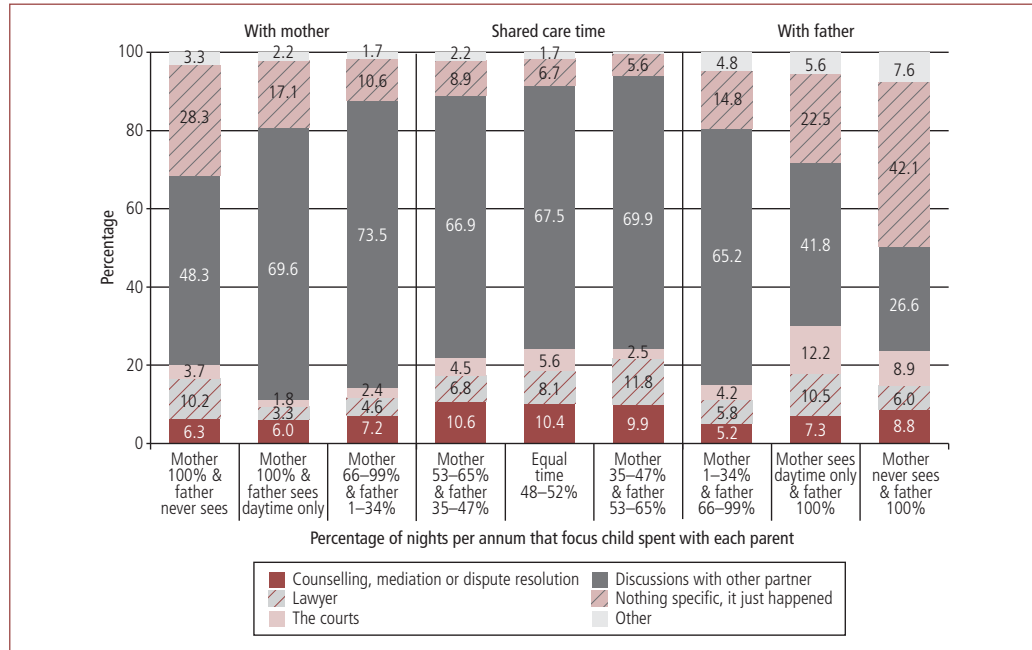
Those most likely to say that they had mainly used family law system processes (i.e., counsellors, mediators or dispute resolution services, lawyers or the courts) were mothers with a shared care-time arrangement (30–32% compared to 8–19% of other mothers) and fathers whose child saw the mother during the daytime only (30% compared to 11–24% of other fathers).

<sup>10</sup> Only 28 mothers with daytime-only care indicated that they had sorted out their arrangements and outlined the main pathway they had adopted to achieve this. This is too small a sample size to allow statistically reliable estimates to be produced. The data for this group (along with the mothers with shared time involving more nights with the father and those who never saw their child) were therefore omitted from the analysis in this section.

<sup>11</sup> As noted above, the pathways used by mothers in three care-time groups were not assessed because there were fewer than 40 mothers represented: those with 35–47% of care nights, those who saw their child during the daytime only and those who never saw their child.

Those least likely to report the use of these family law system processes were:

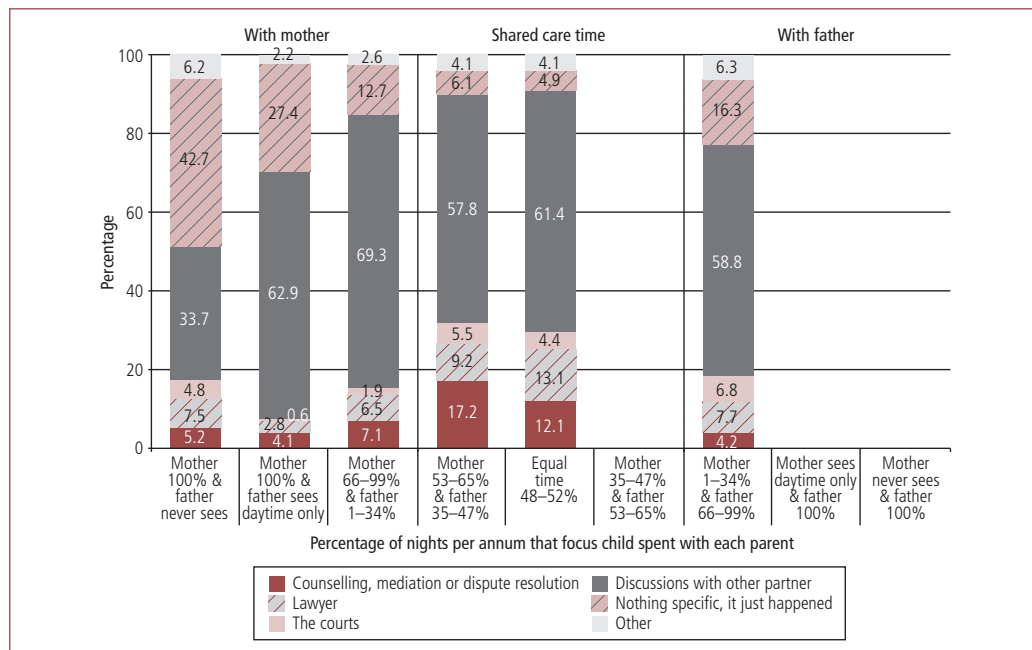
- fathers and mothers who indicated that their child saw the father during the daytime only (11% and 8% respectively);
- the “mainstream” group of fathers and mothers, where mothers cared for the child on most nights (14–16%); and
- fathers who reported that they cared for the child on most nights (15% compared with 19% of mothers who reported this).



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

Source: LSSF W1 2008

**Figure 7.15 Main pathway for sorting out parenting arrangements, fathers, 2008**



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

Source: LSSF W1 2008

**Figure 7.16 Main pathway for sorting out parenting arrangements, mothers, 2008**

Overall, 6–11% of fathers and 4–17% of mothers reported that they had sorted out their arrangements mainly with the assistance of counselling, mediation or dispute resolution services. Mothers with shared care time were more likely than other mothers to report this (12–17% compared to 4–7%). And the same direction of trends was apparent for fathers as mothers, although differences across care-time arrangements were not as great for fathers.

Another 3–12% of fathers and 3–13% of mothers said that their arrangements were mainly sorted out with the help of a lawyer. While the highest proportion of parents reporting this pathway were mothers with equal care time (13%) and fathers with shared care involving more nights with him than with the mother (12%), these percentages were not markedly higher than those for some of the other groups. Those least likely to report that they had mainly used a lawyer were fathers and mothers whose child saw the father during the daytime only (reported by 3% of fathers and mothers taken separately). Again, these percentages were not markedly lower than some of the other percentages.

A further 2–12% of fathers and 1–7% of mothers indicated that they had sorted out their arrangements mainly through the courts. The highest proportion reporting this were fathers who indicated that their child saw his or her mother during the daytime only (12%) or not at all (9%). This was reported by 2–6% of other fathers and by 1–7% of mothers.

In summary, most parents in most groups reported that they had sorted out their arrangements mainly through discussions with the other parent, although the more unequal the care-time arrangements the more likely were parents to indicate that their arrangements had “just happened”. Up to 11% of fathers and 17% of mothers said that they had mainly used counselling, mediation or dispute resolution; up to 12–13% of fathers and mothers indicated that they had mainly used a lawyer; and up to 12% of fathers and 7% of mothers indicated that they had mainly used the courts. Taken together, those who were most likely to say that they mainly used family law system processes (i.e., counsellors, mediators or dispute resolution services, lawyers or the courts) were mothers with a shared care-time arrangement and fathers whose child saw the mother during the daytime only (reported by nearly one in three of such parents).

### 7.2.3 Perceived flexibility of arrangements

Having some level of flexibility of care-time arrangements can be important and it should be driven more by the needs of the children than those of the parents.

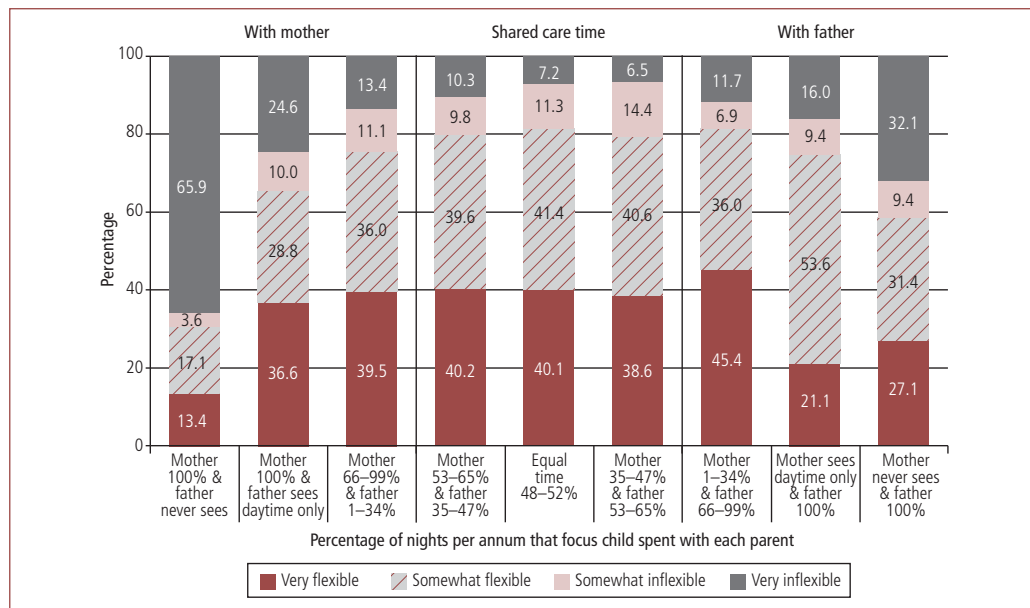
Immediately after ascertaining their care-time patterns, parents in the LSSF W1 2008 were asked to indicate the extent to which these arrangements were flexible and workable. It is likely then, that many parents focused exclusively on their care-time arrangements when answering these questions.<sup>12</sup> Given time constraints, the meaning of “flexibility” and the extent to which any flexibility was influenced by the needs of the child or either parent were not ascertained. Figures 7.17 and 7.18 depict parents’ views about the flexibility of arrangements according to their care-time patterns and gender.

Most parents in all except one group indicated that their arrangements were somewhat or very flexible. Fathers who never saw their child formed the exception, with most of these fathers describing their arrangements as “very inflexible” (66%).

Perceptions of flexibility varied with care-time arrangements and gender of respondent. Parents with the majority of care time were more likely to believe that arrangements were flexible than parents with the minority of care time (e.g., where the father saw the child during the daytime only, 65% of fathers and 81% of mothers described the arrangements as flexible).

Among parents with shared care time, fathers were more likely than mothers to believe that arrangements were somewhat or very flexible (80–82% compared to 71–75%). Fathers with shared care time and those who cared for their child most nights were the most likely of all fathers to believe that their arrangements were somewhat or very flexible (80–82% compared to 31–76% of other fathers). Mothers who cared for their child most nights and mothers whose child saw the father during the daytime only were the most likely of all mothers to believe that arrangements were flexible (81% compared to 56–75% of other mothers).

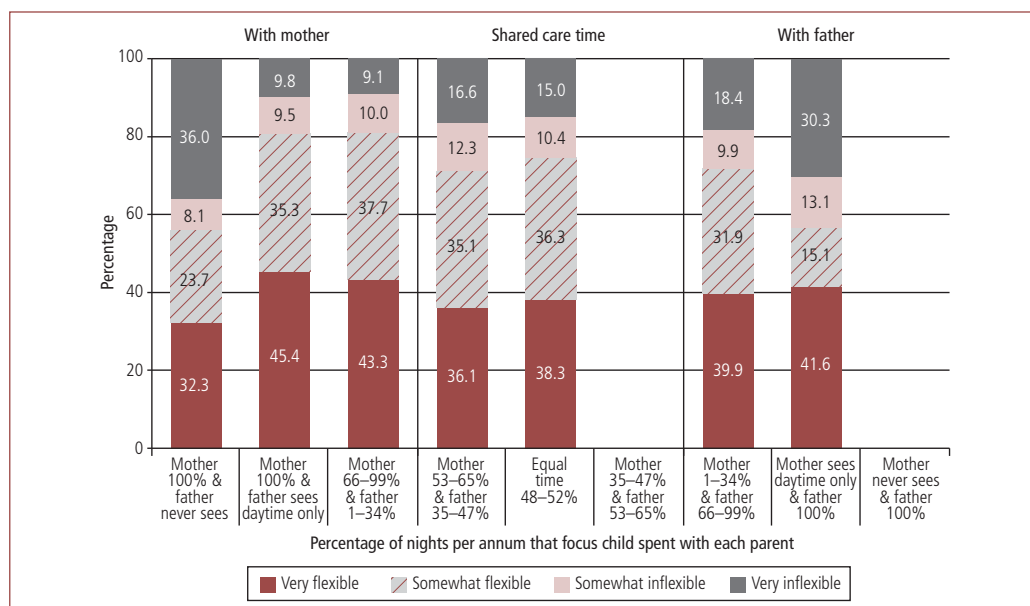
<sup>12</sup> Questions about whether parenting arrangements had been sorted out and the main means of achieving this were asked at a later time in the interview.



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

Source: LSSF W1 2008

**Figure 7.17 Flexibility of parenting arrangements, fathers, 2008**



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

Source: LSSF W1 2008

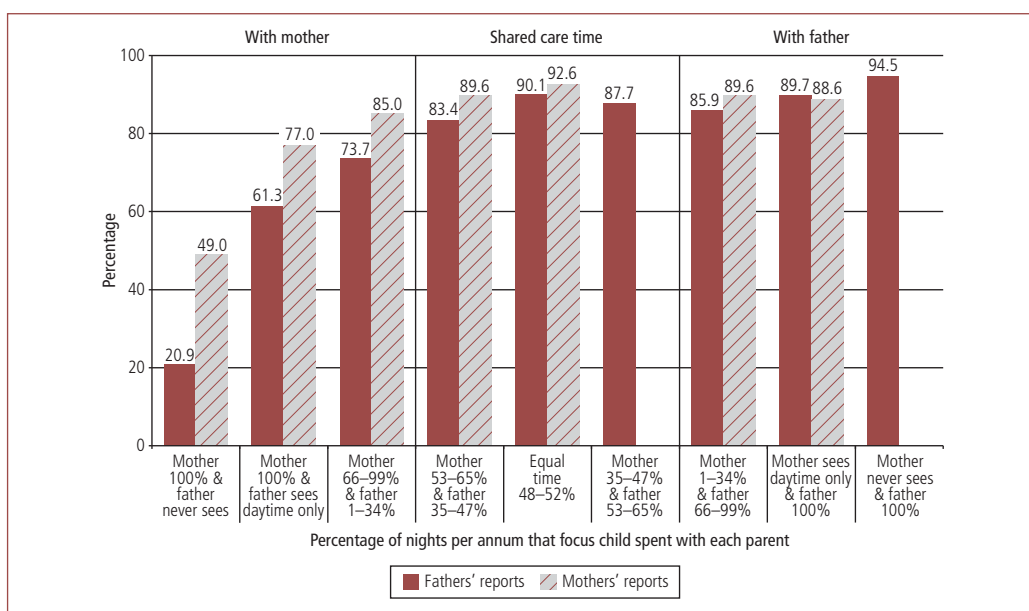
**Figure 7.18 Flexibility of parenting arrangements, mothers, 2008**

## 7.2.4 Perceived workability of parenting arrangements for respondent, their child and child's other parent

Parents were asked to indicate how well their parenting arrangements were working for them, their child and for the child's other parent. The response categories were: "really well", "fairly well", "not so well" and "badly".

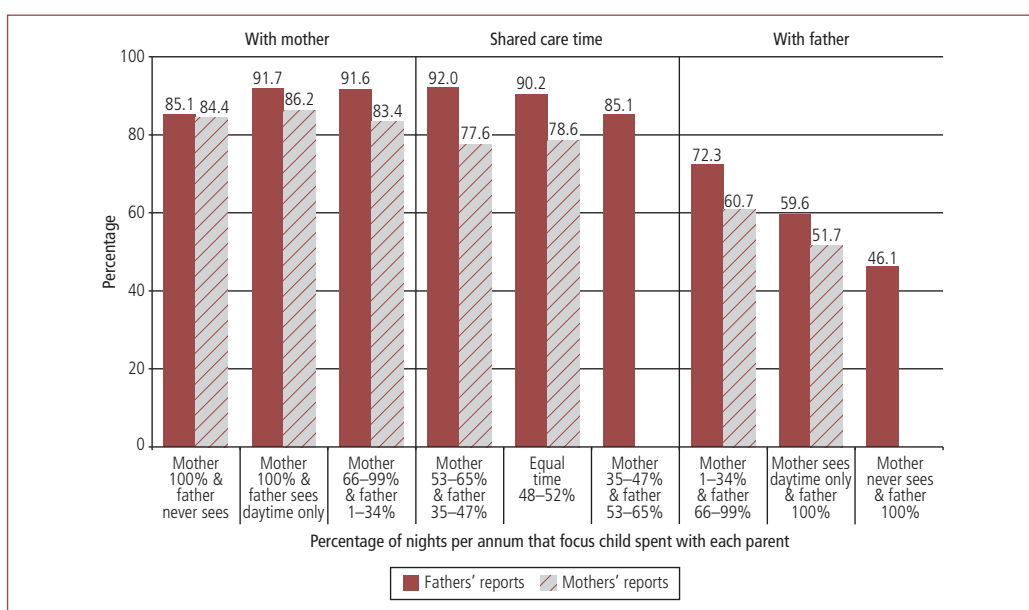
### Overall patterns of perceived workability

Figures 7.19 and 7.20 show the proportions of parents with each care-time pattern who indicated that the arrangements worked well ("really well" or "very well") for the father and mother



Source: LSSFW1 2008

**Figure 7.19** Reports by parents that the current parenting arrangements were working “really well” or “fairly well” for fathers, fathers and mothers, 2008



Source: LSSFW1 2008

**Figure 7.20** Reports by parents that the current parenting arrangements were working “really well” or “fairly well” for mothers, fathers and mothers, 2008

respectively, while Figure 7.21 shows the proportions who indicated that the arrangements worked well for their focus child.

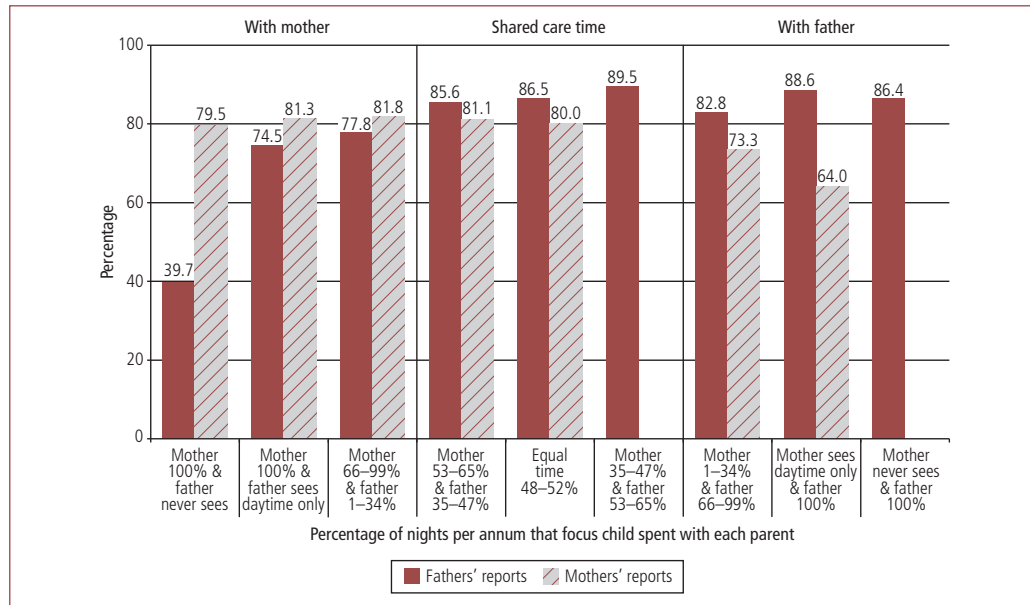
#### For fathers

Parenting arrangements were most likely to be seen as working well for the fathers where the child experienced shared care time or spent most or all nights with the father. This was reported by 83–95% of fathers and 89–93% of mothers with such circumstances.

The greater the number of nights that the child spent with the mother compared with father, the less likely were parents to see the arrangements as working well for the father, and the greater

was the gender difference in evaluations, with fathers being less likely than mothers to see the arrangements as working well for the father. For example:

- where the father had daytime-only care, only 61% of fathers and 77% of mothers reported that the arrangements were working well for the father; and
- where the father never saw the child, only 21% of fathers and 49% of mothers provided such positive evaluations.



Source: LSSFW1 2008

**Figure 7.21** Reports by parents that the current parenting arrangements were working “really well” or “fairly well” for focus child, fathers and mothers, 2008

#### For mothers

Opinions about the workability of parenting arrangements for mothers also varied according to the number of nights that the mother cared for the child. For most care-time arrangements, fathers were more likely than mothers to believe that arrangements were working well for the mothers. Those most likely to believe this were fathers who either: (a) saw their child during the daytime only, (b) had the minority of care nights (1–34% of nights), (c) had equal care nights, or (d) had shared care involving more nights with the mother than father. Between 90% and 92% of fathers in these groups provided such positive appraisals.

The greater the number of nights fathers had relative to mothers, the less likely were fathers to indicate that the arrangements were working well for the mother.

With one exception (those whose child never saw the father), mothers in all care-time arrangements were less likely than fathers to believe that the arrangements were working well for the mother. For example, this was reported by 90% of fathers and 79% of mothers with equal care time, and by 72% of fathers and 61% of mothers whose child spent only a minority of nights with the mother (i.e., 1–34% of nights).

Mothers who cared for their child for most or all nights (66–100% of nights) were the most likely to believe that the arrangements worked well for them (83–86%). Only 78–79% of mothers with shared care time and only 52–61% of mothers with a minority of care nights or no care nights provided such positive appraisals (see Figure 7.20).

#### For the focus child

Parents with equal care time or greater than equal care time were more likely than other parents to believe that the arrangements were working well for their child (80–82% of mothers and 83–90% of fathers with equal or greater care time).

Those who were least likely to report that the arrangements were working for the child were fathers who never saw their child and mothers who saw their child during the daytime only (reported by 40% of fathers and 64% of mothers in these respective groups). In summary, parents with the majority of care time were more likely than parents with the minority of care time to believe that their parenting arrangements were working well for themselves, with the greatest difference being apparent for those whose child never saw the father. Fathers with shared care time were more likely than mothers with shared care time to believe that their parenting arrangements were working well for them, and a similar though less marked trend emerged in relation to views about how well the parenting 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 child's other parent.

### Perceived workability for parents and child combined

Parents may believe that parenting arrangements work well (i.e., “really well” or “fairly well”) for one, two or all three parties (mother, father or focus child), or for neither of the parents nor the child. There are eight possible sets of opinions regarding the parties for whom the arrangements could be seen as working well: “none of the parties”, “the child alone”, “the father alone”, “the mother alone”, “the father and child”, “the mother and child”, “both parents”, and “both parents and child”. These combinations of views held by parents with different care-time arrangements is examined below.

It should be noted, however, that 28% of all parents did not indicate how well the arrangements were working for one or more of the parties, with most of these parents declining to estimate how well the arrangements worked for their child's other parent.<sup>13</sup> The following two sets of opinions were provided by very few respondents: the arrangements worked well for their child alone (< 5%), and they worked well for both parents but not for the child (10%). The focus is therefore on the extent to which the other six sets of opinions varied according to the parents' care-time arrangements.

Figure 7.22 shows the proportions of fathers with each care-time arrangement who expressed the six opinions, while Figure 7.23 provides the patterns of opinions of mothers.

The following trends stand out:

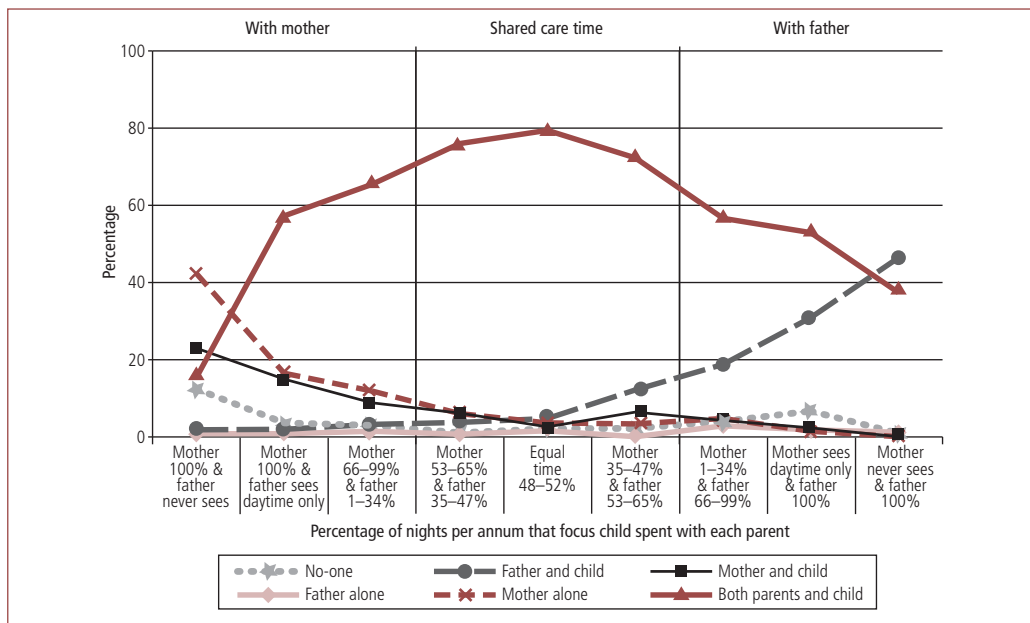
- The most common assessment was that the parenting arrangements worked well for all three parties. For example, between 70% and 80% of mothers and fathers with shared care time said that the parenting arrangements worked well for both parents and the child.
- The only parents who were less inclined to provide the assessment that the arrangements were working well for all parties were those whose child never saw one parent. Where the child never saw the father, 15% of fathers and 32% of mothers thought that their parenting arrangements worked well for everyone. In addition, 37% of fathers whose child never saw the mother thought that their arrangements worked well for everyone (there were not enough mothers in this group to provide estimates from the mothers' perspectives).
- Parents with shared care-time arrangements were the most likely of all groups to believe that their parenting arrangements were working well for everyone. This view became less prevalent as care time was less equally shared.
- The most commonly held view of fathers who never saw their child (and who answered this question in relation to all three parties) was that their parenting arrangements were not working well for them or for their child but worked well for the mother. Although applying to a small minority, these fathers were the most likely of all groups to indicate that the arrangements were not working well for any of the three parties.

Such trends are not surprising given that most parents (and especially those with a shared care-time arrangement) reported that they had sorted out their parenting arrangements and most parents in most groups indicated that they had done so mainly through discussions with the other parent. Only 2–6% of parents with shared care-time arrangements indicated that they had mainly arrived at their arrangements via the courts. Where one parent never saw their child and

<sup>13</sup> Respondents whose child never saw one parent were the most likely to decline answering this question for at least one of the parties (46% where the child never saw the father and 50% where the child never saw the mother). In addition, 21–31% of parents in the other groups declined answering this question for at least one party.

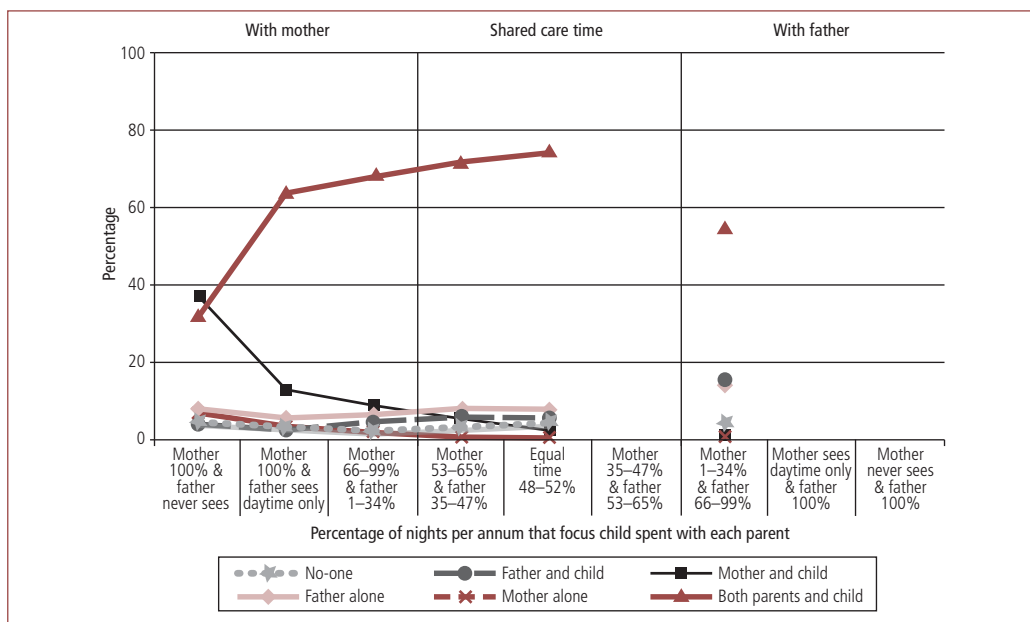


where the mother had daytime-only contact, relatively low proportions of parents stated that they had achieved their arrangements mainly through inter-parental discussions and relatively low proportions said that their arrangements worked well for both parents and child.



Source: LSSF W1 2008

**Figure 7.22** Fathers' views on whether the parenting arrangements were working well for them, the mother and the child, 2008



Source: LSSF W1 2008

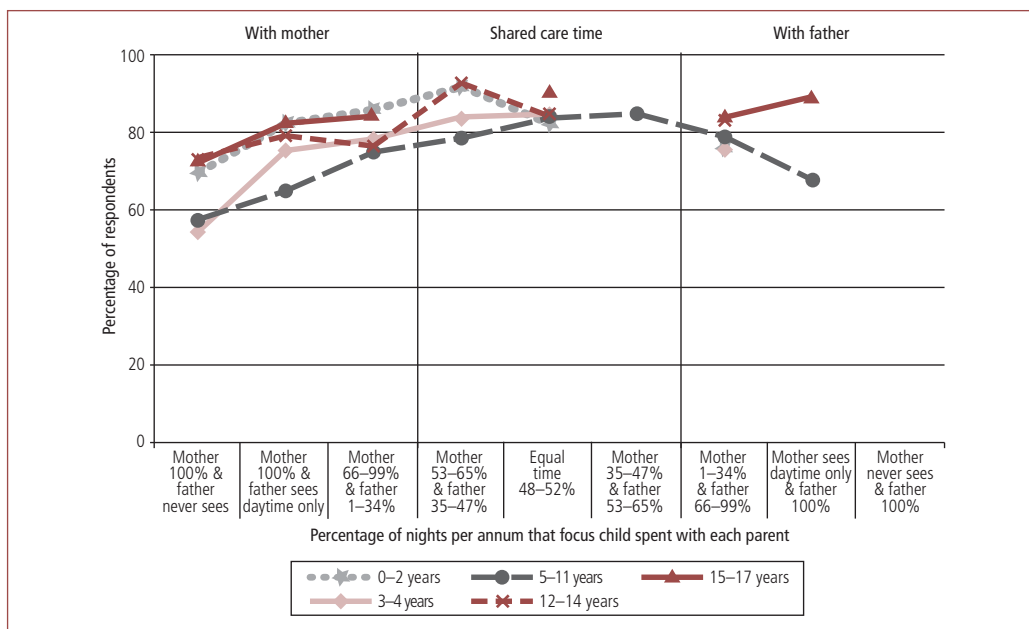
**Figure 7.23** Mothers' views on whether the parenting arrangements were working well for them, the father and the child, 2008

### Workability of parenting arrangements according to age of the child

Given concerns about the suitability of care-time arrangements for children under 3 years old, further analysis was undertaken regarding parents' assessments according to the age of their

focus child. These assessments concerned the workability of arrangements for the child, regardless of whether assessments were provided for the respondent or other parent.<sup>14</sup>

Figure 7.24 shows the proportion of parents (fathers and mothers combined) in each care-time group who indicated that their parenting arrangements were working well for their child, according to the age of the child.<sup>15</sup> More than half the parents in each group believed that their parenting arrangements were working well for their child.



Source: LSSFW1 2008

**Figure 7.24** Reports by parents that their arrangement worked “really well” or “fairly well” for focus child, by age of the focus child, fathers and mothers combined, 2008

Arrangements were considered to work well for the child by over 90% of parents whose child was under 3 years or 12–14 years old and was experiencing shared care time involving more nights with the mother (reported by 92–93%). In addition, such a favourable assessment was reported by 90% of parents whose child was experiencing equal care time and was 15–17 years old.<sup>16</sup> Nevertheless, across all age groups of children, over 80% of parents whose child experienced equal care time believed that the arrangement worked well for their child.

Parents who were least likely to report that arrangements were working well for their child were those with a child aged 3–4 years or 5–11 years who never saw his or her father (54–57% of these parents).

## 7.2.5 Frequency of communication between parents about the child

Parental involvement implies more than just spending time with the child. “Involved parenting” would typically require considerable communication with the child’s other parent about the child’s everyday needs, interests and activities, as well as matters relating to the child’s developmental progress and wellbeing.<sup>17</sup> Frequent “change-overs” in care time would typically entail

<sup>14</sup> The following proportion of parents were not able to provide an assessment of how well the parenting arrangement worked for the child: 11–15% of respondents whose child never saw one parent and 1–6% of parents with other care-time arrangements.

<sup>15</sup> Excluded from Figure 7.24 are care-time arrangements when estimated by the age of the focus child for which there were fewer than 40 respondents.

<sup>16</sup> Owing to the small number of cases, percentages were not derived regarding the assessments of the workability of arrangements by parents with a 15–17-year-old focus child who experienced shared care time involving more nights with one parent than with the other.

<sup>17</sup> “Involved parenting” can entail constructive and/or destructive dynamics between the parents and between parents and their children. Parents’ perceptions of the quality of the inter-parental relationship, family violence

relatively frequent inter-parental communication, although some parents with such care-time arrangements may still manage to avoid talking to each other. And while long distances may prevent some parents from seeing their child very often, if at all, such distances do not necessarily prevent these parents from communicating with their child or with their child's other parent.

What proportion of parents who never see their child in fact have no contact with the child's other parent at all? What proportion of parents who spend a great deal of time caring for their child in fact rarely or never communicate with their child's other parent? Such issues, which are addressed in this section, shed further light on the meaning of care-time arrangements.

Parents in the LSSF W1 2008 were asked to indicate how often they had communicated with the other parent about their focus child since the time of separation. Around two-thirds of fathers and mothers said that they communicated with the other parent about their child once a week or more frequently (68% and 64% respectively), with 83–86% indicating that they were in touch with the other parent about the child at least once a month. Only 7–10% said that they communicated with the other parent about the child less than once a month and another 7% said they did not have any contact at all. While 7% with no contact at all seems a small minority, it would represent the experiences of a large absolute number of Australian families.

Figures 7.25 and 7.26 depict the frequency of inter-parental discussions as reported by those with each of the care-time arrangements.

Parents who never saw their child were the least likely to be in frequent contact with the child's other parent: most appeared to be in touch with the other parent less than once a month, if at all. Nevertheless, 66–76% of fathers and mothers whose child never saw one parent reported that some inter-parental communication about the child was taking place, with 36–43% reporting at least monthly communication on this issue.

Daytime-only care seems to reflect quite different experiences, depending on whether the parent with daytime-only care was the mother or father. Where the child had daytime-only care with the father, 70–71% of fathers and mothers indicated weekly or more frequent inter-parental communication. In contrast, where the child had daytime-only care with the mother, such frequent communication was reported by only 57% of mothers and an even smaller proportion of fathers (44%).

Similarly, the frequency of communication tended to be greater where the father rather than mother cared for their child for a minority of nights (i.e., 1–34% of nights). Where the child was with the father for a minority of nights, weekly or more frequent communication was reported by 70–72% of fathers and mothers. But where the child was with the mother for a minority of nights, only 59–61% reported such frequent communication.

Lack of inter-parental communication may be quite difficult for children who experience substantial time with each parent, although they may be better off under these circumstances if the relationship between their parents is acrimonious. Only 6–10% of fathers and mothers with shared care time indicated that they communicated with their child's other parent less than once a month or never, while 79–82% of these fathers and 74% of these mothers reported that they were in touch at least once a week or more frequently.

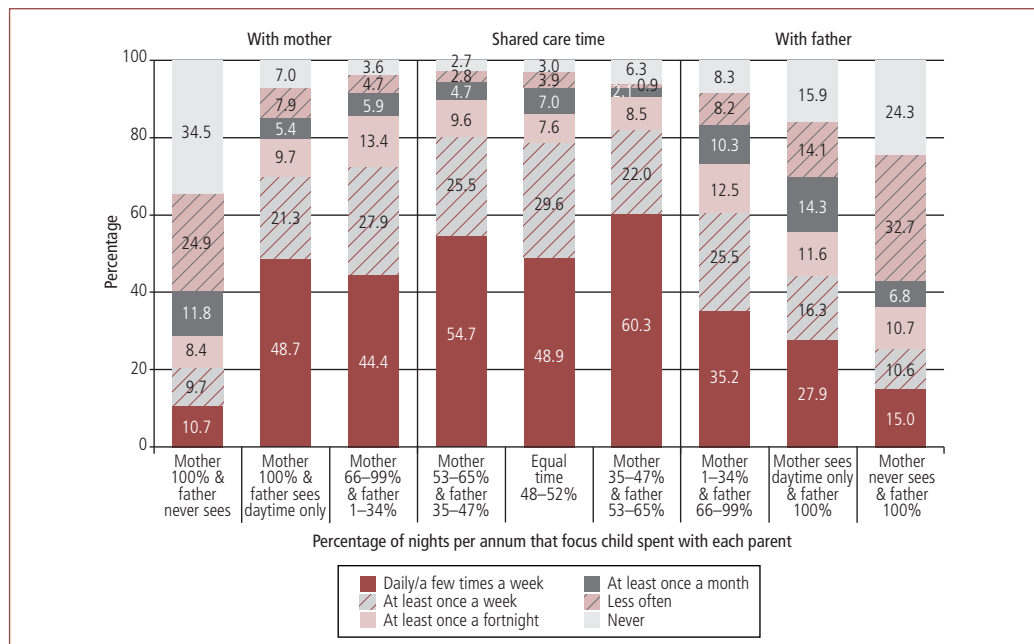
Frequent communication may have favourable or unfavourable effects on the child depending on the tone of the communication or general atmosphere in which it takes place. For example, whether the exchange is characterised by a great deal of acrimony and distrust, or by mutual support and trust. The quality of the inter-parental relationship is an issue that is addressed in Section 7.3, while links between inter-parental relationship quality and children's wellbeing is explored in Chapter 11.

## 7.3 Quality of inter-parental relationships

This section focuses on some family environment issues that are critical to children's wellbeing, namely, the quality of the inter-parental relationship, parents' concerns about their own or their child's safety, reports of family violence before or during the separation, and reports of issues in the relationship before separation, such as mental health problems or issues relating to alcohol or drugs or (other) addictions. Links between each of these matters and care-time arrangements will be discussed in turn. Of central importance here is the extent to which the

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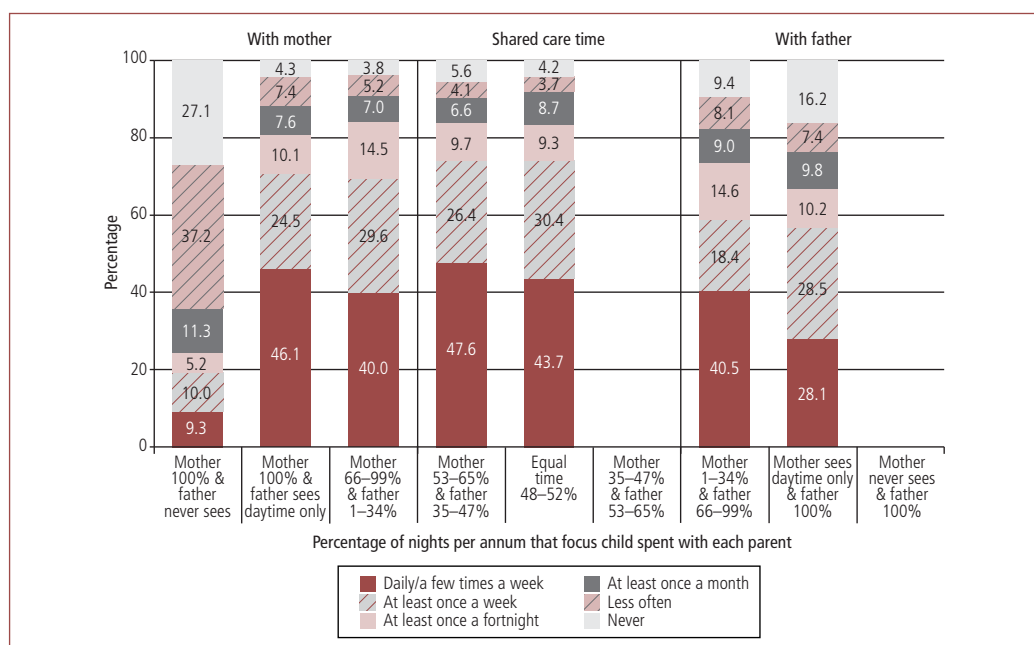
and issues relating to alcohol and other drugs are highly relevant here and are dealt with in the next section.



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

Source: LSSF W1 2008

**Figure 7.25 Frequency of communication between parents about the child, by care-time arrangement, fathers, 2008**



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

Source: LSSF W1 2008

**Figure 7.26 Frequency of communication between parents about the child, by care-time arrangement, mothers, 2008**

care-time arrangements protect children from family dynamics that can pose a risk to their immediate and longer term wellbeing.

### 7.3.1 Views about the quality of the inter-parental relationship

There is ample evidence that children who are exposed to high levels of acrimonious conflict are at a greater risk of experiencing immediate and longer term adjustment problems compared

with other children, although there is also evidence that other factors that may contribute to inter-parental conflict, such as a parent's mental health problems and/or substance misuse, may also independently pose risks to children's adjustment (e.g., see review by Pryor & Rodgers, 2001; see also Amato & Booth, 2001; Sobolewski & Amato, 2007). This section examines the general quality of the inter-parental relationship, as reported by parents with different broad patterns of care, while subsequent sections focus on other aspects of family dynamics, namely family violence and safety issues, mental health problems, and issues relating to use of alcohol or other drugs or other addictions.

Parents were asked to indicate whether their relationship with their child's other parent was "friendly", "cooperative", "distant" or "fearful", or involved "lots of conflict". It is important to note that while relationships that are friendly would also seem likely to be cooperative, cooperative relationships may well occur in the absence of friendliness. Respondents who had a friendly (and therefore cooperative) relationship may have made a somewhat arbitrary choice between these terms when answering the question regarding relationship quality. And while high-conflict relationships would not necessarily involve fear, a fearful relationship seems likely to suggest a relationship involving a great deal of (overt or covert) conflict. In some cases, fear may drive a person to attempt to avoid any triggers of conflict.

The overall pattern of trends was similar for fathers and mothers. More than half the parents in most care-time arrangement groups described their relationship with the other parent as being either friendly or cooperative. Those who were least likely to report this were respondents whose child never saw one of his or her parents (24–31%), followed by parents whose child saw his or her mother during the daytime only (reported by 48% of mothers and 54% of fathers with this care-time arrangement) (Figures 7.27 and 7.28).

While most parents whose child spent the majority of nights with the father (i.e., 66–99% of nights) described the inter-parental relationship as either friendly or cooperative, it is worth noting that the inter-parental relationship was even more likely to be evaluated in such favourable terms when the child was in the care of the mother for most nights (the most common situation) than when the child was in the care of father for most nights. Such positive appraisals were also more likely to be reported by parents whose child was in the care of the father during the daytime only than by those whose child was in the care of the mother during the daytime only (67–71% compared to 48–54%).

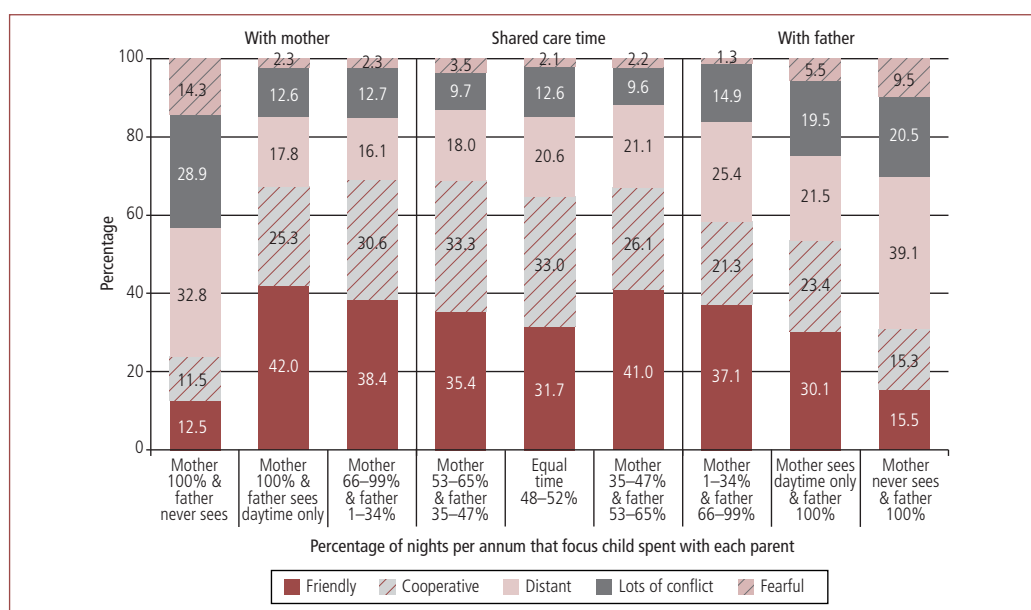
In other words, except in those circumstances where the child never saw one parent, relationships were considerably more likely to be friendly or cooperative where the child spent most or all nights with the mother rather than with the father. Reasons behind this link are likely to be complex. For example, the circumstances that led to the unusual situation where the child is mostly with the father may have created a difficult-to-resolve wedge between parents. This wedge may have been strengthened by post-separation care-time arrangements in which the father has become the primary caregiver—a role that is traditionally seen as the essence of motherhood, despite the growing recognition of the importance of "hands-on" fathering (see Appendix A).

Highly conflictual or fearful relationships were most likely to be reported by parents whose child never saw his or her father (38–43%) or mother (31%, reported by fathers only), and by parents whose child saw the mother during the daytime only (25%). Such negative evaluations were provided by only 12–16% of all other fathers (including those who cared for their child during the daytime only) and by 15–16% of mothers who cared for their child most nights (i.e., 66–99% of nights) or whose child saw the father during the daytime only. However, 21–24% of mothers with shared care-time arrangements or who cared for their child for only a minority of nights (i.e., 1–34% of nights) maintained that their relationship with the child's father was either highly conflictual or fearful.

Taken together, these results suggest the following:

- The parents of children who never saw one parent seemed the most likely to have a conflictual or fearful inter-parental relationship, followed by parents whose child saw his or her mother during the daytime only.
- While it is difficult to characterise the relationship between parents with shared care-time arrangements given the discrepancy between the views of fathers and mothers, most children with these arrangements appeared to be exposed to a friendly or cooperative inter-parental relationship. However, a substantial minority may experience frequent episodes of high

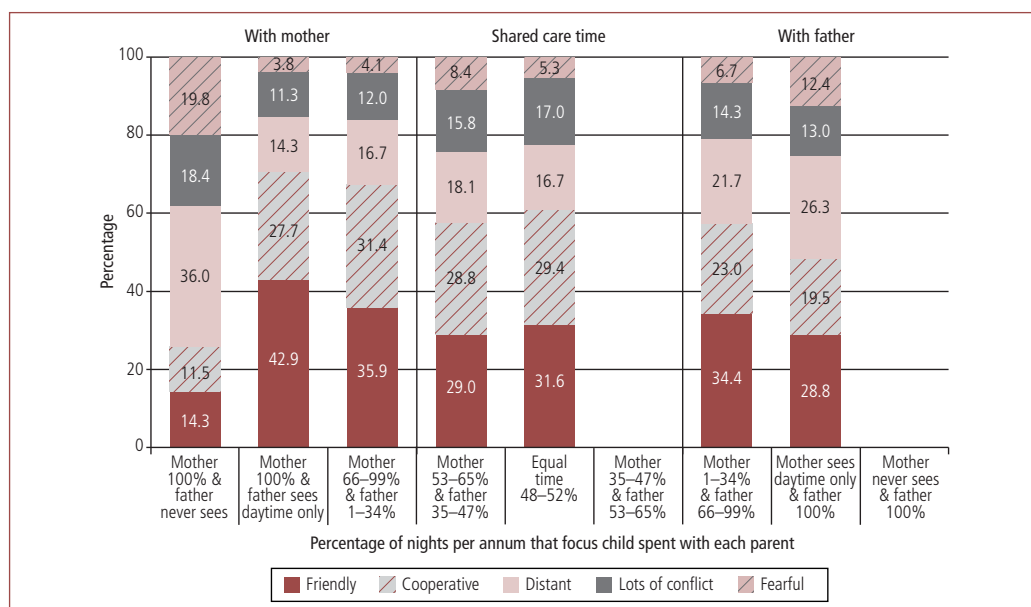
inter-parental conflict or an atmosphere generating fear in one parent.<sup>18</sup> In fact, mothers with a shared care-time arrangement were less likely to report friendly or cooperative relationships than mothers who cared for their child most nights and those whose child saw the father during the daytime only (especially the latter group).



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

Source: LSSF W1 2008

**Figure 7.27 Quality of inter-parental relationship, by care-time arrangement, fathers, 2008**



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

Source: LSSF W1 2008

**Figure 7.28 Quality of inter-parental relationship, by care-time arrangement, mothers, 2008**

<sup>18</sup> The apportioning of time between parents with shared care arrangements varies considerably. Some children spend short periods in the care of one parent and therefore experience frequent “change-overs” and possibly a great deal of face-to-face, sometimes conflicted, contact between parents. Others may spend relatively long periods in the care of one parent and therefore experience relatively few “change-overs” and possibly what Maccoby and Mnookin (1992) refer to as “parallel” parenting.

### 7.3.2 Family violence and safety concerns

This section focuses on the reports of parents in the LSSF W1 2008 about whether they had been physically or emotionally abused by the child's other parent before or during separation and whether they currently held concerns about their own personal safety or the safety of their child. Links between these matters and care-time arrangements are examined.

#### Family violence

Parents were asked whether they had experienced emotional abuse “at any time before or during the separation”,<sup>19</sup> and whether they had ever been physically hurt by the other parent prior to separation.

For simplicity, the concept of “emotional abuse” is here restricted to threats, insults, the different forms of preventions, and damaging property, even though all forms of violence, including physical violence, can also be treated as “emotional abuse” in the sense that any episode of physical violence may be seen as a warning that it could reoccur. Victims may “walk on eggshells” in fear that events may trigger another episode of violence. Virtually all parents who reported physical abuse also reported at least one form of emotional abuse.

Figures 7.29 and 7.30 show the proportion of fathers and mothers (respectively) who reported the experience of physical hurt, emotional abuse alone, or no violence. Overall, high rates of violence were reported by parents. A higher proportion of parents reported having experienced emotional abuse alone than having experienced physical hurt. Importantly, there were two exceptions: mothers whose child never saw the father were more likely to report the experience of physical violence than emotional abuse alone (40% compared to 35%) and much the same proportions of mothers with a minority of care nights (1–34% of nights) reported each of these types of abuse (around 36%).

Fathers were less likely than mothers to report having experienced some form of family violence. This is true for all care-time arrangements. In addition, with the exception of parents whose child saw the mother during the daytime only, fathers were less likely than mothers with the same care-time arrangement to report having been physically hurt by the other parent.<sup>20</sup>

Nevertheless, at least 24% of both mothers and fathers whose child spent most or all nights with the father (i.e., 66–100% of nights) indicated that they had been physically hurt. This was mentioned by 24% of fathers and 37% of mothers whose child spent most nights with the father, by 33% of fathers and 28% of mothers whose child saw the mother during the daytime only, and by 25% of fathers whose child never saw the mother.<sup>21</sup> In addition, where the child never saw the father, 27% of fathers and 40% of mothers indicated that they had been physically hurt.

As noted above, among those whose child saw the mother during the daytime only, 33% of fathers and 28% of mothers said that they had been physically hurt by the child's other parent. On the other hand, where the child's time with the father was restricted to the daytime only, 12% of fathers and 21% of mothers reported having been physically hurt.

The above results indicate that mothers whose child never saw the father were the most likely of all groups to report having been physically hurt by the child's father (40%), followed closely by mothers with only a minority of care nights (37%).

The parents who were the most likely to indicate that they had not experienced any emotional or physical abuse were those whose child saw their father during the daytime only (reported by 56% of fathers and 42% of mothers) and those whose child stayed with their father for a minority of nights (the mainstream group; reported by 50% of fathers and 36% of mothers). This means that parents with shared care time were more likely to report having been a victim of

19 These issues covered the other parent: (a) *preventing* the respondent from the following: contacting family or friends, using the telephone or car, or having knowledge of, or access to, family money; (b) *insulting* the respondent, with the intent to shame, belittle or humiliate; (c) *threatening* to do the following: harm the child/children, other family/friends, the respondent, pets, or themselves; and (d) *damaging* or destroying property. See Chapter 2 for more detailed discussion of these issues.

20 Among parents whose child saw the mother during the daytime only, 33% of fathers and 28% of mothers said that they had been physically hurt, while 41% of fathers and 51% of mothers indicated that they had experienced emotional abuse alone.

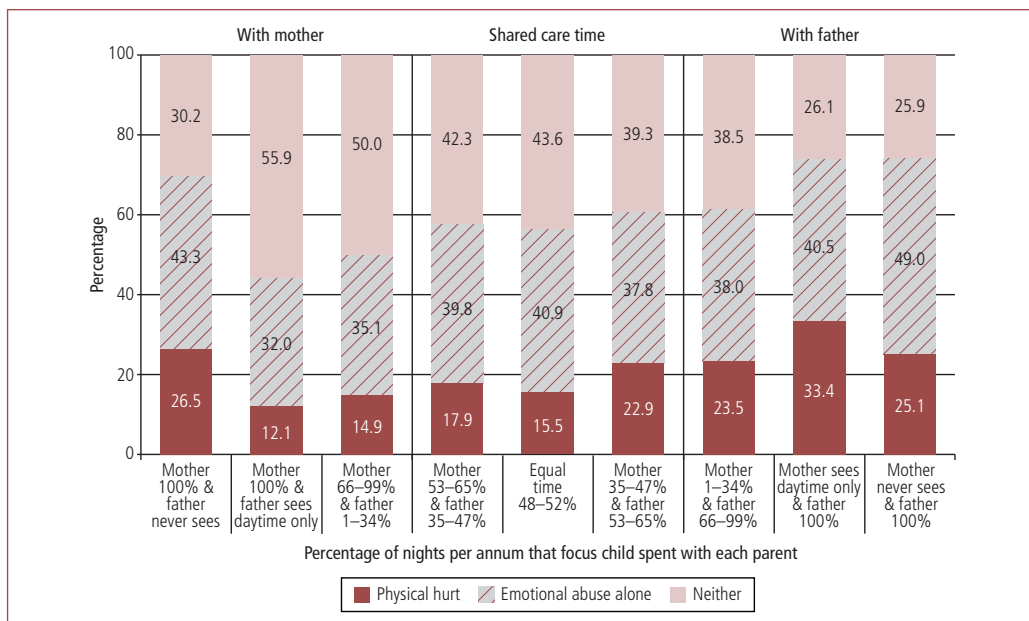
21 Given that fewer than 40 mothers indicated that they never saw their focus child, reports of these mothers were not assessed.



family violence than parents whose child spent a minority of nights with the father or saw him during the daytime only.

For mothers, this trend largely resulted from the higher proportion of mothers reporting the experience of emotional abuse alone who had shared care time than one of the other two arrangements (46% compared to 38–40%). Similar proportions of mothers in each of these groups said that they had been physically hurt (24–25% of mothers with a shared-care arrangement and 21–24% of mothers whose child spent a minority of nights with the father or saw the father during the daytime only).

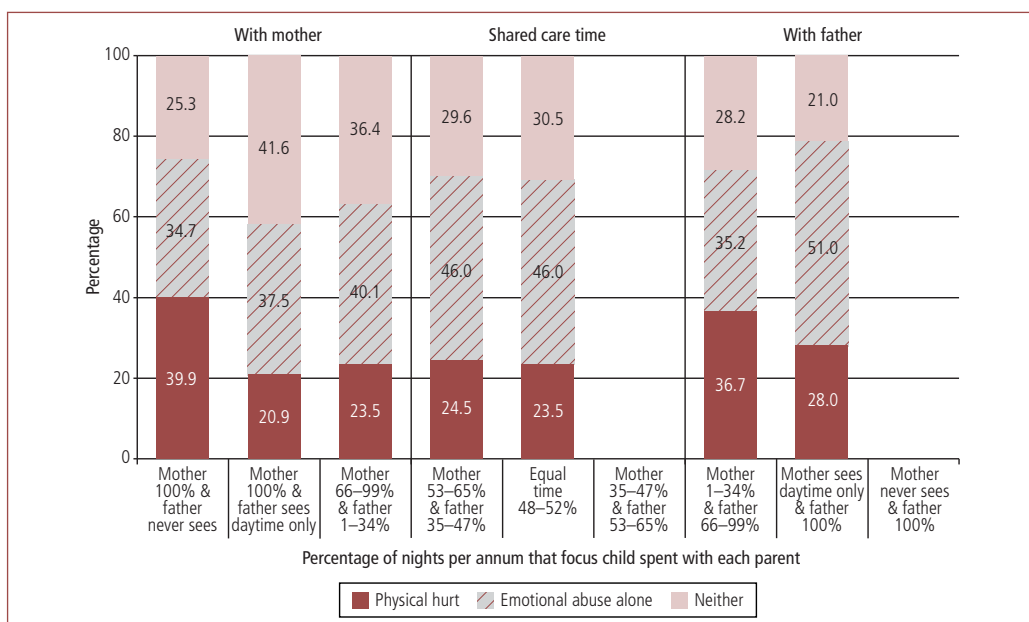
On the other hand, fathers with a shared care-time arrangement were slightly more likely than fathers in the other two groups to report the experience of emotional abuse alone (38–41% compared to 32–35%) and to report having been physically hurt (16–23% compared to 12–15%).



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

Source: LSSF W1 2008

**Figure 7.29 Reports of violence, by care-time arrangement, fathers, 2008**



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

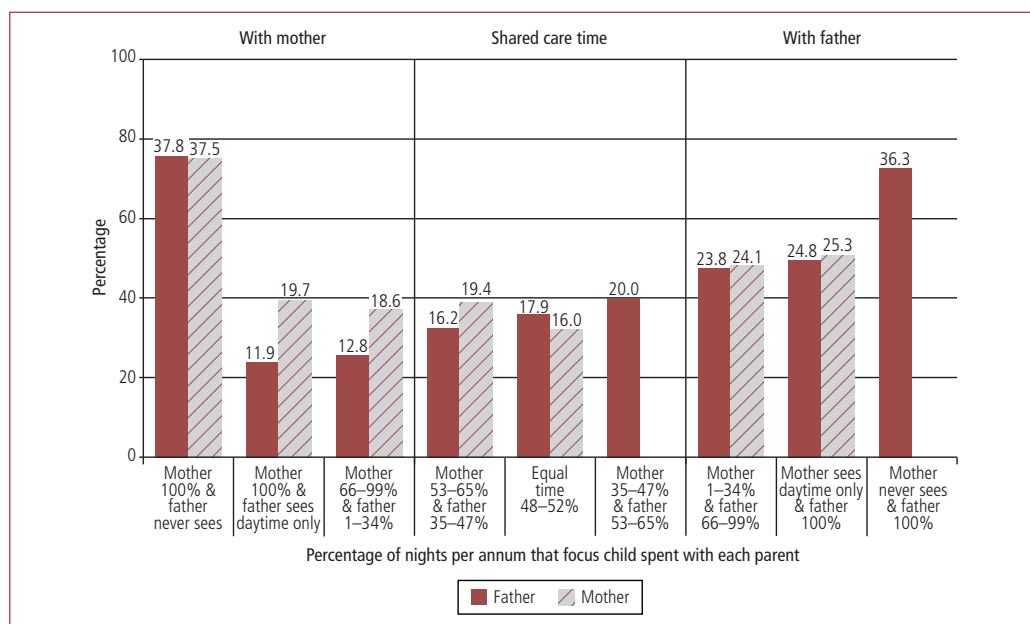
Source: LSSF W1 2008

**Figure 7.30 Reports of violence, by care-time arrangement, mothers, 2008**

## Safety issues

Parents were also asked whether they had any concerns about their own or their focus child's safety as a result of ongoing contact with the child's other parent.<sup>22</sup> Around one in five parents expressed such concerns, with mothers being more likely than fathers to indicate these concerns (21% compared to 17%).

The proportion of fathers and mothers who reported such concerns are depicted in Figure 7.31. When interpreting these results, it is important to bear in mind that the safety concerns may relate to the respondents and/or their child, and may be derive from worries about the potential harm inflicted by someone other than the other parent, such as a new partner or a relative. It is also important to point out that safety concerns may derive from the view that the other parent allows the children to participate in activities that may result in their getting hurt. Nevertheless, as shown in Chapter 2, the vast majority of parents with safety concerns indicated that they had experienced family violence.



Source: LSSFW1 2008

**Figure 7.31** Safety concerns associated with ongoing contact, by care-time arrangements, fathers and mothers, 2008

Concerns about safety were most commonly expressed where the child never saw one of the parents (mentioned by 36–38% of such parents). In addition, safety concerns were expressed by around one-quarter of parents (mothers and fathers alike) in those unusual circumstances where the child spent only a minority of nights with their mother, or saw the mother during the daytime only.

Safety concerns were mentioned by a higher proportion of mothers than fathers, where the father saw the child during the daytime only (20% of mothers compared to 12% of fathers) or cared for the child for a minority of nights (19% of mothers compared to 13% of fathers).

Parents with greater sharing of care time were by no means immune from safety concerns: 16–20% expressed such concerns. These percentages are similar to that derived for mothers with the majority of care time (19%).

Violence was reported far more frequently than safety concerns. This may in part be because the question about violence related to the period before or during separation, whereas the question about safety concerns focused on the current post-separation situation. It is also the case that not all violence will lead to a parent having safety concerns. This is particularly the case given that violence includes emotional abuse.

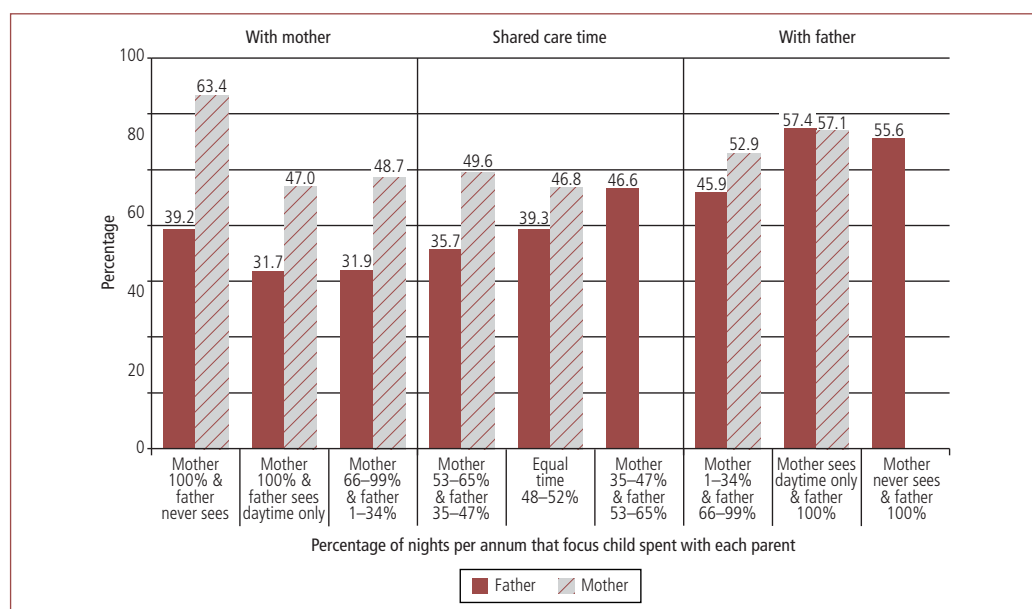
<sup>22</sup> Where children never saw their father, 7% of fathers and 24% of mothers indicated that the question was not applicable. These respondents were treated as having no current safety concerns.

### 7.3.3 Mental health problems and alcohol or other drug issues

The final set of results in this chapter relates to reports of any pre-separation mental health problems or issues relating to the use of alcohol/drugs or other addictions. The question: “Before finally separating, were there ever issues with ...?” was asked of each of the following: (a) alcohol or drug use, (b) mental health problems, and (c) another addiction. Respondents who said another addiction was apparent were asked to specify the nature of this addiction. Gambling was the most commonly mentioned of these.<sup>23</sup> The question was asked in this way to minimise the chances of under-reporting of these issues, which tends to occur when a respondent is asked about themselves.

Mental health and drug issues were commonly reported by parents (Figure 7.32). The following trends emerged:

- With the exception of parents whose mothers saw the child during the daytime only, mothers were more likely than fathers to report such issues.
- Those most likely to report such issues were mothers whose child never saw the father (63%), fathers whose child never saw the mother (56%) and fathers whose child saw the mother during the daytime only (57%).
- In other words, the fathers who were most inclined to report such issues were those who cared for their child for 100% of nights.
- Those least likely to report such matters were fathers who saw their child during the daytime only and fathers who cared for their child for a minority of nights (i.e., 1–34% of nights) (32% in each case). In other words, at least one in three parents in each care-time arrangement mentioned the presence of these issues prior to separation.
- Therefore, where the child saw one parent during the daytime, the picture appeared to be considerably more favourable if this restricted time was with the father rather than with the mother.
- The same proportion of fathers who never saw their child and who had equal care time reported the presence of such issues (39%).



Source: LSSF W1 2008

**Figure 7.32** Prevalence of mental health and/or issues relating to alcohol/drugs or other addictions before separation, by care-time arrangements, fathers and mothers, 2008

<sup>23</sup> Given the close link between substance misuse and mental health problems (see Christie, Burke, Reiger, Rae, Boyd & Locke, 1988; Teeson, Hall, Lytnskey, & Degenhardt, 2000), the percentages of parents who indicated at least one of these problems were derived.

## 7.4 Profiles of families with different care-time arrangements

So far, the discussion in the chapter has focused on various factors relating to socio-demographic characteristics, the sorting out of parenting arrangements and critical family issues that pose risks to children's immediate and longer term wellbeing. The extent to which each of these factors varied according to care-time arrangements was examined sequentially.

These various sets of analyses will now be used to provide a profile of families in which the child experienced the following care-time arrangements: the sharing of time between the parents, never seeing the father, being with the father during the daytime only, and spending most nights or all nights with the father. The mainstream group (children in the care of their mother most nights) is not specifically described but is used as one of the bases for comparison.

This approach has two key advantages: (a) it helps us understand why parents adopt different arrangements; and (b) it sheds light on the different circumstances to which children with different care-time arrangements are exposed, including some that may protect their wellbeing and others that may jeopardise it.

### 7.4.1 Where the child experienced shared care time

Consistent with the Child Support Agency's classification, 35–65% of nights with each parent was considered to involve shared care-time arrangements in this report. Chapter 6 showed that this type of arrangement has become increasingly prevalent and was experienced by 16% of children in the LSSF W1 2008. Given that 35–65% of nights includes arrangements that can deviate considerably from equal or near equal care time, families with these arrangements were divided according to whether the child spent 48–52% of nights with each parent (here called "equal care time" or simply "equal time") or more nights (53–65%) with one parent. Chapter 6 showed that most children with shared care-time arrangements experienced either equal time with each parent or spent more nights with the mother than father (i.e., 53–65% of nights with the mother and 35–47% of nights with the father).

#### Characteristics

On average, the parents with shared care time were older than those whose child spent most or all nights with the mother, but a little younger than those whose child spent most or all nights with the father. They were the most likely of all groups to have primary school age children, although at least one in five had children aged 3–4 years old. These parents also tended to have higher socio-economic status as measured by their educational attainment and incomes, with mothers with equal care time being among the most likely of all maternal groups to have full-time work (although this applied to a minority only).<sup>24</sup> Parents with equal care time were also considerably more likely than all other groups to have been married to the child's other parent and, along with others with less equal but shared care-time arrangements, they were the most likely of all groups to live within 10 km of the other parent (or within a 30-minute drive).

Across all care-time arrangements, the reports of mothers and fathers about their child's other parent's level of involvement in the child's everyday activities prior to separation suggest that parents with shared care-time arrangements were more involved than those with a minority of care nights or no care nights, but less involved than those with most or all care nights. This pattern of results for parents with shared care, compared with parents with a minority of care nights, is consistent with the intent of the reforms, 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".

#### Parenting arrangements

Parents with shared care-time arrangements (whether equal or involving more nights with the mother or father) were the most likely to state that their arrangements had been sorted out, and 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. The fathers with shared care time, whether equal

<sup>24</sup> The other group with a relatively high rate of full-time work was mothers with a minority of care nights.

or unequal, were more likely than the mothers to see their parenting arrangements as flexible. (For other arrangements, the parent with the majority of care was more likely than the parent with the minority of care to believe that arrangements were flexible.)

Like most parents with other care-time arrangements, parents with shared care-time arrangements tended to provide favourable assessments about how well their arrangements were working for their child—a trend that was apparent for children in each of the five age groups examined. Furthermore, of those with shared care-time arrangements who provided assessments for both parents and their child, most indicated that the arrangements were working well for all three parties. Once again, this trend was apparent across all age groups of children.

Although shared care-time arrangements were unusual for children under 3 years old and typically involved more nights with the mother than father (i.e., 53–65% of nights with the mother), most parents with a child under 3 years of age believed that the arrangements were working well for their child, and most of those who provided the necessary assessments tended to believe that they worked well for all concerned.

### Family dynamics

Fathers and mothers with shared care-time arrangements were the most likely of all groups to indicate weekly or more frequent communication with their child's other parent about issues relating to their child. Most described the relationship as either friendly or cooperative, and parents with shared care time were among those most likely to report such positive relationships.

Mothers with a shared care-time arrangement were less likely to report friendly or cooperative relationships than mothers who cared for their child most nights and those whose child saw their father during the daytime only (especially the latter group).

Parents with shared care time were among the least likely to report: (a) the existence of mental health problems or issues relating to alcohol or drugs or (other) addictions in the family prior to separation, and (b) concerns about their own or their child's safety linked with ongoing contact with the other parent. However, these problems were reported by some parents with shared care time. Indeed, nearly half the mothers and 36–47% of fathers with shared care time reported mental health problems or issues relationship to substance misuse or (other) addictions and 16–20% of fathers or mothers expressed safety concerns. Furthermore, nearly 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 saw the father during the daytime only.

### 7.4.2 Where the child never saw the father

Around 8% of fathers and 13% of mothers indicated that their child never saw the father.

### Socio-demographic characteristics

Along with those whose child saw their father during the daytime only, parents whose child never saw the father were the youngest of all groups and the least likely to have been married to the child's other parent. Their focus child in most cases was under 3 years old. They were also among those least likely to have post-school qualifications and the mothers were considerably less likely than other mothers to be in paid work, with the exception of those whose child saw the father during the daytime only. Together with those whose child never saw the mother, these parents were the least likely to live within 20 km of each other and a substantial minority lived 500 km or more than six hours drive from the child's other parent. The fathers were the most likely of all fathers to be living with a partner, and the vast majority of fathers did not have any children in their household. The median personal income of the fathers was among the lowest, while that for mothers fell between the levels derived for other female groups.

According to the reports of mothers and fathers about how involved the other parent was in the child's everyday activities prior to separation, most mothers whose child never saw the father had been very involved, but few fathers who never saw their child had been very involved. Indeed, these fathers were the least likely of all fathers to be seen by their child's mother as playing much of a role in their child's everyday activities.

## Parenting arrangements

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 (whose child never saw their father) held this view. Of parents who had sorted out their arrangements, these fathers and mothers were considerably more likely than most groups to report that the arrangements “just happened”. Mothers were more likely to report that their arrangement “just happened” than to indicate that they had occurred mainly through discussions with the child’s father.<sup>25</sup> Perhaps not surprisingly, most fathers believed that these arrangements were inflexible. Mothers whose child never saw his or her father were more likely than other mothers to believe that the arrangements were “very inflexible”, although they were considerably less likely to believe this than the fathers who never saw their child.

Respondents with these arrangements tended to describe their inter-parental relationship negatively and that they appeared to be in a “winner versus loser” situation regarding the workability of the parenting arrangements for themselves and their former partner. Unlike all other groups of fathers, most who never saw their child argued that the current arrangements worked “badly” for them. Fathers in this group who indicated their views on how well the arrangements worked for all three parties most commonly said that the arrangements worked well for the mother alone. Few mothers in this group agreed with this assessment, and these mothers tended to report that the arrangements worked well for them and their child, or for all three parties.<sup>26</sup>

## Family dynamics

Around one in five fathers and one in four mothers in this group said that they never communicated with the other parent on matters relating to their child. These parents were the most likely of all groups to indicate this.

Both the mothers and fathers in this group were inclined to report that their relationship with their child’s father was “distant”, “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 report safety issues linked with any ongoing contact with the other parent.<sup>27</sup> The mothers in this group were the most likely of all parents to report that, before separation, there were mental health problems and/or alcohol or other drug use issues.<sup>28</sup> However, the fathers were less likely to report this than these mothers and some of the other groups of fathers.

### 7.4.3 Where the child saw their father during the daytime only

Around 15% of fathers and 24% of mothers claimed that the child saw their father during the daytime only.

## Socio-demographic characteristics

These parents were similar to those whose child never saw the father in the following ways—they tended to: (a) be relatively young and to have children under 3 years old, (b) have either never lived with their child’s other parent or have separated before the child was born, and (c) have no children in their household. They 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.

<sup>25</sup> Inter-parental discussions represented the most commonly mentioned main pathway adopted by all other groups.

<sup>26</sup> It should be noted that 43% of fathers and 47% of mothers whose child never saw the father did not provide an assessment regarding how well the arrangements were working for all three parties.

<sup>27</sup> The safety issues referred to those linked with ongoing contact. Where the child never saw their father, 7% of fathers and 24% of mothers indicated that the question was not applicable. These respondents were treated as having no current safety concerns.

<sup>28</sup> The precise question was: “Before finally separating, were there ever issues with alcohol or drug use, mental health problems or another addiction?”

Regarding parental involvement in the child's everyday activities prior to separation, mothers' reports suggested that fathers with daytime-only care were just as likely to be very involved in their child's life prior to separation as fathers who cared for their child for a minority of nights. However, these fathers were less likely to be very involved than fathers with greater care time. The fathers' reports suggest that most mothers whose child saw their father during the daytime only were very involved prior to separation.

### Parenting arrangements

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. Although most fathers in this group considered that their current parenting arrangements were flexible and workable for them and their child, the proportions of fathers who considered the arrangements to be inflexible and not working well for them and their child were the second highest of all groups. The mothers were also the second most likely to report that the arrangements were not working well for the child's father, although again, this view was held by a minority of mothers in this situation. Both fathers and mothers agreed that the arrangements worked well for the mother. Of those who provided the necessary assessments, both the fathers and mothers tended to believe that the arrangements worked well for all three parties. This is a different picture than that provided by parents whose child never saw his or her father. Nevertheless, respondents (fathers and mothers alike) whose child saw the father during the daytime only were less likely than respondents whose child stayed overnight with each parent to provide such favourable assessments.

### Family relationship dynamics

Unlike parents whose child never saw his or her father, both fathers and mothers in this group believed that their relationship with their child's other parent was friendly or cooperative and these parents were among the least likely of all groups to consider the relationship to be distant, 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, violence inflicted by the child's other parent, or pre-separation mental health problems or issues relating to alcohol or other drugs.

#### 7.4.4 Where the child spent most or all nights with their father

Chapter 6 showed that only 5% of children spent most or all nights with their father (i.e., 66–100% of nights). In the present chapter, parents with these arrangements were divided into three groups, covering cases where the child: (a) spent a minority of nights with their mother (i.e., 1–34% of nights), (b) saw her during the daytime only, or (c) never saw her. Given that there were only 29 mothers who never saw their child, no attempt was made to describe any trends for these mothers. Rather, analysis focusing on circumstances in which the mother never saw the child was based on the reports of the relevant fathers.

### Socio-demographic characteristics

The parents in these three groups tended to be among the oldest, and although the focus child in most of these families was under 12 years old, these families were the most likely of all care-time groups to have focus children aged 15–17 years old. However, one in three focus children in families whose child saw the mother during the daytime only was under 3 years old. Among those families in which the child saw the mother during the daytime only, a relatively high proportion of mothers and fathers were born overseas, and although applying to a small minority, a relatively high proportion of the mothers who saw their child during the daytime only were of Aboriginal or Torres Strait Islander descent.

The two groups of fathers who cared for their child for 100% of nights were the most likely of all fathers to have left school before completing Year 12 without obtaining any post-school qualifications. Fathers in these two groups were the most likely of fathers to have no paid work, followed by fathers with most care nights. The mothers with a minority of care nights, on the other hand, were among the most likely of all female groups to have full-time paid work. These mothers were also the most likely of all female groups to have been living with a partner at the time of the survey. A substantial minority of mothers with 1–34% of nights or who saw their child during the daytime only indicated that they were living with at least one full sibling of their focus child. That is, the focus child lived mostly or entirely with the father, while at least one of the child's siblings lived with the mother.

The mothers with daytime-only care were more inclined than mothers with a minority of care nights to report that they lived within 10 km or a 15-minute drive of the child's father, although distance estimates



of fathers who reported such arrangements did not vary. On the other hand, over half the fathers whose child never saw their mother estimated that the two homes were 50 km or more apart or one or more hours' drive away from each other.

The parents in these three groups (where mothers had a minority of nights, had daytime-only care or who never saw their child) tended to have low personal incomes compared with most other groups.

Respondents' reports about the other parent's level of involvement in their child's everyday life suggest that, where the child spent most or all nights with his or her father, the fathers were more likely to have been very involved in their child's everyday activities prior to separation than other fathers and the mothers were considerably less likely to be very involved compared with most other mothers.

### Parenting arrangements

Unlike fathers who never saw their child, most fathers whose child never saw their 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. Nevertheless, only a small minority of parents indicated that they had mainly sorted out their arrangements via use of a court.

Most parents with these three arrangements believed that their parenting arrangements were flexible, although the proportions stating this were higher where the child spent some nights, rather than no nights, with the mother. The fathers in these three groups were more likely than the mothers to indicate that the arrangements were working well for them and their child. Nevertheless, among parents who provided assessments about how well the arrangements were working for all three parties, both mothers and fathers whose child spent a minority of nights with the mother or who saw the mother during the daytime only, most commonly reported that the arrangements worked well for all three parties.

### Family relationships

Where the child never stayed overnight with his or her mother, frequency of communication between the parents about the child tended to be low relative to most other groups. In addition, relationships with the other parent were relatively poor, especially in the groups where the child never stayed overnight with the mother. Rates of safety concerns (for the respondent or child) relating to ongoing contact were relatively high, especially among fathers whose child never saw the mother.<sup>29</sup> The three groups were also among the most likely to indicate that their child's other parent had physically hurt them prior to separation and that mental health problems or issues relating to alcohol or other drugs were apparent prior to separation.

<sup>29</sup> Trends for mothers who never saw their child were not derived owing to the small number of mothers represented in this group.

## 7.5 Summary

This chapter compared parents with different care-time arrangements on several dimensions relating to socio-demographic circumstances and pre-separation circumstances, the sorting out of arrangements, and family dynamics. The chapter provides insight into some of the factors that facilitate or impede more equitable sharing of care time, while at the same time highlighting cases where: (a) having little, if any, time with a parent may well be in a child's best interests; and (b) having a shared care-time arrangement may not be in children's best interests.

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.

Families in which the father did not have the focus child stay overnight can be divided into those who had daytime-only care and those who never saw the child. The mothers and fathers with these arrangements tended to be relatively young and were the least likely of all groups to have been living with the child's other parent at the time the child was born. While there were clear socio-demographic similarities between these two groups, distance between the two homes, the sorting out of parenting arrangements and family dynamics were quite different.

Firstly, fathers who never saw their child were less likely than those with daytime-only care to live within 20 km or a 30-minute drive from the child's mother (with around one-third of the former group living at least 500 km or a 6-hour drive from her). These fathers were also more likely than those with daytime-only care to have re-partnered.

Secondly, parents whose child never saw his or her father were less likely than those whose child experienced daytime-only care with the father to indicate that their parenting arrangements had been sorted out, and where arrangements had been sorted out, those whose child never saw the father were less likely to indicate that this had been achieved mainly through discussions with the other parent. In particular, they were more likely to report that the arrangements had "just happened".

Thirdly, regarding family dynamics, parents whose child never saw the father reported less frequent communication with the other parent, were more likely to describe the inter-parental relationship as highly conflictual or fearful, and were less likely to view it as friendly or cooperative. Consistent with this, both the fathers and mothers in these families were more likely than those in families in which the child saw the father during the daytime only to report that they had been physically hurt by the other parent. The former group of fathers were also more likely than the fathers with daytime-only care time to indicate that they had experienced emotional abuse alone.

Concerns about their personal safety or the safety of their child relating to contact issues were more likely to be expressed by mothers and fathers whose child never saw the father, than by those whose child saw the father during the daytime only. The former group of parents (especially the mothers) were also more likely than the latter group of parents to indicate that there had been mental health problems, substance misuse issues or (other) addictions before separation.

Overall, families in which the father had daytime-only care seemed similar in terms of these family functioning issues to those in which the father cared for the child for a minority of nights (1–34% of nights), while those in which the child never saw the father tended have more problematic family functioning issues than most other groups.

Parents with shared care-time arrangements were as likely or more likely than parents with other care-time arrangements to believe that their parenting arrangements were working well for the child, mother and father (reported by 70–80% of parents with a shared care-time arrangement who provided assessments for all three parties). 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 than parents in families in which the father had fewer overnight stays or daytime-only care (especially the latter group). For example, compared with families in which the father had daytime-only care, both mothers and fathers with shared care-time arrangements were more likely to report having experienced some form of family violence prior to separation.

For the most part, pre-separation experiences of violence and of issues relating to mental health, substance misuse or other addictions, along with 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, the other side of the coin is that there are some children in shared care-time arrangements who have a family history entailing violence and a parent concerned about the child's safety, and who are exposed to dysfunctional inter-parental relationships.



# 8

## Parental responsibility: Decision-making about issues affecting the child and financial support

This chapter examines the question of parental responsibility and the extent to which parents share such responsibility.<sup>1</sup> This chapter has three parts.

In the first part, data from the Longitudinal Study of Separated Families Wave 1, conducted in 2008 (LSSF W1 2008), is used to address the following questions:

- To what extent are decisions relating to the children's long-term welfare shared equally between parents?
- How is the exercise of decision-making responsibility related to the amount of time a parent spends with a child?
- Is the family law pathway used to resolve parenting issues related to the likelihood of joint decision-making?

In the second part, parental responsibility outcomes in orders made by consent and judicial determination are examined (using data from the quantitative analysis of court files). Key issues considered are:

- Has there been a change in parental responsibility outcomes after the 2006 changes?
- Are there differences in parental responsibility outcomes between courts?
- Are there differences in parental responsibility outcomes between cases determined by judicial decision and those resolved by consent?
- Is there a relationship between parental responsibility outcomes and allegations of violence or child abuse recorded in the court file?

The third part concerns financial support. Data from the LSSF W1 2008 are used to address the following questions:

- What is the nature of parents' child support obligations, and to what extent are parents complying with these obligations?
- To what extent are parents' contributions to decision-making and their level of compliance with any financial support obligations related to care-time arrangements?

The issue of parental responsibility is also dealt with elsewhere in this report. Chapter 9 provides a detailed discussion of how the legislative provisions about parental responsibility and care time operate from the perspective of family lawyers and family relationship service professionals. Chapter 15 discusses parental responsibility in legal decision-making.

### 8.1 Decision-making responsibilities

In order to assess the extent to which the sharing of parental responsibility applies in practice, respondents in the LSSF W1 2008 were asked to indicate the relative contributions of each parent to decisions regarding four broad matters pertaining to their child: education, health care,

1 See the "big picture evaluation" questions concerning the proportion of parents who exercise shared parental responsibility (including shared decision-making on long-term issues) (2007 Evaluation Framework; see Appendix B), together with the questions concerning parental involvement and agreement under policy objectives 2 and 3.

religion or cultural ties, and sporting or social activities.<sup>2</sup> Decision-making relating to education issues was only asked about if the focus child was at least four years old.

Table 8.1 provides an overview of whether decisions relating to each of the four areas (taken separately) were mainly made by: (a) the mother, (b) the father, or (c) both parents equally. For each decision-making area, a small proportion of parents said that decisions were mainly made by whichever parent the child happens to be with at the time, or by someone else (e.g., a grandparent, uncle, sibling, or the child, where this child was older). In this chapter, the situation where decisions are being made equally by both parents is also referred to as “shared decision-making”.

**Table 8.1 Involvement of each parent in decision-making about focus child, mothers and fathers, 2008**

	Fathers	Mothers	All
	%	%	%
<b>Education (children 4+ years)</b>			
Mainly mother	41.0	66.3	53.4
Mainly father	10.3	4.3	7.4
Both parents equally	46.3	28.0	37.3
Other	2.5	1.4	1.9
<b>Total</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>
<b>Health care</b>			
Mainly mother	51.2	78.9	65.1
Mainly father	9.3	2.4	5.8
Both parents equally	33.5	16.2	24.8
Other	5.9	2.6	4.3
<b>Total</b>	<b>99.9</b>	<b>100.1</b>	<b>100.0</b>
<b>Religion or cultural ties <sup>a</sup></b>			
Mainly mother	37.1	64.0	50.9
Mainly father	10.2	3.6	6.8
Both parents equally	47.2	28.8	37.8
Other	5.5	3.5	4.5
<b>Total</b>	<b>100.0</b>	<b>99.9</b>	<b>100.0</b>
<b>Sporting and social activities</b>			
Mainly mother	41.3	72.0	56.9
Mainly father	12.5	3.3	7.8
Both parents equally	39.0	20.8	29.8
Other	7.3	3.9	5.6
<b>Total</b>	<b>100.1</b>	<b>100.0</b>	<b>100.1</b>
<b>Number of observations</b>	<b>4,983</b>	<b>5,019</b>	<b>10,002</b>

Notes: <sup>a</sup> 10% of parents answered “don’t know” and 1% did not respond to the question—these parents are excluded from the analysis. It is likely that for many of the parents who answered “don’t know” to this question, it was because it was not an issue whether either parent made a decision as it was not relevant (e.g., no religion). The “other” category consists of the responses “whichever parent the child is with at the time” and “someone else”. Percentages may not total exactly 100.0% due to rounding.

Source: LSSF W1 2008

For all four decision-making areas, the majority of parents said that the decisions were mainly made by the mother or by both parents equally, with only a minority saying that the decisions

2 In the LSSF W1 2008, parents were asked: “Who is mostly involved in making decisions about ...”. The issues raised were: [the child’s] education, health care for [the child], [the child’s] religious or cultural ties, and [the child’s] sporting and social activities. Response options were: (a) “mainly you”, (b) “mainly ... [name or pseudonym of child’s other parent]”, (c) “both of you equally”, (d) “whichever parent the child is with at the time”, or (e) “someone else”. Parents who reported that someone else mainly made the decisions were asked to indicate who this person was.

were mainly made by the father. The following proportions of parents (mothers and fathers combined) indicated that each parent contributed equally to decision-making:

- 37% for decisions about education;
- 25% for decisions about health care;
- 38% for decisions about religion or cultural ties; and
- 30% for decisions about sporting and social activities.

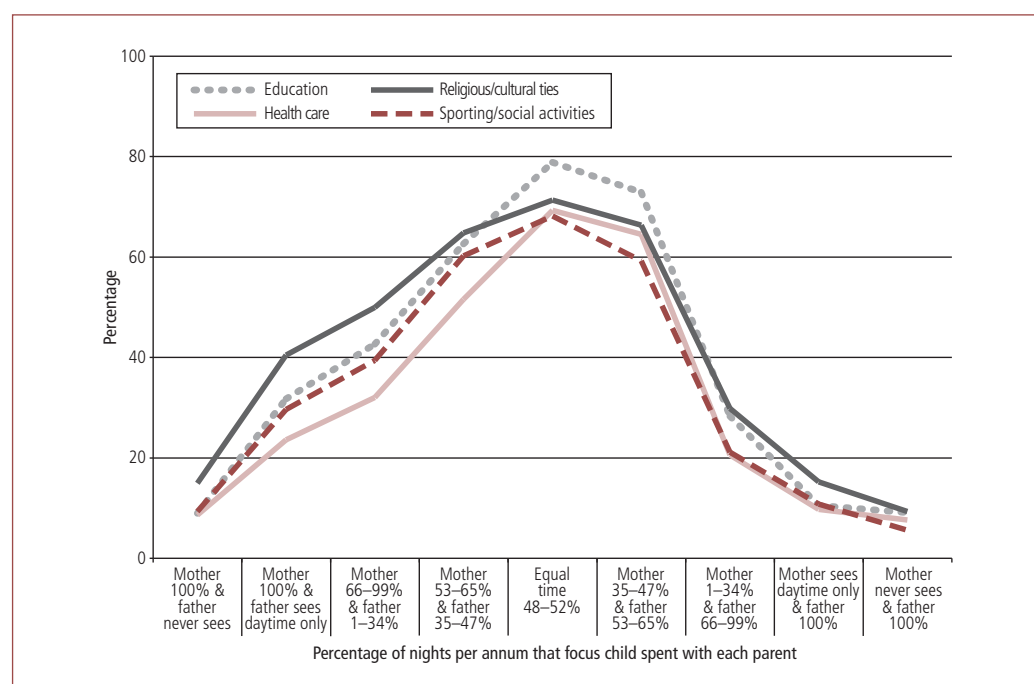
However, only 15% of parents indicated that decisions in all four areas were made jointly. It is clear that shared parental decision-making is not exercised for the majority of children post-separation.

Overall, mothers were more likely than fathers to say that the mother mainly made the decisions (Table 8.1). For example, 66% of mothers and 41% of fathers said that the mother mainly made the decisions about the child's education. Fathers were more likely than mothers to say that decisions concerning education were made by both parents equally (reported by 46% of fathers and 28% of mothers), with only 10% of fathers and 4% of mothers saying that these decisions were mainly made by the father.

