



FAMILY VIOLENCE AND FAMILY LAW IN AUSTRALIA

**The Experiences and Views of Children
and Adults from Families who Separated
Post-1995 and Post-2006**

Volume 1

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Family Violence and Family Law in Australia

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Adults from Families who Separated
Post-1995 and Post-2006

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Volume 1

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Glossary

ADHD: attention-deficit hyperactivity disorder

AIFS: Australian Institute for Family Studies

AVO: Apprehended Violence Order

CAFCASS: Children and Family Court Advisory and Support Service (UK)

CALD: culturally and linguistically diverse

CAP disorder: Central Auditory Processing disorder

CEO: chief executive officer

CPIU: from the Queensland Police, Child Protection and Investigation Unit

CPU: Child Protection Unit

CSA: Child Support Agency

DCP: Department for Child Protection

DoCS: Department of Community Services (NSW)

DV: domestic violence

DVO: Domestic Violence Protection Order

DVPC: Domestic Violence Prevention Council, ACT

FaHCSIA: Department of Families, Housing, Community Services and Indigenous Affairs

FDR: family dispute resolution (or family mediation)

FLC: Family Law Council

FMC: Federal Magistrate's Court

FRC: Family Relationships Centre

GP: general practitioner (medical)

ICL: Independent Child Lawyer or Independent Children's Lawyer

NGO: non-government organisation

NZ: New Zealand

OCD: obsessive compulsive disorder

PTSD: post-traumatic stress disorder

SSAT: Social Security Appeals Tribunal

UK: United Kingdom

UNCROC: United Nations Convention on the Rights of the Child

UniSA: University of South Australia

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Executive summary

This report was commissioned by the Commonwealth Attorney-General's Department in early 2009 to examine the impact of family violence, which had occurred before, during and or after parental relationship breakdown, on post-separation decision making and arrangements as viewed by children and parents. More specifically the brief was to discover parents' and children's perspectives on:

1. The effect that a history of or existence of violence within the relationship has on the decisions that people make about accessing the courts and dispute resolution services
2. The effect that a history of or the existence of violence within the relationship has on the decisions people make while they are at court and at dispute resolution services
3. The effect that a history of or the existence of violence within the relationship has on post-separation parenting arrangements.

Researchers from the disciplines of criminology, law, education, psychology and social work, from three universities, Monash University, the University of South Australia and James Cook University, collected data directly from parents and children. Since the brief included considering the impact of the *Family Law Amendment (Shared Parental Responsibility) 2006 (Cth)*, the research sought views from parents and children from 1995 to the present time to make a comparison between the period prior to the introduction of the amendments and the period afterwards.

Research design

The research design included a number of different data collection strategies aimed at collecting data firsthand from parents and children who had experienced parental relationship breakdown, with and without family violence, defined as domestic violence and or child abuse and covering physical, sexual, psychological, financial and social abuse and control and neglect. (Family violence is discussed further in detail in the body of the report.) The data collection strategies comprised:

1. an online survey for parents
2. an online survey for children
3. two phone-ins for adult and child victims of family violence, one in South Australia and one in Queensland
4. a call-back to a small sample of the online adult respondents who volunteered to be contacted.

Access to respondents was aided by media releases, press advertisements and hundreds of family relationship services publicising the online surveys and phone-ins widely throughout Australia. The study was implemented so as to offer appropriate protection to children as it was important to hear

their voices. Children's views are often not sought yet their contribution was vital as the study focused on their welfare.

Respondents

Close to 1100 adults (90%) and children (10%) responded to the survey and phone-ins. A consistency of responses suggested the strong reliability of the data. The respondents came from cities, regional cities and towns, rural and remote areas in proportion to the distribution of the population in Australia. All states and territories were represented with a slight over-representation from Queensland, South Australia and Tasmania and a strong representation from New South Wales and Victoria. The respondents reflected the wide ethnic and racial diversity of the Australian population and included recent refugee groups. Three times more adult females responded than adult males but that was expected given the focus on family violence and the greater incidence of women as victims.

The views and experiences were consistent between respondents in the various states, city and country locations, between people from different ethnic and racial groups and between parents and children. The greatest difference was in the way that women and men understood, described, were affected by and perpetrated family violence. However, there were also similarities that emphasised common aspects of the experiences of separating or divorced parents and children with a past or present history of family violence. There were some differences between five distinct groups of adult respondents: those who did not use any services subsequent to separation (7.4%), those who made arrangements themselves without professional support or intervention (10.1%), those who used services after 1995 but not after 2006 (23.5%), those who used services only after 2006 (29.4%), and those whose problems took them to services after 1995 and who were still using services after 2006, sometimes up to the present time (29.6%).

The findings

Respondents believed a history and/or existence of family violence affected decisions they made:

- about accessing the courts and dispute resolution services,
- when they were at courts and dispute resolution services and
- about their post-separation parenting arrangements.

The impact of the violence on decision making was often unexpected, unsatisfactory and endless. Women and men thought the family law socio-legal services system had not been designed to deal with problems of family violence prior to 2006, or afterwards, and reported that services did not offer sufficient or relevant intervention in either period.

The nature of the family violence reported

Separation can be a long process that begins before the actual physical separation occurs. Some 85% of women and 56% of men reported domestic violence and/or child abuse during their former partnership. The majority of women reported family violence as the prime reason for the separation, whereas the majority of men saw it as the third most important reason for separation. Many

respondents reported domestic violence and child abuse as coexisting or as indistinguishable from each other because the perpetrator inflicted violence:

- on their (ex) partner in front of the children, or
- on the children in similar ways to that inflicted on the adult victim, or
- on both adult and child victims at the same time.

Respondents reported child abuse separately when the child was in the care of the perpetrator following separation. The abuse reported in this context was serious, not accidental and exceeding neglect. For example, the reports included head injuries and deliberate sedative overdoses requiring hospitalisation of pre-school children, and confirmed sexual abuse.

Women and men found reporting child abuse after separation difficult because it was hard to provide evidence and many reported that they were not believed by professionals in the family law context, even when they could substantiate the abuse.

The types of violence by male perpetrators reported by women victims that occurred during their relationship and during and after separation were physical, sexual, emotional, psychological, verbal, social (isolating the victim), financial and oppressive control of many aspects of their lives.

While a few men reported the same forms of violence, the majority reported being victims of women's emotional, psychological and verbal abuse. Men interpreted their partners' failure to function in a stereotypic family role as being abusive to them in a way that women did not. Men also perceived responses from services as being abusive whereas women did not. Each gender had different ways of understanding and defining violence and attributed different causes to their former partner's violence. This suggests a need for further research to explore gender differences in experiences and underlying notions of family violence in more depth.

When partners separated most adults and children reported that violence initially escalated. For some it reduced over time. However it continued for some men and for many women and children. Women reported 'changeover' times as providing opportunities for further violence towards them including physical, sexual, psychological and emotional violence. At other times they experienced other forms of violence including stalking, harassment and threats to their own and their children's safety. Many women reported being afraid of the perpetrator because of the ongoing threats and occurrences of violence and because of the absence of protection for children when alone with a parent with a history of violence.

Men did not report continuing violence after separation to the same extent, nor did they report fear of their ex-partner or fears for their children's safety or feelings of powerlessness in the same way as women. Rather, after separation men were more concerned about obstructions to access to their children and false allegations of family violence and saw these as expressions of violence. They expressed frustration and sometimes hopelessness rather than fear.

The majority of children reported that experiences of family violence reduced for them after their parents separated, especially if the violence came from only one parent. However, 39% of children in the children's survey said they did not feel safe with their father after separation and just under 10%

said they did not feel safe with their mother. Furthermore, they reported feelings of hopelessness and powerlessness. They resented the lack of opportunity to express their views about their parents' separation and post-separation parenting decisions, in particular about the arrangements made for their care. For this group of children decisions had been made mostly by courts.

The effect that a history of or the existence of violence within the relationship had on the decisions that people made about accessing the courts and dispute resolution services

Comments in the surveys, follow-up phone calls and phone-ins revealed that separating couples were unprepared for the difficulties encountered in using the services of the family law socio-legal system and they became increasingly disillusioned. Many women (65%) had left the partnership because of family violence, hoping that by leaving they would gain protection for themselves and their children. Many reported that family violence allegations were not investigated fully and were often interpreted by services providers as being false or as a tactic in a separated parents' dispute, rather than as a social problem requiring a protective response. Some men also reported that when it was alleged that they were violent, their denials were also not investigated or believed.

Some survey respondents, mostly women, had decided not to use any services at all because of their fears for their own and their children's safety post-separation. They wanted to hide from their former partner to avoid any action that would lead to further violence, including seeking income support. They avoided formal services, including education, counselling and support. These respondents had separated pre- and post-2006 and represented 3.5% of the total respondents to the online survey for adults. However, we suspect that this group might be larger in reality because of their need for anonymity. Clearly the possibility of further violence was influencing their actions. The special safety needs of this group warrant further investigation.

However, 82.5% of respondents voluntarily used services after separation. They started by using services outside the family law socio-legal service system and their satisfaction with those services was higher than with those services within the family law socio-legal service system, both before and after 2006. Most (78%) went to friends and family first and many received support from them, particularly if they had a friend who had knowledge of the area. Their comments indicated the value placed on ongoing support and advice from family and friends. Some 58% approached general medical practitioners (GPs) and through them accessed counselling and other support services. Men and women then took divergent service pathways, with women mainly going to Centrelink for financial support and family relationship services for counselling and men mainly going to the Child Support Agency over payment for children.

Most survey respondents (74%), both men and women, went to private legal practitioners and feedback on this service was very mixed. Moving on to access the courts was a later step and the report shows that the usage of court services dropped by 18% after 2006 and usage of the new network of Family Relationship Centres rose. Nevertheless some 50% of the survey respondents still progressed to court.

A complicating factor was that some respondents approached services about family violence before the separation without necessarily having decided to separate at that point, including state-based

services such as child protection, police and domestic violence courts, in order to stop the violence and gain protection. Some of these services, particularly child protection services, encouraged or urged separation, not always considering potentially negative or unanticipated consequences for the respondents. Respondents reported contradictions that became obstructions due to the difference in the goals of the services in the state and Commonwealth jurisdictions. Some state-based services showed little knowledge of the family law socio-legal services and the practical risks in respondents using them.

The effect that a history or the existence of family violence within a relationship had on decisions people made while they were at courts or at dispute resolution services

Those who used services moved early to use solicitors, but many were unhappy with their responses – they reported that many family lawyers did not believe their reports of family violence or did not take appropriate action. Only a minority of women (some 34%) and men (some 19%) felt that their reports of violence were believed. Respondents had not expected this, or that they might need objective evidence of violence. Many statements were made about solicitors' lack of empathy, suggesting that there was a difference of views between solicitor and client as to the purpose of the service. Also respondents reported financial constraints in accessing and using solicitors.

Most frequently occurring difficulties were with solicitors' advice after 2006 as aspects of the new legislation began to interact negatively with the respondents' hopes of overcoming violence. Often solicitors advised them that unproven allegations of violence may cause courts to regard them poorly and that their request to limit contact with the perpetrator, or for supervised contact, might fail. Many solicitors advised of the courts' obligation to consider 'equal time with each parent' and 'equal shared care', two concepts that were not correct interpretations of the law but were interpretations that had gained currency after the 2006 changes to the *Family Law Act*. Solicitors also advised of the new penalties for false allegations of violence and of new policies seeking to steer people away from courts. Courts were also presented as places where things could go badly wrong.

Adult respondents reported feeling fearful, coerced and upset that their concerns about their own safety and the safety of their children were being ignored or disregarded. The vast majority were dissatisfied. The impact of family violence on the victims, women in particular, included high levels of fear, great anxiety, considerable anger, depression and mental illness that resulted from the violence. It is likely that these effects, if unrecognised by the solicitors, increased the dissonance between the respondents and their solicitors and what may have been put forward as worst case scenarios were heard as inevitable outcomes.

The majority of survey respondents in the post-2006 group, and some from the 1995 onwards group, used the new network of Family Relationship Centres. There too they believed that reports of family violence were not addressed appropriately, including in the educational programs preceding family dispute resolution (mediation). There were major criticisms about the way family violence was addressed in mediation. Only 10% of the survey respondents who disclosed family violence were exempted from mediation; some thought they should have been exempted before it began or during the process. Respondents were surprised that family dispute resolution practitioners did not

counteract the power imbalances between the partners and there was no way they could overcome this themselves. Respondents reported that the new features introduced by the 2006 legislation at Family Relationship Centres conflicted with their own plans for parenting post-separation.

Some 40% of survey respondents with experiences of past or current family violence and who used a Family Relationship Centre did not disclose the violence. Some who did not disclose family violence were happy with the outcomes but others who did not disclose the violence believed the centres should have detected it and proceeded differently. In summary, complaints about family dispute resolution practitioners (mediators) included:

- their lack of understanding of the nature and effects of family violence, and
- their inability to counter the greater power of ex-partners who were violent.

Once in court all respondents experienced common problems. They felt their experiences of violence were disbelieved, ignored, minimised, or sometimes accepted but put to one side in the ultimate decision. Some complained that their solicitors did not present evidence of violence. Many complained about court-appointed experts (mainly psychologists and psychiatrists) who wrote reports without expert understanding of family violence and/or who did not investigate the allegations or denials of violence. Some claimed that the time allocated to making assessments of family violence for family reports was too short. Judges were criticised for not taking reports of violence into account in their decisions, especially with regard to overnight contact for young children, and for ignoring child protection and police reports and state-based domestic violence orders.