### 8.1.1 Decision-making and care-time arrangements

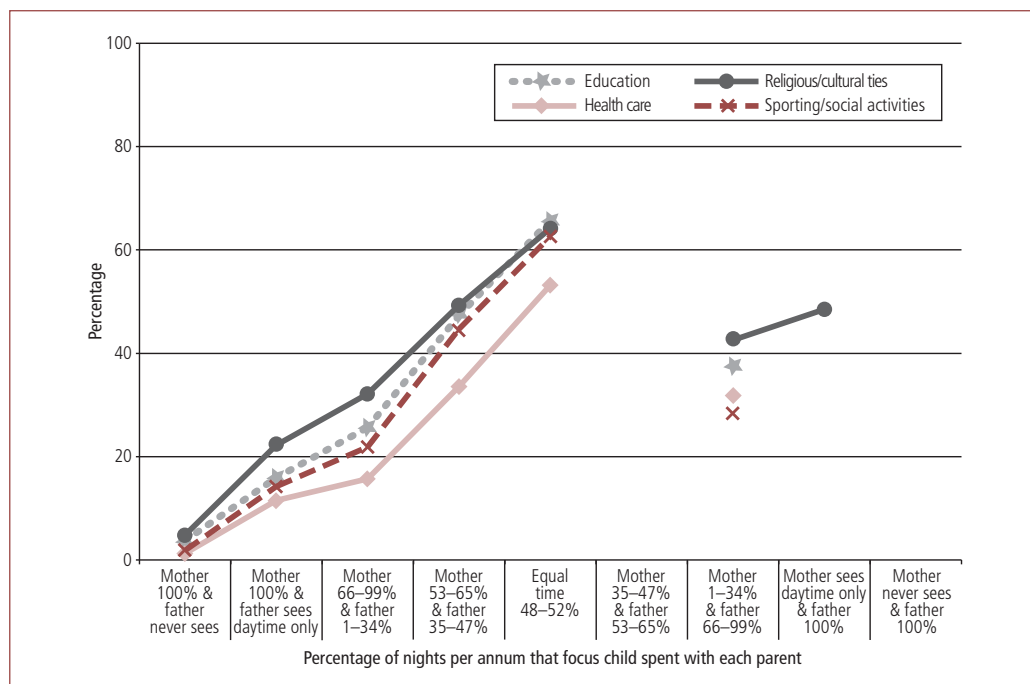
This section provides information on the relationship between care-time arrangement and decision-making responsibility in each of the areas.

Figure 8.1 shows the proportion of fathers with each care-time arrangement who reported that decision-making is shared equally between the parents. Trends for each of the four areas of decision-making are presented. Figure 8.2 provides the same information from the mothers' perspectives.



Source: LSSFW1 2008

**Figure 8.1** Proportion of fathers who said that both parents were equally involved in decision-making about the focus child for each issue, by care-time arrangements, 2008



Source: LSSF W1 2008

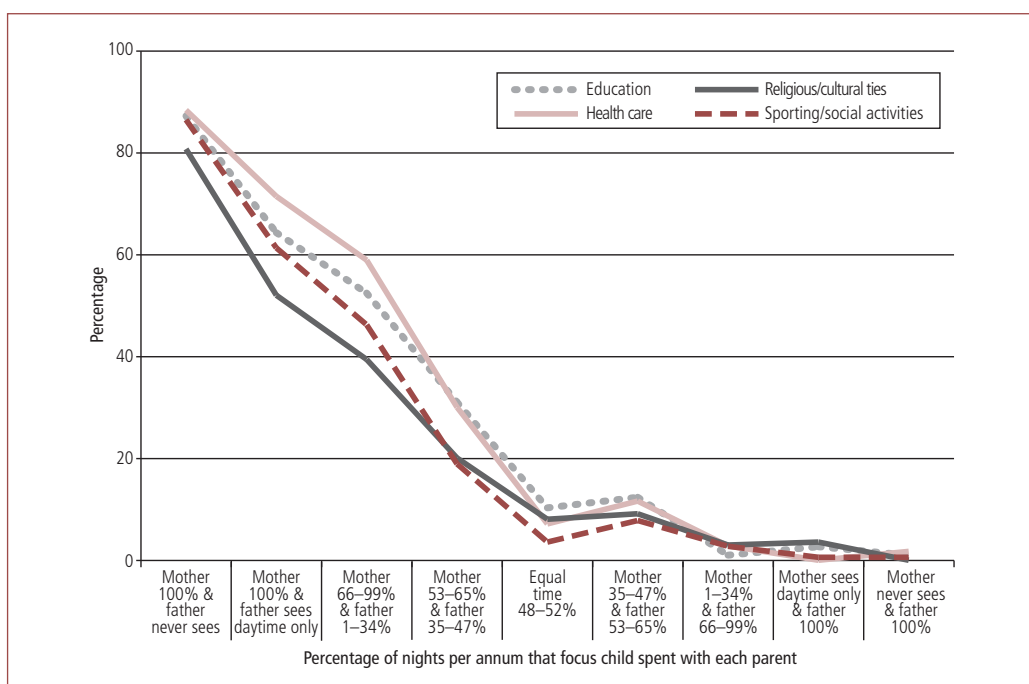
**Figure 8.2** Proportion of mothers who said that both parents were equally involved in decision-making about the focus child for each issue, by care-time arrangements, 2008

It is clear that the more equal the care time of each parent, the more likely were mothers and fathers to indicate that decision-making was shared equally. That is, across the four decision-making areas, the proportions of fathers and mothers who said that both parents contributed equally in decisions increased as the proportion of nights the child spent with the father increased from nil (and in fact never seeing the child), reaching a peak when care time was shared equally. The proportion of fathers and mothers reporting that decision-making was shared equally then decreased progressively as the child saw less of the mother. For example, 79% of fathers with equal care time reported that both parents contributed equally to decision-making on education about the focus child, while 63–73% of fathers with shared care time where the child spent more nights with one parent and fewer than 43% of fathers with other care-time arrangements said that decisions regarding the child's education were made jointly. Among mothers, shared decision-making on education was reported by 66% of those with equal care time (48–52% of nights), 47% of those where the child lived 35–47% of nights with one parent and 53–65% of nights with the other parent, and fewer than 38% of mothers with other care-time arrangements.

The greater the care time of mothers, relative to fathers, the more likely were mothers to be seen as the main decision-maker. Figure 8.3 shows the proportion of fathers with each care-time arrangement who reported that decisions were mainly made by the child's mother, while Figure 8.4 shows the relationship between mothers' reports on this issue and their care-time arrangements. Using decisions about the child's education as an example, fewer than 10% of fathers and mothers whose focus child was mostly in the care of the father said that the mother was mainly responsible for making decisions, compared with 52–87% of fathers and 73–95% of mothers whose child was in the care of the mother for 66% or more of nights.

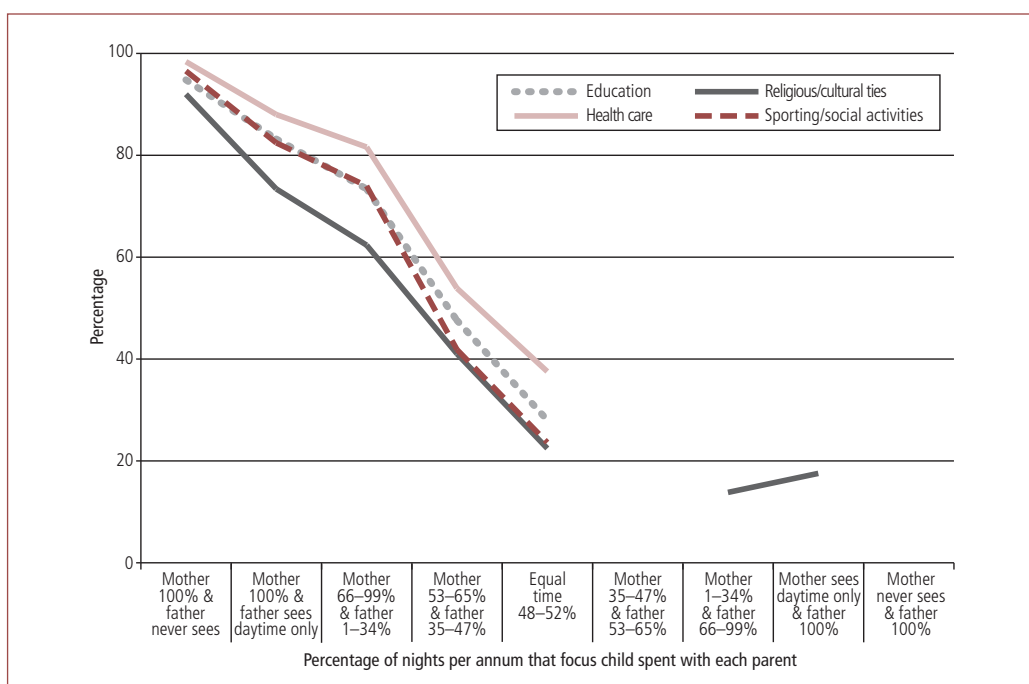
Figures 8.5 and 8.6 show the relationship between care-time arrangements and reports that the father mainly made decisions regarding each of the four areas, from the perspectives of fathers and mothers respectively.





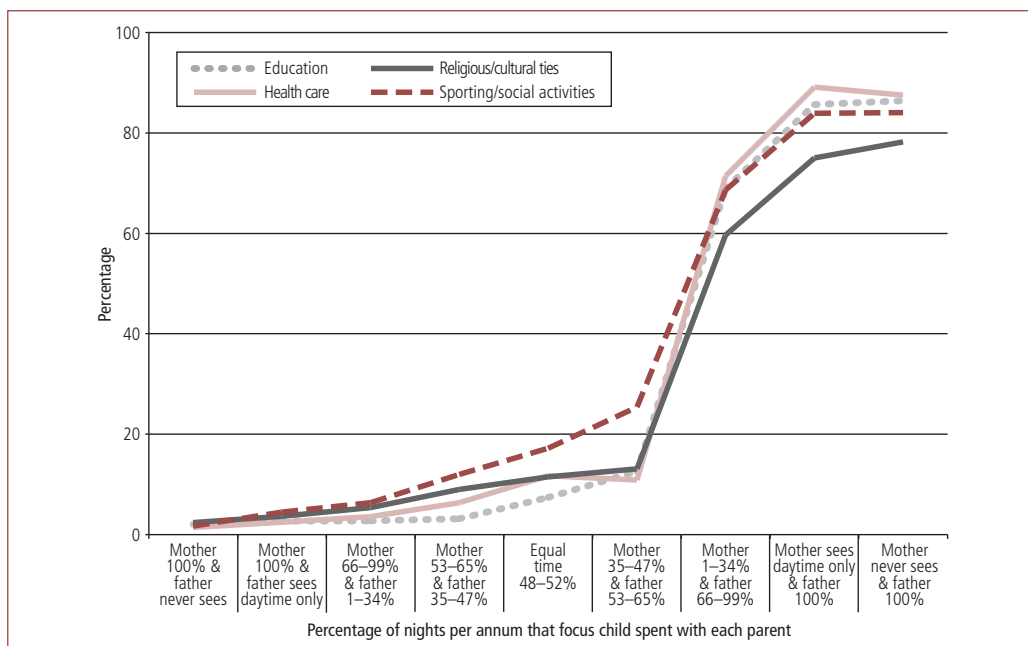
Source: LSSFW1 2008

**Figure 8.3** Proportion of fathers who said that the mother mainly made decisions about the focus child for each issue, by care-time arrangements, 2008



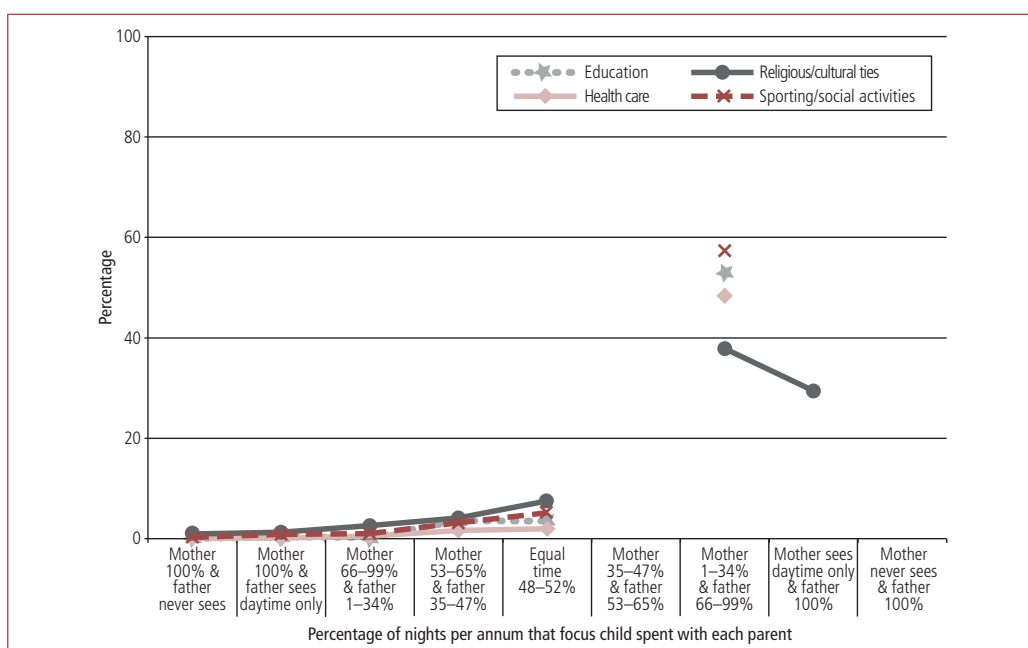
Source: LSSFW1 2008

**Figure 8.4** Proportion of mothers who said that the mother mainly made decisions about the focus child for each issue, by care-time arrangements, 2008



Source: LSSF W1 2008

**Figure 8.5** Proportion of fathers who said that the father mainly made decisions about the focus child for each issue, by care-time arrangements, 2008



Source: LSSF W1 2008

**Figure 8.6** Proportion of mothers who said that the father mainly made decisions about the focus child for each issue, by care-time arrangements, 2008

The analysis in this section demonstrates that perceptions regarding the extent to which decision-making was shared is closely associated with care-time arrangements, with shared decision-making being most likely to occur where care time is shared fairly equally.

### 8.1.2 Shared decision-making and father's involvement in their child's day-to-day activities before separation

This section examines the link between shared decision-making and father's involvement in their child's day-to-day activities before separation. Figure 8.7 focuses on families in which the child lived mostly or entirely with the mother and Figure 8.8 on families with a shared care-time arrangement. The figures show how parents' reports of the extent to which decision-making was shared varied according to the extent to which the father was involved in his child's everyday activities prior to separation.<sup>3</sup>

Among parents whose child was living mostly or entirely with the mother, decision-making about issues affecting the child was most likely to be shared if fathers had been very involved in their child's day-to-day activities prior to separation. For example, in families in which the father had been very involved in the child's life prior to separation, 40% of fathers and 43% of mothers said that decisions about their child's education were shared post-separation. In families in which the father had minimal or no involvement in the child's day-to-day activities pre-separation, 26% of fathers and 14% of mothers reported joint decision-making about their child's education post-separation.

Among families with shared care time, the relationship between the sharing of decision-making and the level of the father's involvement in the child's day-to-day activities before separation is less clear. According to mothers' reports, shared decision-making is substantially more likely where the father had been very involved in the child's everyday activities before separation than where the father had had little or no involvement in such activities.

However, the picture is less clear when based on fathers' reports. Regarding health care, fathers' reports suggest that a clearly positive relationship exists between shared decision-making and their pre-separation level of involvement, but this relationship is weaker than that suggested by mothers' reports. Furthermore, the relationship is in the reverse direction for decisions about sporting and social activities: fathers who indicated that they had had little if any involvement in their child's everyday activities were the most likely of the three "pre-separation involvement" groups to report that decisions in this area were shared equally. Fathers who said that they had been very involved in such activities prior to separation were the least likely to report the sharing of decisions regarding the child's sporting and social activities.

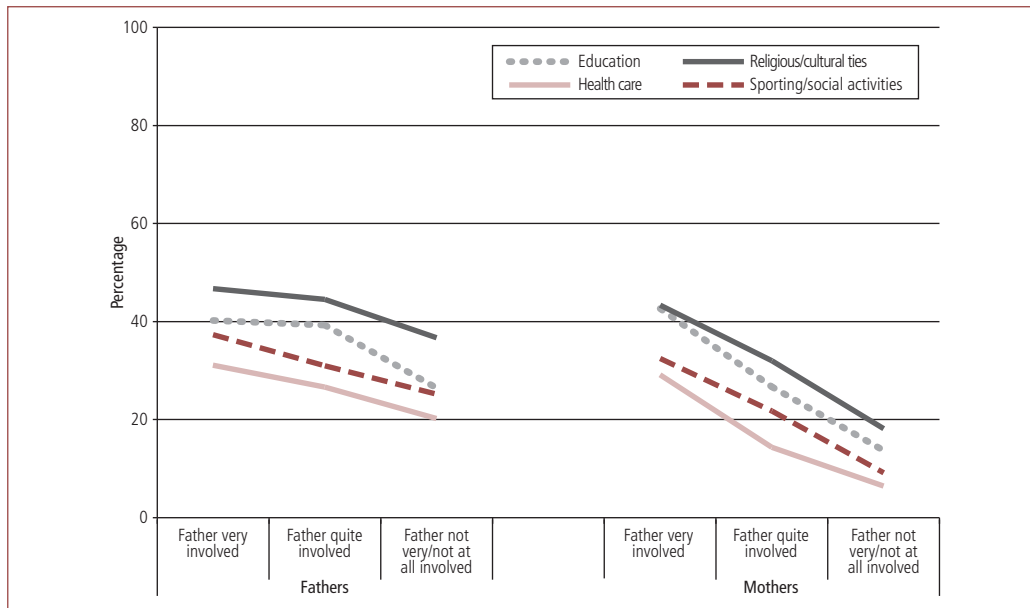
### 8.1.3 Shared decision-making and family violence

The presumption in favour of "equal shared parental responsibility" in the *SPR Act 2006* is not applicable where there are reasonable grounds to believe a child's parent, or another person in the parent's household, has engaged in child abuse or family violence (s61DA(2)). This section, which is based on data from the LSSF W1 2008, provides information on the relationship between shared decision-making and family violence. Parents were asked to indicate whether they had been emotionally abused before or during separation, and whether their child's other parent had physically hurt them before separation. Virtually all parents who said that they had been physically hurt also indicated that they had been victims of emotional abuse. Parents were subdivided into three groups according to whether they said that they had experienced physical hurt, emotional abuse alone, or whether they had not experienced either form of family violence.<sup>4</sup>

Figure 8.9 (on page 183) provides information on family violence in families in which the child spent most or all nights with the mother and Figure 8.10 (on page 183) on family violence in families with shared care-time arrangements. For each of these two care-time arrangements, the proportions of mothers and fathers in each "family violence" group who reported shared decision-making are presented.

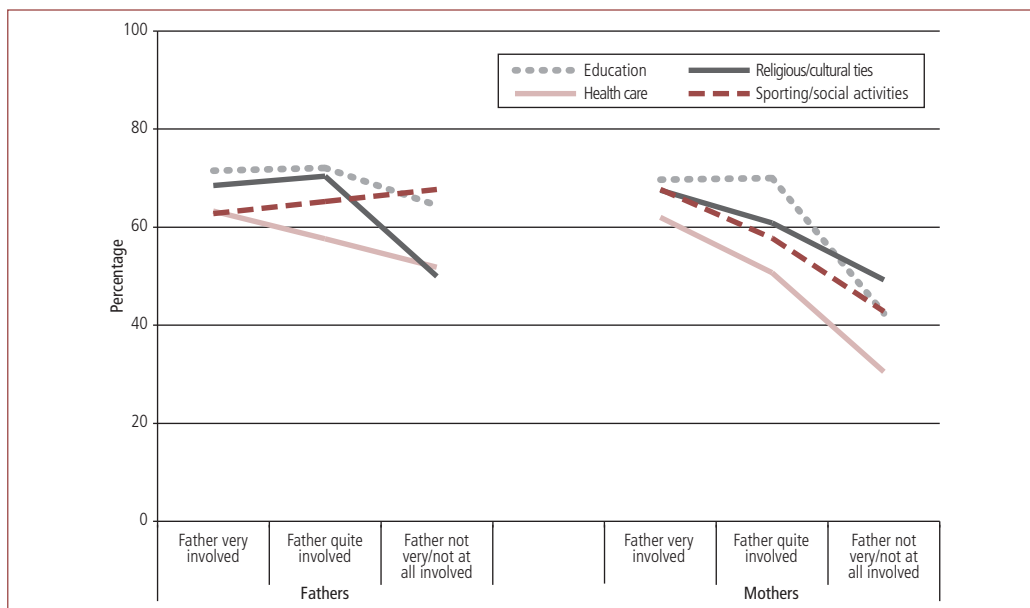
3 Parents in the LSSF W1 1 2008 were asked about their own and the other parent's involvement in the child's day-to-day activities before the separation. The questions asked were: "Before the separation, how involved were you in [focus child's] day-to-day activities: very involved, quite involved, not very involved, not at all involved?"; and "Before the separation, how involved was [other parent] in [focus child's] day-to-day activities: very involved, quite involved, not very involved, not at all involved?"

4 A detailed discussion of the how family violence is defined and measured in the LSSF W1 2008 is provided in Chapter 2.



Source: LSSF W1 2008

**Figure 8.7** Shared decision-making, by level of pre-separation involvement of the father in their child's life, parents with focus child living mostly/entirely with mother (66–100%), 2008



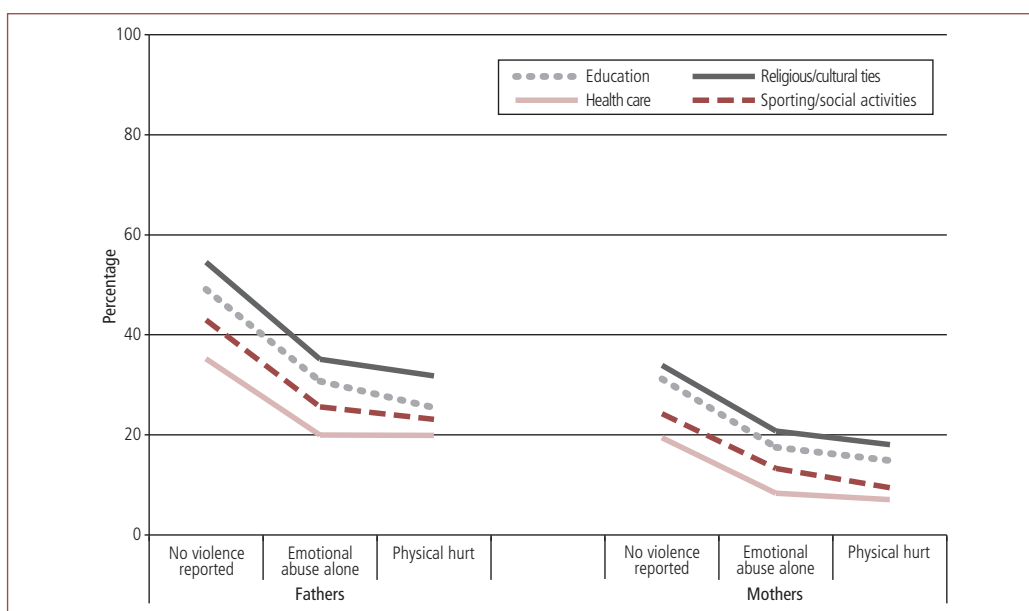
Source: LSSF W1 2008

**Figure 8.8** Shared decision-making, by level of pre-separation involvement of the father in their child's life, parents with focus child in shared care time (35–65%), 2008

Figures 8.9 and 8.10 suggest that shared decision-making was most likely where there had been no physical or emotional abuse, and least likely where respondents had been physically hurt. However, differences in the extent of shared decision-making between those who reported physical violence and those who reported emotional abuse alone are relatively small. These patterns were apparent regardless of the gender of respondents or care-time arrangements.

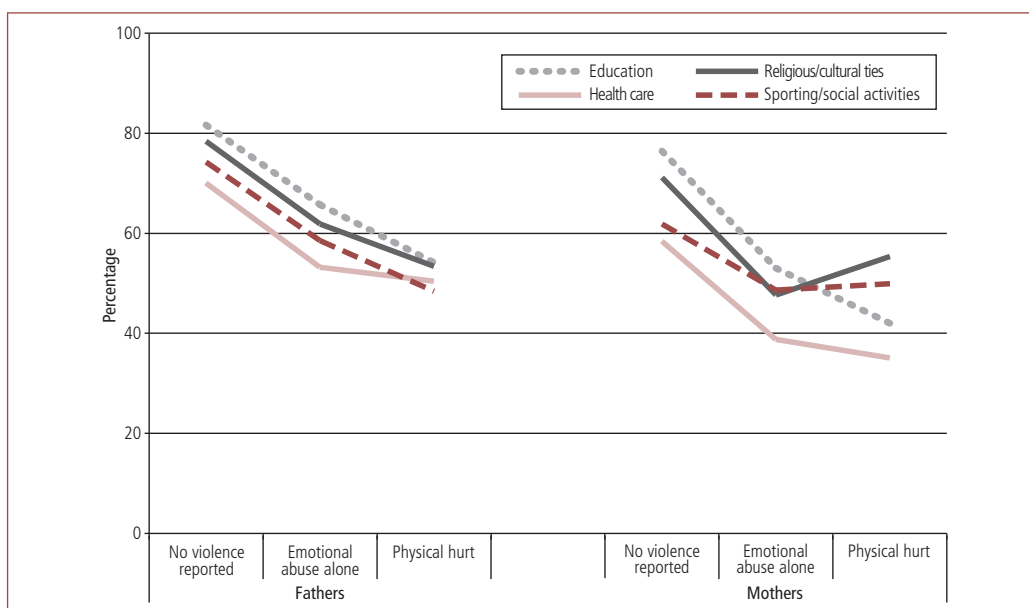
Again using decisions about the child's education as an example, among parents whose child spent most or all nights with the mother, shared decision-making was reported by:

- 49% of fathers and 31% of mothers who indicated that they had not been subjected to either physical or emotional abuse;



Source: LSSF W1 2008

**Figure 8.9** Shared decision-making, by reports of family violence, parents with focus child living mostly/entirely with mother (66–100%), 2008



Source: LSSF W1 2008

**Figure 8.10** Shared decision-making, by reports of family violence, parents with focus child in shared care time (35–65%), 2008

- 31% of fathers and 18% of mothers who said that their child's other parent had emotionally abused them but had not hurt them physically; and
- 25% of fathers and 15% of mothers who said that their child's other parent had hurt them physically.

Among parents providing shared care-time arrangements, shared decision-making about the education of the child was reported by:

- 82% of fathers and 76% of mothers who said that they had not experienced either form of family violence;

- 66% of fathers and 53% of mothers who reported the experience of emotional abuse alone; and
- 54% of fathers and 42% of mothers who reported the experience of physical hurt.

Nevertheless, the proportion of parents who had experienced family violence who reported that decision-making was shared is relatively high, given their experience.

#### 8.1.4 Shared decision-making and safety concerns

In the LSSF W1 2008, parents were asked whether they held any concerns about their child's safety or their own safety as a result of ongoing contact with their child's other parent. The specific question on safety concerns identified whether the concerns related to the respondent alone, the focus child alone, or both respondent and child. Those who reported that they held such concerns were also asked to indicate whether their concerns related to contact with the child's other parent, the new partner of that parent, another adult, and/or another child.

Figures 8.11 and 8.12 show that shared decision-making was much less likely to be reported by parents who held safety concerns than by other parents. This pattern holds irrespective of care-time arrangements and the gender of respondent. However, in families with shared care time, this trend is stronger in the reports of mothers than fathers.

Using education decisions as an example, among mothers with shared care-time arrangements, joint decision-making was reported by 37% who held safety concerns for the child and/or themselves, compared with 61% who indicated that they did not hold such concerns. Among fathers with shared care-time arrangements, 60% who held such safety concerns and 73% who did not hold such concerns said that decision-making was shared.

#### 8.1.5 Shared decision-making and family law pathways

Parents in the LSSF W1 2008 were asked whether they had sorted out their parenting arrangements, and if they had done so, they were asked to indicate whether they had mainly achieved this through: (a) counselling, mediation or dispute resolution services; (b) a lawyer; (c) the courts; (d) discussions with the other parent; (e) nothing specific, it just happened; or (f) something else (in which case, parents were asked to specify the process adopted). Few parents indicated that the last of these alternative options applied. This analysis is restricted to parents who indicated that they had sorted out their arrangements (reported by 71% of fathers and 73% of mothers). Figure 8.13 (on page 186) shows the proportions of fathers who reported shared decision-making, according to the main family law pathway they used to sort out their parenting arrangements. Figure 8.14 (on page 186) provides this information for mothers.

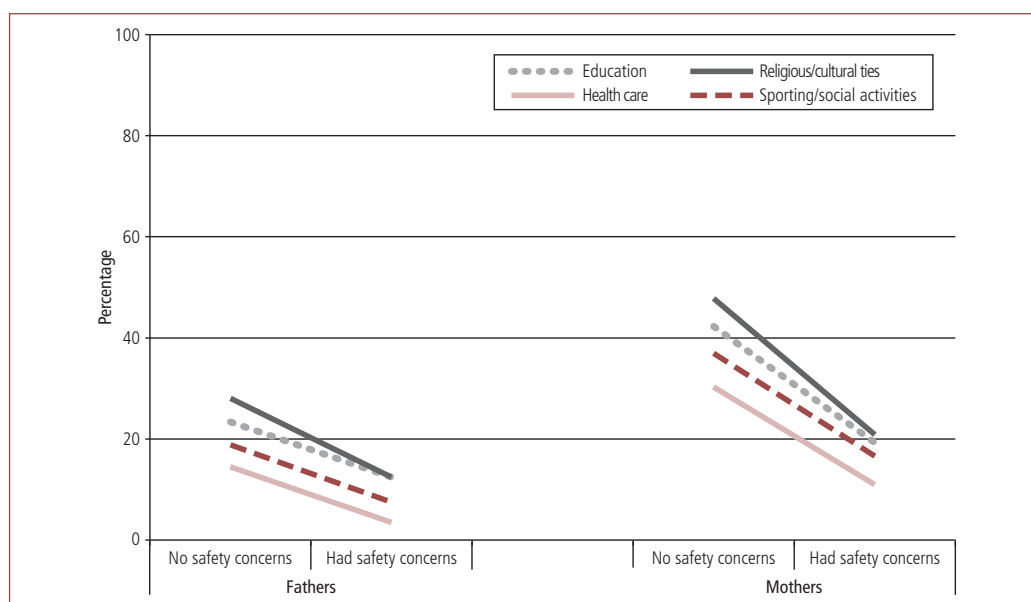
The parents who were most likely to report shared decision-making were those who indicated that they had mainly sorted out their arrangements through discussions with their child's other parent. For example, shared decision-making about education was reported by 60% of fathers who said that they finalised their parenting arrangements mainly through discussions with their child's other parent, compared with between 35% and 49% of fathers who said that they had reached agreement mainly through other means. Among mothers, shared decision-making about education was reported by 38% of those who indicated that they had reached agreement mainly through discussions with other parent, compared with 14% to 29% of mothers who said that they had mainly used other means to sort out their arrangements.

While parents who indicated that they had managed to sort out their parenting arrangements between themselves were more likely than other parents to indicate that decision-making was shared, very little difference in the extent of shared decision-making was apparent for the other family law pathways used to sort out parenting arrangements.

#### 8.1.6 Parental responsibility: Patterns in court files

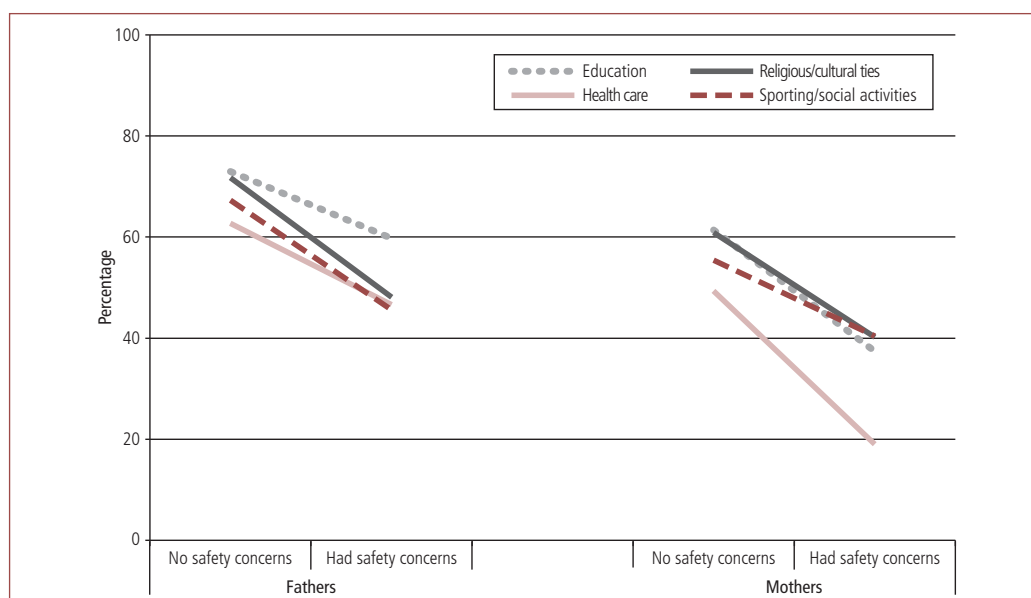
As described in Chapter 1, the *SPR Act 2006* changed the legislative provisions that guide determinations about parental responsibility. A key change was the introduction of a presumption in favour of equal shared parental responsibility (s61DA). This section uses data from the analysis of court files (FCoA, FMC and FCoWA) on parental responsibility orders<sup>5</sup> (made either by

<sup>5</sup> As outlined in Chapter 1, prior to 1 July 2006, the legislation (and consequently court orders) was framed as orders for "joint parental responsibility". Since 1 July 2006, orders for parental responsibility have been mostly



Source: LSSFW1 2008

**Figure 8.11** Shared decision-making, by whether parent had safety concerns for focus child and/or self, parents with focus child living mostly/entirely with mother (66–100%), 2008



Source: LSSFW1 2008

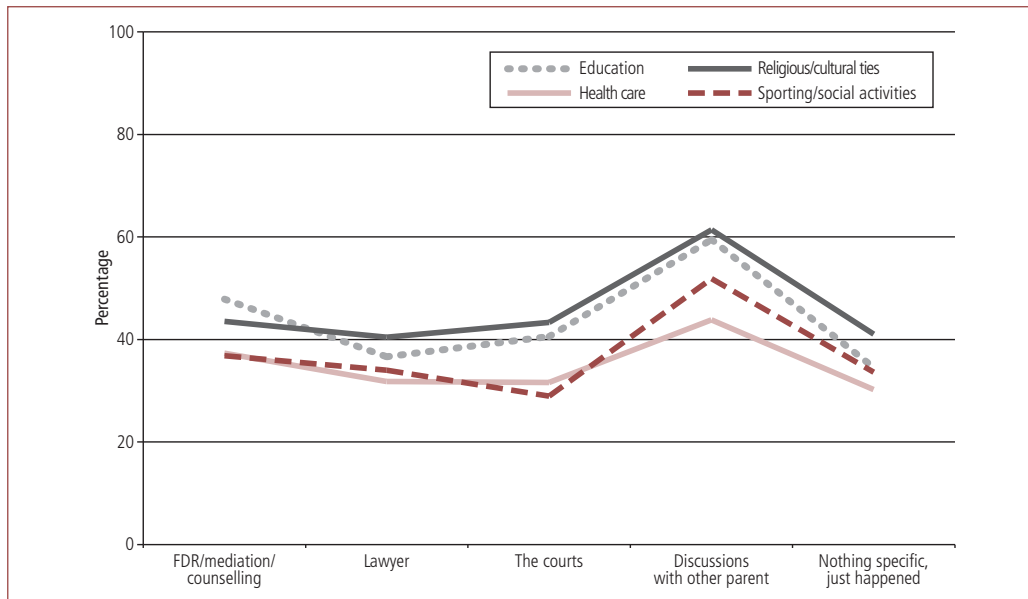
**Figure 8.12** Shared decision-making, by whether parent had safety concerns for focus child and/or self, parents with focus child in shared care time (35–65%), 2008

consent or judicial determination) to describe the patterns of parental responsibility outcomes and whether there has been a change in the extent to which orders for shared parental responsibility have been made post-1 July 2006.<sup>6</sup> It also provides information on the extent to which there are differences between courts in parental responsibility outcomes and whether there are differences between cases that involve a judicial decision and those resolved by consent after proceedings were initiated.

framed in terms of “equal shared parental responsibility” (see Chapter 15 for a discussion of the case law on this).

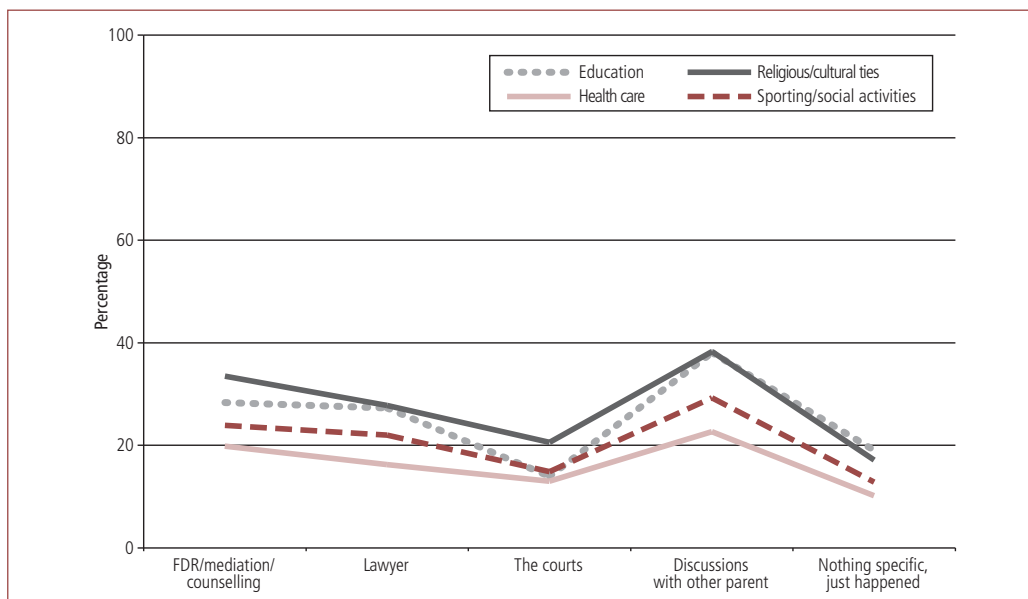
<sup>6</sup> Parental responsibility outcomes are from the last order or judgment document with future arrangements recorded.





Source: LSSF W1 2008

**Figure 8.13** Shared decision-making, by main family law pathways, fathers' reports, parenting arrangements sorted out, 2008



Source: LSSF W1 2008

**Figure 8.14** Shared decision-making, by main family law pathways, mothers' reports, parenting arrangements sorted out, 2008

The pre-reform sample of court files consisted of 1,297 children subject to proceedings, of whom 1,159 had a parental responsibility outcome recorded on the file.<sup>7</sup> The post-reform sample consisted of 1,672 children subject to proceedings, of whom 1,341 had a parental responsibility outcome recorded on the file.<sup>8</sup> The pre-reform figures are from cases sampled from the Melbourne and Perth registries. The post-reform figures are from cases from the Melbourne,

<sup>7</sup> There were 127 children where parental responsibility was not litigated and was therefore recorded in the data collection instrument as not applicable, and a further 11 children where parental responsibility was litigated but no outcome was available on the court file.

<sup>8</sup> There were 166 children where parental responsibility was not litigated and was therefore not applicable and a further 165 children where parental responsibility was litigated but no outcome was available on the court file.

Perth, Brisbane and Sydney registries. The sensitivity of the estimates to the inclusion of more registries for the post-reform estimates has been tested by comparing the pattern of parental responsibility outcomes from just the Melbourne and Perth registries with the patterns when arrangements from all registries are considered. The estimates from the restricted sample are similar to those derived when all of the registries are used. We therefore use the data from all of the registries when examining the extent to which parent responsibility outcomes have changed.

There is evidence of an increase in shared responsibility outcomes following the 2006 reforms. Pre-reform, 76% of cases recorded were for shared parental responsibility, increasing to 87% post-reform (Table 8.2). Interestingly, there was little change in the proportion of parental responsibility orders that were “sole to mother” or “sole to father” (see Chapter 15 for a discussion providing examples of the kinds of cases in which courts will make orders for sole parental responsibility). Most of the increase in shared parental responsibility outcomes is a result of a decrease in the “other” category.

**Table 8.2 Parental responsibility outcomes, pre– and post–1 July 2006**

	Pre-reform	Post-reform
	%	%
Shared parental responsibility	76.3	86.5
Sole to mother	10.3	8.2
Sole to father	3.6	1.6
Other	9.8	3.6
<b>Total</b>	<b>100.0</b>	<b>99.9</b>
<b>Number of children</b>	<b>1,159</b>	<b>1,341</b>

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The “other” category includes sole to maternal grandparent, sole to paternal grandparent or sole to other relatives, along with a small proportion of orders—both mother and father—in the post-reform sample. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

Both pre- and post-reform, a shared parental responsibility order is less likely in cases that are resolved by judicial determination than those resolved by consent (Table 8.3). For example, post-reform, 56% of cases decided by judicial determination had a shared parental responsibility outcome, compared to 91% of cases resolved by consent. There was an increase in shared parental responsibility outcomes for both judicial determination and consent cases.

**Table 8.3 Parental responsibility outcomes, judicial determination and consent, pre– and post–1 July 2006**

	Judicial determination		Consent	
	Pre-reform	Post-reform	Pre-reform	Post-reform
	%		%	
Shared parental responsibility	44.0	56.1	79.9	90.9
Sole to mother	27.8	28.2	8.3	5.4
Sole to father	10.3	6.2	2.9	0.9
Other	17.9	9.4	8.8	2.8
<b>Total</b>	<b>100.0</b>	<b>99.9</b>	<b>99.9</b>	<b>100.0</b>
<b>Number of children</b>	<b>251</b>	<b>222</b>	<b>908</b>	<b>1,119</b>

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The “other” category includes sole to maternal grandparent, sole to paternal grandparent or sole to other relatives, along with a small proportion of orders—both mother and father—in the post-reform sample. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

There has been little change in the extent to which there are sole to mother parental responsibility orders and some decrease in sole to father outcomes, particularly in cases that are judicially determined.

Table 8.4 shows parental responsibility orders according to how the case was resolved (judicial determination, consent after proceedings initiated or pure consent) for post-1 July 2006 cases. There is relatively little difference in the parental responsibility outcomes between pure consent cases and cases resolved by consent after proceedings were initiated. For both types of cases, about 90% had a shared parental responsibility outcome. In contrast, for cases judicially determined 56% had a shared parental responsibility outcome, 28% were sole to mother and 6% sole to father. This reflects that a higher proportion of the cases requiring a judicial determination involve issues of violence, mental health, substance misuse or other forms of family dysfunction (Table 8.5).

**Table 8.4 Parental responsibility outcomes, by type of case, post-1 July 2006**

	Judicial determination	Consent after proceedings	Pure consent
	%		
Shared parental responsibility	56.1	89.7	92.2
Sole to mother	28.2	6.8	3.8
Sole to father	6.2	1.3	0.4
Other	9.4	2.1	3.6
<b>Total</b>	<b>99.9</b>	<b>99.9</b>	<b>100.0</b>
<b>Number of children</b>	<b>222</b>	<b>594</b>	<b>525</b>

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The "other" category includes sole to maternal grandparent, sole to paternal grandparent, sole to other relatives, along with a small proportion of orders—both mother and father. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

**Table 8.5 Reasons given for deciding on sole-to-mother parental responsibility outcomes, post-1 July 2006**

Reason for sole-to-mother parental responsibility outcome	%
Family violence	31.0
Other reason	27.4
Abuse	18.7
Mental health issues	17.7
Substance misuse	11.6
By consent	3.8
Entrenched conflict	1.1
Reason not recorded on file	33.4
<b>Number of children</b>	<b>60</b>

Notes: Sample restricted to cases that were judicially determined and parental responsibility outcome was sole to mother. Weighted percentages. Multiple reasons could be given.

Source: FCoA, FMC and FCoWA court files

Table 8.5 provides information on the reasons for a sole to mother parental responsibility outcome.<sup>9</sup> These reasons were coded on the basis of material on the court file, including judgments where available. The coding frame allowed the following reasons to be coded: abuse, family violence, mental health issues, substance misuse, and entrenched conflict. "Other reason" in-

<sup>9</sup> Because of the small number of sole to father parental responsibility outcomes, a comparable analysis could not be done for this part of the sample.

cluded a range of issues, including situations in which a father had either initiated proceedings and then failed to pursue them or had failed to respond to proceedings issued by the mother. The data reported in Table 8.5 demonstrate that family violence and abuse were the most common reasons underlying a sole to mother parental responsibility order.

In our sample of court files, the FCoA had a higher proportion of cases resolved by consent compared with cases in the FMC and FCoWA.<sup>10</sup> As consent cases were more likely to have a shared parental responsibility outcome than cases that were judicially determined, differences in parental responsibility outcomes between the courts were further analysed for those files with a judicial determination.<sup>11</sup> As shown in Table 8.6, there were differences in the pattern of parental responsibility outcomes for children in cases that were judicially determined, with the FCoA having the highest proportion of sole parental responsibility orders. Where orders of sole parental responsibility were made, in both the FCoA and FMC judicial determination sample, the majority were made in favour of mothers—38% in the FCoA and 26% in the FMC. In both of these courts, a small minority of such orders were made in favour of fathers, 8% in the FCoA and 4% in the FMC.

**Table 8.6 Parental responsibility outcomes in files judicially determined, by court, post-1 July 2006**

	FCoA	FMC	FCoWA
	%		
Shared parental responsibility	44.9	60.0	66.1
Sole to mother	38.1	25.9	12.1
Sole to father	8.2	4.2	13.3
Other	8.7	9.8	8.6
Total	99.9	99.9	100.1
Number of children	49	111	62

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The “other” category includes sole to maternal grandparent, sole to paternal grandparent, sole to other relatives, along with a small proportion of orders—both mother and father. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

A more even spread of sole parental responsibility was evident in the FCoWA, with 12% of mothers and 13% of fathers in the judicial determination sample being awarded sole parental responsibility.

While there is some relationship between an allegation of family violence or child abuse being made in proceedings and an outcome other than shared parental responsibility, even in cases with allegations of family violence or child abuse, in the majority of cases there is a shared parental responsibility outcome (Table 8.7). For example, in cases with no allegations, 90% have a shared parental responsibility outcome, compared to 76% of cases where both family violence and child abuse are alleged, 80% of cases where family violence alone is alleged and 72% of cases where child abuse alone is alleged. Generally, where there is an allegation of family violence or child abuse and an order for sole parental responsibility is made, the order is sole to mother.

Table 8.8 shows parental responsibility outcomes by the age of the child. The most striking feature of this table is that there is apparently no relationship between the age of the child and shared parental responsibility outcomes.

10 In the FCoA, 55% of cases were pure consent cases, compared with 42% in the FCoWA and 13% in the FMC.

11 Overall, little difference was found in parental responsibility outcomes between the courts. In the FCoA, 89% of children had an outcome of shared parental responsibility. The corresponding proportions in the FMC were 85% and 83% in the FCoWA.

**Table 8.7** Parental responsibility outcomes, by allegation of violence or child abuse, judicially determined and consent after proceedings cases, post-1 July 2006

	Allegation of family violence or child abuse			No allegation
	Both family violence and child abuse	Family violence only	Child abuse only	
		%		%
Shared parental responsibility	75.8	79.6	71.9	89.8
Sole to mother	14.0	18.5	18.0	4.9
Sole to father	4.0	1.0	4.4	1.8
Other	6.3	0.9	5.6	3.4
Total	100.1	100.0	99.9	99.9
Number of children	140	152	129	395

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The "other" category includes sole to maternal grandparent, sole to paternal grandparent, sole to other relatives, and orders—both mother and father. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. "Family violence" defined as parent's assertion of either family violence—sexual, family violence—physical, family violence—emotional/psychological/threatened, or family violence order. "Child abuse" defined as a claim of either need to protect child from physical harm, need to protect child from sexual harm, need to protect child from emotional/psychological harm, need to protect child from neglect or need to protect child from witnessing family violence. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

**Table 8.8** Parental responsibility outcome, by age of child, post-1 July 2006

	0–2 years	3–4 years	5–11 years	12–14 years	15–19 years
	%				
Shared parental responsibility	85.6	82.1	86.9	89.1	88.5
Sole to mother	10.5	10.5	7.8	7.0	6.8
Sole to father	1.7	2.6	1.5	1.3	0.1
Other	2.1	4.8	3.8	2.5	4.7
<b>Total</b>	<b>99.9</b>	<b>100.0</b>	<b>100.0</b>	<b>99.9</b>	<b>100.1</b>
<b>Number of children</b>	<b>132</b>	<b>198</b>	<b>739</b>	<b>192</b>	<b>80</b>

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The "other" category includes sole to maternal grandparent, sole to paternal grandparent, sole to other relatives, and orders—both mother and father. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: FCoA, FMC and FCoWA court files

### 8.1.7 Summary

This analysis has examined parents' reports about shared decision-making in relation to children, and court orders concerning shared parental responsibility. The parent data show that parents' practices concerning shared decision-making are contingent on a number of issues, including the amount of care time a parent spends with a child. The trend in formal legal arrangements show that most parents retain parental responsibility under court orders, with this being removed only in a minority of (usually litigated) cases where issues such as child abuse and family violence are of concern.<sup>12</sup>

The analysis of separated parents' views about whether decisions affecting their child are made unilaterally or shared by both parents clearly demonstrates that the exercise of parental responsibility is closely linked with the parents' care-time arrangements. The greater the sharing of care time, the more likely it was that parents would make joint decisions, although those

12 For cases that deal with this point, see: *Re B and B: Family Law Reform Act 1995* (1997) 21 FamLR 676 ¶ 3.12, and *W and W* [2006] FCWA 103 ¶ 23.

who had a minority of care nights were more likely than those with a majority of care nights to believe that decision-making was shared. In addition, the parents' reports suggest that the sharing of decisions about the child was more likely to occur where the father had been very involved in their child's everyday activities before separation, and where parenting arrangements had been sorted out mainly through discussions between the parents themselves, rather than through the use of family relationship services, lawyers or the courts. Finally, the sharing of decision-making was less likely to occur where there had been a history of family violence or where one parent was concerned about personal safety or the child's safety linked with ongoing contact with the other parent. At the same time, a substantial proportion of parents who reported a history of family violence or expressed ongoing safety concerns were in shared care-time arrangements and indicated that decision-making was shared.

The data from court files on parental responsibility shows that orders for shared parental responsibility accounted for the majority of parental responsibility orders both prior to and after the reforms. Matters requiring judicial determination were less likely to result in shared parental responsibility orders being made than matters resolved by consent. This is true both before and after the reforms and reflects the complex nature of matters that proceed to judicial determination and the extent to which concerns about family violence and child abuse are relevant in such matters.

The following section focuses on another key area of parental responsibility: the provision of financial support for children. Among other matters, this next section includes an assessment of the extent to which compliance with child support liability is related to the key issues examined in the present section: the sharing of decision-making and care-time arrangements.

## 8.2 Financial support for children post-separation

The Child Support Scheme (CSS), which was established in 1988, was designed to ensure that non-resident parents contributed to the financial support of their children following separation. This was in response to evidence of low rates of compliance with child support payments and low levels of amounts paid.<sup>13</sup>

As outlined in Chapter 1, a number of changes have been made to the CSS since its introduction, the most significant of which were introduced in the *Child Support Amendment Act 2006*. These most recent reforms were designed to better reflect the costs of children, the income of both parents (with each parent's income being treated equally), and the costs incurred by parents when the children are in their direct care. There has also been an increased emphasis on the enforcement of child support obligations.

In its 2005 report, *In the Best Interests of Children: Reforming the Child Support Scheme*, the Ministerial Taskforce on Child Support (2005) noted that:

child support policy can no longer just be concerned with enforcing the financial obligations of reluctant non-resident parents. Ensuring the payment of child support is one part of a bigger picture of encouraging the continuing involvement of both parents in the upbringing of their children. (p. 1)

While the present evaluation is not about the changes to the CSS, it does consider the interactions between the CSS and the 2006 changes to the family law system. Using data from the LSSF W1 2008, this section examines parents':

- compliance with their CSS obligations—whether payments are made in full and on time; and
- views about the fairness or unfairness of the amount paid.

The new Child Support Formula took effect from 1 July 2008. The LSSF W1 2008 was conducted between August and October 2008—that is, just after the new formula took effect. This was therefore a transitional period for many parents and their responses to the questions about child support may have been affected by this transitional period. The second wave of the LSSF

<sup>13</sup> Early research by AIFS suggested that, before the introduction of the CSS, fewer than one resident mother in three received regular maintenance payments for their children (McDonald & Weston, 1986), with single divorced mothers being the most likely to receive regular payments (36%) and never-married mothers being the least likely (9%). Of divorced resident parents who received maintenance for two children, the average amount received was just over \$20 per week per child (Harrison & Tucker, 1986).

W1, being conducted in the second half of 2009, will provide data on child support more than 12 months after the new formula came into effect.

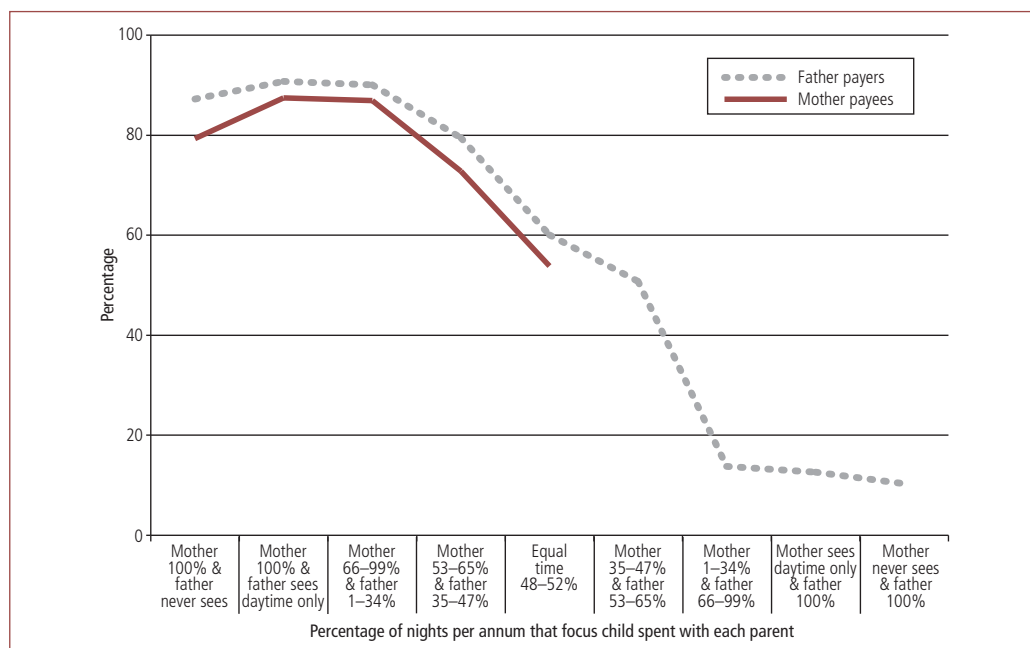
It is important to keep in mind that the sample for the LSSF W1 2008 was drawn from parents who had registered with the Child Support Agency (CSA). (It includes private collection and CSA collect cases.)

### 8.2.1 Child support payment liability

While all the parents in the LSSF W1 2008 were registered with the CSA, a proportion of parents said that they were neither supposed to pay nor receive child support.<sup>14</sup>

Eighty per cent of fathers said that they were supposed to pay child support and 5% indicated that they were supposed to receive it. The reverse pattern was evident for mothers, with 80% reporting that they were to receive child support and 4% indicating that they were to pay it. Fifteen per cent of fathers and 17% of mothers said that child support payments were not meant to be transferred between the parents (i.e., there was no payment transfer liability).

Figure 8.15 shows the proportion of fathers and mothers with different care-time arrangements who indicated that child support payments were supposed to be transferred from the father to the mother. Across all care-time groups, the proportion of fathers reporting that they were supposed to pay child support was similar to the proportion of mothers reporting that they were supposed to receive child support.



Note: The number of mothers responding to the LSSF W1 2008 with whom the child spent 1–47% of nights or who never saw the child was too small to provide statistically reliable estimates and are therefore excluded from the figure.

Source: LSSF W1 2008

**Figure 8.15** Liability of fathers to pay child support to mothers, by care-time arrangement, fathers' and mothers' reports, 2008

<sup>14</sup> In the LSSF W1 2008, parents were asked the following question: "Do you currently pay any child support to, or receive any child support from, [the focus child's other parent]?" Interviewers were instructed as follows: (a) "Pay includes 'should pay' and receive includes 'should receive'"; and (b) "If both pay and receive ask, 'Do you pay more or receive more?' Only use 'both' if the amounts are equal or cancel each other out." There is no guarantee that all respondents answered this question in terms of child support transfer liabilities rather than transfers that occurred in practice. That is, some respondents may have answered in terms of whether actual transfers took place. Nevertheless, it is assumed here that most respondents answered in terms of payment liability rather than practice.



Where the child was in the care of the mother most or all nights, most fathers and mothers indicated that the mother was supposed to receive child support. There was little difference in the pattern of reports provided by parents whose child never saw the father, saw him during the daytime only, or spent a minority of nights with him. The proportion of parents who indicated child support payments were to be transferred from father to mother gradually fell as the nights that the child spent with the father increased beyond 34% of nights.<sup>15</sup> This pattern reflects the Child Support Formula, which recognises the costs of care time once parents have their children staying with them for 14% or more of nights.

Specifically, the proportions of parents who reported that the father had a liability to pay child support to the mother were:

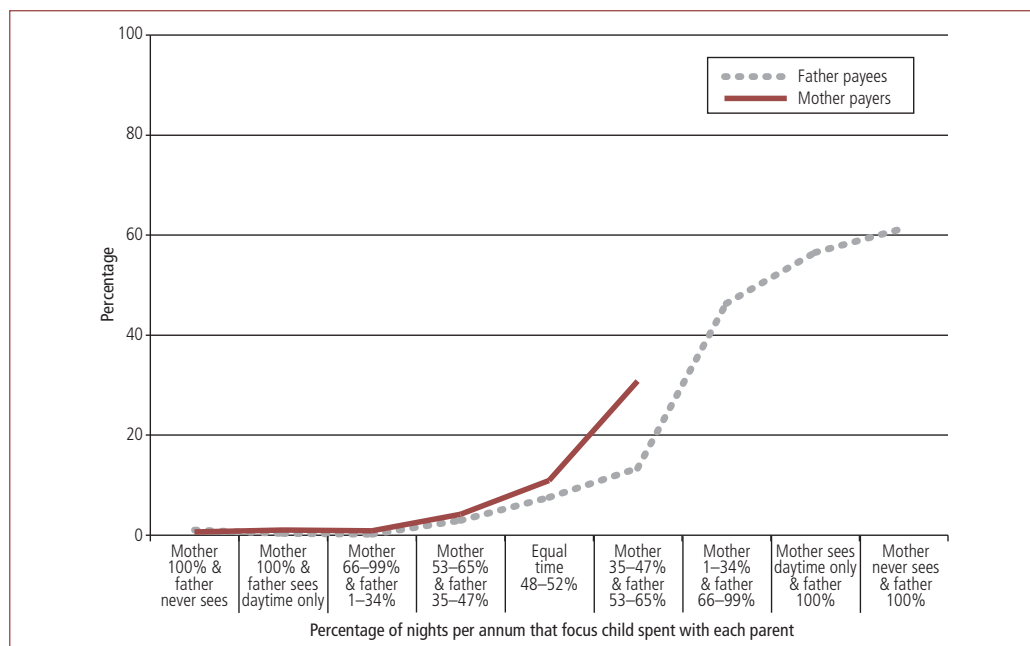
- 87% of fathers and 79% of mothers where the child never saw the father;
- 90–91% of fathers and 87% of mothers whose child had daytime-only contact with the father or spent the majority of nights (66% or more) with the mother;
- 80% of fathers and 73% of mothers with shared care time involving more nights with the mother;
- 60% of fathers and 54% of mothers with equal shared care;
- 51% of fathers with shared care involving more nights with the father; and
- fewer than 14% of fathers who cared for their child most or all nights, and fewer than 14% of mothers who saw their child during the daytime only. (The fact that mothers with these care-time arrangements were receiving child support may reflect the possibility that their child support payments had lagged behind changes in care-time arrangements.)<sup>16</sup>

Figure 8.16 shows the proportion of mothers and fathers who said that the mother was liable to pay child support to the father. As expected, very few fathers were to receive child support where the child lived mostly with the mother. The proportion of fathers who were liable to receive child support was higher where the child spent equal time with each parent than where the child spent most or all the care time with the mother. However, even when the child spent equal care time with each parent or had shared arrangements involving more nights with the father than mother, the proportion of fathers who indicated that the mother was liable to pay the father was quite small (8% and 13% respectively). The liability for the mother to pay the father increased as the father's level of care time increased beyond 65% of nights. In fact, 61% of fathers whose child never saw the mother indicated that the mother was supposed to pay child support.

It is worth noting that the likelihood of fathers being liable to pay child support when the child was mostly in the care of the mother was considerably greater than the likelihood of mothers being liable to pay child support when the child was mostly in the care of the father. This difference possibly reflects differences in the financial circumstances of fathers and mothers with these care-time arrangements, as outlined in Chapter 7, or that mothers were more likely than fathers to have other children from the relationship living with them.

<sup>15</sup> Percentages were not derived for mothers for three care-time arrangements (mothers with shared time involving more nights with the father than mother; mothers with minority time; and mothers who never saw their child) because there were fewer than 40 mothers who indicated that they had these care-time arrangements and who provided information on child support transfers. These sample sizes are too small to enable derivation of statistically reliable estimates.

<sup>16</sup> Another possible reason is that these mothers were more likely to have other children from the relationship living with them, which would influence their overall child support liability. Although parents were asked about child support liability with reference to the focus child, some parents may have misunderstood the question and answered in relation to all children from the relationship, leading to some degree of response error.



Note: The number of mothers responding to the LSSF W1 2008 with whom the child spent 1–34% of nights or who never saw the child was too small to provide statistically reliable estimates and are therefore excluded from the figure.

Source: LSSF W1 2008

**Figure 8.16** Receipt of child support by fathers, by care-time arrangement, mothers' and fathers' reports, 2008

## 8.2.2 Reports on compliance with child support payment liability

This section shows the extent to which parents who were liable to pay child support met their obligations, according to the reports of parents in the LSSF W1 2008.<sup>17</sup>

Table 8.9 shows the extent to which child support obligations were met fully, in terms of amount only, time only, or neither condition. For simplicity, those who were liable to pay child support are called payers, and those who were liable to receive child support are called payees, regardless of whether child support transfers actually took place.

A relatively high proportion of father payers indicated that they fully complied with their child support obligations (74%). A further 18% of father payers said they complied fully with the amount of payment but that such payments were not always made on time, while 6% said that they paid on time but did not always pay the full amount, and only 2% indicated that they neither paid in full nor on time.

Mother payees painted a much less favourable picture. Only 51% said that they received the amount of child support they were supposed to receive in full and on time. A further 29% said that they received the full amount but not always on time, and 7% said they received child support payments on time, but the amount was less than they were supposed to receive. Another 13% of mother payees said that they neither received the full amount of child support they were supposed to receive nor did they receive payments on time. Parents who said that they did not receive the full amount may not have received any child support.

Partial compliance was more likely to reflect child support transfer delays rather than reductions in the amount of payment. Specifically, 18% of father payers and 29% of mother payees

<sup>17</sup> Compliance with child support liability here refers to: (a) whether the amount of child support that is paid is equivalent to (or exceeds) the amount the parent is supposed to pay; and (b) whether the payments are made on time. Compliance regarding the amount paid was derived from parents' reports of both the actual amount paid and the assessed amount to be paid, while compliance in relation to timing of payment was based on parents' reports about whether the total amount of child support was paid: "always on time", "mostly on time", "sometimes on time", "rarely on time" or "never on time". Compliance regarding the payment of child support overall was derived based on these two sets of information: "complied both in amount and on time"; "complied only in amount"; "complied only on time"; and "complied neither in amount or on time".

**Table 8.9 Child support compliance, by liability status and gender of parent, 2008**

	Fathers		Mothers	
	Payers	Payees	Payers	Payees
	%		%	
Fully complied	73.6	49.5	59.1	50.9
Complied with amount only (i.e., payment delay)	18.4	21.9	22.9	29.2
Complied with time only (i.e., payment reduction)	6.2	7.7	6.0	7.0
Neither	1.8	20.9	12.0	12.9
Total	100.0	100.0	100.0	100.0
Number of observations	3,090	251	195	2,942

Source: LSSFW1 2008

indicated that payments were made in full but not on time, and 6% of father payers and 7% of mother payees indicated that payments were made on time but not in full.

As implied above, father payers were more likely than mother payees to report full compliance (74% compared to 51%) and less likely to report no compliance at all (2% compared to 13%). Mother payees were more likely than father payers to report that payment was delayed (29% compared to 18%), while much the same proportions of father payers and mother payees indicated that payment was reduced (6–7%).

Mother payers were less likely to report compliance with their child support obligations (59% reported fully complying with their obligations) than were father payers (74% reported fully complying). Only a small proportion of mothers are child support payers and the lower rate of reported compliance may reflect a more accurate reporting of compliance or it may reflect that this group of mothers, as shown in Chapter 7, is quite different from father payers (in terms of mental health and substance misuse and other aspects of dysfunction).

The tendency for payers to paint a more favourable picture than payees was also apparent among father payees and mother payers. Mother payers were more likely than father payees to report full compliance, while father payees were more likely than mother payers to report no compliance at all.

Table 8.10 shows the extent to which father payers complied with their obligations, as reported by these fathers and by mother payees. According to the reports of both father payers and mother payees, the larger the amount of child support the higher the rate of compliance with the child support obligations. Two-thirds of fathers with the obligation to pay \$35 or less per week reported that they had paid in full and on time, compared with 71–75% of fathers with a \$36–\$150 payment per week, and 80% of fathers who needed to pay \$151 or more per week. Similarly, 57% of mother payees who were supposed to receive at least \$151 per week reported that they had received the payment in full and on time compared to 52% of mothers who were supposed to receive \$81–\$150 per week and 47–48% of mothers who were supposed to receive \$80 or less per week.

The smaller the amount of child support, the more likely it was that father payers did not pay on time. About a quarter of father payers with a payment of \$35 or less per week reported that they paid in full but not always on time while 10% of fathers who were supposed to pay at least \$151 per week reported this. Similarly, one-third of mothers who were supposed to receive \$80 or less each week indicated that the payment was received in full but not always on time, compared with 22% of mothers who were supposed to receive at least \$151 each week.

While few father payers and mother payees indicated that the payment was transferred always on time but not in full amount (i.e., at a reduced amount), it appears that reduction of child support payment was more likely to occur when the amount was higher, though the differences were small. The proportion of parents who reported that payment was transferred always on time but not in full ranged from 5% for the group with the lowest amount of payment (\$35 or less per week) to 8% for the group with the highest amount (\$151 or more per week), according to father payers, and from 4% for the groups with the lowest amount of payment to 11% for the group with the highest amount according to mother payees' reports.

**Table 8.10 Child support compliance, by payment liability, father payers' and mother payees' reports, 2008**

	Amount supposed to pay/receive per week			
	\$35 or less	\$36–80	\$81–150	\$151 or more
<b>Father payers' reports</b>				
Fully complied	65.9	70.7	75.2	80.4
Complied with amount only (i.e., payment delay)	26.3	22.2	17.1	10.4
Complied with time only (i.e., payment reduction)	5.5	5.0	6.2	7.7
Neither	2.3	2.2	1.6	1.5
<b>Total</b>	<b>100.0</b>	<b>100.1</b>	<b>100.1</b>	<b>100.0</b>
<b>Number of observations</b>	<b>553</b>	<b>735</b>	<b>841</b>	<b>961</b>
<b>Mother payees' reports</b>				
Fully complied	47.8	46.8	52.4	57.1
Complied with amount only (i.e., payment delay)	32.6	32.5	29.3	22.0
Complied with time only (i.e., payment reduction)	4.0	6.6	6.8	10.7
Neither	15.6	14.1	11.5	10.3
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>
<b>Number of observations</b>	<b>706</b>	<b>751</b>	<b>754</b>	<b>731</b>

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

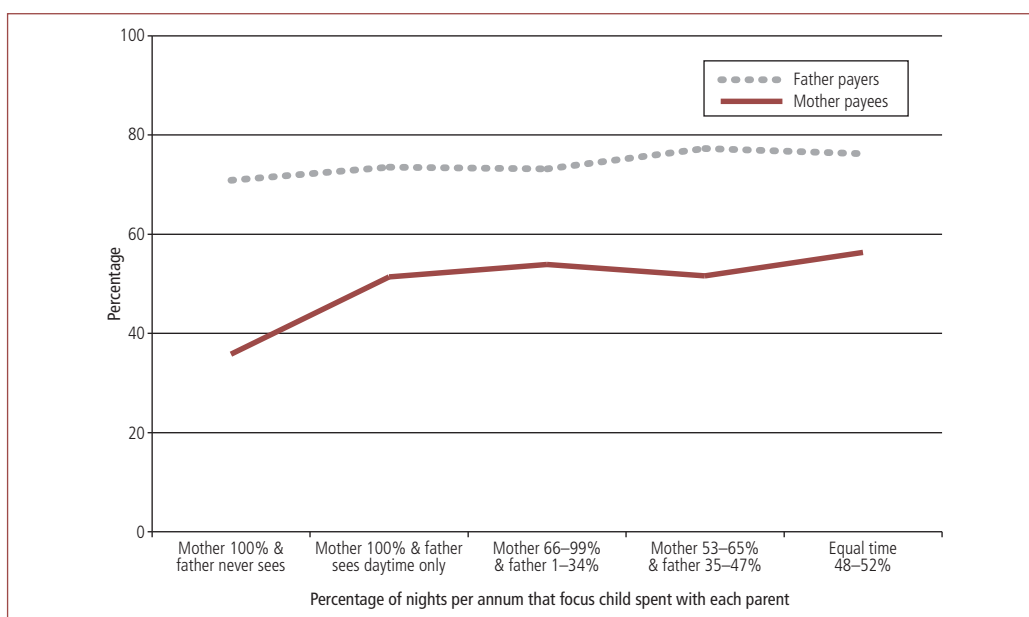
Source: LSSFW1 2008

According to mother payees, compliance with neither time nor amount was most likely for the group with the lowest amount of payment (16%) and the least likely for the group with the highest amount (10%). Few father payers across the four groups indicated they complied with neither (less than 3% for each group).

Figure 8.17 shows the proportions of father payers and mother payees with different care-time arrangements who reported that child support payments were transferred both in full and on time, while Figure 8.18 shows the proportions of parents with these different care-time arrangements who reported that child support was neither paid in full nor on time. These figures are restricted to families in which the child was in shared care (48–52% of nights) or spending more than 52% of nights with the mother.

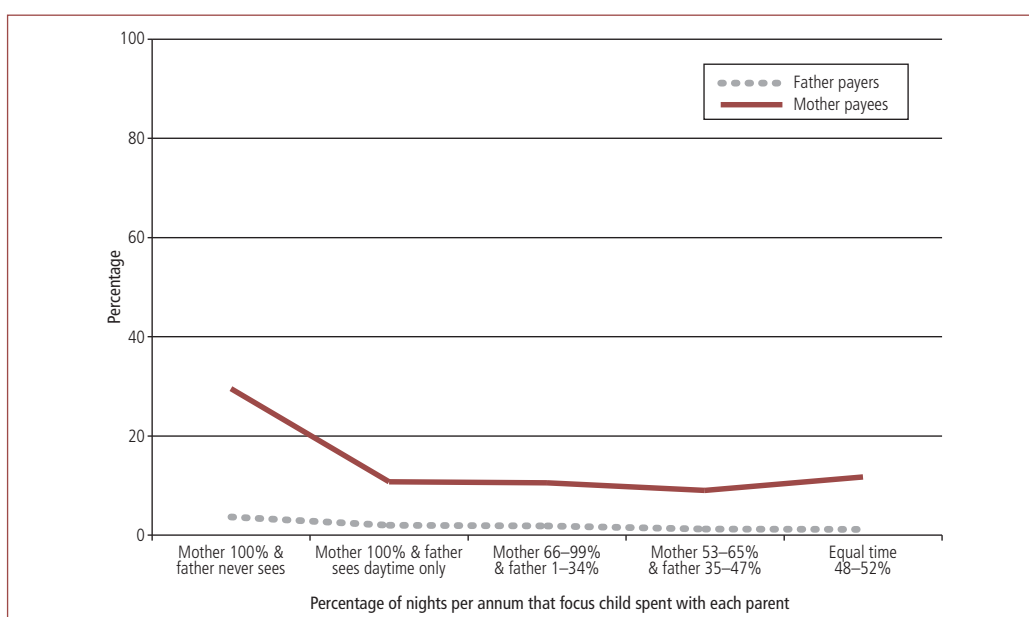
The reports of father payers suggest that there was no clear association between child support compliance and care-time arrangements. With one exception, the same applied to the reports of mother payees. The exception concerned mothers whose child never saw his or her father. These mother payees were less likely than other mother payees to report full compliance (35% compared to 51–56%) and more likely to report no compliance at all (30% compared to 9–12%). Consistent with the earlier discussion, father payers were more likely than mother payees to report full compliance. Conversely, mother payees were more likely than father payers to report no compliance at all.

Compliance with child support was associated with the sharing of decision-making between the parents, as shown in Figure 8.19 (on page 198). Among mother payees, those who reported that decision-making was shared between the parents were more likely than other mother payees to report that child support was paid both in full and on time. For example, 62% of mother payees who indicated that decision-making about educational issues was shared reported that child support was paid in full and on time, compared with 53% of other mother payees. While the sharing of decision-making was also positively associated with child support compliance according to father payers' reports, the relationship was weaker.



Source: LSSF W1 2008

**Figure 8.17** Child support payments made in full and on time, by care-time arrangements, father payers' and mother payees' reports, 2008



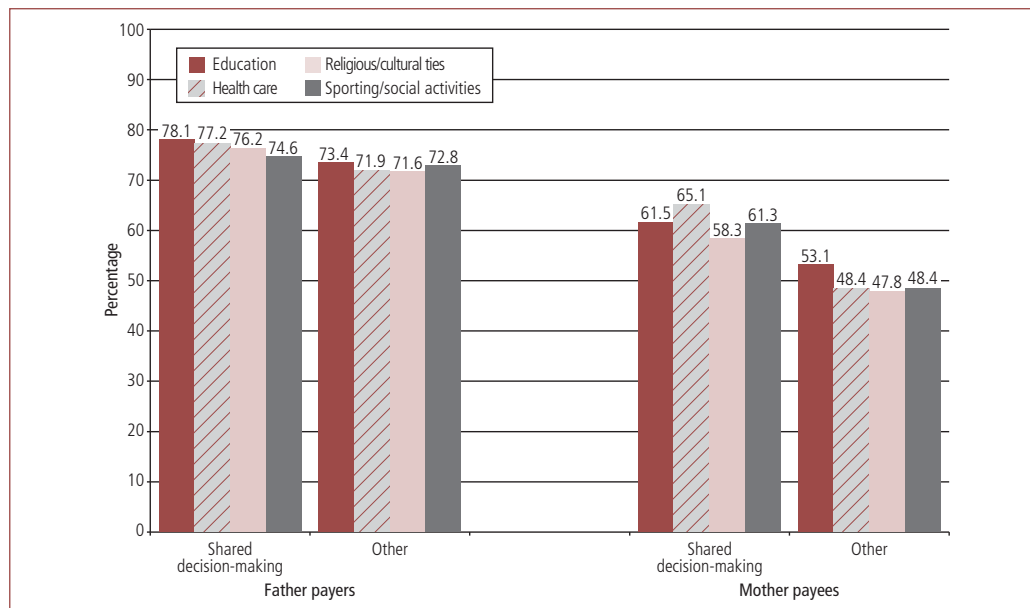
Source: LSSF W1 2008

**Figure 8.18** Child support payments paid neither in full nor on time, by care-time arrangements, father payers' and mother payees' reports, 2008

### 8.2.3 Sense of fairness regarding child support payment

Parents in the LSSF W1 2008 were asked to indicate their view about the fairness or otherwise of the amount of child support.<sup>18</sup>

<sup>18</sup> In the LSSF W1 2008, regardless of whether respondents said that they paid or received child support or that child support was not supposed to be paid, they were asked to indicate the extent to which they felt that the amount of child support was fair or unfair for: (a) themselves; (b) the focus child's other parent; and, where applicable, (c) the respondent's current partner. The latter question was only asked of re-partnered parents who were supposed to be paying child support. The response options offered to the parents were:



Source: LSSF W1 2008

**Figure 8.19 Full compliance with child support liability, by whether decision-making was shared, father payers' and mother payees' reports, 2008**

In general, a majority of parents considered that child support payments were fair for each parent. Specifically, 66% of all fathers and 55% of all mothers reported that their current amount of child support was fair for themselves, while 29% of fathers and 41% of mothers considered the amount to be unfair for themselves (Figure 8.20). In addition, most fathers and mothers believed that current child support amount was fair for the other parent (72% of mothers and fathers), while just 15% of mothers and fathers thought that the amount was unfair for this parent.

In other words, parents were more likely to report that the current child support amount was fair for the other parent than for themselves. This disparity in sense of fairness for self and for the other parent suggests a sentiment among separated parents that the other parent has the “better deal”. Mothers were less likely than fathers to believe that the current amount was fair for themselves, while a similar proportion of fathers and mothers believed that the payments were fair for the other parent.

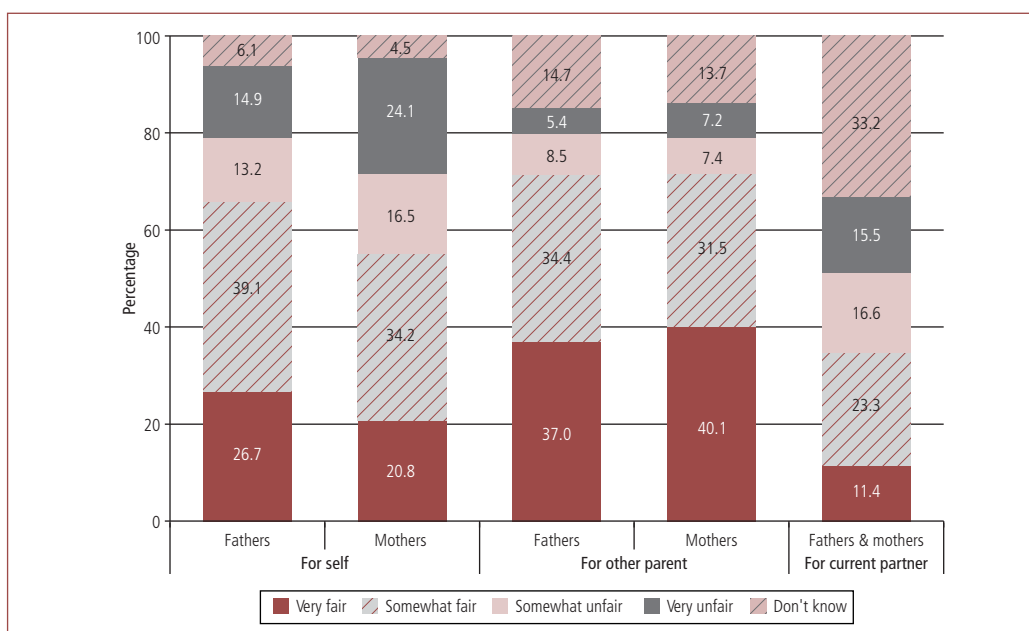
Parents who had re-partnered and who were paying child support were evenly divided in their views about the fairness of the payment for their current partner: 35% described the payments as fair, 32% considered them to be unfair, and 33% expressed uncertainty about this issue.

Figure 8.21 depicts parents' sense of fairness about the child support amount for themselves, according to whether they were payers or payees and according to their gender. Among fathers, payers were more likely than payees to judge the payment amounts as being fair (68% compared to 59%). Fathers who were not liable to pay child support had similar views to those of father payees, although the former group were more likely than the other fathers to express uncertainty (13% compared to 5–6%). The views of mother payers and payees were similar: 55–56% considered the payments to be fair; however, mothers without a child support liability were slightly less likely to consider this situation to be fair (49%).

Father payers were more likely than mother payees to believe that the current payment was fair (68% compared to 56%). Mother payers and father payees, on the other hand, held similar views: 55% and 59% respectively reported that the child support payment amount was fair.

“very fair”, “somewhat fair”, “somewhat unfair” and “very unfair”. Some respondents expressed uncertainty, although “don't know” was not suggested to them as a response option. As mentioned in Section 8.3, the LSSF W1 2008 was conducted shortly after the introduction of the new Child Support Formula. This was therefore a transitional period for many parents and it is therefore probable that responses about the fairness of the scheme are a mixture of views about the old and new formulas. It is also likely to be affected by whether the amount of child support the parent was required to pay changed, and if so in what direction.

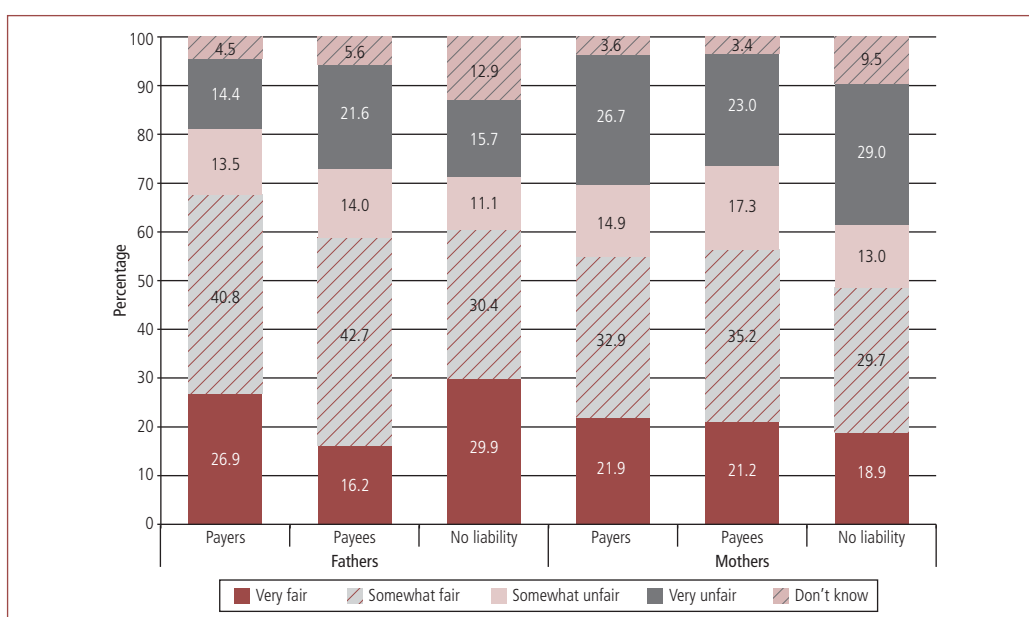
Parents' views about the fairness of the current child support payment for themselves were also related to payment compliance issues. Figure 8.22 presents views of father payers and mother payees on this issue. Of father payers, those who indicated that they fully complied with their obligations (in terms of the amount to be paid and its timing) were more likely than those who did not fully comply to consider that their current payment was fair for them (70% compared to 63%). A similar pattern emerged in the reports of mother payees: those who reported that they received their payments in full and on time were more likely to consider the payments to



Note: Percentages may not total exactly 100% due to rounding.

Source: LSSFW1 2008

**Figure 8.20** Perceived fairness of child support payments for self, other parent and current partner, by gender of parents, 2008



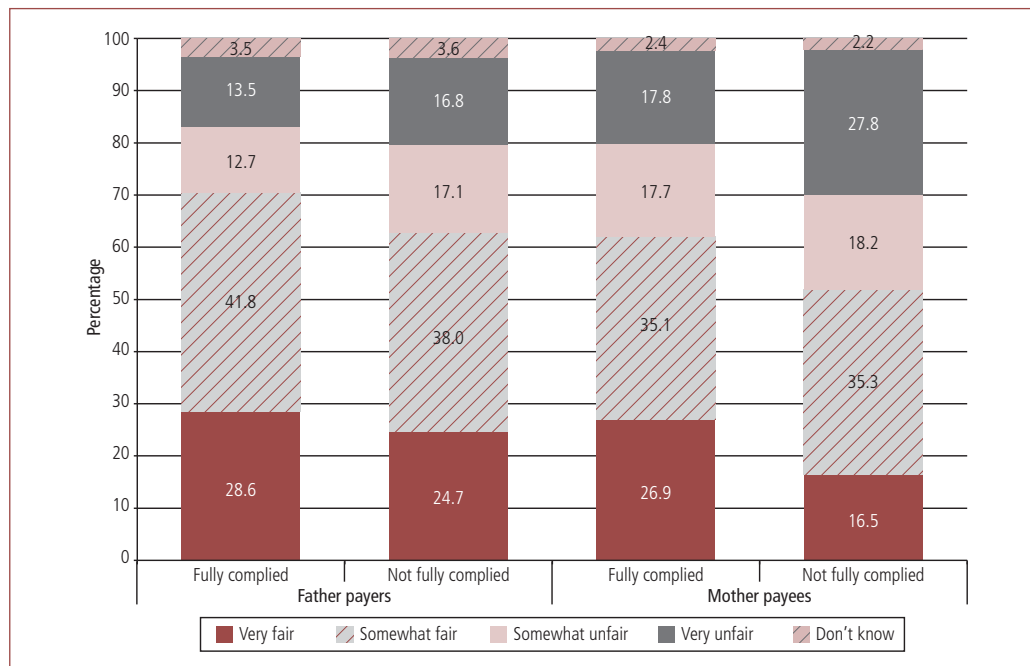
Note: Percentages may not total exactly 100% due to rounding.

Source: LSSFW1 2008

**Figure 8.21** Perceived fairness of child support payments for self, by whether paying or receiving child support, fathers' and mothers' reports, 2008



be fair for them than those who indicated that payments were not made in full and/or on time (62% compared to 52%). It is likely that a sense of unfairness about the amount to be paid may lead some parents to delay transferring payments and/or to withhold some of the payment.



Note: Percentages may not total exactly 100% due to rounding.

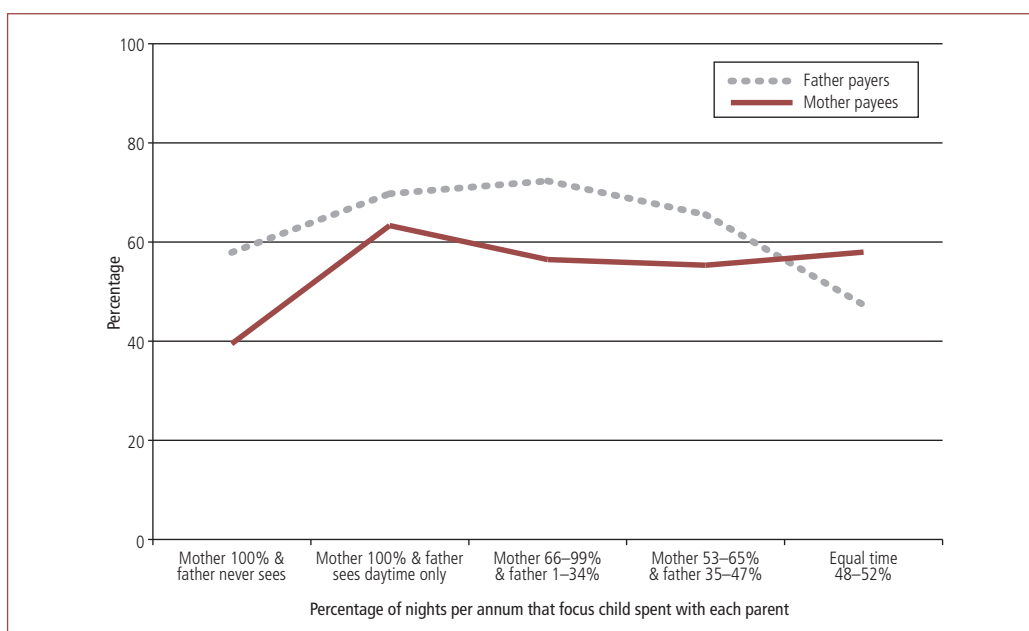
Source: LSSF W1FW1 2008

**Figure 8.22** Perceived fairness of child support payment for self, by whether payment fully complied, father payers' and mother payees' reports, 2008

Figure 8.23 provides information on the proportion of father payers and mother payees in each care-time arrangement who described their current child support payment amount as being fair. It is restricted to families in which the child was in shared care (48–52% of nights) or spending more than 52% of nights with the mother.

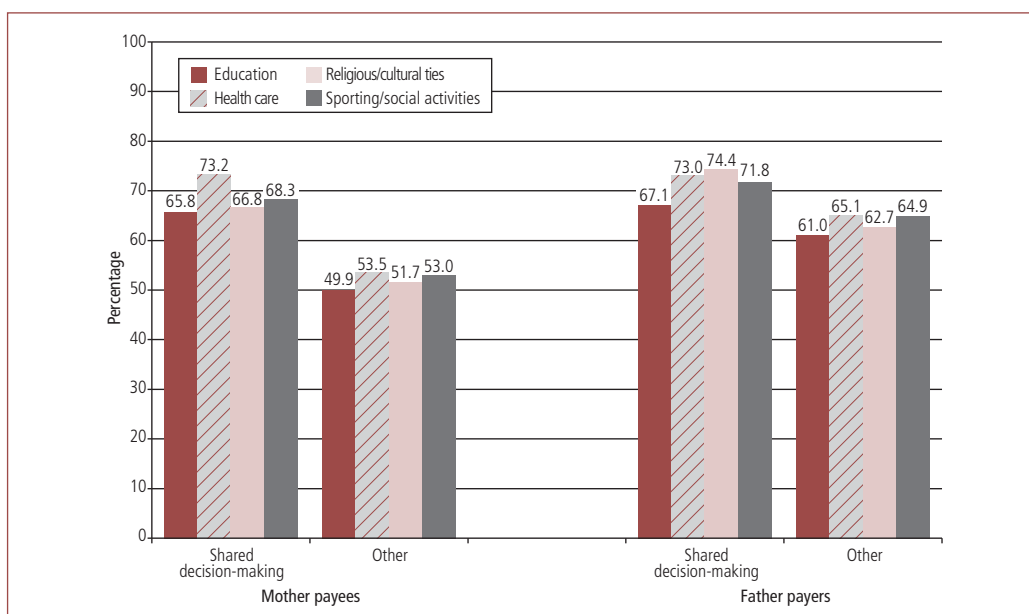
Sense of fairness varied with care-time arrangements among father payers. Father payers in equal shared care were the least likely to describe the current payment as fair (47%), followed by father payers who never saw the child (58%), while father payers who cared for their child during the daytime only or for a minority of nights were the most likely to believe that their payments were fair (70–72%). In contrast, with the exception of one group, the proportion of mother payees who reported that their payments were fair varied only slightly with care-time arrangements. The exception was mothers whose child never saw the father. These mothers were less likely than mother payees with other care-time arrangements to believe that their payments were fair (40% compared to 55–63%).