Children criticised their lack of any opportunity to present their views to the courts and criticised judges for their distance from the children, their views and their experiences. Many responses from children indicated that the existence of family violence should substantially restrict their parenting time with the perpetrator (taking a child protection approach). They reported that the courts' emphasis on children having contact with a violent parent was inappropriate and unsafe. Some adult respondents, more men than women, reported good court decisions but saw these as being related to their own ability to gain and present evidence, to their own network of support, to their use of specialist services and legal services, not to the courts themselves.

The effect that a history of or the existence of violence within a relationship had on post-separation parenting arrangements

For most of the respondents (68.7% of women and 52.2 % of men) the consequence of family violence was that suitable and safe arrangements for themselves and their children were not achieved after separation. This was a recurring theme in the comments. The parents blamed service providers' disbelief of and ignorance of family violence and also the slow and belated investigations of difficulties for the poor outcomes.

Not being able to obtain safe arrangements for children was a factor driving the survey group who had been accessing services for the longest period of all, from 1995 to after 2006. They reported the most severe violence of all three groups, which contributed to their ongoing struggle. The other group most affected was the post-2006 group. They reported being coerced by the combined

pressure from legal advisors and family dispute resolution practitioners to agree to arrangements that were unsafe or inadequate for their children, including shared parenting, overnight or unsupervised contact, or any contact. For some 54% of women and 47% of men in the post-2006 group, the co-existence of family violence, mental illness and substance abuse presented especially challenging problems that they said were not recognised. They believed that parents with this constellation of problems needed special assessment in terms of their parenting capacity.

The critical nature of the responses

Most of the commentary from respondents was critical of services, whether or not the respondents were satisfied with the service outcomes. It was of concern that those satisfied with services fell frequently below 50% and those dissatisfied with services rose frequently to above 50%. Services outside the family law socio-legal service system attracted more positive comment than did services within it.

Why were respondents so critical of family law services? One possible answer is that those most dissatisfied with the services were attracted to the study. However, the high levels of criticisms may have arisen from other factors. The respondents were those with serious family violence that had preceded separation and for most (women in particular) it had continued afterwards. Many spoke of psychological damage and mental health problems for them and their children as a result of the violence before, during and after separation and the call-backs to some, months after the survey, suggested they were worse. This finding differed from the call-back findings in another study that showed separated people's position improving in the twelve month period after service provision (Brown and Hampson 2010). In this current study, the respondents' encounters with the family law socio-legal services in relation to the violence were disappointing and unhelpful.

Conclusions

The respondents in this study proposed many changes to the family law socio-legal services system in their telephone and survey input, which are summarised in the final chapter. They made many proposals ranging from ongoing education on family violence for the entire service system, to more support services, to changes in the current legislation. Nevertheless, and despite such proposals, the problem remains that the family law socio-legal service system has not sought to place adult and child safety after parental separation above all other principles, and unless it can move to do this family violence will remain an unresolved, serious problem for families who seek separation as a way of ending family violence, or who experience family violence as a result of separation.

1. Background to the research

This research project was commissioned by the Commonwealth Attorney-General's Department, Canberra, and sought to discover the impact of family violence during and after (parental) relationship breakdown, from the perspective of children and parents, and the impact of the amendments to the Australian *Family Law Act 1975* implemented by the *Family Law Amendment (Shared Parental Responsibility Act) 2006*.

Specifically our brief was to discover parents and children's perspectives on:

1. the effect that a history of or existence of violence within the relationship has on the decisions that people make about accessing the courts and dispute resolution services
2. the effect that a history of or the existence of violence within a relationship has on the decisions people make while they are at courts and at dispute resolution services
3. the effect that a history of or the existence of violence within a relationship has on post-separation parenting arrangements.

To inform the research process, the researchers first of all conducted a review of the literature.

2. Review of the literature

Australian research has highlighted the role of domestic violence and child abuse (referred to hereafter separately as 'domestic violence' and 'child abuse' and jointly as 'family violence') during and after parental separation and divorce. Research has suggested that domestic violence is a major cause of parental separation and divorce in Australia. The most recent study examining domestic violence and parental separation and divorce reported that some 65% of women and some 55% of men said that they had experienced domestic violence that met the definitions of an offence under criminal law during their partnership (Sheehan and Smyth 2000). Earlier research had shown that when parental separation takes families to legal services some 60% of families report family violence (Hunter 1999) and as families progress to either the Family Court of Australia or the Federal Magistrates Court with a parenting dispute some 50% of these families allege family violence, with domestic violence being by far the common form of violence alleged in comparison with child abuse (Moloney, Smyth et al. 2007a). Furthermore the act of separation does not end the violence and abuse; for some 37% of those who leave the relationship as a result of domestic violence or child abuse, the violence does not stop but continues or even increases (Brown, Frederico et al. 1998; Bagshaw, Chung et al. 2000; Bagshaw 2003; Bagshaw, Quinn et al. 2006). Also the act of separation appears to render children who have not previously been abused vulnerable to post-separation abuse (Wilson 2002). While the precise number of Australian parents who separate because of domestic violence or intra-familial child abuse or who encounter new, continued or increased violence after separation is not known, it seems clear that it affects a substantial proportion of the total of all parents separating and that family violence is integral to parental separation and divorce (Sheehan and Smyth 2000; Kaspiew, Gray et al. 2009; Chisholm 2009a).

Family law legislation has been criticised for being slow to address issues of family violence, as the problem has emerged more clearly in the last twenty years (Brown and Alexander 2007; Domestic Violence and Incest Resource Centre 2007; Bagshaw 2009; Laing 2003). However, the amendments brought about by new family law legislation, the *Family Law Amendment (Shared Parental Responsibility) Act 2006*, represent what some have described as a stronger approach to family violence, to both domestic violence and to child abuse. This legislation introduced new and specific safeguards for adult and child victims and also stated that certain of the priorities and requirements of the policies expressed in the legislation need not apply when family violence is present, for example the presumption of equal shared parental responsibility, consideration of equal or substantial and significant shared time and mandatory attendance at family dispute resolution (Braaf and Sneddon 2007). However, questions have been raised about the efficacy of the protection for victims of family violence offered by the legislation and other questions, possibly more, have been raised about the capacity of the new services created to implement the legislation to protect victims (Domestic Violence and Incest Resource Centre 2007).

The previous Commonwealth government received bipartisan approval at the time Parliament passed the 2006 amendments and commissioned the Australian Institute of Family Studies (AIFS) to conduct a large-scale evaluation of the new legislation (Kaspiew, Gray et al. 2009), which covered its impact on various client groups, on the use of professionals within family law socio-legal services

and on the use of the wider service system. However, the issue of family violence would have been difficult to consider in depth within the parameters of the AIFS evaluation.

Theory and research on family violence and its implications for the research design

Domestic violence (which includes physical, sexual, psychological, emotional, social, verbal, financial and spiritual abuse and neglect) and child abuse (physical, sexual, psychological, emotional verbal abuse and neglect), and the more recent categorisation of multi-type abuse, are areas of dispute as to their nature, types, causes, incidence, impact and appropriate interventions (Bagshaw et al. 2000). There is considerable discussion as to definitions of domestic violence and child abuse but many do not do justice to either one or the other and few cover the inter-relationship between the two (Bagshaw and Chung 2000b; Laing 2000). They comprise a mosaic of behaviour by a family member that includes actual or threatened violence and abuse causing another family member or members to reasonably fear for, or to be reasonably apprehensive about, their personal safety or that of another family member (*Family Law Act 1975 (Cth)*, sec 4).

Domestic violence victims are far more frequently female partners and their children (Bagshaw and Chung 2000b; Bagshaw, Chung et al. 2000), but there is a proportion, currently small, of male victims in the ratio of nine female partners to one male partner (Walby and Allen 2004). There are times of greater vulnerability for women whose partners abuse them including during pregnancy, just after birth, and when they separate from their partner (McInnes 2004; Marcus and Braaf 2007). On some occasions the violence takes the form of child abduction, which is both abusive to the child and the parent, but to date researchers have paid little attention to that form of abuse (Brown and Alexander 2007). Child abuse in the family law context may be more frequent as it is a springboard for parental separation, as is domestic violence. Its forms are somewhat different than in other contexts as it is more likely to comprise multi-type forms of abuse, including sexual abuse and less likely to include neglect (Brown and Alexander 2007).

Domestic violence and child abuse are frequently not disclosed by the victims; moreover violence is often actively denied by both the perpetrators and the victims for different reasons (Bagshaw and Chung 2000a; Bagshaw, Chung et al. 2000; Bagshaw, Quinn et al. 2006; Domestic Violence and Incest Resource Centre 2007). Our prior research has found that victims believe they are silenced by the perpetrators and by inappropriate, punitive and blaming attitudes expressed by professionals in many services. They more often than not have limited access to resources, are brainwashed to believe that they have caused the violence and/or are fearful that they will lose their children or they and/or their children will be harmed if they disclose the violence (Bagshaw, Chung et al. 2000). Women with disabilities, from Indigenous or culturally and linguistically diverse backgrounds, and from rural areas are doubly disadvantaged (Bagshaw, Chung et al. 2000; Victorian Indigenous Family Violence Task Force 2003; Salthouse and Frohmader 2005). A range of specialised services has been established to overcome the silencing of victims and to offer recognition and intervention. However, often evidence of the abuse, particularly of child abuse and non-physical forms of domestic violence, is difficult to obtain and legal action remains problematic. The difficulties in gaining evidence of family violence, and the reluctance of many relevant services to address it when it is alleged in the context of a family law dispute, have meant that it can become an allegation that is never investigated or investigated conclusively and one that is easily denied (Moloney, Smyth et al. 2007a).

On the other hand allegations and denials are made that are found to be false (Brown and Alexander 2007).

The victims of abuse that we interviewed in an earlier phone-in for the *Reshaping Responses to Domestic Violence Study* in South Australia (Bagshaw, Chung et al. 2000) said that they needed to be asked *specifically* and *directly* about violence and abuse in their relationship and even then they found it difficult to disclose. Women talked frequently about the need for non-physical forms of domestic violence to be more widely understood in the community as they themselves thought that behaviour could only be labelled 'domestic violence' if it was physical. Most reported that the threat of violence was enough to instil fear and intimidation and that verbal abuse was the most damaging form of abuse in the longer term, as it eroded their self-esteem. A very small percentage of men reported that they were victims of violence but the effects did not appear to be as damaging or long-lasting as the effects on women during and after separation (Bagshaw and Chung 2000b; Mulrone and Chan 2005). In a recent study, male victims of domestic violence who accessed separation and mediation processes after the 2006 *Family Law Act* amendments also reported a need for specific and direct questioning about domestic violence if they were to disclose the history of violence within the family (Tinning 2008).

One of the challenges for this study was to locate family members who were prepared to disclose the existence of family violence and to talk about it openly and truthfully, even though they may have feared that disclosure would not reflect well upon them, or that they would have to relive the trauma. Clear and specific questioning is the conventional approach to overcoming this problem (Hester, Kelly et al. 1996). At the same time research has shown that certain other strategies can also overcome this problem, for example voluntary and anonymous phone-ins on special publicised phone lines (Bagshaw, Chung et al. 2000; Bagshaw, Quinn et al. 2006). In addition, research undertaken at one of the first 15 Family Relationship Centres demonstrated that families are prepared to discuss family violence with the staff at the service and with the research team in surveys and in interviews, if they are specifically asked about it in a calm and sympathetic way (Brown and Armstrong 2008).

The complexities of women's and men's experience of violence may have an impact on the decisions made by separating families. This study aimed to reach women and men in Australia who identified as victims and perpetrators of violence in order to better understand how gender may contribute to responses to, and the context of, separation. Previously, men who identified as victims of domestic violence and were accessing the Family Court of Australia in 2006–07 were specifically recruited for a qualitative study by one of our researchers in regional Australia (Tinning 2008). The men reported feeling safer and more in control of their lives after separation. This contrasted with the women interviewed who described an increase in intimidation and acts of violence from their former partners after separation. The women identified that fear levels had increased and they were forced to adjust their behaviour and activities accordingly. Tinning argued that post-separation fear affects the decision making of victims of violence in relation to accessing court and dispute resolution services or post-separation parenting arrangements (Tinning 2008). Including a gendered analysis of the perspectives of both male and female victims of violence in our study allowed for a better understanding of the specific needs of and potential solutions for all members of the family.

Concerns about the safety and well-being of children

In the last decade the co-occurrence of domestic violence, child abuse and pet abuse has been recognised and children witnessing or hearing violence is now seen as a form of child abuse (Bagshaw, Chung et al. 2000; Laing 2000; Brown, Sheehan et al. 2001; Shea Hart 2004; Brown and Alexander 2007). There is increasing criticism of the risks that are taken where decisions are made for children to have unsupervised contact with a parent who is mentally ill (McInnes 2008) or who is an alleged perpetrator of abuse (Harne 2003). There are also escalating concerns that allegations of abuse (usually made by mothers against fathers) are often not believed in the Family Court context, in spite of evidence that allegations of child abuse are rarely false and that false denials of abuse are more prevalent (Brown, Sheehan et al. 2001; Saccuzzo, Johnson et al. 2003; Shea Hart 2003, 2004; Brown and Alexander 2007). However, Moloney et al. found that:

Allegations of spousal violence or parental child abuse accompanied by evidence of strong probative weight appeared to influence court orders. Without such evidence, allegations did not seem to be formally linked to outcomes. (2007a: ix)

Section 60CC of the *Family Law Act* (inserted by the 2006 amendments) has created a two-tiered system of 'primary' and 'additional' considerations for determining what is in the child's best interest. It outlines two primary considerations that can clearly be in conflict where there are allegations of family violence and child abuse. The 'best interests of the child' are still paramount but the 'primary' considerations are stated as being:

- 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.