Perceived fairness about child support payment was also associated with child-related decision-making practices. As shown in Figure 8.24, regardless of the specific child-related issues to which the decisions referred, those who reported that both parents contributed equally to the decision-making process were more likely to describe their current child support payment as fair, compared with those who reported that decisions were made mainly by one parent. While this pattern was apparent among both father payers and mother payees, the differences were greater among mother payees. For example, 66% of mother payees who said they and their child's other parent shared in decisions regarding the child's education believed that their current child support payment was fair, compared with 50% of mother payees who believed that decisions on the child's education were not shared. Of father payers, 67% of those who reported shared decision-making on education issues considered that their current child support payment was fair, while this view was expressed by 61% of father payers who said that educational decisions were not shared.



Source: LSSF W1 2008

**Figure 8.23** Perceived fairness of child support payments for self, by care-time arrangements, father payers' and mother payees' reports, 2008



Source: LSSF W1 2008

**Figure 8.24** Perceived fairness of child support payments for self, by whether decision-making responsibilities were shared, father payers' and mother payees' reports, 2008

## 8.3 Summary

The extent to which there is shared decision-making about key issues that have an impact upon the long-term development and wellbeing of children appears to be closely related to the proportion of nights the child spends with each parent. Shared decision-making seems much more likely where there is shared care time than where the child spends most or all nights with one parent. The more unilateral the care arrangement is, the more unilateral the decision-making appears to be, with decisions resting mainly with the parent who has the majority of care. These trends are not surprising given that parents who spend considerable care time with

their children are more likely to be in the best position to make well-informed decisions in the interests of the long-term welfare of their children.

Nevertheless, when children were mainly or entirely with one parent, the sharing of decision-making was more likely to be reported by parents with the minority of care time than by parents with the majority of care time. For some parents, such differences in views on these issues may become a source of conflict.

The sharing of decision-making was closely linked to the extent to which the father was seen to be involved in the child's day-to-day activities before separation, with higher levels of pre-separation involvement being associated with a greater tendency to report the sharing of child-related decisions post-separation.

While shared decision-making represents an important means by which both separated parents can remain involved in their children's lives, its advantages are undermined where there are risks of family violence. The experience of family violence during the pre-separation period and current safety concerns linked with ongoing contact with the child's other parent appeared to influence the likelihood of sharing decisions that have implications for their child's long-term welfare. Firstly, the sharing of decision-making was less commonly reported by respondents who said that their child's other parent had emotionally abused them or physically hurt them (especially the latter) than by other parents. Consistent with these trends, parents who had ongoing safety concerns for the child and/or themselves were less likely than those without such concerns to report the sharing of decision-making. Despite these trends, a substantial proportion of parents who reported a history of family violence or ongoing safety concerns indicated that decision-making was shared.

Finally, parents who had sorted out their parenting arrangements through discussions between themselves were more likely than other parents to indicate that decision-making was shared between the parents. This trend makes sense in that both these matters relate to the tendency to "work things out" together.

While decision-making practices reported by parents varied considerably, legal orders concerning parental responsibility demonstrate a strong trend for legal decision-making power to be allocated to both parents. No significant changes in this trend are evident through comparison of pre-and post-reform patterns. Orders made by judicial determination are more likely to allocate decision-making power to one or other parent (more often the mother) than those made by consent, but even in relation to judicial determinations, shared decision-making power is allocated to both parents in the majority of cases. Cases in which decision-making is removed from one parent commonly involve concerns about family violence and child abuse.

Ongoing financial support for children after parental separation is also central to children's welfare. Since the establishment of the Child Support Scheme in 1988, some fundamental changes have taken place in society and family life in Australia, as outlined in Chapter 1. The Child Support Scheme was designed to reflect some of these changes, ensure that the ongoing financial needs of children are met and encourage the involvement of both parents in their children's lives. This chapter has examined the proportion of parents who were supposed to pay or receive child support after the recent family law and child support reforms were introduced, and the extent to which child support liabilities were paid in full and on time, and parents' evaluations of the fairness of the child support amount for themselves, their child's other parent and, if repartnered, their new partner.

Care-time arrangements were linked with the extent to which parents were paying or receiving child support. Father payers and mother payees whose child lived mostly with the mother were more likely to report paying or receiving child support than those with shared care-time arrangements and those whose child was mainly with the father. This trend is likely to be linked with two factors. First, the Child Support Scheme takes into account the number of nights that children spend with each parent. Second, as Chapter 7 showed, mothers with a minority of care time have significantly lower incomes than fathers with a minority of care time and would therefore be likely to have a lower capacity to pay child support.

More than half of parents with a child support liability reported that the liability was fully complied with (in terms of amount and being on time), with payers being more likely than payees to indicate full compliance (especially father payers). Non-compliance seemed to be less common, although 21% of father payees reported that child support was neither paid in full nor on time. Late payment of child support was more common than partial payment. There was no apparent link between father's reports of child support payment compliance and their

care-time arrangements. However, mother payees whose child never saw the father were less likely than other mothers to report full compliance of child support payment. Parents who contributed jointly to decisions about their child were more likely than other parents to indicate full compliance.

Parents typically considered that their current child support payment was fair for themselves and for their child's other parent. However, perceived fairness for self varied according to payer/payee status, payment compliance, care-time arrangements and whether parents contributed jointly to decisions about issues affecting their children's long-term welfare. Father payers were more likely than mother payees to believe that their current child support payment was fair for themselves. Sense of fairness was low among father payers with equal care time and those who never saw their child but higher than for mother payees whose child never saw their father. Parents who reported full compliance with child support payments were more likely to describe their current payment as being fair, compared with parents who reported that their payment was not made in full, not made on time or not made at all. In addition, parents who shared decision-making responsibilities about their child were more likely to describe their current child support payment as being fair compared with other parents.

However, when interpreting the findings on perceived fairness of the child support scheme, it is important to bear in mind that the data were collected just after the new child support formula took effect in July 2008. This was therefore a transitional period for many parents and their responses to the questions about child support may have been affected by this transitional period. The second wave of the LSSF W1, being conducted in the second half of 2009, will provide data on child support more than 12 months after the new formula came into effect.



## 9

# Parental responsibility and time: Perspectives and practices of lawyers and other service providers

This chapter examines how the legislative provisions about parental responsibility and time operate, from the perspective of family lawyers and other services providers. A key focus is the impact the legislative and policy framework has on the ability of professionals to work with parents to produce child-focused arrangements in discussions and negotiations outside of the court context. The discussion in this chapter relates to the achievement of policy objective 3—encouraging greater involvement by both parents in children’s lives after separation and also protecting children from violence and abuse (2007 Evaluation Framework, Appendix B)—and the assessment of the “big picture indicators” relevant to whether the reforms have:

- assisted parents to focus on the interests of their children;
- meant that parenting arrangements have evolved in the direction of more child-focused and sustainable agreements; and
- resulted in any unintended consequences.

As described in Chapter 1, the *SPR Act 2006* changed the legislative provisions that guide determinations about these issues. It introduced a presumption in favour of equal shared parental responsibility (s61DA), with a linked obligation on courts to consider making orders for children to spend equal (s65DAA(1)) or substantial and significant (s65DAA(2)) time with each parent where the presumption is applied. However, the overarching principle in the legislation remained the best interests of children (s60CA) and a range of factual issues (s60CC) is relevant to this determination. The making of orders for children to spend equal or substantial and significant time with each parent are further subject to a consideration of what arrangements are reasonably practicable (s65DAA(5)), taking into account a range of factors, including the distance between the two homes and the parents’ capacity to communicate and cooperate.

This chapter addresses the following issues:

- What understanding do parents bring to their dealings with service providers, lawyers and courts about what the law says about parenting arrangements?
- Is the presumption, and the circumstances in which it may not be applied or may be rebutted, well understood by parents and system professionals?
- How well understood by parents and system professionals is the difference between equal shared parental responsibility and equal shared time?
- Do legislative and policy frameworks assist professionals to encourage parents to make child-focused arrangements?
- How have the advice-giving practices of lawyers changed since the reforms?
- Is there evidence of any unintended consequences arising from the changes to legislation governing parenting arrangements?

The discussion in this chapter provides a basis for understanding the impact the changes have had on negotiations and discussions about parenting arrangements, mainly outside of the court sector, among parents who seek service assistance and/or legal advice. Patterns in parenting arrangements are described in Chapters 6, 7 and 8. The interpretation of the legislation in case law is discussed in Chapter 15. The data in this chapter are largely drawn from the following:

- Family Lawyers Survey (FLS) 2006 and 2008;
- Online Survey of Family Relationship Services Program (FRSP) Staff 2008 and 2009;
- Qualitative Study of Legal System Professionals (QSLSP) 2008;

- Qualitative Study of FRSP Staff 2007–08, 2009; and
- FCoA, FMC and FCoWA court files, post–1 July 2006.

The analysis in this chapter suggests strong support for the philosophy of shared parental responsibility among system professionals. However, there is a lack of understanding among some parents and system professionals about the operation of the presumption of shared parental responsibility. The empirical evidence indicates that a significant proportion of parents, and even some professionals, think the legislation requires equal or shared parenting arrangements. The distinction between parental responsibility and time is not clearly understood by many parents on first consulting a legal or family relationship service professional, and “shared parenting” is understood to mean shared time. It is apparent that the different contexts in which lawyers and service system professionals work influence their views as to how the policy and the legislative frameworks operate. Service system professionals operate in the context of a policy framework, while legal system professionals operate in the context of a legislative framework. Legal system professionals in particular have indicated that the legislative framework does not provide assistance in encouraging parents to focus on making child-focused, developmentally appropriate arrangements. Many lawyers believe the changes have favoured fathers over mothers and parents over children. Some service sector professionals and many lawyers believe that issues related to child support and financial settlements influence the positions parents adopt in parenting negotiations. There is some evidence that post-separation property division ratios may have changed, with fathers on average receiving an increased share of property settlements. Mothers are perceived by lawyers to be on the “back foot” in negotiations.

It should be noted at the outset that the views of the professionals reported in this section are shaped by their contact with their respective client bases. As explained in Chapter 4, although many parents have contacted or used a lawyer, only a minority say that this was the main pathway used to sort out their parenting arrangements. A larger proportion, but still a minority, said that family relationship services were the main family law pathway used. The extent to which the issues raised by these professionals may be pertinent to a broader cross-section of parents is uncertain.

## 9.1 Philosophical support for shared parental responsibility

The level of support among service sector professionals and family lawyers for a key philosophical aspect of the reforms—promoting shared parental responsibility after separation—was tested through the FLS 2006 and 2008 and the Online Survey of FRSP Staff 2009. A general question about this aim was asked, in part to gauge the extent to which response patterns in relation to other issues may reflect philosophical rather than practical concerns.

In relation to shared parental responsibility, participants were asked to indicate the extent of their agreement with the proposition that “spelling out a general expectation of shared parental responsibility after separation is a positive development”.<sup>1</sup> Not surprisingly, a majority of service sector professionals and family lawyers agreed with the proposition, although stronger support was more evident among the former group than the latter.

Among lawyers, 80% of respondents to the FLS 2006 either strongly or mostly agreed with the proposition. This level of agreement was slightly lower post-reform, with 76% of respondents to the FLS 2008 either strongly or mostly agreeing. A minority (22%) of 2008 participants disagreed, with only 6% strongly disagreeing.

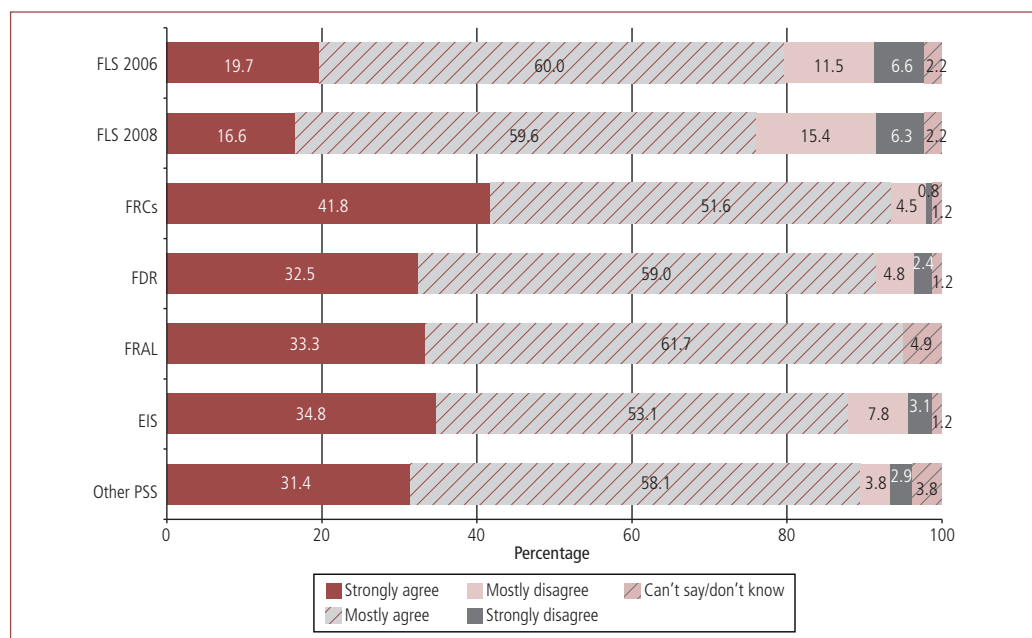
Among service sector professionals, a large majority agreed that “spelling out a general expectation of shared parental responsibility after separation is a positive development” (Figure 9.1). The proportions agreeing or strongly agreeing with the proposition were:

- 93% of Family Relationship Centre (FRC) staff;
- 92% of family dispute resolution (FDR) staff;
- 95% of Family Relationship Advice Line (FRAL) staff;
- 88% of early intervention services (EIS) staff; and
- 90% of other post-separation services (PSS) staff.

1 As explained in Chapter 1, such an expectation was not new, but the presumption as a legislative vehicle for it was.



Despite the very high degree of agreement that the legislation spelling out a general expectation of shared parental responsibility after separation was a positive development, a range of concerns were evident among system professionals, especially lawyers, about the impact of the presumption and the linked provisions about care-time arrangements. These are examined in Section 9.3.



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

Source: FLS 2006 and 2008, Online Survey of FRSP Staff 2009

**Figure 9.1** Agreement with the statement: "Spelling out a general expectation of shared parental responsibility after separation is a positive development", lawyers and service providers

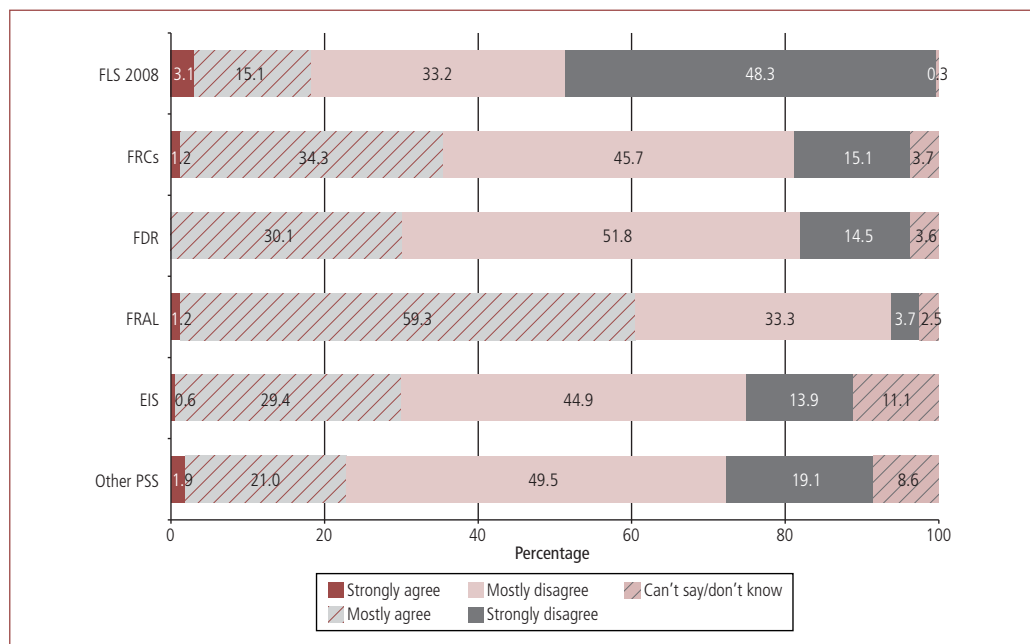
## 9.2 Understanding the distinction between parental responsibility and time

The legislative framework is based upon a distinction between equal shared parental responsibility—which is the subject of the presumption—and arrangements for children to spend time with each parent. While parental responsibility has a presumptive basis, care-time arrangements do not. However, courts are obliged to consider making orders for equal or substantial and significant care-time arrangements where orders for shared parental responsibility are made as a result of the application of the presumption (s65DAA), although they may also make them where it is not applied or rebutted (Goode and Goode (2006) FLC 93–286).

A common theme in the qualitative interviews with family lawyers and service system professionals was that some parents, on first seeking assistance from system professionals, failed to understand the distinction between the concepts of equal shared parental responsibility and time. This was also substantiated quantitatively (Figure 9.2), with a majority of systems professionals who participated in the FLS 2008 and the Online Survey of FRSP Staff 2009 disagreeing with the statement that it was "easy for clients to understand the difference" between shared parental responsibility and time. This was more marked among lawyers than service sector professionals.<sup>2</sup> Over 80% of the family lawyers participating in the survey disagreed with this

<sup>2</sup> In the FLS 2008, the statement with which respondents indicated the extent of their agreement was: "It is easy for clients to understand the difference between equal shared parental responsibility and equal time". In the Online Survey of FRSP Staff 2009, the statement with which staff were asked to indicate the extent of their agreement was: "It is easy for clients to understand the difference between shared parental responsibility and time".

statement (with 48% strongly disagreeing); that is, these lawyers considered that it was *not* easy for clients to distinguish between the concepts of parental responsibility and time.



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

Source: FLS 2008, Online Survey of FRSP Staff 2009

**Figure 9.2** Agreement with the statement: “It is easy for clients to understand the difference between equal shared parental responsibility and equal time”, lawyers and service providers

A majority of participants in the Online Survey of FRSP Staff 2009 also disagreed that it was easy for client to understand the difference between shared parental responsibility and time. “Other PSS” service professionals (who included those providing Parenting Orders Programs [POP] and Children’s Contact Services [CCS]) were more likely to disagree with this proposition (69%) than FDR (66%), FRC (61%) or EIS service professionals (59%). FRAL respondents were the only group of service system professionals to be more likely to agree than to disagree that it was easy for clients to understand the differences between shared parental responsibility and time (61% agreeing or strongly agreeing and 37% disagreeing or strongly disagreeing). This may reflect the brevity of the interactions that most callers have with FRAL, which may not allow these issues to be explored in any depth. In the Qualitative Study of FRSP Staff 2007–08 and 2009, FRAL information officers also frequently stated that they felt it was possible to explain this distinction quite effectively during calls and felt they “made a difference” in helping parents to understand these concepts. The interviews suggested that parenting advisors from FRAL were less likely to share this view than FRAL information officers.

A further point relevant to the operation of the presumption relates to the extent to which parents and system professionals understand the circumstances in which it is not applicable. Evidence from the QSLSP 2008 suggests that many family law system professionals believe there is also poor understanding of this issue among a proportion of both parents and system professionals.<sup>3</sup>

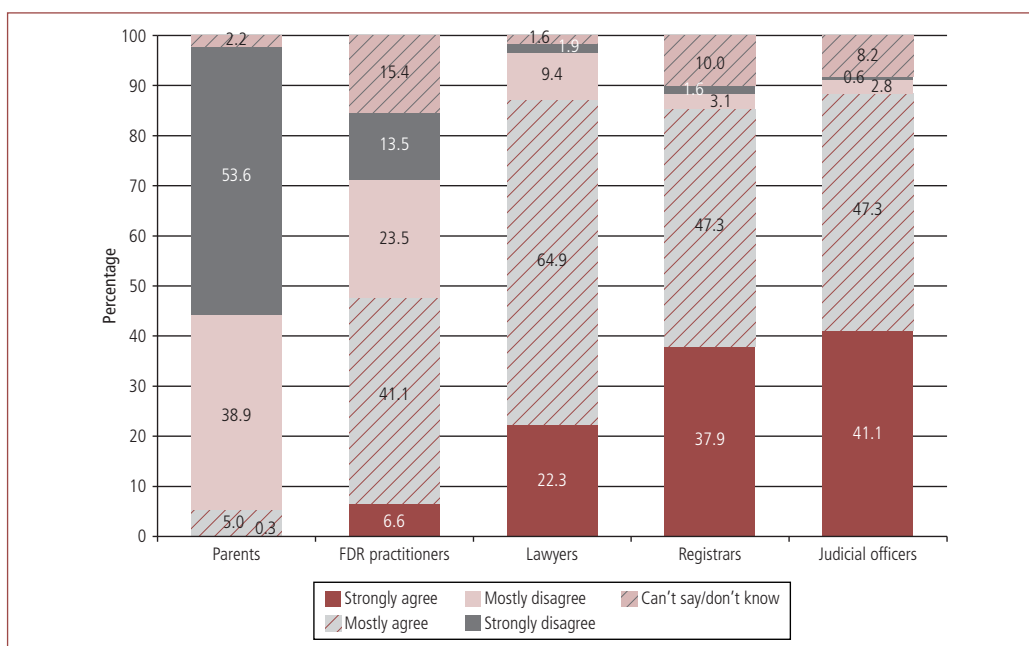
As discussed in Chapter 1, the legislation specifies three sets of circumstances under which the presumption is not applicable or may rebutted:

- It is not applicable in circumstances where there are reasonable grounds to believe that a parent, or someone who lives with a parent, has engaged in abuse of the child subject to proceedings or another child in the family of either party (s61DA(2)(a)), or engaged in family violence (s61DA(2)(b)).

<sup>3</sup> As this is a relatively technical legal point, it was not examined in the Service Provision Project.

- In interim proceedings, the court has the discretion not to apply the presumption where it considers it is not appropriate to apply it (s61DA(3)) (see Chapter 15 for a discussion of case law on the presumption).
- The presumption may be rebutted in circumstances where evidence is adduced to satisfy the court that its application would not be in a child's best interests (s61DA(4)).

The FLS 2008 asked family lawyers to indicate the extent of their agreement with the statement that the exceptions to the application of the equal shared parental responsibility presumption were well understood by parents, FDR practitioners, lawyers, registrars and judges (Figure 9.3). As with the distinction between parental responsibility and time, parents' level of understanding of the exceptions to the presumption was given a particularly low rating. Only 5% of family lawyers agreed that the exceptions were well understood by parents (before they saw a lawyer). It is noteworthy that over half (54%) of all family lawyers who participated in the survey strongly disagreed with this statement.



Notes: \* Parents' understanding *before* they saw a lawyer. Percentages may not total exactly 100.0% due to rounding.  
Source: FLS 2008

**Figure 9.3** Understanding of the exceptions to the equal shared parental responsibility presumption by parents and system professionals, lawyers' views, 2008

Turning to the family lawyers' views about other family law system professionals' understanding of the exceptions to shared parental responsibility, 48% agreed that the exceptions were well understood by FDR practitioners, although a further 15% were unable to answer this question in relation to this group. Family lawyers identified lawyers, registrars and judicial officers as having a much greater level of understanding of the exceptions, with over 85% either agreeing or strongly agreeing with this statement for each of these three professional groups.

Together with the case law examined in Chapter 15 and qualitative insights from the QSLSP 2008, these data indicate that a fair amount of confusion has arisen from the presumption. A key issue is that, while the legislation indicates a range of circumstances under which the presumption is not applicable or may be rebutted, the approach of the courts has traditionally been and still remains that parental responsibility is only removed from a parent in very serious circumstances, usually involving very serious issues relating to family violence, child abuse, mental health and/ or substance misuse.

Participants in the QSLSP 2008 suggested that, rather than seeking to establish that the presumption should be not applied or rebutted, some litigants and lawyers were focusing their argument on "time spent" arrangements. Such strategies appeared at times to be adopted notwithstanding a history of family violence and a relationship history that may suggest incapacity to cooperate.

A federal magistrate noted that they regularly encountered cases where legal representatives and their clients had accepted that the presumption should apply, even though the facts of the cases indicated that it shouldn't, often because of a history of violence and conflict. This participant said that "people are frightened into thinking that if they don't do this, that somehow the court will take a particular view about their client".

Analysis of responses of legal practitioners and judicial officers suggests that the strategy of accepting the application of the shared parental responsibility presumption and focusing the contest on time is a reasonably common strategy. Commenting on where the emphasis in litigation now lies, an independent children's lawyer (ICL) observed that: "It's a real focus on hours and minutes, not on the matters that actually relate to parental responsibility".

A judicial officer maintained that this could lead to an inconsistency in argument:

It's surprising that people will accept joint parental responsibility and then raise allegations about family violence in the context of time arguments ... And so it seems to me there quite often can be this slight tension between wanting to appear to be able to communicate and get on, and make decisions about the long-term position, but then when it comes down to the time, they become a little more pedantic or fussy and will raise issues that sometimes can impact on a decision about shared parental responsibility. (Judicial officer)

Some judicial officers reflected that such strategies indicated a lack of understanding of the consequences of the application of presumption:

They don't really think about that it means consultation and communication. It just seems to be like a nice ideal. And they don't really understand. And also I think that there's this perception that if you're looking for that joint aspect of a rather nebulous concept, that you're looking reasonable. (Judicial officer)

Some judicial officers noted that, for the reasons referred to in the preceding quote, they found themselves making orders for joint parental responsibility despite doubts about their workability. One noted that:

You're then saying to people, "You have a legal obligation to reach agreement on major long-term issues". Is that really going to do children any good if the parents are in conflict and one of them starts to exploit that, saying "Well, you can't decide that these children ... you have to get me to agree and I'm not going to agree". (Judicial officer)

Yet another federal magistrate observed that, in theory, the factual and evidential basis for not applying the presumption was not high (i.e., reasonable grounds need to be established). However, current practice in making orders for shared parental responsibility, even in cases where there has been a history of violence, reflected the traditional position where "we would have given joint responsibility and we still do". It was only in severe cases of violence, according to this participant, where the presumption was not applied and care-time arrangements were restricted.

## 9.3 Parental expectations about shared time

### 9.3.1 Quantitative data on system professionals' views of parental expectations about shared time

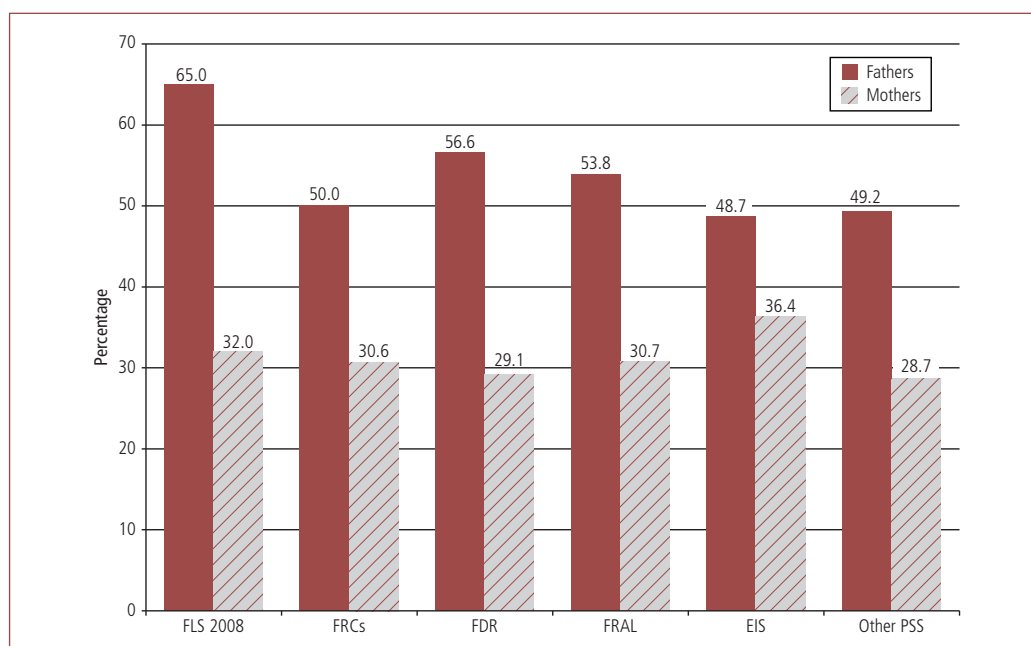
Reflecting the reported focus on care-time arrangements over the presumption of shared parental responsibility among some parents and lawyers, a key area of concern among system professionals in both the legal and family relationship sectors is the pairing of the concept of shared parental responsibility with the concept of equal time.

Participants in the FLS 2008 and Online Survey of FRSP Staff 2009 were asked to indicate what proportion of their clients expected roughly equal time. This question was asked in relation to both fathers and mothers. Responses could range on a scale from 0 to 100%.

Responses from both legal and family relationship system professionals revealed that many parents, particularly fathers, were perceived to have had an expectation of equal care-time arrangements prior to either consulting with a lawyer or attending a family relationship service. Family law system professionals and family relationship service professionals both indicated

that more than half of their father clients began with an expectation that they were entitled to “equal” parenting time. This estimate was slightly greater among lawyers and FDR and FRAL professionals than FRC, EIS and other PSS professionals.

On average, family lawyers indicated that 65% of their male clients and 32% of their female clients expected equal time (Figure 9.4). Lawyers who had indicated that family violence was an issue in half or more of their matters were more likely to indicate that fathers were more likely to expect equal time.



Source: FLS 2008, Online Survey of FRSP Staff 2009

**Figure 9.4** Perceptions of the proportion of mothers and fathers who expect equal time, lawyers and service providers

Service sector professionals also reported that, on average, 49–57% of male clients and 29–36% of female clients expected 50–50 care-time arrangements. This was not as marked as in reports from family lawyers.

These distinctions may reflect the differing nature of clients consulting lawyers compared to those attending family relationship services. It may be that clients who wish to pursue 50–50 care-time arrangements are more likely to seek advice from lawyers compared to attending a family relationship service (or they may already have attended a service and not been successful in their attempt at negotiating an agreement with shared care-time arrangements).

Data collected from the FCoA, FMC and FCoWA court files post-1 July 2006 also indicate that more fathers than mothers proposed equal care-time arrangements when going to court.<sup>4</sup> These data are based on the orders sought by applicants and respondents, although this analysis is presented by gender rather than by applicant/respondent status. Applicant mothers proposed equal shared time (48–52% of hours) for 10% of children in our sample.<sup>5</sup> The corresponding proportion of applicant fathers proposing an equal shared care-time arrangement was almost three times higher, at 27% of children.<sup>6</sup>

<sup>4</sup> Appendix B provides a detailed discussion of the sampling and analysis of court files.

<sup>5</sup> There were 316 children who were subject to proceedings with a proposal for care-time arrangements from an applicant mother with final arrangements where contact hours were specified.

<sup>6</sup> There were 394 children who were subject to proceedings with a proposal for time arrangements from an applicant father with final arrangements where contact hours were specified.

### 9.3.2 Qualitative insights into parents' expectations about shared time

The Legislation and Courts Project (LCP) and Service Provision Project (SPP) each explored qualitatively how the nexus between the presumption of shared parental responsibility and expectations about time affected legal and service system professionals' work with clients. Issues explored in both studies included the ease with which parents understood the presumption, the impact of the presumption on parents' expectations of equal care-time arrangements, the appropriateness of these arrangements, and how professionals within these sectors managed expectations that they believed not to be in the best interests of children.

#### Misconceptions about the distinction between shared parental responsibility and equal time

Participants in the QSLSP 2008 (involving interviews and focus groups with family law system professionals) regularly attributed the shift in expectations to the “publicity that surrounded the reforms”. They suggested that misunderstanding of the reforms was widespread in the community and that even some lawyers thought the reforms meant “50–50” time. This perception is supported by the Qualitative Study of FRSP Staff 2007–08 and 2009, who also experienced misconceptions of the purpose of the reforms. FRAL participants in the 2007 focus groups, in particular, often reported receiving calls from lawyers, service providers and parents with queries about the meanings of the changes in terms of time.<sup>7</sup>

Highlighting the implications of such misunderstandings, a federal magistrate observed that they had noticed some affidavits—in explaining why particular arrangements had previously been made—citing erroneous legal advice on a mythical 50–50 rule: “They will say: ‘My lawyer told me the law has changed and you get equal time now and the judge wouldn’t allow something that wasn’t equal time’”.

Family relationship service professionals—particularly in the FRCs, POP and FDR services—also frequently reported that clients came to their services with an expectation of equal time, which they attributed to their lawyer’s advice. Some respondents questioned whether the lawyers had actually meant this or whether the client had incorrectly taken this impression away from discussions with their lawyer:

The guys come in with a point of view that’s being embossed by their lawyers. And even though you might talk about shared time, shared parental responsibility not being the same thing, that’s all well and good but they believe they’re going to get the equal time and week-about or whatever it is they want. So ... they’re not particularly influenced by that concept of the difference. They’re not going to go there because they’ve already made up their minds that the courts are going to let them have it the way they want it. (FRC practitioner, 2009)

However, as discussed below, many practitioners believed that while this view may be a starting point for many fathers, their attendance at the service was an opportunity to work with them to explore the most appropriate parenting arrangements for the children involved.

#### Managing parents' expectations

In dealing with parents in the context of increased expectations, both legal and family relationship services practitioners consistently spoke of needing to “reality check” the position taken by clients. Regular reference was made to working with clients (and particularly fathers) who were seeking 50–50 time, to encourage them to consider the practical implications of their proposals:

The dads are so intent on wanting to have the children live with them. They overlook the fact that it ... might not suit this particular child’s developmental needs at this stage. (Judicial officer)

I think, being called the *Shared Parental Responsibilities Act* [sic], I think most—I’m going to make a sweeping generalisation here—most dads only read the first two words, and that’s all that matters to them. They’re not reading the rest about that it’s actually in

<sup>7</sup> These FRAL respondents emphasised that they were not giving legal advice with respect to a particular case. They were giving information regarding the aspirations of the legislation, with all of its caveats.

reference to responsibility. They're seeing it as the child spends a week about in each home, regardless of their age or their developmental needs. So if the Act were addressing that, it would certainly, rather than just throwing a blanket over all kids from birth to 16 or 18 years, it would need to have an incremental view of what's appropriate at different times. (FRC practitioner, 2009)

There was a sense among some practitioners that it wasn't that the care-time arrangements themselves were inappropriate for the children, but that fathers (who had perhaps not taken on a primary carer role in the past) needed assistance with some of the basics in terms of their children's needs:

So I had to work with dad about even putting out a toy box or, you know, we actually got dad to purchase a bookcase that the child could sit his little figurines up. So he actually felt like when he went to dad's home it was now his home. So those practical things dad hadn't thought of. He had got his shared care and he was happy with that, but hadn't really thought about how to make it a home for his son during that one week. (FDR practitioner, POP, 2009)

Conversely, a small number of service professionals also hinted that in their practice, there was a sense that mothers were resistant to giving more time to the father, and that they also needed to be worked with to shift their view. This was a minority view, however, and was most commonly expressed by FRAL information officers, who were clearly affected by the many calls they reported receiving from fathers who were unable to spend time with their children.

Similarly, a minority of QSLSP 2008 participants described using the legislation to persuade mothers "to adjust their positions [in order to accept more time] to placate the other party and facilitate an outcome" (Barrister, 2008).

The expectations for equal time held by some clients were said to be impossible to shift, placing both legal and family relationship services practitioners in an ethical dilemma when, in the practitioner's view, this was not in the best interest of the child:

There's a very strong sense of, "I want to have shared time or equal time". And it's challenging for us because we don't have the authority of the court to suggest to somebody, "No, that wouldn't be reasonable in the eyes of the child". So how do you, as a practitioner, decide what would be reasonable and what wouldn't be reasonable? We've had practice examples where [for example], would it be reasonable to leave an eight-year-old at home for half an hour after school, without a parental carer? Who are we to decide what the community standard is on that, and what isn't? So I think these are the real practice dilemmas that we have. And within a framework where people are saying, "Well, I want to do shared care arrangements for very young children", many of us would have reservations about orders that the court has made, because we don't feel that they're child-focused for those little ones. (FRC practitioner, 2009)

Similarly, a judge noted that, despite having a fairly robust view of what solicitors should do, they believed that shifting expectations would be an "almost impossible task":

But with the amount of publicity and the public perception, I think if you try to talk somebody out of doing it, they would have very firmly a view that you were not on their side at all. (Judge, 2008)

A family consultant noted that shifting parents' views when they "propose or agree to arrangements that family consultants believe would be damaging to children" was a key aspect of the role in the current environment: "It can be difficult, but in my view, it's the role and obligation of the family consultant to stand firm and advocate for the child in these circumstances".

Service providers tended to agree that taking a child-focused approach was imperative in working with parents around their expectations of time. Many saw the child-focused aspect of their work as a powerful tool and were confident in their ability to increase the majority of parents' understanding of their children's needs:

[In] our pre-family dispute resolution session, we ... put a lot of preparation work in there, we work with the parents ... we get to that emotional level for them, where they are really focusing on their children ... It's one-on-one, and it really brings about us looking at what's happening for their child at an emotional level, what is happening with



mum and dad and what's that creating for the child, [with] a future focus. So we actually say what would you like to see for your child in the future, and that gives us an actual future focus when we go into the joint session. I think that's been a major change, with how we do our process ... We do that [with the parents] separately, one-on-one, and it can take an hour, an hour and a half, one-to-one that we work with the parents. (FRC manager 2009)

However, in agreement with many of the family law system professionals, most service providers did note that some parents' views about time could not be changed:

I often get a lot of twisting of reading the Act. So, "It's my child's rights to spend 50–50 with me". Which is always an interesting one. Yeah, so the parents, what the parents want, gets twisted into children's rights, which is not what the Act is actually saying. (FRC practitioner 2009)

A range of issues was identified as stemming from the misunderstanding of the law, including increased disillusionment with the system by fathers. A further concern expressed by lawyers was the impact the misunderstanding may be having on parents who either made their own arrangements or came to negotiated arrangements with the assistance of the FDR sector, without legal advice as to what the law really says and means. Family lawyers expressed concerns that arrangements were being made that were developmentally inappropriate or in the context of a history family violence, and such arrangements proved to be unworkable in practical terms.

Many participants believed that expectations concerning rights, fairness and 50–50 types of outcomes meant that the distance between a child-focused outcome and the initial expectations of at least one parent was greater than before the reforms, in both the negotiation and court context. One ICL practitioner noted that: "Now we have to think about it, and we have to have very good reasons when we are talking to parties and sometimes to magistrates about why we think that a shared care arrangement, in [these] particular circumstances, isn't appropriate".

A majority of judicial officers in the sample agreed that they were faced with more unrealistic claims under the reform package. One federal magistrate noted that: "I think there are [a] fair few that have almost like an ambit claim because they know the legislation is there so they just whack it in. I don't know whether it's the litigants themselves or their lawyers".

A judge supported their assessment that children were largely worse off under the reform package by saying: "They really are being divided up more like property than like children".

Chapter 11 will examine the impacts of shared care-time arrangements on child wellbeing, including where there has been a history of family violence, for young children, or where the inter-parental relationship is highly conflictual.

## 9.4 Working with parents to produce child-focused outcomes

As mentioned earlier, service system professionals operate in the context of a policy framework, while legal system professionals operate in the context of a legislative framework. Each of these frameworks is ultimately concerned with assisting parents to reach arrangements that are, in the terms of the legislation, in the best interests of their children (*SPR Act 2006*, s60CA). Thus, the views of both service sector and family law system professionals were obtained on the extent to which the policy and legal frameworks support child-focused agreements (policy objective 4). Service sector professionals were also asked about the extent to which they believed their clients could focus on the needs of their children, while legal sector professionals were asked a range of relevant questions pertaining to the legal framework.

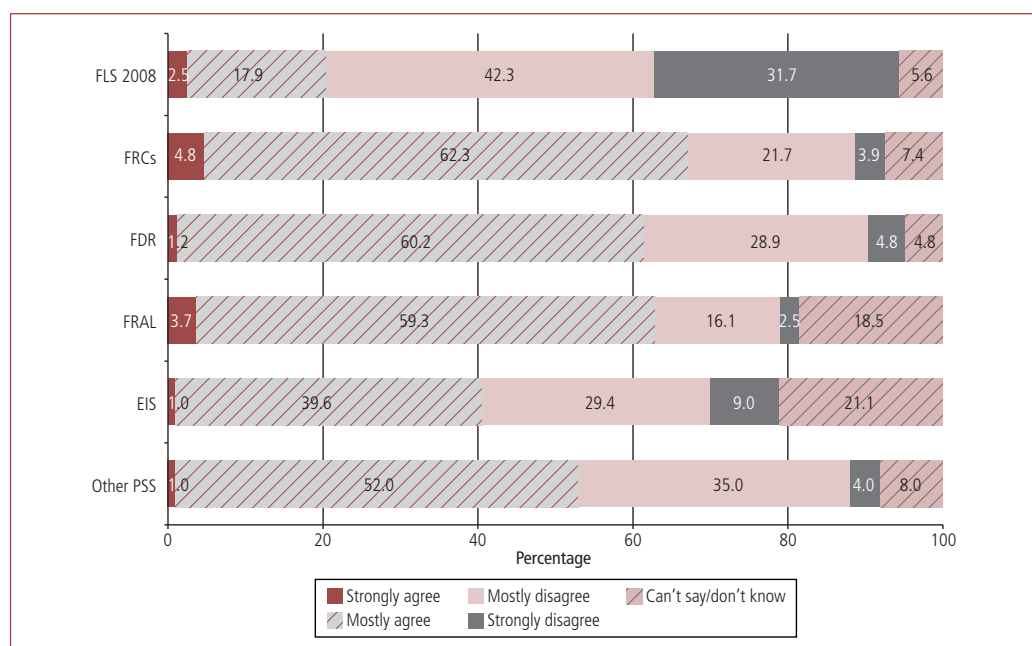
### 9.4.1 Policy and legal framework support for developing child-focused agreements

#### Reaching developmentally appropriate agreements

Both the FLS 2008 and the Online Survey of FRSP Staff 2009 asked respondents to indicate the extent to which they thought their respective operational frameworks supported child-focused agreements. The proposition presented to family lawyers was: "The current framework makes it easy to assist parents reach arrangements that are developmentally appropriate for their

children” and it occurred in a sequence dealing with the legislative provisions. The Online Survey of FRSP Staff 2009 statement was the same, except that it included the word “policy” before the word “framework”. Interestingly, there were marked differences in the pattern of responses, with lawyers indicating a much stronger level of disagreement than service sector professionals.

Figure 9.5 shows that a substantial majority (74%) of FLS 2008 participants disagreed that the current framework makes it easy for parents to reach developmentally appropriate arrangements, with 32% strongly disagreeing. Only 20% of participants indicated agreement with the proposition, of which only 3% strongly agreed.



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

Source: FLS 2008, Online Survey of FRSP Staff 2009

**Figure 9.5** Agreement with the statement: “The current (policy) framework makes it easy to assist parents reach arrangements that are developmentally appropriate for their children”, lawyers and service providers

In contrast with these patterns, among service sector professionals, an affirmative response to the proposition was made by 61–67% of FRC, FDR and FRAL participants (with 1–5% of these participants strongly agreeing). A negative response was given by an aggregate of 34% of participants, with 14% strongly disagreeing. It should also be noted that 19–21% of FRAL and EIS participants expressed uncertainty about this issue.

The difference in response patterns between legal and family relationship professionals in these surveys may be explained, at least partly, by responses from many of the family relationship services professionals who participated in the Qualitative Study of FRSP Staff, indicating a belief that they were able to work with parents to find the best arrangements for children. Many of these participants gave examples of being able to use child-focused techniques to assist parents in making arrangements.

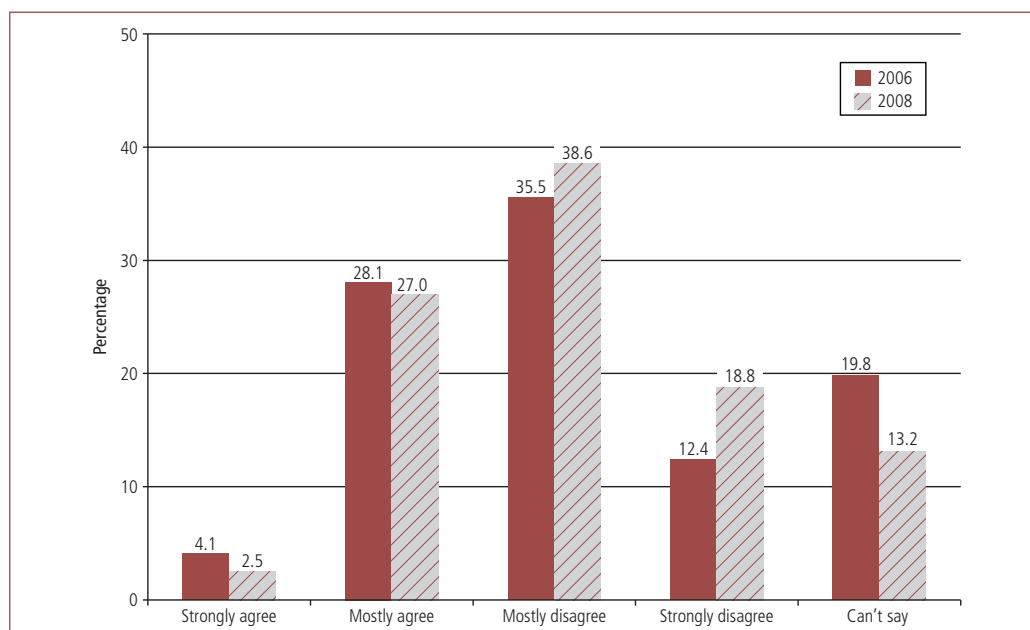
The ability to come back and make changes to arrangements once they have been made was also seen as a positive aspect of the family relationship services model. This included scheduled check-ups and “trying out” different arrangements before they were finalised:

We did one where mum and dad were using the contact service and mum had attended “Mums and Dads” and they came in to talk about a shared care arrangement with me. We sort of worked out that it was actually in the child’s best interest and the child wanted it and both mum and dad wanted it too.

So we actually put an agreement in place and that started happening. But then what actually happened is it was having a really huge effect on dad's work and as a result the child was having to go into child care and that on the week that he was with dad and everything like that. So we actually then had to come back and review it and actually this may not be the best arrangement despite the fact that it started out as the best interests of the child. Financially it hasn't worked out for dad and now it is no longer in the best interests of the child. (POP manager, 2009)

### The benefit to children of the legislative reforms

Respondents to the FLS 2008 were asked to indicate their level of agreement with the proposition that: "The legislative reforms towards shared parental responsibility have benefited children in most cases" (Figure 9.6). Just over half of the lawyers participating in the 2008 survey (57%) disagreed with this proposition, with 19% strongly disagreeing, and around 30% of participants agreed with this statement. A similar pattern of responses to this question emerged in the 2006 survey, although a slightly lower proportion of respondents strongly disagreed that the reforms towards shared parental responsibility had benefited children (19% in 2008; 12% in 2006).



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

Source: FLS 2006 and 2008

**Figure 9.6** Agreement with the statement: "The legislative reforms towards shared parental responsibility have benefited children in most cases", family lawyers, pre- and post-1 July 2006

A common view among the legal system professionals involved in the FLS 2008 and the QSLSP 2008 was that negotiation and litigation had become more focused on parents' "rights" rather than children's best interests and needs. It was suggested that this resulted from the introduction of the presumption and the linked obligation on the court to consider making orders for equal or substantial and significant time where the presumption is applied. Judges regularly observed that they were being confronted with arguments about parents' rights in their courtroom and having to undertake a process of "re-education" of litigants to refocus attention on the interests of children, and solicitors described a parallel process in relation to clients.

A judge said: "I think a lot of clients, or a lot of parties and inexperienced lawyers in this field, have confused equal shared parental responsibility with equal time. There is no presumption about equal time. But some people seem to think there is. They seem to think that because the objects are all written out in very pleasing language that therefore you ignore the fact that there's an overriding factor which is the best interest of the child. And there's a refocus on what someone's perceived rights are".

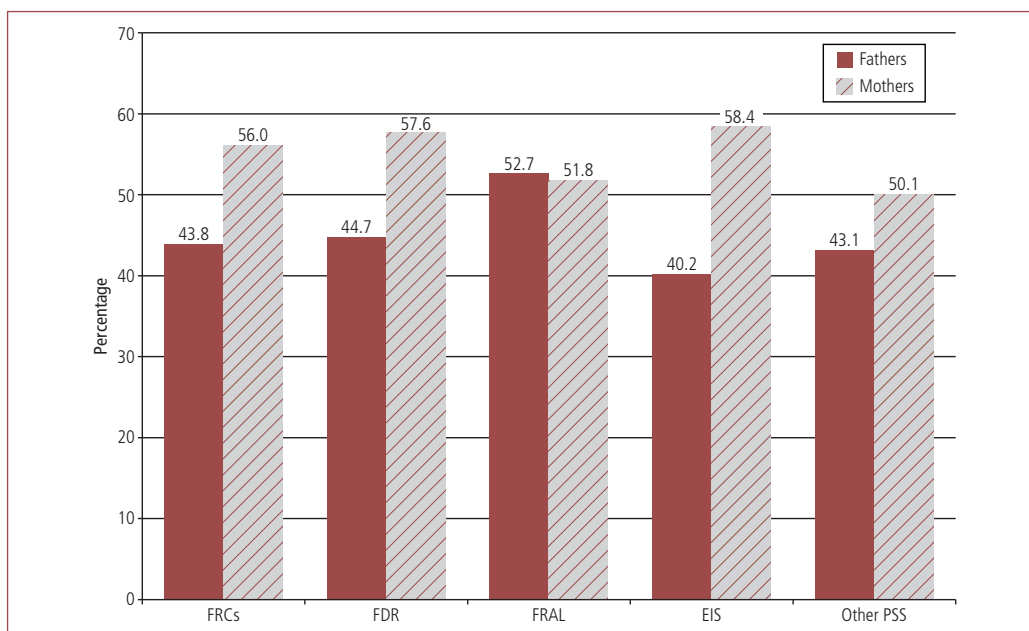
Similarly, a barrister believed that rhetoric of rights and fairness (in relation to parents) seemed to have gained momentum in family law proceedings: “There was a time when if you said to a judge this outcome will be fair to both parents, a judge would have thrown you out of court”. Expectations that they would “get a fair deal”, according to a legal aid solicitor, meant that more work had to go into explaining what the best interests of the child meant to litigants, who then potentially felt “ripped off” when their expectations weren’t met.

Such views are in contrast to much of the qualitative data from FRC and FDR practitioners about the capacity of the reforms—and the expanded service delivery system in particular—to benefit children. As noted above, many family relationship professionals saw the child-focused aspect of the reforms as an opportunity to assist parents and children post-separation. However, all seemed to agree that there were improvements to be made in the ways in which the different aspects of the system worked together. One FDR practitioner summed it up as:

The other good thing is that children have got more of a voice in their parent’s separation in the whole thing. Even if they don’t have a voice, they’re being advocated for by the FRCs, that we understand what they’re going through and now they’ve got all these other services that are supporting them. I think that’s great. The whole family law system is better for children I think. (FDR practitioner, 2009)

### Parents’ capacity to focus on children’s needs

A further issue relevant to the question of child focus is the capacity of parents to focus on their children’s needs. This issue was explored quantitatively in the Online Survey of FRSP Staff 2009, which asked participants to respond to questions concerning the ability of their parent client base to focus on their children’s needs. On average, service providers across the service types indicated half or slightly more than half of mothers (50–58%) and 40–53% of fathers attending their service with post-separation issues were able to focus substantially on their children’s needs (Figure 9.7). Apart from FRAL participants, participants within most service types were more likely to report that mothers were able to focus on their children’s needs more than fathers.



Source: Online Survey of FRSP Staff 2009

**Figure 9.7** Estimates of the proportion of parents who were able to focus substantially on their children’s needs, service providers, 2009

#### 9.4.2 Lawyers’ advice-giving practices

Family lawyers have a professional obligation to advise clients what their legal position is under the law, and the primary focus of the law is, of course, intended to be the best interests of the child. The extent to which advice-giving practices changed under the post-2006 framework can

be gauged by comparing FLS 2006 response patterns with FLS 2008 response patterns to questions regarding the frequency with which participants gave particular kinds of advice.

The qualitative data from the QSLSP 2008 and the quantitative FLS data indicate that advice that could be perceived to support a so-called “80–20 rule”<sup>8</sup> is no longer given as frequently post-reform as it was pre-reform. Overall, it is suggested that there is now more creativity in the advice being provided about parenting arrangements, with parents being encouraged to consider a variety of ways in which fathers can be part of their children’s day-to-day routine.

The FLS 2006 and 2008 questions that were designed to uncover differences in advice-giving around perceived norms in the pre- and post-reform environments canvassed the extent to which three possible sets of advice regarding care-time arrangements were deployed in practice. These were:

- Mothers who have had major child care responsibilities prior to separation will normally obtain residence of their children.
- The normal outcome is that a father will see his children on alternate weekends and half the school holidays.
- Substantial sharing of parenting responsibilities after separation requires high levels of capacity to cooperate.

### Past care-giving patterns

In 2008, a substantially lower proportion of participants indicated that they frequently explained to clients that mothers who have had major child care responsibilities would normally obtain residence of their children, compared to the baseline data collected in 2006.<sup>9</sup> Post-reform, 44% of participants stated that they almost always or often advised clients in this way, compared to almost twice this proportion (82%) in 2006. Conversely, the proportion responding that they “sometimes” or “rarely/never” gave this advice increased from 17% in 2006 to 55% in 2008.<sup>10</sup>

### “Normal” contact patterns

Similar differences were also evident in advice-giving practices concerning quasi-legal norms in arrangements for children to spend time with “non-resident” fathers. In relation to a question asking respondents how often they had advised clients that “The normal outcome is that a father will see his children on alternate weekends and half the school holidays”, only 9% of lawyers participating in the FLS 2008 reported giving such advice “almost always” or “often”, compared with 36% of lawyers in 2006. In 2006, only 26% of lawyers who participated in the survey “rarely or never” gave such advice, compared with a much higher proportion of family lawyers (64%) in 2008. In 2006, 37% of family lawyers reported “sometimes” giving such advice, with 26% family lawyers in 2008 reporting “sometimes” giving such advice. Further evidence of a change in this area comes from responses to the question: “Because of the reforms, I have changed the advice I give to clients about fathers seeing children”. In 2006, 64% of the sample said they would be likely to change their advice about this, compared with 90% saying in 2008 that they had changed their advice about this.

### Shared care and the ability to cooperate

In contrast to the large differences in advice-giving concerning arrangements for spending time, responses to the third question in this set—concerning cooperation and shared care—suggest a more static set of practices. Unlike the two previous questions, this question relates less to

8 This was a perception, widely held in the community, that the outcome of family court matters was, usually, the mother gaining sole residence (80% of time) and the father having contact with their children on alternate weekends and half the school holidays (20% of time) (House of Representatives Standing Committee on Family and Community Affairs, 2003, ¶2.13).

9 Data from the FLS 2006 (pre-reform) and FLS 2008 (post-reform).

10 Data from Wave 1 of the Longitudinal Study of Separated Families (LSSF W1) 2008 reveal that where fathers had a high degree of involvement in the child’s day-to-day activities pre-separation, there was more likely to be shared decision-making about the child post-separation (Chapter 8). Similarly, families in which the father had a high degree of involvement in the child’s day-to-day activities pre-separation were more likely to have shared time post-separation (Chapter 7).

the legal framework and more to received wisdom (possibly based on case law<sup>11</sup> and social science evidence<sup>12</sup>) about the conditions that should exist in order for shared care to be beneficial to children. In both the pre- and post-reform surveys of lawyers, participants were asked how often they explained to clients that substantial sharing of parenting responsibilities after separation requires high levels of capacity to cooperate. In 2008, almost 62% responded that they explained this statement to clients “almost always”, with a further 26% “often” explaining this. In 2006, 66% of respondents stated that they “almost always” explained this statement to their clients.

Comparison of responses in the “sometimes” and “almost never” categories suggests that, post-reform, marginally less emphasis is placed on the ability to cooperate. In 2006, 4% of participants said they “sometimes” gave such advice, compared with 8% in 2008. Similarly, in the “rarely/never” categories, 1% selected this option in 2006, compared with 3% in 2008.

## Shared care and high conflict

Despite less change in the set of responses in relation to advice-giving practice and the capacity to co-operate described in the preceding paragraph, most participants in the FLS 2008 indicated that the changes had resulted in more shared care-time arrangements being made in high-conflict situations. Asked to indicate their level of agreement with the proposition that: “The legislative reforms have resulted in more children in shared care arrangements where there is high conflict”, most respondents (79%) agreed, with 40% strongly agreeing. In contrast, only 16% disagreed, with 4% strongly disagreeing.

This is consistent with views expressed by many participants in the QSLSP 2008 that shared care-time arrangements were being made by agreement, negotiation and litigation in circumstances where the parents had a conflictual relationship.

## 9.5 Who did the legal changes favour?

### 9.5.1 Fathers or mothers; parents or children?

A further issue relevant to the impact of the legal changes, particularly in relation to the dynamics that affect negotiations, are professionals’ perceptions of whether the reforms have favoured fathers, mothers or children. Quantitative data on this issue was gathered in the FLS 2006 and 2008, with qualitative insights provided by the QSLSP 2008. Overall, these data indicate that the majority of professionals perceive that the reforms have favoured fathers.

The FLS 2006 and 2008 asked participants to indicate who they believed the reforms had favoured, in relation to fathers and mothers,<sup>13</sup> and parents and children<sup>14</sup>. Between the survey periods, perceptions that the reforms favoured fathers over mothers and parents over children strengthened. As shown in Figure 9.8, the majority of 2008 FLS respondents (71%) reported that fathers were favoured over mothers, compared with 52% in 2006. As Figure 9.9 shows, this pattern of responses in 2008 was consistent across male and female respondents, with around 70% of male and female lawyers stating that fathers had been favoured over mothers.

In both surveys, between 1% and 2% of respondents believed that the reforms favoured mothers over fathers. It is interesting to note that in the 2008 survey not a single male family lawyer believed that mothers were favoured over fathers. Another 22% of all respondents stated that neither fathers nor mothers were favoured by the reforms in 2008, compared with 34% in 2006.

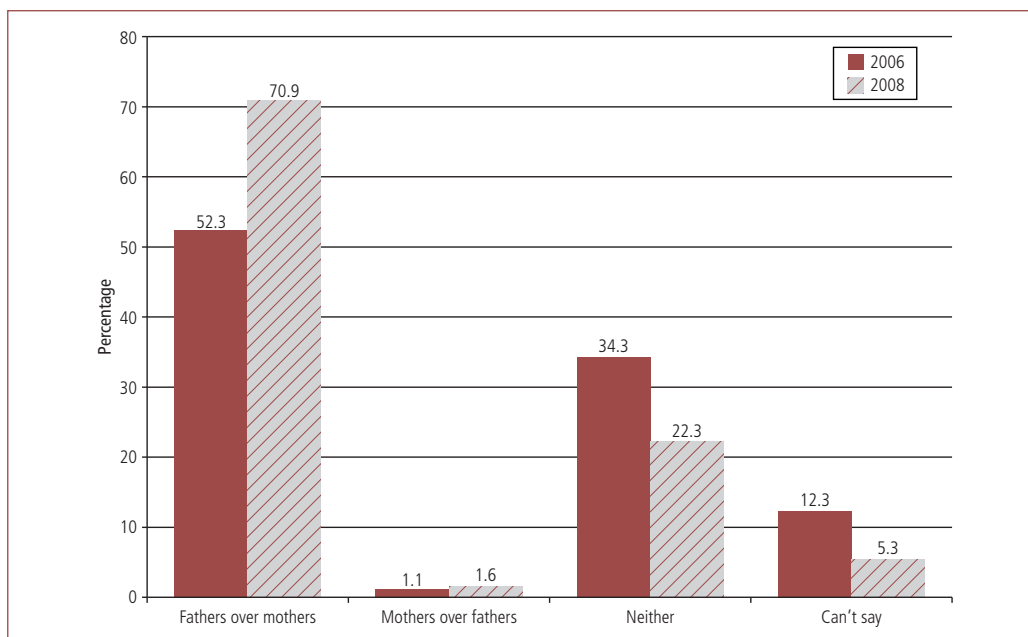
Similarly, the FLS 2006 and 2008 show a strengthened perception that the reforms have favoured parents rather than children. In 2008, 62% stated that the reforms had generally favoured parents over children, compared with 46% in 2006 (Figure 9.10, on page 221). The response patterns are consistent with a view regularly expressed by participants in the QSLSP 2008 that the

11 For example, Padgen (1991), FLC 92–231 at 78,596.

12 See, for example, McIntosh (2003).

13 The question was posed as a statement: “The legislative reforms have generally favoured ...”, with the following options available for selection: “fathers over mothers”; “mothers over fathers”; “neither”; and “can’t say”.

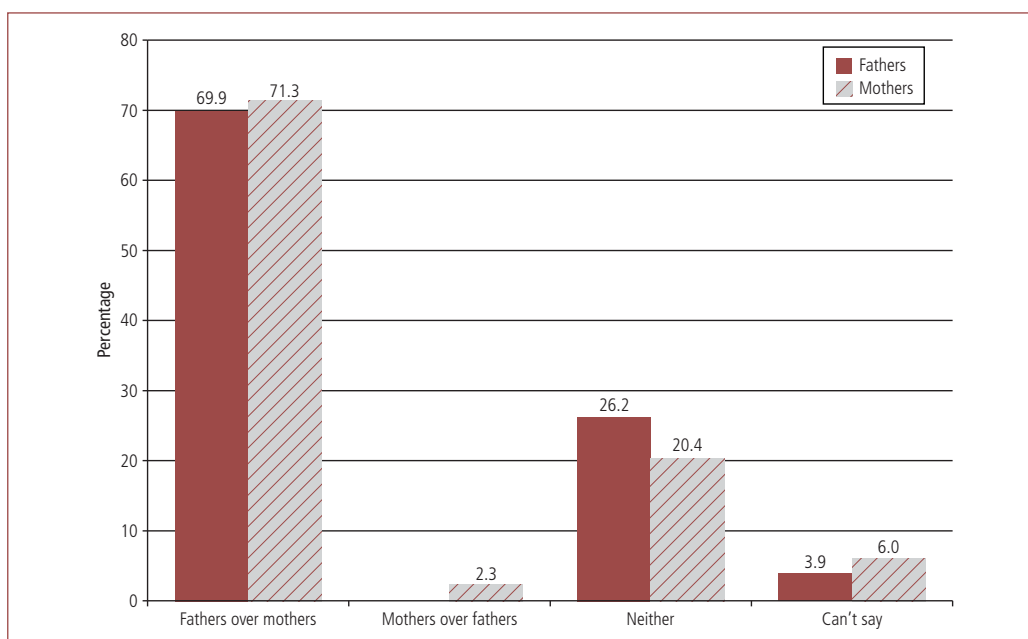
14 The question was posed as a statement: “The legislative reforms have generally favoured ...”, with the following options available for selection: “parents over children”; “children over parents”; “neither”; and “can’t say”.



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

Source: FLS 2006 and 2008

**Figure 9.8** Perceptions of whether the legislative reforms have generally favoured fathers or mothers, lawyers, 2006 and 2008



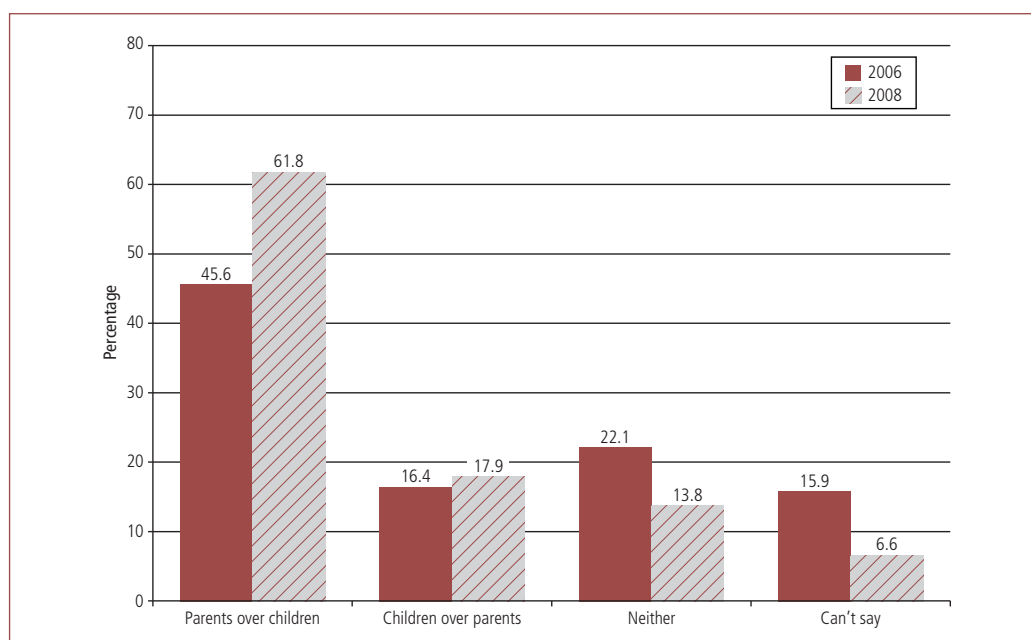
Source: FLS 2008

**Figure 9.9** Perceptions of whether the legislative reforms have generally favoured fathers or mothers, by gender of lawyer, 2008

framing of the legislation—in particular, the presumption of equal shared parental responsibility, and a misunderstanding of what it means—have encouraged an increased focus on parents' rights.

Table E9.1 in Appendix E further illustrates these data and also shows that there was some variation in the pattern of responses by gender of the respondent, with a higher proportion of female lawyers stating that parents had been favoured over children (64% of females compared with 57% of males). Furthermore, male lawyers (21%) were more likely than female lawyers (10%) to report that the reforms favoured neither fathers or mothers.





Notes: One respondent in the 2006 FLS did not answer this question. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 9.10 Perceptions of whether the legislative reforms have generally favoured parents or children, lawyers, 2006 and 2008**

Further insight into the implications of the shifts perceived by system professionals is provided by qualitative data in the QSLSP 2008, where a consistent concern was expressed about mothers “being on the back foot”<sup>15</sup> after the reforms. Across the sample, professionals regularly expressed the view that the shift in bargaining dynamics, and popular perceptions of what “the law” requires had created fear and apprehension among separated mothers. One senior member of the bar said: “A lot of female clients are really fearful. They come in and say, ‘Well, I understand he is going to get shared care. Is there anything I can do to stop it?’ ... I think a lot of the women are desperate to settle because they’re so frightened of what might happen if they go to court”.

Legal system professionals regularly made the point that women felt pressured to agree to outcomes in negotiations that they didn’t feel were in their children’s interests. While this was said to be happening frequently, particular concerns were expressed about the nature of the agreements reached in two different situations. The first concerned cases where there had been a history of family violence. For example, an ICL maintained that situations where there had been family violence and power imbalance frequently resulted in a scenario where “the father has told the mother categorically that the law now says she can have 50–50 and she believes him ... So she feels she’s got no choice but to go along with that, otherwise she might be seen as an obstructive mother or something like that”.

The second situation causing concern involved matters where a lack of legal representation at all, or a perceived imbalance in the quality of the legal representation, failed to alleviate the apparent pressure caused by the imbalance in bargaining power, resulting in women agreeing to inappropriate arrangements. “OK if you have an experienced ICL to work against, but if you have an inexperienced one or not one at all, then its not OK ... means people are agreeing to arrangements because they think they have to, not because they think it’s in the best interests of the children.” This comment highlights the possibility that the involvement of an ICL may ameliorate the imbalance; however, similar sentiments were regularly expressed in relation to legal representation generally.

Many mothers were reported to be potentially welcoming of greater involvement, but concerned about its practical implications. A number of aspects of potential shared care-time

<sup>15</sup> This expression was used by a family consultant.

arrangements were seen to raise particular concerns for mothers. These stem from the potential for disjunction between the patterns of care prior to separation and those that may result from negotiations or litigation.

The first relates to concerns reported among mothers who were facing the prospect of equal or substantial and significant care-time arrangements being made in favour of fathers who had not played an active caring role previously. Such concerns focused on the workability of such arrangements, as well as the capacity of such fathers to meet the day-to-day needs of their children. One legal aid solicitor noted: “The most difficult thing for lots of mums to come to terms with [is] he’s now saying he wants the children however many days. He’s never been left alone with them for a night by himself, especially little ones. He hasn’t changed their nappy, he doesn’t know what they eat for morning tea”.

The second relates more specifically to the implications that changes in arrangements have for mothers themselves. A number of family law system professionals spoke of women feeling that their performance as mothers was being devalued by changes in caring arrangements. This was seen to have practical as well as psychological implications. One barrister noted observing a thinking pattern among their clients along the lines of: “I once had the major care of these children, now they are being taken away from me. Am I such a bad mother?”

## 9.6 Bargaining? Dynamics and issues

An issue connected to the themes examined in the preceding sections relates to a concern about what impact the legal changes have had in relation to the dynamics that affect parents’ bargaining positions in family law matters more widely. It was particularly apparent from data from the FLS 2008 and QSLSP 2008 that a number of issues may be relevant to the positions adopted by the parties in relation to care-time arrangements, including child support liability, access to Family Tax Benefit and post-separation property division. However, while many legal system professionals clearly expressed the view that property and financial considerations and children’s arrangements were connected in negotiations through a potentially complex web of demands and trade-offs, the extent to which this type of dynamic affects separated parents generally is uncertain.

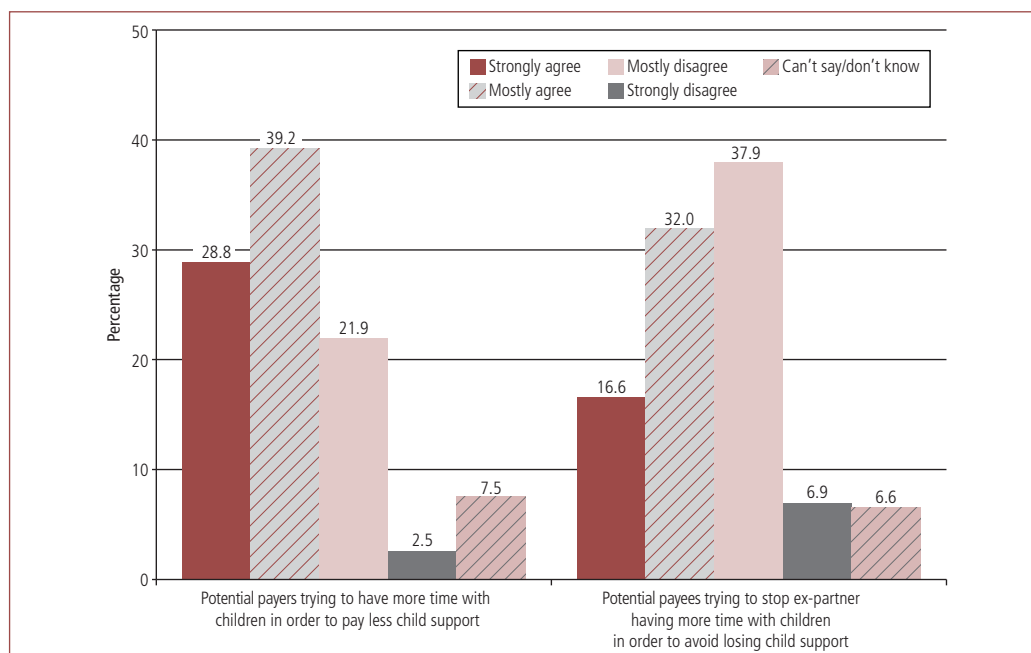
Parents’ reports from the LSSF W1 2008 suggest a link in only a small proportion of cases. Of the 71% of fathers and 73% of mothers in the sample who had reported having sorted out their parenting arrangements, 16% of fathers and 13% of mothers indicated a link between property/financial arrangements and children. It may be that a “bargaining dynamic” may be more strongly evident among the group that had not concluded their arrangements. This is an issue that may be examined further on the basis of LSSF W2 2009 data. Further, socio-demographic characteristics are likely to be relevant in this context and this may be an area where a sample derived from the Child Support Agency (CSA) database has different characteristics from other groups of separated parents; for example, those who arrange child maintenance with no engagement with the CSA. These issues should be borne in mind when considering the data reported in the following sections.

### 9.6.1 Child support

As outlined in Chapter 1, the Child Support Scheme was reformed in parallel with the changes to the *Family Law Act 1975* (Cth). The question therefore arises as to whether there is any connection between parents’ desires to increase the time they spend with their children and their potential child support liability and, conversely, whether there is any connection between a desire to stop a reduction in time in order to maintain child support entitlements. Other financial issues are also relevant here, as government payments such as Family Tax Benefit and Parenting Payments are tied to the amount of time each parent spends with the child or children.

Professionals’ perceptions of the extent to which child support is linked to motivations to seek particular types of parenting arrangements was examined in the FLS 2008 and the Online Survey of FRSP Staff 2009. The data suggest that lawyers see this as strong motivation, in particular for potential CSA payers. Service sector professionals also see it as a motivation for a proportion of their client base, but make almost no distinction between payee motivation and payer motivation. The majority of FLS 2008 respondents perceived that potential payers are motivated to spend more time with their children for financial reasons, with 68% of all respondents agreeing with the statement (29% of them strongly agreeing). In relation to the motivation of potential

CSA payees, 49% of respondents agreed that payees were opposing their ex-partner having more time with their children for child support reasons, and 45% disagreed (Figure 9.11).



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

Source: FLS 2008

**Figure 9.11 Agreement with statements concerning parents' motivation in seeking care-time arrangements and links with child support, lawyers, 2008**

Service sector professionals were asked to estimate the proportion of clients attending their service who:

- are potential CSA payers trying to get more time with their children so that they can pay less child support; and
- are potential CSA payees trying to stop their ex-partner getting more time with their children so as to avoid losing child support.

Estimates of the proportions of clients in each category in response to each of these questions varied little, with large proportions providing a response of "can't say/don't know".

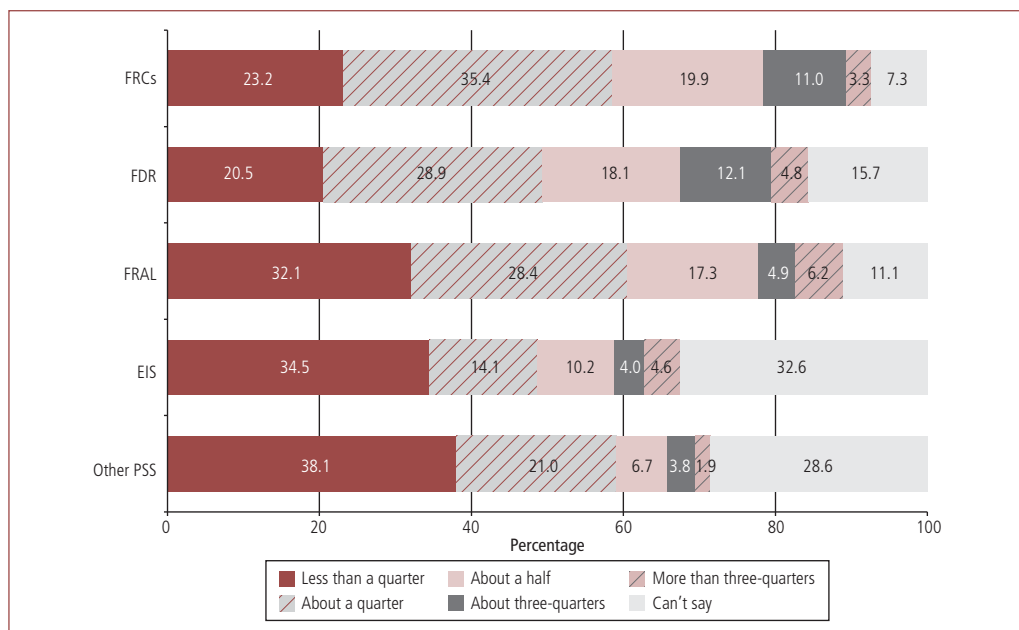
In relation to payers, 60% of FRAL, 59% of FRC and other PSS, and 49% of FDR and EIS participants said that a quarter or fewer of their clients were trying to get more time with their children so that they could pay less child support (Figure 9.12).

Similarly, in relation to payees, the majority of participants (63% FRC, 59% FDR, 56% FRAL, 50% EIS and 52% other PSS) nominated about a quarter or fewer clients who were potential CSA payees trying to stop their partner getting more time with their children so as to avoid losing child support. Again, a substantial minority across the service types provided a response of "can't say" for this item (Figure 9.13).

These responses are consistent with findings from the Qualitative Study of FRSP Staff 2009, where many noted that while they did have clients for whom child support was the predominant issue behind their preferred care-time arrangements, these parents were in the minority.

## 9.6.2 Property settlements

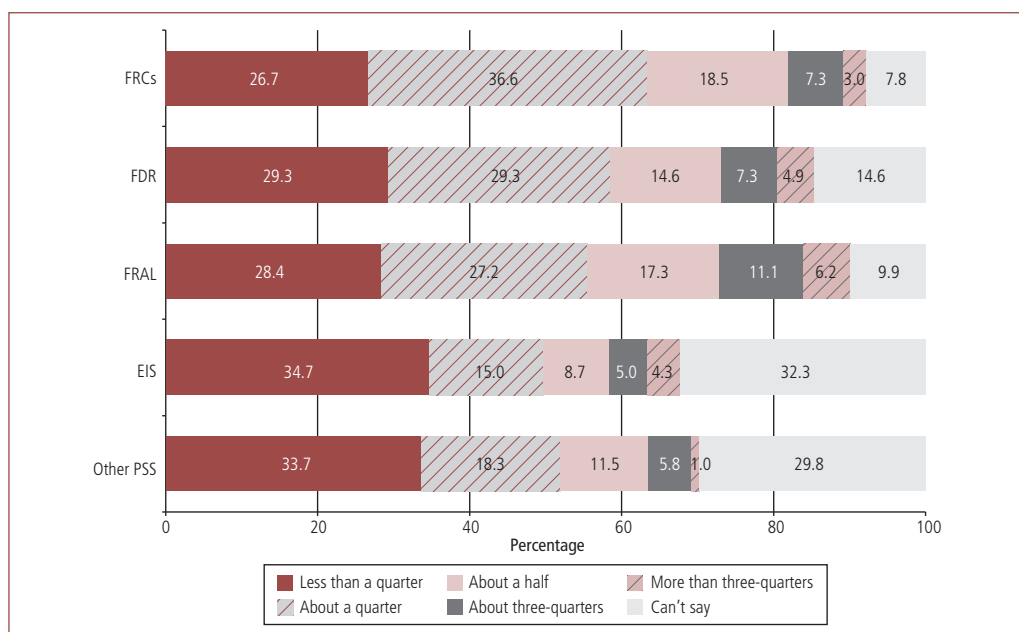
Further insight into the relationship between financial issues and parenting arrangements was assessed through the FLS 2008, in which three new questions dealt with the issue of property arrangements. The first question concerned the extent to which property settlements had shifted to favour mothers or fathers, the second asked participants to quantify the extent of the shift and the third concerned advice-seeking patterns in relation to changing concluded property



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

Source: Online Survey of FRSP Staff 2009

**Figure 9.12** Estimates of proportion of potential CSA payers seeking more time with children so they pay less child support, service providers, 2009



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

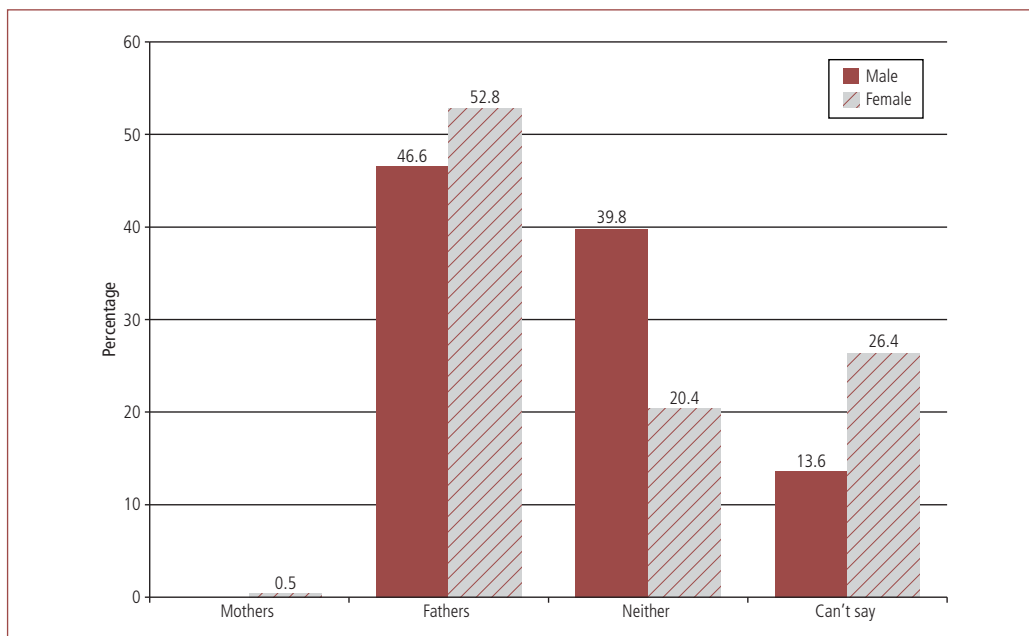
Source: Online Survey of FRSP Staff 2009

**Figure 9.13** Estimates of proportion of potential CSA payees trying to stop ex-partner having more time with children to avoid losing child support, service providers, 2009

arrangements. These questions were included to gain quantitative insight into the extent of an issue that emerged in the QSLSP 2008 where professionals were suggesting that a change in the average ratio of property settlements in favour of fathers had occurred since the reforms.

About half of FLS 2008 respondents (51%) reported that property settlements had on average changed in favour of fathers. A further 27% answered that the changes favoured neither parent, with 22% being unable to say. Only one respondent, or 0.3% of the sample, indicated that

property settlements had changed in favour of mothers. As Figure 9.14 shows, this finding was broadly consistent, irrespective of gender of the respondent, in relation to the proportion reporting that one gender was favoured over the other in terms of property settlements. In the FLS 2008, 47% of male respondents stated that property settlements had changed in favour of fathers, compared with 53% of female respondents. It is noted, however, that a much higher proportion of male respondents (40%) relative to female respondents (20%) stated that neither mothers nor fathers were favoured in terms of property settlements.



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

Source: FLS 2008

**Figure 9.14 Views about whether property settlements have changed in favour of mothers or fathers, by gender of lawyer, 2008**

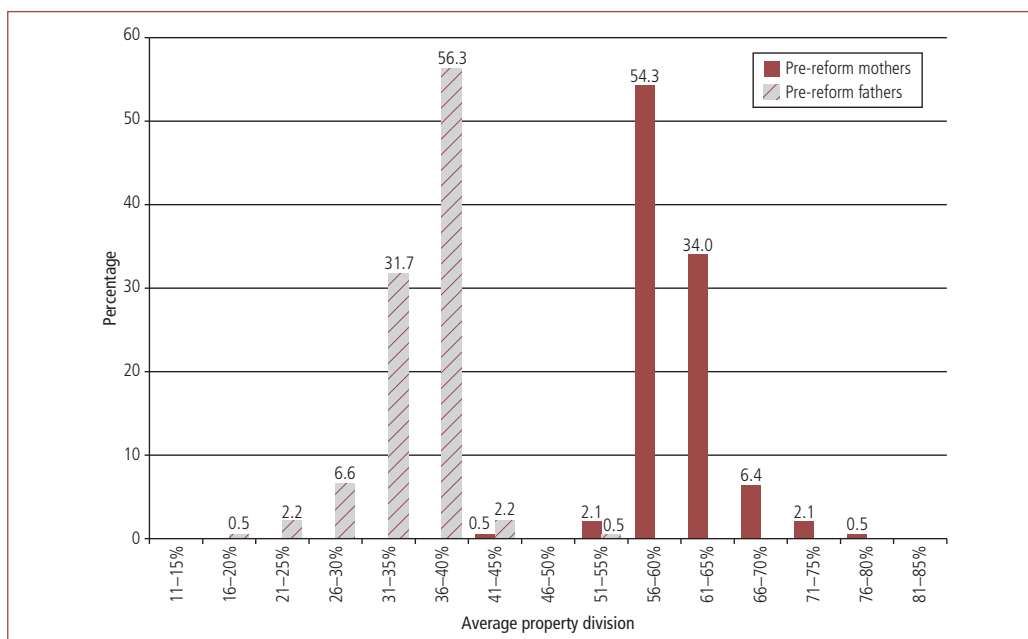
Respondents to the FLS 2008 were also asked to quantify the average property division allocated to mothers and fathers. Separate questions were asked to assess this allocation both prior to the 2006 reforms and after the introduction of the 2006 reforms.

These quantitative data suggest mothers may, on average, be receiving a reduced share of the property since the introduction of the reforms. In 2008, 60% of the lawyers in the sample indicated they had changed the advice given to clients about property settlement entitlements. When asked to quantify average property settlements pre- and post-reform, on average, respondents answered that prior to the reforms the property division allocated to mothers was 63%. A lower figure of 56% was reported for the question relating to average property divisions after the 2006 reforms.

As shown in Figures 9.15 and 9.16, there was some variation in respondents' estimates of the average property division allocated to mothers and fathers. Responses relating to the average property allocation to mothers prior to the 2006 reforms ranged from 45% to 80%. Most respondents (88%) estimated that between 56–65% of the property division was allocated to mothers prior to the reforms. After the reforms, the majority of respondents (76%) indicated that the average property division to mothers was between 51–60%. Similarly, there was a range of responses in terms of property allocation to fathers. When asked to estimate the average property division to fathers prior to the reforms, responses varied from 20% to 55% (88% indicating an average of 31–40%), and after the reforms the corresponding responses ranged between 30% and 66% (with 78% estimating an average property division to fathers of 36–50%).

There are two potentially relevant (and to some extent overlapping) issues that may underlie the trends suggested by these data. One is bargaining dynamics and trade-offs made in negotiations that may involve both care-time arrangements and property settlement. The other is the

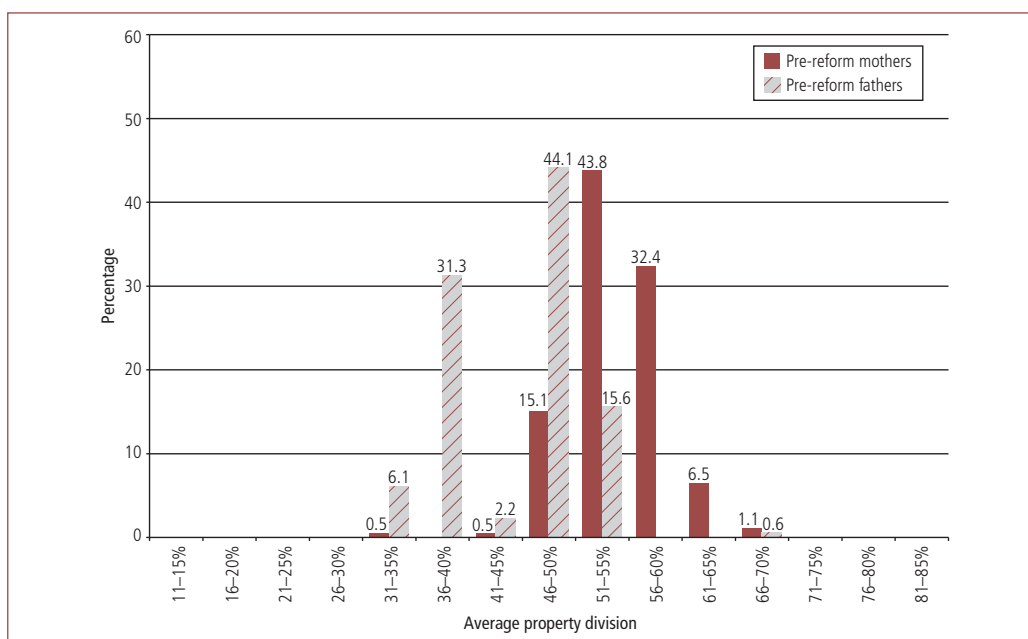
extent to which a party's responsibility for future care of the children may influence property division. Under *FLA* s79(4)(e) and s75(2), the court, in making orders concerning post-separation property division, has a duty to consider the future needs of each party in the context of a range of factors, including whether either of them is responsible for the care of children (s75(2)(c)). This set of considerations follows on from prior steps, in which the court ascertains the value asset pool of the former couple and evaluates the contributions made by each party. If fathers



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

Source: FLS 2008

**Figure 9.15** Average property division allocated to mothers and fathers, pre-2006 reforms (2008 data)



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

Source: FLS 2008

**Figure 9.16** Average property division allocated to mothers and fathers, post-2006 reforms (2008 data)

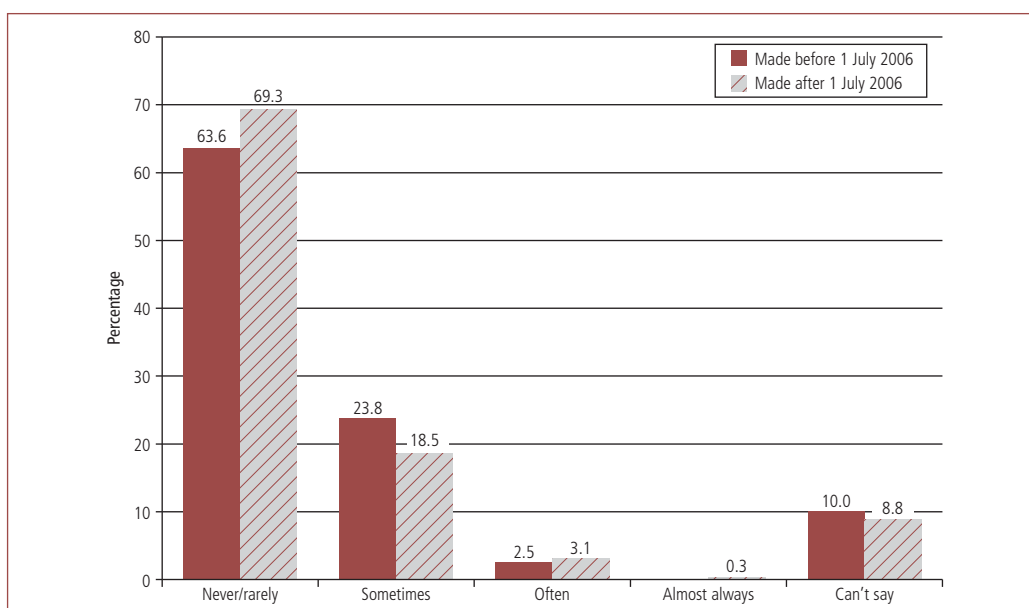
were, on average, caring for children for greater amounts of time, then this may result in greater adjustments in property division being made in their favour under *FLA s75(2)(c)*.

The views of many legal system professionals in the QSLSP 2008 indicate that the desire to obtain a greater proportion of the property settlement was a common motivation for seeking shared care-time arrangements on the part of fathers. For example, an ICL argued that property division was often a “hidden agenda” behind a push for shared care-time arrangements and noted that this was “one of the major problems” in practice. “I’ve got quite a few cases where I’ve dug into it a little bit and realise that this really is about the finances. Dads push for shared care to get 50–50 property”.

Legal practitioners and registrars (who are involved in conciliation conferences where there are property disputes) alike spoke of seeing a change in the bargaining dynamics in this area. A senior member of the bar noted that, in her experience, “a lot of women are trading away property in order to try to secure their preferred outcome in relation to arrangements for the children. So some women are saying to me, ‘If I let him have 10% more, does that mean I don’t have to give him shared care?’” Registrars described consistent experiences in negotiating agreements where mothers had agreed to accept less property if the father accepted less time with the children.

An issue that some participants in the QSLSP 2008 expressed concern over was situations in which parents had negotiated care-time and property arrangements on the basis of a particular division of time, but the care-time arrangements then changed (with greater care reverting to one or other of the parents, usually the mother). In the eyes of some legal system professionals, such circumstances may mean that one party would be disadvantaged financially, since the financial settlement would have been predicated on the short-term care-time arrangements, not the longer term situation.

To examine the extent to which this might emerge as an issue, the FLS 2008 asked participants to indicate how often clients asked for advice on changing care-time and property arrangements. As a point of comparison, lawyers were asked about two time periods: pre–1 July 2006 and post–1 July 2006. As shown in Figure 9.17, it was not very common for clients to seek to change finalised property arrangements. A little over 69% of respondents reported their clients “never/rarely” sought to change property arrangements made after 1 July 2006. This was slightly higher than the corresponding proportion relating to property arrangements made before 1 July 2006 (64%). A further 19% of respondents stated that their clients “sometimes” sought advice concerning changes to such arrangements post–1 July 2006, while 24% of respondents reported “sometimes” for changing arrangements made before 1 July 2006.



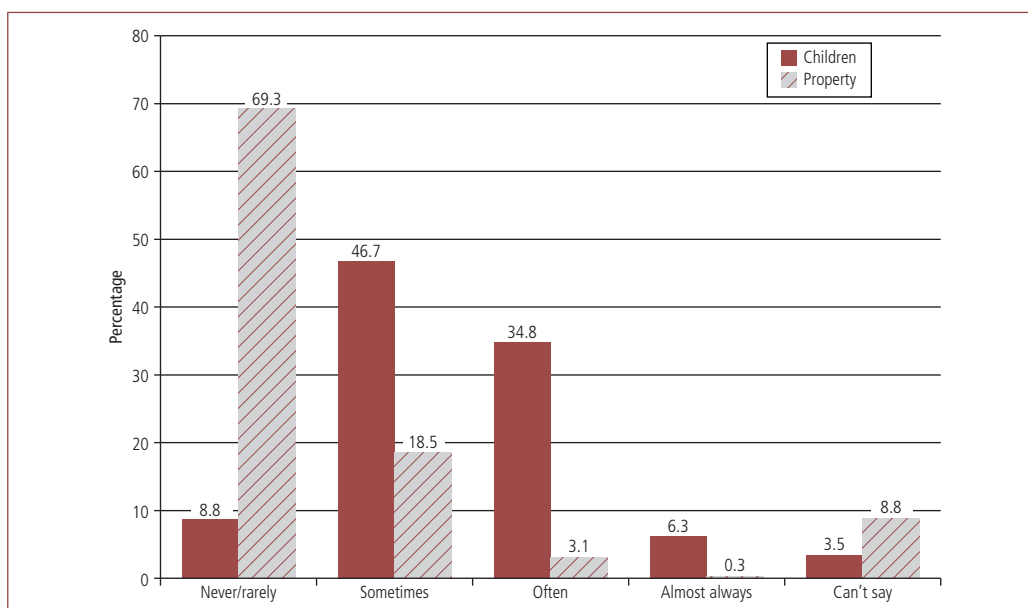
Note: Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2008

**Figure 9.17** Frequency of clients seeking to change finalised property settlements, pre- and post-reform, lawyers' reports, 2008



In contrast, advice about changing finalised parenting arrangements for children was sought much more frequently. While 69% of participants chose the “never/rarely” category in relation to property arrangements, only 9% chose this category in relation to parenting arrangements, post-reform (Figure 9.18).



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

Source: FLS 2008

**Figure 9.18** Frequency of clients seeking to change finalised parenting and property arrangements, post-reform, lawyers' reports, 2008

Qualitative insights shed further light on the complexities involved in renegotiating post-separation parenting and/or property arrangements. In relation to property, courts do have the power to set aside orders concerning property if a party can establish that “exceptional circumstances” exist relating to the care, welfare and development of a child, or where an applicant has caring responsibility and can establish grounds of “hardship” (*FLA* s79A(1)(d)). Few participants in the sample could recall either litigating or being asked to give advice on this provision (or apply it in judicial practice), and some participants were even unaware of its existence. In relation to children, if agreement to vary an existing final order cannot be reached, parties may apply to the court to have a new order made in certain circumstances. The decision in *Rice and Asplund* (1978) 6 Fam LR 570 requires that the applicant demonstrate a “material change in circumstances”<sup>16</sup> since the making of the original order. Case law and legal commentary suggest the scope and application of this principle are complex and subject to discretionary assessments made on a case-by-case basis (see, for example, Middleton, 2007; *Miller and Harrington* (2008) FamCAFC 12; *SPS and PLS* (2008) FamCAFC 16).

In addition to the longer term implications of children's arrangements changing after a property settlement has been concluded, family law system professionals expressed concern about child support payments being based on court order arrangements that subsequently change.<sup>17</sup>

<sup>16</sup> The operation of the rule was explicitly preserved in the *SPR Act 2006*: Sch 1, Part 2, Item 44. Courts also have the power to vary an existing primary order where contravention proceedings are brought (*SPR Act* s70NBA).

<sup>17</sup> This question is dealt with under *Child Support (Assessment) Act 1987* (Cth) ss52–54. Where the arrangement in court orders is departed from and both parties agree on this departure (not necessarily in formal terms), the CSA will base the assessment on the actual arrangement. Where the parents disagree about whether arrangements in a court order are being followed, the CSA makes an “interim care decision” for the purpose of assessment that lasts for 6 months. In the 6-month period, the CSA conducts an investigation that considers a range of matters, including why there has been a change, why the court order is not being observed, who instigated the change and why, and how the change is being formalised (i.e., through mediation, seeking a variation in the order, obtaining legal advice). Depending on the outcome of this investigation, the assessment may be varied or it may revert to reflect the original court order.

Qualitative insights from family law system professionals also indicate a complex range of factors influences decisions about whether to seek new orders. Registrars, for example, suggested that litigation was expensive, and client “burn-out” was a barrier to re-engaging with the system. In other instances, a range of complex personal circumstances might influence the strategy adopted. A community legal centre lawyer, for example, explained that the decision to seek new court orders could be a difficult judgment call to make, depending on the impact such a move could have on the client’s life. In situations where the other party might be disinterested, then “that’s great, you refer them off and they’ll get a hearing in the undefended list”. However, “rocking the boat” by seeking a new order could also entail significant risks: “Sometimes it’s better to let sleeping dogs lie, particularly if you’ve got a parent that our client believes is perhaps not a desirable influence in the children’s lives”. In such circumstances, it might be better, the solicitor observed, simply to wear the child support consequences. It was evident from the comments of other lawyers that such a strategy was considered to be appropriate in circumstances where there had been a history of violence, since a new application could re-inflate the situation.

This was not a phenomenon seen as being confined to agreements made in the court or legal sector, but was also applicable to those reached in family dispute resolution. Some practitioners reported some clients were simply deciding to live with the discrepancies between actual and formal arrangements as a result of a reluctance to engage with the system again. Such clients, it was said, expressed “frustration with the entire system, are not willing to go through it again. So they are content to accept the lower amount of money that they’ve got for peace and quiet in their life” (lawyer).

## 9.7 Summary

In summary, this chapter has examined some broad issues arising from the legislative and service context in which parenting arrangements are litigated and negotiated. While there is strong in-principle support for the philosophy of shared parental responsibility, the data suggest that some practical difficulties arise from the way it is expressed in the legislative framework. The first point is that many parents, particularly fathers, believe that the law means they are “entitled” to 50–50 “shared care” in the sense of responsibility and time spent with children.

Legal sector professionals, in particular, believe that these expectations are difficult to work with and have a number of consequences, including greater disillusionment with the system among fathers who find the law does not provide for 50–50 “custody” and increased difficulties in working with parents to achieve child-focused arrangements. The distinction between parental responsibility and time was also said by a majority of participants in the FLS 2008 and the Online Survey of FRSP Staff 2009 not to be easily understood. There is evidence from the FLS 2008 that the circumstances in which the presumption does not apply or may be rebutted are not widely understood either.

While many service professionals reported that a proportion of parents—particularly fathers—have expectations of 50–50 care when they first attend services, they also suggested that in many of the cases where such arrangements are not appropriate, parents can be worked with to develop more flexible agreements that can meet both their child’s and their own needs. They also noted that some fathers may need additional support in creating a welcoming environment for their child.

Pre- and post-reform data from the FLS indicate that advice-giving patterns about parenting arrangements have changed since the reforms, with advice consistent with an “80–20” rule being given much less frequently post-reform. Although lawyers have not changed the advice they give about the need for parents to be able to cooperate for a shared parenting arrangement to be of benefit to children, lawyers believe more children are in shared care-time arrangements in circumstances of high conflict than before the reforms.

There were significant divergences between the views of lawyers and service system professionals on key aspects of the reforms. These are likely to reflect a number of issues, including the different professional obligations that lawyers and service system professionals have, the different contexts in which they operate and differences in their respective client bases. An indication of this is that a substantial majority of family lawyers said that the *legal* framework did not facilitate the making of arrangements that were developmentally appropriate for children; however, family relationship professionals were more positive about the *policy* framework’s ability to facilitate this. This probably reflects the strong belief among many of the qualitative

studies' participants that, through the expanded services sector, the reforms have brought more emphasis on developmental appropriateness and child-focused practices.

Many legal sector professionals believed the reforms have favoured fathers over mothers and parents over children, and that the post-reform bargaining dynamics are such that mothers are "on the back foot". A connection between child support liability/entitlement and positions in relation to care-time arrangements was perceived by professionals in the legal sector to be relevant to a substantial proportion of clients' circumstances. However, the majority of family relationship service professionals indicated that they thought child support was a motivation for changing care-time arrangements for a quarter or fewer of their clients. These differences between legal and family relationship professionals should be treated with caution, however, as they are based on two very different sets of response categories.

A further issue identified by lawyers as being relevant to the positions some parents adopt in negotiating parenting arrangements relates to post-separation property division. Some lawyers perceived some fathers were motivated to seek equal care-time arrangements to maximise their share of the post-separation property division. Overall, the data suggest there may have been a decrease in the average share of property allocated to mothers in post-separation property settlement after the reforms, with varying estimates of the shift, but most being in the region of a five per cent decrease (i.e. from 70–30 in favour of mother pre-reform to perhaps 65–35 in favour of the mother post-reform).<sup>18</sup>

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<sup>18</sup> This is an area where further research could usefully be conducted.

This chapter focuses on how the family law system deals with families where there are concerns about family violence or child safety. The incidence of these issues among separated families was described in Chapter 2, and systemic responses have been discussed in various ways in Chapters 4 and 5. The issues examined in this chapter are:

- Where child safety concerns are relevant, what progress has been made towards sorting out parenting arrangements? What parenting arrangements have been made in such instances?
- How prevalent are issues concerning family violence and child safety in professional practice according to relationship sector professionals and lawyers?
- What practices are applied in identifying families where these issues are relevant?
- How are these issues dealt with in legal and practice frameworks?

The material in this chapter is relevant to assessing the extent to which policy objective 2, “protecting children from violence and abuse”, has been met (2007 Evaluation Framework, Appendix B). Links between reports of family violence, child safety concerns and child wellbeing are examined in Chapter 11. The main legislative mechanisms for supporting the objective concerning protection from family violence and child abuse are:

- greater emphasis on the need to protect children from harm from exposure to family violence and child abuse in the *SPR Act* (s60B(1)(b), s60CC(2)(b));
- making matters where there are reasonable grounds to believe there has been or is a risk of family violence exceptions to the requirement to attend family dispute resolution (FDR) (s60I(9)(b)(i),(ii),(iii),(iv)); and
- making matters where there are reasonable grounds to believe a parent has engaged in family violence or child abuse grounds for the non-application of the presumption of equal shared parental responsibility (s61DA(2)).

Data from the following studies are drawn on to inform this discussion:

- Longitudinal Study of Separated Families Wave 1 (LSSF W1) 2008;
- Family Lawyers Survey (FLS) 2006, 2008;
- Qualitative Study of Legal System Professionals (QSLSP) 2008;
- Qualitative Study of Family Relationship Services Program (FRSP) Staff 2007–08, 2009;
- Online Survey of FRSP Staff 2009; and
- Survey of FRSP Clients 2009.

The “In Focus” section (page 232–233) demonstrates that safety concerns correlate with a wide range of problematic processes and outcomes. Concerns about their own safety and the safety of their children are clearly linked to the experience of family violence for some, though not all, separating parents.

The remainder of this chapter examines how the family law system deals with family violence and the abuse of children. The first section looks at professionals’ estimates of the prevalence of family violence, followed by a discussion of the tension between maintaining “meaningful involvement” and protecting children from harm. Section 10.2 focuses on identification and screening for family violence and abuse, and Section 10.3 discusses service provision sector professionals’ views of the adequacy of the system’s response and identifies challenges and problems. The chapter closes with an examination of family law professionals’ views of the adequacy of the legal system’s responses to these issues.

## In focus

### Parenting arrangements where there are safety concerns: Progress, pathways and patterns

As noted in Chapter 2, about one in five parents (17% of fathers and 21% of mothers) reported safety concerns associated with ongoing contact with their child's other parent.

Data from the LSSF W1 2008 indicate that parents with such safety concerns, either for themselves or for the focus child, were taking longer to sort out their parenting arrangements than parents without such concerns. Parents with safety concerns were considerably less likely than parents without such concerns to indicate that they had sorted out their parenting arrangements (fathers: 43% cf. 77%; mothers: 52% cf. 79%) and more likely to indicate that they were in the process of doing so (fathers: 35% cf. 16%; mothers: 33% cf. 12%) or that nothing had been sorted out (fathers: 21% cf. 7%; mothers: 15% cf. 9%).<sup>1</sup>

Although most parents said that they had contacted a service during or after their separation to help sort out their parenting arrangements, those with safety concerns were considerably more likely to have done so (fathers: 87% cf. 62%; mothers: 92% cf. 64%). In total, 48% of fathers and 55% of mothers with safety concerns had contacted at least three services, compared with only 16% of fathers and 20% of mothers who indicated that they were not concerned about their own or their child's safety.

Among parents who believed that their parenting arrangements had been sorted out, those with safety concerns were less likely than other parents to indicate that they had mainly reached agreement through discussions with the child's other parent. Nevertheless, the proportion of parents with safety concerns who indicated this was quite high considering that they held such concerns (indicated by 41–42% of fathers and mothers with safety concerns, compared with 69–74% of those without such concerns).

Among parents who had sorted out arrangements, those with safety concerns were more likely to use pathways involving formal assistance than those without safety concerns. For example, 13–17% of fathers and mothers with safety concerns indicated that they had mainly arrived at their arrangements with the assistance of counselling, mediation or family dispute resolution services, compared with only 6–7% of those who did not have safety concerns. Lawyers were seen as the main means of sorting out arrangements by 15–18% of fathers and mothers with safety concerns and by 4–5% without such concerns, while the courts were mentioned by 15% of fathers and 8% of mothers with such concerns, but by only 2% of both fathers and mothers without such concerns. Similarly, among those who were still in the process of sorting out their parenting arrangements, those with safety concerns were more likely to indicate that they were using a lawyer or the courts.<sup>2</sup>

Compared with parents who had sorted out their arrangements, lower proportions of those with safety concerns who were in the process of doing so indicated that they were mainly achieving this through discussion with the other parent. Nevertheless, a substantial minority of parents with safety concerns said that they were mainly relying on such discussions (28% of both fathers and mothers), which could indicate that help is not being sought where it is needed. It should be kept in mind, however, that nominating "discussions" as the main pathway did not mean that services were not also used (see Chapter 4).

At the same time, parents' perceptions of the flexibility and workability of arrangements were linked quite strongly with safety concerns. Those with safety concerns were more likely than those without such concerns to see their arrangements as being somewhat or very inflexible (fathers: 57% cf. 22%; mothers: 45% cf. 17%) and as working "not so well" or "badly" for themselves.

The socio-demographic profiles of parents with and without safety concerns (e.g., country of birth, pre-separation and current marital status) were generally similar. The exceptions were economic ones: parents

1 Numbers omit the "don't know" responses.

2 However, 11% of fathers with safety concerns and 15% of those without such concerns said that they were mainly sorting out their arrangements with the use of counselling, mediation or family dispute resolution services.

with safety concerns were more likely than other parents to indicate that they were under financial stress.<sup>3</sup> Specifically, parents with safety concerns were more likely than those without such concerns to indicate that:

- they had experienced at least three financial difficulties since separation (fathers: 49% cf. 26%; mothers: 53% cf. 35%);<sup>4</sup> and
- they and their family were "poor" or "very poor" (fathers: 18% cf. 8%; mothers: 17% cf. 7%).

In addition, fathers with safety concerns were less likely than fathers without such concerns to have paid work (78% cf. 86%). The difference for mothers was not as strong (51% cf. 55%).

### Parental involvement: Current care-time arrangements

Parents with safety concerns were no less likely than other parents to indicate that they had shared care-time arrangements (fathers: 22–23%; mothers 11–12%).<sup>5</sup> In other words, around one in four fathers and one in ten mothers with shared care-time arrangements indicated that they held safety concerns as a result of ongoing contact. Parents with safety concerns were also more likely than those without such concerns to report that the father never saw the child: 18% of fathers with safety concerns resulting from ongoing contact with the child's mother never saw their child, compared with 6% of other fathers. The difference for mothers was smaller (18% cf. 12%).<sup>6</sup>

### Inter-parental communication

While most parents without safety concerns reported that they communicated with their child's other parent about the child once a week or more often, 43% of fathers and mothers with safety concerns made such a claim. In fact, 15–18% of fathers and mothers with safety concerns indicated that they never communicated with their child's other parent.

### Contributing to decisions affecting the child in the longer term

As discussed in Chapter 8, a substantial number of parents (especially fathers) with safety concerns indicated that decision-making was shared equally between the parents. For instance, regarding the child's education, equally shared decision-making was reported by 30% of fathers and 16% of mothers with safety concerns, and by 50% of fathers and 31% of mothers who did not hold such concerns.

<sup>3</sup> However, no causal connection can be assumed from this.

<sup>4</sup> Eight indicators of financial difficulties were measured and parents were asked to indicate whether they had experienced any of them.

<sup>5</sup> The difference in the percentages of fathers and mothers arises from the fact that a higher proportion of fathers than mothers reported that they had shared care-time arrangements. Of all those with shared care-time arrangements, 17% of fathers and 18% of mothers reported safety concerns.

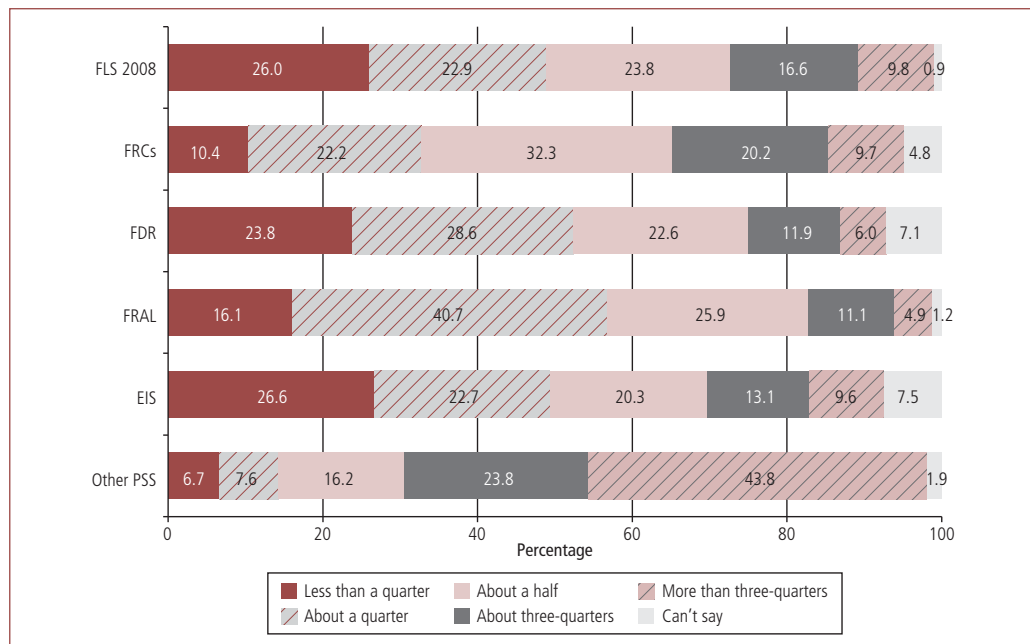
<sup>6</sup> As noted in Chapter 2, most parents whose child never saw one parent answered the question on safety concerns. (This seems reasonable, given that contact can occur through telecommunications and other indirect means.)

## 10.1 Professionals' estimates of family violence and views of the family law system response

### 10.1.1 Professionals' estimates of family violence and abuse

Consistent with the high rates of violence reported by parents using family relationship services, lawyers or family law courts (see Chapter 4), lawyers and service provision sector professionals frequently described a high number of matters involving concerns about family violence, and to a lesser extent, child abuse, in their practices.

Service provision sector professionals were asked to "estimate the proportion of *families with children* you have dealt with over the past 12 months where family violence or abuse has been an issue". Similarly, lawyers were asked to "estimate the proportion of *children's matters* you have dealt with in the past 12 months where family violence or child abuse has been an issue". Figure 10.1 summarises the results.



Notes: Percentages exclude "not applicable", "none" and "all" responses and missing data. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2008 and Online Survey of FRSP Staff 2009

**Figure 10.1** Estimates of proportion of families where family violence or abuse has been an issue, lawyers and service provision sector professionals, 2008 and 2009

Among lawyers who participated in the FLS 2008, half indicated that about half or more of their clients/matters involved family violence or abuse. A much larger proportion of Family Relationship Centre (FRC) service professionals compared to FDR professionals responded that half or more of the families they saw experienced violence or abuse (62% compared to 41%). The disparity in reports between professionals in FRCs and those in FDR probably reflects their different practice contexts. FRCs play an important gateway and screening role involving substantial numbers of family law system clients who, prior to the 2006 reforms, would have been less likely to have been directed to family dispute resolution. FDR service providers outside FRCs are somewhat more likely to have a client base that may already have been through an initial screening process and/or may have self-nominated for FDR.

Around 40% of the Family Relationship Advice Line (FRAL) and early intervention services (EIS) professionals indicated that half or more of the families that contacted or saw them experienced violence or abuse. Other post-separation services (PSS) professionals indicated much higher rates, with 84% indicating that half or more of the families they saw experienced violence or abuse. This is probably because the service types within this group—the Parenting Orders Program (POP) and Children's Contact Services (CCS)—specifically cater to families experiencing high levels of conflict and safety concerns. Hence it is likely that a high proportion of families attending these services would have experienced violence or abuse.

Pre-reform data based on lawyers' estimates are available from the FLS 2006. These show that the identification of violence as an issue in children's matters has been more common post-reform than pre-reform. In 2008, 26% of the sample identified family violence as an issue in three-quarters or more of their caseload, compared with 15% pre-reform. A similar shift was evident in the pattern of lawyers nominating the "less than a quarter" category, with 38% doing so in 2006 compared with 26% in 2008. The significance of these shifts is difficult to gauge. They may, on the one hand, indicate heightened awareness of family violence and child abuse or, on the other hand, indicate shifts in the make-up of the client base of lawyers, due to the operation of family dispute resolution with exceptions. A view expressed by many legal system professionals was that the general profile of disputes that came into the legal sector and particu-



larly the court sector had become more complex since the reforms because, they believed, less complex cases were being sifted out by the family relationships service sector.<sup>7</sup>

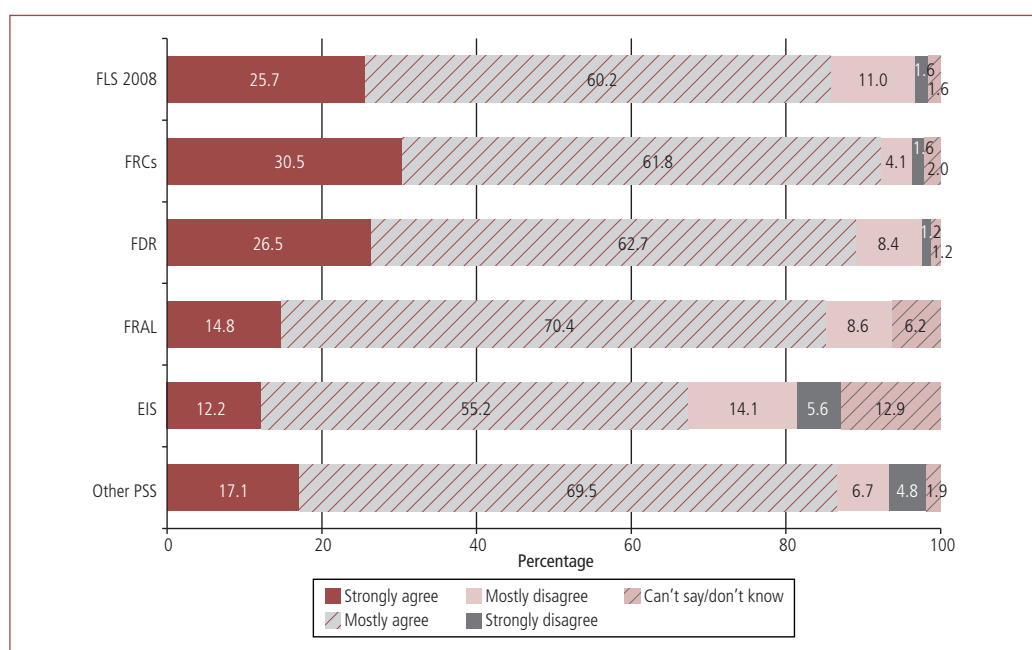
### 10.1.2 Meaningful involvement and protection from harm

Chisholm (2007) and Parkinson (2007) are among those who have commented on the tension that exists between the aim for children to have “meaningful involvement” with each parent and to be protected from exposure to harm from violence, abuse and neglect. Concerns were raised in interviews and focus groups conducted with legal system professionals that “meaningful involvement” was at times being emphasised at the expense of protection for family members and the children.

As a result, questions concerning these issues were included in the FLS 2008 and the Online Survey of FRSP Staff 2009. In these surveys, professionals were asked to indicate the extent of their agreement with two propositions:

- “The child’s right to meaningful involvement with both parents is given adequate priority in the system.”
- “The need to protect children and other family members from harm from family violence and abuse is given adequate priority in the system.”

Figure 10.2 shows that in relation to meaningful involvement, 92% of FRC and 89% of FDR service professionals mostly or strongly agreed that this was given adequate priority in the family law system (31% and 27% respectively strongly agreed). A similar proportion of lawyers (86%) gave an affirmative response to this question (26% strongly agreed).



Notes: Percentages exclude “not applicable” responses and missing data. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2008 and Online Survey of FRSP Staff 2009

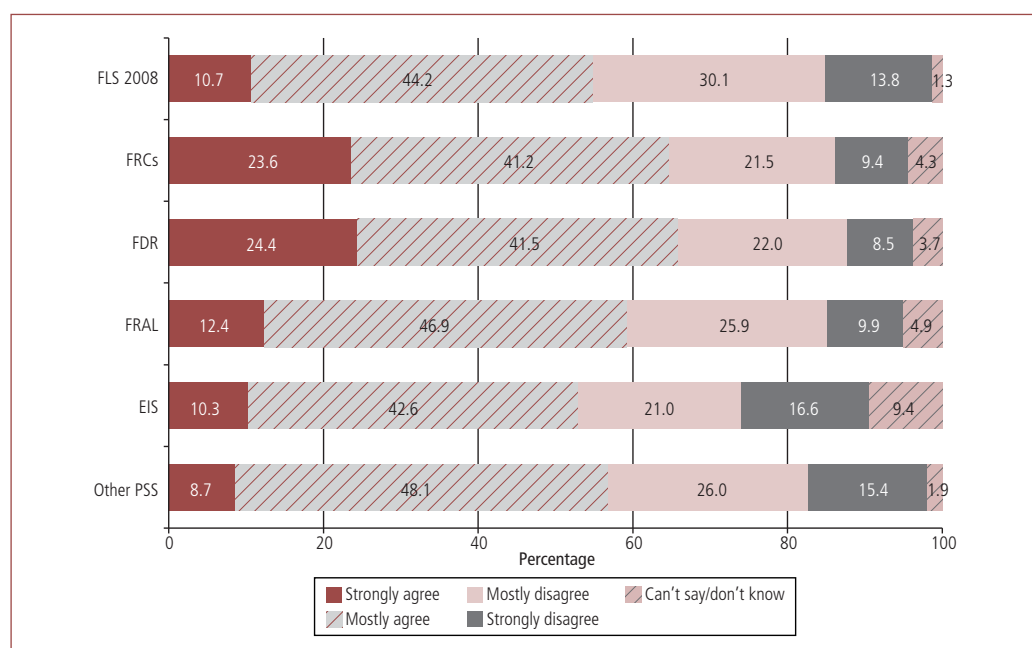
**Figure 10.2** Agreement with the statement: “The child’s right to meaningful involvement with both parents is given adequate priority in the family law system”, lawyers and service provision professionals, 2008 and 2009

EIS professionals were the mostly likely to say that the child’s right to meaningful involvement with both parents was not given adequate priority (20%), followed by lawyers (13%), other PSS professionals (12%), FDR service professionals (10%), FRAL staff (9%), and FRC professionals (6%).

<sup>7</sup> QSLSP 2008.

EIS professionals were also most likely to provide a response of “can’t say/don’t know” (13% compared to between 0% and 6% for the other groups). This makes sense, given that they are less likely to be directly involved in assisting families with decisions about the care of children post-separation.

In relation to the statement that the system gives adequate priority to protecting children from harm from abuse, neglect or family violence, much lower proportions of professionals indicated agreement. Figure 10.3 shows that affirmative responses (i.e., agreeing or mostly agreeing) were made by 55% of lawyers, 65% of FRC and 66% of FDR service professionals, 59% of FRAL staff, 57% of other PSS professionals and 53% of EIS professionals. Negative responses were made by 31% of FRC and FDR service professionals, 44% of lawyers, 36% of FRAL staff, and 38% of EIS professionals. Other PSS professionals were most likely to indicate their disagreement, with 41% doing so. Again, the nature of the other PSS services (that is, CCS and POP) may be driving this higher level of disagreement. Further, in the qualitative study, participants from CCS, in particular, frequently cited examples of concerns about arrangements that courts had made for children attending their service.



Notes: Percentages exclude “not applicable” responses and missing data. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2008 and Online Survey of FRSP Staff 2009

**Figure 10.3** Agreement with the statement: “The need to protect children and other family members from harm from family violence and child abuse is given adequate priority in the family law system”, lawyers and service provision professionals, 2008 and 2009

The above results point to a broad range of responses by both sectors, perhaps suggesting that the question may have quite different meanings for individual practitioners and/or reflect a wide range of experiences of the way in which the “family law system” impacts on families for whom violence or abuse is an issue. It is clear, nonetheless, that in the eyes of a substantial minority of professionals across the legal sector and the service delivery system, there are concerns about the way that family violence and child abuse are dealt with.

The FLS 2008 also asked participants to indicate the extent of their agreement with the following proposition in the context of their post-reform experience: “The legal system has been able to deal adequately with cases involving allegations of family violence and child abuse”. A higher proportion disagreed that the legal system adequately deals with family violence (aggregate of disagree and strongly disagree: 51%) compared to those who agreed with this statement (aggregate: 43%). This response pattern is more strongly negative than those concerning the questions regarding “meaningful involvement and protection from harm” being given adequate priority.

This points to a stronger level of concern about the legal system, as opposed to the “family law system” more generally.

## 10.2 Screening for and identifying abuse and family violence

Reports by family law professionals suggest that screening for family violence, child abuse and other safety-related issues is undertaken systematically in the family relationship service sector and less systematically in the legal sector. In both the qualitative interviews and surveys, service provision professionals reported that screening is routine practice within their services..

Service provision professionals were asked to indicate their level of agreement with statements that “screening for child abuse and neglect” and “screening for family violence” “is a core part of our business at this service”.

### 10.2.1 Child abuse and neglect

Almost all FRC and FDR professionals indicated agreement (96% and 95% respectively) (with 65% and 60% respectively strongly agreeing) that screening for child abuse and neglect was a core part of their business at the service (Table 10.1). A similar proportion of FRAL respondents agreed (94%), although the proportion strongly agreeing was lower (47%) than for FRC and FDR professionals. Professionals working in other services indicated slightly lower levels of agreement. This included other PSS (82%; 47% strongly agreeing) and EIS (87%; 45% strongly agreeing) professionals.

### 10.2.2 Family violence

The pattern of responses in relation to family violence was similar to that for child abuse. Almost all FRC and FDR professionals (98% and 99% respectively) agreed or strongly agreed that family violence was a core part of the business at their services with 81% and 77% respectively strongly agreeing (Table 10.1). Professionals working in other services indicated slightly lower levels of agreement, with FRAL respondents indicating 95% agreement (47% strongly agreeing), other PSS 94% (47% strongly agreeing) and EIS 90% (45% strongly agreeing).

**Table 10.1 Agreement that screening for child abuse and neglect or family violence is a core part of the service, service provision professionals, 2009**

	EIS	PSS			
		FRAL	FRC	FDR	Other PSS
	%				
Screening for child abuse and neglect is a core part of our business at this service	86.5	93.8	95.6	95.2	81.6
Screening and assessment for family violence is a core part of our business at this service	90.0	95.1	98.0	98.8	94.2
<b>Number of observations</b>	<b>335</b>	<b>81</b>	<b>248</b>	<b>84</b>	<b>106</b>

Source: Online Survey of FRSP Staff 2009

Service provision professionals were asked to rate their ability to: (a) identify issues of child abuse and/or neglect, and (b) identify issues of family violence in their work for the service they were responding about. In each of these areas, more than 90% of professionals in each service rated their abilities positively (“excellent” or “good”) in each area (Table 10.2).

Qualitative data from the service provision sector strongly suggest that screening for violence, abuse and neglect has been an increasingly important part of service delivery since the mid-1990s. In the first wave of the Qualitative Study of FRSP Staff, respondents indicated a high level of awareness of concerns about these issues. Many organisations indicated that the screening tools developed and recommended by the Attorney-General’s Department (AGD) were very good (if somewhat lengthy) but that they also engaged in more focused, ongoing and at times more extensive screening. They emphasised that screening occurred from the first contact with

clients (frequently a phone call) and continued throughout the time the client attended the services. They recognised that disclosures could occur at any time and were more likely to occur in an atmosphere of developing trust and support.

While some legal services (for example legal aid commissions) and practitioners screen routinely, no uniform approach or protocol appears to be applied. The Family Law Section of the Law Council of Australia has issued best practice guidelines that deal with family violence (Family Law Council 2004); the Family Court of Australia has had a Family Violence Strategy in place since 2004 (Family Court of Australia [FCoA], 2004) and has recently published its *Best Practice Principles for Use in Parenting Disputes When Family Violence or Abuse is Alleged* (FCoA, 2009a).

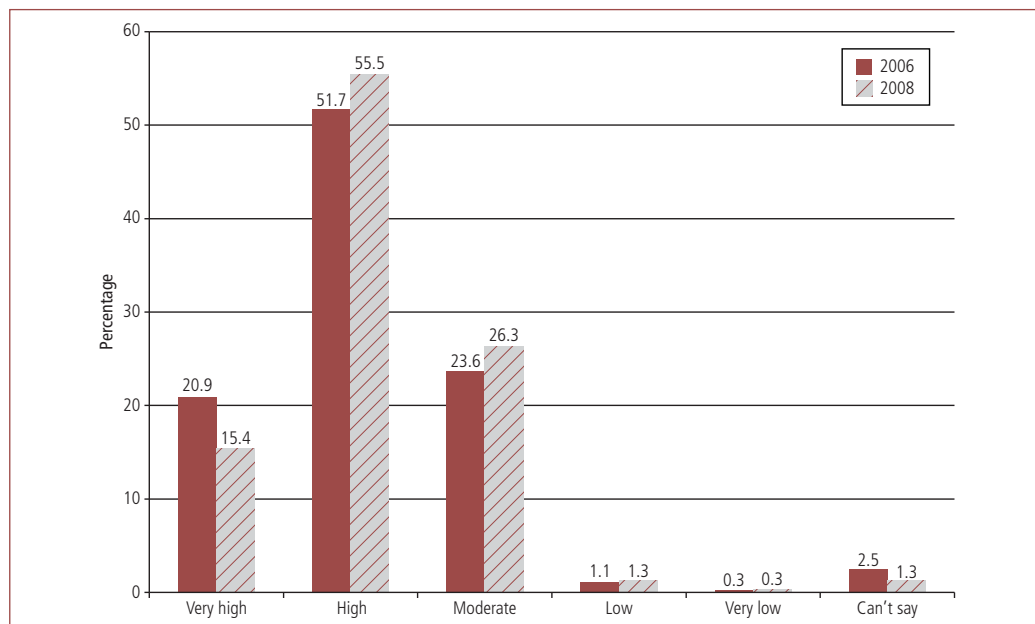
As discussed in more depth in Chapter 13, screening occurs in Family Court of Australia processes as part of the Child Responsive Model and in the FCoWA as part of its Child Related Proceedings model. At the time this research was being undertaken, there was no routine screening process (apart from basic opportunities for the client to raise safety concerns in the process of filing documents) in the Federal Magistrates Court (FMC); the responsibility to identify and disclose the presence of concerns about family violence or child abuse, and allegations of such a history, lies with individuals and their lawyers.

Examination of professionals' views on the efficacy of screening revealed high self-assessment ratings by both lawyers and service provision professionals. The majority of family lawyers surveyed were very confident of their ability to screen for family violence, abuse and neglect (Figure 10.4). Over 70% rated this ability as high or very high, while most of the other

**Table 10.2 Positive assessments of own ability to identify issues of child abuse and neglect or family violence in their work, service provision professionals, 2009**

	EIS	PSS			
		FRAL	FRC	FDR	Other PSS
	%			%	
Identify issues of child abuse and/or neglect	92.1	92.3	94.1	96.3	91.2
Identify issues of family violence	95.3	93.7	97.5	93.9	93.2
Number of observations	335	81	248	84	106

Source: Online Survey of FRSP Staff 2009



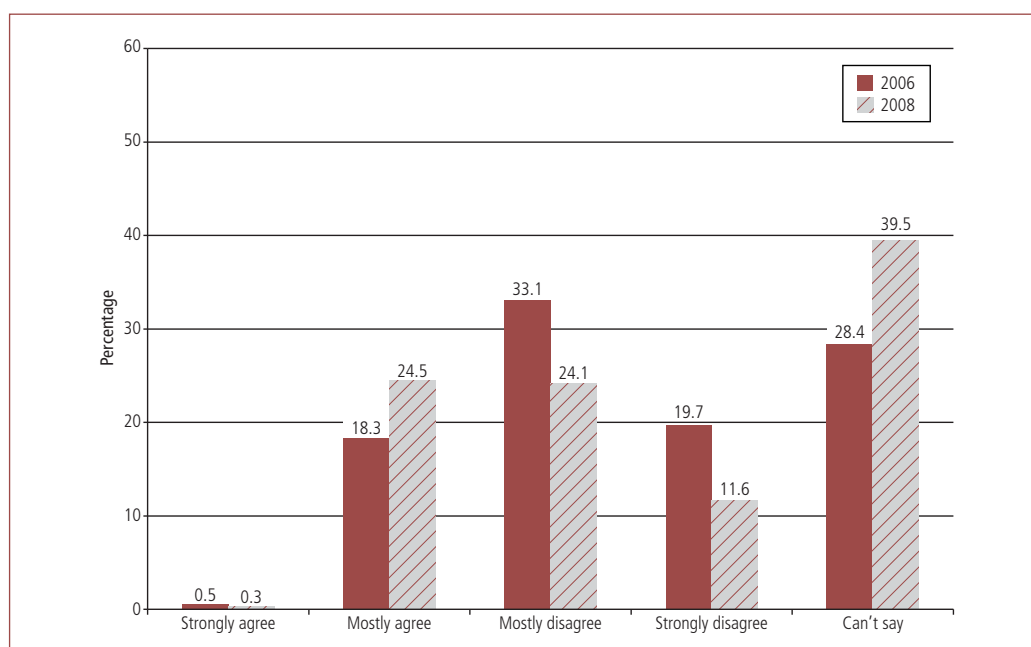
Note: Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 10.4 Assessment of own ability to screen for the presence of family violence and abuse, lawyers, 2006 and 2008**

respondents (26%) reported a moderate capacity to screen for family violence. Self-assessed ability to screen for family violence, abuse and neglect did not vary greatly between the 2006 and 2008 surveys.

Contrasting with lawyers' confidence in their own capacity to screen for family violence and child abuse, was their relatively low confidence in the ability of Family Relationship Centres<sup>8</sup> and the legal system's ability to screen for similar issues. In the FLS 2006, however, 28% said they could not answer what was at that time an anticipatory question regarding the operation of FRCs, while in the FLS 2008 (by which time most FRCs were operational), 40% gave a "don't know" response (Figure 10.5). Responses to this question did show a reduction in lawyers' negative assessments of the capacity of FRCs to screen adequately (aggregate of mostly disagree and strongly disagree: 53% in 2006 compared with 36% in 2008). This is mirrored to a less significant extent by an increase in the positive categories between 2006 (aggregate of 19%) and 2008 (aggregate of 25%), although as Figure 10.5 also shows, almost no one from either survey gave strong endorsements. As discussed in Chapter 10, these response patterns are likely to reflect a lack of familiarity on the part of the lawyers with the operations of FRCs and also may reflect experiences that lawyers have heard about from their clients. There is evidence to support this view, both from the data from the Survey of FRSP Clients 2009 and the open-ended responses from lawyers in the FLS 2008.



Source: FLS 2006 and 2008

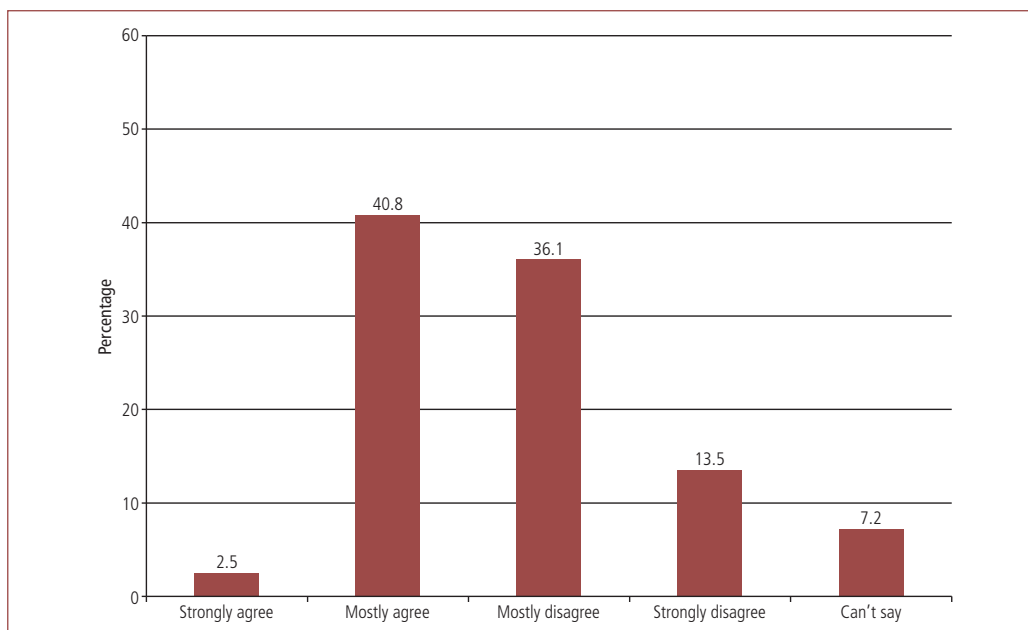
**Figure 10.5** Agreement with the statement that FRCs have been able to screen adequately for family violence and child abuse, lawyers, 2006 and 2008

Fewer than half of the lawyers participating in the FLS 2008 agreed with the statement that the legal system has been able to adequately screen for family violence and child abuse (Figure 10.6).<sup>9</sup> This is a much higher level of agreement than that given by lawyer survey participants in regard to FRCs (Figure 10.5).

On the question of screening, it could be said in summary that the family relationships sector and the legal sector are very confident about their respective capacities. However, as noted in Chapter 4, there was a large percentage of "don't knows" with respect to assessing other services' and courts' capacities. This suggests that there remains a significant way to go in achieving a sense of confidence in the screening capacity of other parts of the family law system.

<sup>8</sup> FRCs were the only services dealt with in this question.

<sup>9</sup> This question was not asked in the FLS 2006.



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

Source: FLS 2008

**Figure 10.6** Agreement with the statement: "The legal system has been able to screen adequately for family violence and child abuse", lawyers, 2008

The following section examines how concerns about family violence, child abuse and neglect and other dysfunctional behaviours are dealt with substantively in the family relationship services and legal sectors.

### 10.3 Service provision sector responses: Insights from clients and service provision professionals

It probably wouldn't have happened a few generations ago, but it is not uncommon now for the parents that we see for *their* parents to have separated or their parents to have had highly conflicted relationships or alcohol and drug issues or mental health issues. So there is an opportunity to engage even the most hardened characters who come in demanding 50–50 because it is their right and they own the children—to turn it around a bit. (FRC manager, 2009)

This section combines insights from data from the Survey of FRSP Clients 2009 with data obtained from the Qualitative Study of FRSP Staff and Online Survey of FRSP Staff to consider the evidence on the question of the efficacy of service provision sector responses to family violence, child abuse and child safety concerns. A key point is that while service provision professionals demonstrate general confidence in their abilities, client data suggest there is room for improvement.

Table 10.3 shows the pattern of responses to a range of questions asked of parents who participated in the Survey of FRSP Clients 2009. Close to a quarter of parents reported that they felt afraid of the other person involved in the matter they attended the service about and that they experienced threats and abuse outside of the sessions while attending the service.<sup>10</sup> Just over a quarter expressed fear of the person they attended the service about and nearly half said their ability to resolve issues over parenting or children was affected by their concerns or fears. In

<sup>10</sup> This is likely to under-represent the proportion of clients who experienced safety concerns. As part of the sampling process for the client survey, services were provided with an opportunity to exclude clients from the sample who had experienced violence or would potentially be at risk of further violence through their participation. Twenty per cent of those sampled for the survey were excluded by services, although family violence was only one possible reason for their exclusion. Other reasons included mental health, disability, substance misuse and no record of an address.

relation to the effectiveness of service responses to concerns or fears, just over 65% of the sample who indicated holding such fears said these were adequately addressed. In 35% of cases, the participant indicated their fears weren't adequately addressed. Parents whose comments related to FRCs and FDRPs were less likely to say their concerns or fears were addressed than those using other post-separation or early intervention services.

**Table 10.3 Parents' reports of safety concerns while attending a service, 2009**

	EIS	PSS			Total	Number of respondents
		FRC	FDR	Other PPS		
	%		%		%	
Respondent expressed some fear of person they attended the service about	19.0	30.6	28.9	53.4	28.7	2,335
Respondent sometimes felt afraid of the person they attended the service about during the sessions at the service	15.7	24.8	25.7	38.1	23.2	2,335
Respondent experienced threats or abuse outside the sessions, while attending the service	16.3	25.8	29.2	33.5	23.8	2,335
Concerns or fears about the person they attended the service about were addressed at the time of attending the service <sup>a</sup>	71.1	61.7	59.1	69.3	65.2	670
Respondent's ability to negotiate a parenting agreement/plan <sup>b</sup> was affected by concerns or fears <sup>c</sup>	n. a.	48.4	50.5	36.8	48.1	620

Notes: Includes respondents who went to the service about their current partner, ex-partner and/or grandchildren's parents. For each item, response categories were "yes", "no" and "prefer not to say". Responses of "prefer not to say" represented only a small number of responses (< 5%) and are included in totals for calculating the "yes" responses above.

<sup>a</sup> This item asked only of those who expressed fear about being with the person they attended the service about.

<sup>b</sup> Grandparents were asked about their ability to make arrangements to spend time with their grandchildren.

<sup>c</sup> This item asked only of those who expressed concerns about their safety, and are FRC, FDR and POP clients.

Source: Survey of FRSP Clients 2009

Parents who participated in the Survey of FRSP Clients 2009 had the opportunity to make comments in response to an open-ended question inviting them to: "add anything else about their experience of attending the service". A small proportion of these responses raised issues relating to family violence and child abuse and these provide some insight into the experiences underlying the response patterns in Table 10.3. In women's responses, there were three main threads. One thread concerned the experience of being empowered when dealing with the relevant service to recognise and deal with a history of family violence. In relation to counselling, for example, one woman said:

[It] made me realise that there is help out there. Made me see the extent of the violence. They woke me up to a lot of things. They gave me advice. Helped me put safety plans in action.

The second thread reflects perceptions on the part of some participants that family violence had not been taken into account adequately in the context of the service provided. Such comments indicated that family violence had been "brushed aside" or not dealt with effectively by the professional providing the service. For example, one participant said:

She [an FRC professional] forgot that I didn't want to be around my ex-partner and I had to see him. I feel like they didn't listen to me about my concerns about the children's safety.

The third thread concerns a perception expressed by some participants that FDR practitioners in particular treated family violence as "being in the past" and of little relevance in making ongoing parenting arrangements. For example, this parent said:

I strongly believe my fear, and the fear for my child's safety, was not met during the mediation. The mediator seemed to see it "as in the past", when the incident only happened a week or so before. I asked for shuttle mediation and that did make the experience bearable ... but now my ex-partner and I are in court proceedings. I was very let down and felt hopeless during the mediation process.



Men's comments raised concerns about family violence and child abuse less frequently than women. Where concerns were raised, there were again three main threads. One less common thread was similar to the theme about inadequate recognition in women's comments, but concerned a perception that where women were violent, this wasn't taken into account adequately. For example, one participant said:

My ex-partner took no notice at all of the agreements reached until eventually I was issued with a certificate allowing me to go to court. It seemed to me that domestic violence was treated as a women's issue and there was little or no recognition that women can be perpetrators as well as victims.

A more common thread concerned experiences where the participant said their partner made false allegations about family violence and child abuse, but the services they were dealing with were unable to see through them. Referring to an FRC, one man described his experience in this way:

I feel the whole experience was horrible, it disempowered me completely—it was shuttle meeting; no trust with the service provider. The current system is flawed because one person can lie about issues, there is no checks and balance in my case ... I felt it was two women against me.

A still smaller group of comments endorsed the assistance the participants had received in dealing with issues concerning anger and violence. For example, one man said a counselling service had helped get to the cause of his "bad behaviour problems" and, while irreconcilable differences remained with his partner, he had come away with "greater awareness and tools to deal with my own behaviour problems".

Service provision professionals were asked whether their organisations had procedures and protocols in place to deal with disclosures of family violence and for child abuse and/or neglect that safeguarded the families. Among FRC and FDR service professionals, 99% of respondents reported that their service had protocols in place to deal with family violence, and 98% and 100% respectively for child abuse and neglect (Table 10.4). Among FRAL service professionals, 88% reported their services had protocols regarding family violence and 96% for dealing with disclosures of child abuse and/or neglect. For EIS and other PSS service professionals, 98% and 97% respectively responded yes to having protocols and procedures relating to child abuse and neglect and 93% and 90% respectively responded positively in regard to having procedures relating to family violence. FRAL, EIS and Other PSS respondents had the highest rate of "can't say/don't know" responses in regard to family violence (9% for FRAL, and 5% for EIS and Other PSS). FRAL respondents had the highest rate of "can't say/don't know" responses in regard to child abuse and/or neglect (4%). For other groups, this response was given between 0% and 2% of the time.

**Table 10.4 Services with procedures/protocols to deal with family violence or child abuse and/or neglect disclosures, service provision professionals' reports, 2009**

	EIS	PSS			
		FRAL	FRC	FDR	Other PSS
	%				
The service has protocols and procedures for dealing with disclosures of family violence	93.3	87.5	98.8	98.8	89.6
The service has protocols and procedures for dealing with disclosures of child abuse and/or neglect	97.6	96.3	98.0	96.4	97.2
<b>Number of observations</b>	<b>335</b>	<b>81</b>	<b>248</b>	<b>84</b>	<b>106</b>

Note: "Can't say/don't know" responses were included in the analyses.

Source: Online Survey of FRSP Staff 2009

Service provision professionals who indicated that there were protocols and procedures in place were also asked their level of agreement regarding whether these protocols and procedures safeguarded families who used the service. In relation to both child abuse and neglect and family violence, large majorities of professionals (between 89% and 100%) made affirmative responses (Table 10.5).

**Table 10.5 Agreement that procedures and protocols in place for dealing with disclosures safeguarded families using the service, service provision professionals, 2009**

	EIS %	PSS			
		FRAL	FRC	FDR	Other PSS
This service has procedures and protocols in place for dealing with disclosures of family violence that safeguard the families who use this service	98.7	92.8	98.0	98.8	99.0
This service has procedures and protocols in place for dealing with disclosures of child abuse and/or neglect that safeguard the families that use this service	98.1	89.3	98.3	100.0	99.0
<b>Number of observations</b>	<b>335</b>	<b>81</b>	<b>248</b>	<b>84</b>	<b>106</b>

Source: Online Survey of FRSP Staff 2009

### 10.3.1 Assessing capacity

Data from the Qualitative Study of FRSP Staff and also the Online Survey of FRSP Staff 2009 suggest that when violence is disclosed in the context of FDR, service provision professionals respond in a variety of ways. As previously noted, in the Online Survey of FRSP Staff 2009, FDR practitioners across the different service types were more likely to agree that FDR can be undertaken in the context of family violence rather than for child abuse and neglect. About half of FRC and FDR professionals agreed that their service provided FDR at times in the context of child abuse and neglect and around 80% indicated that their service provided FDR at times in the context of family violence.

Insights about how decisions are made to proceed with the dispute resolution process come from both follow-up open-response questions and the qualitative interviews. A strong theme coming from these data is that decisions are made in the context of detailed screening and assessment that aims to deal realistically with what is presented. As one practitioner put it:

If I refused to see people where there were drug and alcohol issues I'd have no clients ... We'd say that if you came to FDR and you were drunk or stoned on the day, visibly so, that we would need to reschedule. But we wouldn't be saying you need to go and do an A or D program before you can be involved in this. People need to make arrangements for their kids right now. One of the issues they have with the other partner may well be their drug and alcohol use, but it's not something that would stop us from going ahead with that, unless we felt that either of the clients was unable to present their situation fairly. If it was creating an imbalance in the mediation room, that the mediator wasn't able to address or redress, then we'd need to say we can't go ahead with this. But otherwise ...

A children's contact centre manager also observed that a history of these issues should not preclude a parents' participation in their service—rather an assessment of how they are currently managing these issues should be made:

A lot of people might have some kind of mental health issues but it's something that they're kind of working through and managing at the moment. Whereas maybe in the past it wasn't being managed. I mean, if someone was, you know, full-blown alcoholic or drug addict or had some severe mental health stuff going on, I just don't think they would be able to go through the routine of using the [children's contact centre] because you'd have to be a little bit organised ... They probably wouldn't have the capacity to ring and make an intake and turn up to their intake and come for the visits at the scheduled time. So I think the people that we're seeing are people that have moved on a little bit from that. But there have been issues in the past, definitely.

### 10.3.2 Referring on

Service provision professionals were also asked about their ability to make referrals to appropriate services in cases where child abuse and neglect or family violence was disclosed in their

work for the service. Table 10.6 demonstrates that FRSP staff across services indicated a high level of confidence in their ability to make appropriate referrals, with consistent affirmative responses (ratings of “excellent” or “good”) from more than 90% of the sample.

**Table 10.6 Positive rating of ability to make referrals in the context of disclosures of child abuse and neglect or family violence, service provision professionals, 2009**

	EIS	PSS			
		FRAL	FRC	FDR	Other PSS
	%				
Able to make referrals to the appropriate services for clients in cases where child abuse and/or neglect is disclosed	94.2	92.4	95.1	93.9	96.0
Able to make referrals to the appropriate services for clients in cases where family violence is disclosed	94.0	93.8	95.1	90.1	93.9
<b>Number of observations</b>	<b>335</b>	<b>81</b>	<b>248</b>	<b>84</b>	<b>106</b>

Source: Online Survey of FRSP Staff 2009

### 10.3.3 Making arrangements

Service provision professionals were asked about their ability to work directly with families/clients who were at risk of or had experienced child abuse and neglect or family violence, or had had allegations made against them. More broadly, they were also asked about their ability to identify circumstances where clients were at risk of harming others. The proportions of service provision professionals who responded positively to these items (that is, providing a rating of “excellent” or “good”) are presented in Table 10.7. Generally, these data show that professionals’ confidence in being able to work with abused or at-risk clients, or where allegations were raised, was generally high (mostly percentages in the 70s and 80s), but not as high as the ratings professionals gave of their confidence to make appropriate referrals, with significantly fewer respondents rating their abilities/confidence as “excellent”.

**Table 10.7 Positive assessments of own ability to assist families with issues of child abuse and neglect of family violence, service provision professionals, 2009**

	EIS	PSS			
		FRAL	FRC	FDR	Other PSS
	%				
Able to work with families where children are at risk of child abuse and/or neglect or family violence	86.4	77.4	79.7	78.4	90.6
Able to work with clients who are at risk of family violence	94.0	89.4	90.1	90.7	90.0
Able to work with families where children have experienced child abuse and/or neglect	85.5	78.3	81.2	79.7	90.9
Able to work with clients who have experienced family violence	94.7	87.7	91.0	89.6	95.1
Able to work with clients who have had allegations of child abuse and/or neglect made against them	80.1	70.2	77.0	73.3	93.2
Able to work with clients who have had allegations of family violence made against them	88.9	75.8	84.6	85.5	92.2
Able to identify circumstances where clients may be at risk of harming others	88.2	87.2	83.2	84.0	85.4
<b>Number of observations</b>	<b>335</b>	<b>81</b>	<b>248</b>	<b>84</b>	<b>106</b>

Source: Online Survey of FRSP Staff 2009

In summary, while there are some variations in the positive ratings of their ability to work with families/clients where family violence or child abuse and neglect is an issue, the majority of service provision professionals across the different services types were confident in their abilities to work with these clients. There was more confidence evident in relation to making referrals, and less, but still high, confidence evident in relation to working substantively with

clients in situations where concerns of, or allegations about, family violence and child abuse are relevant. However, the optimistic picture provided by professionals' own assessments is modified somewhat by the data from the Survey of FRSP Clients 2009. A significant minority of the clients (average of 29%) who expressed fears or safety concerns with respect to the other party did not agree that these were addressed at the time of attending the service.

In the context of family law issues, it was clear from the Qualitative Study of FRSP Staff, that working constructively with families may not mean undertaking FDR at the time clients first present at the service or perhaps at all. It could, for example, mean placing the emphasis on referral or dealing with other issues prior to deciding whether to proceed with FDR. A strong concern expressed by this sector, however, is anxiety about what happens when they refer families into the court system. Many provided examples of families being sent back to try again with FDR, when this did not seem appropriate.<sup>11</sup> Some spoke of cases in which, in their view, decisions made by the courts have placed family members and children at risk.

## 10.4 Legal system responses: Insights from family law professionals

As noted earlier, there is much less confidence among lawyers about the implementation of the principle concerning protecting children from harm than the principle of maintaining meaningful involvement with each parent. On the basis of data from various evaluation studies, especially the FLS 2008 and 2009 and the QSLSP 2008, a range of issues is relevant, and the data indicate some complex trends. Data on the filing of Form 4<sup>12</sup> notices, and the number of allegations concerning family violence and child abuse are discussed in Chapter 13. The following analysis combines insights from interviews and focus groups with family law system professionals and results from the FLS 2008. It includes responses to an open-ended invitation to comment on the way in which family violence and child abuse are dealt with in the family law system.<sup>13</sup>

In broad terms, these data suggest four relevant themes. A theme that has the broadest empirical support, in terms of the number and consistency of references to it in data from both studies, concerns cultural issues. These data suggest that the way in which the shared parenting philosophy of the *SPR Act 2006* is understood, in the context of a cultural failure to understand the impact of family violence in particular, produces pressures that mean less emphasis is placed post-reform on the protection from harm principles than pre-reform. The next most significant theme in these data suggest that concerns about and allegations of family violence and child abuse are not dealt with adequately in the system largely because systemic reasons inhibit appropriate investigation and responses. The third theme relates to particular aspects of the legislative framework that influence the decisions that are made about raising concerns about family violence and child abuse in litigation. Finally, there is still a view held by some legal sector professionals, mainly lawyers, that allegations of family violence are made to gain tactical advantage over fathers in cases where they are pursuing shared care. The above issues are considered briefly below.

### 10.4.1 Lack of understanding

In relation to this broad theme, the data indicate that an interplay between two issues is relevant. The first issue is the impact of the widespread misunderstanding of the introduction of "equal" shared parenting, together with an increase in expectations among fathers and a related perception of disempowerment of women. The second issue is a lack of understanding among some family law system professionals of the nature of family violence and the implications it has for

11 Of course, referrals from the courts into, or back into this sector for a service such as family dispute resolution may at times be appropriate. Sometimes, for example, the scope of a dispute may have been greatly reduced by the time a matter reaches a judicial officer, and may therefore be "mediatable". One difficulty here, however, is the lack of information flow from a service such as family dispute resolution to the courts. As they currently stand, certificates do not provide a judicial officer in a busy list with sufficient information to make an informed decision on whether litigation is the most appropriate way forward. The Note to s60I(8) provides that courts may consider the kind of certificate issued when considering whether to refer parties to FDR (s13C) and in determining whether to make a costs order against a party (s117).

12 Form 4 notices are used to notify courts where there are concerns about family violence and child abuse. Where such notices are filed and the allegation is relevant to whether an application should be refused or granted, the court is obliged to take prompt action (s60K).

13 Responses were made in relation to this issue by 134 of the 319 survey participants.

making parenting arrangements. A regular refrain in the reflections of independent children's lawyers, legal aid, community legal centre and private legal practitioners was their uncertainty about whether to raise concerns about family violence, in part because of these aforementioned cultural issues and in part because of some features of the legislative framework (see below).

A substantial proportion of practitioner participants asserted that family violence was minimised—in the sense of not being given adequate consideration—in the family law system for reasons that largely reflected a lack of understanding of the issues it raises. A variety of factors were said to be connected with this, including a failure on the part of some professionals to appreciate the nature of family violence, particularly its more subtle manifestations, such as emotional abuse and controlling behaviour. There was a range of comments that asserted a failure on the part of some professionals to understand the impact on children of exposure to family violence and the implications such exposure may have for parenting arrangements. Inconsistent approaches across different parts of the system (including among courts and judicial officers) were referred to in these comments. This concern was raised in relation to the legal system generally, and some comments also entailed the assertion that family violence was given minimal attention in FRCs. Comments pertaining to relationship services, including FRCs, suggested that women who had experienced family violence were being pressured into accepting shared parenting agreements. These quotations from responses to the open-ended question in the FLS 2008 illustrate participants' concerns:

This area still needs a lot of work at Commonwealth level. There are many judicial officers who appear not to know how to deal with allegations of family violence or how it impacts on children especially. Some training in developmental child psychology around FV issues would help.

Family violence is often not acknowledged unless there is actually a state AVO or DVO in place to “validate the violence”. Many participants in the system do not accept or acknowledge that family violence is insidious and invisible and therefore unable to be quantified unless supported by a DVO or AVO.

It has been my experience that family violence is overlooked more frequently than previously as a factor to be taken into account since the amendments. A protection order is not a magic wand and its existence does not change the nature of the relationship between parents. [It] only gives one a breathing space perhaps, for the life of the order.

In comments concerning the law on shared time, practitioner participants implied that two aspects of the new legislative framework compounded the lack of efficacy in the system's treatment of family violence and child abuse: (a) the presumption in favour of shared parental responsibility; and (b) the provisions recognising the child's right to meaningful involvement with each parent. It was suggested that these provisions strengthened the tendency for the implications of family violence in particular not to be given adequate consideration. These provisions were said to have had an impact on expectations, with fathers asserting a right to shared time even where there had been violence, placing mothers in a defensive position. It was suggested that the fear created by the possibility of the application of the presumption and the consequent application of the provisions relating to equal time or substantial and significant arrangements contributed to women agreeing at times to unsafe arrangements. Two participants suggested that women in violent relationships were choosing to stay in such relationships to protect their children from shared parenting arrangements in the event of separation. For example, one participant said:

More and more women are electing to stay with an abusive partner, because whilst in the relationship they can, to some extent, try to protect the children. Women are aware that, if they leave an abusive partner, the abusive partner is likely to get “shared care”—in which case the children will be alone with an abusive parent.

### 10.4.2 Systemic issues

The second most significant theme emerging from the qualitative data was that family violence and child abuse were not dealt with adequately due to systemic issues. Two main points were raised. The first one was a concern that inadequate resources—in the sense of judicial officers and forensic capacity—mean that these issues are not dealt with appropriately in the federal family law system, with delays in courts being a particular manifestation of this problem.

Inadequate time to scrutinise allegations could mean unsafe arrangements could be in place for some time. Conversely, interim arrangements that limit contact for safety reasons could unfairly impinge on the parent–child relationship negatively during the time taken to resolve the matter if the concerns prove to be unfounded.

The second systemic issue concerned the poor interface between the federal family court system and the state-based child protection and family violence systems, due to inadequate resources in the state systems. The following quotes illustrate concerns expressed by family law system professionals:

The system is amateurish and underfunded. The conflict between state and federal laws makes it next to useless. Each jurisdiction gives lip service to child protection issues but is unable to address important child abuse issues except in the most extreme cases. The present situation is atrocious.

Much family violence still goes undetected due to time and resource constraints within the system. A full investigation is not often practical because it takes too long and costs too much. On other occasions, when family violence is alleged wrongly, the allegations cannot be refuted because of the difficulty of proving the negative. The whole subject is still a mess.

Insufficient resourcing of the family law system has had an adverse impact on the time frames within which serious matters (domestic violence/child abuse) are dealt with, despite the best efforts of the current judiciary and court staff. The Magellan program<sup>14</sup> works very well, but the model and the resourcing of the Magellan program could be expanded. There is a need to address the ongoing issue of court delays to minimise possible “systems abuse” of children as result of court delay.

In matters involving false allegations of child abuse, the alleged offender is treated as guilty until proven innocent, and this often impacts upon the meaningful relationship between the child and the alleged offender (parent), particularly where there is a long delay between the date of the allegation and the date of the trial.

A further systemic issue raised by some participants concerned the Federal Magistrates Court. A consistent suggestion from participants in the QSLSP 2008 and the FLS 2008 suggested that some federal magistrates in particular demonstrated a lack of understanding of family violence. According to one respondent:

There is a tendency amongst judicial officers in the Federal Magistrates Court not to deal with allegations of family violence or child abuse adequately. The key to having it dealt with adequately appears to be in the preparation of the court documents and succinctly prepared submissions to the judicial officer.

In my area, the Federal Magistrate is unwilling to transfer matters to the Family Court that should rightly be Magellan cases. This has resulted in cases where there are serious recent allegations of child abuse (either about the subject child or another child in the household) not being given the judicial case management they need.

Other systemic issues raised concerned delays in allegations of family violence and child abuse being dealt with, even where a Form 4 notice was filed.

### 10.4.3 Issues in the legislation

While some aspects of the 2006 amendments were intended to increase the emphasis placed on protecting children from family violence and child abuse (s60B(1)(b), s60CC(2)), there are perceptions among some legal professionals that other aspects of the amendments (eg., s117AB, s60CC(3)(c)) may inhibit concerns about these issues being raised.

<sup>14</sup> Magellan is a case management system for matters involving allegations of serious sexual or physical abuse, which is available in the FCoA. More information is provided in Chapter 13.



## Costs orders for false statements

The *SPR Act 2006* introduced a provision obliging courts to make a costs order against a party found “to have knowingly made a false allegation or statement in the proceedings” (s117AB). There was significant concern that this provision would inhibit disclosures of family violence and child abuse, and the Senate Legal and Constitutional Affairs Committee, in considering the SPR Bill, recommended against its inclusion until the AIFS report, *Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings* (Moloney et al., 2007), was released (Recommendation 7). There is evidence of this provision being applied, but published judgments where costs are ordered on this basis are relatively uncommon.<sup>15</sup> Some judgments have taken the approach that in order for a court to be satisfied that a false statement has been made “knowingly”, it requires proof to *Briginshaw v Briginshaw* (1938) 60 CLR 336 standard.<sup>16</sup> One judge has articulated the test in this way: “There should be no ‘room for misunderstanding or doubt’: objectively, the person making the statement cannot believe that statement to be true” (per Cronin J in *Charles and Charles* [2007] FamCA 276, ¶ 26).<sup>17</sup>

Other judges proceed on the basis that a finding may be made on the basic civil standard: the balance of probabilities (e.g., *Sharma and Sharma* (No. 2) [2007] FamCA 425 ¶8; *Claringbold and James* (Costs) [2008] FamCA 57 ¶35). Instances where costs have been ordered under s117AB include matters where:<sup>18</sup>

- a mother was found to have fabricated allegations of abuse against a father (*Sharma and Sharma* (No. 2) FamCA 425 ¶ 13);
- a father was found to have “knowingly” made false statements about the mother’s parenting capacity (*Klumper and Klumper* (Costs—Parenting) (2008) FamCA 360);
- a mother was found to have knowingly made false statements that a child sustained an injury while in his father’s care (*Hogan and Halverson* [2007] FMCAfam 1131);
- in *Claringbold and James* (Costs) [2008] FamCA 57, Bennett J relied on s117(2A)(c) to make a costs order against a mother who was found to have knowingly made false statements about family violence in her current relationship (¶ 26). Her Honour held this also fulfilled her obligation under s117AB.

In both the FLS 2006 and 2008, participants were asked to indicate the extent of their agreement with two propositions that: (a) the prospect of an adverse costs order has discouraged allegations of violence or child abuse that are genuinely held and/or likely to be true; and (b) the prospect of an adverse costs order has discouraged false allegations of violence and child abuse. The resulting data suggest that the level of concern about the provision discouraging true or genuinely held allegations dissipated between 2006 and 2008, but some concerns remained. Doubt about its capacity to discourage false allegations grew between 2006 and 2008.

In 2008, participants’ views on the operation of adverse costs orders were mixed. Most did not perceive that adverse cost orders discouraged allegations that were likely to be true, with 68% (46% in 2006) disagreeing with this statement, compared to 14% (38% in 2006) of respondents who agreed (Figure 10.7).

Adverse costs orders were perceived by a majority of participants to be unsuccessful in discouraging false allegations, with 65% disagreeing in 2008 that the prospect of adverse costs orders had discouraged false allegations of violence (50% in 2006) and 10% agreeing (32% in 2006) (Figure 10.8).<sup>19</sup>

15 The data collection instrument for the FCoA, FMC and FCoWA court files post-1 July 2008 required data collectors to record whether a costs order had been made under s117AB. Not one such order was recorded.

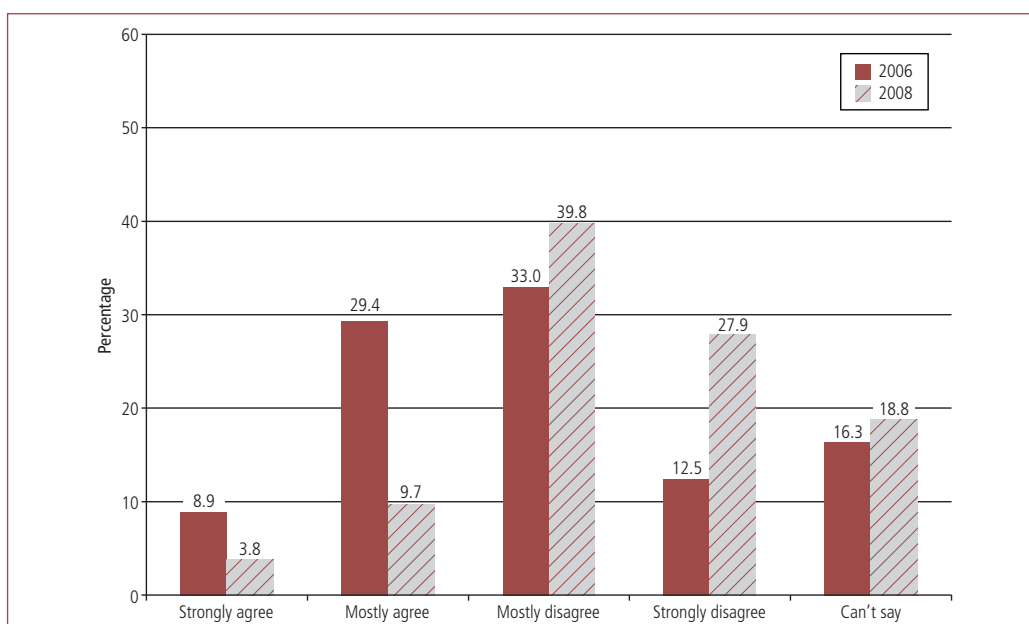
16 Codified in the *Evidence Act 1995* (Cth) s140(2).

17 This approach was followed in *Elenozska and Patronis* (No. 2) [2007] FMCAfam ¶ 10, 11. The civil standard of proof is the balance of probabilities (*Evidence Act 1995* (Cth) s140(1) and the *Briginshaw* standard places the burden of proof at the stricter end of the civil spectrum.

18 Refusal to make an order under s117AB in an appeal case (not involving children or family violence) is in: *Kitman and Kitman* (Costs) [2008] FamCAFC 180.

19 “Can’t say” responses were 19% in 2008 and 17% in 2006.

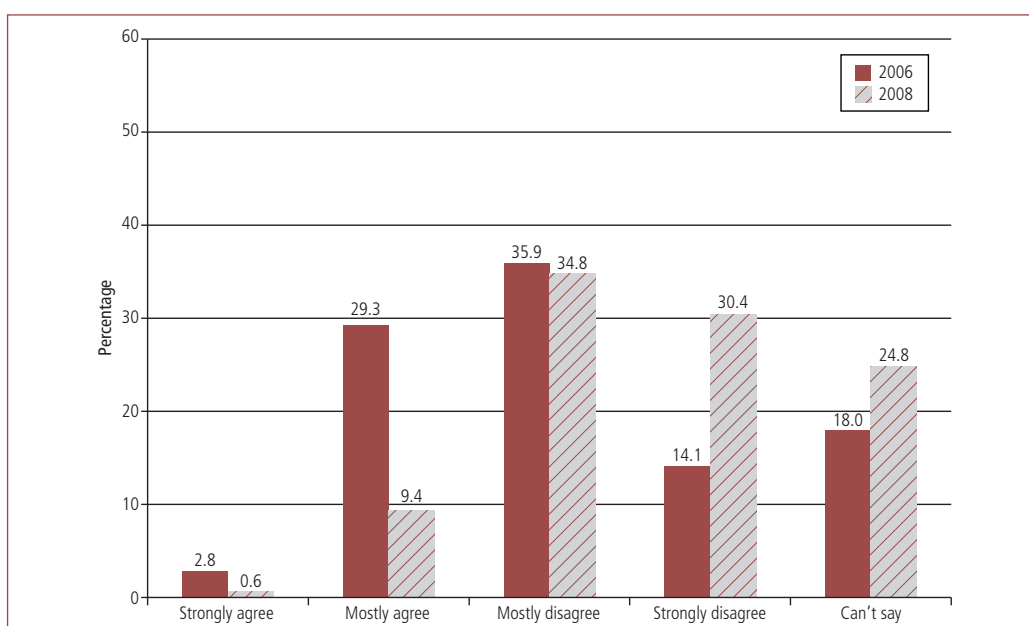




Note: Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 10.7** Agreement with the statement: "The prospect of an adverse costs order has discouraged allegations of violence or child abuse that are genuinely held and/or likely to be true", lawyers, 2006 and 2008



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

Source: FLS 2006 and 2008

**Figure 10.8** Agreement with the statement: "The prospect of an adverse costs order has discouraged false allegations of violence or child abuse", lawyers, 2006 and 2008

Legal practitioners who participated in the QSLSP 2008 made it clear that they took their obligation to warn clients about costs orders very seriously and were aware of the impact that such warnings had on their clients. For example, one solicitor said: "I do find that people do get a bit nervous about that ... the thought of having to pay out any amount of money for any reason at all, is something that really petrifies them".

Finally, it should be noted that there were very few statements from family relationship service professionals concerning the question of false allegations or costs orders for false statements. This is probably because, while service professionals must carefully screen for indicators of violence and abuse, it is not their role to make a judgment with respect to whether a statement is “true or “false”. Thus, if a client expresses fear or makes significant allegations against a former partner with respect to child abuse, the default position of the service professional must be to accept such an expression at face value. FDR should not proceed, for example, when one former partner says that she or he is fearful either about proceeding or about the possible consequences of being asked to make an agreement.

This is likely to be what one FDR practitioner was suggesting in providing the following feedback:

We’ve never had a case here where we’ve believed there were false allegations of family violence. People tend to generally try to cover it [family violence] up rather than make false allegations. It’s not until you start unpicking their stories that it becomes apparent [that there is family violence].

We take it that the FDR practitioner is not implying here that false allegations are never made. Rather we understand this statement to mean that it is not the function of an FDR practitioner to conclude that the allegation is a false one.

### The friendly parent criterion

A further aspect of the legal framework that potentially impinges on decisions about whether to raise concerns about family violence and child abuse is what has become known as “the friendly parent criterion” (s60CC(3)(c)). This is one of a series of factual considerations contained in the s60CC enumeration of primary and additional considerations that guide the courts’ determinations as to what orders may be in a child’s best interests. This factual consideration was newly included in the *SPR Act 2006* but, consistent with research on the *Reform Act 1995* (Kaspiew, 2007), judicial officers interviewed for the QSLSP 2008 indicated that this had always been a relevant and important factor under the previous framework.<sup>20</sup>

As part of the 2006 amendments, the following sub-section was included in s60CC(3)(c), in the list of considerations a court must take into account in determining what orders are in a child’s best interests: “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 parents”. Similar issues are also referred to in s60CC(4)(b), which requires courts to consider a range of issues relevant to the extent to which a parent has fulfilled their parental obligations. A discussion of post-2006 case law on s60CC(3)(c) is in Chapter 15.

Comments from solicitors suggested that in combination with the presumption and the linked obligation to consider equal or substantial and significant time, this change contributed to a more conservative approach to raising concerns. A strategy of challenging the role of the other parent was seen as risky because mothers in particular may be seen as “unfriendly parents”. For example, one solicitor said: “We’re very much reminding them of that to ensure that they come across as best they can” The analysis of case law (see Chapter 15) demonstrates how this provision operates in practice and the jurisprudence that has developed around it under the *SPR Act 2006*. A further indication of the level of significance it has is evident from the FCoA, FMC and FCoWA court files, which included the collection of data from affidavits, family reports and judgments. These data are examined in Chapter 14.

### Burdens of proof

Issues concerning proof of family violence and child abuse were also suggested by legal professionals as being problematic, according to a range of data sources in the Legislation and Courts Project. There are some complex questions about the extent to which proof must be provided in support of family violence and child abuse concerns. Potentially, there are three relevant burdens of proof. At the most basic level, evidence providing “reasonable grounds” to believe that a parent has engaged in family violence or child abuse needs to be provided to trigger an

<sup>20</sup> It was mostly considered under the umbrella of s68F(2)(h), which required the court to consider the parents’ attitude to the responsibilities of parenthood. This provision is replicated in s60CC(3)(i).

exception from family dispute resolution (s60I(9)(b)) or to establish the non-applicability of the presumption of equal shared parental responsibility ((s65DA(2)).

The second level of “proof”, the civil standard, is applicable in most circumstances to questions of fact in civil proceedings, including family law proceedings. This means that in order to be taken into account as being relevant to a parenting matter, concerns about family violence and child abuse need to be established by evidence to satisfy the “balance of probabilities” standard. The issue of how such factual findings may then influence the orders that a court makes remains a question of discretion, and a wide range of approaches are evident in the case law (see Chapter 15).

The third relevant burden of proof arises in a context where a court is being asked to make findings relating to allegations that a child has been subjected to abuse. According to the High Court, courts should refrain from making such findings unless “impelled by the circumstances of the case to do so” (*M and M* 1988 166 CLR 69 ¶ 23). Where such circumstances exist, the appropriate burden of proof is the balance of probabilities toward the strictest end of the civil spectrum.<sup>21</sup> The High Court in *M and M* emphasised that, rather than making findings about past abuse, the most important task for family courts was to make orders that were in the best interests of children. This includes taking into account whether the evidence indicated the existence of an “unacceptable risk” to the child in the future (see Higgins & Kaspiw, 2008).

Data from evaluation studies, in particular the QSLSP 2008, suggest a range of different views and practices exist in relation to how issues concerning family violence and child abuse may be dealt with at an evidentiary level. This point is reinforced by the discussion of case law in Chapter 15. In the eyes of some participants in QSLSP 2008 and FLS 2008, issues concerning proof have become more difficult in the post-reform environment. It seems that a number of factors may be relevant in informing this perception.

One factor is the way in which family violence is dealt with as an exception to family dispute resolution and grounds for non-application of the presumption of shared parental responsibility. A judge, for example, noted that such features of the legal framework may have practically rather than technically raised the stakes in terms of proof. “If you say to the wife, say, prove when, where etc. ... she’s going to have ... trouble particularising it, she’s going to have ... trouble proving it except that a court might accept her over him ... she’s going to be subjected to a whole lot of cross-examination about things that ultimately aren’t very relevant to the issue”. This was not an isolated view.

The difficulties in pleading issues around family violence were a recurrent theme, with solicitors noting the difficulties clients have in disclosing family violence and providing details specific enough to satisfy legal requirements. This description of the advice that may be given from a barrister illustrates this point: “What have you done about it? Have you done anything? Do we need to subpoena anybody to show you have made complaints? Then I think you advise them that we can still raise it but you’re going to be knocked out essentially because you have never done anything about it. I think you’re always pointing out the weaknesses in their cases”.

Another barrister observed that: “Where such allegations are raised, then material has to be prepared properly and the issues have to be properly litigated—that’s expensive ... And it costs a lot of money to do the Form 4 because it all has to be detailed”.

Other participants suggested that even where sufficient proof was available, the family violence was not always taken into account in an appropriate way: “Now there’s an assumption that it’s [parenting’s] going to be shared so the onus of proof has shifted. If you’re alleging abuse you’ve got to put on notices of abuse. I’ve had cases where we’ve had proof and the woman’s still being treated like she’s on trial”.

Some other comments referred to the difficulties faced by litigants and their advisors in circumstances where there were concerns about family violence and child abuse but objective evidence was not available to substantiate them. This response in the FLS 2008 illustrates such concerns:

The complaint I most hear is that “no one wants to listen to me” about [his] violence toward me. Unless [state child protection authority] or police or the client (usually the mother) has attended a hospital or doctor for injuries sustained, or obtained a [state

<sup>21</sup> As explained above, this test was articulated in *Briginshaw v Briginshaw* (1938) 60 CLR 336 and has since been codified in s140 of the *Evidence Act 1995* (Cth).

family violence protection order] then there's not much initial opportunity to be heard before the Court on the issue. The problem is that, in my experience, it is in the worst cases of DV that the woman is too afraid to act and therefore there is no independent or supporting evidence available, at least initially.

Making equal time or shared care basically the starting point has exposed children to higher levels of violence and conflict in cases where there is domestic violence, but it either can't be proven or isn't at the most serious level.

#### 10.4.4 Claims about tactics

Some participants in the FLS 2008 and QSLSP 2008 raised concerns about the role that allegations of family violence and child abuse play in relation to arguments about shared care-time arrangements. Some of these responses suggested that allegations concerning these issues are used tactically in some cases to counter arguments for shared care. These comments relate to the themes reported in the two preceding sections in complex ways. To some extent, some of the comments discussed in this section tend to contradict the views encapsulated in the comments described in the preceding section, in the sense that they assert that too much emphasis is placed on family violence and child abuse, with the potential for parent–child relationship being curtailed as a result of these issues, on the basis of slim evidence. Thematically, however, the comments are consistent with the concerns that point to insufficient forensic capacity in the system and, overall, they demonstrate the range of views in this area. Such comments were reflected in a small group of responses, along these lines:

An allegation of child abuse or risk of harm is a “tool” used by some parents against the other. It is easy to make such a claim. Interim hearings will be determined on a risk of harm where real evidence of such can be minimal. The ability to “answer” such an accusation is very difficult and this can have serious adverse effects to both the long-term outcomes to the litigation and, more importantly, the parent–child relationship.

The question of the use of state protection orders was also raised in a number of comments, to contradictory effects. On the one hand, some comments suggested that undue emphasis was placed on family violence orders obtained either on an interim or final basis under state-based laws,<sup>22</sup> with such orders being used to trump claims for shared parenting arrangements:

In [state jurisdiction], police frequently issue Police Family Violence Orders in the situation where the wife “creates” a scene and says she is scared [in order] to have the husband removed from the home and he is prevented from returning. This has huge impacts on father's ability to see the children in the interim and must be taken into account by the Court. The Police Family Violence Orders are issued without any testing of the evidence and the FCA must still have regard to them.

According to one participant, this led to a situation where:

there appears to be a presumption of guilt in the family law system (i.e. re: AVO and allegations—especially interim matters or people who self-represented at criminal court and consented to a final AVO with facts they don't agree with). Consequently this has an incredible impact in the family law system. It's like a double whammy to the person being accused.

Conversely, a couple of comments suggested that men were agreeing to state protection orders to take advantage of the requirement in s60CC(3)(k) for the family courts to have regard to orders made on a final or contested basis. Orders made by agreement are not caught by this provision, meaning that a court is not obligated to have regard to them. A further couple of comments reflected some participants' views that state protection orders were obtained too easily, with too little evidence. A different perspective on the issue is provided by comments suggesting that people who experience family violence are under more pressure to go to a contested hearing as a result of this provision, since the “significance of the [state protection order] is greater”.

<sup>22</sup> The *SPR Act* requires the court to consider any state family violence order made on a final or contested basis (s60CC(3)(k)).

## 10.5 Summary

The material in this chapter demonstrates that the overall picture in relation to how well the policy objective of keeping children safe from family violence and child abuse is being met is complex. This is an area where a range of views is evident both among parents and family law system professionals. The evidence considered in this chapter demonstrates that, post-reform, parenting arrangements where there are safety concerns are taking longer to resolve and there is more use of services among these families. However, the rate of shared care-time arrangements among parents with safety concerns was no different to that among parents without safety concerns.

A little under 30% of parents who had used various relationship services reported experiencing fear of the other party when these services were being used. Of these parents, around 35% (depending on the service attended) indicated these concerns or fears were not addressed at the time of attending the service.

Lawyers and professionals who work in the relationship services sector indicated that concerns about family violence and child abuse and neglect were common among separating families and perceived to be even more prevalent among the client base of service and legal sectors in the family law system. However, both lawyers and relationship service provision professionals expressed much greater confidence in the family law system's ability to ensure that children had meaningful involvement with each parent than its ability to ensure that children are protected from harm from family violence, child abuse and neglect. Just over half the lawyers who participated in the FLS 2008 disagreed with a proposition that the legal system deals adequately with family violence and child abuse.

Service provision professionals expressed confidence in their own ability to identify and work with families who experience family violence and child abuse and neglect, although the optimistic self-assessments of these professionals are modified somewhat by data from the Survey of FRSP Clients 2009 and the views of lawyers. Service provision sector practice often means engaging with such families in ways that will ensure that these concerns are also addressed via liaison with or referrals to other services specialising in areas such as mental health, addictions and family violence. These interventions can be in some tension with the perceived need to develop comprehensive parenting arrangements as a matter of priority. Family relationship services staff spoke of assisting with "holding" arrangements for parents and children while some of the dysfunctional behaviours and attitudes are attended to.

Lawyers were largely confident in their own ability to screen for family violence and child abuse and neglect, but less confident (and largely unfamiliar with) the service provision sector's ability to do so. This contrasts with the confidence expressed by service provision professionals about their own ability to screen for family violence and abuse.<sup>23</sup>

Both lawyers and service provision professionals expressed reservations about the adequacy of the legal system's response when concerns about family violence and child abuse are raised. A little over half the lawyers in the FLS 2008 expressed the view that the legal system had not been able to adequately screen for family violence and child abuse.

Qualitative comments also suggest a range of complex issues underpin their global assessments of the lack of efficacy in handling family violence and child abuse and neglect across the system. Relevant issues include a lack of understanding of family violence and child abuse in various parts of the system and perceptions of a pressure to reach agreements notwithstanding the presence of such concerns. Problems also stem from the intersection of the state and federal legal systems.

There are some concerns about aspects of the legislative framework (s117AB and s60CC(3)(c)) inhibiting people in raising concerns about family violence and child abuse and contributing to a cautious approach among lawyers. Costs orders under s117AB appear to be uncommon but have been made in a range of circumstances. Some of the concern about costs orders discouraging genuinely held allegations appear to have dissipated, while lack of confidence in their ability to discourage false statements has grown.

Finally, while there was widespread concern that family violence and child abuse and neglect are being inadequately responded to, some legal professionals and fathers also claimed that

<sup>23</sup> It should be noted that service provision professionals were not asked their views about legal sector screening.

such allegations are being used to impede fathers' claims for a shared parenting role after separation. However, these concerns were expressed by a small minority of participants and the predominant concerns expressed by professionals (legal and service provision sectors) were about the high levels of prevalence of family violence and child abuse and neglect and the complexity of eliciting disclosures.

Parental separation is typically distressing for children and requires adjustments on many fronts. Although most children of separated parents do not exhibit long-term adjustment problems, there is ample evidence that children of separated or divorced parents have an increased risk of experiencing a broad range of adjustment problems, including high anxiety, social withdrawal, low self-esteem, delinquency in adolescence, and poor school achievement (Amato, 2005).<sup>1</sup>

While in many cases parental separation itself would be highly disruptive for children, individuals differ markedly in the way in which they respond to such events. Their responses will also depend on the context. Some children's wellbeing may improve following parental separation if the pre-separation parental relationship entailed high levels of acrimonious conflict or family violence (Amato, Loomis & Booth, 1995; Jekielek, 1998). How parents manage separation and the resulting conflict can make a big difference as to how children adjust following parental separation. Children are likely to have poorer outcomes when conflict between separated parents is "poorly resolved" and children are "caught in the middle" (Rodgers & Pryor, 2001).

As discussed in Chapter 1, the changes to the family law system have been designed to encourage the involvement of both parents in their child's life while protecting children from harm. Where this is in the best interests of the child, such involvement includes the sharing of decision-making responsibilities on matters affecting the child in the longer term, and enabling both parents to spend equal or substantial time in caring for the child.

The move to encourage each parent to spend equal or substantial time with their child is based, at least in part, upon the view that there is a benefit to many children from having a meaningful relationship with both of their parents and that substantial time with both parents can assist in this being achieved (see Chapter 1).