'Additional' considerations of a child's best interests include: views expressed by the child; the nature of the relationship of the child with each parent and other persons; the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent; and family violence involving the child or member of the child's family.

A number of concerns have been raised in relation to the 2006 amendments (see the 'Special Collections – Family Law' section of the Australian Domestic and Family Violence Clearinghouse website for an up-to-date list of resources on this topic). There are concerns about the reification of shared parenting responsibility (which is often interpreted as meaning equal time spent with each parent), the use of Richard Gardner's (1999) untested and controversial 'parental alienation syndrome' when a parent (usually a mother) tries to protect a child from abuse (Koch 2008),¹ and the increased marginalisation of the issue of family violence in favour of shared parenting in considerations of the 'best interests of the child' in decision making (Bagshaw and Campbell 2008). Also researchers have suggested that children may be at greater risk when there are serious levels of conflict between parents over parenting arrangements, and consequently there is now the potential for increased opportunities for children to either witness or be the direct victims of various forms of

¹ The Psychologists Board of Queensland disciplined a prominent Brisbane clinical psychologist in March 2008, saying that he acted unprofessionally in giving evidence about the parental alienation syndrome to the Family Court of Australia, which led to a mother losing custody of her two children. See Koch (2008).

abuse from a parent (Chisholm 2006; McIntosh and Chisholm 2008). Some see the changes as promoting the parent's (usually the father) right to contact over the safety of the mothers and children (Kirkwood 2007). Previous research suggests that shared parenting may undermine continuity of care for young children and the children's relationship with the primary carer (usually the mother) without producing a measurable benefit to the father's relationship with the child (Solomon and George 1999). Recent research (Sweet and Power 2009) has found that women who were breastfeeding infants and attending dispute resolution services and/or Family Court were being ordered into shared parenting despite the fact that many of the women in the study were also leaving violent/abusive relationships. For these women the system not only had problems with making appropriate decisions when violence/abuse had occurred or was ongoing, but also did not consistently consider the needs of the infants for nutrition in the form of breastfeeding, or the comfort and security that the infant was gaining from breastfeeding (Sweet and Power 2009).

Richard Chisholm has pointed out that the wording in the 2006 amendments conveys a questionable view that what children mainly need is a 'meaningful relationship with both parents', which is not clearly defined or supported by evidence or research, and that this 'is inherently more important than the child's need for nurturing and love'. Chisholm also pointed out that the new two-tiered approach in the *Family Law Act* 'downgrades the importance of children's views by putting them into the category of an "additional" rather than a "primary" consideration' (2006: 6). This is inconsistent with recommendation 7 of the seminal report *Every Picture Tells a Story* (Australian Government House of Representatives Standing Committee on Family and Community Affairs 2003: Recommendation 7), which emphasised the importance of including the perspective and needs of children in decision making, with and without assistance from the family law system. This report recommended that all processes, services and decision-making agencies in the system have, as a priority, built-in opportunities for appropriate inclusion of children in decisions that affect them² and gave high priority to screening for issues of entrenched conflict, family violence, substance and child abuse, including sexual abuse.³

Listening to children's voices

Since the introduction of the 1995 and 2006 amendments to the *Family Law Act* there has been increasing pressure on all socio-legal professionals to involve children in family law matters that affect them. The recent trials and evaluations of child-inclusive practices in mediation (McIntosh 2003; McIntosh and Long 2006) have encouraged court systems and community-based agencies to adopt processes whereby the voice of the child is heard.⁴ The conditional requirement for separated couples to use family dispute resolution where there are parental disputes over children before seeking court adjudication provides opportunities for family dispute resolution practitioners to influence the outcomes of decision making for children and to facilitate their direct or indirect involvement in decision making. However, there are exceptions to this requirement, which include circumstances of family violence or child abuse (see section 60I of the *Family Law Act*).

² Recommendation 13

³ Recommendation 15: xxi–xxvii.

⁴ The Family Court of Australia's Less Adversarial Trial (LAT) and innovative Child-Responsive Program separately and in combination tend to focus attention on the children and enable the earlier identification of the most important elements of the evidence relating to the children's best interests. See Faulks (2008).

Conceptions of children's interests have changed markedly over a relatively short period of time. Policies affecting children do not occur outside of gender politics (Smart and Sevenhuijsen 1989). For example, Chisholm suggested that the 2006 changes to the *Family Law Act* reflected 'a political desire to be even-handed between two opposing adult views or concerns that have pervaded the public debate: the men's concerns to stay involved with the children, and the women's concerns that this may expose the children to violence' (Chisholm 2006: 7). However for those parents in conflict who need third party intervention, the requirement to start with 'equal' parenting time suggests that the non-resident parent's needs are more important than the child's

In this report the research team has strongly argued that it is essential to include the voices of children in the research. Bagshaw had previously published the findings of telephone interviews with children in the *Children and Families in Transition Project* and reported that they were resilient and had definite views about their 'best interests', in particular where they were exposed to domestic violence or child abuse (Bagshaw, Quinn et al. 2006; Bagshaw 2007). Our research therefore used strategies for obtaining children's views, which are outlined in the section on research design.

Family law legislation, the socio-legal family law service system and family violence

The new 2006 legislation specifically set out a number of protective devices for victims of domestic violence and child abuse. It is an object of the Family Law Act to ensure that the best interests of children are met by protecting children from physical or psychological harm and from being subjected to, or exposed to, abuse, neglect or family violence. The courts are required to take prompt action if there are allegations of child abuse or family violence and also not to expose a person to an unacceptable risk of such violence. Furthermore the courts are to consider any family violence and family violence order that applies to a child or to a member of the child's family (Braaf and Sneddon 2007). Finally where there are reasonable grounds to believe that there has been family violence or child abuse, the presumption that it is in the child's best interests for the parents to share parental responsibility does not apply. Parents are also not required to obtain a certificate from a Family Disputes Resolution Practitioner before attending the Family Court where there has been or where there is a risk of child abuse or family violence (see sections 60I and 61DA of the *Family Law Act 1975* and the Explanatory Memorandum to the Family Law Amendment (Shared Parental Responsibility) Bill).

One complication is what is defined and accepted as family violence by clients, as victims do not conceptualise their experiences as being family violence in many circumstances and certainly not in legal terms that meet court definitions (Shea Hart and Bagshaw 2008). A related issue is the impact or the severity of the violence, as the new legislation requires the victims to have a 'reasonable' fear or apprehension of a threat to their safety or well-being; how this can be measured and how it can be substantiated for court purposes is difficult to ascertain. Furthermore, and most importantly, has been the shadow cast over the potential protection of victims afforded by the legislation by the principles in the legislation of 'equal parental responsibility' and 'shared time' for the care of children. The tension set up by the legislation between protecting the child and parental equality of responsibility may not be resolved so as to protect victims, if the person claiming equality of responsibility or equal shared time is the perpetrator of violence and the more powerful member in the partnership. Decisions in the Family Court of Australia illustrate the difficulties courts are having

in managing the interaction between these principles and family violence (see *Murphy v Murphy* 2007; Fam CA 79; *Delaney v Delaney* 2008; FMCA FAM 674).

The 2006 legislation has attempted to promote a major change in the Australian model of parental separation and divorce. It moved the model of intervention for families experiencing separation and divorce from an adversarial model to one of parental cooperation in the ongoing joint care of children post-separation. The legislation encourages parents to reach parenting agreements, on their own if possible, or with the help of family dispute resolution practitioners. To assist parents the legislation has re-shaped the family law socio-legal services system and the relationship of its various parts with one another. Thus it has created a new service, the **65 Family Relationship Centres (FRCs)** spread throughout Australia, where parents can seek early intervention to prevent or ameliorate separation and where they can have counselling or family dispute resolution (family mediation) to support decision making in relation to the post-separation care of the children. The customary package that FRCs offer is an Intake Interview (often by phone), a Post-Separation Adjustment and Post-Separation Parenting Seminar (often split into two information and education seminars), an Assessment Interview for Suitability for Mediation, and up to 3 hours of mediation with possibly a review of any agreement reached some months later. The legislation makes attendance at the centres for family dispute resolution mandatory before proceeding to court if there is a dispute. However, as previously stated, where there has been or where there is a risk of family violence or child abuse, the requirement to obtain a certificate from a family dispute resolution provider before seeking parenting orders from the family courts does not apply.

Such a 'first port of call' in the form of a nationally consistent entry to the confusing family law socio-legal services system through the Family Relationship Centres was advocated by the Family Law Pathways Advisory Group in their report 'Out of the Maze' (Family Law Pathways Advisory Group 2001). However, the new centres have been the cause of much of the questioning of the legislation. They have been criticised for not being able to screen out from mediation those families where violence would prevent the mediation from being fair, despite their use of mandated family violence screening tools. Some have regarded their staff as being inadequately trained in recognising and addressing family violence in mediation and the centres have been seen as likely to support mediation above other interventions despite perpetrator–victim power imbalances (Field 2006; Domestic Violence and Incest Resource Centre 2007; Rathus 2007).

Ironically, it appears that the centres themselves have experienced somewhat different problems with family violence than those identified originally. These include: the inadequacy of the theoretical notions of screening tools, the high proportions of families coming with disclosed problems of family violence, the strength of demands for shared parental time overshadowing disclosures of family violence, the need to integrate those parents experiencing family violence into the education and information seminars and not exclude them even though they may not be able to use mediation, and the demand for mediation (despite ineligibility due to family violence) on occasions caused by a financial inability to proceed to court despite the potential for legal representation through state Legal Aid or other funded legal services (Brown and Armstrong 2008). In addition, where family violence exists the movement of clients between the FRCs and the courts has proved problematic, as sometimes the courts have not accepted the exemptions and have sent the families back to the centres for mediation, or for further mediation (Brown and Armstrong 2008). There are formal protocols emerging between the FRCs and the courts, but these as currently designed seem

inadequate for these particular clients. A further problem noted by the FRCs is that of the interface between themselves and child protection services in each state and territory. The FRCs report difficulty in activating such services, due, they believe, to the view of the state services that their service is not relevant in the context of parental separation. This interface problem has a long-standing history (Brown, Frederico et al. 1998; Fehlberg and Kelly 2000).

Some of the criticisms of family dispute resolution derive from the theoretical premise that women are oppressed, need to be protected and that mediation, therefore, is not seen as appropriate where there is domestic violence. However, Kelly stressed the importance of understanding how women categorise their own experience, suggesting that separated women experiencing domestic violence may not see themselves as oppressed and may choose to proceed with mediation (Kelly, Burton et al. 1996). Denying women individual agency and choice may add to their oppression. Where they have left the abusive relationship and the perpetrator has accepted responsibility for the violence, mediation may offer some women an opportunity to negotiate for themselves, significantly increasing their self-esteem and sense of empowerment (Keys Young 1996). Thus, some experienced family dispute resolution practitioners may proceed with mediation where violence has been identified if the victim makes an informed choice to do so and if certain conditions are in place (such as advocates or support persons for the victims, 'shuttle' mediation, two experienced mediators, strict ground rules, etc.) and the safety of all parties is assured. However, where the perpetrator is not accepting responsibility for the violent behaviour, or where the woman is fearful and her ability to negotiate a fair outcome for herself is likely to be compromised, litigation may be the preferred option. Much more research is needed to be sure that mediation leads to satisfactory outcomes in the short and long term in these cases (Bagshaw 2003). At the same time it must be pointed out that in reality family dispute resolution services have always provided mediation to clients affected by family violence, and over the years community-based organisations have improved their capacity to provide specialist services to these clients (Kelly 1988; Gribben 1990; Bickerdike 2007).

Where there is family violence, the **Federal Magistrates Court** and the **Family Court of Australia** can make orders for parents, for example to attend a Parenting Orders Program for post-separation parenting which includes elements to safeguard the safety of clients (Brown and Smale 2006).

In the past decade, various research studies have identified problems for the client group experiencing family violence within the litigation process in the Family Court of Australia (Rhoades, Graycar et al. 2000; Brown, Sheehan et al. 2001; Rhoades, Graycar et al. 2001; Shea Hart 2004; Humphrey 2005; Bagshaw, Quinn et al. 2006; Brown and Alexander 2007; Shea Hart and Bagshaw 2008). In 2004, the **Family Court of Australia** (FCA) launched a Family Violence Strategy that relies on education for court staff and early risk assessment (Family Court of Australia 2004). In March 2009, the FCA introduced '*Best Practice Principles for use in Parenting Disputes when Family Violence of Abuse is Alleged*', details of which can be found on the FCA website. The FCA also has a specialised program (Magellan) which manages cases where there are allegations of child abuse. This program does not deal with domestic violence, although a similar program in the Family Court of Western Australia, Columbus, covers both domestic violence and child abuse (Brown and Alexander 2007). The Magellan program is a time-limited and judge-led court service that tightly coordinates a number of Commonwealth and State services, and as is required with every parenting case, brings the interests of the children to the fore when child abuse is alleged. It is a national

program that has been favourably evaluated on a number of occasions (Brown, Sheehan et al. 2001). The report *Cooperation and Coordination: An Evaluation of the Family Court of Australia's Magellan Case-Management Model* contains a description of the objects and operation of the Magellan case management model (Higgins 2007), as does the Family Court of Australia's 2008-09 Annual Report. Running beside the Magellan program is the Less Adversarial Trial (LAT) program that brings parents together in a less formal court with a court team that stays with the family throughout the proceedings. However, two evaluations of the pilot program have raised doubts about its suitability for parents with any history of family violence where there are concerns for the child's safety when in the care of one parent or where the parents remain in high conflict (Hunter 2006a; McIntosh and Long 2006, 2007).