While there is evidence that children benefit from having a quality relationship with both parents (e.g., Lamb, 2007), research into the links between the amount of time children spend with each parent post-separation and children's wellbeing has produced mixed results. Smyth (2009), in a review of post-separation shared care research, concluded that:<sup>2</sup>

So while equal time or substantially shared time feature prominently in the Act as a consideration, and while post-separation arrangements generally should try to maximize "positive and meaningful" father involvement as opposed to minimal father-child contact (Lamb, 2007), the research evidence for equal time parenting is not strong. Put another way: the idea that a clear linear relationship exists between parenting time and children's outcomes (such as ever-increasing amounts of time necessarily leads to better outcomes for children) appears to lack an empirical basis—although an emotionally close and warm relationship naturally requires some time to sustain it. (p. 43)

Exposure to inter-parental relationships characterised by conflict, fear, safety concerns or physical harm clearly jeopardises the wellbeing of children, with children in shared care-time arrangements, as well as others who spend considerable time with each parent, being particularly vulnerable in these circumstances (Buehler et. al., 1997).

<sup>1</sup> There is also evidence that, as adults, these children are more likely than those who grew up living with both biological parents to divorce and become single parents themselves (see Amato 2000; Teachman 2008)).

<sup>2</sup> Amato and Gilbreth (1999), in a meta-analysis, concluded that, in general, the frequency of contact with the non-resident father was not directly related to children's wellbeing. Other studies include Bauserman (2002), Lamb (2007) and Whiteside and Becker (2000).



Concerns have been raised about whether shared care-time arrangements are detrimental to the developmental needs of very young children and whether such arrangements can exacerbate any negative impacts of parental separation on children's wellbeing if their parents are locked in a high level of conflict or have a history of violence. McIntosh and Chisholm (2008)<sup>3</sup> and McIntosh, Long and Wells (2009) concluded that shared care time may not be in the best interests of children when their parents have high levels of conflict. Smyth (2009) neatly summarised the results of McIntosh and Chisholm's (2008) research: "Where children were caught in the middle of radiating parental conflict, shared care was found to compound the risks of poor outcomes for children" (p. 49). These concerns have been particularly pronounced for young children in shared care-time arrangements.

There is very little Australian research into the impact of different post-separation care-time arrangements on children's wellbeing (for a review, see Smyth, 2009). While the studies referred to in the previous paragraph are important, they were based on small, unrepresentative samples of children whose parents had separated. The extent to which the results of this study apply more generally to separated families is a key question that needs to be answered.

This chapter relates to policy objective 2 of the 2007 Evaluation Framework (Appendix B), which has the aim to encourage greater involvement of both parents in children's lives following separation, provided that the children are protected from family violence or child abuse. The discussion looks at the impact of the following aspects of children's post-separation experiences on their wellbeing:

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

The analysis is primarily based on data from the Longitudinal Study of Separated Families Wave 1 collected in 2008 (LSSF W1 2008). The analysis is supplemented by data from the first three waves of the Longitudinal Study of Australian Children (LSAC). Both of these studies have advantages and disadvantages for understanding the impact of post-separation experiences on children's wellbeing. The greater the consistency in the general findings based on these two datasets, the greater our confidence in the conclusions we are able to draw.

The LSSF W1 2008 provides information on care-time arrangements and child wellbeing for a large sample of children and their families in which the parents separated after July 2006. While the LSSF has the advantage of providing a large sample of children and their families, its main limitation is that information on child wellbeing is entirely based on parents' reports. The LSAC survey is used because, although it provides data on a much smaller number of children whose parents have separated, high-quality information on child wellbeing is derived from parents, teachers and the children themselves.<sup>4</sup>

## 11.1 Methodological issues

Understanding the relationship between care time and children's wellbeing post-separation is difficult. One challenge that needs to be overcome is that we don't know how a child would have progressed had they had a different care-time arrangement. As shown in previous chapters, there are significant differences in the socio-economic characteristics of parents and inter-parental relationship dynamics for children with different care-time arrangements (Chapter 7) and shared decision-making (Chapter 8). For example, children in shared care-time arrangements tend to have parents who are better educated, more likely to be employed and have a better quality relationship (lower conflict) than children who spend 100% of nights with one parent.

Regression modelling is used to estimate the impact of different care-time arrangements on the wellbeing of children while taking into account (i.e., holding constant) the impact of other variables likely to affect children's wellbeing (e.g., parental educational attainment, labour force status, country of birth).

3 McIntosh and Chisholm (2008) drew upon two studies. The first is based on an intervention in a community mediation setting (McIntosh & Long, 2006; McIntosh, Wells, Smyth, & Long, 2008) and the second an intervention in a registry of the Family Court of Australia (McIntosh, Bryant & Murray, 2008; McIntosh & Long, 2007).

4 An overview of LSAC is provided by Gray and Smart (2009).

The regression modelling framework is also used to estimate whether the impact of different care-time arrangements depends upon: (a) the quality of the parental relationship post-separation; (b) whether there is a history of violence; and (c) the age of the children.

## 11.2 Care-time arrangements and children's wellbeing

### 11.2.1 Measures of wellbeing: LSSF W1 2008

This section examines the measurement of children's wellbeing using data from the LSSF W1 2008. A summary of the overall wellbeing of the children is provided (see text box on page 258). The measures used are of:

- overall health (all ages);
- behavioural problems (children 1–3 years);
- learning (children aged 4+ years);
- peer relationships (children aged 4+ years);
- overall progress in most areas of life (children aged 4+ years);
- conduct problems (children aged 4+ years); and
- emotional symptoms (children aged 4+ years).

### 11.2.2 Children's wellbeing: Reports of fathers and mothers

In terms of general health, over half the parents said that their child had “excellent health” (55%) and a quarter described their health as “very good” (26%). Just 5% of parents provided ratings of “fair or poor” (Table 11.1, see page 259).

For focus children aged 4 years and older, the majority of parents reported that their child was doing as well as, or better than, other same-age children in terms of learning (89%), peer relationships (93%), and overall progress (90%). Only a small minority of parents reported that their child was not doing as well as other children of the same age in each of these areas (7–11%). Fathers' and mothers' views on these issues were similar.

Mean scores for the three measures of social-emotional wellbeing (BITSEA behavioural problem scale for children aged 1–3 years and the Conduct Problems Scale and Emotional Symptom Scale for children aged 4 years and older) were very low, suggesting that parents believed that their child was doing well overall in this dimension.

One of the advantages of the LSSF W1 2008 is that both parents of around 1,800 children had participated in the survey (here called the “former couples sample”). There was a relatively high level of consistency in report between parents about their child's wellbeing. For example, 84% of parents were generally consistent in their assessment of their child's general health. This level of consistency provides confidence that there are not systematic biases between the reports of mothers and fathers.<sup>5</sup>

### 11.2.3 Children's high and low wellbeing and care-time arrangements

This section examines the relationship between care-time arrangements and child wellbeing. The care-time categories are the same as those used in Chapters 6, 7 and 8 and are:

- 100% of nights with the mother, and the father never sees the child
- 100% of nights with the mother, and the father has daytime contact with the child;
- 1–34% of nights with the father and 66–99% of nights with the mother;
- 35–47% of nights with the father and 53–65% of nights with the mother;
- 48–52% of nights with each parent;
- 35–47% of nights with the mother and 53–65% of nights with the father;
- 1–34% of nights with the mother and 66–99% of nights with the father;
- 100% of nights with the father, and the mother has daytime contact with the child; and
- 100% of nights with the father, and the mother never sees the child.

<sup>5</sup> Appendix E provides a detailed analysis of the extent to which there is consistency in the parents' reports of child wellbeing for the sub-sample of the survey for which there is couple data.

## Measures of children's wellbeing

A number of measures of children's wellbeing was collected in the LSSF W1 2008. Some of the measures are of low levels of wellbeing (sometimes termed "ill-being"), some are measures of high levels of wellbeing, and others cover dimensions ranging from positive to negative (i.e., from low to high levels of wellbeing). This text box describes the measures of children's wellbeing examined in this evaluation.

### Overall health of focus child (all ages)

Parents were asked: "In general, would you say [focus child's] health is excellent, very good, good, fair or poor?" The responses to this question were used to create two variables. The first measured whether or not the parents believed that the child had fair or poor health, and the second measured whether or not they believed that the child had excellent health.<sup>6</sup>

### Progress compared with other children (children aged 4+ years)

If the focus child was aged 4 years or older, parents were asked: "Compared with children of the same age, how would you say [child's] is:

- doing with [his/her] learning [or school work];
- getting along with other children [his/her] own age; and
- doing in most areas of [his/her] life [referred to as "overall progress"]?

The response options were: "much better", "somewhat better", "about the same", "somewhat worse" or "much worse".

The responses to these questions were used to create three variables that captured whether or not the parents believed that the child was doing worse or much worse relative to other children for each of these dimensions, and another three variables that captured whether or not the child's progress in these areas was better or much better than other children of the same age.

### Socio-emotional difficulties (children aged 4+ years)

Socio-emotional difficulties for children aged 4 years or older refers to aspects of low wellbeing: externalising behaviours (e.g., acting out or disruptive behaviours); and internalising behaviours (e.g., anxiety, worrying, sadness, withdrawal). Using the Strengths and Difficulties Scale (SDQ) developed by Goodman (1997), externalising behaviours were measured using the conduct problems scale and internalising behaviour was measured using the emotional symptoms scales. Scores on both scales range from 0–10, with higher scores indicating more conduct problems or emotional symptoms (i.e., lower wellbeing).

### Behavioural problems (children 1–3 years)

For children aged 1–3 years, behavioural problems were captured using the Brief Infant-Toddler Social and Emotional Assessment (BITSEA) (Briggs-Gown & Carter, 2006). Parents were asked to indicate how well 14 statements described their child during the last month. Examples of the statements include: seems nervous, tense or fearful; is restless and can't sit still; hits, bites or kicks you [or child's other parent]; and does not make eye contact. The responses to these statements were used to derive a behavioural problem scale that ranged from 0 to 28, with higher scores representing relatively problematic socio-emotional development.

<sup>6</sup> Focusing on the two ends of this scale allows us to identify children who are and are not doing well. However, proportions of children who are doing well and very well are also reported in this chapter.

As noted in Chapter 6, there were too few mothers in the LSSF W1 2008 who were caring for their child for 35–47% of nights or who never saw their child to allow statistically reliable estimates to be produced for these groups. They are therefore excluded from the following analyses.

Figures 11.1 and 11.2 (on page 260) depict trends in the wellbeing of the focus children, as perceived by fathers with different care-time arrangements, with Figure 11.1 focusing on low wellbeing and Figure 11.2 focusing on high wellbeing. The extent to which the children's wellbeing varied according to their care-time arrangements, as suggested by mothers' reports, is shown in Figure 11.3 (low wellbeing) and Figure 11.4 (high wellbeing) (both on page 261). Because the BITSEA and SDQ measures focused on low wellbeing, these measures are only shown in Figures 11.1 and 11.3.

**Table 11.1 Health and wellbeing of focus children by gender of parents, 2008**

	Fathers	Mothers	All
<b>General health (all children)</b>			
Excellent (%)	50.4	59.3	54.9
Very good (%)	26.9	24.6	25.8
Good (%)	16.9	11.7	14.2
Fair/poor (%)	5.8	4.4	5.1
Number of observations	4,782	4,990	9,772
<b>Behavioural problems<sup>a</sup> (1–3 years old)</b>			
Mean	2.72	2.92	2.83
Number of observations	1,555	2,023	3,578
<b>Learning compared with other same-age children (4+ years old)</b>			
Much better/somewhat better (%)	44.8	42.7	43.7
About the same (%)	44.9	46.1	45.5
Much worse/somewhat worse (%)	10.4	11.2	10.8
Number of observations	2,832	2,660	5,492
<b>Getting along with other same-age children (4+ years old)</b>			
Much better/somewhat better (%)	37.9	36.1	37.0
About the same (%)	55.6	55.7	55.7
Much worse/somewhat worse (%)	6.5	8.2	7.3
Number of observations	2,851	2,689	5,540
<b>Overall progress in most areas compared with other same-age children (4+ years old)</b>			
Much better/somewhat better (%)	32.9	31.9	32.4
About the same (%)	58.2	57.7	58.0
Much worse/somewhat worse (%)	8.9	10.4	9.7
Number of observations	2,819	2,657	5,476
<b>Conduct problems<sup>b</sup> (4+ years old)</b>			
Mean	1.37	1.76	1.56
Standard deviation	1.68	1.76	1.73
Number of observations	2,912	2,727	5,639
<b>Emotional symptoms<sup>c</sup> (4+ years old)</b>			
Mean	2.02	2.39	2.20
Standard deviation	2.13	2.36	2.26
Number of observations	2,905	2,726	5,631

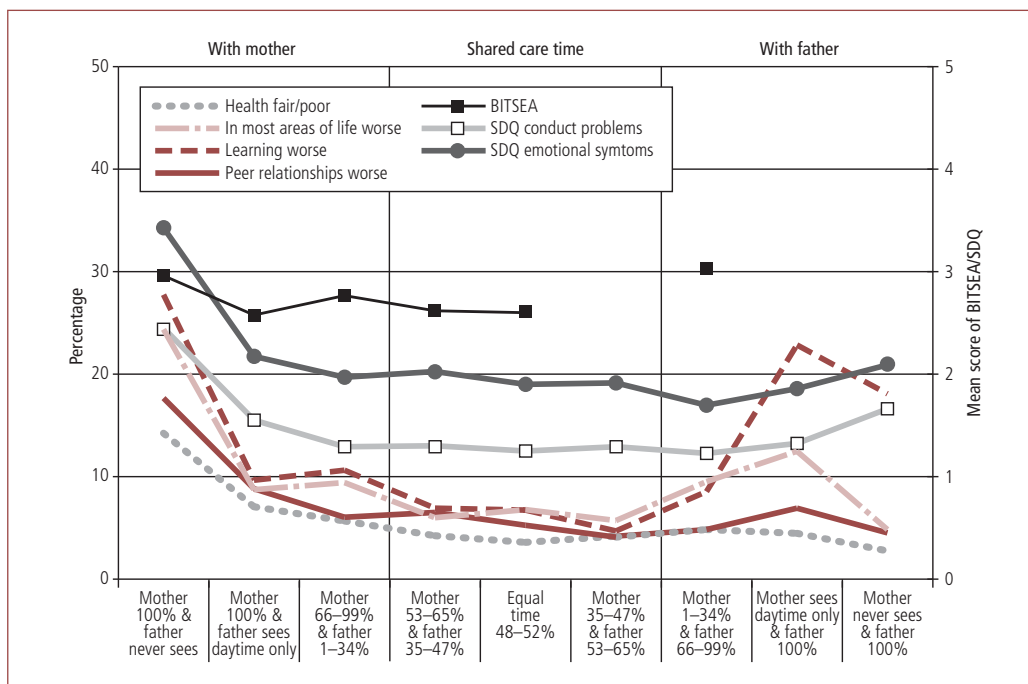
Notes: <sup>a</sup> 0–28, higher score = more problems. <sup>b</sup> 0–10, higher score = more problems, SDQ. <sup>c</sup> 0–10, higher score = greater difficulties, SDQ.

Source: LSSFW1 2008

Fathers' reports suggest a general lack of relationship between children's wellbeing and their care-time arrangements. This is generally the case for indicators of both low wellbeing (Figure 11.1) and high wellbeing (Figure 11.2). There are two main exceptions. Firstly, fathers who never saw the focus child were more likely than other fathers to have negative views about their children's wellbeing. However, given that these fathers never saw their child, their reports are likely to be considerably less well informed than those of fathers who spent time with their child. Their reports may well be coloured by their general dissatisfaction with their post-separation care-time arrangements (see Chapter 7). Secondly, according to fathers' reports, children with a shared care-time arrangement (involving their spending 35–65% of nights with each parent) had slightly higher levels of wellbeing than children with other care-time arrangements. However, differences were generally not statistically significant for care arrangements where the child mainly or entirely lived with the father, while the differences were statistically significant for two or three measures in arrangements where the focus child saw the father in the daytime only or mostly lived with the mother (66–90%).<sup>7</sup>

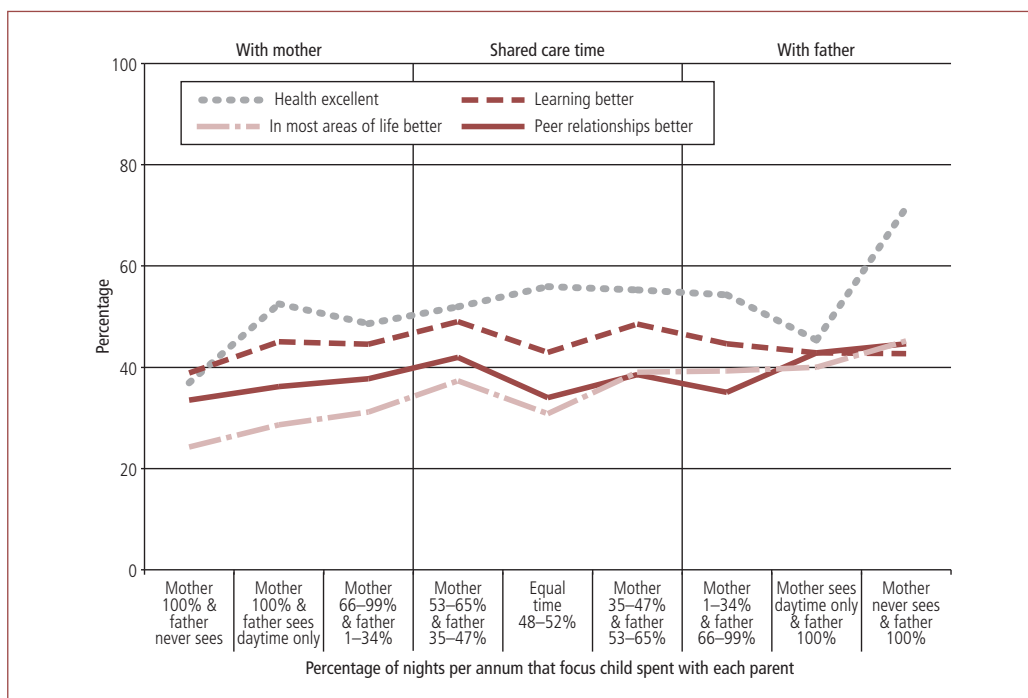
<sup>7</sup> Fathers whose child never saw their mother were more likely than other fathers to indicate that their child had excellent health. Trends for this aspect of wellbeing differ from those of other aspects of wellbeing for this particular group.

Mothers' reports also suggested that there was no clear, consistent relationship between children's wellbeing and their care-time arrangements (Figures 11.3 and 11.4).



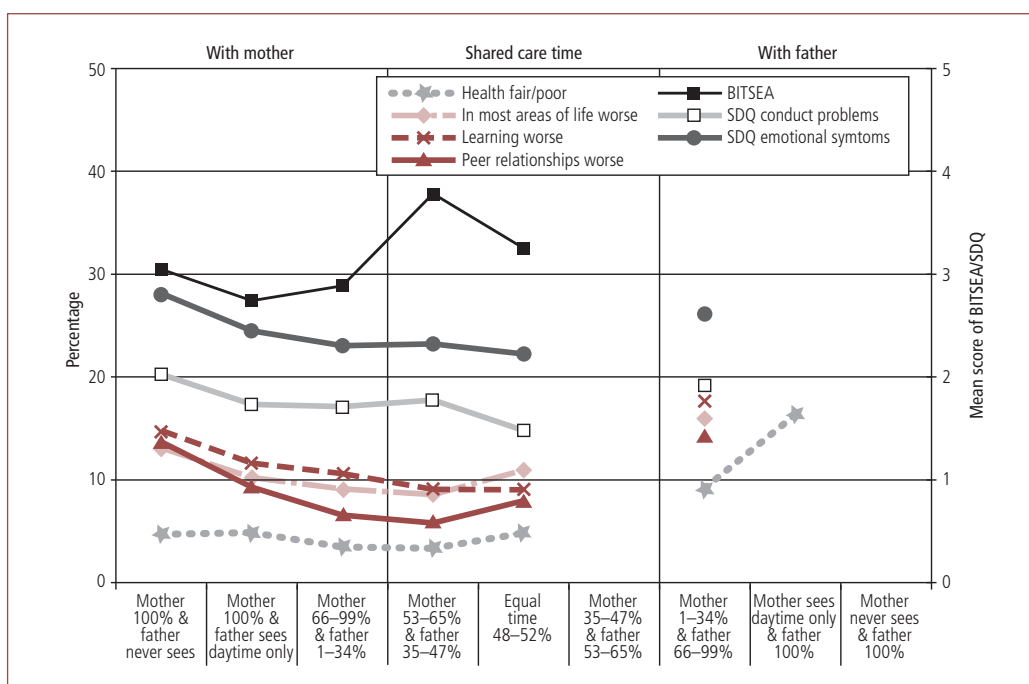
Source: LSSF W1 2008

**Figure 11.1** Negative measures of child wellbeing, by care-time arrangements, fathers' reports, 2008



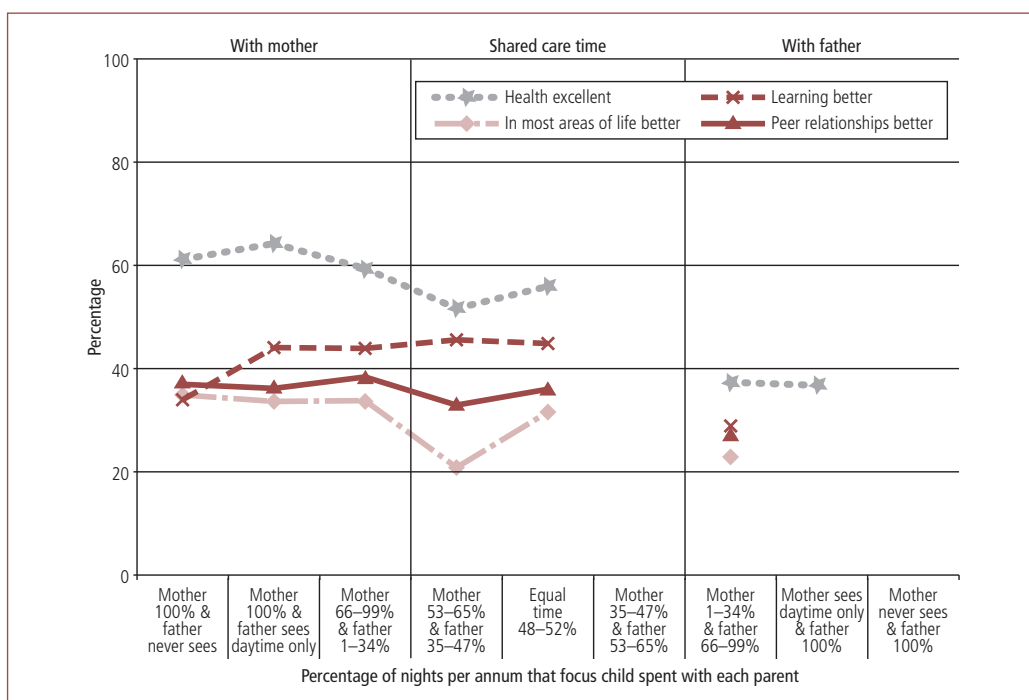
Source: LSSF W1 2008

**Figure 11.2** Positive measures of child wellbeing, by care-time arrangements, fathers' reports, 2008



Source: LSSF W1 2008

**Figure 11.3 Negative measures of child wellbeing, by care-time arrangements, mothers' reports, 2008**



Source: LSSF W1 2008

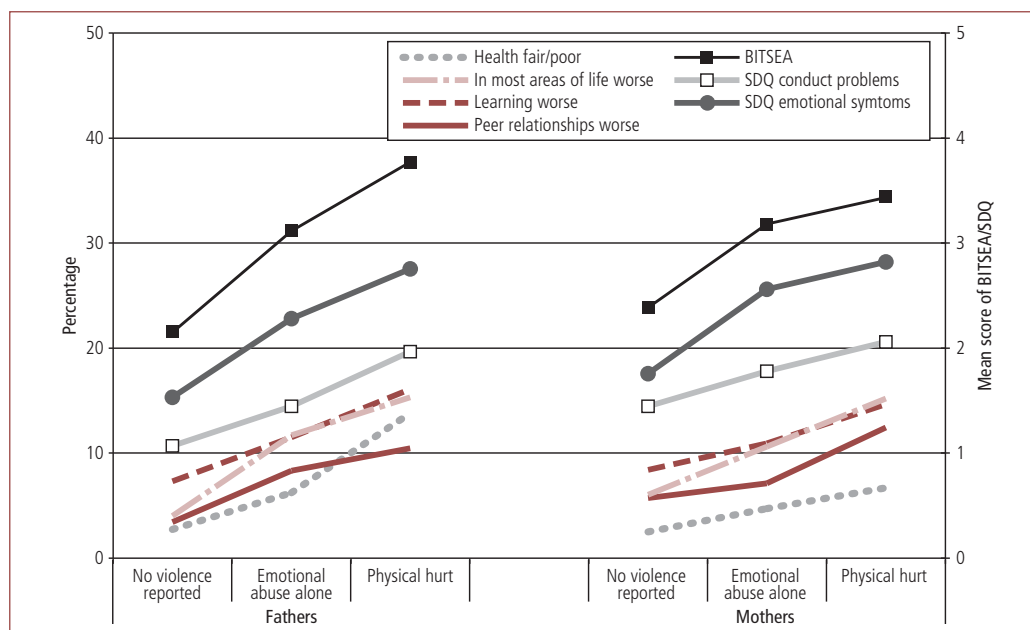
**Figure 11.4 Positive measures of child wellbeing, by care-time arrangements, mothers' reports, 2008**

## 11.3 Family violence, safety issues and the nature of inter-parental relationships

This section examines the relationship between children's wellbeing and their exposure to violence (before or during separation), parents' safety concerns, and parental views about the quality of their relationship with their child's other parent.

### 11.3.1 Family violence and child wellbeing post-separation

There was a clear and strong link between parental experience of family violence and child low wellbeing. Across all measures, children whose mother reported having experienced family violence (emotional abuse or physical hurt) appeared to have a higher rate of low wellbeing based on mothers' reports than those whose mothers did not report having experienced family violence (Figure 11.5). A similar relationship emerged between fathers' reports of having experienced family violence and their assessments of their child's wellbeing.



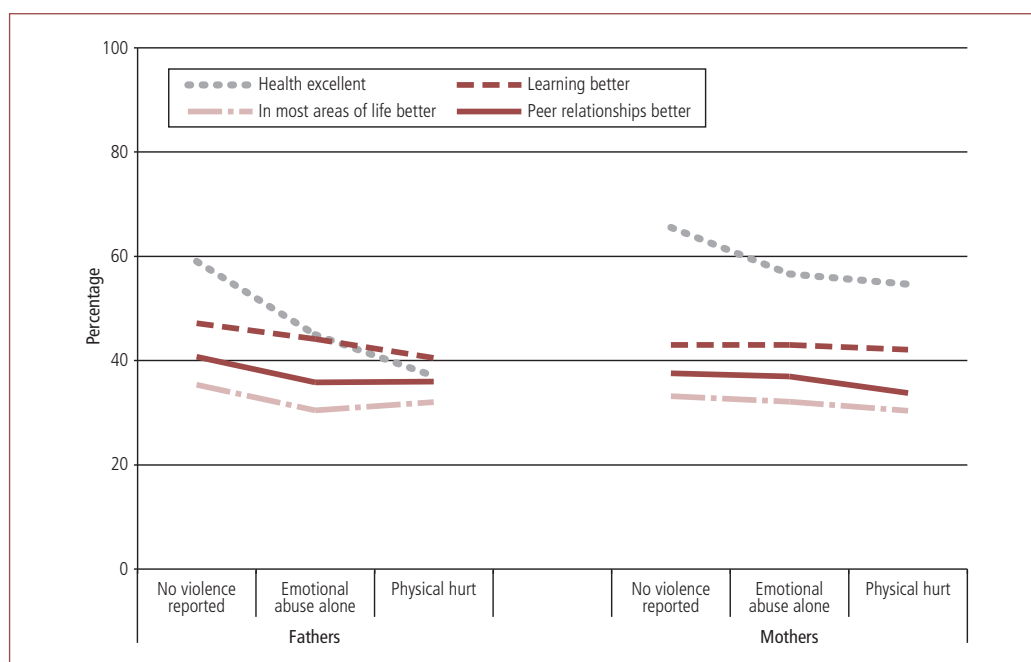
Source: LSSF W1 2008

**Figure 11.5** Negative measures of child wellbeing, by reports of experience of family violence, fathers' and mothers' reports, 2008

For example, the following proportions of mothers indicated that their child had fair or poor health: 3% who reported that they had not been physically or emotionally abused by the father before or during the separation, 5% who said that the father had abused them emotionally but had not physically hurt them, and 7% who said that the father had physically hurt them. According to fathers' reports, fair or poor health was experienced by 3% of children whose mothers had not physically or emotionally abused their father, by 6% of those whose mothers had emotionally abused but not physically hurt their father, and by 14% of those whose mother had physically hurt their father.

In relation to positive wellbeing, the children appeared to fare better when there had been no history of physical or emotional abuse than when either emotional abuse alone or physical violence had taken place—particularly the latter (Figure 11.6). This relationship between child wellbeing and family violence emerged from the reports of fathers and mothers, although it is important to recognise that mothers were more likely to report having experienced family violence than were fathers (see Chapter 2).





Source: LSSFW1 2008

**Figure 11.6** Positive measures of child wellbeing, by reports of experience of family violence, fathers' and mothers' reports, 2008

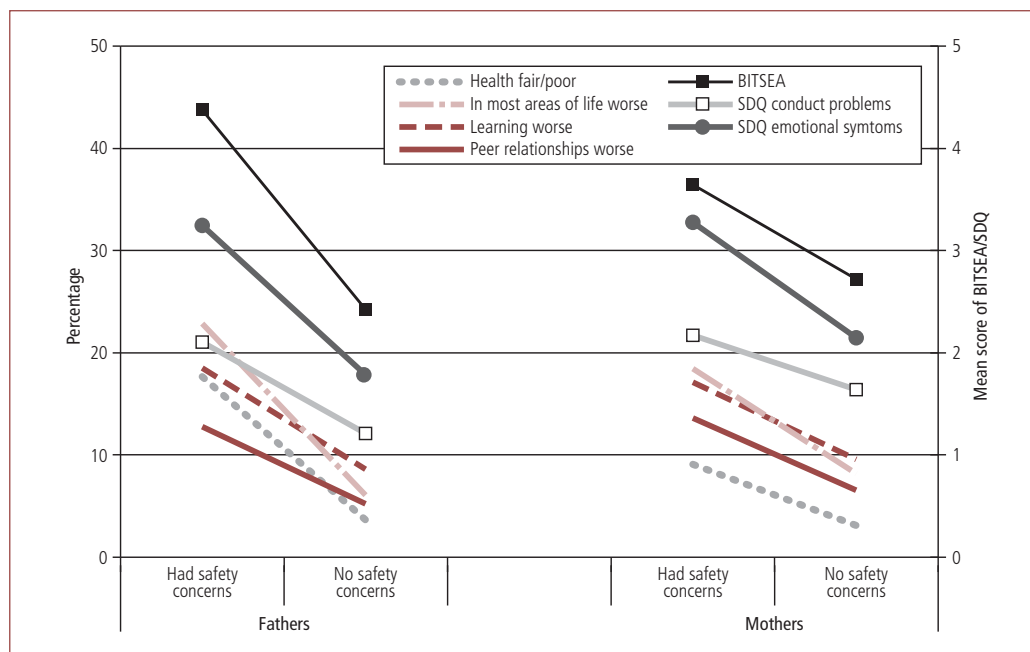
### 11.3.2 Current safety concerns and child wellbeing post-separation

Figures 11.7 and 11.8 show the relationship between fathers' and mothers' reports of their child's wellbeing and their safety concerns (in relation to themselves and/or their child) as a result of ongoing contact with their child's other parent, with Figure 11.7 focusing on low wellbeing and Figure 11.8 focusing on high wellbeing.<sup>8</sup> Regardless of gender, parents who expressed such concerns described their child's wellbeing less favourably than parents who did not indicate any safety concerns.

The link between child wellbeing and safety concerns derived from fathers' perspectives was stronger than that derived from mothers' perspectives. For example, based on mothers' reports, the children's average score on the SDQ measure of conduct problems was 2.17 where the mother held safety concerns and 1.64 where the mother did not hold such concerns. Based on fathers' reports, the children's average score on this measure was 2.10 where the father held safety concerns and 1.21 where he did not hold such concerns. As another example, the child was described as having fair or poor health by 9% of mothers who held such concerns and 3% who did not hold these concerns, and by 18% of fathers who held such concerns and 4% who did not hold these concerns.

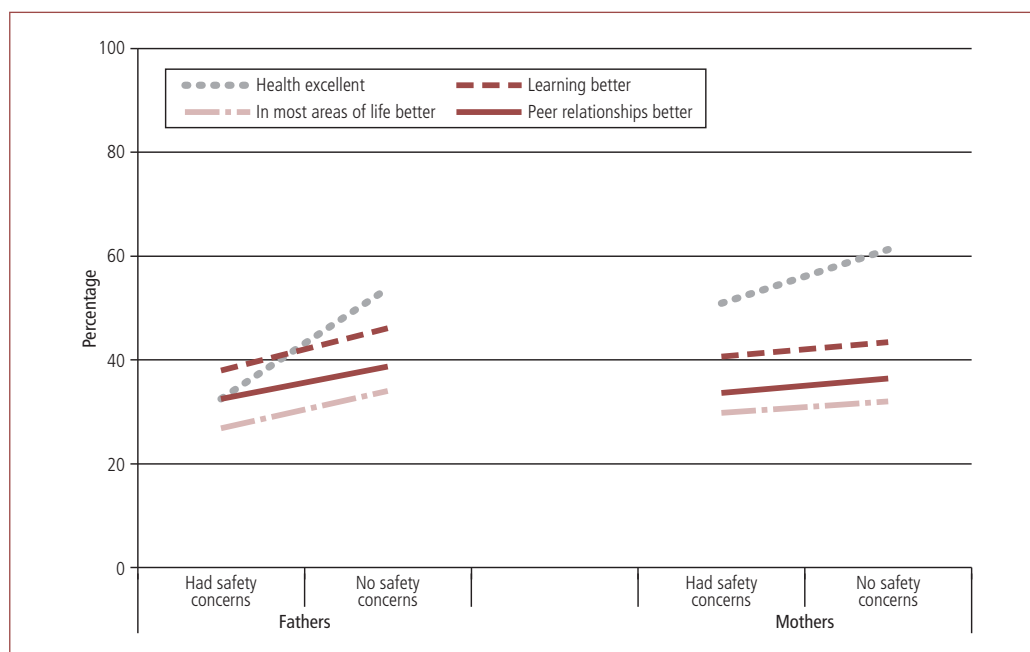
From the perspectives of both mothers and fathers, children appeared to do better if their parents' post-separation relationship was friendly rather than distant, conflictual or fearful (Figures 11.9 and 11.10 (on page 265)). Specifically, children whose parents' relationship was highly conflictual or fearful had lower levels of wellbeing than those whose parents' relationship was friendly or cooperative. Children whose parents had a distant relationship with each other appeared to be doing less well than those whose parents had a friendly or cooperative relationship, but better than those whose parents had a highly conflictual or fearful relationship.

<sup>8</sup> Chapter 2 provides a detailed discussion of violence before or during separation and safety concerns. The concerns of mothers and fathers mostly related to the child's other parent rather than to a partner or some other person. This was especially the case for mothers.



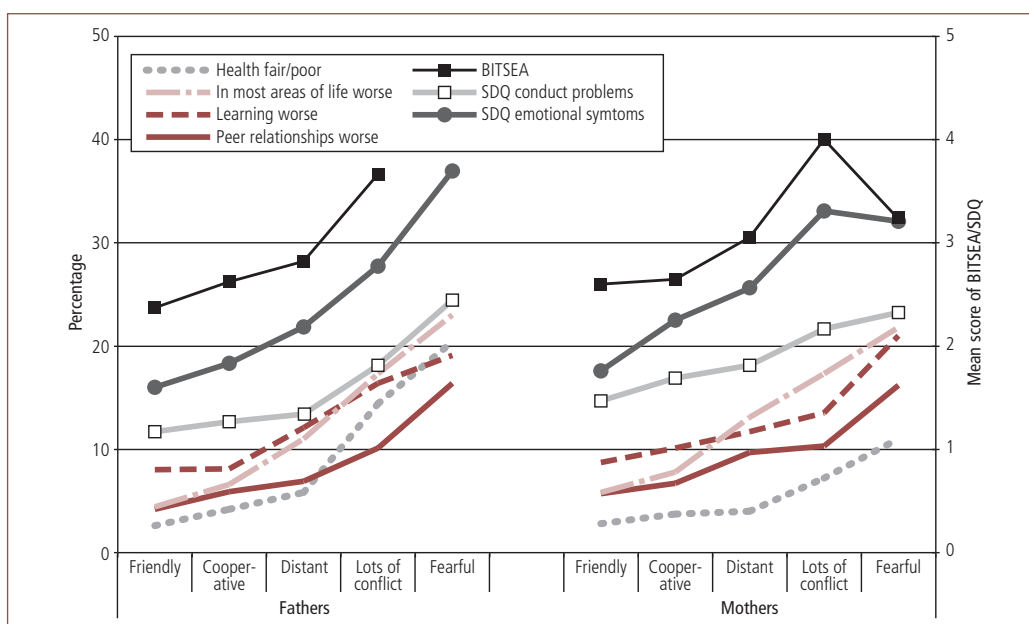
Source: LSSF W1 2008

**Figure 11.7** Negative measures of child wellbeing, by whether parents had any safety concerns for self and/or focus child, fathers' and mothers' reports, 2008



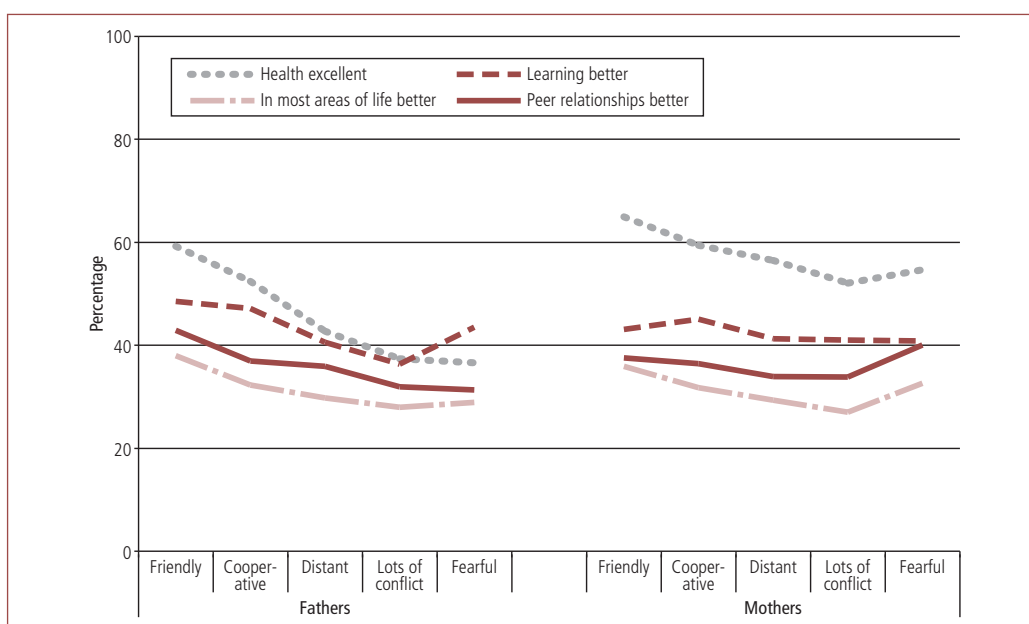
Source: LSSF W1 2008

**Figure 11.8** Positive measures of child wellbeing, by whether parents had any safety concerns for self and/or focus child, fathers' and mothers' reports, 2008



Source: LSSF W1 2008

**Figure 11.9** Negative measures of child wellbeing, by nature of inter-parental relationships, fathers' and mothers' reports, 2008



Source: LSSF W1 2008

**Figure 11.10** Positive measures of child wellbeing, by nature of inter-parental relationships, fathers' and mothers' reports, 2008

### 11.3.3 Impact of care-time arrangements, inter-parental relationship quality and violence and safety issues on child wellbeing

This section provides a summary of the results of regression modelling of the impact of violence, safety concerns and poor inter-parental relationships on child wellbeing (see Section 11.1 for a discussion of the methodological issues involved in estimating the impact of these factors on child wellbeing). The text box provides a detailed summary of the statistical techniques used and empirical specifications.<sup>9</sup>

<sup>9</sup> The regression results (coefficients and *t*-statistics) and the summary statistics for the models are provided in Appendix E.

## Technical description of estimation method

Ordinary least squares (OLS) is used for wellbeing measures that are continuous (i.e., the SDQ and BITSEA measures) and logistic regression is used for wellbeing measures that are binary (i.e., zero/one variable(s), which applied to all the other measures). The variable for general health is coded as 1 if the rating is fair or poor, 0 for all other responses. For learning, getting along with other children and overall progress, each variable is coded as 1 if the rating is worse or much worse, 0 for all other responses.

Care-time arrangements are captured by the following set of dummy variables (i.e., variables that take the value of one if the respondent has the particular characteristic and zero otherwise):

- mother 66–99% of nights, and father 1–34% of nights (omitted reference category);
- mother 100% of nights, and father never saw child;
- mother 100% of nights, and father saw child in the daytime only;
- mother 53–65% of nights, and father 35–47% of nights;
- equal time: 48–52% of nights each; and
- mother 0–47% of nights, and father 53–100% of nights.

It is important to note that, unlike in the other chapters, two rather than three shared care-time arrangements are examined: equal care time (48–52% of nights with each parent) and shared care time in which the child spent more nights with the mother than father (53–65% of nights with the mother). Only a small proportion of children experienced shared care time involving more nights with their father than mother (i.e., 53–65% of nights with their father). The latter group was therefore combined with those who spent most or all nights with the father.

The perceived quality of inter-parental relationships was captured by the following set of dummy variables: friendly (omitted category), cooperative, distant, lots of conflict, and fearful.

Family violence before or during separation was specified using the following set of dummy variables: no violence (omitted category), emotional abuse only, and physical hurt. A detailed discussion of the measures of inter-parental relationships, violence and safety concerns is provided in Chapter 2.

The extent to which the impact of shared care time on child wellbeing varied according to reports of pre-separation violence, ongoing safety concerns and the nature of the post-separation inter-parental relationship was tested by interacting care-time arrangement with these variables. A separate model was estimated for each set of interactions. That is, the first interaction model assesses the extent to which the wellbeing of children with shared care-time arrangements varied according to the parents' indication of whether they had experienced physical abuse, emotional abuse alone or neither; the second interaction model assesses the extent to which the wellbeing of children with shared care-time arrangements varied according to whether or not parents expressed safety concerns; and the third assesses the extent to which the wellbeing of children with shared care-time arrangements varied according to parents' descriptions of the nature of their current relationship with the child's other parent.

In addition, the extent to which wellbeing outcomes for children with shared care varied with the age of the study child is tested by interacting care-time arrangements with the age of the study child.

Characteristics of the parents included in the regression model were: age, educational attainment, employment status, relationship status at separation (married, cohabiting, not lived together since the birth of the focus child), Indigenous status, whether born overseas, whether living with a partner, and whether there had been any mental health problems or substance misuse issues prior to separation.<sup>10</sup> Characteristics of the focus child included in the regression model were age and gender.

The models were estimated separately for mothers and fathers and for all respondents (i.e., mothers and fathers combined). The estimates of the combined model were similar to those found for the separate models for mothers and fathers.

<sup>10</sup> Parents were asked whether, before finally separating, there had ever been issues with mental health problems, alcohol or drug use, or another addiction. They were not asked to indicate which member of the family had such problems in order to increase the chance that such matters would be acknowledged.

## Relationship between child wellbeing and care-time arrangements

Table 11.2 provides a summary of the regression modelling results regarding the relationship between care-time arrangements and children's wellbeing. The top panel refers to the estimated impact of care-time arrangements on child wellbeing as reported by fathers and the bottom panel summarises the estimates as reported by mothers. The reference group comprises children who were spending 66–99% of nights with their mother and 1–34% of nights with the father (the most common group). That is, the wellbeing of children with all other care-time arrangements were compared with that of children in this reference group.

**Table 11.2 Relationship between child wellbeing and care-time arrangements, statistically significant estimates, 2008**

	Health	Learning	Peer relationships	Overall progress	Conduct problems (SDQ)	Emotional symptoms (SDQ)	Behavioural problems (BITSEA)
<b>Fathers</b>							
Mother 66–99% & father 1–34% (reference category)							
Mother 100% & father never sees		Worse			Worse	Worse	
Mother 100% & father sees daytime only							
Mother 53–65% & father 35–47%		Better		Better			
Equal time 48–52%	Better	Better		Better			
Mother 0–47% & father 53–100%	Better					Better	
<b>Mothers</b>							
Mother 66–99% & father 1–34% (reference category)							
Mother 100% & father never sees			Worse				
Mother 100% & father sees daytime only							
Mother 53–65% & father 35–47%							
Equal time 48–52%							
Mother 0–47% & father 53–100%	Worse		Worse	Worse	Worse		

Notes: The direction of the estimated effect is only shown when the regression coefficient is statistically significant at the 5% or better confidence level. Estimates of the underlying regression models provided in Appendix E.

Source: LSSF W1 2008

The results of the regression modelling were generally consistent with the bivariate relationships discussed in Section 11.2.3. For example, the lower level of child wellbeing reported by fathers who never saw the child was apparent in the regression modelling. No significant relationship between child wellbeing and care-time arrangements emerged for mothers' reports, with the exception of children who mainly lived with the father (0–47% nights with mother and 53–100% with father), who were worse off in four measures compared with those children who mainly lived with the mother and had some nights with the father (66–99% nights with mother and 1–34% with father).

The results suggest that children with shared care-time arrangements (equal care time 48–52%, mother 53–65% and father 35–47%) were doing as well as, or better than, children who were with their father for 1–34% of nights. According to fathers' reports, children with shared care-time arrangements had higher wellbeing compared with children who were with their father for a minority of nights, and according to mothers' reports, the wellbeing of children in these two groups did not differ significantly. The reports of fathers and mothers were therefore consistent in suggesting that children in shared care-time arrangements were not doing worse than those who were spending a minority of nights with their father.

According to the reports of both fathers and mothers, the wellbeing of children with daytime-only contact did not differ significantly from that of children who were with their father for 1–34% of nights.

According to the reports of mothers, children who stayed with their mother for less than 48% of nights had lower levels of wellbeing for the health measure, peer relationships, overall progress and were more likely to have conduct problems.

### Relationship between child wellbeing and experience of family violence, safety concerns and the inter-parental relationships

Table 11.3 provides a summary of the multivariate analyses of children's wellbeing and three indicators of family dynamics—current quality of inter-parental relationship, reports of the experience of pre-separation family violence, and parents' expressions of safety concerns for themselves and/or their child.

**Table 11.3 Relationship between child wellbeing and family violence, safety concerns and inter-parental relationships, summary of regression modelling, 2008**

	Health	Learning	Peer relationships	Overall progress	Conduct problems (SDQ)	Emotional symptoms (SDQ)	Behavioural problems (BITSEA)
<b>Fathers</b>							
Reports of experience of family violence before separation							
Violence not reported (reference category)							
Emotional abuse only			Worse	Worse		Worse	Worse
Physical hurt	Worse		Worse	Worse	Worse	Worse	Worse
Safety concerns							
Safety concerns	Worse	Worse	Worse	Worse	Worse	Worse	Worse
Perceived quality of inter-parental relationship							
Friendly (reference category)							
Cooperative							
Distant						Worse	
Lots of conflict	Worse	Worse		Worse		Worse	
Fearful	Worse					Worse	
<b>Mothers</b>							
Reports of experience of family violence before separation							
Neither (reference category)							
Emotional abuse only							Worse
Physical hurt							
Safety concerns							
Safety concerns	Worse	Worse		Worse		Worse	Worse
Perceived quality of inter-parental relationship							
Friendly (reference category)							
Cooperative						Worse	Better
Distant				Worse		Worse	
Lots of conflict				Worse	Worse	Worse	Worse
Fearful				Worse	Worse		

Notes: The direction of the estimated effect shown when the regression coefficient is statistically significant at the 5% or better confidence level. Estimates of the underlying regression models provided in Appendix E.

Source: LSSF W1 2008

According to fathers' reports, a history of family violence was associated with a lower level of child wellbeing. Across all except one measure (learning for children aged 4 or more years), children whose father had been physically hurt by the mother prior to separation had statistically lower wellbeing than those whose father did not report physical violence. In addition, children whose father had experienced emotional abuse alone had statistically significant lower wellbeing on four of the seven measures compared with children whose father reported not having experienced violence.

The bivariate analysis (Section 11.3.1) suggests that children whose mothers reported experience of family violence had a lower level of wellbeing (as reported by the mother) than children whose mothers did not report violence. However, when differences in their socio-demographic characteristics and family dynamics were controlled, the relationship between a history of family violence and child wellbeing was no longer statistically significant. This suggests that the negative effect of pre-separation experience of family violence on children's wellbeing, based on mothers' reports, is captured by other factors, such as the mother's safety concerns and the nature of the post-separation inter-parental relationship. Of course, as discussed in Chapter 2, safety concerns are strongly related to having experienced physical violence.

Safety concerns have a negative impact upon children's wellbeing, as assessed by both mothers and fathers. Across most measures of wellbeing, children whose parents held safety concerns had a significantly lower level of wellbeing compared with those whose parents did not have such concerns.

In relation to perceived quality of inter-parental relationship, children whose fathers described the inter-parental relationship as highly conflictual had a statistically significant lower level of wellbeing on four of the measures compared with fathers who described the relationship with the other parent as friendly. Fathers who reported a fearful relationship also provided significantly less favourable assessments for two measures of their child's wellbeing, compared with fathers with a friendly relationship with the mother. These patterns were also apparent as reported by mothers; that is, highly conflictual or fearful relationships between the parents were associated with less favourable assessments of children's wellbeing on some of the measures.

### Interactions between care-time arrangements and violence, safety concerns and inter-parental relationships

As outlined earlier, an important issue that needs to be addressed when evaluating the changes to the family law system (which have encouraged substantial involvement of each parent in the child's life in some circumstances) is whether some family dynamics, such as inter-parental conflict and safety concerns, are more damaging to children with some care-time arrangements than to children with other care-time arrangements.

This section examines whether shared care-time arrangements increase the negative effects on child wellbeing of family violence (measured for the pre-separation period or the period covering the separation process), safety concerns and a highly conflictual or fearful inter-parental relationship.<sup>11</sup> There have also been concerns raised about the developmental appropriateness of having shared care time for young children (McIntosh & Chisholm, 2008), which is also examined in this section.

As discussed above, the extent to which shared care-time arrangements may be problematic in the context of family violence, high-conflict inter-parental relationships or safety concerns is estimated within a regression model framework by interacting care time with: (a) the child's age, (b) the nature of the inter-parental relationship, (c) a history of family violence, and (d) safety concerns.<sup>12</sup>

There is no evidence of any differential effect of care-time arrangements on children's wellbeing for children of different ages. The same results emerged in relation to: (a) the impact of care-time arrangements for children with parents whose relationship with each other varied in quality, (b) the impact of care-time arrangements for children whose parents reported a history of experience of family violence, and (c) the impact of care-time arrangements for children whose parents' relationship with each other differed in quality. For each of these sets of analyses, few interaction terms were statistically significant and there was no clear pattern to those interaction terms that were statistically significant.

Therefore, while previous experience of family violence and current conflictual or fearful relationships between the parents were associated with poor outcomes for children, analysis of

11 Family violence only captured reports by respondents that the child's other parent had abused them emotionally before or during separation or had physically hurt them before separation. Violence inflicted by respondents was not assessed.

12 Estimating the interactions between care-time arrangements and the measures of the inter-parental relationship involves estimating 7 regression models (a separate model for mothers and fathers for each set of interactions for each of the 7 measures of child wellbeing—a total of 49 regression models). The coefficient estimates and standard errors for each of the underlying regression models are provided in Appendix E.



parents who participated in the LSSF W1 2008 suggests that, one to two years after separation, such negative dynamics were not more or less damaging for children in some care-time arrangements than for children in other arrangements.

The estimates for the interaction between care time and current safety concerns produced a quite different picture. Children in shared care-time arrangements where fathers reported safety concerns did not appear (according to fathers' reports) to have a lower level of wellbeing than when the father did not have safety concerns. However, children in shared care-time arrangements where mothers reported safety concerns did seem (according to mothers' reports) to have lower wellbeing than when the mother did not have safety concerns, and this effect was statistically significant for all measures except the measures on learning (4+ years) and the behavioural problems scale (1–3 years).

Figures 11.11 and 11.12 show the predicted wellbeing of children according to their care-time arrangements and mothers' reports about whether they held safety concerns.<sup>13</sup> The figures show how child wellbeing varies according to whether the mother held safety concerns for children who lived mostly with the mother (66–99% of nights or had who had daytime-only care with their father) and children with shared care-time arrangements (35–65% of nights). The predicted wellbeing was calculated while holding constant all the explanatory variables apart from care-time arrangement and safety concerns at the sample mean.

The following trends are apparent in these figures:

- Children whose mothers expressed safety concerns had lower wellbeing (according to mothers' reports) than children whose mothers said that they did not hold any safety concerns. This is true irrespective of the care-time arrangement.
- Among children whose mothers held safety concerns, those who were in shared care-time arrangements fared worse in terms of wellbeing than those who were living mostly with their mother.
- Shared care time worsens the negative impacts associated with mothers' safety concerns on child wellbeing.

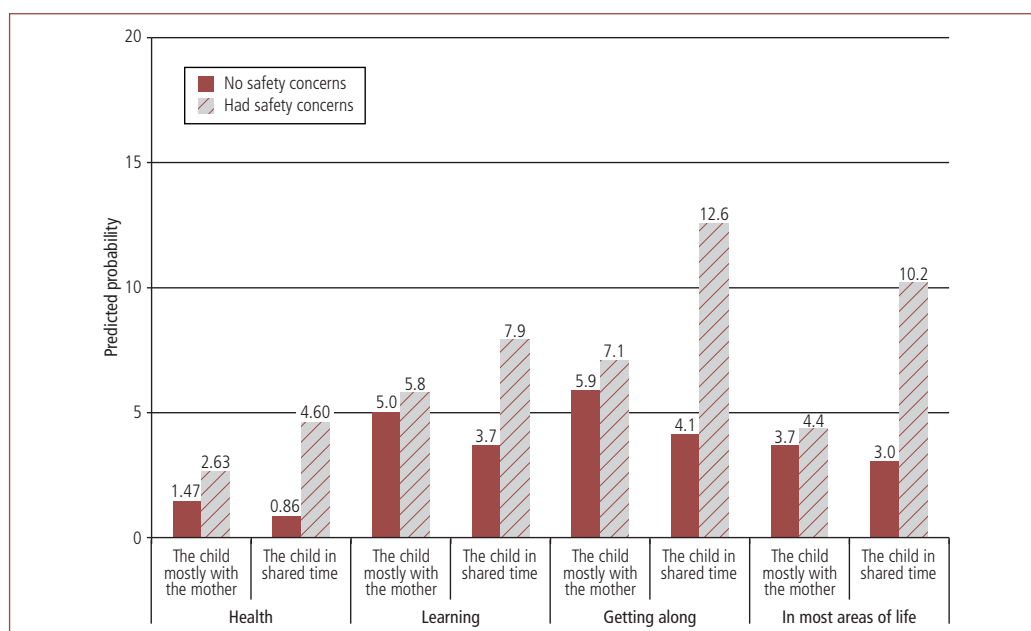
For example, where the child lived mostly with a mother who held no safety concerns, the predicted proportion with fair or poor health was only 2%. This increased to 3% where the mother expressed safety concerns. Among children in a shared care-time arrangement, the predicted proportion with fair or poor health was 1% where there were no safety concerns and 5% where there were safety concerns.

The effects of safety concerns for children in shared care-time arrangements is particularly marked in relation to how well the child (aged at least 4 years old) was faring relative to his or her peers (regarding learning, peer relationships and overall progress). To take the most extreme of these three sets of results—where the child lived mostly with a mother who held no safety concerns—the predicted proportion with poor peer relationships was only 6%. This increased to 7% where the mother expressed safety concerns. Among children in a shared care-time arrangement, the predicted proportion with such poor peer relationships was 4% where there were no safety concerns and 13% where there were safety concerns.

## 11.4 Care-time arrangements, violence and safety issues, inter-parental relationships and child wellbeing: Estimates using LSAC

All the above-mentioned sets of analysis have been based on the LSSF W1 2008. As already noted, all these parents had separated after 1 July 2006, and most had been separated for one to two years when they were interviewed. To test the robustness of the findings concerning the relationship between children's wellbeing and shared care-time arrangements, similar analyses based on data from LSAC was undertaken. Some of the outcome measures used differ between LSAC and the LSSF 2008 and, as noted earlier, the reports of child wellbeing were provided by parents (almost exclusively mothers), teachers and the children themselves. The LSAC survey

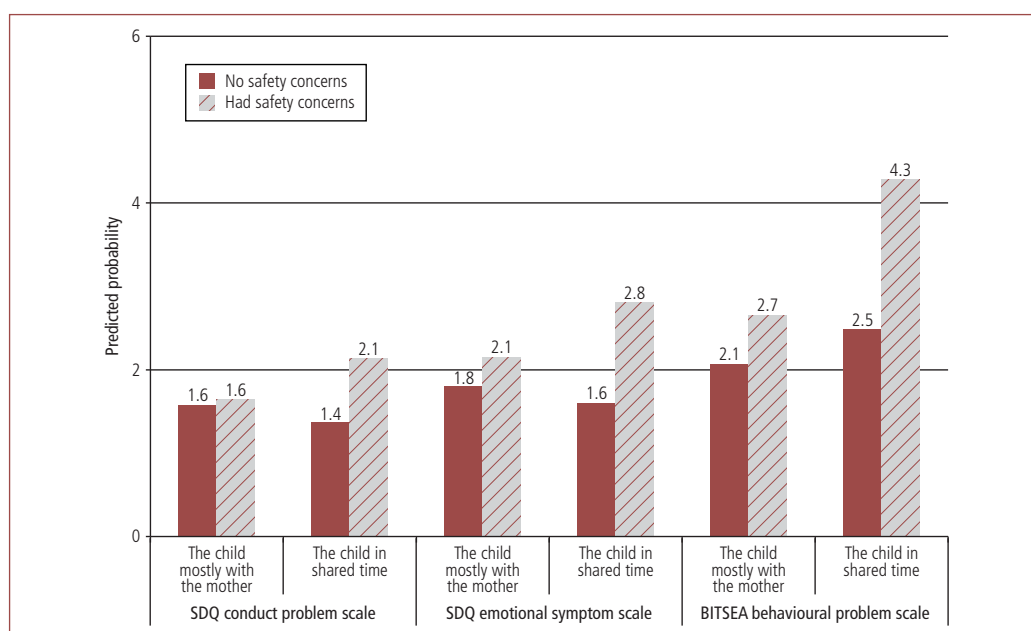
<sup>13</sup> The interactions between shared care time and safety concerns were not statistically significant for the learning measure and the BITSEA Behavioural Problems Scale. These measures are included in the figures to highlight the fact that the direction of trends for these measures is consistent with those for all other measures of wellbeing.



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

Source: LSSF W1 2008

**Figure 11.11 Negative measures of child wellbeing, by care time and safety concerns (health, learning, getting along, overall progress), mothers' report, 2008**



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

Source: LSSF W1 2008

**Figure 11.12 Negative measures of child wellbeing, by care time and safety concerns (social-emotional development), mothers' report, 2008**

does not provide comparable data on violence to that collected in the LSSF W1 2008 and so it is not possible to estimate the interaction between violence and care time using LSAC. LSAC does, however, include information on the nature of the inter-parental relationship, and this variable is used to examine whether the negative impacts of parental conflict on children are worsened by shared care-time arrangements.

**Table 11.4 Wellbeing of children in different care-time arrangements, multivariate analysis, teachers' report, LSAC**

	Age of focus child	1–13% nights father	14–34% nights with father	35–65% nights with father (shared care)	No contact with father
SDQ total difficulties	4–5 years		Better		Worse
	6–7 years				
	8–9 years				Worse
Hyperactivity	4–5 years		Better		
	6–7 years				Worse
	8–9 years				Worse
Peer problems	4–5 years		Better		Worse
	6–7 years		Better		
	8–9 years				
Conduct problems	4–5 years				
	6–7 years				
	8–9 years				
Emotional problems	4–5 years			Worse	Worse
	6–7 years				
	8–9 years				
Pro-social	4–5 years				
	6–7 years				
	8–9 years				
Approaches to learning	4–5 years				
	6–7 years				Worse
	8–9 years				Worse

Notes: Reference group: child saw one parent during daytime and no overnight stay. The models were adjusted for financial wellbeing, parenting style, maternal characteristics (education, age and mental health), and children's age and sex.

Source: LSAC Wave 1 to Wave 3 (2004–08)

**Table 11.5 Children's self-report of feelings and PPVT, multivariate analysis, LSAC**

	Age of focus child	1–13% nights father	14–34% nights with father	35–65% nights with father (shared care)	No contact with father
Child reported feelings	4–5 years				
	6–7 years				
	8–9 years				
PPVT	4–5 years			Better	
	6–7 years				
	8–9 years	Better	Better	Better	

Note: The models were adjusted for financial wellbeing, parenting style, maternal characteristics (education, age and mental health), and children's age and sex.

Source: LSAC Wave 1 to Wave 3 (2004–08)

In LSAC, parents and teachers provided ratings of five different dimensions of wellbeing measured by the SDQ (hyperactivity, peer problems, conduct problems, emotional problems, and prosocial behaviour). In addition, a “total difficulties” SDQ measure was derived, based on parents' and teachers' reports (taken separately). Teachers also indicated the child's approach to learning and the children described their feelings (more sadness, anger, fear, less happy). Children also completed the Peabody Picture Vocabulary Test (PPVT). Data from the first three waves of LSAC collected in 2004, 2006 and 2008 are used to estimate the impact of care-time arrangements on child wellbeing at three ages: 4–5 years, 6–7 years and 8–9 years of age.

The wellbeing of children in five care-time arrangements was examined: those with 1–13% of nights with the father, with 14–34% of nights with the father, with 35–65% of nights with the father, with daytime only with the father, and who never saw the father.

Children with separated parents in LSAC may have separated before or after July 2006 and so the LSAC sample includes children's whose parents separated before and after the 2006 changes to the family law system.

The results of the estimates of the impact of care time on child wellbeing are briefly summarised in this section. Detailed information on the models estimated and the regression results are provided in Appendix E.

For most indicators of wellbeing, there was no significant link between the children's wellbeing and their care-time arrangements. If anything, children with shared care time (and 1–34% of nights with the father) fared better than children with other care-time arrangements. This was particularly true when wellbeing was based on the child's self-report and on the direct assessment of the child's language skills.

Virtually none of the interaction terms between care-time arrangement and the nature of the inter-parental relationship post-separation were statistically significant and there was no clear pattern in the smattering of significant interaction terms. Estimates are summarised in Tables 11.4 and 11.5.

The analysis of the LSAC data thus produces results that are very similar to those resulting from the LSSF W1 2008.

## 11.5 Summary

Shared care does not appear to be associated with worse outcomes for children compared with the child spending 1–34% of nights with the father or having daytime-only contact. If anything, children in a shared care-time arrangement fared marginally better.

While a history of family violence and highly conflictual relationships between the children appears to be quite damaging for children, children in shared care-time arrangements seem to fare no worse than children in other care-time arrangements where there has been a history of violence or where there is ongoing high conflict between the parents. One possible explanation for this is that for those with a history of violence, the violence was no longer so evident once the parents separated. These results also could have occurred because the measures adopted were quite broad. However, children appeared also to fare relatively poorly where their mothers expressed safety concerns associated with ongoing contact with the child's other parent. Where this situation existed, children in shared care-time arrangements fared worse, according to mothers' assessments, than those who stayed with their father for only 1–34% of nights.

While safety concerns for some mothers may have been linked with concerns about the child being allowed to engage in activities that may hurt them, Chapter 10 showed a strong link between pre-separation family violence and ongoing safety concerns. In addition, it is important to note that around half the mothers with safety concerns indicated that there had been problems in the relationship relating to mental health or substance misuse. It therefore seems likely that, for many mothers, safety concerns were often associated with such continuing problematic issues, especially violence.



Family relationships extend beyond household boundaries, with a great deal of “caring and sharing” often occurring between members of the extended family network. Most infants and children aged 4–5 years see at least one of their grandparents on a weekly or more frequent basis (Gray, Misson, & Hayes, 2005), with grandparents being important providers of informal child care, especially for children under the age of 5 years (Australian Bureau of Statistics [ABS], 2006), and some grandparents assuming full responsibility for raising their grandchildren (Ochiltree, 2006). In addition, many grandparents provide financial support to grandchildren and the parents, especially in times of crisis (Millward, 1998).

Where parents are separating, grandparents can play an important role in assisting children to cope. However, not all grandparents can or wish to have much to do with their children (Ochiltree, 2006), and among those who are involved, not all play out their roles in positive ways (Fergusson, 2004). The dynamics of post-separation relationships between grandparents, grandchildren and the parents of these grandchildren can be complex and maintaining these relationships will not always be of benefit to the family. For example, some grandparents may “take sides”, perhaps adding fuel to the conflict between the parents and to the distress of the grandchildren (Fergusson, 2004).

Previous research suggests that grandchildren whose parents have separated are more likely to have contact with their maternal than paternal grandparents (Cherlin & Furstenberg, 1986; Lussier, Deater-Deckard, Dunn, & Davies, 2002; Weston, 1992).

## 12.1 Grandparents and the 2006 family law reforms

One of the aims of the 2006 family law reforms was to lessen the potential for parental separation to diminish or sever the relationship between children and their grandparents and other people who play a significant and beneficial role in the children’s lives.

The *Shared Parental Responsibility Act 2006* (Cth) recognises that “children have a right to spend time on a regular basis with, and communicate with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives) where this is consistent with their best interests” (s60B(1)(2)(b)). By so doing, the important role that grandparents (and other relatives) can play in children’s lives following the separation of their parents has been more specifically recognised. The stated objective behind this change was to “facilitate greater involvement of extended family members in the lives of children”.<sup>1</sup>

### 12.1.1 Key evaluation questions

In light of this objective, the present chapter considers the following questions:

- What are the views of parents in general about children maintaining contact with each set of grandparents after the children’s parents separate?
- How close or involved is the relationship between grandchildren and grandparents in separated and non-separated families?
- Where the parents have separated, to what extent does the grandparent–grandchild relationship vary according to the living arrangements of the grandchild?

<sup>1</sup> Explanatory Memorandum ¶ 39, Family Law Amendment (Shared Parental Responsibility) Bill 2006 (Cth).

- What are the preferences of parents and grandparents regarding the grandparent–grandchild relationship after parental separation?
- What is the impact of parental separation on the relationship, as perceived by parents and grandparents?
- How common is it for parents to consider grandparenting time when developing their post-separation parenting arrangements?
- Have family lawyers noticed any change in the number of grandparents seeking their advice, and are family lawyers more inclined to advise grandparents that, since the reforms, they are in a stronger position in relation to spending time with their grandchildren?
- What are grandparents' views about various aspects of the 2006 reforms?
- What are family relationship service providers' perceptions of changes in the engagement of grandparents in post-separation families?

### 12.1.2 Datasets

The analyses in this chapter are based on several datasets:

- General Population of Parents Survey (GPPS) 2006 and 2009—Each of these surveys of both separated and non-separated parents included a module eliciting parents' views about the relationship between their own parents and their children.<sup>2</sup> In addition, the GPPS 2009 tapped parents' attitudes concerning the importance of grandchildren maintaining the same level of contact with grandparents on both sides after parental separation. All parents in each of these surveys had at least one child under the age of 18 years.
- Longitudinal Study of Separated Families Wave 1 (LSSF W1) 2008 and Looking Back Survey (LBS) 2009—Each of these surveys asked about whether, in deciding on post-separation parenting arrangements, time with grandparents was taken into account. All these parents had at least one child under the age of 18 years at the time of separation and interview.
- Grandparents in Separated Families Study (GSFS) 2009—This online survey sought information on the grandchild's living arrangements and relationship with their grandparent, the grandparent's awareness of the explicit reference to grandparents in the reforms, their views about the likely impact of this specific reference on contact between grandparents and grandchildren, and any services they had used to remain in contact with their grandchild.<sup>3</sup>
- Focus groups from the GSFS 2009—A sub-sample of grandparents who had completed the online survey then participated in one of a series of focus groups. This was designed to understand the day-to-day experiences of being a grandparent to one or more children whose parents had separated.
- Survey of Family Relationship Services Program [FRSP] Clients 2009—Many of these clients had attempted to negotiate arrangements about their grandchildren. The survey included questions on the outcomes of these negotiations and their workability.
- Online Survey of FRSP Staff, 2008 and 2009—These surveys included questions on whether there had been a growing interest in grandparenting post-reform and the effectiveness of services in dealing with grandparenting issues.
- Qualitative Study of FRSP Staff 2008 and 2009—Among other issues, these studies tapped the views of FRSP staff members, including managers, about the benefits and difficulties associated with including grandparents (directly or indirectly) in post-separation parenting discussions and the extent to which grandparents and grandparenting had increasingly featured in discussions and service delivery.

2 Parents were also asked about the relationship between grandparents on the other parent's side and their children (GPPS 2006) or their youngest child (GPPS 2009). It is beyond the scope of this chapter to provide details on this.

3 This online survey was limited to grandparents with at least one grandchild aged 2–10 years whose parents separated between 1 January 2004 and 31 December 2008. It is important to note that the sample would not be representative of the Australian population of grandparents in this position. The survey was first conducted in Victoria in order to derive the necessary information to select focus group participants and then extended nationally. Recruitment was achieved through the placement of newspaper advertisements and a number of seniors' publications.



- Family Lawyers Survey (FLS) 2008—This online survey asked family lawyers about whether, since the reforms: (a) more grandparents had been seeking their advice; and (b) the lawyers were more inclined to advise grandparents that they are in a stronger position in relation to spending time with their grandchildren.

### 12.1.3 Identification and grouping of separated parents and grandparents for analysis

This section outlines differences in the way the groups of separated parents were identified between the GPPS 2006 and GPPS 2009, the means of identifying grandparents in the GSFS 2009 whose grandchildren had different care-time arrangements, and the number of respondents represented in all the groups that are compared in subsequent sections.

In the GPPS 2006, the identification of separated parents with different care-time arrangements was based on two questions that were asked of separated parents about their children from their previous relationship(s): (a) “Do any of them live with their other parent?”; and (b) “Do any of them live with you?” Separated parents were classified as resident parents if they indicated that at least one of their children lived with them and that none lived with the other parent, or as non-resident parents if they said that at least one of their children lived with other parent and that none of their children lived with them. Most mothers who had a child living elsewhere also had resident children ( $n = 66$ ). There were only 12 non-resident mothers in the sample according to these classifications and even fewer with a living parent (i.e., grandparent to their child). Some separated parents (66 mothers and 92 fathers) indicated that some but not all their children lived with them. It is not possible to determine whether the children of these parents were in shared care-time arrangements or whether at least one child lived with one parent and another child lived with the other parent.

In the GPPS 2009, questions on care-time arrangements (and involvement) related to the youngest child only. Respondents were asked whether the child mainly lived with them, with the other parent or elsewhere. Some respondents (57 fathers and 31 mothers) volunteered that their child lived with both parents equally, but not all these respondents had living parents. It was decided that all groups that were to be included in the analysis would consist of at least 40 respondents.

The views of the following groups of parents who had at least one living parent are compared:

- non-separated fathers (GPPS 2006:  $n = 1,529$ ; GPPS 2009:  $n = 1,523$ );
- non-separated mothers (GPPS 2006:  $n = 1,761$ ; GPPS 2009:  $n = 1,865$ );
- non-resident fathers (GPPS 2006:  $n = 177$ ; GPPS 2009:  $n = 143$ );
- resident fathers (GPPS 2006:  $n = 79$ ; GPPS 2009:  $n = 62$ );
- resident mothers (GPPS 2006:  $n = 599$ ; GPPS 2009:  $n = 497$ ); and
- equal care-time fathers (GPPS 2009:  $n = 51$ ).

Other groups of respondents comprised fewer than 30 respondents who had a living parent.

The following groups of grandparents represented in the GSFS are compared:

- paternal grandparents whose grandchild lived mainly with the mother ( $n = 204$ );
- maternal grandparents whose grandchild lived mainly with the mother ( $n = 166$ );
- paternal grandparents whose grandchild had an equal care-time arrangement ( $n = 51$ ); and
- maternal grandparents whose grandchild had an equal care-time arrangement ( $n = 41$ ).

There were fewer than 20 respondents in other groups.

The precise number of respondents in each group who answered the various questions examined in this chapter varied slightly.

## 12.2 Views of parents in general about the grandparent–grandchild relationship

### 12.2.1 Parents' attitudes concerning children maintaining contact with their grandparents after parental separation

In the GPPS 2009, parents in general were asked to indicate their level of agreement or disagreement with the statement: “It is important for children to maintain the same level of contact with their grandparents on both sides after parental separation”. The response options were: “strongly agree”, “agree”, “mixed feelings”, “disagree” and “strongly disagree”. Some parents expressed uncertainty, and these responses have been combined with the “mixed feelings” category.

Table 12.1 shows that approximately 90% of both fathers and mothers agreed (either strongly or moderately) with this statement.

**Table 12.1 Agreement with the statement that: “It is important for children to maintain the same level of contact with their grandparents on both sides after parental separation”, fathers and mothers, 2009**

	Fathers	Mothers	All
	%		
Strongly agree	38.5	45.4	42.3
Agree	50.5	44.8	47.4
Mixed feelings/don't know	7.7	6.4	7.0
Disagree	2.8	2.9	2.9
Strongly disagree	0.4	0.5	0.5
Total	99.9	100.0	100.1
Number of observations	2,248	2,750	4,998

Note: Percentages may not total exactly 100.0% due to rounding.  
Source: GPPS 2009

Figure 12.1 shows the patterns of answers provided by parents (both separated and non-separated, with different care-time arrangements) regarding the importance of children maintaining the level of contact that they had with their grandchildren prior to separation.

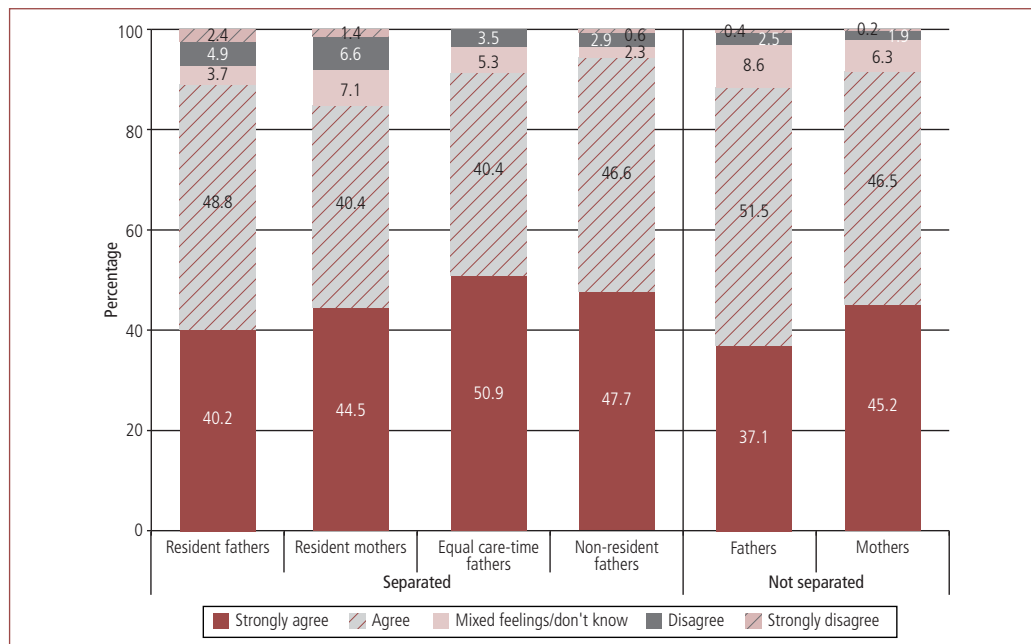
The overwhelming majority of parents in all groups agreed either strongly or moderately with the statement (between 85% and 94%).

These results suggest that attitudes of Australian parents, including those who have separated, are very consistent with the objective of the reforms: to facilitate the continued involvement of grandparents in the lives of their grandchildren after parental separation.

### 12.2.2 Parents' perceptions of current grandparent–grandchild relationships

The three surveys used for this analysis complement each other. The GPPS 2006 and GSFS 2009 asked respondents to indicate the closeness of their relationship with their grandchild(ren), the GPPS 2009 asked about level of involvement, and the GSFS 2009 examined frequency of contact (an aspect of involvement). Levels of closeness and involvement are here seen as representing different dimensions of the meaningfulness of a relationship. The analysis below first outlines the views of non-separated parents and separated parents with different residence status on the closeness of the relationship between their own parents and their children.

The two GPPS surveys first identified whether one or both of the respondent's parents were still alive. The GPPS 2006 subsequently asked whether the relationship between the respondent's parents and their children had become closer, stayed the same, or become more distant since the separation, and whether the current relationship was “very close”, “close”, “not close” or “non-existent”. Some respondents volunteered that the relationship for the different children varied. In the GPPS 2009, parents were asked to indicate whether their own parents were “very involved”, “quite involved”, “not very involved”, “not at all involved” in their youngest child's life, and whether they would like their parents to be “a lot more involved”, “a little more



Note: Percentages may not total exactly 100% due to rounding.

Source: GPPS 2009

**Figure 12.1 Agreement with the statement that: "It is important for children to maintain the same level of contact with their grandparents on both sides after parental separation", by separation and residence status, fathers and mothers, 2009**

involved", "a little less involved", "much less involved", or whether they thought that the level of involvement was "about right".<sup>4</sup>

Figure 12.2, which is based on data from the GPPS 2006, summarises the views of separated and non-separated fathers and mothers regarding the closeness of the relationship between their own parents and their children. The separated parents are divided into three groups: resident and non-resident fathers, and resident mothers, with the groups sorted according to the proportion of parents in each who indicated that the relationship was either very close or close (from highest to lowest proportion).

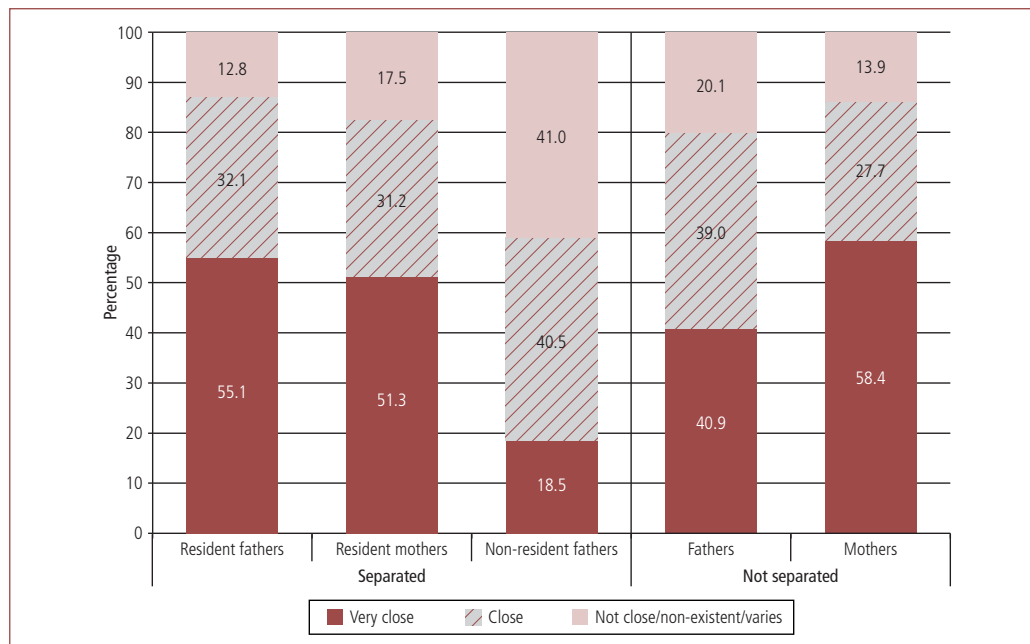
In addition to the above-mentioned groupings (fathers and mothers who had not separated, resident fathers and mothers and non-resident fathers), in the 2009 survey there were 49 fathers who indicated that their child lived with each parent for much the same time. Figure 12.3 shows the patterns of answers of these six groups regarding their own parents' level of involvement in their child's life. The groups are sorted according to the proportion of parents in each group who described the relationship as either very involved or quite involved (from highest to lowest proportion).

Of the five groups of parents in the GPPS 2006, very close relationships between their own parents and their children were most likely to be reported by mothers who were not separated (58%), followed by resident fathers and resident mothers (51–55%), then fathers who were not separated (41%). Non-resident fathers (19%) were the least likely to provide such a description (Figure 12.2).

Patterns of responses of resident fathers and mothers were very similar: 51–55% of resident fathers and mothers described the relationship between their children and their parents as very close, while 13–18% described it as not close, non-existent or "varies".

Although non-separated mothers were more likely than resident mothers to report very close relationships between children and their grandparents in the GPPS 2006, the reverse was the case regarding the level of involvement recorded in the GPPS 2009: resident mothers were

<sup>4</sup> A small number of parents ( $n = 14$ ) who only talked about the relationship between their own children and stepchildren were excluded from the analysis.



Source: GPPS 2006

**Figure 12.2** Perceived closeness of current relationship between their own parents and children, by separation and residence status, fathers' and mothers' reports, 2006

more likely than non-separated mothers to indicate that their parents were very involved in their child's life. In fact, resident mothers were the most likely of all groups to report this (40% compared to 14–28%) (Figure 12.3).<sup>5</sup>

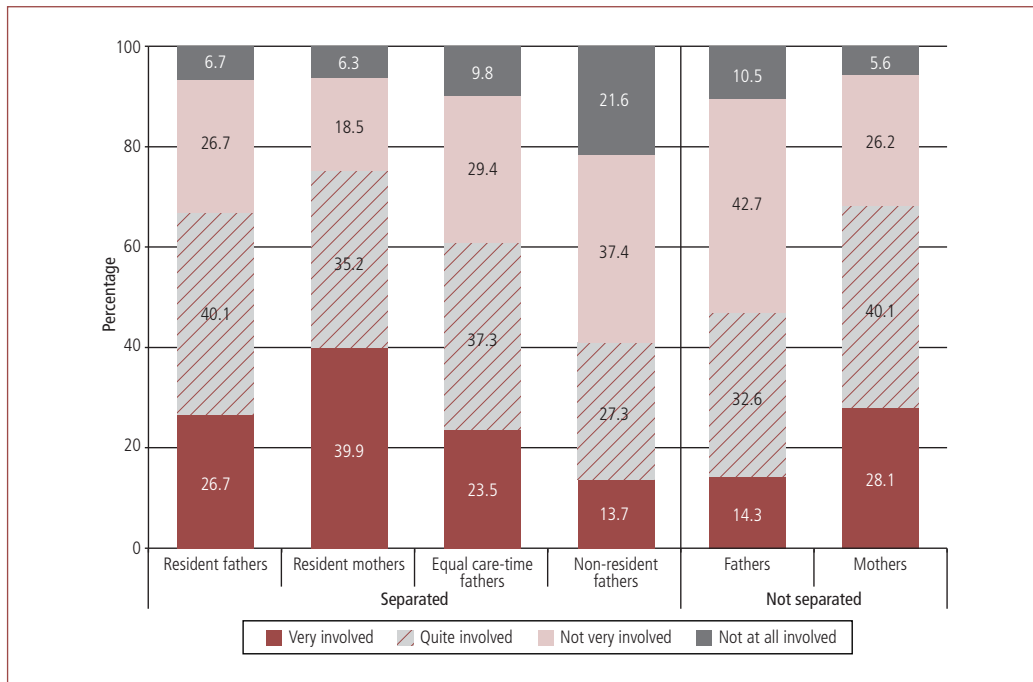
Much the same proportion of resident fathers and non-separated mothers indicated that grandparents were very involved in their child's life (27–28%), while the proportion of fathers with equal care-time who stated this was slightly lower (24%). It is interesting to note that, while non-separated fathers in the GPPS 2006 were more than twice as likely than non-resident fathers to indicate that their parents and children had a very close relationship with each other (41% compared to 19%), in the GPPS 2009 only 14% of each of these groups of fathers indicated that their parents were very involved in their child's life. However, the fathers who had not separated were slightly more likely than non-resident fathers to indicate that their parents were quite involved (33% compared to 27%). Thus, the data suggest that separation status and care-time arrangements are both important influences on the closeness of the grandparent–grand-child relationship.

### 12.2.3 Parents' preferences regarding level of involvement of grandparents

As already noted, parents in the GPPS 2009 were asked whether they would prefer their own parents to become more or less involved with their child or whether the level of involvement was about right. Figure 12.4 shows the patterns of preferences of parents in the six care-time arrangement groups regarding the level of involvement of their own parents in their child's life.

More than half the parents in all groups reported that the level of involvement was “about right” and almost no parents preferred to see the level of involvement decrease. Those who were most likely to indicate that the level of involvement was “about right” were resident fathers and fathers with equal care time (roughly 80%), while those who were least likely to report this were non-resident fathers (53%). Non-resident fathers, on the other hand, were the most likely to prefer to see their parents have greater involvement in their child's life, followed by fathers who had not separated (47% and 41% respectively).

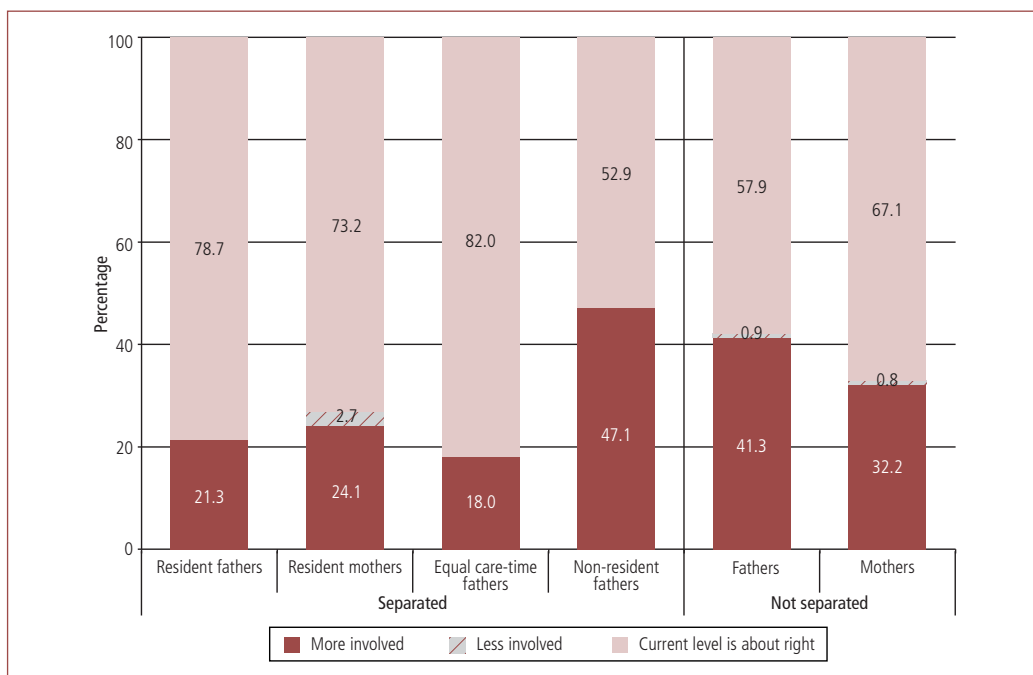
<sup>5</sup> Data from the LSSF W1 2008 suggest that the proportion of parents who lived with their own parents varied little according to care-time arrangements. However, resident mothers were more likely than resident fathers to have young children (aged under 5 years) (see Chapter 7) and previous research suggests that grandparents are more likely to be involved in the care of younger than older grandchildren (ABS, 2006; Gray et al., 2005).



Note: Percentages may not total exactly 100% due to rounding.

Source: GPPS 2009

**Figure 12.3** Perceived current level of involvement of their own parents in children's lives, by separation and care-time arrangements, fathers' and mothers' reports, 2009



Note: Percentages may not total exactly 100% due to rounding.

Source: GPPS 2009

**Figure 12.4** Preference regarding level of involvement of own parents, by separation and residence status, fathers and mothers, 2009

## 12.3 Parental separation and the grandparent–grandchild relationship

### 12.3.1 Grandparents' perceptions of current grandparent–grandchild relationships in separated families

The respondents to the GSFS 2009 comprised grandparents with a grandchild aged between 2 and 10 years whose parents had separated between 1 January 2004 and 31 December 2008. Two issues regarding the grandparent–grandchild relationship are examined in this section: (a) the current level of closeness of the relationship, and (b) current frequency of contact.

The grandparents were divided into four groups: paternal and maternal grandparents, where the grandchild mostly lived with the mother; and paternal and maternal grandparents, where the grandchild experienced an equal care-time arrangement.<sup>6</sup>

Grandparents rated their level of closeness to the youngest of their grandchildren aged between 2 and 10 years (whose parents had separated). The rating scale ranged from 0: “extremely distant/no relationship” to 10: “extremely close”. Ratings of 8–10 on this scale are here classified as “very close”, while ratings of 5–7 and of 1–4 are classified as “moderately close” and “not close” respectively. Grandparents were also asked: “How often do you get together, or spend time with this grandchild?”. The response options were: “daily/most days”, “at least every week”, “at least every fortnight”, “at least every month”, “at least twice a year”, “once a year or less often” and “never”.

Figure 12.5 shows the patterns of answers provided by grandparents concerning the closeness of their relationship with this grandchild, while Figure 12.6 shows their patterns of answers concerning how often they saw this grandchild.

Consistent with the above-mentioned trends based on parents' views, the grandparents' reports suggest that children's involvement with, and closeness to, their grandparents is quite strongly connected with the children's care-time arrangements. Of the four groups, those most likely to report a very close relationship and very frequent contact were maternal grandparents whose grandchild lived mostly with the mother, while paternal grandparents whose grandchild lived mostly with the mother were least likely to report this; indeed, 17% of these paternal grandparents indicated that they never saw their grandchild. The GPPS data based on parents' reports suggest that such trends relate mostly, but perhaps not entirely, to which parent the child is mainly living with, rather than to whether this parent is the grandparent's daughter or son.

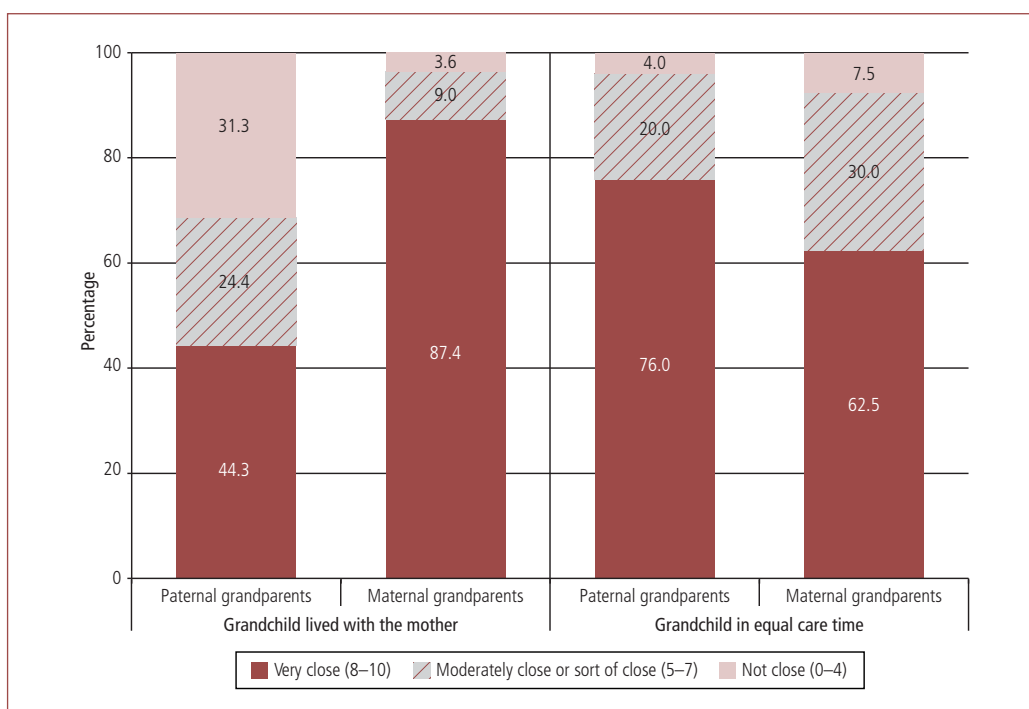
Where the child spent much the same time with each parent, paternal grandparents were more likely than maternal grandparents to report being very close to the grandchild (76% compared to 63%). However, these two groups provided a similar picture regarding frequency of contact.

### 12.3.2 Parents' views of the impact of parental separation on the closeness of the grandparent–grandchild relationship

Figure 12.7 (on page 284) shows that the three groups of separated parents in the GPPS 2006 (resident mothers, resident fathers and non-resident fathers) most commonly believed that the level of closeness of the relationship between their parents and children had remained much the same after separation. However, the two groups of resident parents were much more likely than non-resident fathers to indicate that the relationship had become closer since separation (36% compared to 13%), and much less likely to report that it had become more distant (6–8% compared to 36%).

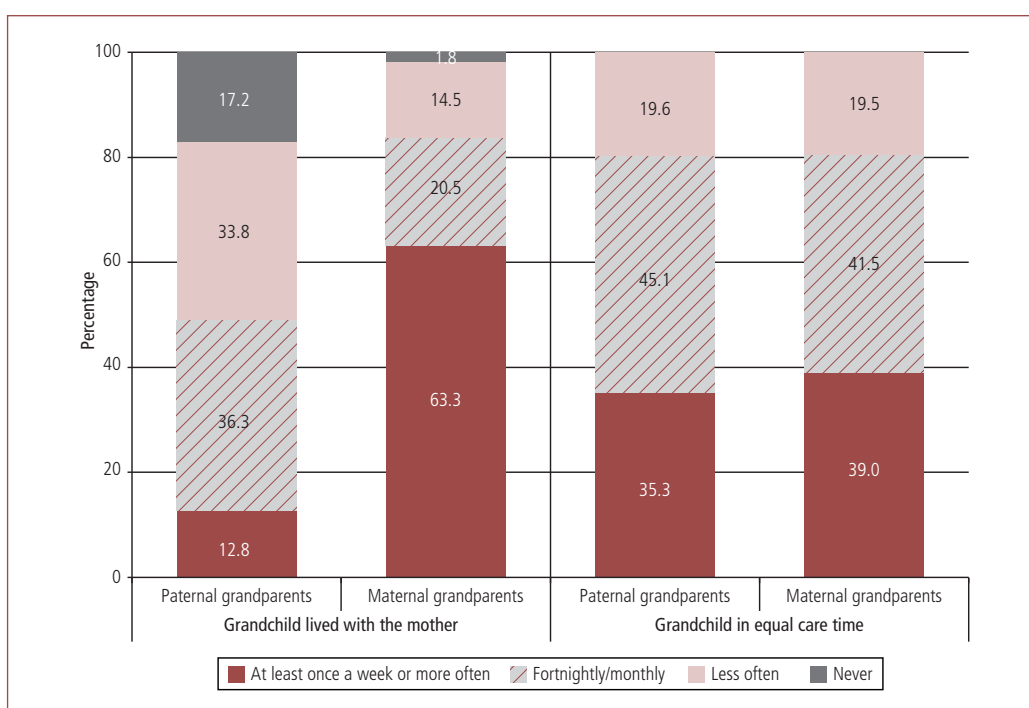
Parents in the GPPS 2009 reported on whether the grandparents' level of involvement in their child's life had increased, remained the same, or decreased (Figure 12.8, on page 284). Resident fathers were considerably more likely than all other groups to indicate that involvement had increased (47% compared to 17–29%), while 62% of resident mothers and 59% of fathers with equal care time said that the level of involvement had remained much the same.

<sup>6</sup> Grandparents were asked with whom their focus child mainly lived. The response options included: “lives mainly or only with his/her mother”, “lives mainly or only with his/her father”, “lives about the same time with each parent”, “lives mainly or only with you” and “lives mainly or only elsewhere”. The grandchild was considered to be in an equal care-time arrangement if grandparents reported that the child “lives about the same time with each parent”.



Source: GSFS 2009

**Figure 12.5** Current levels of closeness of relationship between grandparents and grandchildren after separation, grandparents' reports, 2009

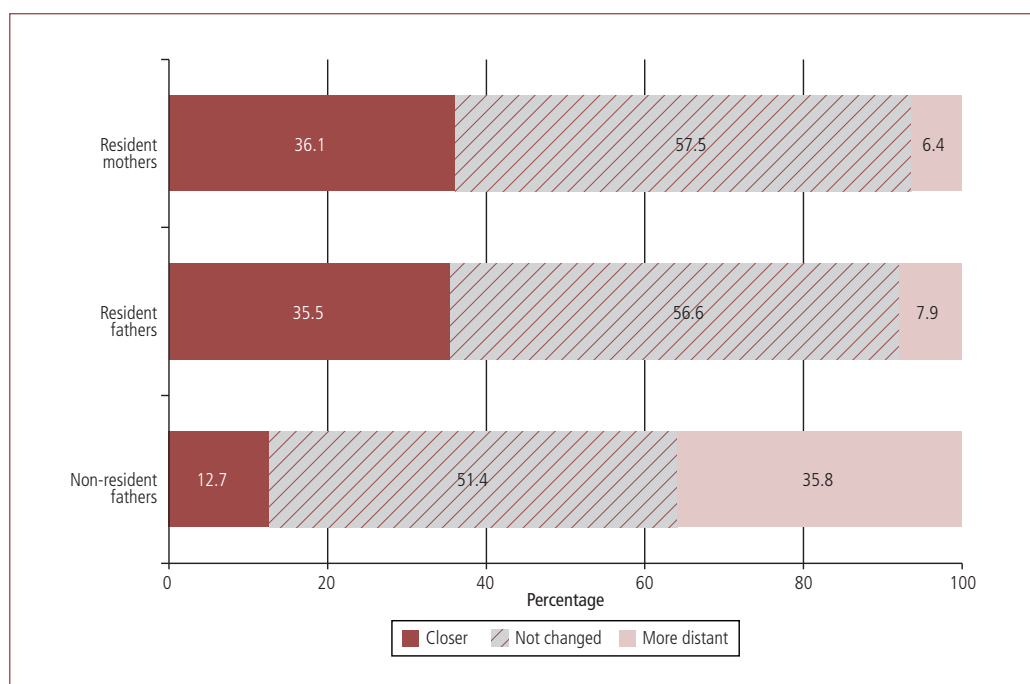


Note: Percentages may not total exactly 100% due to rounding.

Source: GSFS 2009

**Figure 12.6** Current frequency of grandparents getting together or spending time with grandchildren after separation, grandparents' reports, 2009

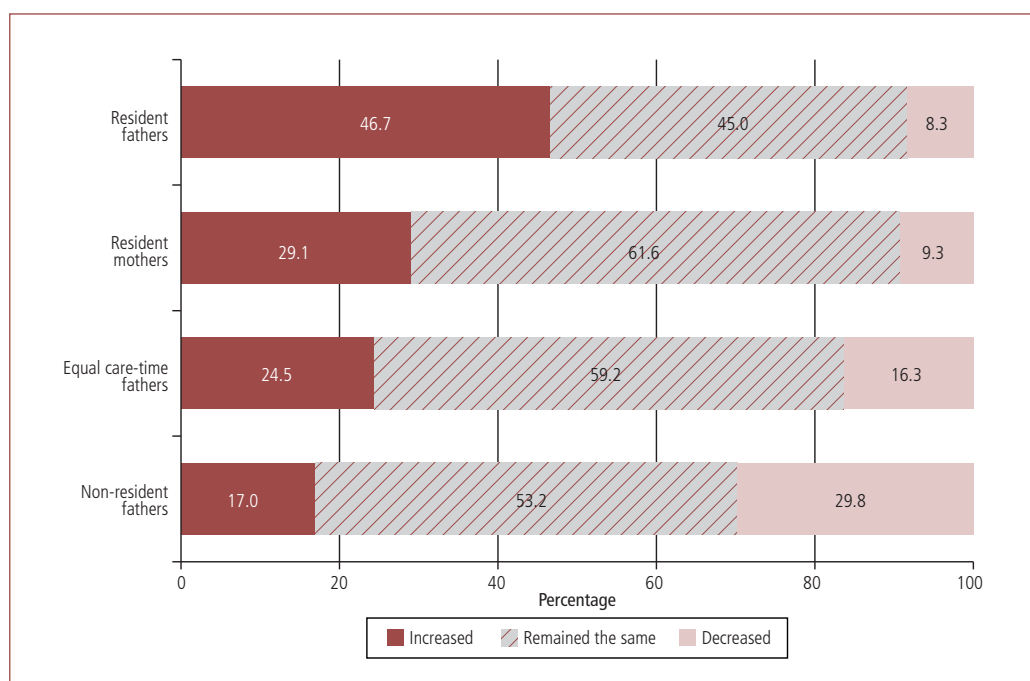




Note: Percentages may not total exactly 100% due to rounding.

Source: GPPS 2006

**Figure 12.7** Changes in relationship between their own parents and children since separation, by residence status, parents' reports, 2006



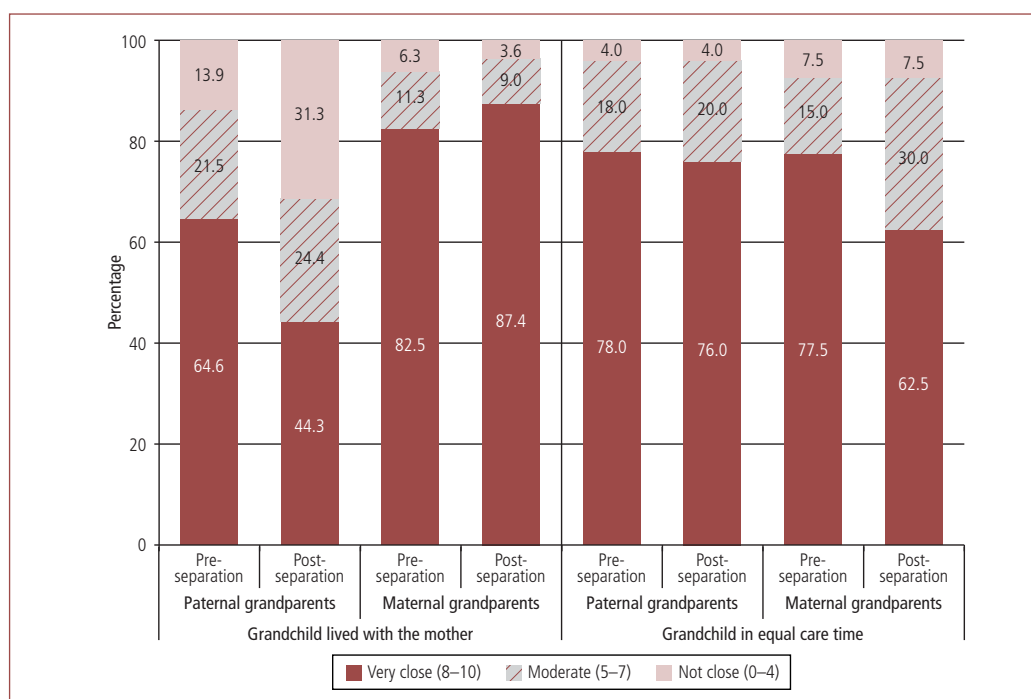
Source: GPPS 2009

**Figure 12.8** Changes in involvement of grandparents in grandchildren's lives since separation, by residence status, parents' reports, 2009

Although just over half the non-resident fathers indicated that the level of involvement had not changed, nearly one-third said that their parents' level of involvement with their child had decreased.

### 12.3.3 Grandparents' views of the impact of parental separation on the closeness of the grandparent–grandchild relationship

In the GSFS 2009, change in grandparent–grandchild relationships was assessed by asking grandparents to indicate their level of closeness to their grandchild before their grandchild's parents separated and at the time of the survey (i.e., at some stage after the parents had separated). Although most grandparents in all groups indicated that a very close relationship existed before the parents separated, those least likely to suggest this were paternal grandparents whose grandchild lived with the mother after parental separation (65% of paternal grandparents compared to 76–83% of other groups) (Figure 12.9). And whereas most grandparents in the other groups also indicated that they had a very close relationship with their grandchild at the time of the survey, this was suggested by only a minority of paternal grandparents whose grandchild lived with the mother (44% compared to 63–87%). In other words, paternal grandparents whose grandchild lived with the mother were considerably less likely to indicate that a very close relationship existed at the time of the survey than prior to the parents' separation.



Note: Percentages may not total exactly 100% due to rounding.

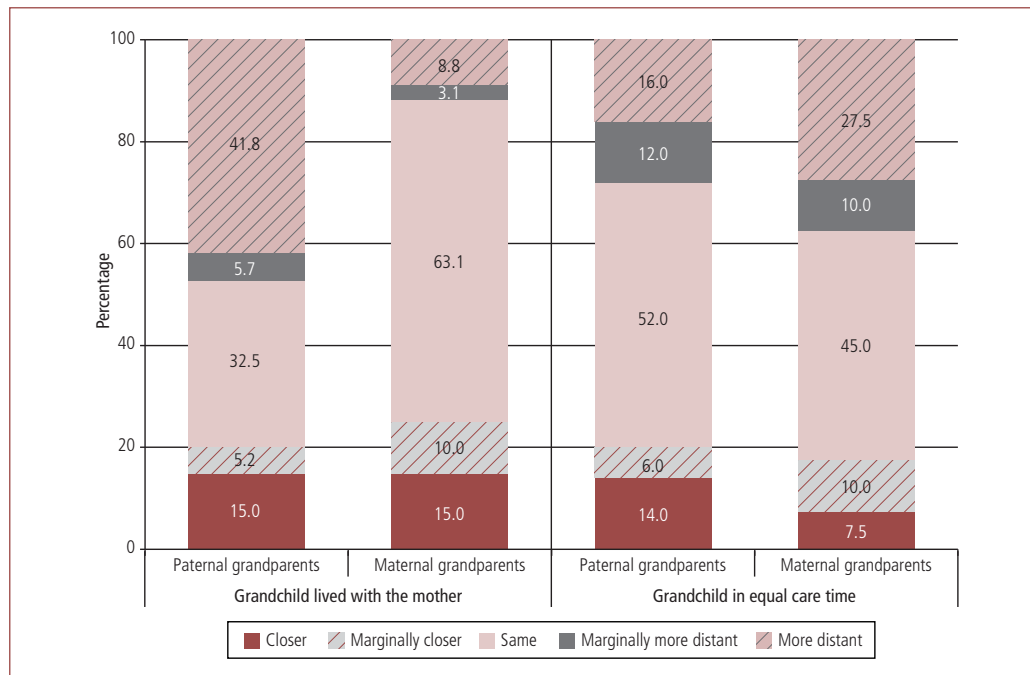
Source: GSFS 2009

**Figure 12.9** Level of closeness of relationship with grandchild, before parental separation and at the time of the survey, as reported by grandparents, 2009

Maternal grandparents whose grandchild experienced equal care time were also less likely to indicate that a very close relationship existed at the time of the survey than prior to parental separation (63% compared to 78%). Of all groups, maternal grandparents whose grandchild lived with the mother were the most likely to report a very close relationship in both pre- and post-separation periods (83% and 87%). Paternal grandparents whose grandchildren had equal care-time with both parents also reported maintaining their very close relationships both before and after separation (78% and 76%).

Figure 12.10 provides another perspective on the level of change in closeness of the relationship, as perceived by the four groups of grandparents. Change in perceived relationship with grandchildren is derived from grandparents' ratings of closeness to grandchildren before parental separation and current closeness on a scale ranging from 0: "extremely distant/no

relationship” to 10: “extremely close”. The same rating for the two periods was taken as reflecting no change in the closeness of the relationship. The relationship was classified as having become more distant if the rating for the current situation was at least two points lower than that for the pre-separation period. The relationship was classified as having become “marginally more distant” if the current rating was one rating point lower than the pre-separation rating. Similarly, where the rating for the current situation was at least two points higher or one point higher, the relationship was classified as having become “closer” and “marginally closer” respectively.



Note: Percentages may not total exactly 100% due to rounding.

Source: GSFS 2009

**Figure 12.10 Change in closeness of relationship with grandchildren, grandparents' reports, 2009**

Between 18% and 25% in each group indicated that the relationship had become closer since their grandchild's parents had separated. However, where the grandchild lived with the mother, a more distant relationship was reported by around half the paternal grandparents and only 12% of the maternal grandparents. Where the grandchild was in the care of each parent for much the same number of nights, maternal grandparents were more likely than paternal grandparents to indicate that the relationship had become more distant (38% compared to 28%).

Given that most children live with their mother after their parents separate, these results suggest that most children with grandparents continue to experience a close relationship with their maternal grandparents, but for at least half, their relationship with their paternal grandparents (which was already not as close as their relationship with their maternal grandparents) became more distant. The results suggest that, where children have an equal care-time arrangement, a substantial minority experience a more distant relationship with their paternal and maternal grandparents than they had prior to their parents' separation, with the effect being more apparent for maternal grandparents than paternal grandparents. It should be borne in mind that such results refer to children aged 2–10 years exclusively.

Grandparents who participated in focus group discussions described their experience of eroding relationships with grandchildren as follows:

The baby wasn't born 'til June and I looked after him and walked him to school ... From then on it sort of slid down the banner when I don't see them at all. I'd made birthday visits and it's very cold and I'm just at the crossroads ... where do you go and how do you heal? (Maternal grandmother, grandchild with shared care time)

Before they separated, we were seeing her [the child] for probably not every day, but every second day at the most, or out of seven days we'd probably see her five. They lived close by. But then when they separated, unfortunately she was used as a bit of a ploy and we didn't see her for probably six to eight weeks. (Paternal grandmother, grandchild lived with mother)

[The time around the separation] I was ordered out of the house; I was told not to ever touch her baby: "You'll never see her [the child] again". Three days later, she'd gone. My son came home from work. So I then didn't see her [the child] for 18 months. (Paternal grandfather, grandchild lived with mother)

At times, the pragmatics of the circumstances surrounding a separation seem to "favour" a grandparent:

So we used to see them [the children] once or twice a year sort of thing, and that was about all that we got to see them ... Since then we have established a marvellous relationship with our grandchildren—we see them every week. We come down, he [the father] brings them up. He's more than happy for them to be at home. He rang us up a couple of weeks ago and said he was having some trouble with the oldest one, would we take him for a few days, and things like that. So it's turned around the other way completely ... We have a wonderful relationship with our grandchildren that we didn't have before. (Maternal grandfather, grandchildren lived with father)

But although separation can result in more frequent contact between grandparents and their grandchildren, the future can feel uncertain.

I see a lot more of them now than what I saw before because when we used to go and see them, she'd disappear with the children. So I see more of my grandchildren now, which I'm very grateful for, but who knows what's going to happen tomorrow? It's an ongoing thing and I don't know what more to say to be honest. I just find it frustrating because I can't even pick up the grandchildren without being abused and I don't know where you go. (Paternal grandmother, grandchild with shared care time)

### 12.3.4 Grandparents' level of satisfaction with their relationship with their grandchildren post-separation

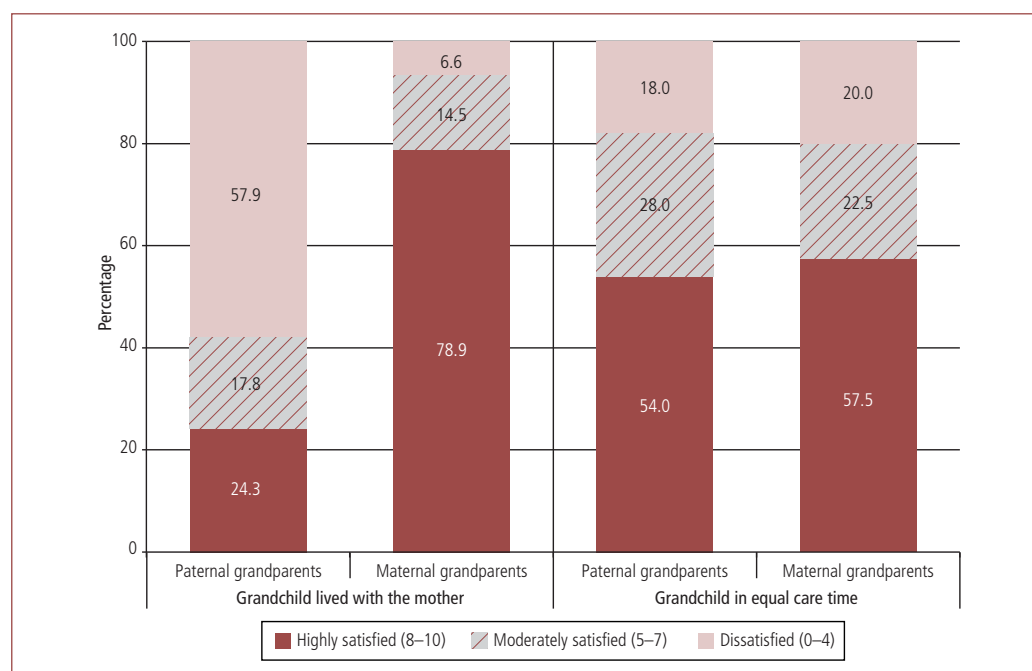
Grandparents were asked to indicate how satisfied they were with their current relationship with their grandchild, with the use of a scale ranging from 0: "completely dissatisfied" to 10: "completely satisfied". The patterns of results for the four groups of grandparents are depicted in Figure 12.11.

Consistent with the trends shown above for closeness of relationship and apparent changes in closeness, maternal grandparents whose grandchild was living with the mother were the most likely of all groups to indicate that they were highly satisfied with their relationship with their grandchild (79%), followed by maternal (58%) and paternal (54%) grandparents whose grandchild experienced equal care-time arrangements. Paternal grandparents whose grandchild was living with the mother were the least likely to state this. Indeed, only one-quarter of these grandparents indicated high satisfaction, compared with over 50% of grandparents whose grandchild had an equal care-time arrangement, and nearly 80% of maternal grandparents whose grandchild lived with the mother.

The reports of parents and grandparents, when taken together, suggest that the closest and most involved relationships are between grandparents whose sons or daughters have the majority of care time, followed by those whose sons or daughters have equal care-time arrangements. Those who "miss out" are grandparents whose sons have minority or no care nights.<sup>7</sup> From the perspective of the grandchildren, those who live with their mothers appear to be most likely to

<sup>7</sup> While there were only 19 paternal grandparents in the GSFS 2009 whose son was the resident parent, there were 79 resident fathers with a living parent in the GPPS 2006 and 62 such fathers in the GPPS 2009. A higher proportion of these fathers than fathers with equal care time indicated that the relationship between their parents and children were close (tapped in the 2006 survey) and involved (tapped in the 2009 survey). Given that there were only 8–14 non-resident mothers with a living parent and only 15 grandparents whose daughter was the "non-resident parent", no attempt was made to assess the strength of the relationship between maternal grandparents and their grandchildren who lived with the father.

maintain or strengthen their relationship with their maternal grandparents but to become less involved and have a more distant relationship with their paternal grandparents.



Source: GSFS 2009

**Figure 12.11** Satisfaction with relationship with grandchild, grandparents' reports, 2009

## 12.4 Consideration of time with grandparents when making parenting arrangements

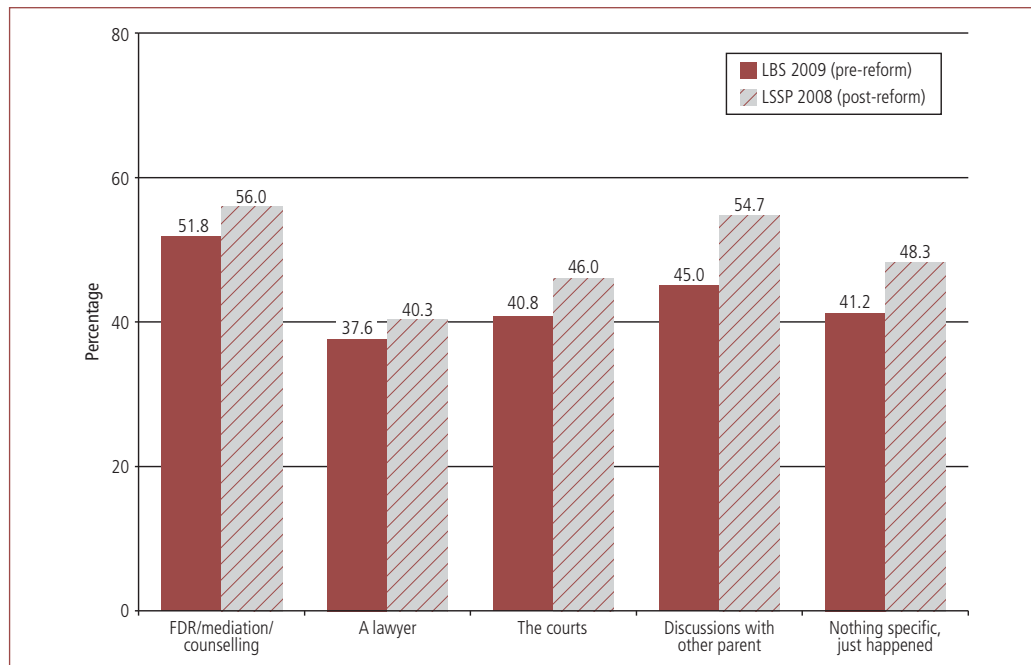
Three surveys included questions on whether their focus child spending time with grandparents was taken into account when the parents were sorting out their parenting arrangements.<sup>8</sup>

It appears that many parents who had sorted out arrangements had considered time with grandparents when making their decisions. In the LSSF W1 2008, just over half the parents who sorted out parenting arrangements (53%) indicated that the focus child's time with grandparents was considered in reaching parenting agreements. The percentage based on the LBS 2009, comprising parents who had separated before the reforms, was somewhat lower (40%). In the LSSF W1 2008, a similar proportion of fathers and mothers indicated that time with grandparents was taken into account (52% and 53% respectively). In the LBS 2009, on the other hand, mothers were more likely than fathers to report that time with grandparents had been taken into account (48% compared to 38%) during the process of sorting out parenting arrangements for their focus child.

Grandparents in the GSFS 2009 also commonly indicated that their time with their focus grandchild was taken into account when the parents of this child separated. Specifically, 53% of grandparents reported that their time with the grandchild was taken into account either fully or to a fair extent, while 34% said that this was not the case, and 13% expressed uncertainty.

<sup>8</sup> In the LSSF W1 2008, parents who had sorted out parenting arrangements for their focus child were asked: "When you were deciding the parenting arrangements for [focus child], was spending time with grandparents, on either side, taken into account?" In LBS 2009, parents were asked: "When you were deciding the parenting arrangements for [focus child] in [year separation took place], was spending time with grandparents, on either side, taken into account?" (These parents had separated between January 2004 and May 2005.) Response options were "yes" or "no" for each of these questions. In the GSFS 2009, grandparents were asked: "At the time your grandchild's parents separated, to what extent did they take the needs of this grandchild to have a continuing relationship with you into account?" Response options were: "fully taken into account", "to a fair extent", "a little" and "not at all taken into account".

Figure 12.12 shows that post-reform parents were more likely than their pre-reform counterparts to report that time with grandparents had been taken into account, regardless of the main dispute resolution or decision-making pathway taken. The difference was most pronounced with respect to the “discussions with other parent” pathway and least pronounced when the main pathway was obtaining assistance from lawyers.



Source: LSSFW1 2008, LBS 2009

**Figure 12.12** Proportion of parents indicating that time with grandparent was considered in parenting arrangements for focus child, by main pathways, pre- and post-reform

Although about half of the separated parents in the LSSF W1 2008, the LBS 2009 and the GSFS 2009 reported that they had considered time that their children would spend with grandparents in their parenting arrangements, a few grandparents in the focus groups indicated that they had to fight through the legal system to have access to their grandchildren. For example:

I see him [the grandchild] more regular now ... because I won ... I see him once a fortnight ... But I had to go through nine months court to do it because she said I wasn't going to see him and we tried all the mediation. I went through everything I could. (Paternal grandparent, grandchild lived with mother)

I was adamant at the outset as [grandchild's] grandmother that I wouldn't lose any contact—I mean, I would have flown to the end of the earth if I had to. But it simply wasn't viable and there was no ... I wasn't going to lose that contact. As a consequence of that, myself and my husband have a very close relationship with [the grandchild]. (Paternal grandmother, grandchild lived with mother)

In summary, there appears to be a little more willingness among post-reform separated parents to include grandparents in post-separation parenting arrangements. This is not linked to one resolution or decision-making pathway, though it is least pronounced when lawyers were nominated as the main pathway.

## 12.5 Family lawyers' perceptions

The FLS 2008 examined any impact of the insertion of the principle that recognises the child's right to spend time and communicate on a regular basis with people significant to their care, welfare and development, including grandparents. Lawyers in the survey were asked to indicate

their agreement or disagreement with two items: (a) “Since the reforms, more grandparents are seeking advice”; and (b) “Since the reforms, I am more inclined to advise grandparents that they are in a stronger position in relation to spending time with their grandchildren”. Possible responses were: “strongly agree”, “mostly agree”, “mostly disagree”, “strongly disagree” and “can’t say”.

The survey suggests that 50% of the family lawyers surveyed agreed that there has been an increase in the extent to which grandparents are seeking advice (8% strongly agreed). On the other hand, 37% disagreed with this proposition (10% strongly disagreed), while the remainder were unable to say. The majority of family lawyers (57%; 9% strongly agreed) agreed that, since the reforms, they were more inclined to advise grandparents that they were in a stronger position in relation to spending time with their grandchildren. But again 34% disagreed (8% strongly disagreed) and 10% were unable to say.

## 12.6 Grandparents’ knowledge and use of legislation and services under the 2006 reforms

### 12.6.1 Grandparents’ knowledge about the 2006 family law reforms

Grandparents in the GSFS 2009 were asked whether they were aware of the 2006 changes in the *Family Law Act* that recognise the right of children to have a relationship with their parents and others important to them, including grandparents. They were asked to indicate whether they were “fully aware”, “to a fair extent”, “a little” or “not at all aware”. They were also asked if, in their opinion, the legislative changes would make any difference in helping children to maintain contact with their grandparents, by indicating if they thought they would be: “a great deal of help”, “some help” or “no help at all”. At least four in ten grandparents indicated that they were aware of the explicit reference to grandparents in the legislation, with 17% indicating that they were fully aware of the reference and 27% stating that they had some knowledge of it.

Grandparents tended to welcome the legislative changes, with 42% reporting that the explicit reference to grandparents would greatly help grandchildren to maintain contact with their grandparents, 38% considering that this would be “some help”, and only 13% indicating the change would provide “no help at all”. Eight per cent expressed no opinion on this issue.

While many grandparents who participated in the GSFS 2009 reported that they were aware (“fully” or to “a fair extent”) of the reference to grandparents in the 2006 changes to the *Family Law Act*, the focus group discussions with grandparents suggested that they had little understanding of the reforms in general, although they may have heard or read about them. For example:

I thought there were some changes to the financial side of it and, as you said, the amount of time you spend—whether it’s 50–50, 60–40—but the contribution from the father, money coming from the father, was actually less now than it was before. (Maternal grandmother, grandchild lived with mother)

The only thing I recently read was they are actually reviewing 50–50 custody. Is that currently happening? (Maternal grandmother, grandchild with shared care time)

I only heard that grandparents now have rights, that’s all I heard. I didn’t hear *how* you had rights, but I just hear that grandparents now have rights. (Maternal grandmother, grandchild with shared care time)

I don’t know a lot about them. I remembered when they were talked about and I read a little bit about [them]. I asked my son what was going to happen. He said that he felt it was going to be a fairer system between him and his ex-wife. (Paternal grandmother, grandchild lived with mother)

Responses in the grandparent focus groups tended to reflect the situations in which individual grandparents found themselves. Thus, one grandmother who was reasonably satisfied with how matters had panned out put it this way:

My understanding of the law reforms is that actually the parents and the grandparents, we don’t have rights. The children have the rights. We have responsibilities. So the



children, they've said, have a right to spend time with their parents and grandparents.  
(Paternal grandmother, child lived with mother)

Another, largely dissatisfied, grandmother suggested:

I have rung up to find out grandparents' rights but like most of you here, government agencies are very big on talk about grandparents' rights, but when it gets down to the nitty gritty it doesn't work.(Paternal grandparent, grandchild with shared care time)

## 12.6.2 Grandparents' use of services or the courts

In the GSFS 2009, grandparents were asked whether they had ever sought help or advice or used any services to facilitate contact or help improve their relationships with their grandchildren. Those who answered in the affirmative were then asked to indicate where they went. The following response options, which also included reference to use of a court, were offered to them:

- a Family Relationship Centre (FRC);
- other counselling, mediation or family dispute resolution (FDR) service;
- a grandparents organisation or advocacy group;
- a family violence service;
- a lawyer or legal services (such as a legal advice line, private lawyer, legal aid);
- a court (such as the Federal Magistrates Court [FMC] or the Family Court of Australia [FCoA]); or
- other (please specify).

Responses that were provided for the "other" category were then coded.

Table 12.2 suggests that about two-fifths of paternal grandparents and one-fifth of maternal grandparents made use of either a service or the courts. The service used most often by both paternal and maternal grandparents was that of a lawyer or legal service. Although some sort of relationship-focused service was also used fairly often by this group, so too were the courts.

**Table 12.2 Use of services or courts, by paternal and maternal grandparents, 2009**

	Grandchild lived with the mother		All grandparents
	Paternal grandparents	Maternal grandparents	
	%		%
Used any service or court	40.1	21.2	31.7
Services/courts used (if any used)			
FRC	20.9	17.8	20.0
Other counselling, mediation or FDR service	24.8	24.4	24.7
Grandparent organisation or advocacy group	3.8	8.9	5.3
Family violence service	1.9	0.0	1.3
Lawyer or legal service	59.1	55.6	58.0
Court	24.8	26.7	25.3
Other	18.1	13.3	16.7
Did not use any service/court	59.9	78.8	68.3
Number of observations	262	212	474

Source: GSFS 2009

It was clear from grandparents in the focus groups that many had a very incomplete knowledge of the non-legal services that were available for them, their adult children or their grandchildren. Few had knowledge of more than one of a list of relevant services handed out during the focus

groups. Referring to a list of services handed out at the focus group, only one of which she recognised, one grandmother observed:

I think that all solicitors should be made, under law, to give out a list like this to people for free services. (Maternal grandparent, grandchild with shared care time)

Some grandparents were more proactive:

If I find things in *The Age* about family violence or children, separate parents [sic] or—and they've usually got a web page or they've got a contact number—I've chopped those out and I fold them into a little thing and I say here's some compulsory reading. We laugh. Other things as well that I think are interesting for childrearing. But at the library, it has the pamphlets on all manner of things. I've seen things there on your role as a parent and grandparent and children and those sorts of things, so I think that's a source. (Maternal grandparent, grandchild with shared care time)

This level of proactivity was unusual among the focus group grandparents. In addition, a few were uncomfortable with navigating websites as a way of finding information. Others seemed inclined to see family law issues in the more traditional terms of them being essentially legal problems.

### 12.6.3 Making grandparenting arrangements at FRSP services

In addition to seeking information from grandparents via focus groups, further information was obtained from grandparents who participated in the Survey of FRSP Clients 2009. Of these, 79 (83%) indicated that they had attempted to develop arrangements while at the service about spending time with or the care of grandchildren.<sup>9</sup> This section focuses on these 79 grandparents. Where there was more than one grandchild about whom the grandparent attended the service, the relevant survey questions focused on the youngest grandchild (here called the “focus grandchild”).

The following issues are examined:

- basic circumstances of the respondents and focus grandchild;
- whether agreement was reached while at the service on all or some aspects of arrangements for their focus grandchild and whether a certificate allowing the matter to be taken to court was issued;
- grandparents' opinions about the extent to which the arrangements made at the service worked for them and for their grandchild or grandchildren, including whether the needs of their grandchild or grandchildren were adequately considered; and
- frequency of contact between grandparents and their focus grandchild.

#### Circumstances of respondents and grandchildren

Table 12.3 shows that nearly 90% of the respondents in the survey were grandmothers, and two-thirds were paternal grandparents. The average age of their focus grandchild was 5.5 years, with all except 8% being under 12 years old.

One in five respondents indicated that their grandchild's parents were living together and, in all except one of these 16 cases, the grandchild was living with the parents. Three-quarters of the grandparents indicated that the parents of their focus grandchild were not living together. Where the parents were not living together, most of the grandparents indicated that their grandchild was living with their mother, and 21% reported that the grandchild was living with them.

<sup>9</sup> Of the 95 grandparents who participated in this survey, 63 were clients of FRCs, 6 attended an FDR service, 13 attended another post-separation service (PSS) and 13 attended an early intervention service (EIS). Of these, the following number of grandparents had attempted to develop arrangements about the care of their focus grandchild while at the service: 58 who had attended an FRC, all 6 who had used an FDR service, 7 who had used another PSS and 8 who had used an EIS.

## Agreement outcomes while at the service

As noted above, the 79 respondents included in this analysis had indicated that they had attempted to develop arrangements while at the service about spending time with or the care of grandchildren. The question on care of grandchildren was only asked of the minority whose grandchild was living with them. Table 12.4 shows that more than half the grandparents (57%) indicated that no agreement had been reached. The remainder were fairly evenly divided between indicating that they had achieved agreement on all or on only some aspects of the

**Table 12.3 Circumstances of grandparents who sought help regarding time with or care arrangements of a grandchild, grandparents' reports 2009**

Circumstance	
Age of focus grandchild	
Mean age (years)	5.5
	%
Age distribution	
0–2 years	25.3
3–4 years	22.8
5–11 years	44.3
12–14 years	7.6
Total	100.0
Status of grandparents	
Grandmothers	86.1
Paternal grandparents	67.1
Number of observations	79
Where the parents were not living together, focus grandchild's living arrangements ( $n = 61$ )	
Mainly or only with mother	62.3
Mainly or only with father	6.6
About the same time with each parent	1.6
Mainly or only with respondent	21.3
Mainly or only elsewhere	6.6
Unsure	1.6
Total	100.0

Notes: Sixteen grandparents reported that their focus grandchild's parents were living together, with one indicating that the grandchild was living with him/her. Two grandparents were unsure if their focus grandchild's parents were living together.

Source: Survey of FRSP Clients 2009

**Table 12.4 Outcomes of care arrangements for grandchild(ren), grandparents' reports, 2009**

Outcome	%
Level of agreement achieved while at the service	
Agreement achieved on all aspects	20.3
Agreement achieved on some aspects	22.8
No agreement achieved	57.0
Total	100.1
Number of observations	79
Where agreement on only some aspects or no aspects had been achieved:	
Certificate issued	49.2
No certificate issued	46.0
Unsure	4.8
Total	100.0
Number of observations	63

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

Source: Survey of FRSP Clients 2009

arrangements. Almost half of those who indicated that partial or no agreement had been reached reported that they had been issued with a certificate allowing the matter to be taken to court.

### Grandparents' evaluations of agreed-upon arrangements

Grandparents were asked to indicate how well the arrangements made at the service worked for them and how well they worked for their grandchild or grandchildren. Table 12.5 shows that, of those who answered this question and reported that agreement had been reached on at least some aspects of the arrangements, most provided positive evaluations of the workability of arrangements (indicated by at least 70%). Grandparents were marginally more likely to report that the arrangements were not working for themselves than to indicate that the arrangements were not working well for their grandchild(ren) (24% compared to 15%).

**Table 12.5 Evaluations of agreed-upon arrangements and level of child focus in agreement process, grandparents' reports, 2009**

	Strongly agree/ agree	Neither	Strongly disagree/ disagree	Total	Number of respondents
	%				
Workability of arrangements made (where full or partial agreement was achieved)					
Arrangements worked for self	69.7	6.1	24.2	100.0	33
Arrangements worked for grandchild(ren)	72.7	12.1	15.1	99.9	33
Grandchild(ren)'s needs were taken into account					
Where partial or full agreement was achieved	81.8	12.1	6.1	100.0	33
Where no agreement was achieved	35.1	0.0	64.9	100.0	37
Total	57.2	5.7	37.1	100.0	70

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

Source: Survey of FRSP Clients 2009

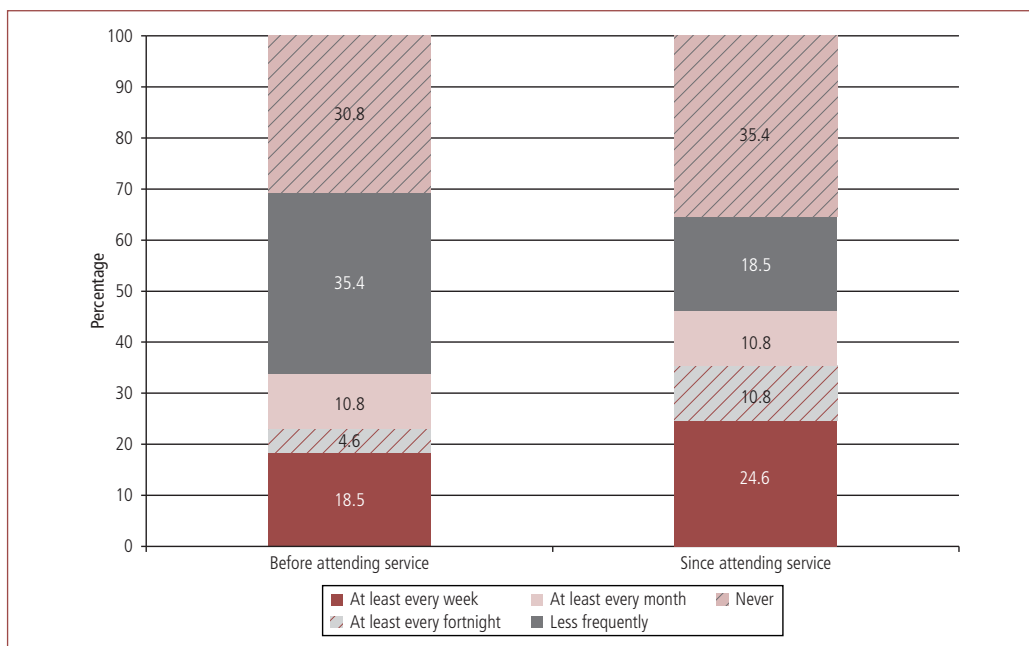
Overall, 57% believed that the grandchild(ren)'s needs were taken into account, while nearly two-fifths disagreed. Such evaluations were strongly related to the achievement of agreement on at least some aspects of the arrangements: positive appraisals were provided by most grandparents (82%) who indicated that at least some agreement had been reached and by only one-third of grandparents who indicated that no agreement had been reached.

### Frequency of contact with grandchildren

Grandparents were also asked to indicate how often, if at all, they spent time with their focus grandchild: (a) before they attended the service, and (b) since attending the service. The response options were: "daily/most days", "at least every week", "at least every fortnight", "at least every month", "at least twice a year", "once a year or less often" and "never".

Figure 12.13 summarises the answers provided by the remaining 65 grandparents who were not living with their grandchild at the time of the survey. Close to one in three of these grandparents indicated that they never saw their grandchild before attending the service and a marginally higher proportion indicated they had never seen their grandchild since they attended the service. On the other hand, the proportion of grandparents who saw their grandchild daily, weekly or at least fortnightly increased from 23% to 35%.

However, the greatest change occurred in the proportion of grandparents who indicated that they saw their grandchild less frequently than once a month—that is, those who saw their grandchild "at least twice a year" or "less than twice a year"—35% reported that this situation applied to them before they attended the service and only 19% indicated that they experienced this situation since attending the service. Much of this difference represented a decrease in the



Notes: "At least every week" represents contact that occurred "daily/most days" and "at least every week". "Less frequently" includes contact that occurred "at least twice a year" and "once a year or less often". The 14 grandparents who were living with their grandchild at the time of the survey are not represented. All but one of these grandparents indicated that they saw their grandchild "daily/most days" before attending the service. Percentages may not total exactly 100% due to rounding.

Source: Survey of FRSP Clients 2009

**Figure 12.13 Frequency of face-to-face contact with grandchild before and since attending the service, grandparents' reports, 2009**

proportions who indicated that they saw their grandchild "once a year or less often", from 17% before attending the service to 3% since attending the service.<sup>10</sup>

In summary, this section focused on grandparents who attempted to develop arrangements while attending an FRSP service about spending time with or the care of their grandchildren. Most of these respondents were grandmothers and most were paternal grandparents who had attempted to reach agreement in relation to spending time with grandchildren who were living with their mothers. Nearly one in five were living with their grandchild both before and after they attended the service. More than half the grandparents indicated that no agreement had been reached, and of these respondents and those who reported the achievement of partial agreement, one-quarter indicated that they had been issued with a certificate allowing them to take the matter to court.

## 12.7 FRSP staff perceptions about grandparent–grandchild relationships

### 12.7.1 Level of interest in grandparenting

In the Online Survey of FRSP Staff 2008, respondents were asked whether their services had attracted a growing level of interest in grandparenting since the reforms had come about.<sup>11</sup> The results are summarised in Table 12.6.

<sup>10</sup> The proportions of grandparents who indicated that they saw their grandchild at least twice a year were: 18% before they attended the service and 15% since attending the service.

<sup>11</sup> The question asked was: "Since the reforms came into effect, the service has experienced: (a) an increasing proportion of fathers wanting their children to spend time with grandparents; (b) an increasing proportion of mothers wanting their children to spend time with grandparents; and (c) an increasing proportion of grandparents wanting their grandchildren to spend time with them". Response options were: "strongly agree", "agree", "disagree", "strongly agree", "can't say/don't know" or "not applicable". Staff who did not work in the FRSP sector prior to 1 July 2006 are likely to have interpreted this question as meaning: "Have the services experienced a change over the period July 2006 to 2008 when the survey was conducted?"

**Table 12.6 FRSP staff agreement that after the 2006 reforms more parents and grandparents want grandchildren to spend time with grandparents, by type of service, 2008**

	EIS	PSS			All services	
		FRAL	FRCs	FDR	Other PSS	
	%		%			%
<b>Fathers wanting their children to spend time with grandparents</b>						
Strongly agree	23.1	30.6	32.8	6.9	15.3	27.2
Agree	19.2	33.7	44.3	31.9	29.2	28.2
Strongly disagree/disagree	4.8	2.0	3.3	41.7	15.3	5.9
Can't say/don't know	52.9	33.7	19.7	19.4	40.3	38.7
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.1</b>	<b>99.9</b>	<b>100.1</b>	<b>100.0</b>
<b>Mothers wanting their children to spend time with grandparents</b>						
Strongly agree	26.8	41.8	45.9	2.8	5.6	35.0
Agree	16.6	23.5	29.5	20.8	27.8	21.7
Strongly disagree/disagree	1.0	1.0	1.6	52.8	22.2	2.0
Can't say/don't know	55.6	33.7	23.0	23.6	44.4	41.3
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Grandparents wanting to spend time with their grandchildren</b>						
Strongly agree	15.7	0.0	4.9	23.6	18.9	12.0
Agree	27.0	52.0	57.4	43.1	31.1	38.3
Strongly disagree/disagree	6.4	36.7	32.8	18.1	17.6	19.6
Can't say/don't know	51.0	11.2	4.9	15.3	32.4	30.1
<b>Total</b>	<b>100.1</b>	<b>99.9</b>	<b>100.0</b>	<b>100.1</b>	<b>100.0</b>	<b>100.0</b>
<b>Number of observations</b>	<b>224</b>	<b>98</b>	<b>62</b>	<b>74</b>	<b>74</b>	<b>532</b>

Notes: "Not applicable" responses were excluded. Due to the small number of responses, the "strongly disagree" and "disagree" categories are reported together. The sample size differs slightly between items because of exclusion of cases with missing information for individual items (less than 5%). Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Staff, 2008

Almost two-thirds of the Family Relationship Advice Line (FRAL) staff who took part in the survey agreed or strongly agreed that since the reforms there had been an increasing proportion of mothers and fathers wanting their children to spend time with their grandparents. About one-third were unable to say one way or the other. A smaller proportion (52%) of FRAL staff thought that there had been an increase in the proportion of grandparents wanting to spend time with their grandchildren since the 2006 changes.

About three-quarters of FRC staff agreed or strongly agreed that the proportion of mothers and fathers wanting their children to spend time with their grandparents had increased since the 2006 changes and almost two-thirds thought there had been an increase in the proportion of grandparents wanting to spend time with their grandchildren.

Around two-fifths of FDR service staff agreed or strongly agreed that an increasing proportion of fathers wanted their children to spend time with their grandparents, 23% agreed or strongly agreed that this was the case with mothers and 67% that an increasing proportion of grandparents wanted to spend time with their grandchildren. The difference in views of FRC and FRAL staff compared to FDR staff is likely to reflect the fact that FRCs offer a considerably broader range of services and information than FDR services.

About half of other PSS staff (other than FRC and FDR staff) agreed or strongly agreed that there had been increasing numbers of grandparents wanting to spend time with their grandchildren, while 45% thought there had been increasing numbers of fathers and 33% thought there had been increasing numbers of mothers wanting their children to spend time with grandparents.

About a half of the EIS staff felt unable to answer the questions about the extent to which, after the 2006 changes, more parents and grandparents wanted grandchildren to spend time with grandparents. Of those who provided answers to these questions, the majority agreed or strongly agreed that their services had attracted a growing level of interest in grandparenting.

In the Qualitative Study of FRSP Staff, participants were not asked specifically about grandparents. A small number of participants, however, mostly from FRAL, indicated at the time of interview that there seemed to be an increasing number of grandparents engaging with the family relationships sector.

In summary, there is evidence, largely from the Online Survey of FRSP Staff 2008, that approximately eighteen months into the process, most staff members in all but FDR services who felt able to answer the question agreed that since the reforms were enacted there has been an increasing engagement by and on behalf of grandparents on grandparenting.

### 12.7.2 FRSP services support for grandparents and other family members

Table 12.7 addresses two questions of the same group of services, this time asked as part of the Online Survey of FRSP Staff 2009. The questions focused on children's relationships with extended family members and on grandparents.

**Table 12.7 FRSP staff perceptions about support their service provides for grandparents and other family members, 2009**

	EIS	PSS				All services
		FRAL	FRCs	FDR	Other PSS	
		%				%
<b>This service assists clients to improve their relationships with extended family members</b>						
Strongly agree	35.2	1.3	15.1	27.5	11.6	23.0
Agree	58.3	74.7	58.7	52.5	69.8	60.7
Strongly disagree/disagree	2.2	16.0	20.2	10.0	15.1	10.7
Can't say/don't know	4.3	8.0	6.0	10.0	3.5	5.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>How would you rate this service's capacity to provide a service that caters to the needs of grandparents?</b>						
Very poor/poor	2.5	1.2	2.0	0.0	1.9	1.9
Average	11.4	11.1	9.8	13.3	4.9	10.3
Good	48.3	69.1	54.5	57.8	48.5	53.1
Excellent	36.0	18.5	32.1	27.7	42.7	33.2
Can't say/don't know	1.9	0.0	1.6	1.2	1.9	1.6
<b>Total</b>	<b>100.1</b>	<b>99.9</b>	<b>100.0</b>	<b>100.0</b>	<b>99.9</b>	<b>100.1</b>
<b>Number of observations</b>	<b>335</b>	<b>81</b>	<b>248</b>	<b>84</b>	<b>106</b>	<b>854</b>

Notes: "Not applicable" responses were excluded. Due to the small number of responses, the "strongly disagree" and "disagree" categories are reported together and the "poor" and "very poor" categories are reported together. Percentages may not total exactly 100.0% due to rounding.

Source: Survey of FRSP Staff 2009

In the first instance, staff members were asked to respond to the statement that the service to which they belonged assisted clients to improve their relationships with extended family members. Most staff members in all services agreed or strongly agreed that this was the case. A maximum of 10% felt unable to answer the question. On the other hand, up to a fifth disagreed or strongly disagreed with the proposition.

Staff members were also asked how they would rate their service's capacity to cater to the needs of grandparents. A substantial majority rated this as good or excellent, with only a handful of staff members unable to say and very few judging it to be poor or very poor.

Data from the Qualitative Study of FRSP Staff 2009 suggest that services have become increasingly aware of grandparents accessing services, particularly in FRAL and those services offering FDR. Thus, one FRAL legal advisor noted that: "We take a lot of grandparent calls".

A FRAL parenting advisor put it this way:

Yes, grandparents, I think, are a reasonable chunk of our work—certainly not a majority, but we do get regular calls from grandparents.



And an FRC practitioner observed:

We've always seen lots of grandparents ... We are seeing a lot more grandparents really wanting to have set time to see their grandkids.

References to grandparent cases by FRSP staff largely referred to three groups:

- Grandparents who had taken on the care of their grandchildren—According to one Children's Contact Service (CCS) manager: "We have some grandparents that the children live with them (and some who come here to visit the children and some who do changeovers as well)".
- Grandparents who were seeking contact with their grandchildren after their grandchildren's parents had divorced—A FRAL information officer spoke of a grandparent who reported: "that the family has broken down and she won't allow me access to the grandchildren". The FRAL information officer added: "Usually the ones I've had are sons' mothers calling, feeling that helplessness and what are my rights, things like that", while an FRC manager noted: "We usually see a surge after school holidays and Christmas holidays, possibly due to not seeing the grandkids during that time and wanting to put something in place for next time. So it is usually around those times when we see grandparents come in and just the relationship has broken down and they are scared that they are not going to be seeing the grandchildren anymore because their son was the one that ended the relationship or the bad feeling—just all of those sorts of things. So it is just grandparents being scared that they are going to lose contact. A lot of it is very new isn't it; a couple of months after the separation, the grandparents are coming in: 'Okay I don't want to lose contact with my grandchildren, what can we do'".
- Grandparents who were seeking contact with their grandchildren where no separation or divorce had occurred, but there has been a breakdown in the relationship between the grandparents and their own children<sup>12</sup>—An FRC manager noted: "We're also seeing grandparents coming in of intact families because there's been some sort of family conflict where they're not seeing the grandkids as much as they would like and they really want set times to see their grandkids. But it's like: 'You already see them, they all come around to dinner on Sunday night as a family or you go to family barbecues and you do this. It's not like you're not seeing them'. It's just that 'I want to have all day Saturday because I need to see my grandkids'. They're actually wanting a parenting plan for their grandkids."

It was also reported that grandparents contact services regarding post-separation issues on behalf of their own adult children. Most commonly in this category, it is grandmothers who engage the service on behalf of their adult sons who have lost contact with their own children. Again, this seems to be most commonly experienced in FRAL.

In addition, grandparents featured in cases described by family relationship service providers in which there are complex extended family problems that predate the parental separation. For example, one FRC practitioner spoke of grandparents who just "want FDR because they want contact with their grandchildren [but] they don't want to address the issues that are there".

Another FDR practitioner spoke of how the child's parent:

will allude to this sexual abuse but it's never been substantiated because, you know, back in that time you didn't talk about it as well. So then you're dealing with something that's never been substantiated, there's some allegations but they won't even now come right out with it for fear of consequences in the family. So there's a lot of dynamics. It's not usually straightforward with grandparenting issues.

An FRC manager had yet another take on the complexity of some grandparenting cases:

So it is quite difficult, especially with some grandparents laying blame. So it is one thing to talk to the parents about communication with each other and in front of the child, but quite often it is grandparents that aren't doing the right thing and so that is where the breakdown happens. So they are wanting to see the children but when they are around the children they are running one or the other down to the child. So by us being able

<sup>12</sup> Examples of courts decisions where grandparents have applied for contact with grandchildren in such circumstances are: *Church and M Overton and Anor* [2008] FamCA 953; *Samson & Jacks* [2008] FamCA 176; *Bermet and Swallow* (No. 2) 2008, Family Court, unpublished.

to engage them I think that that's beneficial, even if it doesn't get to dispute resolution. They are able to hear what that damage is because that is just so important.

Another FRC manager simply observed:

So when you've got grandparent involvement, it often flags up issues around mental health and substance abuse issues.

And an FDR manager spoke of having:

two sets of grandparents in the room with the biological parents trying to sort out—not straight away of course—lots of work to get up to there, but trying to figure out, well, when do the kids get to see grandparents? Just like some mums might not recognise the importance of dads, both parents sometimes don't recognise the importance of grandparents to children ... Some grandparents come to our "Children in Focus". When they come they just sit there and cry the whole time.

A number of practitioners also spoke of the very practical difficulties associated with accommodating grandparents. One FRC practitioner observed that:

Wednesday night is really, you know, paternal grandmother, dad's parents and the other one should be mum's parents. Actually, when you look at an actual calendar and try and put that in there, mum and dad feel ripped off too, at times.

Some FRSP staff were concerned that like some parents, grandparents can be more focused on their own rights than on the wellbeing of their grandchildren and the children's parents. According to one FRC manager:

They've got "rights" ... We're getting so many grandparents coming in now because they've got "rights" to see their grandkids. "So I want every second weekend plus the Wednesday night in the middle", which for this poor mum means that she spends no time with her kids because the dad, of course, gets every other second weekend and supposedly Wednesday nights, so God knows how that's going to work. But grandparents are very much coming in and being very demanding. "I need to see my grandkids" and "I have a right because I've been told that I have a right to see my grandkids".

The upsides, downsides and at times sheer complexity of involving grandparents and extended family members in discussions and arrangements after parental separation were all reflected in the grandparent focus groups. Grandparents told stories that covered the whole range of emotions—from joy and optimism to anger and desperation. Some grandparents had made great sacrifices, both financial and emotional, in order to maintain good relationships with their sons/daughters and sons/daughters-in-law and thus remain involved in their grandchildren's lives. Some told stories of problematic relationships with sons/daughters-in-law that predated the separation and then spilled over into post-separation dynamics.

By no means were all grandparents in favour of the emphasis on shared care-time arrangements or shared decision-making about matters affecting children's long-term wellbeing. Some spoke of the tensions that, in their view, such circumstances created between the separated parents and a few spoke of how, again in their view, shared care-time arrangements or shared decision-making could be used, by both mothers and fathers, as a weapon in their conflict. One grandmother was especially angry at what she saw as the consequences of an emphasis on shared care-time arrangements leading, in her view, to the child's father preventing her daughter from taking the child back to her home state for a holiday. Her option, as she saw it, was to move to the other side of Australia or see her grandchild only occasionally.

## 12.8 Summary

Most parents agree that it is important to maintain the same level of contact with grandparents as was occurring before the separation. Most parents, but especially mothers, also considered that their children had a close or very close relationship with their grandparents.

Most separated parents in 2006 thought that the relationship between their own parents and their children was close or very close, but non-resident fathers were least likely to think this.

In addition, non-resident fathers in 2009 were also the least likely to rate their own parents as being very involved or quite involved in their children's lives.

These trends were consistent with the reports of grandparents in 2009. Maternal grandparents whose grandchildren lived mostly with the mother were most likely to report close or very close relationships with their grandchildren. Paternal grandparents whose grandchild lived mostly with the mother were least likely to indicate this. In addition, maternal grandparents whose grandchild lived mostly with the mother were the most likely of all groups to report at least weekly contact. Next most likely were maternal and paternal grandparents whose children had an equal care-time arrangement. Least likely were paternal grandparents whose grandchild lived mostly with the mother. Thus, from the perspective of both parents and grandparents, relationships between paternal grandparents and grandchildren who live with their mother are the most tenuous in terms of closeness and involvement (including frequency of contact).

Resident mothers, resident fathers, and non-resident fathers most commonly believed that the relationship between their parents and children had remained much the same after the separation, with a slightly higher proportion of resident parents stating this than non-resident fathers. However, resident fathers and mothers were much more likely than non-resident fathers to indicate that the relationship had become closer since separation.

Resident fathers, resident mothers, fathers with equal care-time and non-resident fathers were all more likely to report that since the separation, the involvement of their own parents with their children had either increased or stayed the same. But non-resident fathers were the group most likely to say that involvement between their own parents and their children had decreased, while resident fathers were the most likely to report that it had increased.

Consistent with the trends noted above, maternal grandparents whose grandchild was living with the mother were the most likely to indicate that they were highly satisfied with their relationship with their grandchildren, followed by maternal and paternal grandparents whose grandchildren experienced an equal care-time arrangement. Paternal grandparents whose grandchild was living with the mother were the least likely to state this. Indeed, only one-quarter of these grandparents indicated high satisfaction.

Most post-reform parents who had sorted out their parenting arrangements felt that time with grandparents had been taken into account, and most grandparents confirmed this perception. Pre-reform separated parents, on the other hand, were less likely to have taken grandparents into account. This change is consistent with the aspirations of the reforms.

Only a minority of grandparents made use of services in relation to the separation and, among this group, lawyers and legal services were cited considerably more often than any other source of assistance. Consistent with this finding, few grandparents in the focus groups had knowledge or understanding of the range of services available. Most were pleasantly surprised to know they existed, although a few felt that they would make no difference.

Paternal grandparents were considerably more likely to seek the support of services than maternal grandparents. More than half the mainly paternal grandparents in the Survey of FRSP Clients 2009 who sought help from services regarding arrangements with their grandchildren indicated that no agreement had been reached. Of these grandparents and of those who reported reaching partial agreement, almost a half indicated that they had been issued with a certificate allowing them to take the matter to court. In addition, nearly one in five of the grandparents in this survey were living with their grandchild both before and after they attended the service.

Interviews and surveys with FRSP staff revealed a growing appreciation of the importance of including grandparents in the negotiations and discussions where appropriate. Lawyers, too, were somewhat more likely to advise grandparents of their more prominent position under the legislation. There was also an appreciation by FRSP staff of the complexity of some extended family situations, and the need to avoid automatically assuming that involvement of grandparents would contribute positively to the children's lives. The stories from the grandparent focus groups reflected this complexity.

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

This chapter examines the impact the 2006 reforms have had on the Family Court of Australia (FCoA), the Federal Magistrates Court (FMC) and the Family Court of Western Australia (FCoWA).

The following questions are addressed:

- How do the case management systems in each court operate?
- What, if any, changes in filing patterns have occurred since the implementation of the *SPR Act 2006* from 1 July 2006?
- What are the implications of having two courts operating in parallel (the FCoA and the FMC) for the achievement of policy objective 4 (2007 Evaluation Framework, Appendix B). This policy objective concerns the way in which various components of the family law system work together.

The chapter begins with an overview of the case management system in each of the courts. Post-reform patterns in filings and the number of allegations of family violence and child abuse made in matters across the three courts are then examined. Finally, the implications, from the perspective of family law system professionals, of the parallel operation of the FMC and the FCoA are considered.

The analysis in this section is based on the following sources:

- Qualitative Study of Legal System Professionals (QSLSP) 2008;
- FCoA, FMC and FCoWA court files pre- and post-1 July 2006;
- Family Lawyers Survey (FLS) 2006 and 2008; and
- FCoA, FMC and FCoWA administrative data 2004–09.

## 13.1 Case management: A brief overview

Each of the three main courts exercising *Family Law Act (FLA) 1975* jurisdiction (the FCoA, the FMC and the FCoWA) operates on the basis of a different procedural and case management system. Western Australia has one main court exercising family law jurisdiction (the FCoWA), while the FMC and the FCoA each provide services across the rest of Australia.<sup>1</sup> The FCoA and FMC have registries in each city and the FMC operates circuits in 38 regional areas. Under a protocol agreed to by the courts, the Family Court of Australia handles cases involving complex issues, including complex questions of law, matters involving sexual abuse, serious physical abuse or serious controlling violence, international child abduction and international relocation, or cases that will take longer than four days to hear.<sup>2</sup> Matters involving issues such as child and abuse and family violence make up a significant proportion of the FMC's caseload. This is discussed in Section 13.2.7.

<sup>1</sup> For an account of the issues relating to the establishment of the FMC and proposals to restructure the courts (Chapter 1), see Forgarty (2009).

<sup>2</sup> Protocol for the division of work between the Family Court of Australia and the FMC. The Semple Report noted that the definition of complexity was not clearly understood: (Semple and Associates and AGD ¶ 104–105).

### 13.1.1 Family Court of Australia

In the FCoA, children's matters (excluding those involving allegations of sexual or serious physical abuse)<sup>3</sup> are handled under the Less Adversarial Trials (LAT) model, which incorporates the Child Responsive Program (CRP). The LAT model involves active case management by a judicial officer and the CRP involves a family consultant being involved throughout a matter. When a matter is listed for trial, the following phases of the CRP take place (Huggall, 2007):<sup>4</sup>

- Phase 1: Intake and assessment interviews with the parents, including screening for family violence and child abuse.
- Phase 2: A child and family conference, which may involve an interview with the child or children separately to the parents.
- Phase 3: In some cases, a selective settlement meeting, which may result in consent orders being made by a registrar.
- Phase 4: Oral evidence, given by the family consultant on Day One of the LAT. An issues assessment report is also prepared and provided to the judge on the first day.

Day One of the LAT hearing focuses on identifying the issues in dispute and determining how a matter should proceed. The judge may speak to the parties directly to obtain their perspective, or the parties may elect to speak through their legal representative (Collier, 2008). As mentioned above, the family consultant provides an oral report outlining key aspects of their dealings with the family. No affidavits are filed prior to Day One of the LAT unless they are required in support of a Form 4 notice<sup>5</sup> or to establish that a party is not required to attend family dispute resolution (FDR) because an exception under s60I(9) applies. On Day One of the LAT, a range of procedural orders may be made by the court to assist with progressing the matter, including orders for the appointment of an independent children's lawyer (ICL), orders for a Family Report to be prepared, and orders relating to the evidence that the court wishes to obtain.

In 2008, the FCoA implemented a docket system, which means each case is allocated to a single judge who is responsible for its progress through the system. In the FCoA, compliance with the requirement of s60I is largely the responsibility of registrars, who exercise delegated judicial responsibility in a range of areas and determine whether a matter may be listed for hearing under one of the s60I(a) exceptions.

Matters involving serious allegations of sexual or physical abuse are handled in the Magellan case management system in the FCoA.<sup>6</sup> Magellan was initially trialled and implemented in the Melbourne Registry of the FCoA and was in train in most registries by 30 June 2006.<sup>7</sup> The aim of Magellan is to ensure that matters involving allegations of serious physical or sexual abuse are resolved as expeditiously as possible. Key attributes of the model are uncapped legal aid funding, the involvement of an ICL and collaboration with state and territory child protection authorities that provide child protection reports in Magellan matters. Magellan matters were not covered in this evaluation. The numbers of matters that were started as Magellan cases between 2004–05 and 2008–09 are shown in Table 13.1.

3 These are handled in the Magellan case management system, described further below.

4 The LAT process aligns with Division 12A of Part VII, but is based on a case management system (the Children's Cases Program), trialled by the FCoA prior to the reforms (see Harrison, 2007).

5 Form 4 notices are used to notify courts where there are concerns about family violence and child abuse. Parties are obliged to file such a notice when an allegation of child abuse has been made (s67Z), and a range of professionals, including registrars, family consultants, family counsellors, family dispute resolution (FDR) practitioners and independent children's lawyers (ICLs) are obliged to inform child protection authorities if they suspect a child has been abused or is at risk of abuse (s67ZC). Where such notices are filed and the allegation is relevant to whether an application should be refused or granted, the court is obliged to take prompt action (s60K). Such action may involve making interim or procedural orders (s60K(2)) to obtain evidence or protect the child or party (s60K(2)(a)). The courts are also required to deal with issues raised as expeditiously as possible (s60K(2)(c)). Prior to the reforms, they were only required to be filed when child abuse was alleged.

6 For more detailed information on the Magellan case management system, see Higgins (2007).

7 Implementation was completed in all Family Court registries by 30 June 2006 (FCoA, 2006). The NSW Department of Community Services (DoCS) extended participation to include south-west NSW by February 2007, but it was still only available in NSW on a limited basis as this report was being prepared (FCoA, 2007).

**Table 13.1** Number of matters started as Magellan cases, 2004–05 to 2008

	2004–05	2005–06	2006–07	2007–08	2008–09
Number of matters	213	195	227	204	268

Source: FCoA data provided to AIFS

In 2008–09, as a proportion of total filings in children's matters<sup>8</sup> in the FCoA and the FMC, 2% of cases were Magellan matters. Magellan matters made up 13% of filings in children and children and property matters in the FCoA in this period.

### 13.1.2 Federal Magistrates Court

The FMC also operates on the basis of a docket system, so that each matter is handled by the same judicial officer from filing until resolution or determination. The legislative charter of the court is to operate as informally as possible, use streamlined procedures and encourage the use of appropriate dispute resolution procedures<sup>9</sup>.

Unlike the FCoA, the FMC rules require that affidavits be filed with the initiating application or response to an initiating application (FMC Rules 2001 R.4.05). During the period of this evaluation, the FMC process for assessing compliance with s60I changed. Prior to 1 March 2008, federal magistrates evaluated whether there were grounds to accept that a party is not required to attend FDR because an exception under s60I(9) applied on the basis of affidavit evidence. After 1 March 2008, the FMC required certificates to be filed with Part VII applications.<sup>10</sup> At the time this evaluation was conducted, family consultant services were provided to the FMC on a sub-contracted basis, although in 2008 family consultants were engaged by the FMC to provide services in regional areas (Henderson, 2008). The FMC *Annual Report 2008–09* indicated that family consultants conducted 1,099 child dispute conferences. Orders for Family Reports to be prepared were made in 4,444 matters.

When a matter first goes before a federal magistrate for a procedural hearing on the first court date, the federal magistrate assesses the issues in the case. Consideration is given to issues such as compliance with s60I, the need for an ICL and the need for a Family Report. Issues relating to family violence and child abuse are brought to the attention of the court by the parties, or the family consultant or ICL where these professionals are involved. No routine screening takes place by FMC personnel, although parties have the opportunity to bring safety concerns to the attention of registry staff.

As noted in Chapter 1, this evaluation took place in a practice environment that was evolving in many areas. In the last quarter of 2009, the FMC was allocated increased registrar resources (increasing from 20 to 34) and family consultant resources (increasing from 14 to 31).<sup>11</sup>

### 13.1.3 Family Court of Western Australia

As noted earlier, the FCoWA primarily exercises jurisdiction under the *FLA* and its state-based mirror, the *Family Court Act 1997* (WA), which applies to disputes applying to ex-nuptial children.<sup>12</sup> Under FCoWA case management practices,<sup>13</sup> matters are assigned to a family consultant track, magistrate track or judge track (FCoWA, 2008, R5.5), depending on a range of factors, in-

<sup>8</sup> This refers to applications for final orders made in matters involving children only and children and property. These categories exclude filings relating to child support and matters filed pursuant to the courts' welfare jurisdiction (s67ZC).

<sup>9</sup> *Federal Magistrates Act 1999* (Cth), s(1)(2)(a),(b)(c).

<sup>10</sup> From that date, registrars became available to deal with requests for exceptions from filing an s60I certificate rather than requests for exceptions being considered by a federal magistrate on the first court date (FMC, Practice Division No. 1 of 2008).

<sup>11</sup> Advice from the FMC. The decision concerning resource allocation was based on Des Semple & Associates (2009).

<sup>12</sup> Family law dispute resolution services in WA are delivered by the FCoWA and family law magistrates, who also hold office as registrars of the FCoWA and operate as if they constitute a single entity. Outside the Perth metropolitan area, the Magistrates Court of WA has comparable summary family law jurisdiction to other state courts.

<sup>13</sup> FCoWA, *Case management guidelines*, 1 January 2008.



cluding the length and nature of the matter. Where an application is filed in reliance on the family violence or child abuse exceptions to the requirement to attend family dispute resolution,<sup>14</sup> the FCoWA requires the parties to file a Form 4 notice (FCoWA, 2008, R3.2).

The FCoWA operates on the basis of the Child Related Proceedings Model,<sup>15</sup> which begins with a case assessment conference (CAC). These are conducted by family consultants and involve interviews being conducted with the parties (and their lawyers, for represented parties) to identify what issues are in dispute and to screen for family violence and child abuse, and mental health and substance misuse issues. No affidavits are filed by the parties prior to the CAC unless an affidavit in support of a Form 4 and s60I(9) exception is required. A hearing before a magistrate or judge follows a CAC. At the hearing, a family consultant provides an oral report and the parties may give limited evidence. At this hearing, interim orders may be made as well as procedural orders to determine the further progress of a matter. These orders may concern the appointment of an ICL and deal with the evidence that the court wishes to obtain. They may also require parties to attend community programs such as post-separation parenting courses.

The court event that follows the CAC and its consequent hearing is a Child Dispute Conference, conducted by a family consultant. Where necessary, these conferences allow the family consultant to make an assessment as to whether the matter will resolve following the steps taken after the CAC or whether it will progress further in the court process. Cases that do progress further in the court process are assigned either to a magistrate or a judge. The assessment concerning which track a matter should be allocated to is made by the magistrate who conducts the post-CAC hearing. Family consultants retain involvement as required through the proceedings.

The Family Court of Western Australia trialled a special case management system, known as the Columbus Pilot, for matters involving family violence and child abuse, analogous to the FCoA's Magellan program in some respects, in 2001–02 (Murphy & Pike, 2005). The approach of streaming cases into a special case management track such as Columbus or Magellan was not maintained in the FCoWA, but aspects of the Columbus system have been implemented in the Child Related Proceedings model, in particular the emphasis on an interdisciplinary approach and the application of screening and risk management processes (Murphy & Pike, 2006). The FCoWA has close links with the WA Department of Child Protection (DCP) and has protocols for sharing information with this department, the Magistrates Court of Western Australia and the WA Department of Corrective Services in matters involving family violence. FCoWA personnel are linked to the Magistrates Court computer records, and information on charges, convictions and violence restraining orders can be obtained instantly. From March 2009, a senior officer of the Department of Child Protection was based with the family consultants, allowing the FCoWA instant access to information, records and advice from that department.

## 13.2 Differences in patterns of filings and representation in the FCoA, FMC and FCoWA

This section examines whether there have been changes in the filing of applications, filing of Form 4 notices and orders for the appointment of ICLs since July 2006 in the FCoA, FMC and FCoWA. Key issues highlighted in this discussion include an increased trend for a greater proportion of matters to be filed in the FMC compared with the FCoA, a reduction in the numbers of applications filed for child-related orders and an increase in the number of applications for property-related orders.

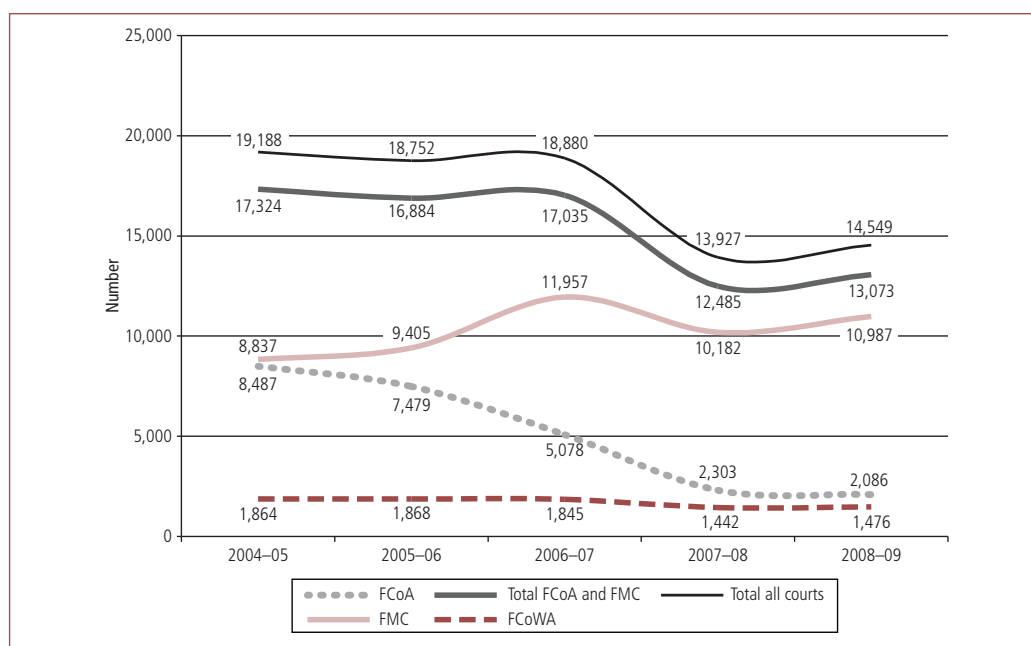
### 13.2.1 Matters involving children

There has been an overall decline in the number of applications for final orders relating to children's matters since 1 July 2006, from 18,752 in 2005–06 to 14,549 in 2008–09 (Figure 13.1). The number of applications to the FCoA declined from 7,479 to 2,086 over this period, the number to the FMC increased from 9,405 to 10,987, and the number to the FCoWA decreased from 1,868 to 1,476.

<sup>14</sup> *Family Court Act 1997* (WA) s66H(8)(b).

<sup>15</sup> This model is available only in the metropolitan region. Advice from the court at the time this report was being prepared was that some aspects of the WA model were being reconsidered. The information contained in this report was correct as at 30 November 2009.





Note: Includes children only and children plus property matters.

Source: FCoA, FMC and FCoWA administrative data 2004-09

**Figure 13.1** Number of applications for final orders, by court, 2004-05 to 2008-09

There has been a continuation of the pre-reform trend of an increasingly greater proportion of filings being made in the FMC rather than the FCoA (Table 13.2), with the proportion of filings in the FMC increasing from 50% in 2005-06 to 76% in 2008-09. By contrast, there has been no change in the proportion of filings being made in the FCoWA (10% in all years). When the split between just the FMC and FCoA is considered, in 2008-09 the FMC handled 84% of all filings in children's matters, compared with 55% in 2005-06 (see filing information in Table 13.3).

**Table 13.2** Final orders for children and children plus property, by court, 2004-05 to 2008-09

	2004-05	2005-06	2006-07	2007-08	2008-09
			%		
FCoA	44.2	39.9	26.9	16.6	14.3
FMC	46.1	50.2	63.3	73.1	75.5
FCoWA	9.7	10.0	9.8	10.4	10.1
Total	100.0	100.1	100.0	100.1	99.9
Number of applications	19,188	18,752	18,880	13,927	14,549

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

Source: FCoA, FMC and FCoWA administrative data 2004-09

Table 13.3 provides information about the number of filings in children's matters in each of the courts, broken down by whether they were a children only or a children plus property matter for the period 2004-05 to 2008-09. The increasing proportion of filings that are being made in the FMC is evident in both applications for final parenting orders only and applications for final parenting orders combined with property.

There are likely to be several reasons for the decrease in the total number of filings. The main explanation is the introduction of the requirement for parents to attend FDR before filing a court application except in certain circumstances (operation of s60I), as well as some shifts in these issues being seen primarily as relationship problems rather legal ones and the increasing availability of relationship services.

There are also a number of explanations for the increase in the proportion of filings being made in the FMC. Part of the explanation may be in the parties choosing the FMC over the FCoA

**Table 13.3** Number of applications for final orders, by type of final order and court, 2004–05 to 2008–09

	2004–05	2005–06	2006–07	2007–08	2008–09
<b>Family Court of Australia</b>					
Children only	6,361	5,345	3,673	1,760	1,523
Both children and property	2,126	2,134	1,405	543	563
<b>Total (children only + children &amp; property)</b>	<b>8,487</b>	<b>7,479</b>	<b>5,078</b>	<b>2,303</b>	<b>2,086</b>
<b>Federal Magistrates Court</b>					
Children only	7,619	8,128	10,186	8,833	9,615
Both children and property	1,218	1,277	1,771	1,349	1,372
<b>Total (children only + children &amp; property)</b>	<b>8,837</b>	<b>9,405</b>	<b>11,957</b>	<b>10,182</b>	<b>10,987</b>
<b>Family Court of Australia and Federal Magistrates Court</b>					
Children only	13,980	13,473	13,859	10,593	11,138
Both children and property	3,344	3,411	3,176	1,892	1,935
<b>Total (children only + children &amp; property)</b>	<b>17,324</b>	<b>16,884</b>	<b>17,035</b>	<b>12,485</b>	<b>13,073</b>
<b>Family Court of Western Australia</b>					
Children only	1,563	1,542	1,531	1,268	1,323
Both children and property	301	326	314	174	153
<b>Total (children only + children &amp; property)</b>	<b>1,864</b>	<b>1,868</b>	<b>1,845</b>	<b>1,442</b>	<b>1,476</b>

Source: FCoA, FMC and FCoWA administrative data 2004–09

because of greater judicial resourcing in the FMC—which has increased over time—while that in the FCoA has decreased (see footnote 29). Another part of the explanation may be that the FMC has a wider reach beyond capital cities than does the FCoA.

The qualitative data collected as part of the evaluation (examined in the following sections), suggests three further reasons that may, to varying and possibly overlapping extents, be relevant in explaining the shift in filing behaviour. These are:

- different processes applied in the FCoA and FMC for compliance with s60I (see sections 13.1.1 and 13.1.2);
- the concerns among many legal practitioners about a range of aspects of the implementation of the LAT model in the FCoA;<sup>16</sup> and
- a perception among legal practitioners that orders for equal or substantial and significant shared care were more likely to be made in the FMC than the FCoA.<sup>17</sup>

### 13.2.2 Matters involving property only

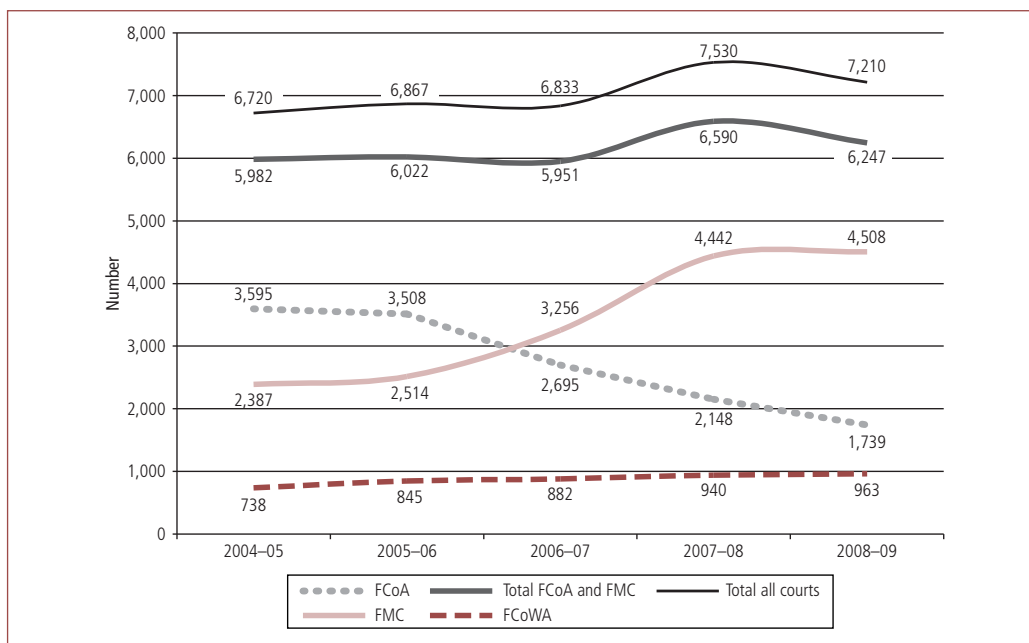
The period after the introduction of the reforms saw an increase in the numbers of applications for final orders in matters involving property only (Figure 13.2). In the two years prior to the reforms (2004–05 and 2005–06), there was little change in the number of such applications to the FCoA and the FMC and a small increase in the FCoWA. From 2006–07 to 2007–08, the numbers of filings in the FCoA and FMC combined increased from 5,951 to 6,590 and then fell slightly to 6,247 in 2008–09. The FCoWA also experienced an increase in the number of property-only matter filings, from 738 in 2004–05 to 963 in 2008–09. (There was no decrease between 2007–08 and 2008–09, as occurred for the FCoA and FMC combined.)

Data reported in Chapter 9<sup>18</sup> suggest that the shared parenting reforms intensified the bargaining dynamics over property arrangements. FLS 2008 data (reported in Chapter 9) suggested

<sup>16</sup> See Section 14.3.2 in Chapter 14.

<sup>17</sup> See Section 13.3.4.

<sup>18</sup> See Section 9.4 in Chapter 9.



Source: FCoA, FMC and FCoWA administrative data 2004–09

**Figure 13.2** Number of applications for final orders, property only, by court, 2004–05 to 2008–09

average property distribution ratios, with fathers receiving a greater proportion of property post-reform. The trends suggested in the present data may be consistent with this.

As with the patterns in filings in relation to children's matters, there has been an increase in the proportion of property-matter-only filings, which increased in the FMC, from 42% in 2005–06 to 72% in 2008–09.

### 13.2.3 Applications for consent orders

Data from the FCoA, whose registrars handle most applications for consent orders made to formalise arrangements made by agreement,<sup>19</sup> show a small reduction in the total numbers of orders being made to formalise agreements reached by the parties in property and children's matters. As Figure 13.3 indicates, a slight downward trend is evident, with a drop from 11,774 in 2005–06 to 10,100 in 2008–09. While the number of applications for children only and property only has remained relatively stable, a 33% decrease in consent orders for property and children matters—from 2,198 in 2004–05 to 1,474 in 2008–09—is largely responsible for the overall decrease. It is also noteworthy that the introduction of FDR with exceptions has apparently not led to an increase in the number of parents seeking to formalise agreements in the court.<sup>20</sup>

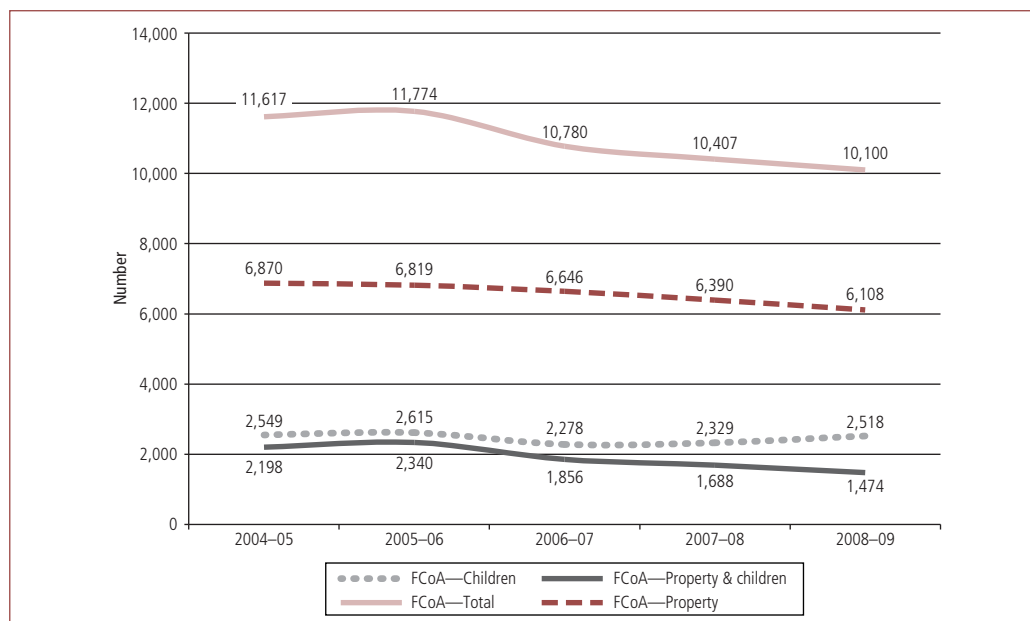
### 13.2.4 Trends in appeals

Data from FCoA annual reports show an increase in child-related appeals in 2008–09. As indicated in Table 13.4, the number of total appeals in the FCoA has increased steadily in the post-reform period, rising from 299 in 2005–06 to 364 in 2008–09. The 2008–09 financial year saw a sharp increase in child-related appeals, which rose to 47% from 31% in 2007–08. The post-reform period saw a steady increase in the number of appeals by self-represented litigants (from 41% in 2006–07 to 53% in 2008–09), with a particularly notable increase between 2007–08 and 2008–09 in the proportion of appeals involving self-represented litigants, rising from 44% to 53%.

The gender distribution of appellants (which indicates that more males tend to lodge appeals), remained relatively stable over the period 2004–05 to 2008–09.

<sup>19</sup> Family Law Rules 2004 (Cth) Pt 10.4, and Federal Magistrates Court Rules, Reg 10.04, Reg 13.04.

<sup>20</sup> It should be noted, however, that these figures do not include FMC figures. The FMC does not have a special consent order form. Applications by consent are made on regular application forms and filed with an affidavit.



Source: FCoA administrative data 2004–09

**Figure 13.3** Number of consent orders applications, FCoA, 2004–05 to 2008–09

**Table 13.4** Proportions and characteristics of appeals, 2004–05 to 2007–09

	2004–05	2005–06	2006–07	2007–08	2008–09
	%				
Appeals that are child-related	51	42	43	31	47
Gender of appellant <sup>1</sup>					
Male	51	55	53	52	50
Female	39	37	39	39	42
Unknown/other <sup>2</sup>	10	9	8	9	8
Appellants who are self-represented <sup>1</sup>	41	41	43	44	53
Court where first instance decision was made					
FCoA	65	65	62	44	44
FMC	35	35	38	56	56
Number of appeals filed <sup>1</sup>	308	299	324	349	364

Notes <sup>1</sup> Numbers based on all appeals, e.g., parenting, financial, costs and other matters. <sup>2</sup> "Other" in this category may include corporate or statutory entities. Whole figures supplied.