Legal services and the shadow of the law

The new parental separation model that moves parents from an adversarial approach to a cooperative one de-emphasises the use of legal representatives (Batagol 2008). For some this presents a major problem in that it may mean that arrangements that a court would be prepared to order under the Act are sidelined through legal uncertainty or unwillingness to use legal processes, or be suppressed in favour of consensus, or suppressed through lack of power in the relationship (Field 2006). What has not been clear is the assistance legal representation has provided in the past for parents and children where family violence exists and therefore it has not been clear what assistance it is providing in the new service system. The legislation implies that many victims of family violence will have to proceed to court for resolution of post-separation parenting disputes but there has as yet been little consideration of:

- what use victims are making of legal practitioners in these circumstances
- what value they gain from them
- the financial implications for these parents and how well they can meet them
- what use they are making of state legal aid services
- what outcomes they are achieving, and
- whether any particular group in the population finds accessing these services more difficult than other groups, such as people in rural and remote areas, particular ethnic or racial groups, new arrivals in Australia and people with a disability.

Legal services are a potential resource for parents but their use may be changing, for example parents may be mixing the use of legal services and family relationship centres and accessing courts. Another complication in using such services may be assumptions about them that might be termed 'shadow of the law' assumptions, which may be or may not be correct (Batagol 2008). There was both anecdotal evidence presented at the *Shared Parental Responsibility and Family Law: Implications for Children* seminar at the University of South Australia (Bagshaw and Campbell 2008), and evidence from Cate Bank's recent research in Queensland (Fynes-Clinton 2008) to suggest that since the 2006 changes to the *Family Law Act* some family lawyers have been advising their clients not to allege violence or abuse against their ex-partners unless there is 'absolute proof', as 'the court looks unfavourably on a parent not willing to facilitate a close and continuing relationship between the child and the other parent' (ibid).

Regional, rural and remote families

Our research included families from regional, rural and remote communities. It was vital to hear the perspectives of parents from these communities in Australia because they vary widely in population, composition, geographical proximity to services and cities, prosperity and industry (Cheers 1998). The human services available to rural and remote communities can vary greatly and are often severely limited. For example, small communities are unlikely to have specialist domestic violence services, and in some areas there are very few general human services. We hypothesised that this context impacts on people's decisions about accessing the courts and dispute resolution services and/or post-separation parenting arrangements.

More research is needed to ascertain the experiences and needs of rural families requiring services when there is a history of family violence. Mainstream welfare policies, structures and methods have been extended to rural areas over the last few decades in attempts to respond to rural needs but, over time, inadequacies have been identified (Cheers and Taylor 2005). Prior research has not specifically looked at the effect that a history or existence of violence within a relationship has on rural people's decisions about accessing court and dispute resolution services or post-separation parenting arrangements. Another of our researchers, Sarah Wendt, has argued that taking a rural perspective, or seeing the rural community as both a cultural and emotionally charged social arena, has much to offer when understanding women's experiences and feelings of safety and fear. Her research has shown that local cultural constructions in rural communities, such as the importance of self-reliance, pride, privacy, belonging, and the value of family and property, make the recognition and reporting of domestic violence problematic for rural women and children (Wendt and Cheers 2004a, 2004b; Wendt 2009). Researching the experiences of rural people made our study more inclusive and recognised the complexities and differences of rural women's, men's and children's experiences. Including rural perspectives offers services (old and new) an opportunity to build local solutions and that meet the specific and unique needs of rural families.

Mental health

One of the issues currently identified by another of our researchers, Elspeth McInnes, in family law disputes involving family violence is the extremely poor, and actually dangerous, interface between mental health services and courts in the family law jurisdiction, which is not attracting any attention (McInnes 2008). Whilst the Family Court system has implemented an Integrated Client Service Delivery program featuring Mental Health Support (Attorney General's Department 2009), the focus has been on skilling court staff to identify mentally ill parents and link them with services, rather than on the safety of children ordered into the care of mentally ill parents. When approaching this research we were mindful that that the de-emphasis on legal representation may pose problems for parents suffering from mental ill health and for their children. They may be unable to represent their own position as a parent satisfactorily, or consider the needs of their children and plan accordingly, or understand their former partners' goals and arrangements.

Groups with special disadvantage

There are a number of groups of clients who experience social disadvantages in addition to family violence that affect them in managing separation and post-separation parenting and/or in gaining

access to and gaining services from the family law socio-legal service system. Such groups have already been mentioned and include those who have recently arrived in Australia, particularly refugees, those from ethnic cultures that are inexperienced with a family law socio-legal services systems like that of Australia, those without strong English, those with an intellectual disability and those from the Indigenous population in Australia (Bagshaw et al. 2000).

Very little research has been undertaken into the pathways these groups take after parental separation but they have been presented in the past as groups that are the least protected legally (Strategic Partners and Research Centre for Gender Studies 1999). There are special legal services – the Aboriginal Legal Services – advocating for one of these groups but not for others although some are supported by targeted welfare services outside of the family law socio-legal services system.

Children

It was important to include children’s perspectives in the study considering the impact that parental separation has on children in the short and long term and given that children have their own perspectives on parental separation and divorce (Smart 2001). We know little of what children think about family violence and parental separation, but what is known suggests that children from separated families find court processes confusing and illogical and believe their interests are not served at all in decisions made post-separation (Hays 2003). In prior research with this population of children, they have argued that they have the right to have a say (Campbell 2005, 2008b), in particular when they are experiencing or have experienced family violence (Bagshaw 2007). Children’s right to have a say is also supported by the United Nations Convention of the Rights of the Child 1989, to which Australia is a signatory. However, including children below the ages of eight in research is only possible through the views of their parents or professionals so we focused our research on children above this age. In spite of some opposition from two men who complained to our ethics committees, our research builds on the work of other researchers who have found that children from separated families who have experienced family violence often express a wish to participate in research that canvasses their views (McIntosh and Long 2006; Bagshaw 2007).

3. Research methodology

The study took an explanatory approach (Weinbach 2005) using quantitative and qualitative data. The qualitative data were analysed using a content analysis strategy based on identifying the major themes expressed in the respondents' comments (Grinnell 1997). The researchers examined what impact the existence, or a past history, of family violence has had on separating partners' use of services within the family law socio-legal services system (or on their non-use of such services) and in turn what impact the history or existence of violence and the use of services has had on separating parents and their children. Seeking to identify links such as these necessitated using large samples from relevant populations in order for the research to offer a reliable base for policy information and in-put. Furthermore the researchers were required to cover a national service system and therefore included samples from three Australian states, as the various states demonstrate some differences in their respective populations. The need to cover several states was made more pressing by the different child protection services established in each state and territory and similarly the different courts dealing with domestic violence in each state and territory. The study also covered the different types of locations in which people live, ranging from urban to regional to rural. There have been many concerns expressed as to an absence of services and supports in rural areas and so the rural component needed to be incorporated.

There were other issues of bias that underlined the need for us to seek large samples. The issue of family violence has been, and still is, hotly disputed on a gender basis and all groups are somewhat suspicious of the others. Also various disciplines have expressed different views of the ability of the new legislation to protect victims of violence. A number of gender-based, discipline-based and service-based lobby groups exist, so we were mindful that our research had to strive to be patently free of bias (both perceived and actual) and at the same time take gender, power and control into account in the analysis of the data.

Research questions

In our research, the following research questions were viewed from the perspective of parents who had separated since 1995, and post-2006:

1. What effect does a history of, or the existence of, family violence (domestic violence and child abuse) within the relationship have on the decisions that people make about accessing the courts and various family dispute resolution services?
2. What effect does a history of or the existence of family violence (domestic violence and child abuse) within a relationship have on decisions that people make while they are at the courts and at a dispute resolution service?
3. What effect does a history of or the existence of family violence (domestic violence and child abuse) within a relationship have on post-separation parenting relationships?

Underlying these questions was a framework suggesting that separating parents consider options for their separation prior to separation and again afterwards as they attempt to create or to follow a

pathway to their goals for post-separation parenting care. As they proceed along their individual pathways they are likely (but not bound) to seek services for help with making these decisions. Family violence was seen as a factor that may influence their decision making and the previous research we have canvassed supported this view. However, we were mindful that other factors would also influence decision making. Some of these are associated with the parents, such as their views of themselves as parents, their views on any violence and its risks to them and their children, their age, their financial, housing, employment and educational resources, their understanding of and attitudes to family law, the existence of other problems, their ethnicity, race, their health status and that of their children, and where they live. Others are those associated with the structure of the family law socio-legal service system, such as the accessibility of the various parts, the affordability of the various parts, the recognition and intervention for family violence given by the various parts, the complementarity and connectivity of the various parts, and the actual services the parents and their children receive. Another group of factors we considered was the inter-relationship between provisions for family violence, shared care and child support formulae in the minds of the parents and in the application of these provisions to them.

The framing of the research process took into account the possibility that outcomes of these factors and their interplay in decision making may be different for each of the populations specified.

So additional research questions were posed as follows:

4. What factors do parents with a history of or the existence of family violence (domestic violence and child abuse) within the relationship find affects their decisions about accessing courts and the various family dispute resolution services and how do they think these factors inter-relate with family violence issues?
5. What factors do parents with a history of or the existence of family violence (domestic violence and child abuse) within the relationship find affects their decisions while they are at court and dispute resolution services and how do they think these factors inter-relate with family violence issues?
6. What factors do parents with a history of or the existence of family violence (domestic violence or child abuse) within a relationship find affect their decisions and experiences of post-parenting relationships and how do they think these factors inter-relate with family violence issues?

Finally questions were posed for seeking children's views, but we were mindful that children may not have such clear-cut views about the various types of services their parents use, or see them as following pathways or progressing through stages. So the over-arching question posed for the children was broader:

7. When there is a history of or the existence of family violence (domestic violence and child abuse) what are children's views of their parents' processes of decision making and actual decisions made and what factors do children think should be given weight in decisions about their own best interests?

As mentioned we canvassed factors influencing decision making that were associated with the parents and their concerns about their children and our specific research questions in the surveys and interviews also collected demographic data and data relating to the following factors:

- who initiated the separation and why
- their views of themselves and each other as parents
- their views of their children and their welfare and/or safety
- their views and understandings of any violence and its risks to them and their children
- the effects of any *allegations* or *denials* of family violence on them and their children
- the effects of any family violence on them and their children
- the longevity, frequency, types, nature and extent of any violence and associated levels of fear and intimidation, power and control
- their health status and that of their children, including physical and mental health
- special issues associated with where they live, e.g. urban, rural, remote
- their age, gender, race and ethnicity
- the ages and sex of their children
- their access to personal, family, community, legal, health, financial, housing, employment, education, protective services and other resources
- their understanding of and attitudes to family law and their rights and entitlements, pre- and post-contact with the system
- their experiences and views of services and service providers and advice they have received
- the structure of the family law socio-legal service system, such as the accessibility and affordability of the various parts
- the recognition and understanding of and interventions for family violence given by the various parts of the socio-legal service system
- the complementarity and connectivity of the various parts of the system, e.g. Family Court and Federal Magistrates Court, and court and state child protection agencies
- the inter-relationship between provisions for family violence, shared care and child support formulae in the minds of the parents and in the application of these provisions to them.

The research questions listed above also guided the research with children, who we viewed as the ‘innocent victims’ in family separation and family violence. Factors influencing decision making for children, which were addressed in the questions asked of children in this research, included:

- their views of their parents and their involvement in the children’s lives
- their views of themselves, their siblings and their family situation
- their perceptions of their ability to remain safe and to feel protected within their families
- their perceptions of sources of protection and safety for them when violence occurs
- their access to other forms of protection and safety, such as the police, FRSP services, other community service providers, neighbours, extended family, friends
- their views and understandings of any violence they have witnessed in their family and the associated risks to them
- the effects of any violence on them, and their perceptions of the effects on their parents
- their understandings of the longevity, frequency, types, nature and extent of any violence and associated levels of fear and intimidation, power and control

- their understandings of issues of abuse and the effects of abuse on them and their parents
- their perceptions of their own health status and that of their siblings and parents
- the impact of their age and sex, race and ethnicity
- their understanding of their rights as children and how they may access their rights
- their understandings of the family law system and its functions
- their experiences and views of services and service providers.

Research design

This research has used a number of different data sources and data collection strategies to derive samples from each of the four populations identified:

1. people who attended a Family Relationship Centre or another family dispute resolution provider
2. people who accessed the court system (instead or as well)
3. those who did not access either system (but who may or may not have accessed other services)
4. children of the above groups of parents where family violence had been or was continuing to be experienced.

We used a mixed methods design to collect quantitative and qualitative data from the above four groups of participants from across Australia.

Data sources and data collection instruments for all three adult populations

Three data sources were used for this study

1. **Online surveys:** Two nationally advertised on-line surveys were developed and placed on a secure internet website (Survey Monkey), with one specialised survey created for parents who had separated since 1995 (Appendix 1) and one for children between 8 and 18 years of age whose parents had separated since 1995 (Appendix 2). A national information dissemination process through email networks, relevant service providers, newspapers, a website and radio interviews were used to direct people to the website. This process had been found to be successful with this population previously in terms of gaining large numbers of respondents who were eligible and who were representative of the various likely groups and in gaining them quickly (Brown, Lundgren, Stevens and Boadle 2010). Respondents were computer literate with responses from men and women from a spread of age and ethnic and racial groups.
2. **Phone-in:** The second data source involved two separate teams of researchers conducting a widely advertised 'phone-in' in two states (Queensland and South Australia), using one questionnaire for parents (Appendix 3) and a separate questionnaire for children (both based on the findings from, and identified gaps in, the online survey) as a basis for the interviews (Appendix 4). A national information dissemination process through email networks, relevant

service providers, newspaper and radio advertising and a website were used to inform people about the phone-in, both in advance and during the interview sessions. In prior research, this strategy had been found to be successful for interviews with domestic violence victims and perpetrators (Bagshaw, Chung et al. 2000) and for interviews with separated parents and with children (Bagshaw, Quinn et al. 2006). The phone-in offered a number of advantages, included an opportunity to capture different populations – those whose literacy in English was not strong, those from rural, remote and regional areas (via a toll-free number), those not attending services and those who wanted to protect their anonymity. It also provided an opportunity for the researchers to access children in order to ascertain their views, using a separate, simpler, shorter and anonymous questionnaire. Again, this strategy had been successful in accessing children's views in the *Children and Families in Transition Project* (Bagshaw, Quinn et al. 2006; Bagshaw 2007) and the *Reshaping Responses to Domestic Violence Project* (Bagshaw, Chung et al. 2000), both of which canvassed children's views about family violence and their involvement in decision making after parental separation. As part of the advertising campaign, information about the phone-in was circulated among various urban, rural and regional services such as family relationship services, domestic violence services, services to fathers and male perpetrator groups, children's services, services for ethnic and racial sub-groups as well as services for special groups.