Source: FCoA 2005, 2006, 2007, 2008, 2009b

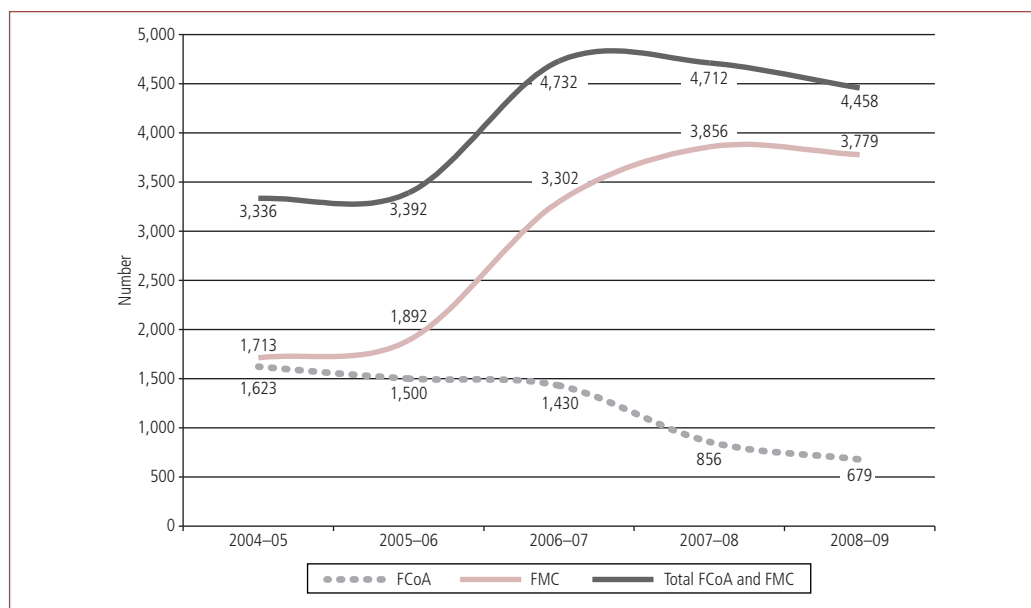
While there seems to have been a drop in child-related appeals in the years prior to 2008–09, it has to be noted that the definition of this category in the FCoA 2004–05 *Annual Report* (FCoA, 2005) encompassed "residence", "interim residence", "contact", "interim contact", and "specific issues". From 2005–06 onwards, this category was identified as "children-related appeals", or as "parenting issues raised as appeals", which includes the previous categories except for "specific issues". Thus, changes may be explained, in part, by definitional variations.

### 13.2.5 Independent children's lawyers

Court data indicate that increased proportions of cases have orders made for independent children's lawyers to be involved in proceedings.<sup>21</sup> In 2005–06, there were a total of 3,392 ICL

<sup>21</sup> Data provided to AIFS by the family law courts. Figures include appointments made in Magellan cases.

orders across both the FCoA and FMC and 4,458 in 2008–09 (Figure 13.4). The number of ICL orders post-reform decreased in the FCoA (from 1,500 in 2005–06 to 679 in 2008–09) and increased in the FMC (from 1,892 in 2005–06 to 3,779 in 2008–09).

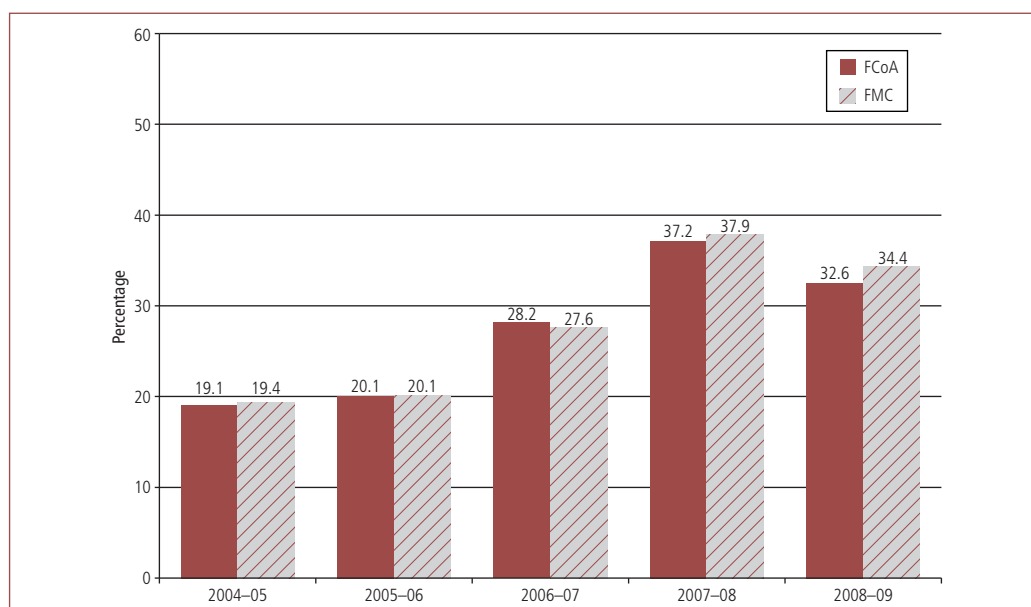


Note: Data on number of ICL orders not available from the FCoWA

Sources: FCoA and FMC administrative data 2004–09

**Figure 13.4** Number of ICL orders, FCoA and FMC, 2004–05 to 2008–09

However, as overall numbers of applications have changed, it is important to also analyse the proportion of final order applications which have an ICL order (Figure 13.5). Prior to the reforms (2004–05), just under a fifth of FMC and FCoA matters involved orders for ICLs to be appointed. This proportion increased in the post-reform period to be about a third of matters in each court in 2008–09. It should be noted that, while commissions generally appoint and fund ICLs when requested by the court, under Commonwealth guidelines this is a decision for the commission.



Sources: FCoA and FMC administrative data 2004–09

**Figure 13.5** Applications for final orders for which ICL orders were made, child only and children and property, by court, 2004–05 to 2008–09

Analysis of FCoA, FMC and FCoWA court files initiated and concluded post-1 July 2006<sup>22</sup> reveals that cases that required a judicial determination had the greatest proportion of ICLs involved (Table 13.5). An ICL was appointed in 30% of judicially determined cases, 25% of cases determined by consent after initiated proceedings and in 2% of consent cases. Across courts, an ICL was appointed in 17% of FCoA cases, and 20% of cases in the FMC. There was a slightly lower rate of appointment of an ICL in the FCoWA (13%) (Table 13.6).

**Table 13.5 Cases with an ICL ordered, by file determination, post-reform**

	Judicial determination	Consent	Consent after initiated proceedings	Total
ICLs involved (%)	29.6	2.1	24.5	17.3
Number of cases	68	7	94	169

Note: Number of ICLs appointed, based on last application.

Source: FCoA, FMC and FCoWA court files

**Table 13.6 Cases with an ICL ordered, by court, post-reform**

	FCoA	FMC	FCoWA	Total
ICLs involved (%)	17.0	19.5	13.3	17.3
Number of cases	53	73	43	169

Note: Number of ICLs appointed, based on last application.

Source: FCoA, FMC and FCoWA court files

### 13.2.6 Legal representation and self-representation

The number of self-represented litigants<sup>23</sup> in the FCoA and FMC decreased from 10,405 in 2005–06 to 7,114 in 2008–09 (Figure 13.6). This fall continues a pre-reform trend.

While there has been a decrease in the number of self-represented litigants, this has been largely driven by the fall in the total number of filings (Table 13.3). There was nevertheless a downward trend in the proportion of matters with self-represented litigants in the FMC, which fell from 52% in 2005–06 to 38% in 2008–09 (Figure 13.6). Over the same time period, there was no clear trend in the proportion of FCoA matters involving self-represented litigants.

Further insight into representation of litigants was obtained by the analysis of post-reform files in parenting matters from the three courts. The results indicate that applicants as well as respondents were significantly more likely to use a private solicitor in “consent” (65% for applicants and 46% for respondents) and “consent after initiated proceedings” cases (61% for applicants and 48% for respondents),<sup>24</sup> than in judicially determined cases (44% for applicants and 31% for respondents). Applicants were also more likely than respondents (59% and 44% respectively) to use a private solicitor, across all categories (judicial determination, consent, consent after proceedings).

There was little difference between applicants and respondents in rates of self-representation in judicially determined cases (26% for applicants and 31% for respondents). Respondents were significantly more likely to not have representation in consent (18% for applicants and 38% for respondents) and consent after proceedings were initiated cases (13% for applicants and 26% for respondents). Respondents in judicially determined cases were equally likely to have a private solicitor or no representative (31% each).

### 13.2.7 Family violence and child abuse

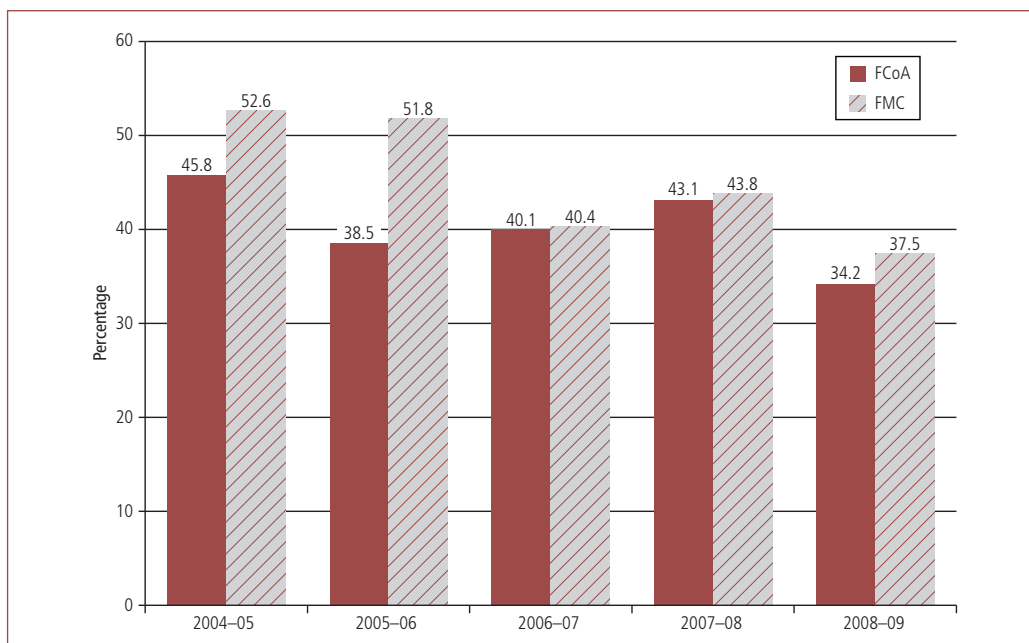
In this section, quantitative data dealing with the issues of family violence<sup>25</sup> and child abuse are examined. The discussion begins with an examination of court data on pre- and post-reform

<sup>22</sup> This sample was based on matters filed after 1 July 2006 and determined by 14 November 2008.

<sup>23</sup>

<sup>24</sup> These designations are used on the court form, even though such applications are made by mutual consent.

<sup>25</sup> The definition of this term is discussed in Chapter 2.



Note: Proportion was calculated by dividing the number of self-represented litigants (either applicant, respondent, or both) by the number of total applications for final orders (children only, children and property, property only).

Source: FCoA and FMC administrative data 2004-09

**Figure 13.6** Self-represented litigants as a proportion of applications for final orders, child only, children and property, and property only, by court, 2004-05 to 2008-09

patterns in the filing of Form 4 notices across the three courts. This is followed by a discussion of the prevalence of allegations of family violence and child abuse in the FCoA, FMC and FCoWA court files pre- and post-reform, with post-reform comparisons being drawn from the *Allegations of Family Violence* report (Moloney et al., 2007).

At the outset, it should be noted that pre- and post-reform data were generated in significantly different procedural environments. The first point to note is that, prior to the reforms, the Form 4 notice was required to be filed in cases where there were allegations of child abuse only, while post-reform it was applicable in cases where allegations of child abuse *or* family violence were being made. Further, as noted in Section 13.1.3, the Family Court of Western Australia requires a Form 4 notice to be filed when a matter is to be dealt with under one of the violence/child abuse exceptions to the requirement to attend FDR (s60I(9)(b)).

In addition, as outlined briefly in Section 13.1 and discussed in more depth in Chapter 14, each court has taken a different procedural approach to the implementation of Division 12A of Part VII of *FLA 1975*. Most relevantly for the purpose of this discussion, the FCoWA and the FCoA have taken the approach of not requiring affidavit material to be filed prior to the first stage of proceedings (the CAC in the FCoWA and Day One of the trial in FCoA). However, in each court, evidence relevant for the claiming of a s60I(9)(b) exception would be provided on a sworn basis, usually on a form required to be filed by the court. In the FMC, affidavits need to be filed prior to proceedings starting (FMC Rules 2001 R4.05).

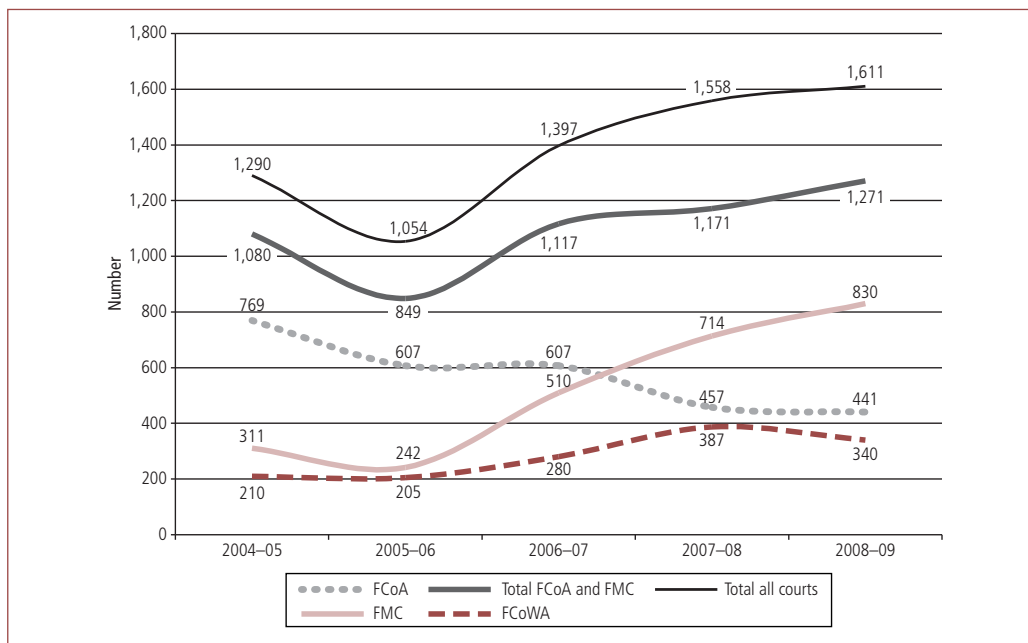
Therefore, the nature of written documentation on the court files is different in each court and has changed pre- and post-reform. This means that any change in patterns of allegations may be related to changes and differences in procedures between courts.

For these reasons, these data offer tentative insights into pre- and post-reform shifts, but the reasons for such shifts may be due to a number of factors, including changes to the legislation (see Chapter 15), changes to procedure (discussed below) and changes in the nature of matter reaching the courts due to the operation of FDR with exceptions (see Chapter 5).



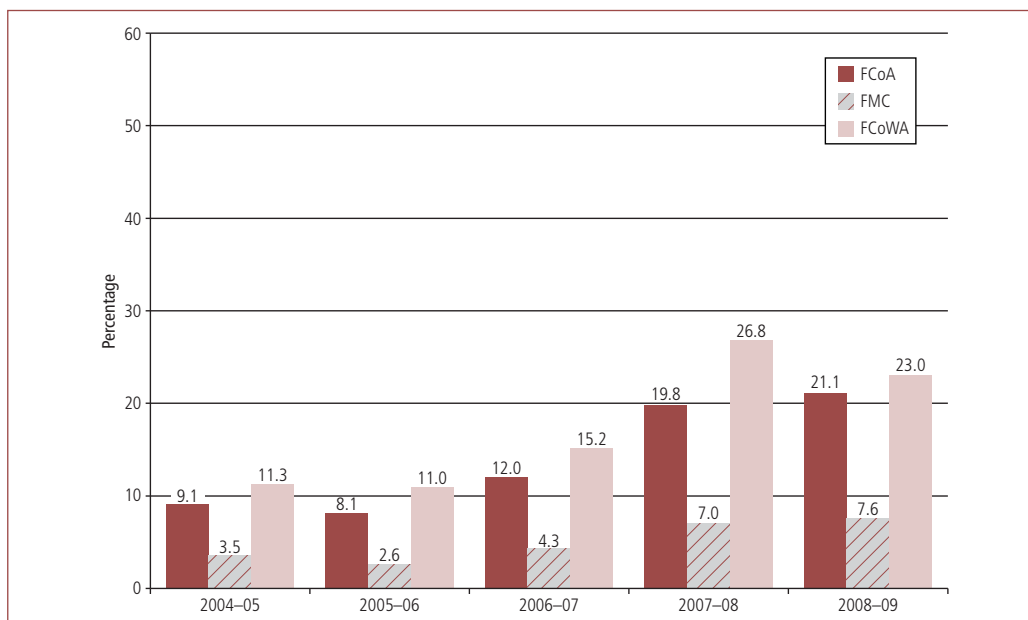
## Patterns in the numbers of Form 4 notices being filed

Data provided by the courts on the numbers of Form 4 notices filed indicate that a change in pattern of filings of Form 4s can be observed after the reforms were implemented (see Figure 13.7), with the proportion of cases in which a Form 4 notice was filed in the post-reform period increasing in each court, to differing extents (see Figure 13.8).



Source: FCoA, FMC and FCoWA administrative data 2004–09

**Figure 13.7** Number of Form 4s and Form 66s<sup>26</sup> filed, by court, 2004–05 to 2008–09



Source: FCoA, FMC and FCoWA administrative data 2004–09

**Figure 13.8** Applications for final orders for which a Form 4 notice was filed, children only and children plus property, 2004–05 to 2008–09

<sup>26</sup> A Form 66 used to be used where allegations of child abuse were being raised. This was replaced by the Form 4 from 29 March 2004.

As a total across all the courts, the number of Form 4 notices filed increased in the post-reform period, reversing a downward pre-reform trend. There was an increase in Form 4s filed in the FMC and FCoWA post-reform, while the number of Form 4s filed in the FCoA declined. By court, Form 4 filings:

- decreased in the FCoA post-reform (607 filed in 2005–06 to 441 filed in 2008–09);
- tripled in the FMC (242 filed in 2005–06 to 830 filed in 2008–09); and
- increased in the FCoWA (205 filed in 2005–06 to 340 filed in 2008–09).

As with the other data reported in this section, these figures need to be placed in context by analysing the proportion of matters in which Form 4 notices were filed (see general filing trends set out in Table 13.3).

As Figure 13.8 indicates, this analysis confirms that post-reform, matters in which a Form 4 was filed increased as a proportion of all filings. In summary, the increase by court was:

- FCoA: from 8% in 2005–06 to 21% in 2008–09;
- FMC: from 3% in 2005–06 to 8% in 2008–09; and
- FCoWA: from 11% in 2005–06 to 23% in 2008–09.

## Patterns in allegations of family violence and child abuse

Data on the prevalence of allegations of family violence and child abuse pre- and post-reform from the FCoA, FMC and FCoWA court files, when compared with data from the *Allegations of Family Violence* report (Moloney et al., 2007), suggest some differences in the prevalence of allegations raised pre- and post-reform (Tables 13.7 and 13.8). However, observed differences between the *Allegations of Family Violence* report and the file analysis data should be treated cautiously due to differences in sample size and data collection techniques and the different procedural environment in the FCoA.<sup>27</sup>

Table 13.7 shows that the post-reform FCoA, FMC and FCoWA court files and *Allegations of Family Violence* report data (Moloney et al., 2007) suggest some shifts in the number of allegations of family violence and/or child abuse being made in proceedings, as reflected in the material in the file. It suggests a change in the extent to which the material on the court file reflects allegations of family violence and child abuse in the FCoA in matters that proceeded to judicial determination. Pre-reform, 79% of court files reflected such allegations compared with 50% post-reform. It is likely that this change reflects a shift in the processes applied in the FCoA as a result of the implementation of the LAT model. As noted earlier, affidavits are not filed in LAT matters prior to Day One of the trial. This procedural change is likely to have affected the extent to which affidavit material deals with allegations of family violence and child abuse, rather than representing a decrease in matters in which such allegations are raised in the FCoA. A further relevant issue is the point referred to in footnote 7, regarding the implementation of Magellan and the consequent possibility that a change has occurred in the profile of available sample files between the two studies.

In contrast, a more stable trend is indicated for the FMC, where 67% of judicial determination cases involved such allegations pre-reform, compared with 70% post-reform. The relative stability of the FMC figures pre- and post-reform lends weight to the hypothesis raised in the preceding paragraph regarding the change in the procedural environment being relevant to the change reflected in the FCoA figures. Interestingly, while no pre-reform data are available for the FCoWA, the post-reform figures more closely resemble those in the FMC, with 65% of judicial determination matters involving allegations of family violence or child abuse or both of these types of allegations.

<sup>27</sup> The *Allegations of Family Violence* report judicial determination sample was based on 60 cases from the Melbourne, Dandenong and Adelaide registries of the FMC and the FCoA (Moloney et al., 2007). The file analysis judicial determination sample was based on 233 cases from the Melbourne, Sydney and Brisbane registries of the FCoA and FMC and from the FCoWA. The data collection for the *Allegations of Family Violence* report was conducted by two barristers. The data collection for the file analysis was conducted by a team of 11 law students. A further significant issue may be the implementation of Magellan, which was available in the Melbourne Registry when the *Allegations of Family Violence* report sample matters were heard, but not in Adelaide. By the time the matters in the file analysis sample were heard, Magellan had been almost fully implemented (see Section 13.1.1). Differences may therefore also reflect the most serious cases being streamed out of the total available pool of sample files in the post-reform period.

**Table 13.7** Judicially determined cases that have an allegations of violence raised by and against applicants and respondents, by court, pre- and post-reform

	FCoA		FMC		FCoWA	
	Pre-reform	Post-reform	Pre-reform	Post-reform	Pre-reform	Post-reform
	%					
Any allegation of family violence and/or child abuse	79	50	67	70	N/A	65
No allegation of family violence or child abuse	21	50	33	30	N/A	35
<b>Number of files</b>	<b>28</b>	<b>61</b>	<b>27</b>	<b>106</b>		<b>66</b>

Source: FCoA, FMC and FCoWA court files

Table 13.8 shows the numbers of allegations of family violence and child abuse raised in matters that settled by consent after proceedings were initiated. The trend in this part of the sample was less marked for the FCoA, where 53% of the sample had allegations of family violence and/or child abuse pre-reform, compared with 50% post-reform. A slightly more marked trend is evident in the FMC, where 62% of cases had such allegations pre-reform, compared with 56% post-reform.

**Table 13.8** Cases finalised by consent after proceedings that have an allegations of violence raised by and against applicants and respondents, by court, pre- and post-reform

	FCoA		FMC		FCoWA	
	Pre-reform	Post-reform	Pre-reform	Post-reform	Pre-reform	Post-reform
	%					
Family violence only	30	17	35	32	N/A	13
Child abuse only	5	14	2	10	N/A	23
Child abuse and family violence	18	19	22	14	N/A	9
Any allegation of family violence and/or child abuse	53	50	62	56	N/A	45
No allegation of family violence or child abuse	47	50	38	44	N/A	55
<b>Number of files</b>	<b>109</b>	<b>83</b>	<b>116</b>	<b>204</b>	<b>N/A</b>	<b>137</b>

Source: FCoA, FMC and FCoWA court files

### 13.3 The FMC and the FCoA: Implications for the administration of the *SPR Act 2006*

The following sections examine further the implications of having two courts (i.e., the FMC and the FCoA) operating in parallel when exercising *FLA* jurisdiction. Data from the QSLSP 2008 and FLS 2006 and 2008 were used to shed light on this issue.

Speaking from their own professional experience, many lawyers and family consultants interviewed and surveyed viewed the lack of consistency in process and approach with concern. These concerns are outlined below and varying approaches in case law are discussed in Chapter 15. In considering the material reported in the following sections, it should be noted that differences in interpretations of the law and personal judicial style are an inevitable part of the legal system. This is recognised to be the case by legal system professionals and judges and contributes to the dynamic nature of the administration of the justice. However, the material reported in the next sections suggests that in the current environment, the extent to which structural, procedural and jurisprudential inconsistency prevail have become significant concerns for many family law professionals, particularly when the implications for families and the integration of the system are considered holistically.

In this context, it should be noted the quantitative data reported in earlier chapters on outcomes in relation to care-time arrangements (Chapter 6) and parental responsibility (Chapter 8) show

some variations in patterns between courts, but these are not large.<sup>28</sup> However, lawyers are professionally trained to assess their clients' positions in relation to the range of possible outcomes suggested by previous judgments in similar fact situations. For this reason, their perceptions focus on observed differences in judicial approach. This point informs the following discussion of qualitative insights into professionals' views on the implications of the parallel operation of the two courts. This discussion reflects the environment in which the evaluation data were collected. As noted at Sections 13.1.1 and 13.1.2, there have been recent changes in resource allocations and the question of the structure of courts delivering family law services has been under active re-consideration (as discussed in Chapter 1).

### 13.3.1 Uneven access to court services

At the level of principle, several participants in the QSLSP 2008 expressed the view that the existence of two courts has fundamental implications for fairness. This concern arises from the differences between the FMC and the FCoA case management systems, described in the first part of this chapter. Within the FCoA's LAT system, litigants were seen to have access to better service in terms of family consultant involvement and judicial management. However, as the majority of matters are filed and dealt with in the FMC (see Section 13.2.1) and the FMC operates most circuits in regional areas, access to LAT is confined to matters dealt with in the FCoA. While a substantial proportion of legal practitioners had concerns about the LAT model (Chapter 14), most judges and family consultants saw it as a more child-focused process.

Differential access to LAT was raised by several family consultants and some legal practitioners as an "access to justice" problem. For example, after reflecting that LAT is often unavailable in regional areas, one family consultant posed the question: "So, do we have two classes of citizens whereby country people cannot file in the Family Court to receive this better system for their children?". Another family consultant observed that, while the majority of filings are in the FMC, that court has very few resources and the LAT process is a luxury for a smaller group of clients in the FCoA.

Concerns were also expressed that there are differences between the FCoA and FMC in the average level of family law experience of their judicial officers. While there was strong appreciation expressed for the access to "quicker, cheaper" justice in the FMC, there was concern about the relative inexperience of some members of the FMC bench. It was recognised clearly that there were some excellent federal magistrates in each registry, but a majority of practitioners who participated in the focus groups also expressed the view that there was less consistency in decision-making in the FMC compared with the FCoA.

Many lawyers expressed the view that some federal magistrates, particularly those without a family law practice background, were more likely to make decisions that were insufficiently cognisant of the developmental needs of children. Concerns were expressed across multiple professional groups, with lawyers and family consultants also noting that federal magistrates from a non-family law background can be unaware of the subtleties of children's developmental stages. A lawyer stated: "I'm not sure if anyone has spoken to them, but there are some federal magistrates that practitioners have tried to avoid".

A consistent theme was the likelihood of a less nuanced interpretation of the new Part VII being applied by some FMC decision-makers, whose starting point for parenting determinations was perceived to be shared care/equal time rather than shared parental responsibility. Reflective of such concerns was the comment of a practitioner about the approach of some FMC decision-makers: "If I was wanting to run a really well-considered and thoughtful case, I'd probably only rate 25% of them [federal magistrates] as really understanding those issues".

A further issue highlighted by several groups in each location were the inconsistencies in approach between federal magistrates. Several barristers noted that some magistrates can have divergent views on the same set of facts: "It really is a bit of a raffle". Other professionals noted

<sup>28</sup> Data from the FCoA, FMC and FCoWA court files post-1 July 2006 that were not reported in those chapters show that there were differences between the courts in judicially determined orders for shared care for children in different age groups. In the FMC sample, 18% ( $N = 78$ ) of children were in the 0–4 age group, compared with 12% ( $N = 70$ ) in the FCoA. For children aged 5–11 years, 22% ( $N = 177$ ) were in shared care arrangements in the FMC sample and 25.3% ( $N = 164$ ) in the FCoA sample. For children aged 15–19 years, shared care was ordered for 37% ( $N = 52$ ) in the FCoA sample, compared with 15% in the FMC sample ( $N = 52$ ). These data are not reported in tabular form due to the small sample sizes, and some caution is warranted in considering these data. However, they do provide some support for the qualitative data concerning differences in approach.

they had modified their advice-giving practices, as there was greater uncertainty surrounding the approach that might be taken. An example of the type of comments made is: “I just say there is no guarantee what is going to happen. I cannot tell you what’s going to happen until I know who you are [appearing] before, because anything can happen”.

### 13.3.2 Court resources

A further issue that provides context for the concerns expressed by participants relates to resources, particularly judicial and family consultant resources.<sup>29</sup> This was a theme that arose spontaneously in discussions and was seen to have a range of serious implications. Despite not being specifically canvassed in the interview and focus groups schedules, in the majority of focus groups the issue of adequate resources was raised as a fundamental issue, although it is not a direct consequence of the reforms.

A common view was that the FMC was under-resourced and that federal magistrates had “enormous” workloads and federal magistrates also spoke of having “crammed lists”. A number of barristers questioned the sustainability of the workloads of federal magistrates. For example, one barrister questioned the sustainability of judicial officers conducting “40 matters every day, day in, day out”, while another *barrister* noted that three federal magistrates in one particular registry had 1,600 cases and said, “They sit through lunch. They read through lunch. They sit after ... You wouldn’t wish that on your worst enemy”. Referring to time pressures in the FMC, one lawyer said:

You’re not heard ... Sometimes you don’t even get a chance to make submissions ... It’s just not that really thorough examination that I think you get in the Family Court.

The impact of inadequate resources was not seen to be confined to the FMC. Barristers raised the issue of delays associated with inadequate resources being provided to both courts. For example, one barrister noted: “You just don’t get an urgent interim hearing on your first day. Short notice used to mean two days. It now means two months if you’re really lucky”.

Several lawyers noted that with many cases still going through the process and not reaching a final determination, interim arrangements made in these cases are often based on no or very limited social science evidence. Community Legal Centre (CLC) lawyers suggested that these delays can have even longer term impacts, noting that “all kinds of things have settled” in the months it takes to get an intake date for a LAT in one particular registry.

On a related theme, participants suggested that hearing times were often very compressed in the FMC, given the number of matters scheduled. Further examples of the results of pressured hearings and processes included parties walking in for a mention and walking out with final orders. This had occurred where the other party had not filed an affidavit and resulted in the other party being unable to raise their issues.

### 13.3.3 Differences in process

At a broader level, differences in processes between the FCoA and the FMC were seen by participants to contribute to a lack of coherence in the administration of family law. For example, the number of times parties appear in each court and the listing of matters for trial can be quite different in each court. A lawyer stated: “I find it quite odd that you have one system of law that runs through two courts that run very differently”.

A point made by some family consultants was that the parallel operation of the FMC and FCoA, with each court having a different approach to the implementation of Division 12A of Part VII of the *FLA 1975*, undermined the system’s ability to provide a cohesive, child-focused service. This was seen to occur because the FMC provided barristers with a forum in which to pursue their preferred traditional advocacy practices: “The majority of barristers are going to go for what they already know. Their skills are honed for the adversarial system”.

<sup>29</sup> The question of judicial resources was not within the scope of this evaluation, but in light of the concerns reported in this section, it should be noted that since the reforms, there have been 10 departures from the FCoA bench. Six of these judicial officers were replaced by federal magistrates, three were replaced with FCoA judges and one position was abolished (information provided by the FCoA). At the end of the 2007–08 financial year, there were 53 judicial officers in the FMC (FMC, 2008).

A further issue that was suggested by participants as being a particularly significant difference between the two courts was the impact of the family consultant role. In the FCoA, family consultants provide judicial support with a forensic focus within the LAT and CRP framework. In the FMC, Family Reports were identified as being a very powerful settlement tool.<sup>30</sup> One lawyer described this as creating a situation where there was “trial by family consultant” in the FMC.

Disquiet about this phenomenon was expressed by legal practitioners, family consultants and judicial officers. A key concern was that issues of fact, which may be crucial to the outcome but are only dealt with in neutral terms in the report, did not receive sufficient scrutiny in the context of the settlement. One family consultant explained the difficulties in these terms: “There are some cases that should run that do not run, and there are all sorts of things wrong with that”. Expanding on this comment, the speaker noted that issues related to child protection and the parties’ safety would not be tested in such circumstances.

This comment from a judicial officer summarises the concerns that arise because family consultants are not privy to all the evidence and yet their recommendations carry significant weight in bringing about settlements:

Sometimes when I read a Family Report, I think it would be interesting to see what they think if they knew XYZ, if such things are proven ... If they come back with a recommendation for equal time or they come with strong recommendations, I think it's a pretty weighty matter in negotiations because sometimes the matter will settle on that basis.

### 13.3.4 Forum choice

The data reported in the preceding section establishes that the FMC increasingly has had a greater share of filings than the FCoA, with the majority of children’s matters being filed in the FMC. However, the data from interviews and focus groups with system professionals indicate that practitioners see advantages in many aspects of FCoA practice.

The FCoA was valued for the depth of experience of its judicial officers, registrars and family consultants. In deciding in which court to file (where such choice is available and viable given the complexity of the matter), it is apparent that, to some extent, legal practitioners make strategic choices based on the issues involved in a particular matter. In addition to pragmatic considerations, such as where a quicker time to hearing may be available, other issues were regularly mentioned.

Participants’ responses raised the possibility that the existence of the FMC and FCoA, and the differences in approach between them, may create opportunities for outcome-based “forum shopping”. A range of practitioners noted that matters involving family violence and child abuse would get a better hearing in the FCoA, even outside of the Magellan case management process. However, as noted earlier, post-reform filings have increased in the FMC rather than the FCoA, which is likely, at least in part, to be a function of increasing judicial resources being allocated to the FMC and decreasing judicial resources being available in the FCoA (footnote 29).

Where matters involved family violence, allegations of risks to children or mental health issues, some lawyers indicated they would be more inclined to file in the FCoA. CLC lawyers spelled out the reasons for this type of advice, indicating they believed there were more procedural safeguards in the FCoA. With more time being devoted to matters in the FCoA, this allowed for a deeper exploration of issues around family violence. A further relevant issue was the involvement of family consultants in all FCoA matters.

It is also apparent that perceptions that an order for shared time may be more achievable in the FMC may drive some decisions about where to file, depending on whether a practitioner is acting for a mother or a father. For example, a barrister stated that if acting for a male client seeking shared time, then this client had a better chance in the FMC. This barrister added: “I think if you’re desperate to prevent shared care, you might well go in the Family Court”. This was not an isolated view, but of course needs to be balanced against the results of the analysis of court files, which reveal relatively small differences between the courts in relation to time outcomes (Chapter 6).

<sup>30</sup> In 2008–09, 4,444 Family Reports were ordered in the FMC (FMC, 2009).



### 13.3.5 Transfers

A number of participants expressed concerns about the operation of the system for transferring cases between the FMC and the FCoA.<sup>31</sup> The concerns expressed by practitioner and judge participants about transfers related to two main issues: reluctance among federal magistrates to transfer matters involving allegations of family violence and child abuse to the FCoA, and the timing of transfers occurring too late after an application had initially been filed.

Almost without exception, federal magistrates interviewed said that they never or rarely transferred matters involving family violence to the FCoA. Cases that these federal magistrates transferred to the FCoA were the Magellan-type (child abuse) cases or more complex cases that involve significant hearing time and many witnesses. Some practitioner respondents had experienced making unsuccessful applications for the transfer of matters involving child abuse, and questioned whether such matters should have been retained in the FMC.

FCoA registrars identified the timing of transfers as a significant issue. Several participants felt that too many of the cases that begin in the FMC are transferred at the point of final hearing. A Family Court judge also raised this as an issue of concern, stating that magistrates generally don't examine the files early enough. These participants noted that these late transfers are particularly inappropriate for matters involving allegations of abuse or matters transferred to Magellan.

The implications of delays in transfers occurring were seen to be heightened by the existence of two different sets of processes. Registrars commented that a late transfer from the FMC can also have a significant impact, as there is the risk of a family going through a process in one court and then being required to undertake a different process in another court. This risk is particularly acute when there is a difference between the courts in the way in which a trial is run, such as a transfer to LAT in the FCoA.

Several registrars in multiple locations described the transfer of matters as being like what one described as a “ping pong match” and that sometimes cases are transferred backwards and forwards between the FMC and FCoA as there are different views on their complexity. Another registrar talked of cases starting in the FMC and, by the time the hearing date approaches, magistrates realise that they are complex cases that need to be transferred to the FCoA. Their view was that, along with matters being heard in the “wrong” court, this also led to delays and could be unfair to litigants.

In the period 2007–08 (the financial year during which these qualitative data were being collected), the FMC transferred 535 matters to the FCoA (FMC, 2008). In comparison, the FCoA transferred 1,544 matters to the FMC. No breakdown between file type (i.e., whether they involved children or property or child support or a combination) was available.

### 13.3.6 Time to finalise applications

Data from the FCoA, FMC and FCoWA court files post-reform (Table 13.9) show that the average time taken to finalise matters that proceeded to judicial determination was in fact shorter in the FCoA than the FMC (4.8 months vs 5 months), with FCoWA having the quickest timeframe of all, at 4.4 months. However, further analysis (not shown in Table 13.9) shows that cases explicitly identified as being dealt with using LAT processes in the FCoA ( $n = 15$ ) had a longer median resolution period of 9.4 months. Given the small sample size, these data should be treated with caution, but they do provide some support for the reported concerns about delays in LAT (see Section 14.3.2 in Chapter 14).

## 13.4 Summary

This chapter has provided an overview of how each of three main family law courts has operated in the post-reform period and the impact the reforms have had on filing patterns, in addition to presenting some data that sheds light on the prevalence of allegations of family violence and child abuse in court matters post-reform. In some areas, such as the handling of matters involv-

<sup>31</sup> A protocol for transfers was being developed by the Family Law Advisory Group (a body comprised of federal government, FMC and FCoA representatives) as this report was being prepared.



**Table 13.9** Number and average length of matters, by file determination and court, post-reform

	FCoA	FMC	FCoWA
<b>Judicial determination</b>			
Number of months	4.8	5.0	4.4
Number of files	56	101	65
<b>Consent</b>			
Number of months	0.7	1.3	0.4
Number of files	166	45	98
<b>Consent after proceedings initiated</b>			
Number of months	5.2	5.7	6.9
Number of files	82	194	125

Source: FCoA, FMC and FCoWA court files

ing family violence and child abuse, shifts may be attributable to a range of different aspects of the reforms, meaning any interpretation should be undertaken cautiously.

There has been a substantial decrease in the number of applications for final orders involving children since 1 July 2006 (from 18,752 in 2005–06 to 14,549 in 2008–09). The number of applications to the FCoA declined, the number to the FMC increased and the number to the FCoWA decreased. There has been a continuation of the pre-reform trend of an increasingly greater proportion of filings being made in the FMC rather than the FCoA, with the proportion of filings in the FMC increasing from 50% in 2005–06 to 76% in 2008–09. By contrast, there has been no change in the proportion of filings being made in the FCoWA (10% in all years).

It should also be noted, however, that applications for final property orders increased post-reform, reversing a pre-reform trend towards stability. No causal connection in relation to property orders can be assumed from the data, particularly given the prevailing economic conditions, without further investigation.

In each court, the number of Form 4 notices filed as a proportion of applications for final orders has increased. Some shifts are suggested in the numbers of allegations of family violence and child abuse—tending towards more of these being evident in the FMC than the FCoA—but the implications of this are unclear due to a range of potentially influential procedural and other changes.

These data point to an increase in the complexity of matters reaching court in the post-reform period, as indicated by increases in orders for ICL appointments and the filing of Form 4 notices in both the FCoA and the FMC. This is likely to apply also to the FCoWA on the basis of the high numbers of Form 4s filed in that court, although data on the number of ICL appointments was not available. This is consistent with insights from the QSLSP 2008, with many professionals observing that court matters had become consistently more complex since the reforms, with the operation of FDR with exceptions meaning that less complex matters were sifted out of the caseload of the court and, to some extent, the legal sectors.

The data indicate that all three courts deal with a high number of matters involving allegations of family violence and/or child abuse, with such allegations being raised in a majority of matters.

Participants in the QSLSP 2008 raised a number of concerns about the parallel operation of the FMC and FCoA. These included the implications for parents and practitioners of there being two courts administering the same legislation on the basis of two very different sets of processes. One issue stemming from this was that the FMC provided practitioners who preferred to operate in a traditional adversarial model with a forum in which to do so, a point that has particular significance when it is considered that some 84% of children's matters were dealt with in the FMC in the post-reform period.

There were also concerns both about the time pressures under which federal magistrates operate and the role that family reports play in bringing about settlements in the FMC. Some federal magistrates were perceived to be more inclined to adopt a literal interpretation of the *SPR Act 2006*, meaning some outcomes may not be sufficiently cognisant of the developmental needs of children, particularly those in younger age groups. Further, transfers between courts were seen to be a difficulty, with federal magistrates seen as being reluctant to transfer matters to the

FCoA, even those involving family violence and child abuse. As a result of the different case management systems operating in the three courts (FMC, FCoA and FCoWA), matters in the FCoA and FCoWA are subject to routine screening for family violence, child abuse and other complex issues, but those filed in the FMC are not.

# 14

## The implementation of Division 12A of Part VII: Principles for conducting child-related proceedings

This chapter examines how Division 12A of Part VII, “Principles for conducting child-related proceedings”, has been implemented by the courts.<sup>1</sup> The way in which the Family Court of Australia (FCoA) and the Family Court of Western Australia (FCoWA) have changed their case management approaches to support the implementation of Division 12A of Part VII has been described in Chapter 13. The Federal Magistrates Court’s (FMC’s) approach has also been described in Chapter 13, but while many aspects of the FMC approach are considered to be consistent with Division 12A of Part VII (Henderson, 2008), this court did not change its model as the FCoA and the FCoWA did in the post-reform period.<sup>2</sup>

The material in this chapter is relevant to fulfilment of policy objective 2 of the 2007 Evaluation Framework (Appendix B) concerning encouraging greater involvement of both parents in children’s lives after separation, and to assessing the extent to which the changes have meant that litigated cases are resolved in a more child-focused manner.<sup>3</sup> In considering the issue of using a child-focused approach, the trends in filing patterns discussed in Chapter 13 are pertinent, in that the bulk (84%) of parenting matters are handled in the FMC, where processes are considered by most professionals to be closer to traditional adversarial models, as discussed in Section 14.2. Thus, while the FCoA has implemented a model intended to be less adversarial and more child-focused, the shift in filing patterns means this model has been applied in a diminishing minority of cases.

The analysis in this chapter is based on the following studies:

- Qualitative Study of Legal System Professionals (QSLSP) 2008;
- FCoA, FMC and FCoWA court files pre- and post-1 July 2006; and
- Family Lawyers Survey (FLS) 2006 and 2008.

The extent to which Division 12A of Part VII represents a desirable departure from the norm, particularly the case management model within which it is implemented, is a key issue in this discussion, with professional views on the efficacy of the model implemented by the FCoA being particularly mixed. While most judges and family consultants perceive the model to be more child-focused and that it has led to a less adversarial approach to children’s matters, many lawyers are less positive about it.

In considering this material, some important caveats must be borne in mind. The data discussed in this chapter provide limited insights into the operation of Division 12A of Part VII in the respective courts. They do not provide a basis for a comprehensive evaluation of each court’s model, given the small sample size and the fact that this report is broadly concerned with views about the impact of the family law reforms generally, with the implementation of Division 12A of Part VII being one aspect of this inquiry. Any criticisms or strengths suggested in the discussion should be seen only as providing a basis for further consideration and inquiry.

It is important to note that this evaluation has not considered the experiences of families in the FCoA’s less adversarial trials (LAT) model or the FCoWA’s child-related proceedings model. An evaluation of the FCoA’s model by McIntosh and Long (2007), which focused on the impact of the processes on families, revealed positive results. However, such an approach was beyond

1 As noted in Chapter 13, Division 12A of Part VII reflected the case management practices trialled by the Family Court of Australia (FCoA) in its Children’s Cases Program prior to the reforms.

2 The court is considering further ways of implementing less adversarial processes (FMC, 2009, p. 22). As noted in Chapter 13, the court has only recently been allocated additional family consultant and registrar resources.

3 2007 Evaluation Framework, p. 8 (see Appendix B).

the scope of this evaluation, which considered the operation of Division 12A of Part VII as part of a broader set of questions. Nevertheless, some of concerns raised in this section are consistent with those flagged by Hunter in her evaluation of the pilot for Division 12A, the FCoA's Children's Cases Program (Hunter, 2006).

The intention in introducing Division 12A of Part VII was “to provide legislative support for a less adversarial approach to be adopted in all child-related proceedings under the Act” (Explanatory Memorandum ¶ 339). Division 12A of Part VII was described in Chapter 1. Key provisions provide that:

- the court must consider the needs of the child and impact of proceedings upon them in determining the conduct of the proceedings (s69ZN(3));
- the court is to actively direct, control and manage the proceedings (s69ZN(4));
- the proceedings should be conducted in a way that safeguards the child against family violence, child abuse and neglect, and the parties to the proceedings against family violence (s69ZN(5));
- the proceedings are to be conducted in a way that promotes cooperative and child-focused parenting by the parties (s69ZN(6));
- judges have the power to decide which issues may be disposed of summarily and which require full investigation (s69ZQ(1)(a));
- judges have the power to give directions and make orders regarding procedural steps (s69ZQ(1)(c)), subject to deciding whether a step is justified on the basis of likely benefits, considered against the cost of taking it (s69ZQ(1)(d)).

This discussion first presents insights based on quantitative data from the FLS 2006 and 2008, followed by discussion of strengths and weaknesses based on qualitative data. Differences in approach between the FMC and FCoA are examined in Section 14.2. The FCoWA approach is discussed at Section 14.4.

## 14.1 Key insights from the FLS 2006 and 2008

The FLS 2006 and 2008 examined lawyers' views of Division 12A of Part VII through a series of statements seeking to elicit views on some important aims of the changes. The purpose of including these in the survey was to gauge professionals' responses to the aims and implementation of Division 12A of Part VII, in the overall context of the 2006 reform package. In addition to examining professionals' views through a series of specific propositions, FLS 2008 participants were also given the opportunity to make open-ended comments.

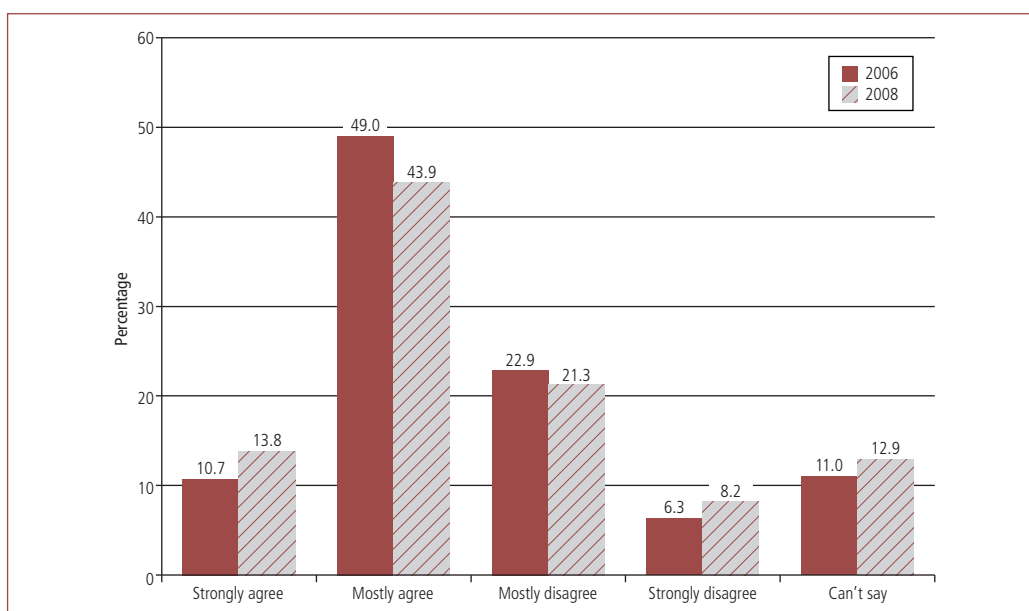
Professionals' views were sought concerning the desirability of Division 12A of Part VII, and the extent to which key philosophical objectives of Division 12A were likely to be (FLS 2006), or were being met (FLS 2008). The issues were framed as propositions requiring participants to indicate the strength of their agreement: “strongly agree”, “mostly agree”, “mostly disagree”, “strongly disagree”, and “can't say”. Propositions and responses are summarised in the following text and accompanying figures.

### The Division 12A process is a desirable change

As shown in Figure 14.1, in each survey, an aggregate of 58–60% of respondents strongly or mostly agreed with this proposition, while 29–30% mostly or strongly disagreed (can't say: 11% in 2006 and 13% in 2008).

### The less adversarial court processes in the Division 12A reforms will be/are more attentive to the interests of the child

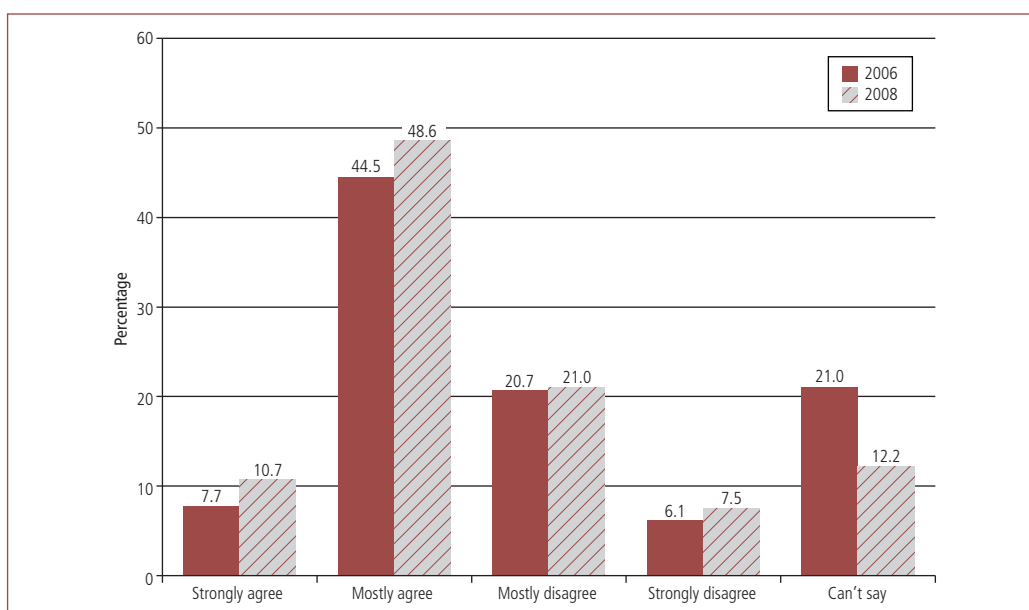
In 2006, 52% of family lawyers either strongly or mostly agreed, compared with 59% in 2008 (Figure 14.2). The slight increase in the pattern of positive responses in 2008 is attributable to a reduction in the “can't say” response categories, which fell from 21% in 2006 to 12% in 2008. Differences in response patterns in the negative categories were negligible, with an aggregate of 27% disagreeing in 2006, compared with 29% in 2008.



Note: Four respondents in the FLS 2006 did not answer. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 14.1** Agreement with the statement: "The Division 12A process is a desirable change", 2006 and 2008



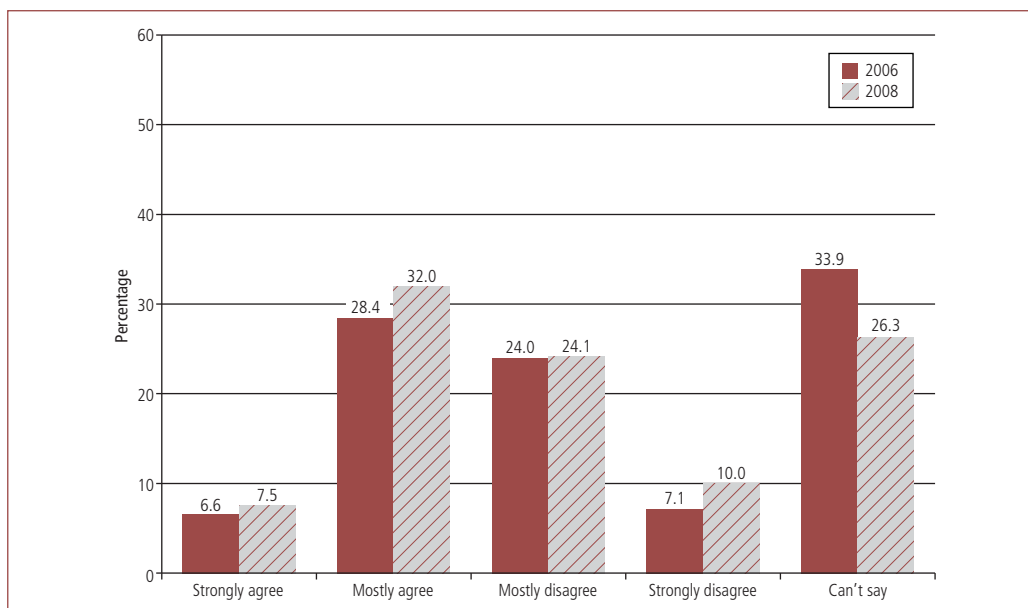
Note: Five respondents in the FLS 2006 did not answer.

Source: FLS 2006 and 2008

**Figure 14.2** Agreement with the statement: "The less adversarial court processes proposed by the Division 12A reforms will be/more attentive to the interests of the child", 2006 and 2008

**For most children the less adversarial court processes in the Division 12A reforms will deliver/delivers better outcomes than the traditional court process**

In 2006, an aggregate of 35% of family lawyers agreed that the Division 12A reforms will deliver better outcomes than the traditional court process, 31% either strongly or mostly disagreed and 34% could not say (Figure 14.3). In 2008, 40% agreed, 34% disagreed, while 26% could not say.



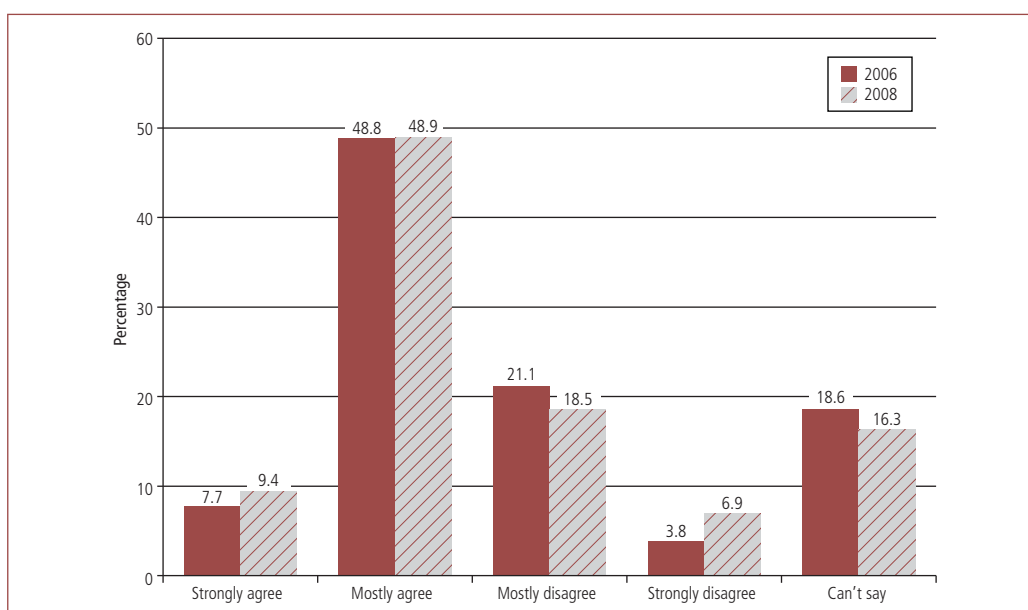
Notes: One respondent in the FLS 2006 did not answer. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 14.3** Agreement with the statement: "For most children the less adversarial court processes in the Division 12A reforms will deliver/delivers better outcomes than the traditional court process", 2006 and 2008

### The less adversarial court processes in the Division 12A reforms will be/are more attentive to the goal of future parental cooperation

In both 2006 and 2008, the majority of family lawyers (close to 60%) were positive that the less adversarial court processes in the Division 12A reforms were more attentive to the goal of future parental cooperation (Figure 14.4). That is, just under 60% of the 2006 and 2008 respondents agreed, 25% disagreed, and approximately 17% expressed uncertainty.



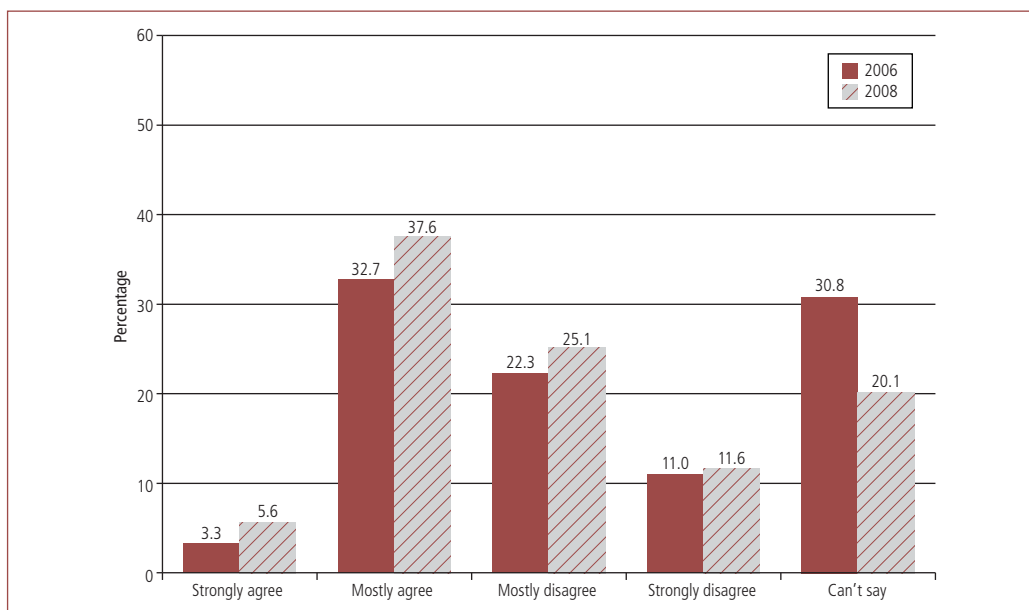
Note: Two respondents in the FLS 2006 did not answer.

Source: FLS 2006 and 2008

**Figure 14.4** Agreement with the statement: "The less adversarial court processes in the Division 12A reforms will be/are more attentive to the goal of future parental cooperation", 2006 and 2008

## Division 12A provides sufficient flexibility to deal appropriately with allegations of violence and abuse

Response patterns indicate views were noticeably divided on this issue in both FLS periods, with an aggregate of 43% of the sample showing a positive response in 2008, compared with 36% in 2006 (Figure 14.5). In 2008, 37% of the sample showed a negative response, compared with 33% in 2006. A reduction of responses in 2008 in the “can’t say” category—20% in 2008 compared with 31% in 2006—is offset against marginal increases in both positive and negative categories.



Notes: Three respondents in the FLS 2006 did not answer. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 14.5** Agreement with the statement: “Division 12A provides sufficient flexibility to deal appropriately with allegations of violence and abuse”, 2006 and 2008

## Most litigants will feel/feel they got a fair hearing in the Division 12A process

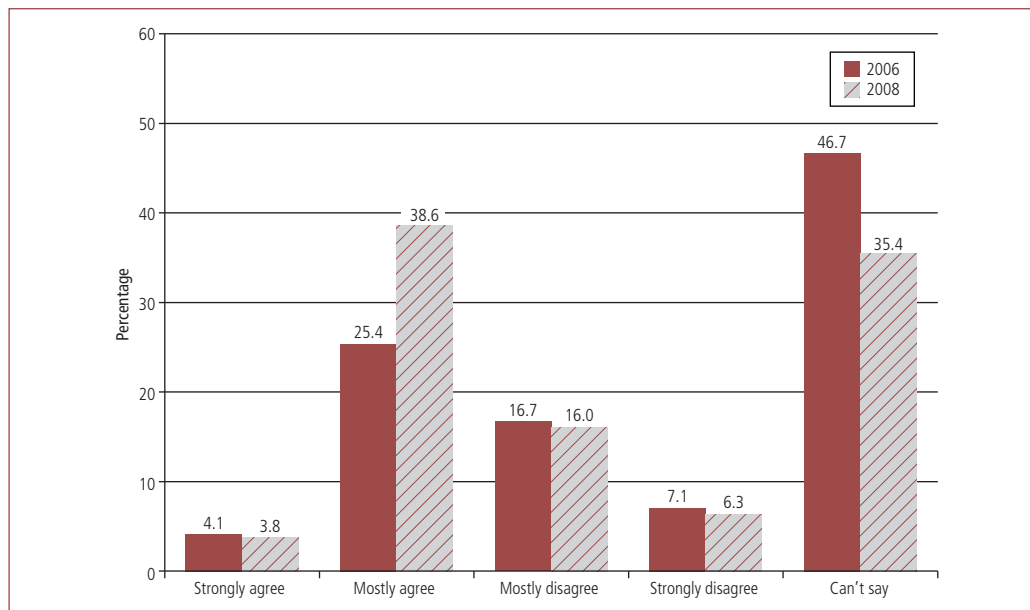
Support for this proposition increased in 2008, with 42% of the sample responding affirmatively in 2008, compared with 30% in 2006 (Figure 14.6). In 2008, 22% disagreed compared with 24% in 2006. A high number of “can’t say” responses—close to half the sample in 2006—dropped in 2008, but the proportion of participants (35%) indicating uncertainty was still high. This may reflect a lack of direct experience with Division 12A processes among this part of the sample and caution in commenting on an issue of which they have no direct knowledge.

## 14.2 Differences between the FMC and the FCoA

In order to gain insight into whether lawyers perceived that Division 12A had had an impact on substantive outcomes (to gauge any perceived connection between process and outcome—Division 12A was not intended to change substantive outcomes), participants were asked to indicate (separately for each court) the extent of their agreement with this proposition: “The Division 12A process will not/has not made much difference to the outcome of judicial determinations in the FCoA/the FMC”. In 2008, a proposition applying to the FCoWA was added.

Overall, respondents were more likely to agree than disagree that the Division 12A process has not made much difference to judicial outcomes, and there was little difference in response patterns between the two survey periods. It is noteworthy that roughly a third of family lawyers expressed uncertainty regarding this issue in both years.





Notes: One respondent in the FLS 2006 did not answer. Percentages may not total exactly 100.0% due to rounding.

Source: FLS 2006 and 2008

**Figure 14.6** Agreement with the statement: "Most litigants will feel/feel they got a fair hearing in the Division 12A process", 2006 and 2008

In relation to the FCoA, the proportion of participants who predicted Division 12A would not affect judicial determinations in 2006 stood at 47%. There was a reduction in the proportion who said this in 2008, with an aggregate of 40% of participants who agreed that Division 12A had not made a difference to the outcomes of judicial determinations. Roughly commensurate numbers indicated disagreement (i.e., they agreed Division 12A would or had made a difference) in 2006 (21%) and 2008 (23%). The 2008 survey yielded an increase in the "can't say" category, which came in at 36% in 2008, compared with 32% in 2006.

In relation to judicial outcomes in the FMC, in 2006 more than half of the respondents (52%) either strongly or mostly agreed that Division 12A would not make much difference to the outcome of judicial determinations, and changes were only marginal in 2008, with 50% of the sample agreeing. A similarly consistent pattern is evident in the other response categories, with disagreement with the proposition standing at 16% in both 2006 and 2008. In the "can't say" category, 32% of the sample responded in this way in 2006 compared with 35% in 2008.

These data raise some interesting issues. The most common response of the 2006 and 2008 samples predicted or saw little difference in judicial determinations in relation to the reforms, with these responses being only slightly higher in relation to the FMC compared with the FCoA. There are very significant differences in the way in which Division 12A of Part VII has been implemented in the FCoA compared with the FMC. However, the patterns arising from the FLS data suggest that, despite differences in processes, participants perceived there had been little change to substantive outcomes. Also relevant in this regard may be the fact that the second most common response category was "can't say", suggesting two possibilities: either that the participants did not have direct experience of Division 12A of Part VII processes that would allow them to make informed comment, or that even if they had such experience, they did not have empirical and comparative insight on which to base informed comment.

Many responses to the open-ended question in the QSLSP 2008 tended to suggest that Division 12A of Part VII had made no change to FMC processes,<sup>4</sup> and a number of participants noted that this meant that there was no access to such processes in regional areas. However, a small number of respondents suggested that they preferred the FMC approach anyway. The following comments are characteristic of responses such as these:

<sup>4</sup> As discussed in Chapter 13, more Family Consultant resources were allocated to the FMC in 2009.

Family Court's Division 12A is too expensive for litigants and takes too long. I prefer the FMC's more ad hoc approach to the less adversarial [trials process]. Best thing about Division 12A is reduced role of rules of evidence.

I file more readily in the FMC now to avoid the Division 12A process of the FCoA. Clients want certainty of process and the process in the [FCoA] is so varied and unpredictable that filing in the FMC gives them greater certainty.

The QSLSP 2008 qualitative data suggest that there are differing views on the extent to which FMC processes are consistent with Division 12A of Part VII. The predominant suggestion was that little had changed in FMC practice and it remained a traditional, adversarial legal forum. The alternative view, expressed by some practitioners and judicial officers, is that FMC processes—particularly in relation to active judicial officer management of proceedings (stemming from the use of the docket system) and the application of procedures consistent with a less formal approach to proceedings from inception (*Federal Magistrates Act 1999* (Cth) s42)—are consistent with Division 12A of Part VII principles anyhow.

Most legal practitioners expressed the view, quite strongly, that the FMC had not changed its processes in line with Division 12A. For example, one ICL commented:

But their line [FMC] has always been: “We’ve always been less adversarial, so we don’t need to change anything about the way we do things” ... I mean the way they run trials is the adversarial way. It’s the traditional applicant goes first ... cross-examination. There’s nothing different in the way trials are run between now and the reforms.

Participants argued that this undercuts the overall goal of more child-focused processes. One CLC lawyer, for example, mused that it was bewildering that the FMC had not implemented the less adversarial process for children’s matters, when it conducts around 80% of children’s cases and the LAT was designed to improve outcomes for children. Family consultants’ reflections were mostly consistent with this view, with marked differences between FMC and FCoA practices being observed.

Some federal magistrates held a very different view of the extent to which Division 12A of Part VII had been implemented by the FMC. Several magistrates made comments that the FMC had always had a flexible approach or attitude to the way in which they dealt with cases and that the way trials are conducted in the FMC are less adversarial in any event. For example:

In this court we have always had a very hands-on approach. You get one of us on your first return date and we sit there and ask what is the case about and doing things like identifying issues for the family report writer.

## 14.3 Less adversarial trials in the FCoA: Qualitative insights

Overall, the qualitative data from both the QSLSP 2008 and the FLS 2008 suggest that views on the efficacy of the process are split. The data from QSLSP 2008 reflect significantly different views among different professional groups about the effectiveness of the Family Court of Australia’s LAT process. Most, but not all, judicial officers, in very frank reflections on its operation, suggested it was a largely positive development. Family consultants were mostly positive in their responses, but legal practitioner views were significantly more mixed, with both positive and negative views being expressed. The majority of open-ended responses in the FLS 2008 were negative, with roughly fewer than 20% of respondents making positive comments. It is important to note in this regard that most participants (i.e., 58–60%) agreed with the Division 12A reforms in principle, and 29–30% strongly or mostly disagreed in each survey year.

### 14.3.1 Views of family consultants and judges

Family consultants were largely positive about the implementation of the FCoA’s LAT model and the Child Responsive Program (CRP) aspect of it (see Chapter 13 for a discussion of LAT and CRP). A feature that attracted particularly positive comment was the ability to work with families early in the process and to encourage a child focus from the first contact with the family. For example, one family consultant said: “The program has actually brought the kids into the process at a more early stage than might have been the case in the past”.

More generally, this involvement was seen as having an influence on identifying and framing issues and redirecting the focus onto the needs of children. One family consultant illustrated this point by referring to a matter where consent orders had been agreed to with the assistance of the ICL, but the judge had asked the family consultant for their view:

I was horrified to discover that this child, everyone had caved in at the 11th hour and said, “It’s OK, we’ll send this child off for contact with Dad”. This child has actually witnessed a significant violent event or incident on Christmas Day. It was the second or third time the child has seen his father punch someone’s lights out ... I had to argue the case as to why the judge shouldn’t agree with the consent orders ... It was sent off for formal assessment and counselling.

Some family consultant comments indicated that the understanding between judges and family consultants of the family consultant’s role in the process was still being developed. Some family consultants suggested that their expertise was at times not fully utilised, depending on the approach of the judge. This comment reflects this view: “Some judges want your input and elicit that input. Other judges are more traditional”. Another participant in this same focus group agreed, saying, “When you deal with the judiciary, they hold all the cards”.

This was not a universal experience, and appears to be linked to personal judicial style. Family consultants in another state reported that judges would speak to them prior to the proceedings, just to provide information about how they planned to run the proceedings: “And you sort of felt like—wow, you know, I’m part of this team”.

In common with family consultants, a majority of judges interviewed suggested that the introduction of the LAT process was positive and had led to more of a child focus. Judges particularly noted that the flexibility provided by the legislatively defined case management powers was effective in getting to a decision about what is in the child’s best interests. A judge noted that: “I certainly feel much more able to be involved and run things the way I want in the sense of asking questions whenever I want, without feeling guilty about it”.

Consistent with family consultants, judges tended to suggest that Day One of the LAT and the CRP phase enabled early assessment of the key issues. One judge described the advantages in this way:

I found by having the continuous hearing, instead of the common law climactic hearing, was very beneficial. In terms of parties reaching agreements, [it was] often earlier than would have been the case, or failing agreement, reducing the issues.

However, some judges also made the observation that the LAT process is a cultural change that is difficult to effect without sometimes falling back into traditional methods. One judicial officer participant noted that, while some judges were very good at applying Division 12A, not all judges, including themselves, fell into this category: “We come from a background which is completely foreign to Division 12A ... that is, the whole concept of judicial intervention in the way a case is prepared and run. We’ve got to learn a whole lot of new skills”.

Illustrating the way this can play out in practice, other judges suggested there was a mismatch between Day One of an LAT trial and the remainder of the proceedings. In these participants’ views, the first day tended to work well, but as the trial progressed, the remainder of the defended hearing tended to play out more traditionally. Ingrained professional habits, among both judges and legal practitioners, were seen to be somewhat difficult to shift.

Some judicial officers, consistent with the concerns of some legal practitioners, also expressed some reservations around the way in which cases with family violence were handled within the LAT framework. There were two aspects to these concerns. First, some believed the more personal nature of LAT proceedings, where parties speak directly to the judge, may not be optimal for parties who have experienced family violence. Second, some maintained that the informality of the LAT may not be the best approach for determining allegations that often concern serious criminal offences.

This comment from a judicial officer participant illustrates these concerns:

I think that it’s wholly inappropriate where serious allegations like serious violence or child sexual abuse and those sorts of issues are raised ... It’s the wrong atmosphere, in terms of hard issues that might need to be addressed by decision, by a court, and I think

it also risks treating women in particular, who have been the subject of violence, badly, because I think it limits the seriousness of what they allege.

In contrast to such concerns, a less frequent view was expressed that the LAT facilitated the achievement of appropriate outcomes where there were allegations of family violence or child abuse. Participants who espoused this view suggested that the LAT allowed a broader picture of the child's circumstances to be put before the court, including in relation to family violence and child abuse. A further point raised was that the involvement of the family consultant from the first day of the trial could also help to clarify the relevance of such issues.

### 14.3.2 Views of legal practitioners

Positive comments from legal practitioners (overall representing a minority in the qualitative data obtained in the FLS 2008 and QSLSP 2008) welcomed active judicial management, child focus and the ability for clients "to be heard" in the process. The following quotations reflect such views:

Division 12A are overall beneficial to clients and practitioners, as they allow for case management and reduce delays in directional matters. The FMC would benefit from the use of Division 12A hearings.

Narrows the disputed issues, limits the evidence, reduces the length of hearing, maximises the chance of agreement on more issues and reduces costs.

A positive process [but] more involvement of children is needed.

Clients really like being able "to say their bit" to the judge. Their frustration with the system appears lower.

A range of concerns were raised by legal practitioners, as summarised in the next sections.

### Inconsistent practices

Legal practitioners consistently referred to inconsistencies in judicial practice as being a significant disadvantage. At a broad level, this inconsistency was seen to impinge negatively on the courts' ability to effectively implement Division 12A of Part VII. Some responses suggested that judicial officers (and practitioners) needed more training to operate optimally in the model. Participants regularly made the point that it was difficult to prepare cases and advise clients in the context of this inconsistency.

One respondent who raised the issue of judicial inconsistency also raised the concern that, depending on judicial style, some clients could feel bullied. This was a concern raised by several participants across both the FLS 2008 and the QSLSP 2008 samples, and is reflected in this comment:

Much depends upon the manner in which each judge deals with the process. All are different; some impose their view on the parties, others let the process evolve. The imposition of a view very much reflects the outcome of a matter and often causes a client to settle on terms with which they are most unhappy.

Another respondent framed the issues this way:

The judges are too busy to manage the matters and, alternatively, each judge approaches these in a different manner, making it very difficult to prepare your client. All in all a disappointing delivery of justice to all-too-stressed clients.

### Impact on clients

A range of views about what it was like to be a parent participating in the Division 12A of Part VII model was evident. On the one hand, some lawyers suggested clients felt intimidated and were unable to take effective advantage of the opportunity to tell the judge about their case. In contrast, some lawyers suggested that clients "felt heard" in the process and that it was less intimidating for them.

Some participant comments directly contradicted concerns raised by other participants, suggesting a range of experiences and views that may also be linked to the issue of judicial inconsistency.

The first area of concern was that some inarticulate, uneducated or nervous clients were unable to effectively use the opportunity to speak directly to the judge and in some cases presented themselves badly, prejudicing the outcome. This was seen to be particularly problematic where there was an imbalance of power between the parties (for a range of reasons, including possibly a history of violence). These comments from the FLS 2008 reflect such concerns:

The real issues in a matter are often not explored in a way that allows the court to know what dynamics exist in the parental relationship. It favours bullies who can wear down the other party. It favours the articulate over the less confident.

The process favours those litigants who are articulate, self-confident and have a dominant personality, at the expense of those who lack confidence and are intimidated by the court setting and procedure. The process sometimes takes on the flavour of “tell the judge what you think she/he wants to hear”, even from family consultants who give evidence.

In contrast to the concerns represented in these comments, other respondents suggested that, in their view, the more personal format did have advantages. These included the opportunity for the judge to hear from the parties without being mediated by their lawyers, a sense from clients that they felt “heard” in the process and more focus on the child in the process. These quotations reflect such views:

I believe that the process is more likely to achieve the best outcome for children as the court has more opportunity to see what parents are “really” like. Lawyers have less “control” over the clients, which is difficult for the lawyer but ultimately better for children.

Parents appreciate being able to participate in the proceedings to a greater extent than previously.

### More delays, higher costs?

A significant issue raised by numerous legal practitioners in the QSLSP 2008 and FLS 2008 was an increase in delays and client costs associated with the LAT. Legal practitioner participants also raised concerns about a lack of resources being directed into the system and adding to problems concerning delays and cost. For example, one asserted that: “There is simply not the resources for matters to be dealt with in a proper and timely fashion. The delay is prejudicial to all involved”. This is a summary of these concerns:

- LAT processes were said to require more preparation and more court events, and were seen as consuming more judicial resources. Several participants made mention of the need to prepare or “coach” clients prior to trial and to think quite carefully about the evidence that was to be presented. This required clients to engage more resources and therefore money in preparing for the first part of the court process.
- LAT trials were said to be associated with multiple court events. Participants noted that, along with the obvious financial costs that multiple appearances entail, clients also face an emotional cost, as the reforms have resulted in multiple court events that heighten conflict and have a negative impact on children.
- Judicial time was used inappropriately, with judges assuming some tasks previously done by registrars. This meant clients faced increased costs, as more senior practitioners are required for court events involving judges. Registrars made the point that this re-allocation of workload had decreased job satisfaction for some registrars.
- LAT processes were largely seen to be inappropriate for property matters, and when proceedings combined a property and children’s matter, LAT (used for the children’s matter) was perceived to “gum up the works”.

## Rules of evidence

A further area where opinions were divided was on the question of evidence. Under Division 12A of Part VII, certain provisions of the *Evidence Act 1995* (Cth) do not apply in child-related proceedings (*FLA s69ZT*). The court retains the discretion to apply any of these provisions in certain circumstances (*FLA s69ZT*) and it also retains discretion as to the weight accorded to any piece of evidence (*s69ZT(2)*). In the QSLSP 2008, views of a wider range of participants (i.e., including judicial officers) were nearly evenly divided on whether this was a good or bad thing, although lawyers' views tended to be more negative.

Most, but not all, judges welcomed the flexibility that *s69ZT* had brought to the evidence-gathering process, although some were concerned about the poor quality of affidavit material being put before the court. Most judges expressed the view that their discretion as to weight (*s69ZT(2)*) was sufficient to deal with any dubious evidence put before them, with such evidence being assessed according to well-honed professional judgment and dealt with accordingly.

Some judges also noted that they retained the discretion to apply the rules (*s69ZT*) and would do so in cases where there were allegations amounting to serious criminal conduct, including family violence and child abuse. For example, one judge said that they applied the rules in a minority of cases where "there are serious allegations of violence or abuse or other allegations which are in the nature of serious criminal offences".

Lawyers' views tended to be mostly negative. The following comments give a flavour of the issues raised:

Evidence is coming before courts which is suspect. Parties and lawyers and judges think that almost anything is relevant. Professional standards are falling as a consequence.

Sloppy or incompetent lawyers are encouraged to include unnecessary and irrelevant material in affidavits because there is no one to stop them.<sup>5</sup> This usually has the effect of escalating tension.

## Are the right cases getting the right processes?

Finally, a general point emerging from some comments suggests that there is a perception among some practitioners that some of the cases being handled in LAT are inappropriate for such a process and that some cases that are appropriate for LAT are not being handled in this way because they go to the FMC. This relates to a perception, also reflected in the views expressed in the QSLSP 2008, that the very hardest cases go to the FCoA, partly because of the "sifting out" that occurs as a result of family dispute resolution with exceptions. This comment reflects this type of thinking:

Its [i.e., Division 12A of Part VII in the LAT model] application in the Family Court is misconceived. By the time the more difficult and complex matters get to trial in the Family Court, it is time for a decision on evidence according to law. I think that, if this approach has any application, it should be in the FMC where they deal with less complex matters which often have less entrenched conflict. I have expressed this view to federal magistrates, but they do not have time to use the techniques available to them under Division 12A.

## 14.4 The Family Court of Western Australia model

The case management model reflecting the FCoWA's implementation of Division 12A of Part VII was described in Chapter 13. As with the data relating to the FCoA's implementation of Division 12A of Part VII, participants in WA suggested both positive and negative aspects to the WA model. A significant point is that the data suggest that, while there is not complete consistency among judicial officers in the application of their case management powers, there is less inconsistency than in the FCoA in the implementation of the model. Further, the responses of judicial decision-makers and family consultants suggest a particularly strong awareness of the

<sup>5</sup> Note, however, that the relevance requirement for admissibility (*Evidence Act 1996* (Cth) s55, 56) has not been lifted.



importance of identifying and dealing with concerns relating to family violence and child abuse, and this is borne out by the earlier examination of patterns in the filing of Form 4 notices. However, the data, particularly those emanating from legal practitioners, suggest this awareness is not universal and that there are some areas where the WA model could be improved.

Views expressed by WA participants in the FLS 2008 were fairly evenly balanced on the question of whether Division 12A had made any difference to judicial outcomes. Nine participants either strongly or mostly agreed that Division 12A had made a difference to judicial outcomes, while eight strongly or mostly disagreed and two were unsure. Given the small sample size, these data do not produce statistically reliable measures, but they do provide some insights.

A broad point highlighted by Western Australian judicial officer participants in the QSLSP 2008 was the importance of spelling out legislatively the need for court processes to be child-focused. A magistrate said: “That whole concept about saying that the actual conduct of the proceedings is important in terms of being child-focused was, I think, a major development in the law”.

Among the WA judicial officers interviewed, responses to the implementation of Division 12A of Part VII were largely positive. This group of participants commonly welcomed the increased flexibility offered by Division 12A of Part VII, particularly the ability to identify the issues in dispute early and guide the way in which evidence would be collected to address them. One magistrate, for example, noted that they found these powers useful to: “narrow down the issues and put aside the ones that can be agreed or don’t need to be argued ... I confine the evidence where possible and keep the inflammatory stuff out of it ... and keep the parties homing in onto the issues that need a determination”.

Practitioner participants were mainly positive about the way in which these powers were applied, though some suggested there were inconsistencies between decision-makers. The level of concern over this did not seem to be as great as that reported by Sydney, Melbourne and Brisbane QSLSP 2008 participants. A further benefit identified was that, in combination with the Case Assessment Conference (CAC), the application of powers to identify and define issues in dispute and specify what evidence should be collected, had promoted pre-trial settlements. In addition, another advantage identified was that limitations on the filing of affidavits reduced both conflict and cost.

Another strength of the model, identified by participants across the range of professional groupings, was that the model was more client-friendly. Participants noted that clients seemed to both understand the process better and feel as though they had been heard within it. Rather than sitting at the back of the courtroom not understanding what was going on, one lawyer commented that “a lot of clients have felt more heard”.

A further strength, identified spontaneously by a number of legal practitioner participants was the quality of magistrates who handle the post-CAC interim and procedural hearings. These decision-makers were said to be operating in a semi-therapeutic way—ensuring that the families felt heard—and understood that the welfare of the family was a core concern. A practitioner noted that: “We are all in awe of [their] patience and their extraordinary ability to make everybody that comes before them feel like they’re really listening to their case and they’re trying to find a way to do the best they can for the family and the children particularly”.

A particular area where the WA model attracted both praise and criticism was in the conduct of the CAC. Participants’ responses suggest a number of strengths and weaknesses of this aspect of the FCoWA model.

Concerns about the model included both substantive and operational issues. There were two main operational concerns. The first was that the pool of family consultants employed to staff the new model was comparatively inexperienced in the family law system. Their social science input was valued considerably, but practitioners noted it could take some time for them to become accustomed to working in the legal context and that further training for this could perhaps be provided. This comment illustrates the issues:

They have to come to grips with what the issues are in a short time frame and then get in the witness box and summarise that for the magistrate very quickly, which is more legal training than it is social work type training.

A further issue identified in this regard concerned training in weighing evidence, since this is a relevant aspect of the family consultant role but not part of social science training.



The second concern arose from the compressed time frame—one hour—in which the CAC process unfolds. Participants, including family consultants themselves, noted that this was a very short period in which to discuss a range of potentially quite complex issues, including those prescribed by the parenting questionnaire concerning family violence and child abuse. This was of concern, given the potential significance of the outcomes of the interim hearing, as suggested by these comments:

[The] initial summary by the consultant at the first case assessment hearing might be based on not a lot and yet still carries quite a weight in terms of where it's going. Particularly compared to previously, where you would have had full affidavits by that stage.

A related observation was made by a magistrate, who suggested that a potential disadvantage of reaching outcomes as a result of the CAC process was the absence of evidence at this stage:

A lot of brokering and a lot of negotiations go on without evidence. The only evidence we've got is that from the family consultant and sometimes it's a "he said, she said" thing and I find that to be a little difficult.

Family consultant participants suggested that the issues arising from the compressed time frame were alleviated to some extent by the steps that follow the interim hearing, and in the CAC, at which "the flags" in any particular case could be identified. These may include collecting more information from parties and agencies, organising follow-up appointments and, in some instances, conducting a child dispute conference. Issues related to timing constraints and experience are linked to some of the more substantive concerns raised in relation to the CAC. These concerns had several aspects, and reflect some of the same concerns that were discussed in relation to the FCoA's LAT process in Section 14.3. As with the LAT, there was some concern that the CAC process contributed to delays in matters that required expeditious handling in order to proceed to hearing. Further, there was concern that the process could lead to an increased number of court events in comparison to the previous model. A solicitor gave this example: "[A client] got very frustrated by having to do an initial CAC and then getting it adjourned off for several further interim hearings and then being listed for a conciliation conference".

A further concern was raised by legal practitioners who reported having clients who had felt pressured in the CAC process into making agreements with which they were not entirely happy. This issue was raised specifically in connection with clients who had reported a history of family violence. One practitioner, for example, reported clients feeling "quite a lot of pressure to agree to orders" for a child to spend time with the father. It was suggested that "the effects of that, I think, can be quite damaging as well, because often that is felt as minimising the seriousness of the family violence".

More broadly, views on whether the FCoWA model, and the CAC process in particular, was effective in dealing with family violence were diverse. The views expressed were similar in substance and diversity to those reported in relation to the FCoA's LAT model. In addition to concerns about pressure to reach agreement, further issues were raised, particularly in relation to self-represented parties who had experienced family violence. These concerns suggested that in addition to being susceptible to pressure to agree to inappropriate outcomes, such litigants found it difficult to speak personally to the magistrates.

In contrast, other participants, including judicial officers, indicated that the screening process carried out as part of the CAC was invaluable in identifying concerns related to family violence, child abuse and issues related to mental health and substance misuse. As social science professionals, family consultants were seen to be particularly well-qualified to identify and assess the relevance of these issues and to bring them to the attention of the court. Further, judicial officers and family consultants emphasised the importance of having ready access to information from the WA Child Protection Department. Judicial officers from WA spontaneously raised the use of s69ZW orders, which require state and territory agencies to provide documents or information, more frequently than judicial officers in Brisbane, Melbourne and Sydney.

## 14.5 Summary

A majority of family law system professionals endorsed the introduction of Division 12A of Part VII. Each of the three courts has implemented Division 12A of Part VII in varying ways and to

different extents, with FMC processes seen as being the least affected. Both the FCoA and the FCoWA have implemented case management systems to support the approach in Division 12A of Part VII, based on the pre-trial involvement of family consultants and the early identification of issues, evidence and procedures. Outside of WA, the extent to which Division 12 of Part VII can be said to have meant matters are generally resolved in a more child-focused way under the reforms is limited because the FMC handles some 84% of children's matters.

While family consultants and judges were generally favourably inclined towards the LAT approach in the FCoA, and some professionals from all groups saw the lack of availability of this model as a disadvantage in areas not serviced by the FCoA, many practitioners expressed concern about the model. To some extent, these concerns reflect the difficulties inherent in attempting to change ingrained professional habits and approaches, as some participants recognised. However, judges also expressed some concerns about some aspects of the model, suggesting further refinements and possibly education of professionals in working with the model may be needed.

The main concerns expressed by legal practitioners were that the LAT process had led to more costs through more hearings and that there were delays because of a shortage of judicial officers. Some lawyers were also concerned that clients who were not articulate or well-educated may be disadvantaged in the part of the process where they may speak directly to the judge. Conversely, some lawyers said that clients felt "heard" in the process and appreciated the opportunity to speak in court. Practitioners expressed concern about inconsistent judicial approaches to the application of case management powers, observing that some judicial officers were interventionist, while others were more traditional in their approach. This made it difficult to prepare clients and cases for hearing.

Some of the concerns expressed in relation to the FCoA model were also relevant to the FCoWA model, although there were generally fewer concerns about the FCoWA model. Practitioners in WA also commented that the FCoWA model had led to increased costs and delays. The CAC process in WA was also a source of concern in some areas. There were reports that clients could feel pressured to agree to arrangements and there were doubts that the one-hour timeframe in which the CAC was conducted could allow sufficient exploration of complex issues.

This chapter discusses the application of the 2006 changes that were made to Part VII of the *Family Law Act (FLA) 1975* through the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) (*SPR Act 2006*). The changes were intended to ensure that “children have a right to have a meaningful relationship with both parents after separation” and that “children live in an environment where they are safe from violence and abuse” (Explanatory Memorandum, p. 2). This discussion examines how the legislation contributes to the achievement of policy objective 2 in the 2007 Evaluation Framework (see Appendix B), which concerns greater involvement of parents post-separation and the protection of children from violence and abuse.

The questions considered in this discussion are:

- How is the legislation being applied in day-to-day legal practice?
- How do legal professionals, including judges, view its workability?
- What interpretations of key provisions are evident in the case law?

Data from the following sources inform this discussion:

- Qualitative Study of Legal System Professionals (QSLSP) 2008;
- Family Lawyers Survey (FLS) 2008;
- Family Court of Australia (FCoA), Federal Magistrates Court (FMC) and Family Court of Western Australia (FCoWA) court files, post-1 July 2006; and
- published judgments 2006–09.

This chapter has two parts. The first part looks at the workability of the legislation in day-to-day litigation and decision-making practice, while the second part examines how the legislation has been interpreted and applied in judgments.

## 15.1 The workability of the *SPR Act 2006*

A central message in the data from the Legislation and Courts Project, particularly those gathered in the QSLSP 2008 and FLS 2008, is that the *SPR Act* is complex and difficult to apply. This point has also been made in the case law, with, for example, one judge in the appeal case of *Robertson and Sento* ([2009] FamCAFC 49 ¶ 7)<sup>1</sup> observing that “Part VII in its current form is undoubtedly extremely complex”. As a consequence, the central message—that the best interests of children are the paramount consideration—is obscured to some extent, according to many family law system professionals.

An observation that was regularly made by QSLSP 2008 participants was that not only were the principles hard for lay people to understand, but even legal practitioners and judicial officers had trouble maintaining focus on this issue amid the other provisions (e.g., the presumption, and the child’s right to a meaningful relationship) outlined in the Act. One barrister noted that while “best interests” “is meant to be the paramount consideration, it gets lost in amongst all these loops and hoops and criteria that one must rather artificially go through”. As suggested in earlier chapters, differing approaches are evident among different decision-makers, and there are also perceived to be differences in approach between the FCoA and FMC.

<sup>1</sup> Finn J.

A more fundamental issue raised by lawyers and judicial officers was a concern that legislation that should be accessible to its users—separated families—had become extremely difficult to understand even for some professionals, let alone lay people. One judicial officer observed that: “I think very few average people can understand it ... they cannot go to the Internet, look up the *Family Law Act* and get the guts of it”. Further, the change in language from “residence and contact” to terminology based on “person[s] with whom a child is to live” (s64B(2)(a)) and “the time a child is to spend with another person[s]” (s64B(2)(b)) was seen by many QSLSP 2008 participants to be awkward and difficult to use.

At a practical level, participants said that the complexity of the legislation meant that advice-giving, litigation and judgment-writing all had become more time-consuming and complicated. Participants in an advice-giving role, particularly those working in high-volume legal aid and community legal centre practices, expressed concern that the complexity impeded clients’ understanding. Such concerns were seen to be particularly pertinent in relation to parents who were disadvantaged in some way (e.g., culturally and linguistically diverse [CALD] groups, people with low educational attainment, and self-represented litigants). This exchange in a focus group involving legal aid practitioners illustrates the point:

[First speaker:] “I suppose you’ve got to tell them a heap more stuff now. We have numerous check lists”.

[Second speaker:] “And they weren’t absorbing the little bit we told them before”.

It was argued that clients now needed more visits in order to obtain the information that they needed in order to understand the available options in their particular situation.

In relation to court-based advocacy practice, a barrister observed that the legislative pathway was complex and convoluted: “By the time you go through each and every step ... it’s a huge process and our job in formulating submissions is very difficult”. Representative of judicial reflections along these lines are these comments on judgment-writing under the framework:

What it means, to use the vernacular, is there are more hoops to go through now than ever before ... Where those factors were relevant, you would have dealt with them anyway. But if you don’t say that you’re dealing with them, and it takes extra time to go through each one when you are writing a judgment, it adds enormously to the time that judges have to spend in writing judgments ... Because if you don’t specifically say, “And now I deal with [whatever section it might be]” then you’re potentially creating a ground of appeal.