3. **Call-backs:** At the end of each survey parents were asked if they were willing to be interviewed by telephone by the researchers and if so they were asked to provide a first name, phone number and appropriate day and time of the week for the researchers to call them. A call-back was then organised by the group of researchers located in Victoria (see the call-back questions in Appendix 5). The team selected a smaller group of respondents to follow up by phone, thereby gaining more targeted and richer data as well as obtaining data on unanticipated issues. This strategy was chosen because in a prior survey of clients at one Family Relationship Centre, all surveyed were prepared to participate in a phone follow-up (Brown and Armstrong 2008). However, only half of the number of survey respondents selected for the call-back interviews were able to be contacted within the time frame for this study. The telephone interviewers had to contend with different time zones across Australia and, in particular, found it difficult to connect with the male respondents who volunteered to be contacted.

An overview of the sample for the study

1. Online adult survey: A total of 931 adults responded to the survey for adults. Of the 913 who identified their sex, 677 (74.2%) were women and 236 (25.8%) were men. 398 women and 142 men (total: 540) had separated since 1995, and 224 women and 71 men (total: 295) had separated since 2006. We had hoped for a gender balance but this was outside of our control.
2. Online children's survey: 105 children began the online survey and 65 completed it. The children were aged between 5 and 25 years, with a mean age of 13 years.
3. Phone-in interviews with parents: A total of 105 adults responded to the phone-ins in South Australia and Queensland. Of the 88 who identified their sex, 47 (53.4%) were women and 41 (46.6%) were men. Most interviews were lengthy, some up to 3 hours.
4. Phone-back interviews with parents: 13 men and 20 women (total: 33) were selected from responses at the end of the surveys to be interviewed during the phone-back Australia-wide.

5. Phone-in interviews with children: 4 boys and 8 girls (total: 12) between 9 and 17 years of age were interviewed during the phone-ins in Queensland and South Australia. The interviews were shorter than those with the parents. Again, we had hoped for a gender balance but this was outside of our control. We had also planned to conduct face-to-face interviews with children in Western Australia but service providers were unable to gain permission from parents for this to happen within our time frame.

An overview and analysis of the demographic data for the online survey with parents

Age of respondents

The female respondents were a little younger than the males, with 43.9% of women and 54.0% of the men falling into the modal age group of 40 to 49. It is not known whether this reflects the ages of those who responded or the partnership ages overall. Their ages are pictured in Table 1 below.

Table 1: The age ranges of men and women who responded to the adult survey

Answer Options	Male		Female	
Under 20	0	0.0%	2	0.3%
20–29	8	3.4%	51	7.5%
30–39	47	20.0%	232	34.3%
40–49	127	54.0%	297	43.9%
50–59	41	17.4%	85	12.6%
60+	12	5.1%	9	1.3%

The majority of respondents were women, 74.2% of the overall respondents being female and 25.8% men. When we divided these respondents according to the year they separated we note that of the total number of women surveyed, almost a third (30%) identified as being in the post-2006 cohort and a similar number as being in the pre-2006 (28.2%) cohort. A quarter of the women surveyed had been in the system ‘since 1995 and after 2006’.

Of the men who were surveyed the majority identified as being part of the pre-2006 cohort (31.4%) followed by those in the post-2006 cohort (26.7%). Almost a fifth of all male respondents had been in the system since 1995 and after 2006.

Table 2: The numbers and percentages of men and women who had been in the family law system since 1995 and after 2006

Category	Male		Female	
Overall	236	25.8%	677	74.2%
Pre-2006	74	31.4%	191	28.2%
Post-2006	63	26.7%	203	30.0%
Since 1995 and after 2006	46	19.5%	165	24.4%

Of the 236 men who answered the survey, 74 (31.4%) stated that they accessed socio-legal services pre-2006, 63 (26.7%) accessed services after the 2006 amendments and 46 (19.5%) had been in the system since 1995 and were still in it. The remainder of the men who answered the survey (53) had not accessed services or had made arrangements without professional help. Of the 677 women who answered the survey, 191 (28.2%) of those stated that they had accessed socio-legal services pre-2006, 203 (30.0%) accessed services after the 2006 amendments and 165 (24.4%) had been in the system since 1995 and were still in it. The remainder of the women who answered the survey (118) had not accessed services or had made arrangements without professional help.

In terms of location, most men and women lived in a capital city with almost half of each cohort living there. However, we also had a considerable representation from men and women who lived in a regional town or city. For the women surveyed, in each cohort there was at least a third that lived in a regional town or city. We also had important participation from women in rural areas ranging from 7.4% to 16.5% in each cohort. Undoubtedly the smallest numbers represented were women in remote areas, with an overall 1.3% (n=9), 2.1% pre-2006 (n=4), 1% post-2006 (n=2) and 0.6% since 1995 and after 2006 (n=1).

Men were also drawn from most of the areas described. There was also solid participation from men in regional towns or cities, ranging from 30.4% to 35.1% in each cohort. For men who lived in rural areas, for the cohort 'since 1995 and after 2006' there were 8.1%, 10.8% from the pre-2006 cohorts and 12.7% from the post-2006 cohort. For those who lived in remote areas, overall there were 1.3% (n=3), 2.7% pre-2006 (n=2) and 1.6% post-2006 (n=1).

Table 3: The numbers and percentages of women in relation to cohort and location who responded to the survey

Answer options	Women							
	Overall		Pre-2006		Post-2006		Since 1995 and after 2006	
Capital city	329	48.7%	94	49.2%	112	55.2%	79	48.2%
Regional town or city	260	38.5%	73	38.2%	74	36.5%	57	34.8%
Rural area	78	11.5%	20	10.5%	15	7.4%	27	16.5%
Remote area	9	1.3%	4	2.1%	2	1.0%	1	0.6%

Table 4: The numbers and percentages of men in relation to cohort and location who responded to the survey

Answer options	Men							
	Overall		Pre-2006		Post-2006		Since 1995 and after 2006	
Capital city	136	57.9%	38	51.4%	32	50.8%	32	69.6%
Regional town or city	77	32.8%	26	35.1%	22	34.9%	14	30.4%
Rural area	19	8.1%	8	10.8%	8	12.7%	0	0.0%
Remote area	3	1.3%	2	2.7%	1	1.6%	0	0.0%

Location of respondents to the adult survey: states and territories

The respondents were drawn from the various states in Australia, but the numbers were not entirely representative of each state's population. In addition two Australian people currently living overseas answered the survey without saying which state they had previously lived in.

The largest number of respondents (24.4%) came from Queensland which had an atypically large number of respondents; the next largest number (22.5%) came from NSW, the most populous state in the nation, the next (20.6%) from South Australia, with an almost identical number (20.0%) from Victoria, then WA (6.3%), Tasmania (5.6%), ACT (0.6%) and NT (0.1%). It is possible to explain the prominence of Queensland and South Australia as these were two of the three bases of the research team and the prominence of Tasmania might relate to the high degree of interest that state's services and the University of Tasmania took in the study.

All of the three groups of service users were represented in each state and territory. The gender distribution was not the same in the small states and territories as the gender distribution as a whole or as in the larger states. Northern Territory had equal numbers of men and women and, while Tasmania had more female respondents than male, it did not have as high a proportion as the other states. Taking the numbers of respondents from each state and territory, together with their gender balance and the representation of all three groups of services users, the representation of all states and territories and within each state and territory was most satisfactory.

Table 5: The number and percentage of women who responded to the survey in relation to cohort and state

Answer option	All females		Pre-2006		Post-2006		Since 1995 and after 2006	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
NT	2	0.3%	1	0.5%	1	0.5%	0	0.0%
NSW	139	21.4%	37	20.0%	46	23.5%	36	22.5%
ACT	15	2.3%	7	3.8%	3	1.5%	1	0.6%
VIC	123	19.0%	29	15.7%	42	21.4%	32	20.0%
QLD	163	25.1%	50	27.0%	45	23.0%	39	24.4%
SA	129	19.9%	43	23.2%	35	17.9%	33	20.6%
WA	43	6.6%	10	5.4%	13	6.6%	10	6.3%
TAS	35	5.4%	8	4.3%	11	5.6%	9	5.6%

Graph 1: The percentage of women who responded to the survey in relation to cohort and state

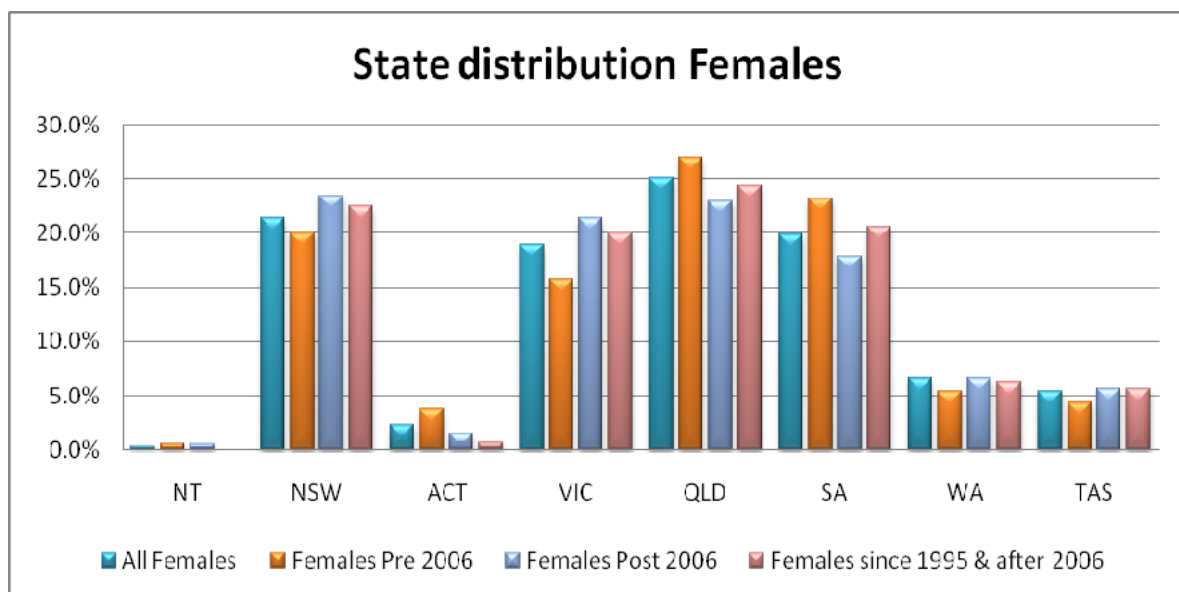
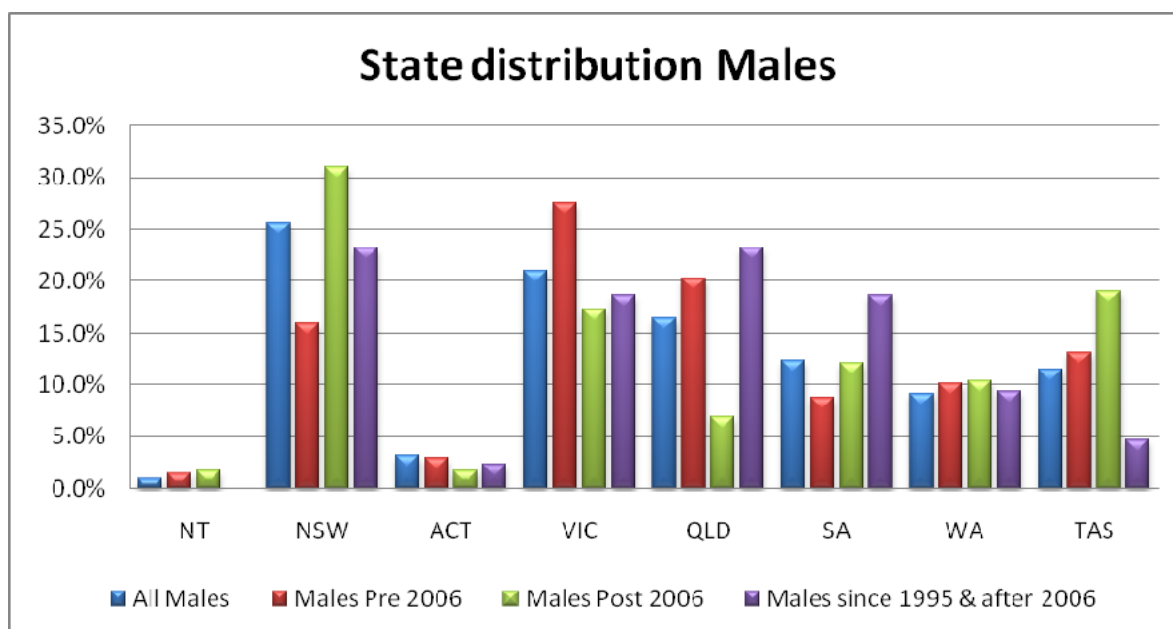


Table 6: The number and percentage of men who responded to the survey in relation to cohort and state

Answer option	All males		Pre-2006		Post-2006		Since 1995 and after 2009	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
NT	2	0.9%	1	1.4%	1	1.7%	0	0.0%
NSW	56	25.6%	11	15.9%	18	31.0%	10	23.3%
ACT	7	3.2%	2	2.9%	1	1.7%	1	2.3%
VIC	46	21.0%	19	27.5%	10	17.2%	8	18.6%
QLD	36	16.4%	14	20.3%	4	6.9%	10	23.3%
SA	27	12.3%	6	8.7%	7	12.1%	8	18.6%
WA	20	9.1%	7	10.1%	6	10.3%	4	9.3%
TAS	25	11.4%	9	13.0%	11	19.0%	2	4.7%

Graph 2: The percentage of men who responded to the survey in relation to cohort and state



The cultural background of respondents to the adult survey

The cultural backgrounds of respondents was typical of the general population with 3.2% coming from Indigenous backgrounds, 72.3% from other Australia, 10.5% from the UK, 1.8% from New Zealand, 7.0% from Europe, 1.4% from Asia, 0.2% from Africa, 0.5% from North America, 0.8% from South America, 1.1% from another English-speaking country, and 1.1% from another non-English-speaking country. There appeared to be little difference in the representation of men and women from the various cultural backgrounds with the exception that there were no women of African background and men from Europe were more heavily represented in the prior to 2006 group than in any other group. The cultural background of the respondents according to gender and group is illustrated in Table 7 below.