As noted at the outset, only a few participants spoke positively of the legislative framework. Positive comments mostly focused on the fact that the framework allowed them to give very specific advice to their clients about what courts take into account in making parenting orders. For example, a barrister noted that:

I think that the Act, particularly the expanded provisions in terms of what a judge needs to consider, brings to bear true focus on important issues. And those issues, I think, create a more level playing field than what there once was. I think it highlights what parents generally have to offer their children as a positive enquiry rather than [previously], which was more how deep is your bucket of mud you’ve got to bring to court.

### 15.1.1 Interim decisions

The making of decisions on an interim basis was also identified by family law system professionals as problematic, given the complex nature of the legislation and the eleven-step process outlined in *Goode and Goode* (2006) FLC 93–286 (see Section 15.2). A significant issue was the difficulty of assessing appropriate interim arrangements, and the applicability of the presumption in the context of limited evidence and limited time.

The difficulties are explained clearly in this quote from a judicial officer:

The real difficulties are that there are often many contested questions of fact, typically in the area of family violence. Some of the allegations are really in the nature of criminal offences. So to make a finding that the ground has been substantiated, to rebut the presumption of equal shared parental responsibility on an interim hearing, the theory

sounds good, the reality is different. Because of the constraints on time and the nature of an interim hearing rarely permit that issue to be looked at in real depth.

Two strategies are used to overcome this problem, according to participants' comments. A strategy available to litigators is not to seek any parental responsibility orders at the interim stage, since parental responsibility is shared in the absence of a court order anyway (*FLA* s61C). However, it was noted by a judicial officer that applications for orders for sole parental responsibility could be a basis for matters to be transferred from the FMC to the FCoA, and that this factor (and the desire to obtain an FCoA hearing) may motivate some lawyers to adopt different approaches.

A strategy available to judicial officers (and regularly referred to in the judicial officer data) is to use the discretion not to apply the presumption and to make time arrangements that prioritise the safety of the children (*FLA* s65DA(3)).

However, several legal practitioners suggested that this approach is inconsistently applied in interim proceedings, particularly in the FMC. A community legal centre lawyer noted that, even when allegations were raised and supported by evidence—including family violence orders made under state legislation—"we're finding that is not making a great deal of difference to the arrangements that have been put in place for children".

## 15.1.2 Consent orders

### Practices concerning consent orders

Orders may be made by consent—either to formalise agreements made outside a court process, or to formalise agreements made after court proceedings have been initiated and agreement subsequently occurs. In relation to the former type of orders, most of these are made by registrars in the FCoA, or registrars in the FCoWA in that jurisdiction. Depending on the stage of proceedings at which a matter settles, arrangements made by consent after proceedings have been initiated may be endorsed by registrars or the judicial officer responsible for the docket the matter is listed in. In order to explore any issues that may arise in relation to court endorsement of such orders, registrars and judicial officers in the QSLSP 2008 were asked about their practices in making consent orders and whether any issues of concern had arisen since the reforms.

The complex dynamics that settlement negotiations involve were touched on earlier (see Chapters 9 and 11). The tensions in this area are succinctly summarised in this comment by a legal practitioner about the choice litigants face in deciding whether or not to settle:

Most of them settle by consent and you've got a real tension because those that settle by consent feel as if they've been bullied into it, get a settlement because they can't afford it and they want to get it over and done with. Those that run the full trial feel as though they got shafted anyway because they didn't get heard properly. So either way they feel as though they've lost.

In reflecting on their practices concerning consent orders, a common observation among registrars and judicial officers was the limited supervisory role courts have in the context of a system that encourages parties to reach agreement by themselves.

In discussing their approach to consent orders, however, judicial officers indicated that where a matter had been in their list, they generally would have insight into whether the orders proposed were appropriate or not. Most registrars and judicial officers indicated that they would be active in asking questions or requesting further information if they had doubts about orders. For example, one judicial officer said: "If there is something that really stood out I would say, 'Did you really mean to do this?', bearing in mind what your client has said about the other party. You will usually get a rational explanation".

Other judicial officers and registrars noted that they would be particularly inclined to ask questions in circumstances where there had been concerns about family violence and child abuse or the parties were self-represented or they came from CALD backgrounds. In such cases, they indicated they would be likely to scrutinise settlement proposals closely.

Registrars indicated that in relation to orders that were to be made by consent from the outset, their capacity to actively engage with the suitability of arrangements was limited because of the emphasis placed on parties reaching their own agreement. However, this was also an area

where views and practices differed. Some registrars adopted an approach that emphasised the issue of consent, while others took a stronger view of their obligation to assess the orders. These variations are illustrated by these two quotations:

It's governed a lot by the parties' consent. If they consent to something that on our own subjective assessment is [not durable, for example] then that's our personal view ... They swear [they are consenting] ... and we are here to service a consent [arrangement], as appalling as it might be on any subjective level. (Registrar)

If we have a gut reaction that they are not workable, we don't make them. (Registrar)

In cases where consent orders did raise concerns, registrars indicated they would either seek more information from the lawyers, where lawyers were involved, or refer them to a judicial officer's list for them to be made in open court. Some participants mentioned time constraints as a limitation on the amount of scrutiny that could be applied to arrangements arrived at by consent.

However, the following situations were highlighted as being ones in which further information might be sought:

- orders where there was no contact with a father provided for;
- orders where there was a history of family violence; and
- circumstances in which a registrar formed a concern about a power imbalance, including those where one party was not represented, or the arrangements seemed unusual and potentially unworkable (an example of the latter instance was an arrangement for a two-year-old girl that provided that she live with her mother during the day and her father at night).

### 15.1.3 Factual considerations: What issues are raised most frequently?

In deciding what arrangements are in a child's best interests (s60CC(1)), courts are required to consider a list of fifteen "considerations". These are divided into primary and additional considerations. Primary considerations are the "benefit to the child of having a meaningful relationship with both of the child's parents" (s60CC(2)(a)) and "the need to protect the child from physical or psychological harm from being subjected or exposed to abuse, neglect or family violence" (s60CC(2)(b)). These considerations, including additional considerations, are shown in the text box (pages 339–340).

The considerations may or may not be relevant to varying extents in any particular case. It is the duty of the judge to consider those that are relevant and to assess the evidence relevant to any particular issue and the weight it should be accorded in relation to what orders are in a child's best interest. This is an area where strategic decisions by litigants and lawyers are important in deciding what issues to emphasise in any case, and discretionary assessments by decision-makers are important in making orders.

In the data collection from FCoA, FMC and FCoWA files post-1 July 2006, data relating to this list (and some other issues) were collected. The purpose of this was twofold. First to examine the sorts of issues that are typically raised in children's matters. Second, to identify which are the most common factors raised. Table 15.1 shows the frequency with which particular issues are raised in the evidentiary material on the court files, across the sample of files where matters were settled either by consent after proceedings had been initiated or that were judicially determined. Factual issues relating to concerns about family violence and child abuse were collectively the most numerous across the sample. For example, material relevant to the need to protect children from physical harm was present in 19.1% of judicial determination cases. High proportions of cases also involved material containing assertions of family violence (e.g., physical violence was alleged in 33.5% of cases, and emotional or psychological abuse (including threats) was raised in 26.4% of judicially determined cases).

Interestingly, after the violence and abuse clusters, the next most frequently raised issue was the impact of substance misuse on a parent's capacity to parent their child, with this being raised in 32.5% of judicially determined cases and 27.2% of consent after proceedings were initiated cases.

The issue of the capacity of a parent to facilitate the other parent's relationship with a child also occurred frequently, with evidence regarding this factor relevant in 30.9% of judicially



## s60CC: How a court determines what is in a child's best interests

### Determining child's best interests

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

### Primary considerations

- (2) The primary considerations are:
- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
  - (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

### Additional considerations

- (3) Additional considerations are:
- (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
  - (b) the nature of the relationship of the child with:
    - (i) each of the child's parents; and
    - (ii) other persons (including any grandparent or other relative of the child);
  - (c) 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;
  - (d) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:
    - (i) either of his or her parents; or
    - (ii) any other child, or other person (including any grandparent or other relative of the child), with whom he or she has been living;
  - (e) the practical difficulty and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;
  - (f) the capacity of:
    - (i) each of the child's parents; and
    - (ii) any other person (including any grandparent or other relative of the child);
 to provide for the needs of the child, including emotional and intellectual needs;
  - (g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the child and of either of the child's parents, and any other characteristics of the child that the court thinks are relevant;
  - (h) if the child is an Aboriginal child or a Torres Strait Islander child:
    - (i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
    - (ii) the likely impact any proposed parenting order under this Part will have on that right;
  - (i) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents;
  - (j) any family violence involving the child or a member of the child's family;
  - (k) any family violence order that applies to the child or a member of the child's family, if:
    - (i) the order is a final order; or
    - (ii) the making of the order was contested by a person;
  - (l) whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;



- (m) any other fact or circumstance that the court thinks is relevant.
- (4) Without limiting paragraphs (3)(c) and (i), the court must consider the extent to which each of the child's parents has fulfilled, or failed to fulfil, his or her responsibilities as a parent and, in particular, the extent to which each of the child's parents:
  - (a) has taken, or failed to take, the opportunity:
    - (i) to participate in making decisions about major long-term issues in relation to the child; and
    - (ii) to spend time with the child; and
    - (iii) to communicate with the child; and
  - (b) has facilitated, or failed to facilitate, the other parent:
    - (i) participating in making decisions about major long-term issues in relation to the child; and
    - (ii) spending time with the child; and
    - (iii) communicating with the child; and
  - (c) has fulfilled, or failed to fulfil, the parent's obligation to maintain the child.
- (4A) If the child's parents have separated, the court must, in applying subsection (4), have regard, in particular, to events that have happened, and circumstances that have existed, since the separation occurred.

### Consent orders

- (5) If the court is considering whether to make an order with the consent of all the parties to the proceedings, the court may, but is not required to, have regard to all or any of the matters set out in subsection (2) or (3).

### Right to enjoy Aboriginal or Torres Strait Islander culture

- (6) For the purposes of paragraph (3)(h), an Aboriginal child's or a Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
  - (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.

determined cases. Interestingly, there is a fairly marked difference in the extent to which this factor was relevant in judicial determination cases compared to consent after proceedings were initiated cases (30.9% and 18.5% respectively), whereas most other factors had fairly similar rates of occurrence between the two sub-samples. This issue is particularly frequent in judicial determination cases, suggesting that where evidence of this nature is relevant, a matter is less likely to settle. Case law on the application of s60CC(3)(c) is discussed in the next section.

The factors that relate directly to the characteristics of the child tended to be mentioned much less often than factors relevant to violence and abuse, substance misuse and the parent's ability to facilitate the child relationship with the other parent. The most frequently raised child-related factor was that of the views of the child in the judicial determination sub-sample (14.3%). Other child-specific considerations—including the impact of any change in arrangements on the child, the child's relationships with siblings and step-siblings, and any special needs of the child—were mentioned comparatively infrequently. This tends to support the qualitative data examined in Chapter 9 that indicates that litigation is parent-focused rather than child-focused.

## 15.1.4 The interpretation of key provisions in the *SPR Act 2006*

Decision-making in children's matters under the *FLA 1975*, as amended by the *SPR Act 2006*, involves the exercise of a significant amount of judicial discretion. Judicial officers are charged with the task of deciding what orders may be in a child's best interests (s60CA) on the basis of

**Table 15.1 Factual Issues alleged during proceedings, by type of proceeding, ranked from overall most frequent to least frequent, post-reform**

Factual issue <sup>1</sup>	Judicial determination	Consent after initiated proceedings
	%	
Impact of substance misuse on capacity to parent	32.5	27.2
Parent's assertion of family violence—physical	33.5	23.3
Parent's facilitation of child's relationship with other parent	30.9	18.5
Parent's assertion of family violence—emotional/psychological/threatened	26.4	20.7
Family Violence Order	19.5	12.7
Benefit to child of meaningful relationship with parent	15.4	13.9
Need to protect child from physical harm	19.1	9.4
Views expressed by child	14.3	10.1
Psychological/mental capacity of parent to meet child's needs	13.7	10.7
Need to protect child from neglect	13.8	9.6
Need to protect child from emotional/psychological harm	17.9	7.4
Need to protect child from witnessing family violence	13.2	9.9
Parents' attitude towards parenthood	9.5	10.1
Parental history—spending time	16.3	6.8
Other relevant fact or circumstance	11.7	8.1
Parent's ability to put child's needs before own	5.1	6.1
Need to protect child from sexual harm	8.2	4.1
Parental history—exercising responsibility	6.7	3.7
Effects on child due to change in arrangements	7.3	2.7
Capacity of parent to meet physical and material needs of child	4.8	3.7
Child's relationship with parent and/or new partner	6.1	2.1
Possibility that child's views were influenced	2.7	3.3
Parental history—financial/child support	5.8	1.8
Parent's assertion of family violence—sexual	3.5	3.1
Impact of parenting arrangement on child's psychological health	2.8	3.0
Child's relationship with siblings/step-siblings	2.0	3.3
Impact of social relationships of parent on child	1.8	2.7
Capacity of parent to meet psychological/mental needs of child	3.6	1.6
Physical capacity of parent to meet child's needs	1.9	1.6
Parental history—communicating	2.4	0.9
Impact of parenting arrangements on child's special/extracurricular activities	2.1	0.9
Parental history—other	0.5	1.3
Facilitation, if child is Indigenous, to enjoy his/her culture	0.4	1.4
Capacity of parent to meet educational needs of child	1.3	0.5
Impact of parenting arrangements on child's physical health	0.9	0.4
Special needs of child with regards to maturity, sex, lifestyle	1.0	0.2

Note: <sup>1</sup> Factual issue alleged at any stage during the proceedings.

Source: FCoA, FMC and FCoWA court files post-1 July 2006

factual findings that they may make in relation to a wide range of issues about which evidence may be adduced in court. Many of these issues are referred to in the s60CC checklist (see text box in Section 15.1.2) or dealt with under the umbrella of some of its wider sub-sections.<sup>2</sup>

While the presumption in favour of equal shared parental responsibility provides a starting point for the exercise of discretion, any orders made must ultimately reflect the judge's view about what arrangements are in the best interests of the child in the particular circumstances of the case, on the basis of any factual determinations made (*Goode and Goode* (2006) FLC

<sup>2</sup> For example, s60CC(3)(f), requiring the court to consider the capacity of each parent to provide for the child's needs, may direct attention to any difficulties, such as substance misuse, that a parent may have.

93–286). In crafting orders, the court is not confined to the proposals of the parties (*Uv U* (2002) 211 CLR 238), though it must provide the parties with an opportunity to make submissions on any alternative arrangements it might be considering (*Bolitho and Cohen* (2005) FLC 93–224).

As explained in Chapter 1, the *SPR Act* introduced a number of new concepts and terms, including the presumption of equal shared parental responsibility (s61DA) and the notion of each parent having a meaningful involvement in the child's life (s60B(1)(a)), the child having a meaningful relationship with each parent (s60CC(2)(a)) and the child spending substantial and significant time with each parent (s65DAA(2)). In addition, it elevated the importance of protecting children from harm from exposure to family violence and abuse to an Object (s60B(1)(a)), as well as citing this as one of two primary considerations (s60CC(2)(b)). This section examines how the new provisions are being interpreted at the appellate level and applied in case law.

At the time this report was being prepared, the High Court had heard an appeal in a matter involving a relocation decision (*MRR and GR* No B20 of 2009 [2009] HCATrans 316), the first High Court consideration of the *SPR Act* 2006. At first instance, the federal magistrate had denied a mother's application to relocate from north-west Queensland to Sydney. Orders were made for the 5-year-old child in the case to live with each parent on a week-about basis. Equal shared parental responsibility was ordered and the orders also provided that if the mother moved away from north-west Queensland, the child should live with the father (*Rosa and Rosa* [2009] FamCAFC 81 ¶ 1–2). The mother unsuccessfully appealed on a range of grounds, mostly relating to the weight placed on various factual issues by the federal magistrate (¶ 18–19). The appeal was also based on an argument that the federal magistrate decision had failed to adequately address a range of issues specified in s65DAA(5), including why an equal time arrangement was practical, and the parties' capacity to communicate (¶ 19). The full court acknowledged that the issues raised under s65DAA(5) relating to whether the proposed orders were reasonably practicable had not been explicitly dealt with in the first instance judgment (¶ 96), but held that factual issues relevant to these provisions had been dealt with in the judgment in relation to findings relevant to the application of other provisions (¶ 97–108). The question of whether it was necessary for this provision to be explicitly considered was a ground in the High Court appeal (*MRR and GR* No B20 of 2009 transcript of proceedings, 248, pp. 5–7). The High Court overturned the full court's decision, holding that it was not reasonably practicable for the child to spend equal or substantial and significant time with each parent and it was not open to the federal magistrate to make the order he did (*MRR and GR* No B20 of 2009 [2009] HCATrans 316, 40). The judgment had not been published at the time this report was being prepared.

The following discussion uses appellate judgments and, where appropriate, first instance decisions, to examine how key new provisions are being applied. This discussion provides a context for considering and understanding other aspects of the evaluation, particularly findings from interviews and focus groups with family law system professionals, the file analysis of family law files, and the Family Lawyers Surveys. The discussion of first instance judgments in particular provides a context for understanding the outcome patterns evident in the file analysis that were discussed in Chapters 8 and 9 and the discussion of how family violence is handled, discussed in Chapter 10.

Two methods of selection were used for the judgments referred to in this section. Key appellate judgments are included where they provide interpretations of the law. Not all appellate judgments do this, as many appeals involve arguments that in essence represent objections to the way in which the first instance decision-maker may have exercised their discretion. The extent to which appellate judgments may interfere with a first instance decision is limited to very narrow grounds.<sup>3</sup> Appellate judgments have been selected that shed light on the application of key provisions and terms in the *SPR Act* 2006. Further, some appellate judgments and some first instance judgments have been selected to demonstrate how key provisions are being applied in day-to-day decision-making practice. Where variations in approach, particularly to substantive legal concepts, are evident among decision-makers, judgments that illustrate these variations have been included to the extent possible, bearing in mind that this is not intended to be an excessively technical discussion.

<sup>3</sup> In *Gronow v Gronow* (1979) 144 CLR 513, Stephen J summarised the approach in this way: "before reversal an appellate court must be well satisfied that the primary judge was plainly wrong, his decision being no proper exercise of his judicial discretion" (¶ 519–520).

## 15.2 Decision-making post–1 July 2006: *Goode and Goode*

One of the first appellate decisions dealing with the interpretation of the *SPR Act 2006* was *Goode and Goode* (2006) FLC 93–286. In an extensive and detailed consideration of the provisions relating to parental responsibility (e.g., s61C, s 61D, s61DA) and time (e.g., s65DAA), the full court articulated its view of the appropriate interpretation of these provisions, as well as setting out the approach to be followed by courts in making parenting orders. The full court (Bryant CJ, Finn and Boland JJ) confirmed the continuing paramountcy of the best interests principle (s60CA) and the applicability of the presumption (s61DA) to decisions made on an interim basis.

The case involved an application by a father appealing against interim parenting orders made by Collier J in the Family Court, which essentially provided that the children live with the mother and spend time with the father. The father sought equal time with the children and equal shared parental responsibility. Collier J had applied s61DA, finding that equal shared parental responsibility did not apply. His Honour appears to have reached his decision by applying the principles in *Cowling AM v Cowling JH* (1998) FLC 92–801 and did not apply the provisions of s60CC, after finding that the existing arrangements for the children seemed to be working well and did not require changing.

In considering the nature of parental responsibility under the *SPR Act 2006*, the full court held that there were two distinct types of parental responsibility. The first exists by virtue of s61C and is vested in each parent until the child turns 18 and is unaffected by change in the nature of the parents' relationship such as separation or remarriage to another partner (¶ 30). This provision pre-dates the *SPR Act 2006* amendments and, relying on the authority of a pre-2006 full court decision, *B and B: Family Law Reform Act 1995* (1997) FLC 92–755, the court affirmed the prior position that this type of parental responsibility, “where no order has been made”, would be exercised solely by the person who had the physical care of the children at the time in relation to day-to-day matters. Longer term, issues, such as “major surgery, education, religion and the like” (*B and B* ¶ 9.29) would require consultation between the parents (¶ 35).

The *Goode* full court then distinguished parental responsibility, arising by virtue of s61C, from parental responsibility arising as a result of a court order made as a result of the application of the presumption (s61DA) or otherwise.<sup>4</sup> Once such orders are made, the requirements of s65DAC are applicable, meaning that in relation to major long-term issues, the parents are required to consult each other and make a genuine effort to come an agreement about such issues (¶ 38).

The full court held that, where the presumption was applied and orders for equal shared parental responsibility made, the court was obliged to consider making orders for a child to spend either equal or substantial and significant time with each parent (s65DAA) as these provisions described “the path ... to be followed” (¶ 45). However, it also said that even where the presumption was rebutted or not applied, orders for equal or substantial and significant time could be made, if they were considered to be in the child's best interests, when the Objects (s60B) and the primary and additional considerations (s60CC) had been considered (¶ 47). This reflects the primacy of the “best interests” (s60CA) provision and the discretion this principle vests in courts to make orders based on the particular circumstances of the case.

Moreover, orders for equal or substantial and significant time could be made even where they were not sought by either party, as long as the court considered they would promote the child's best interests and the parties were accorded procedural fairness by having the opportunity to make submissions on options advanced by the court (¶ 48). This latter point relies on the pre-reform authority of the High Court in *U v U* (2002) 211 CLR 238 (see also *Bolitho and Cohen* (2005) FLC 93–224) and represents a jurisprudential thread that has been further developed following the enactment of the *SPR Act 2006* (see, for example, *Sampson and Hartnett* (No 10) (2007) 38 Fam LR 315).

A further significant point developed in *Goode* related to the meaning to be attached to the word “consider” in s65DAC, which provides that the court “must consider” making orders for equal or substantial and significant time where the presumption of equal shared parental responsibility was applied. The full court offered an interpretation emphasising the prescriptive aspects of the

<sup>4</sup> A court may find that the presumption is rebutted, but nonetheless make orders for shared parental responsibility (*Goode and Goode* (No 2) [2007] FamCA 315 ¶ 61–63).

term, holding that “the juxtaposition of ss 65DAA(1)(a), 65DAA(1)(b) and 65DAA(1)(c) suggests a consideration tending to a result, or the need to consider positively the making of an order, if the conditions in s 65DAA(1)(a), being the best interests of the child, and s 65DAA(1)(b), reasonable practicability, are met. The same considerations apply to s 65DAA(2)”. As discussed further below, the meaning of “consider” has been subject to other interpretations.

In summarising its approach, the *Goode* full court outlined the following eleven-step process for making decisions on an interim basis:

1. Identify the competing proposals of the parties.
2. Identify the issues in dispute in the interim hearing.
3. Identify any agreed or uncontested relevant facts.
4. Consider the matters in the s60CC list that are relevant and make findings about them (this may only be possible to a limited extent in interim hearings).
5. Decide whether the presumption applies (i.e., deciding whether or not it does not apply because there are reasonable grounds to believe there has been child abuse or family violence or that the decision-maker should use their discretion not to apply the presumption in interim proceedings).
6. If the presumption does apply, consider whether it should be rebutted because its application would not be in the best interests of the child.
7. If the presumption applies and is not rebutted, decide whether orders for equal time would not be in a child’s best interests because of one or more matters in s60CC or impracticability.
8. If the presumption is applicable, but equal time orders are not in a child’s best interests, consider whether orders for substantial and significant time might be appropriate.
9. If neither equal nor substantial and significant time is considered to be in the best interests of the child as a result of consideration of one or more matters in s60CC; or
10. If the presumption is not applied or is rebutted, then make such an order as is in the best interests of the child.
11. Even then, the court may need to consider equal or substantial and significant time, especially if, after affording the parties procedural fairness, the court considers such orders to be in the best interests of the child.

In summary, the full court decision of *Goode* confirmed the paramouncy of the best interests provision. It also confirmed the applicability of the presumption in interim matters and outlined an eleven-step process for courts to follow in decision-making. It further held that parental responsibility arises automatically under s61C, but is a different legal concept when orders under s61DA (or otherwise) are made. In this latter instance, an obligation to consult and reach agreement on decision-making accompanies the order. Further, the court interpreted “consider” to carry with it an obligation “to consider positively” the time arrangements contemplated by s65DAC.

An issue partly arising from the approach set out in *Goode* relates to whether decisions are susceptible to appeal where the decision-making pathway, including discussion of relevant legislative provisions and findings of fact, is not set out sufficiently clearly and explicitly. An issue referred to by some decision-makers in the interviews and focus groups with family law system professionals was the time-consuming, and in some instances difficult, process involved in adhering to the framework set out in the legislation and in *Goode*. In a decision after *Goode*, an appeal bench (Bryant CJ, Faulks DCJ and Finn J), held that a trial judge’s “failure to follow what we see as the logical approach would not lead to appealable error unless such error arose from a failure to give adequate reasons or to have regard to the matters which the legislation requires must be considered” (*Taylor and Barker* [2007] FamCA 1246 ¶ 63). While the requirement for adequacy of reasons is longstanding (see, for example, *Robertson and Sento* [2009] FamCAFC 49 ¶ 5–6) numerous appeals have been mounted—at times successfully—on the basis that these issues have not been set out sufficiently clearly.<sup>5</sup>

5 In *Robertson and Sento* [2009] FamCAFC 49 ¶ 5–6, the Full Court held that not only is the requirement for adequacy of reasons longstanding—pre-dating the 2006 amendments—but the case of *Goode* makes it clear that that requirement continues under the new legislation. Appeals that have been successful on the basis that these issues have not been set out sufficiently clearly include *Moose and Moose* [2008] FamCAFC 108, and *Oscar and Traynor* [2007] FamCA 1019.



### 15.2.1 Implications of *Goode*: Status quo

Since the *Reform Act 1995* (see Chapter 1), the question of the extent to which past time arrangements influence the decisions courts make on an interim or final basis has been undergoing jurisprudential revision. Prior to the *Reform Act 1995*, on an interim basis it was generally held to be appropriate to maintain the status quo unless there was evidence to establish that the child's health and wellbeing would be endangered by such a course of action (*Cowling AM v Cowling JH* (1998) FLC 92–801 ¶ 21, 22). In decision-making on a final basis, the status quo was considered to be one of several relevant issues, though neither party had any legal onus to prove it should be maintained or disturbed.<sup>6</sup> Relevant considerations were said to be the quality of the status quo, with changes to a longstanding arrangement requiring particularly careful explanation. The reasoning behind these approaches had two important threads. First, particularly in relation to interim decisions, it was considered important to maintain stability for children by maintaining existing time arrangements, especially when evidence had not been thoroughly tested and considered at trial. Second, it was considered that past time arrangements would have engendered a particular pattern in children's emotional relationships that should not be changed without due care.

As legislative support for shared parenting has increased, the emphasis placed on these principles in case law appears to have been declining, although there is variation in the approach to such issues among different decision-makers.<sup>7</sup> The implication arising from the approach articulated in *Goode* is that pre-existing time arrangements carry no particular weight, even on an interim basis, but each case is to be decided on its own merits. This point is illustrated by the full court's decision in *Dylan and Dylan* [2008] FamCAFC 109, in which a first instance decision of Carmody J was upheld. In this case, the arrangements ordered were contrary to the children's wishes and reflected the court's own arrangements fashioned as a compromise between the arrangements proposed by the mother and the father. In making the decision to make arrangements not consistent with the children's wishes, the trial judge noted that "I have reluctantly reached the conclusion that they should not be acted upon but only because I do not think they are consistent with either the requirements of the law or their overall long term best interests" (¶ 262 cited at ¶ 23), and went on to note that, among other things, the ICL submission on this point, the Family Report and the evidence of child psychiatrist, "did not take account of the changes to the law" (¶ 264 cited at ¶ 23).

While the full court (Warnick, May and Boland JJ) held that the parent's involvement prior to separation with the children was not irrelevant, and had not been treated as such by the trial judge, past patterns of care were of limited significance. The court at first instance said that:

... dominant maternal involvement during the marriage is not an argument against increasing paternal involvement after separation, especially in light of the amendments. Mothers and fathers interact differently with their children in some ways but similarly in others. Lack of experience itself does not suggest disinterest or incompetence. (*Dylan and Dylan* [2007] FamCA 842 ¶ 251)

The full court found no error in this treatment of the issue (¶ 57), upholding Carmody J's reasoning that the mother's argument that the difference between the father's application for time with the children after separation was undermined by the limited time he spent with them before separation "missed the point".

A similar point was made by another full court comprised of Finn, Coleman and Thackray JJ in the decision of *Dicosta and Dicosta* [2008] FamCAFC 161, which followed *Goode and Goode*.<sup>8</sup> In that case, the father unsuccessfully appealed against orders made by Brewster FM in the FMC that the children live with the father five nights a fortnight. The father was seeking orders for equal time. In concluding their analysis of the appeal grounds, the full court held that:

we would say that we do not accept the contention of counsel for the appellant father that the result arrived at in this case must mean that a parent who had not been the primary carer for the children prior to separation would never be able to assume such a role in the future. It cannot be emphasised too strongly that notwithstanding the provisions

<sup>6</sup> *Burton* (1978) 4 Fam LR 783 p. 786, cited in *Barber and Salmon* [2009] FMCAfam 272 at ¶ 179.

<sup>7</sup> See, e.g., *Barber and Salmon* [2009] FMCAfam 272, ¶ 180, and *Whelan and Scott* [2008] FMCAfam 203.

<sup>8</sup> *Dicosta and Dicosta* [2008] FamCAFC 161, ¶ 35.

of the amended legislation, every case remains to be determined on its own facts having regard to the findings required to be made under that legislation.(¶ 61)

The full court held that the additional considerations concerning the effect of any changes in the child's living arrangements "must require that there still be some consideration of the existing arrangements for the child in question ((s60CC(3)(d)) in light of any findings made about the nature of the child's relationship with each parent (s60CC(3)(b))" (¶ 35).

### 15.2.2 After *Goode*: Further analysis of "consider", best interests and discretion

The full court's discussion of the meaning of "consider" in *Goode* is classified under the doctrine of precedent as *obiter dicta*. In plain language, this means comments made by a court as part of a general discussion about legal interpretation, rather than comments that are directly relevant to the particular legal points that are being determined in the decision (these are called *ratio decidendi*). In *Goode*, the appeal did not turn on the meaning of "consider", so rather than being binding *ratio*, these comments may strictly be considered *obiter*. As such, though they hold legal weight because they emanate from a full court, they are not considered "binding" on other judges. For this reason, the meaning of "consider" has undergone further development in case law, and there is now an alternative interpretation to the one offered by the full court in *Goode*.

This alternative interpretation comes from a decision by the Chief Judge of the Family Court of Western Australia, the Hon. Stephen Thackray. His Honour's decision in *F and B* [2008] FCWA 132 is noteworthy not just for its discussion of "consider", but also for its approach to the issue of best interests.<sup>9</sup>

Rather than basing the meaning of "must consider" on its immediate legislative context (i.e., s65DAA), Thackray CJ followed an approach to statutory interpretation that suggests words that recur in a particular piece of legislation should be accorded a consistent meaning, particularly when they are used in the same section of an Act (per Hodges J in *Craig Williamson Pty Ltd v Barrowcliff* [1915] VLR 450 at 452). Noting that the words "must consider" also occur in the *SPR Act 2006* in relation to the s60CC checklist (and its forerunner in the *Reform Act 1995*, s68F), Thackray CJ relied on a passage from *B and B: Family Law Reform Act 1995* (1997) FLC 92-755 which, in the context of a discussion of s68F, emphasised the discretionary nature of decision-making about best interests in general and in relation to the factors in s68F in particular. His Honour emphasised this statement in *B and B*: "the circumstance that the facts in individual cases may vary almost infinitely, that the inquiry is a positive one tailored to the best interests of the particular children and not children in general, and that the Court is required to take into account all factors which it perceives to be of importance in determining that issue" (¶ 9.51 in *B and B*, ¶ 27 in *F and B*). He noted that s65DAA(1) and s65DAA(2) suggest particular outcomes (i.e., equal or substantial and significant time arrangements where they are reasonably practicable and in a child's best interests), but departed from the *Goode* bench's formulation of "consider" as "tending towards a result", on the basis that Parliament, in enacting the *SPR Act 2006*, had maintained the discretionary nature of the "best interests" inquiry. His Honour posed these two questions:

- Why would Parliament merely require the Court to "consider" making an order that is both in the best interests of a child and reasonably practicable when the Court's fundamental obligation is to make orders that are in the best interests of the child?
- Why not instead direct the Court to make such an order?

In answering these questions, Thackray CJ argued that the best interests inquiry would not yield just one answer in any particular case, but there would often be "a number of possible outcomes in one case that could be seen as promoting the best interests of the child and being reasonably practicable". In such instances, judicial officers had the responsibility of considering all the available options and selecting the one most consistent with the paramountcy of the child's best interests, rather than "considering" options "tending towards the results", indicated in s65DAA(1) and (2).

<sup>9</sup> For another interpretation more consistent with the *Goode* approach but arguably narrower still, see *H and H* [2007] FMCAfam 27, where Altobelli FM said at para 58: "the word 'consider' in s65DAA is given a narrow contextual application—it is not to consider at large, but rather to consider a reasonably narrow range of results specified in s65DAA".



The point that more than one type of arrangement may meet the best interests criterion was made eleven years ago by the High Court in *CDJ & VAJ* (1998) 197 CLR 172 at 219), which held that “best interests are values not facts”. It is a point that decision-makers return to regularly (e.g., *Runcorn and Raine* [2008] FamCA 837) in decision-making under the *SPR Act 2006*, in discussing the tension that arises out of the paramountcy of the discretionary best interests principle (s60CA) and the provisions that direct courts to consider particular outcomes, that is, equal or substantial and significant time where the presumption of equal shared parental responsibility is applied.

## 15.3 Objects and principles: Meaningful involvement and protection from harm

As noted earlier in this report, the factual circumstances relevant to many parenting disputes mean that courts frequently need to give active consideration to the question of how to weigh the two key primary considerations in the s60CC checklist,<sup>10</sup> which often stand in some tension to each other (see, for example, Chisholm, 2007, 2008; Parkinson, 2007). These considerations have been described (by Brown J in *Mazorski and Albright* (2007) 37 Fam LR 518) as “the twin pillars” underpinning the parenting provisions in the Act: “the first is the importance to children of having a meaningful relationship with both parents; the second is the need to protect children from physical and psychological harm” (¶ 3).

The case law demonstrates that, in any particular case, this tension will be resolved through reference to the evidence and the exercise of discretionary judgments as to how to balance these issues in making orders in particular circumstances. Significantly, however, the cases also demonstrate that questions of evidence and proof are less complex in relation to the first of these pillars (meaningful relationship) than the second. Indeed, one judgment has even suggested that “meaningful relationship” (s60CC(2)(a)) has an implicitly presumptive basis,<sup>11</sup> meaning that the existence or otherwise of a meaningful relationship in any given case is always open to rebuttal on the basis of evidence provided. While this approach has subsequently been explicitly rejected in a full court decision,<sup>12</sup> comments by Murphy J in *Runcorn and Raine* (2008) FamCA 837 reflect an approach characteristic of many first instance decisions:

... significantly, as it seems to me, the Act does not require a court to consider whether a party’s proposal is important, significant and valuable to a child. Rather, it appears to require the court to consider that such a relationship is of benefit to the subject children. Whilst not a “presumption” necessary to be rebutted (in the same sense as, for example, the express presumption as to equal shared parental responsibility), the paragraph appears to be presumptive in concept or effect. (¶ 47)

In contrast to the presumptive nature of s60CC(2)(a), Murphy J emphasised that the relevance of the other of the two pillars, the need to protect children from harm, and other factual issues relevant to the best interests inquiry under s60CC(3), need to be based on findings of fact:

Findings about harm or abuse or the risk of either, or the likely effect of change for a child, or the capacity of one or both parents to provide for children’s needs, all involve findings of fact which can readily be seen as likely to impact on orders about the nature and extent of a future parent/child relationship. (¶ 42)

In turn, the full court (Warnick, Thackray and Le Poer Trench JJ)<sup>13</sup> has observed that “findings of fact involve a weighing of the probabilities and are not made in a vacuum”, with such findings in a civil case being based on a consideration of the evidence as a whole, rather than one piece of evidence in isolation (citing Gibbs CJ and Mason J in *Chamberlain v R* (No2) (1984) 153 CLR 521 at 536).

<sup>10</sup> In the Objects provisions, the need to ensure children have the benefit of both their parents “having a meaningful involvement in their lives” is recognised (s60B(1)(a)); while in s60CC(2)(a), the “benefit to the child of having a meaningful relationship with both parents” is stated as one of two primary considerations.

<sup>11</sup> *Runcorn and Raine* [2008] FamCA 837.

<sup>12</sup> *McCall and Clark* [2009] FamCAFC 92.

<sup>13</sup> *Marsden and Winch* (No 3) [2007] FamCA 1364 ¶ 155.

In contrast to Murphy J's approach in *Runcorn*, other decisions have interpreted s60CC(2)(a) as requiring a careful evaluation of the evidence. For example, Benjamin J in *John and Chris* [2007] FamCA 393 concluded that the court should conduct an "evaluation [that] should include consideration of whether, on the facts, a meaningful relationship can be established and, if so, whether it is of benefit to the child" (¶ 39).<sup>14</sup>

In *McCall and Clark*, the full court (Bryant CJ, Faulks DCJ and Boland J) identified three possible approaches to s60CC(2)(a) (¶ 118). The first, the "present relationship approach", would require examination of the evidence of the nature of the child's relationship with each parent at the time of the proceedings to consider the benefit to the child of having a meaningful relationship with each parent, and these findings would influence the orders made. The second, the "presumption approach", was similar to that outlined by Murphy J in *Runcorn*. This approach was rejected as being beyond the intention of the legislature (¶ 120). The third, the "prospective approach", would be based on a consideration of the evidence at the time of trial, with orders being framed to "ensure the particular child has a meaningful relationship with both parents" where this was in their best interests.

The full court held that the prospective approach reflects the "preferred" interpretation of s60CC(2)(a). It also indicated that the present relationship approach may also be relevant in some instances (¶ 119) and that courts were required to consider the issues raised under s60CC(3)(b) concerning the nature of the child's relationship with each parent and others, including grandparents. It further noted, in favour of the preferred prospective approach, that if the present relationship were "exclusively applied", then courts would be limited in making orders that allowed a relationship to develop in the absence of an existing one.

The following section begins with a further examination of the jurisprudence on the interpretation of "meaningful". This is followed by an examination of how tensions between the two pillars in s60CC(2) (i.e., meaningful relationship and protection from harm) are manifested and resolved in day-to-day decision-making.

### 15.3.1 Meaningful relationship

#### Definition of "meaningful relationship"

There is no definition of "meaningful relationship" in the Act, and different decision-makers have offered different constructions of the term. A definition frequently referred to in the case law and endorsed by the full court<sup>15</sup> was formulated by Brown J in the first instance Family Court decision of *Mazorski and Albright* (2007) 37 Fam LR 518. There are three important aspects of the definition proposed in this case. Starting with a semantic analysis of the notion of "meaningful", Brown J equates the use of the term "meaningful" in the context of "meaningful relationship" with "significant", which is said to be synonymous with "important or of consequence". Second, Her Honour emphasised the child's perspective, holding that a meaningful relationship "is one which is important, significant and valuable to the child". Third, Her Honour suggested that "meaningful" was an essentially "qualitative adjective" rather than a "strictly" quantitative concept. Quantitative considerations were said to be relevant at a different stage of the best interests consideration, namely those relevant to the application of the equal shared parental presumption and the application of s65DAA (the provisions relating to equal or substantial and significant time arrangements).

A slightly different view has been adopted by Murphy J, which suggests "quantity" (in the sense of time) is an element of a "meaningful relationship", but not necessarily determinative.<sup>16</sup> In discussing Brown J's approach, Murphy J emphasised the word "strictly" in relation to Brown J's analysis of "meaningful". However, other decision-makers have adopted the emphasis in Brown J's definition of the qualitative nature of the term "meaningful" and its non-quantitative characteristics. In *Godfrey and Sanders* (2007) 208 FLR 287, Kay J indicated that the term indicated an aspiration for a "meaningful relationship, not an optimal relationship" (¶ 36).

<sup>14</sup> This decision adopted the reasoning of Bennett J in *G and C* [2006] FamCA 994 in relation to this point: *Chris and John* ¶ 39.

<sup>15</sup> May, Boland and O'Reilly JJ in *Moose and Moose* [2008] FamCAFC 108 ¶ 67; see also *McCall and Clark* [2009] FamCAFC 92.

<sup>16</sup> *Runcorn and Raine* [2008] FamCA 837 ¶ 45.

In *Loddington and Derrington* (No 2) [2008] FamCA 925, Cronin J suggested that “for there to be a meaningful relationship, it must be healthy, worthwhile and advantageous to the child” (¶ 169), further adding that the issue was relevant to both parents, not just fathers (¶ 172). His Honour emphasised the individualised nature of the consideration that should occur, suggesting that “this assessment as to how a child will benefit must be done on the peculiar facts of what the parents are offering” (¶ 173). Given that the case involved two very young children, Cronin J also considered what relationship might be meaningful given the children’s developmental stages. The next two paragraphs set out the analysis proposed in this regard:

The creation of a meaningful relationship in very young children must be seen from two perspectives. In the case of a parent to whom there is a major attachment, the benefit that the children receive from the meaningful relationship is the continuation of all of the things that will protect that attachment. For the children, it is knowing that they are returning to their mother and that she is available for them as their major form of security. Other benefits such as toilet training, discipline, eating habits, learning to play, read and so forth presumably follow more easily if the secure attachment is not disturbed. (¶ 175)

The position of a parent who may be a very good and loving parent but who is not the major attachment figure, is no less important. In the case of very young children, it is not so much the time spent with the children but the gap between visits and the quality of time spent that is important. (¶ 176)

### Managing the tension: s60CC(2)(a) and (b)

As noted earlier, cases where there are concerns about the potential for children to be exposed to harm highlight the tensions involved in decision-making in this area. As Murphy J’s approach, outlined above, suggests, “meaningful relationship” has a presumptive quality,<sup>17</sup> while issues relevant to exposure to harm need to be established on the basis of evidence.<sup>18</sup> The nature of the evidence adduced, discretionary decisions as to the weight to be accorded to such evidence, and discretionary assessments of which factors are important in any one case, influence outcomes in this area, as the following discussion of cases demonstrates.

The case of *M and L (Aboriginal Culture)* (2007) FLC 93–320 provides an example of how these issues play out in practice. This full court decision upheld a mother’s appeal against parenting orders made by Brown FM, which provided that the children, aged 9 and 5, live with the father and his family in the north-eastern region of the Northern Territory. The orders also provided that the children spend as much time as possible with the mother and her family on the outskirts of a small town located east of Darwin.

Among the key relevant factual issues in this case were a history of family violence perpetrated by the father, the circumstances in which the mother cared for the child and the circumstances in which the children would be cared for by the father. Both parents were Indigenous. The father proposed to care for the child with the assistance of his father and other relatives in his community. The federal magistrate considered evidence concerning all these issues and made orders that the child live with the father and his family. The mother’s appeal was framed on the basis that the federal magistrate had made the orders by attaching insufficient weight to findings that she had been always been the primary caregiver and that there was no dispute regarding her parenting capabilities. She also argued that insufficient weight was given to the father’s history of violence and alcohol consumption and to their effects on the children.

The full court, comprised of Kay, Strickland and Warnick JJ, not only agreed with the mother but formed the view that Brown FM had ultimately reached his decision by primarily relying on unsubstantiated evidence that the mother had relied on communal care of the children and that the community in which the father resided provided better opportunities for the children.

After analysing the parties’ arguments and reviewing the evidence on which they were based, Kay J noted that the federal magistrate had “perhaps skirted over the domestic violence issue more than it ought to have been skirted over” (¶ 36). He noted no evidence had been adduced

<sup>17</sup> Case law pre-dating the *SPR Act 2006* (Cth) recognised a child’s need for a relationship with both parents where this did not expose them to risk. See, e.g., *U and U* (2002) 29 Fam LR 74, per Hayne J ¶ 176.

<sup>18</sup> The Full Court in *Marsden and Winch* [2007] FamCA 53, however, has rejected the proposition that s60CC(2)(a) must be “displaced” (¶ 79).

to show that the mother's care was inadequate (¶ 44), and that "concessions were made that the mother loved her children and parented them appropriately" (¶ 45). However:

by way of stark contrast there was ample evidence of the father's violent behaviour and alcohol abuse. These matters seem to have been put almost to one side and matters aimed at maximising the children's opportunity to become immersed in their patrilineal culture became [a] dominant consideration. (¶ 45)

The orders made by the federal magistrate were set aside and the matter was remitted for re-hearing.

In *Marsden and Winch* (No 3) [2007] FamCA 1364, a decision of Faulks DCJ in which he determined that it was not in the best interests of a 4-year-old girl to spend time with her father, was upheld by an appeal bench. Among the factual issues that contributed to Faulks DCJ's decision were findings that the husband had a history of compulsive sexual behaviour involving voyeurism and young women, and that he had an "obsessive attitude" to his relationship with the mother, which had necessitated her obtaining restraining orders against him. The husband had been jailed for breaching one of these orders. There was extensive evidence considered at trial about these issues, including evidence from a psychiatrist as a Single Expert witness. The full court upheld the decision on the basis that Faulks DCJ had sufficiently weighed the meaningful relationship principle against the protection from harm principle, with detailed reference to the evidence, and his conclusion that spending time with the father raised the possibility of psychological harm, outweighing the possible benefits, should stand.

## 15.4 Parental responsibility

As noted earlier, the decision in *Goode and Goode* established that parental responsibility may arise in two ways under the *SPR Act 2006*. The first is by virtue of s61C and is vested in each parent regardless of relationship status, unless varied by a court order. The second arises through the application of the presumption in s61DA. The equal shared parental responsibility presumption is not applicable where there are reasonable grounds to believe a parent of a child has engaged in family violence or child abuse (s61DA(2)). Further, it may be rebutted on the basis of evidence that establishes that orders providing for equal shared parental responsibility would not be in the best interests of the child (s61DA(4)). Decision-makers also have the discretion not to apply the presumption in interim proceedings (s61DA(3)).

Parental responsibility is defined in s61B as "all the duties, powers, responsibilities and authority which by law, parents have in relation to children". Further, s61D provides that a parenting order confers parental responsibility for a child on a person to the extent reflected in that order and doesn't diminish parental responsibility except to the extent provided for in the order. Where orders providing for shared parental responsibility have been made, s65DAC imposes an obligation on parents to make "decisions jointly" (s65DAC(2)), except where these decisions do not involve "major long term issues" (s65DAE) and the child is spending time with the person needing to make such decisions. Major long-term issues are not defined in the legislation exhaustively, but the s4 definition of the term explicitly recognises matters concerning:

- the child's education, both current and future;
- the child's religious and cultural upbringing;
- the child's health; and
- changes to the child's living arrangements that make it significantly more difficult for the child to spend time with the other parent.

In relation to the last point, the relevant provision (s4) says decisions concerning establishing new relationships do not come within its ambit, unless the new relationship would involve the partner moving to a new area, making it "significantly more difficult for the child to spend time with the other parent". The distinction between major long-term issues and other aspects of parental responsibility have been described by a full court as "fraught with ambiguity" (*Chappell and Chappell* [2008] FamCAFC 143).<sup>19</sup>

<sup>19</sup> This decision also notes that the legislation makes no explicit provisions for orders concerning the day-to-day care, welfare and development of a child (¶ 51). Orders for joint parental responsibility, as were made under the *Reform Act 1995*, are no longer provided for in the legislation (*Newlands and Newlands* [2007] FamCA 168).

Issues relating to parental responsibility have been the subject of numerous decisions that indicate a range of complex aspects to the way in which these provisions have been expressed. A key question is what form parental responsibility takes, and how orders for parental responsibility may be expressed, in circumstances where the presumption of equal shared parental responsibility is not applied or is rebutted and has been the subject of developing case law since the implementation of amendments. An examination of the cases reveals a variety of approaches to the question of what orders regarding parental responsibility may be made in such circumstances. In a technical sense, different interpretations are evident among different decision-makers, but the philosophical and practical approach is summarised in this comment of Thackray CJ:

The fact the presumption does not apply is by no means the end of the matter. Judges in this Court have long taken the view that it is generally appropriate for both parents to have an equal say in major decisions about their children.<sup>20</sup>

The general trend in decisions is for orders to be made for shared parental responsibility (except in extreme cases, see below), sometimes with exceptions for particular issues. The legal pathway that is followed varies, but the reasoning commonly suggests that, notwithstanding the non-application or rebuttal of the presumption, shared parental responsibility is considered to be in children's best interests in the majority of cases.<sup>21</sup>

As discussed in Chapter 9, the "reasonable grounds" test for the non-application of the presumption (s61DA(2)) is not a high standard of proof, and a formal finding on the evidence is not necessary (see, for example, *Hunt and Theophane* [2008] FamCA 956 ¶ 7). However, this is not always the approach decision-makers take, and the framing of this provision has been described by one judge as "a curious and perhaps unhelpful form of legislative drafting ... encountered usually in the criminal jurisdiction".<sup>22</sup>

In some instances, the treatment of the presumption is unclear and a full court of the Family Court accepted an argument, based on pre-reform case law,<sup>23</sup> that "it is sufficient if, as occurred in the present case, the substance of the issue is considered and dealt with in a way that permits an appellate court to discern either expressly or by implication the path by which the result has been reached" (*Marsden and Winch* (No 3) [2007] FamCA 1364 ¶ 73). In other instances, explicit consideration is given to the presumption and the strength of evidence upon determinations as to its rebuttal or non-application may be made (eg *Bookburst and Bookburst* [2009] FamCA 6, ¶ 141–159). In *John and Chris* [2007] FamCA 393, Benjamin J suggested the court should make a declaration dealing with the question of whether the presumption applied, had not been applied, or had been rebutted (¶ 25).

Further, while the legislation involves a distinction between the non-application of the presumption (s61DA(2)) and the rebuttal of the presumption on best interests grounds (s61DA(4)), this distinction seems to be blurred in day-to-day legal practice, with judgments dealing with the rebuttal of the presumption in a range of circumstances (e.g., *Runcorn and Raine* (2008) FamCA 837). There are cases where the presumption is not applied or rebutted on the grounds of family violence, but orders for shared parental responsibility are deemed to be in the children's best interests (e.g., *Goode and Goode* (No 2) [2007] FamCA 315. This is the approach endorsed by Kay J, in the appellate decision of *Kennedy and Kennedy* [2007] FamCA 1221 ¶ 38, where it was held that when the presumption of equal shared parental responsibility is deemed not to apply, the starting point for the court's consideration is s61C—the provision that automatically vests each parent with parental responsibility, regardless of relationship status (¶ 38)—with orders to be made subject to the best interests criterion.

The following discussion refers to a number of cases to demonstrate the variety of approaches taken. A key point is that while the presumption may be not applied or rebutted, orders for

20 *W and W* [2006] FCWA 103 ¶ 23.

21 In *Hyland and Starke* [2008] FMCAfam 1035, Reithmuller FM made orders for equal shared parental responsibility on the basis of a best interests analysis where the father had admitted family violence (¶ 93), having found the presumption did not apply (¶ 15). In *Thorn and Jennings* [2008] FMCAfam 1330, the presumption was held to be rebutted on the basis of family violence (the father had criminal convictions for assaulting the mother: ¶ 63).

22 *Bookburst and Bookburst* [2009] FamCA 6, ¶ 156.

23 *Bennett and Bennett* (1991) FLC 92–191. This case did not deal with a presumption, but rather more generally with the question of adequacy of reasons.



equal shared parental responsibility are at times nonetheless made.<sup>24</sup> The circumstances in which parental responsibility is removed are usually quite extreme in a factual sense, often involving high levels of violence, conflict, mental health issues or substance misuse, or in some cases, the failure of a parent to respond to legal proceedings. These points are illustrated by the cases outlined in the following sections. The purpose of the discussion of these cases is to illustrate the application of the law through examples of first instance judgments.

The approach of making orders for equal shared parental responsibility despite a finding that the presumption did not apply, is demonstrated in a decision of Ryan J, made on an interim basis.<sup>25</sup> This decision arose from proceedings that occurred as a result of the appeal decision discussed earlier, *Goode and Goode* (2006) FLC 93–286, where the appeal was allowed and the matter remitted for re-hearing. In the subsequent proceedings, *Goode and Goode* (No 2), Ryan J held that the presumption did not apply due to the history of family violence. However, Her Honour held it was nonetheless in the children’s interests that they see their parents working together and that there be an interim order for shared responsibility. Her Honour suggested that had such an order been in place previously, it may have averted disputes over aspects of parental responsibility because “the mother would have better understood her obligation to discuss [matters concerning the children] with the father” (¶ 62). Although orders for shared parental responsibility were made, the father’s interim application for equal time was not successful, as Ryan J held that the proposal was “contraindicated by the potential disorganisation his proposal will bring to the children’s lives during school term” (¶ 63).

In the decision of *Kennedy and Kennedy* [2007] FamCA 1221, Kay J of the FCoA, sitting as a single appellate judge, upheld an appeal against orders made by a federal magistrate for the parents to exercise equal shared parental responsibility in circumstances where the father had admitted making threats to kill the mother, destroying her property and engaging in other threatening behaviour. In addition to orders for equal shared parental responsibility, the federal magistrate had ordered that the two children of the relationship, aged 7 and 3, live with each parent on a week-about basis. Kay J observed that “there was an aura of violence pervading the [appeal] proceedings” (¶ 40), and held that s61DA(1) (the presumption) should not have been applied, nor should s65DAA (time arrangements where the presumption is applied). In exercising discretion to remake the orders (rather than remitting the matter for re-hearing), he made orders for the children to be cared for, consistent with arrangements pre-dating the federal magistrate’s orders.

In *Gulloway and Tarneit* [2008] FamCA 412, the following factual findings were relevant. The father was a drug addict and had a criminal history. He had been violent to the mother during the relationship. He had had no direct contact with the child, aged 5, since the previous year. The mother had been happily repartnered for several years and there was a child from that new relationship. After the father instituted proceedings in the Family Court, he was ordered to undergo psychiatric assessment, which revealed him to be suffering from a personality disorder. As a result, supervised time at a contact centre was ordered, although the father failed to attend the sessions. He also failed to attend the court hearings. At the time of the final hearing, he sent a message to the court that he was unable to attend as he was currently in jail, but provided no further details.

Cronin J found that the presumption was rebutted, rather than not applied, not only because of the violence but also because the father had shown himself unable to have a meaningful relationship with his son, primarily by not attending the contact centre visits. Final orders were made that the mother have sole parental responsibility and that the father have no time with the child.<sup>26</sup>

The decision in *Hampton and Anor & Pepper* [2008] FamCA 791 involved a 12-year-old child whose biological father was living in the US. It appeared the father had had no contact with his child for some years and the litigation had been ongoing for some time. After the father ceased to be actively involved in the litigation, in failing to respond to served documents and his lawyers ceasing to act, the judge made final orders vesting shared parental responsibility in the mother and her new partner. It was held that the presumption was rebutted on the basis that its application would not be in the child’s best interests and there was no meaningful relationship to be sustained (¶ 15).

<sup>24</sup> For example, *Goode and Goode* (No 2) [2007] FamCA 315.

<sup>25</sup> Decision-makers have the discretion not to apply the presumption at interim level: s61DA(3).

<sup>26</sup> For another such example, see: *Grover and Rathdowne* [2008] FamCA 1143.

In *Thorpe and McGregor* [2008] FamCA 927, the presumption was held to be not applicable on the grounds of family violence. Further orders provided for there to be no contact between the three children (aged 12, 10 and 8) and the father. The factual background of this matter, dealt with in Magellan, was a history of violence so extensive that the mother and two younger children had an indefinite state protection order against the father and that the state child protection authorities had substantiated concerns that the children were subject to emotional abuse through witnessing their father's violence against their mother. The family consultant involved in the case gave evidence that the father used the children as objects to cause harm to the wife and that he had openly denigrated the mother in the presence of the children. The father's argument was that there had been no violence and no harm caused to the children. The orders made also provided for the children to undergo counselling.

In *Doolan and Nixon* [2008] FamCA 946, orders were made for a 9-year-old child to have no face-to-face contact with his father and for the mother to have sole parental responsibility. Watts J found the presumption to be rebutted on best interests grounds on the basis of factual findings concerning the father's alcoholism and his violent and abusive behaviour. Evidence from the family consultant indicated the child found his father's behaviour difficult to deal with, as the father was abusive and "not nice" when intoxicated and the child felt unsafe in his presence, particularly after witnessing an assault by the father on another family member. The mother had tried to encourage the boy to attend contact with his father (this was substantiated by the family consultant and the contact centre) but the boy had started to resent the mother for making him attend contact, despite his concerns about his safety, and questioned whether she loved him. Watts J found that there was no meaningful relationship between the boy and his father as the father had failed to modify his behaviour or take action to make the boy feel safe.

In the first instance FCoWA decision of *W and W* ([2006] FCWA 103, Thackray CJ held the presumption was not applicable because there was evidence of family violence. In relation to the question of parental responsibility, outside the context of the presumption, he said: "the fact there has been family violence is clearly an important factor in determining whether it is appropriate for the parents to share parental responsibility; however, the nature of the violence needs to be assessed to determine whether it should have any impact" (¶ 23).

According to Thackray J's analysis, the history of family violence of itself was not such as "to have any real impact on the allocation of parental responsibility" (¶ 24). There were, however, other issues that supported the mother's argument in favour of sole parental responsibility, notably a poor relationship where communication was by email, in which the father "abuse[d], annoy[ed] and denigrate[d], the mother" (¶ 25). His Honour concluded that the orders for shared parental responsibility requested by the father would simply provide: "an ongoing forum in which to denigrate and belittle [Mrs W]. [Mr W] treats the mother of his children with utter contempt and considers her opinions to be worthless" (¶ 26). Accordingly, he allocated sole parental responsibility to the mother. He nonetheless encouraged her to seek the father's input, but noted this was a matter entirely for her (¶ 26).

In the decision of *Maluka and Maluka* [2009] FamCA 647, a factual history involving extreme, long-term violence and abuse was deemed to warrant the non-application of the presumption and the making of orders for sole parental responsibility. In addition, orders were made permitting the mother to live wherever she wanted to and restraining the father from living with, spending time with or communicating with the children (aged 7 and 5). Benjamin J made the following factual finding (among others):

I am satisfied that throughout the time the parties lived together the father on regular occasions beat the mother, including at time in the presence of the children and children were significantly affected by this. I accept the mother's evidence that from time to time the children were screaming as the mother was being beaten by the father. I am also satisfied that the father was aware the children were present and had no insight (and continues to have no insight) into the impact of his violence and abuse upon the mother and consequently upon them (¶ 47).

Other relevant factual findings were that the father was facing criminal proceedings arising from breaches of intervention orders taken out against him by the mother and that he had used one of the children as a "human shield" to protect himself when being attacked by someone wielding a tomahawk. The father's application sought equal shared parental responsibility, and that the children spend time with him every second weekend, on alternate Wednesday evenings and for half school holidays.



In circumstances where parents are in conflict over decision-making about aspects of parental responsibility, courts have the discretion to allocate some aspects of decision-making power to one parent rather than the other (see ss61C, s61D). The reported cases<sup>27</sup> indicate that this is an option frequently used by courts where parents are in conflict. A variety of approaches is evident in tailoring orders. In numerous cases, there have been decisions made where the parties are to share responsibility for some long-term decisions but not for others. In other cases, one party will hold the final say. In others, one party is given sole responsibility for a period of time, after which both parties are to have shared equal responsibility. Some orders also impose an obligation on the parent with decision-making power to consult the other parent by taking particular steps, but then provide the decision-maker with the ultimate say.

This is an area where the exercise of discretion in the individual circumstances of the case is very clearly evident, with judges balancing the strong philosophical concept of shared parental responsibility in the Act against a variety of other considerations, including the need for decision-making power to be allocated on a workable basis between parties in conflict, and the need to observe the requirement in the Act of making decisions that are least likely to lead to further proceedings (s60CC(3)(l)). The dilemmas raised in the course of this consideration are reflected in this comment of Cronin J, in a case involving intense conflict between the parents over the day-to-day management of issues relating to their children:<sup>28</sup>

There comes a point in time where the Court cannot govern the daily lives of parents. In relation to significant issues however such as health and education, these children need an opportunity to have those issues determined quickly and decisively. (¶ 235)

In this case, Cronin J ordered that the mother have sole responsibility in the areas of education and health until 2011, but that otherwise the parties have shared responsibility. In *Arman and Arman* [2008] FamCA 923, Cronin J similarly made a “split” responsibility order by awarding the mother sole responsibility in all areas other than cultural matters and religion.

## 15.5 Time arrangements

In relation to arrangements for time spent between the child and the parent, a similarly discretionary approach is indicated by the cases, with a wide variety of arrangements ordered, depending on the factual circumstances. As explained earlier, the consequence of the application of the presumption of equal shared parental responsibility and the making of orders for equal shared parental responsibility is an obligation on the court to consider making orders for the child to spend equal (s65DAA(1)) or substantial and significant time (s65DAA(2)) with each parent. Substantial and significant time arrangements are defined in the legislation (s65DAA(3)) as occurring “only if”:

- (a) the time the child spends with the parent includes both:
  - (i) days that fall on weekends or holidays; and
  - (ii) days that do not fall on weekends or holidays; and
- (b) the time the child spends with the parent allows the parent to be involved in:
  - (i) the child’s daily routine; and
  - (ii) occasions and events that are of particular significance to the child; and
- (c) the time the child spends with the parent allows the child to be involved in occasions and events that are of special significance to the parent

In considering orders for substantial and significant time, courts are required to consider whether proposed arrangements are “reasonably practicable” (s65DAA(5)). This involves considering:

- how far the parents live from each other (s65DAA(5)(a));
- the parents’ current and future capacity to implement the arrangement (s65DAA(5)(b));
- their current and future capacity to communicate and resolve difficulties (s65DAA(5)(c));

<sup>27</sup> See Chapter 9 for a discussion of patterns in orders for parental responsibility.

<sup>28</sup> *Loddington and Derrington* (No 2) [2008] FamCA 925.

- the impact that an arrangement of that kind would have on the child (s65DAA(d)); and
- any other matter as the court considers relevant (s65DAA(5)(e)).

In *Eddington and Eddington* (No 2) [2007] FamCA 1299, the full court (Finn, Coleman and Collier JJ) held that “orders made for time spent cannot satisfy the requirements of substantial and significant time unless they literally meet all the requirements” of s65DAA(3). Further, whether arrangements met the definition would “vary from case to case” with what “constitutes substantial and significant time in one factual context” not meeting the definition in another (¶ 54).

The legislation is silent as to what time arrangements should or may be considered where the presumption is not applied, and *Goode and Goode* (2006) FLC 93\_286 indicates that this matter should be determined according to the discretionary best interests principle. The following summaries demonstrate the variety of approaches that are taken, with contact being ceased or curtailed only in extreme factual circumstances, and courts making arrangements for equal or substantial and significant amounts of time even where the relationship between the parents is poor. The extent to which arrangements reflect the requirements of s65DAA depend upon the factual circumstances of the case and the way in which individual decision-makers approach the question of discretion. The cases described in the following sections provide examples to illustrate these points.

### 15.5.1 Equal time

*M and H* [2008] FCWA 16 provides an example of equal time arrangements being ordered for a 6-year-old girl. In light of evidence suggesting the parties had a poor relationship and communication difficulties, Thackray CJ held that the difficulties posed by these issues would be no different in an equal time arrangement than in the existing arrangement involving the child “moving to and fro between the homes of her parents on a number of occasions each fortnight” (¶ 153). His Honour noted that he had considered the implications of the arrangements for the child:

In considering the impact of an equal shared care arrangement on [the child], I do not discount the difficulties associated with a child not having one permanent base which she can call “home”. There would be very few adults who would relish such a disruptive arrangement, which could potentially last for a decade or more. However, disadvantages associated with any arrangement need to be weighed against the advantages. In my view the fact there may be some adverse impact upon [the child] of a week about arrangement does not mean that the arrangement is not reasonably practicable within the meaning of the legislation. (¶ 155)

In light of concerns about how the loss of her primary caregiver status would affect the mother, Thackray CJ ordered that the orders be delayed several months so that the mother could obtain counselling to come to terms with no longer being the primary caregiver.

In the case of *Hibbins and Hibbins* [2008] FMCAfam 228, Baumann FM made orders maintaining a week-about arrangement that had been in place for more than two years and appeared to be working well for the child. The parents were found to be in “chronic conflict” and to have exposed the child (aged 9) to the conflict and involved her in the litigation (she had been seen by a family consultant three times). The mother’s application to reduce contact by introducing an arrangement that would mean the child was with her for nine nights and the father for five in a two-week cycle was rejected and the father’s proposal to maintain the week-about arrangement was upheld. In considering the child’s wellbeing, Baumann FM made the following observation: It is a consistent amazement to me that there are cases that come before the Court where, despite chronic conflict and dysfunction between the parents; exposure by a child overly and inappropriately to conflict and to the litigation; and demonstrated inability of the parents to consistently remain child focused and insightful; the child still presents as happy, securely attached and generally well loved and cared for by those parents. (¶ 1)

Baumann FM held that the primary consideration relating to the need to protect children from harm was relevant in the case, conceptualising the parents’ involvement of the child in their conflict as a relevant issue in this context. In considering whether the child manifested any damage as a result of the situation he concluded that:

In circumstances where the child has been well aware of the conflict (she has been interviewed by report writers on at least three separate occasions) the lack of detectable transference of negative views held by a parent to T suggests the parents have disguised some of their negative views. Alternatively she shows a maturity beyond her years and is capable of seeing some of her parents' silliness for what it is. (¶ 45)

## 15.5.2 Substantial and significant time arrangements

*Tilney and Liatos* (No 3) [2007] FMCAfam 1016 involved a dispute over the care of a 3-year-old boy whose mother, the court (Neville FM) found, had a long history of "intermittent" drug-taking and had contracted hepatitis C. The boy had been cared for in a shared arrangement between the parents, but the parents' relationship had deteriorated as a result of the father's discovery of the mother's previously undisclosed drug addiction. The father had applied for the child to spend very limited time with the mother and the mother sought continuation of the shared care arrangement, arguing that she was overcoming her drug addiction. Neville FM made a series of orders that allowed for a week-about arrangement to be instituted three years after the proceedings if annual hair follicle drug tests proved the mother had been free of drugs for the three-year period. He also made orders applying the equal shared parental responsibility presumption, but these were contingent on the mother remaining drug-free and would be revoked if a twice weekly regime of drug testing revealed the mother had resumed taking drugs. Initially, a time regime based on a fortnightly cycle was allowed for in the orders, with the child spending four days between 9 am and 5 pm with the mother in one week and a weekend from 5 pm Friday to 5 pm Sunday in the second week. This time was to be supervised by either of the mother's parents or another person agreed to by the parents. The time orders were contingent on the mother remaining drug-free and a positive drug test would mean the time orders would cease operation until she returned clear test results for three consecutive weeks. In light of the circumstances of the case, Neville FM held that the child's best interests required that the orders should reflect the requirements of s65DAA(2) (substantial and significant time) rather than s65DAA(1) (equal time).

In *Williams and Robb* [2009] FamCA 316, Burr J made orders for a 12-year-old girl to spend pupil-free days and public holidays with her father, in addition to the pre-existing arrangements for her to spend alternate weekends with her father. In making the orders, His Honour emphasised the role of s65DAA and its requirement that courts consider equal or substantial and significant time arrangements. In rejecting the mother's argument against the extension of time (she argued it would restrict the girl's ability to make her own social arrangements), Burr J commented that:

it is appropriate to extend the husband's time to include those pupil free days, not just on the basis that it represents the child's best interests to do so, but because in my view, the legislation obliges me to consider such additional time being spent with the husband ... In my view, those pupil free days afford an opportunity in a very limited way to increase that substantial and significant time that the husband is able to spend with her. (¶ 8)

In recognition of the girl's wishes to maximise her involvement in extra-curricular activities, orders were also made that the father is "to use his best endeavours to reasonably ensure [the child's] attendance at all of her extra curricular activities as accord with [the child's] wishes". (¶ 17)

In *Thorn and Jennings* [2008] FMCAfam 1330, the court made orders for two children, aged 10 and 12, to spend time with their father from Wednesday to Monday in alternate weeks and half the school holidays. Sole parental responsibility was allocated to the mother. A key issue was the father's violence towards the mother (including in the presence of the children) and others. He had a criminal conviction for assault of the mother. The father was seeking a week-about arrangement and sole parental responsibility. The mother was seeking sole parental responsibility and for the children to spend time with the father from Friday to Monday every second weekend and for part of the school holidays. There was disagreement about which school the children should attend and the sole parental responsibility outcome allowed this decision to be made by the mother. The federal magistrate made this finding:

I am satisfied that the father has in the past been unable to avoid violence and has been a perpetrator of family violence on his partners. Further he has attempted to minimise the

seriousness of a number of these incidents to the court. In deciding this matter I intend to give much weight to this history of violence and the father's attitude. (¶ 43)

However, it was also found that the children had a loving relationship with their father, who had demonstrated his commitment to parenthood through involvement with the children's extra-curricular activities.

### 15.5.3 Restricted time arrangements

The decisions demonstrate that orders for restricted or no time spent are made only in extreme factual circumstances, involving all or some of the same concerns relevant to parental responsibility, such as family violence, concerns about child abuse, substance misuse, and mental health problems. The decisions summarised below indicate that the threshold for contact to be curtailed or ceased is high, with behaviour representing an unacceptable risk of harm to the child (including in an emotional/psychological sense) being established on the facts.

In *Arman and Arman* [2008] FamCA 923, Cronin J ordered that it was in the best interests of the children that time with the father be limited to unsupervised day-only time plus telephone contact. In this case, the father repeatedly ignored court orders (particularly with respect to drinking heavily at night while with the children), continued to denigrate the mother in front of the children and refused to accept responsibility for the impact of his actions on the children. Any view of an expert, including the family report writer, which was inconsistent with his own views was treated by him as unacceptable and therefore to be ignored. This included the finding that one of the children was starting to demonstrate overt symptoms of trauma and required immediate professional help.

In *Wadmal and Amrita* (No 2) [2008] FamCA 1062, Brown J limited the father's time with a 2-year-old girl to supervised time at a contact centre (rather than supervised by a relative). Relevant factual findings were that the father, "behind a veneer of empathetic charm" (¶ 112), had "the capacity for explosive physical and verbal violence" (¶ 112) and had subjected the mother to physical abuse. Expert evidence had indicated he may suffer from a psychopathic personality disorder. Notwithstanding this, the child was found to have "a warm loving relationship" (¶ 127) with both her mother and father. In balancing safety concerns about the father's behaviour, including a concern that he wanted to have the child circumcised for cultural reasons, against the potential harm that could be done from the removal of the relationship, Brown J observed that a "court must be very cautious about making orders which eliminate contact between a parent and child" (¶ 125). This caution underpinned the decision to maintain supervised contact and allocate sole parental responsibility to the mother.

## 15.6 Factual considerations: s60CC(3)(c)

Data from the file analysis discussed earlier indicate that the so-called "friendly parent" criterion in s60CC(3)(c), which requires the court to consider the extent to which a parent has facilitated the other parent's relationship with the child, is frequently raised in the parties' material. The concept that a parent should facilitate the involvement of the other parent in the child's life has long been influential in family law decision-making (Kaspiew, 2007), but the explicit inclusion of this principle in the legislation has led some commentators to suggest that litigants will be discouraged from raising concerns about their child's wellbeing in the care of the other parent (Rathus, 2007). The following discussion demonstrates how s60CC(3)(c) is being applied in case law. Again, a significant variation is evident in the approaches taken by different judges, but it is clear that this issue is given significant emphasis by decision-makers, such that it is a potentially determinative factor in decision-making in the context of the emphasis on "meaningful involvement" with each parent being in a child's best interests. In the context of this principle, some decision-makers view behaviour that impedes or fails to facilitate to a sufficient extent the other parent's relationship with the child as a form of harm and/or emotional abuse. In some cases, such findings are held to warrant orders being made for the residence of the children to change and, in some circumstances, restrictions being placed on spending time with the parent whose behaviour is inconsistent with s60CC(3)(c).<sup>29</sup> The following case summaries outline the approaches evident in decision-making for this issue.

<sup>29</sup> See, for example, *S and H* [2008] FCWA 23; *Edgar and Reagan* [2008] FMCAfam 46.

In *Irish and Michelle* [2009] FamCA 66, Benjamin J made orders for two children (aged 7 and 9) to move interstate to live with their father. This was in light of findings that the mother was unable to assist the older child to overcome her feelings of trauma at the breakdown of her parents' relationship, largely as a result of her own feelings about the separation, leading to the child expressing opposition to spending time with the father and his new partner. Although expert evidence suggested that improvements in the mother's attitude and behaviour had occurred by the time of trial and she had adopted strategies to assist the child, who was described as "strong willed", to have a positive relationship with her father, the judge doubted these improvements would continue after the trial finished, concluding that: "sadly this is a case where the children may be at unacceptable risk of psychological harm if they remain with their mother as their primary carer" (¶ 218). The children's views were that they wished to remain resident with their mother, a position consistent with the submissions of the ICL and the recommendation of the family consultant. The court orders provided for the parents to have equal shared parental responsibility, the children to live with their father, his new partner and her daughter interstate and the children to spend time with their mother in school holidays and one weekend per month.

In the first instance Family Court decision of *Bain and Stewart* (No 6) [2008] FamCA 1135, Cronin J made final orders that the child be removed from the mother's care and instead be placed permanently with the father. Sole parental responsibility was given to the father. Time with the mother was to be on a gradually increasing and supervised basis. These orders were made after interim orders ten months earlier by Guest J placed the child with the father. Further interim orders by Cronin J four months later ceased all communication between the child and the mother in order to ascertain how the child would cope. The social science evidence indicated the child not only thrived but stabilised and was no longer displaying the behavioural problems he had earlier shown. The judgment indicated these orders were made reluctantly and only after the mother had been provided by the court with numerous opportunities over a three-year period to change her stance as a "no contact" parent. She had failed and the child had as a result developed behavioural problems.

*Runcorn and Raine* [2008] FamCA 837 is another first instance Family Court decision where the children were permanently removed from living with their mother and instead placed with their father as a result of the mother's attitude towards the father and his role in the children's lives. The mother had several children with several fathers and sought to exclude the fathers from the children's lives. She would not allow any of the children to use their father's surnames, constantly belittled the fathers to the children and made allegations of abuse. When the mother was psychiatrically assessed, she was found to be most likely suffering from a mixed personality disorder, with both histrionic and borderline features. Murphy J held:

I find that the children are at risk of psychological or emotional harm if exposed to significant care by their mother. I find that she sees no meaningful role for the father in the children's lives and it is highly likely that, not only will she not promote a meaningful relationship between them and their father, but will actively seek to undermine that relationship. (¶ 289)

Other cases demonstrate the application of s60CC(3)(c) in circumstances where fathers have been found not to support relationships between mothers and children to a sufficient extent.<sup>30</sup> An example is *Vile and Prabszic* [2009] FamCA 25, a first instance FCoA decision in which Watts J ordered that a 7-year-old child be removed from his father's primary care to that of his mother. Sole parental responsibility was allocated to the mother, and she had an obligation to attempt to "reasonably consult" with the father prior to making decisions of a long-term nature. Initially, the child was to spend time with the father on a supervised basis and the orders provided for non-supervised time to be phased in over a nine-month period. The relevant factual findings were that the mother had suffered a significant mental illness following the parties' separation as a result of the violence and other treatment she had suffered at the hands of the father and his mother during the relationship. Psychiatric examination of the parties revealed the mother to be fully recovered with an excellent prognosis. She demonstrated insight into her illness as well as its impact on the child. She had rebuilt her relationship with the child in an appropriate manner, assisted by professionals. The father, however, was assessed as having a narcissistic

<sup>30</sup> See also: *Sawyer and Reid* [2009] FamCAFC 33. In that case, the Full Court upheld orders placing the children primarily with the mother as a result of findings that the father's violence had impacted on the children's ability to have a meaningful relationship with either parent.



personality with over-valued ideas, or an encapsulated delusion that the mother remained ill, unsafe and should have minimal involvement in the child's life.

Watts J accepted the mother's argument that it would be "more likely for the child to have a meaningful relationship with both his parents if he lives with his mother than if he lives with his father" (¶ 80). His Honour further found that in his father's care, "there is a prospect that the child could be subjected to the risk of abuse in the wider sense of that term; that is trauma and psychological injury [i.e., damage to his relationship with his mother] in the event that he continues to be primarily resident with his father" (¶ 88).

In *Durand and Morel* [2009] FMCAfam 22, Roberts FM expressed concern about the mother's ability to facilitate a 4-year-old child's relationship with her father on the basis of evidence from staff at a contact centre and the Family Report writer. The contact centre staff had indicated that the mother had prolonged goodbyes with the child instead of saying goodbye and leaving quickly. Roberts FM referred to affidavit evidence of the mother in relation to family violence prior to separation, noting that the father denied violence but admitted heated arguments in the presence of the child. Finding violence was no longer an issue, the federal magistrate observed that the mother's agreement to equal shared parental responsibility was an encouraging sign in light of concerns about her ability to facilitate the child's relationship with the father:

Because it is in the interests of the child for the parties to move forward and put the difficulties of the past behind them, I have deliberately not made a finding about whether the mother's actions at handovers of the child were intentional or not. However, I can say that if I had come to a conclusion that her actions were intentional in order to pursue some agenda to exclude the father from the child's life, I would have had no hesitation in concluding that such behaviour was emotional child abuse on her part. That is because the evidence is clear that the child has become stressed at handovers and the only conclusion to be drawn would have been that the mother had deliberately caused stress to her child in order to pursue a personal agenda. (¶ 57)

The father's application for the child to spend time with him from Thursday evening to Sunday evening every second week, plus Thursday nights in the alternate week was successful. The mother had agreed to Friday to Sunday evenings in alternate weeks. There was also disagreement over school holiday contact in summer holidays and the orders in relation to this largely reflected the father's application.

## 15.7 Summary

This section has discussed case law arising from the implementation of the *SPR Act 2006* for the purpose of examining the legal context for the empirical findings arising from this evaluation. A key point to note is the discretionary nature of decision-making in the family law context and the way that jurisprudence develops in the context of matters that are litigated and, in some instances, appealed. The significance of this issue is that examination of judgments sheds light on the nature of matters that are litigated and the way in which the law is applied in these contexts. The way it is applied and interpreted in a discretionary decision-making context adds to our understanding of how the legislation is operating in court-based practice. The wider question of what impact it has had on matters that do not proceed to court and are resolved through discussion and negotiation has been examined in Chapter 9. The discussion of the case law adds to the insights presented in that chapter by illustrating the outcomes and approaches in reported decisions that are influential in informing family law system professionals' views of how the legislation is operating and, perhaps more importantly, influence the advice they give to clients about what their position under the law might be. Further, analysis of cases and interpretations of the legislation add to the perspectives of family law system professionals discussed in Section 15.1, particularly in relation to the qualitative insights into the complexity of the legislation and the variation in approaches that are evident.

Overall, the discussion of the cases presented in this chapter illustrates some key themes that are consistent with insights based on qualitative data (interviews and focus groups with family law system professionals) and quantitative data (Family Lawyers Survey 2008). First, as the discussion of the full court's decision in *Goode and Goode* indicates, the legislation is particularly complicated, with an eleven-step decision-making pathway outlined in that decision, even for interim determinations. This complexity is further illustrated by the discussion in relation to

parental responsibility and the application of the presumption, with a variety of approaches manifested in the cases discussed.

Second, the discussion of discretionary approaches to decision-making about “best interests” and the individualised nature of case-by-case decision-making illustrates the point that the s60CA (best interests) discretion results in a wide variety of arrangements being ordered, depending on the circumstances of the case. This discretionary application of the best interests principle contrasts with the understandings of many parents, discussed in Chapter 9, that the Act mandates equal time arrangements. It also adds to the understanding of lawyers’ concerns about whether the presumption is the best legislative expression for the philosophy of shared parental responsibility. The third point arises from two parts of the discussion in this chapter: decision-making concerning the two primary considerations and the application of the so-called “friendly parent” criterion in the s60CC(3) list of additional considerations (s60CC(3)(c)). The strength of emphasis in decision-making on the need to maintain meaningful relationships between parents and children is illustrated in the way in which behaviour that reflects non-facilitation of the other parent’s relationship is conceptualised in some decisions as a form of emotional abuse, justifying a change of residence and, in some cases, curtailment of the child’s relationship with the other parent.



The findings in this report are based on a synthesised analysis of data from seventeen separate studies. The perspectives of parents and professionals across the family law system have been canvassed in several different studies, which have in total involved some 28,000 individuals. The evaluation has also drawn on administrative data from the courts and the family relationship sector, in addition to collecting information from over 1,700 court files and analysing relevant case law. This means that the main evaluation questions can be addressed on the basis of data from at least three sources in most cases. The breadth and diversity of the evaluation studies means that certain conclusions in relation to the main evaluation questions can be drawn with confidence. However, it is also important to appreciate that some of the policy objectives that informed the 2007 Evaluation Framework (see Appendix B) encompassed potentially long-term shifts in behaviour and attitudes that may not be evident within the three-year time frame of the evaluation. Further, some aspects of the policy objectives and the evaluation questions are not readily amenable to measurement. However, there are some clear conclusions that can be drawn and these are outlined in this chapter.

The evaluation data provide a more comprehensive empirical evidence base about separated families and the family law system in Australia than has ever been available before. This evidence base shows that 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. Such families 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.

## 16.1 Implications of the findings for the key evaluation questions

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- 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. There was less use of these services to support relationships by couples who had not faced serious problems (about 10%). Client satisfaction with early intervention services was high, with a large majority of clients being willing to recommend the services to others.

Overall, clients of post-separation services also provided favourable ratings. Over 70% of FRC and FDR clients said that the service treated everyone fairly (i.e., practitioners did not take sides) and over half said that the services provided them with the help they needed. 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 capacity to assist clients as high. They also spoke of considerable challenges linked to the complexity of many of the cases they are dealing with 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. 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.

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## 2 To what extent does FDR assist parents to manage disputes over parenting arrangements?

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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. Almost a third did not reach agreement and did not have a certificate issued. However, most of these parents reported going on to sort things out mainly via discussions between themselves. About a 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 most had not resolved matters or had decisions made approximately a year after separation.

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. This may reflect an inadequate understanding of the exceptions to FDR (*SPR Act 2006* s60I(9)) 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 opt nonetheless 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”.

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

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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. Nonetheless, the exercise of

shared decision-making was reported by a substantial proportion of parents with a history of violence.

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. There is evidence of some increase in shared responsibility outcomes for cases that went to court following the 2006 changes. Conversely, there were only relatively small decreases in the proportion of cases in which the mother or the father had sole parental responsibility.

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). Father payers with equal care time and fathers 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. Child support compliance was higher where there was shared decision-making than where one parent had all of the decision-making responsibilities.

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#### **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?**

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Although only a minority of children had shared care time, the proportion of children with these arrangements has increased. This is part of a longer term trend in Australia and internationally. Judicially determined orders for shared care time increased post-reform, as did shared care time in consent cases.

The majority of parents with shared care-time arrangements thought that the parenting arrangements were working well both for parents and the child. While, on average, parents with shared care time had better quality inter-parental relationships, violence and dysfunctional behaviours were present for some.

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. 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.

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#### **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?**

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Just over half 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.

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). The parents in most families in these 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. This was associated with a 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 highlighting this. 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.

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## 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?

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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. 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. 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.

Mothers and fathers who reported safety concerns tended to provide less favourable evaluations of their child's wellbeing compared with other parents. 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.

A majority of lawyers and a large proportion of family relationship service professionals expressed the view that the system had some scope for improvement in achieving an effective response to family violence and child abuse. 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. While the legislation sought to place more emphasis on the importance of identifying concerns about family violence and child abuse (e.g., *SPR Act 2006* 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. These include *SPR Act 2006* 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 a requirement for courts to consider the extent to which a parent has facilitated the other parent's relationship with the child (s60CC(3)(c)).

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 systems and services (such as child protection systems) also need further work. At the same time, the progress that continues to be made on improved screening practices will go only part of the way to assisting victims of violence and abuse.

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## 7 To what extent are children's need and interests being taken into account when parenting arrangements are being made?

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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 in 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 both clients and relationship 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. In cases in which equal or shared care time would be inappropriate, this can make it more difficult for relationship services professionals, lawyers and courts to encourage parents to focus on the best interests of the child (discussed further below).

While 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 FCoWA and the FCoA, the court that handles most children's matters, the FMC, did not have change its case management approach.

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## 8 How are the reforms introduced by the *SPR Act 2006* working in practice?

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The philosophy of shared parental responsibility is overwhelmingly supported by parents, legal system professionals and service professionals. However, many parents do not understand the distinction between shared parental responsibility and shared care time, or the rebuttable (or non-applicable) presumption of shared parental responsibility. 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 sometimes 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 have declined markedly since the reforms.

Total court filings in children's matters have declined, and a pre-reform trend for filings to increase in the FMC, with a corresponding decrease in the FCoA, has gathered pace.

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. The FCoA, the FMC and the FCoWA have each adopted a different approach to the implementation of Division 12A of Part VII. The 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. 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 this evaluation provides 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* tend to be seen by lawyers and judicial officers to be complex and cumbersome to apply in advice-giving and decision-making practice. 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.

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

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The majority of parents in shared care-time arrangements reported that the reforms worked well for them and for their children. But up to a fifth of separating parents had safety concerns that were linked to parenting arrangements; and shared care time in cases where there are safety concerns correlates with poorer outcomes for children.

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 these concerns were 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 circumstance in which violence has occurred.

Further unintended consequences are also evident. A majority of lawyers perceived that the reforms have favoured fathers over mothers and parents over children. There was concern among a range of family law system professionals that mothers are disadvantaged in a number of ways, including in relation to negotiations over property settlements. There is an indication 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 influence the care-time arrangements some parents seek to negotiate. The extent to which these concerns are generally pertinent to separated parents is uncertain. The evaluation indicates 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 be 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.

## 16.2 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 is 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 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 what types of matters are not suitable for FDR can be developed and so that other options can be better facilitated.

Beyond effective screening, possible ways forward include:

- continued development of protocols for the sharing of information within the family relationship service sector and between the sector and other critical areas, such as child protection;
- 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;<sup>1</sup>
- 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 in 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 entail ensuring they 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 such concerns and assisting such 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 what measures are required to assist these families (to some extent, LSSF W2 2009 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.

<sup>1</sup> "Round table dispute resolution" is one (though by no means the only) model that might be further explored by FDR practitioners and other professionals within the sector.





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# Acronyms, abbreviations and glossary

## Acronyms

ABS	Australian Bureau of Statistics
AGD	Attorney-General's Department
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
AJFL	<i>Australian Journal of Family Law</i>
ATSI	Aboriginal or Torres Strait Islander
AV	Audiovisual
AVO	Apprehended Violence Order
BITSEA	Brief Infant-Toddler Social and Emotional Assessment
CAC	Case Assessment Conference
CALD	Culturally and linguistically diverse
CBS	Call Back Service
CCS	Children's Contact Service
CEO	Chief Executive Officer
CFC 2003	Caring for Children after Parental Separation Survey 2003
CLC	Community Legal Centre
COTA	Council on the Aging
CRP	Child Responsive Program
CSA	Child Support Agency
CSS	Child Support Scheme
DV	Domestic violence
DVO	Domestic Violence Order
EDST	Education and Skills Training
EIS	Early intervention services
FaCSIA	Department of Families, Community Services and Indigenous Affairs
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FCS 2003	Family Characteristics Survey 2003
FCS 2007	Family Characteristics and Transitions Survey 2007
FDR	Family dispute resolution
FRAL	Family Relationship Advice Line
FRC	Family Relationship Centre
FRO	Family Relationships Online
FRSP	Family Relationship Services Program
FV	Family violence
GP	General practitioner
HILDA	Household, Income and Labour Dynamics in Australia survey

ICL	Independent children's lawyer
LAT	Less adversarial trials
LSAC	<i>Growing Up in Australia</i> : Longitudinal Study of Australian Children
MFRS	Men and Family Relationships Service
OLS	Ordinary least squares
PDR	Primary dispute resolution
POP	Parenting Orders Program
PPVT	Peabody Picture Vocabulary Test
PSCP	Post-Separation Cooperative Parenting
PSS	Post-separation services
RFDR	Regional family dispute resolution
SCSP	Supporting Children after Separation Program
SDQ	Strengths and Difficulties Scale
SFVS	Specialised Family Violence Service
SSAT	Social Security Appeals Tribunal
TDRS	Telephone Dispute Resolution Service

## Family Law Evaluation projects

FLS 2006	Family Lawyers Survey 2006
FLS 2008	Family Lawyers Survey 2008
	Families Project
GPPS 2006	General Population of Parents Survey 2006
GPPS 2009	General Population of Parents Survey 2009
GSFS 2009	Family Pathways: The Grandparents in Separated Families Study, 2009
LBS 2009	Family Pathways: The Looking Back Survey, 2009
LCP	Legislation and Courts Project
LSSF W1 2008	Family Pathways: The Longitudinal Study of Separated Families, Wave 1, 2008
LSSF W2 2009	Family Pathways: The Longitudinal Study of Separated Families, Wave 2, 2009
	Online Survey of FRSP Staff 2008
	Online Survey of FRSP Staff 2009
QSLSP 2008	Qualitative Study of Legal System Professionals, 2007–08
QSLSP 2009	Qualitative Study of Legal System Professionals, 2009
	Qualitative Study of FRSP Staff 2008
	Qualitative Study of FRSP Staff 2009
SPP	Service Provision Project
	Survey of FRSP Clients 2009

## Courts

FCoA	Family Court of Australia
FCoWA	Family Court of Western Australia
FMC	Federal Magistrates Court

## Legislation

	<i>Child Support Amendment Act 2006</i>
	<i>Family Court Act 1997 (WA)</i>
	<i>Family Law Amendment (Defacto Financial and Other Measures) Act 2008 (Cth)</i>
<i>FLA 1975</i>	<i>Family Law Act 1975 (Cth)</i>
<i>Reform Act 1995</i>	<i>Family Law Reform Act 1995</i>
<i>SPR Act 2006</i>	<i>Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth)</i>

## Judicial abbreviations

CJ	Chief Justice
DCJ	Deputy Chief Justice
FM	Federal Magistrate
J	Justice

## Care-time descriptions

Care-time arrangement	Percentage of nights
Father never sees child	Mother 100% of the time
Father with daytime-only care	Mother 100%, father sees daytime only
Most nights with mother*	Mother 66–99%, father 1–34%
Shared care time involving more nights with mother	Mother 53–65%, father 35–47%
Equal care time	Equal time 48–52%
Shared care time involving more nights with father	Mother 35–47%, father 53–65%
Most nights with father*	Mother 1–34%, father 66–99%
Mother with daytime-only care	Mother sees daytime only, father 100%
Mother never sees child	Father 100% of the time

Note: \* Where the child spends most nights with one parent and attention is directed to the other parent, the latter parent is described as having a minority of care nights.