Table 7: The number and percentage of men who responded to the survey in relation to cohort and cultural background

Answer options	Males overall		Pre-2006		Post-2006		Since 1995 and after 2006	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Indigenous Australian	5	2.1%	2	2.7%	2	3.2%	1	2.2%
Other Australian	167	70.8%	53	71.6%	46	73.0%	32	69.6%
UK	22	9.3%	3	4.1%	6	9.5%	5	10.9%
NZ	3	1.3%	2	2.7%	1	1.6%	0	0.0%
European	25	10.6%	10	13.5%	4	6.3%	5	10.9%
Asian	2	0.8%	0	0.0%	0	0.0%	1	2.2%
African	2	0.8%	0	0.0%	0	0.0%	0	0.0%
North American	2	0.8%	1	1.4%	1	1.6%	0	0.0%
South American	1	0.4%	0	0.0%	0	0.0%	1	2.2%
Other English-speaking country	2	0.8%	2	2.7%	0	0.0%	0	0.0%
Other non-English-speaking country	5	2.1%	1	1.4%	3	4.8%	1	2.2%

Graph 3: The percentage of men who responded to the survey in relation to cohort and cultural background

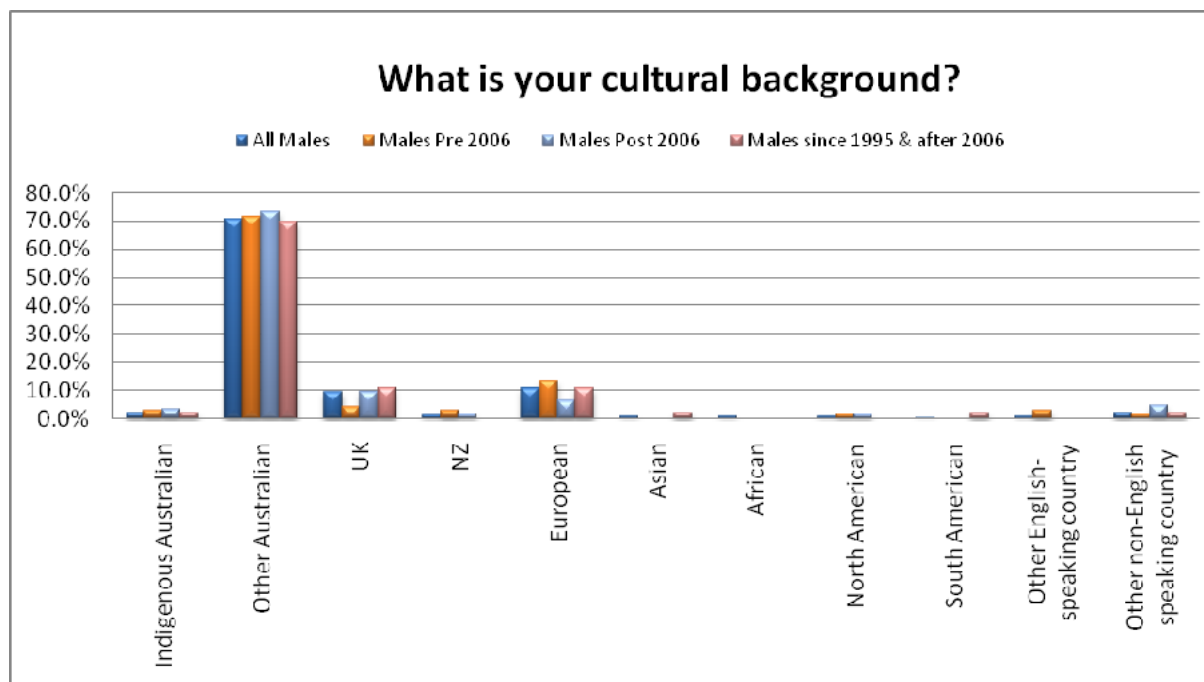
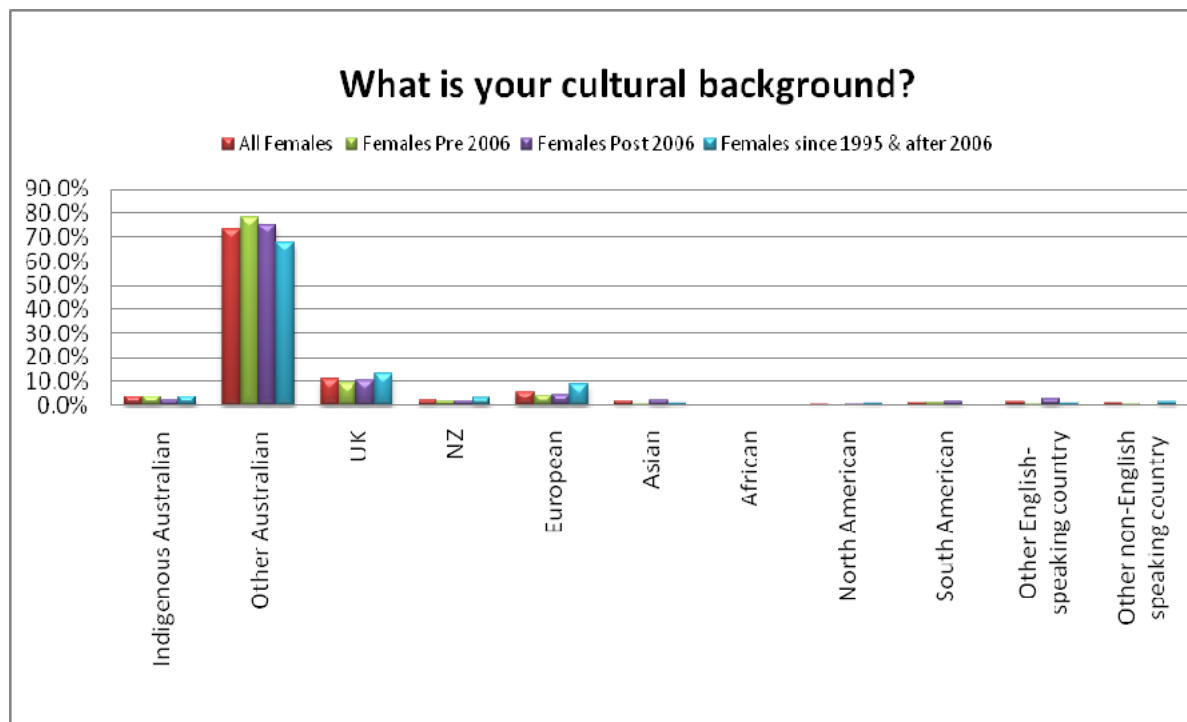


Table 8: The number and percentage of women who responded to the survey in relation to cohort and cultural background

Answer options	Females overall		Pre-2006		Post-2006		Since 1995 and after 2006	
Indigenous Australian	24	3.6%	7	3.7%	4	2.0%	6	3.6%
Other Australian	491	72.8%	150	78.5%	153	75.4%	112	67.9%
UK	74	11.0%	18	9.4%	21	10.3%	22	13.3%
NZ	13	1.9%	3	1.6%	3	1.5%	5	3.0%
European	39	5.8%	8	4.2%	9	4.4%	15	9.1%
Asian	11	1.6%	1	0.5%	4	2.0%	1	0.6%
African	0	0.0%	0	0.0%	0	0.0%	0	0.0%
North American	3	0.4%	0	0.0%	1	0.5%	1	0.6%
South American	6	0.9%	2	1.0%	3	1.5%	0	0.0%
Other English-speaking country	8	1.2%	1	0.5%	5	2.5%	1	0.6%
Other non-English-speaking country	5	0.7%	1	0.5%	0	0.0%	2	1.2%

Graph 4: The percentage of women who responded to the survey in relation to cohort and cultural background



The cultural background of the ex-partners of respondents to the survey

The distribution of the cultural backgrounds of the respondents' partners was much the same as that of the respondents and there was little difference in terms of gender, as illustrated in Table 9.

Table 9: The number and percentage of female ex-partners of men who responded to the survey in relation to cohort and cultural background

Answer options	All females		Pre-2006		Post-2006		Since 1995 and after 2006	
Indigenous Australian	26	3.9%	7	3.7%	5	2.5%	6	3.7%
Other Australian	453	67.8%	134	70.2%	139	68.5%	110	67.9%
UK	62	9.3%	12	6.3%	20	9.9%	17	10.5%
NZ	18	2.7%	6	3.1%	4	2.0%	5	3.1%
European	55	8.2%	13	6.8%	19	9.4%	16	9.9%
Asian	13	1.9%	4	2.1%	3	1.5%	2	1.2%
African	1	0.1%	1	0.5%	0	0.0%	0	0.0%
North American	7	1.0%	3	1.6%	2	1.0%	1	0.6%
South American	6	0.9%	3	1.6%	2	1.0%	0	0.0%
Other English-speaking country	13	1.9%	4	2.1%	6	3.0%	2	1.2%
Other non-English-speaking country	14	2.1%	4	2.1%	3	1.5%	3	1.9%

Graph 5: The percentage of female ex-partners of men who responded to the survey in relation to cohort and cultural background

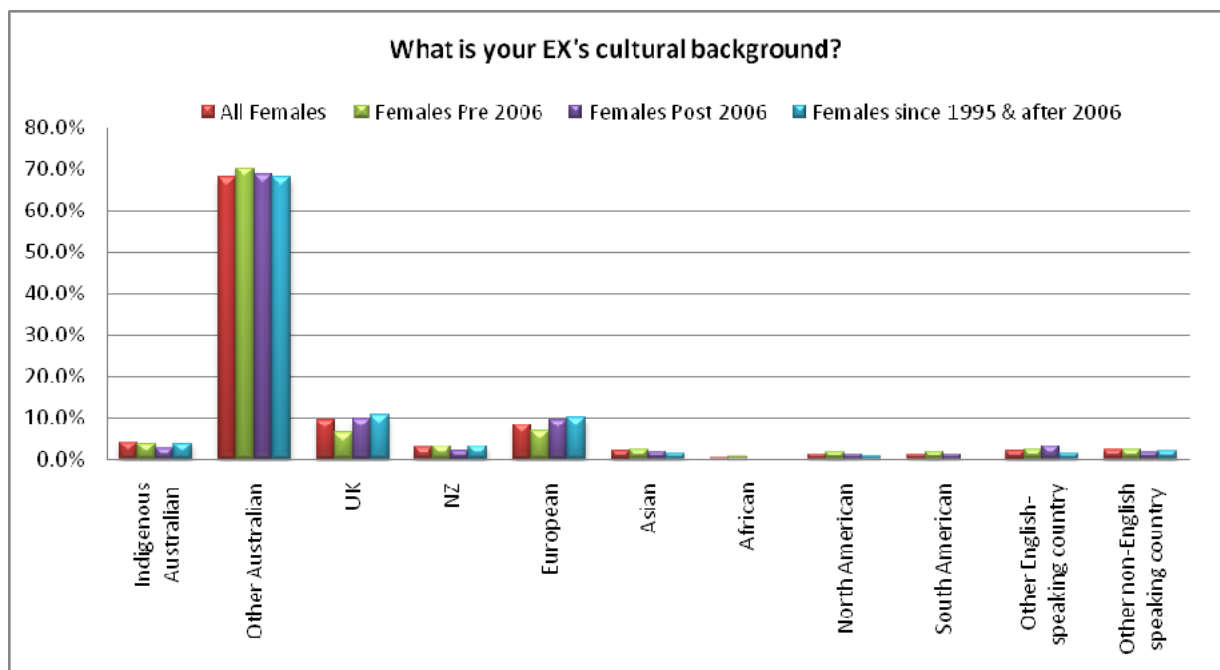
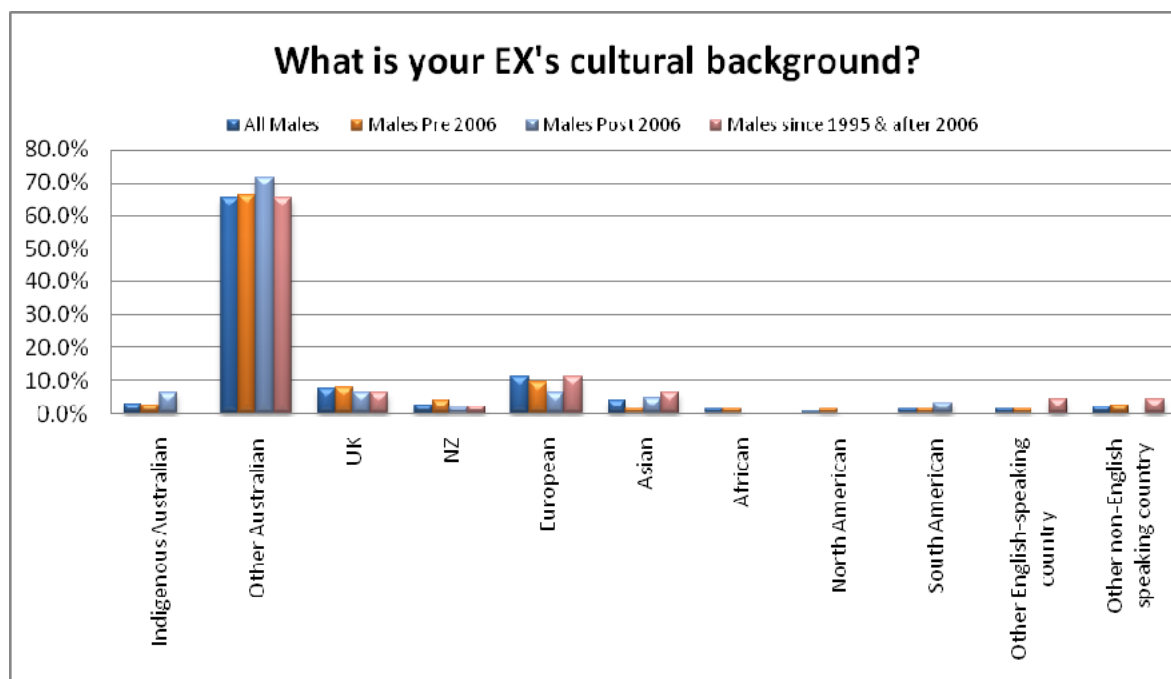


Table 10: The number and percentage of male ex-partners of women who responded to the survey in relation to cohort and cultural background

Answer options	All males		Pre-2006		Post-2006		Since 1995 and after 2006	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
Indigenous Australian	7	3.0%	2	2.7%	4	6.3%	0	0.0%
Other Australian	15	65.3%	49	66.2%	45	71.4%	30	65.2%
UK	4		6	8.1%	4	6.3%	3	6.5%
NZ	18	7.6%	3	4.1%	1	1.6%	1	2.2%
European	6	2.5%	7	9.5%	4	6.3%	5	10.9%
Asian	10	4.2%	1	1.4%	3	4.8%	3	6.5%
African	3	1.3%	1	1.4%	0	0.0%	0	0.0%
North American	1	0.4%	1	1.4%	0	0.0%	0	0.0%
South American	3	1.3%	1	1.4%	2	3.2%	0	0.0%
Other English-speaking country	3	1.3%	1	1.4%	0	0.0%	2	4.3%
Other non-English-speaking country	5	2.1%	2	2.7%	0	0.0%	2	4.3%

Graph 6: The percentage of male ex-partners of women who responded to the survey in relation to cohort and cultural background



Demographic data for the online survey with children

A total of 105 respondents began the children's survey, and 68 (64.76%) completed it. Of the 88 respondents who answered the question about their gender, 53.4% (47) reported that they were girls and 46.6% (41) reported that they were boys.

Eighty-four of the 105 respondents gave information about their ages, while 3 others replied to this question with nonsensical responses. No responses were recorded for the other 18 respondents. Table 11 shows the ages of those who provided this information and the frequency of respondents at each age.

As indicated, the youngest respondents were aged 5 and the oldest was aged 25 years, with the mean age at 12.92 years. The small number of respondents above the age of 18 (7 respondents, 8.3% of the sample) indicates that some young adults wished to complete the survey retrospectively.

Sixty-eight point six percent (59 of 86) of respondents identified as 'other Australian', with the next largest group being 'European' (6 respondents, 7%). One 15-year-old girl identified herself as Indigenous Australian. She stated that she currently lives in Sydney, although not with either of her parents. In terms of country of origin, 68 of 91 respondents (74.7%) who answered this question stated that they were from Australia. The next largest group (7 respondents, 7.7%) were from the UK and another 3 (3.3%) were from the United States of America. One child each identified as Ukrainian, Iranian, Israeli and Dutch respectively.

Most of the respondents' parents had been separated for longer than a year (69 of 83 respondents, or 83.1%), with the next largest group having separated for less than one year (8 respondents, 9.6%).

Table 11: Number and percentage of children who responded to the survey in relation to age

Age	Number	%
5	2	2.4
6	0	0
7	0	0
8	10	11.9
9	4	4.8
10	8	9.5
11	8	9.5
12	13	15.5
13	6	7.1
14	4	4.8
15	9	10.7
16	7	8.3
17	6	7.1
18	0	0
19	1	1.2
20	1	1.2
21	2	2.4
22	1	1.2
23	0	0
24	1	1.2
25	1	1.2
TOTALS	84	100.0

Demographic data for the adult phone-ins in South Australia and Queensland

Profile of the adult respondents to the phone-in in South Australia

In total, 41 adults responded to the phone-in in South Australia. The majority of respondents – 85% (n=35) – were women. Thirty-three respondents (80.5%) were non-Indigenous Australians, 2 were Indigenous Australians and 5 were born overseas (including 3 from the UK). Most (63%, n=26) were living in a capital city, just under 20% in a rural location and 17% from a regional town or city. No respondents identified that they lived in a remote location. Nearly half (49%, n=20) of the respondents were aged between 40 and 49 years.

Profile of the adult respondents to the phone-in with parents in Queensland

A total of 65 adults contacted the Queensland phone-in. Of these, 52 or 80% were women. Ten women and one man were from an Indigenous background; 19 women (and no men) were born in a country other than Australia. Of this group, English was not a first language for twelve women (2/12 prior 2006; 10/12 post 2006). The majority of respondents were from a regional city (28 of the 65 or

43%), with 35% from a capital city, 15% from a rural location and four of the 65 from remote areas. Respondents were most likely to be aged between 40 and 49 years (35%) and 30–39 years (27%).

Demographic data for the national call-back with adults from the survey

There were a total of 33 individuals who participated in the call-backs, of which 20 (65%) were females and 13 (39%) were males. Two participants (6%) were aged between 20 and 29 years, 12 (39%) were aged between 30 and 39 years, 14 (45%) were aged between 40 and 49 years, and three (10%) were aged between 50 and 59 years. They were drawn from five Australian states: four (13%) were from New South Wales, 10 (32%) were from Queensland, two (6%) were from South Australia, 11 (35%) were from Victoria and four (13%) were from Western Australia. The majority of participants, 21 (68%), were living in Australian cities, while 9 (29%) lived in regional towns or centres and one (3%) was from a rural area. Twenty-six (84%) participants were Australian born, four (13%) were born overseas, and one (3%) was an Australian-born Aboriginal.

Demographic data for the phone-ins with children in South Australia and Queensland

A total of 12 children and young people participated in the children's phone-in interview, held on 23 and 24 November 2009 in Adelaide and Townsville. Respondents were aged between 9 and 17 years, eight were female and four were male. All but one respondent identified as non-Indigenous Australian, the exception being a young person who asked to be identified as Aboriginal. There were no respondents who were born overseas. All 12 respondents were from families with heterosexual parents, made up of a biological father and biological mother at the time of separation. Six young people lived in the city, five in a regional area and one in a rural area. Four of the respondents had parents who separated prior to the 2006 amendments; the remaining eight had experienced family separation during the past three years.

Table 12: Demographic data for the children who responded to the phone-ins: age, gender, cultural group, year of parental separation and location

	<i>Age</i>	<i>Gender</i>	<i>Cultural group</i>	<i>Year of separation</i>	<i>Location</i>
1	15	male	other Australian (OA)	post-2006	regional
2	14	female	OA	post-2006	rural
3	16	female	OA	post-2006	capital city
4	13	female	OA	post-2006	capital city
5	15	female	Aboriginal	post-1995	capital city
6	15	female	OA	post-2006	regional
7	13	male	OA	post-2006	capital city
8	17	male	OA	post-1995	regional
9	14	female	OA	post-2006	capital city
10	12	male	OA	post-2006	regional
11	14	female	OA	post-1995	regional
12	9	female	OA	post-1995	capital city

4. Ethical considerations

All research conducted by the researchers involved in this project was carefully scrutinised and approved by the University of South Australia's Human Research Ethics Committee (HREC) and the Monash University Standing Committee on Research on Humans. Ethics approval was granted firstly for the overall project and again at each phase of the research for each of the instruments used. Two complaints were received by both of these ethics committees about the children's surveys and the researchers were required to give detailed responses to the concerns expressed, which were accepted by both of the committees after careful scrutiny and legal advice. Ethics approval was also obtained from the ethics committees of the James Cook University and the University of Tasmania, and from the Research Committee of the Australian Association of Social Workers and the Family Court of Australia's Research and Ethics Committee.

Participation in the online surveys and phone-ins was voluntary and did not require participants to identify themselves. Any potential identifying data gathered was removed and has not been included in this report. Service providers and others were asked to provide potential participants in the survey with an information sheet and relevant information was also provided at the beginning of each survey instrument. Links to the online surveys were placed on a Monash University website and the source of the completed surveys could not be identified. Participants were also able to print out and complete hard copies of the report. All participants in the phone-in and any other interviews were advised that participation was voluntary and they could withdraw at any stage. A toll-free number was provided in order to assist people from rural and remote areas to participate in the phone-in.

All written or transcribed material generated from the research will be kept in confidence and will be securely stored for five years at the University of South Australia and Monash University.

Interviewers were carefully selected and trained for the phone-in and were debriefed as required. Discussing family violence can be stressful, in particular for the victims who are typically women and children, so all participants in the phone-in were advised that they could stop at any stage and they were then linked to appropriate resources. In the phone-in in Adelaide, participants were asked if they would like to be transferred to a person on another line who would be able to offer them support and make appropriate referrals, either during or at the end of the interview.

Only professionals with appropriate experience, such as in counselling, psychology or social work, were selected as interviewers for the phone-in and professionals with experience in interviewing children took the calls from children.

Due to the anonymity of the 'phone-in' process, and the level of control that a child who telephoned the toll-free number had over choosing to continue to participate or to end the call, formal consent was not required. We acknowledged, however, that consent to participate was negotiable throughout any contact with the researchers, and informal consent was continually negotiated with the children during the time of their participation.

Disclosures of family violence

Adults who had separated post-1995 were invited to participate in an *anonymous* survey and phone-in. Therefore the researchers could not take any action when ongoing family violence was disclosed in the survey other than to offer to transfer the caller to a counsellor during the phone-in and/or to offer referrals to appropriate services. The adults' survey included an introduction warning participants that the content of the survey included sensitive issues surrounding family violence and so they may refuse to answer specific questions or may withdraw at any time. Furthermore, the survey sections had headings detailing the nature of the questions being asked in each section. This provided transparency about the topic so that people could decide whether or not they wanted to proceed with the survey and/or not answer specific questions. At the end of the survey participants were provided with a link to a comprehensive website, Children and Teens First (CHaT First: <http://www.chatfirst.com.au>) that was developed by Dale Bagshaw, Karolyne Quinn and Birte Schmidt in partnership with Centacare Family Services as an outcome of the *Children and Families in Transition Project*, funded by the Telstra Foundation (Bagshaw, Quinn et al. 2006). The content of the website is child-focused and offers comprehensive information to children, teens and parents from separated families, including information about family violence, and including contact details of all relevant services in each Australian state.

When adult participants decided to participate in the phone-in or the follow-up telephone interview, before the interview proceeded the following points were discussed:

- Safety was established, e.g. by asking participants whether or not they were in a safe place to participate in the study.
- Interviewers were instructed to advise the participants to phone the police immediately if they disclosed that they were in danger.
- Interviewers informed each participant that sensitive questions would be asked about family violence, and they were then asked if they wanted to proceed.
- If participants wanted to proceed they were informed that they may refuse to answer specific questions and they may withdraw at any time by hanging up the phone.
- During the interview, interviewers also warned each participant about the specific content of questions coming up. For example, 'I am going to now ask some questions about different forms of violence and abuse. Do you want to continue?' This continual checking with the participant provided them with the opportunity to choose not to answer questions and/or withdraw.
- At the conclusion of the interview, each interviewer inquired about each participant's well-being and made a referral to an appropriate social service should they want to discuss issues further with a counsellor or other service provider.
- In Adelaide, and on request, participants in the phone-in were transferred to a person who could make appropriate referrals. They were advised of this at the beginning of the interview.
- All children who phoned in were referred to Kids Helpline, which offers a comprehensive counselling service to children.

Ethical issues in research with children

Child participants (8–18 years) were asked to participate in an online survey (see Appendix 2) and a phone-in (see Appendix 4).

The researchers were unable to take any action when ongoing family violence was disclosed in the survey, as it was anonymous. However, each survey included an introduction warning children (in child-friendly language) that the content of the survey included sensitive issues surrounding family violence and so they may refuse to answer specific questions or may withdraw at any time. Furthermore, the introduction to each section in the survey included headings detailing the nature of the questions being asked. These warnings enabled children to decide whether or not they wanted to proceed with the survey and/or not answer specific questions. As previously indicated, at the end of the survey the children were also referred to Kids Helpline and to the *Children and Teens First* website. Similarly, at the beginning of the phone-in with children safety issues were discussed (see below).

In choosing to use an online survey and phone-in for the research with children the research team considered the following benefits.

- Research has found that children and adolescents are more likely to report and respond to sensitive questions about family problems and emotional issues when questions are administered on a computer (Black and Ponirakis 2000).
- A computer-based survey provides anonymity and has successfully been used as a data collection tool when researching populations at risk within the fields of psychology, medicine, mental health, drug and alcohol use, and sexuality (ibid).
- Computer-based surveys have been used with children between ages 9 and 15 years to ask sensitive questions and researchers have found that self-administered surveys yield higher response rates to sensitive questions, that is, privacy and children having the opportunity to work through questions at their own pace contributes to a higher response rate (ibid).
- Children do not have to worry about the reaction of the interviewer and so are more likely to disclose sensitive material, that is, it has been reported that children find it easier to be honest when relating to a computer than with a person.
- Research has reported as high as 98% of surveys being completed successfully by children aged between 9 and 15 years (ibid).

Children's survey: ethical issues

Age range of the children responding to the survey

One ethical issue that arose in relation to the children's survey was that 13 respondents to the survey listed their ages as being outside the range identified in the recruitment material. Two children reported that they were aged 5 years, while 12 respondents reported their ages to be between 17 and 25. While the survey instructions were clear about the range of ages in which respondents should fall, controlling who responds is not possible in an instrument of this type. The team considered the relevance of responses from the twelve older people who answered the survey questions in retrospect, and we considered their contributions to be valid when the responses were

considered as a whole. Thus, it was decided to include the survey data from the older respondents who answered the questions as child witnesses of family violence.

Two respondents reported that they were aged 5 at the time of beginning the survey. The team had considered that those aged younger than 8 might find the survey too difficult to complete, so the youngest age was set at 8 to ensure that all children would both understand and have the ability to complete the questions. The two 5 year olds who began the survey, however, did not complete the entire list of questions but the responses they did give were considered useful to be included in the full data set. Concerns about the autonomy of children aged 5 to respond independently to a survey of this nature were considered, especially in relation to the possibility of coercion from adults who may 'prime' young children to answer questions in specific ways. The fact that these two children did not complete all the questions suggests that they were not unduly coerced to undertake the survey, and that they independently decided which questions to answer and which to leave.

Managing questionable responses

During the course of this study, the research team was advised by the chairpersons of the University of South Australia (UniSA) and Monash University ethics committees that two men in the Australian community (who purported to represent other groups) had formally complained to them about the nature and content of the study itself. In response to the first complaint, the research team temporarily withdrew the survey from the internet and provided the ethics committees with detailed responses to the concerns, which were accepted.

Criticisms were made by one man that children may complete the survey unsupported and unsupervised and may require follow-up counselling at the end of the survey. However, the survey instrument included contact details for the Kids Helpline (telephone counselling service) and the suggestion of seeing their school counsellor (a face-to-face option), thereby providing them with the opportunity to contact someone should they choose to do so. As with the adults, we also provided children with a link to the national website specifically designed for children whose parents had separated which includes a wide range of information and advice in separate sections for children and adolescents: *Children and Teens First* (www.chatfirst.com.au). Research has shown that between 64 and 97% of children and adolescents (aged 9–15 years) have stated that researchers should provide children with details of where to go for help, but should also let them seek help if they wished (Black and Ponirakis 2000).

As the research progressed, the second man made open threats to undermine the children's survey by suggesting that he and other adults would pretend they were children in responding to the survey. Once this came to our attention we closed the survey. However, analysis of the children's survey data indicated that a very small number of people who appeared to be adults had indeed tried to 'contaminate' the data by providing responses that did not make sense when considered as a whole. It was relatively easy to identify those who were engaging in inappropriate use of the survey and their responses were removed from the data set.

The final number of children and young people whose responses appeared to be genuine and considered appropriate to their stated age and circumstances was 101, of whom 67 (64.4%) of the sample provided full responses to every question on the instrument.

Children's rights

In our response to criticisms made to the UniSA and Monash ethics committees about the ethics of using a survey instrument with children, we asserted that not providing private, anonymous options for children to participate in the research via surveys would marginalise children and ignore their right to express their own opinions (see the United Nations Convention on the Rights of the Child, Article 12). As experienced professionals with a long history of work with children we do not construct children as 'incompetent', 'damaged', or deny their right to make decisions for themselves. This would be in opposition to our view of children as being competent actors in their own lives and capable of making their own choices and decisions, a view which is supported by others (e.g. Smart 2001). One of our research team, Alan Campbell (2008b), has argued that when it comes to sensitive topics such as parental divorce, violence and abuse children are likely to consider a research project in terms of its context in their lives and its level of meaning for them and so will make their own decision about whether to participate or not.

In the *Children and Families in Transition (CAFIT)* research project, led by another member of the research team, Dale Bagshaw, the 20 children interviewed by phone, whose parents had separated, all stressed that children should be given a voice on all matters that affect them. In particular those children who had experienced family violence held very strong views on this topic (Bagshaw 2007). In this study, our research methods have therefore promoted working 'with' children rather than 'on' or 'for' them by providing them with two options to have their say in a totally anonymous setting. As we have pointed out, children have the right, under Article 12 of the United Nations Convention on the Rights of the Child, to express their views in all matters affecting them. Children also have the right to have their wishes and feelings taken into account by local authorities and courts who are making decisions about them under the *Children Act 1989*. Providing two data collection methods for children (survey and phone interview) provided children with opportunities for their voices to be heard (Mullender, Hague et al. 2002).

Children's agency

In both the phone-in and the survey, children were advised that they did not have to answer every question if they did not want to and it is notable that in the online survey children exercised their individual agency and skipped questions that they did not choose to or want to answer. Analysis of their responses indicate that the vast majority were concerned that they were not asked what they wanted in relation to decisions made about them after their parents separated and that they would have liked to have had more say in relation to parenting arrangements. The majority also said they would have liked to have made the decision themselves. When asked the question in the survey and the phone-in – 'Do you think that children and young people have a right to have a say about things they want or would like (for example who they want to live with or who they want to see after their parents split up and how often they want to see them)?' the majority of those who answered the question agreed strongly.

Recruitment of children for the research

Children were recruited in a number of ways for the research. We did not recruit them directly but rather placed information in the public domain through newspaper advertisements, notices to relevant services from ourselves as a research team and to other relevant services via FaHCSIA's state and territory office network to the range of family relationship services so children themselves

could access the online survey and/or phone the researchers. A variety of people may have brought the survey or phone-in to the attention of any child, including a service provider working with children, a parent, an extended family member or a carer, or a child may have read a notice or advertisement and chosen to respond themselves. Notices with the link to the survey and information about the phone-in were emailed to the chief executive officers (CEOs) of various organisations who then made a decision as to whether or not they distributed the survey link and information about the phone-in within their organisation, thereby giving (or not giving) consent.

The issue of parental consent

In relation to parental consent, where a child had contact with an abusive or violent parent and the link to the survey had been given to the child by a service provider or other non-abusive family member, we believe that it would have been contrary to the best interests of the young person to be expected to seek consent from the violent or abusive parent to complete the survey. For this reason we chose to use anonymous methods so they would not be required to do so. We considered that it would be highly unlikely that a violent or abusive parent would provide their child with the link to the survey or with information about the phone-in and the link would be more likely to be given to the child by a non-abusive parent or family member, or by a service provider. Most children nowadays have easy access to computers and can choose to complete the survey in their own time and space.

In summary, statements made to children about possible risks were as follows:

(1) We stated at the beginning of the survey and the phone-in that before the child began they must be sure that they were safe and secure to do so, as the research asked questions about their experiences of their parents' separation and divorce and may therefore have made them feel uncomfortable.

(2) We stated that if a child wished to talk to someone about any feelings or concerns that arose as a result of questions asked they should either talk with a parent or relative that they trusted, make a time to see their school counsellor, ring Kids Helpline (phone number provided) or contact another child-oriented agency that is listed in the Chat First website (link provided).

We placed the following statements on each page of the survey.

- You should only complete the survey if you want to and feel comfortable doing so.
- If you feel uncomfortable or do not want to proceed then you can exit at any stage.

5. Overview of the research findings and discussion

The research findings are organised in a way that distinguishes between the parent and child subjects of the research and according to the method used to collect the data, beginning with an analysis of the data collected from the parents and followed by an analysis of the data collected from the children.

What adults had to say in the survey and phone-in

Online survey of adults

The online surveys were widely publicised in the media and information about the data collection for the online survey for adults was sent out through FaHCSIA's state and territory office network to the range of family relationship services, as well as to other relevant services and service networks known to members of the research team. Almost all organisations contacted were cooperative in publicising the research. Some asked the research team to submit additional ethics applications or research requests and the team did this and no such applications were refused. Further discussion of ethical issues encountered can be found in the previous section of the report.

The questions for the online survey for parents can be found in Appendix 1. The survey was divided into 9 main sections and different researchers in the team took responsibility for the analysis of the data in at least one section, so the style of analysis for each section may differ slightly. This report provides an overview, summary and discussion of the findings and the Appendices, which are available in Volume 2 of this report, provide a more detailed analysis of each section of the survey and call-back data illustrated with tables and graphs.

Sections 2 and 3: background information and the nature of the respondent's relationship with ex-partner

Number and gender of respondents

The survey was publicised as being open to men and women who had separated and/or divorced from 1995 to the present and who had a history or current experiences of family violence as well as those who did not. The total number of those responding to the online survey for adults was 913: 677 (74.2%) were women, and 236 (25.8%) were men, but these were responding as individuals, not as separating or separated couples

The respondents fell into five groups. These groups were:

- (1) Group One: those who had not made decisions or accessed any services,
- (2) Group Two: those who had made decisions but who had not accessed services or professionals,

- (3) Group Three: those who had accessed services from 1995 to 2005,
- (4) Group Four: those who had accessed services after 2006 and
- (5) Group Five: those who had accessed services and professionals from 1995 and after 2006, that is, those who had experience with the family law socio-legal services system both before and after the 2006 reforms.

The percentages of those who fell into each of these groups were

- (1) Group One: 7.4% total, 4.8% women and 2.6 % men.
- (2) Group Two: 10.1% total, 7.3% women and 2.8% men.
- (3) Group Three: 23.5% total, 18.4% women and 5.1% men.
- (4) Group Four: 29.4% total, 21.2% women and 8.2% men.
- (5) Group Five: 29.6% total, 22.6% women and 7.0% men.

Graph 7: The percentage distribution of male and female respondents across the five groups

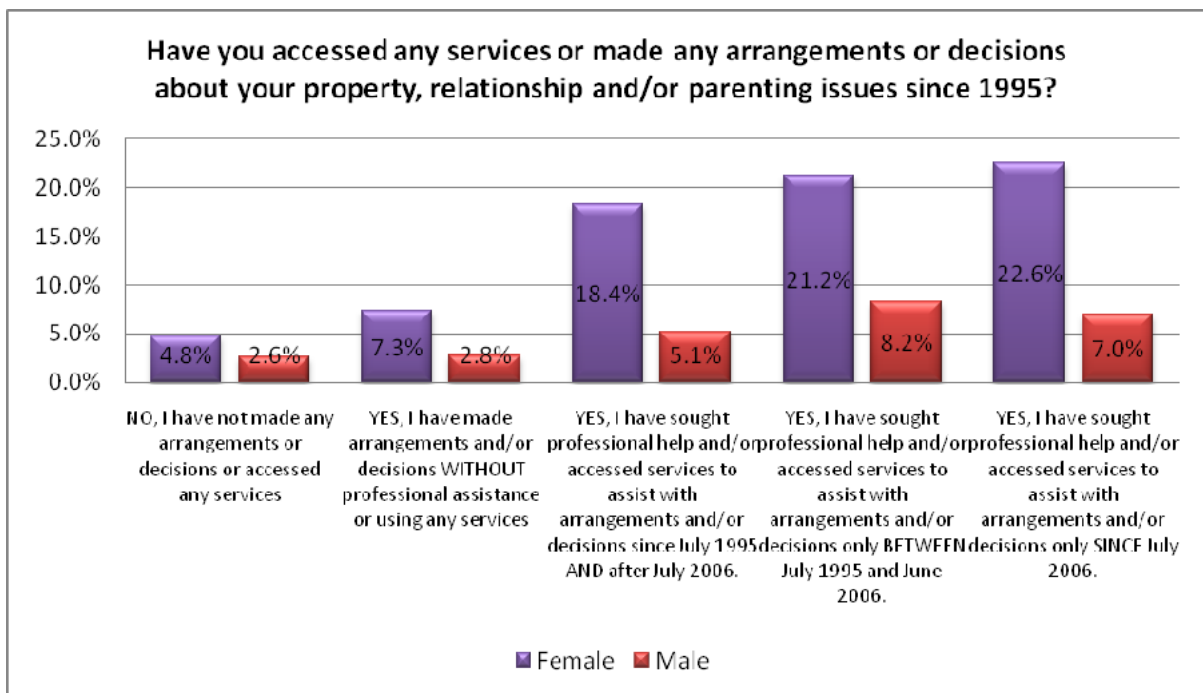


Table 13: Numbers and percentages of respondents to the adult survey in relation to gender

Answer options	Male	Male %	Female	Female %
NO, I have not made any arrangements or decisions or accessed any services	23	2.6%	43	4.8%
YES, I have made arrangements and/or decisions WITHOUT professional assistance or using any services	25	2.8%	66	7.3%
YES, I have sought professional help and/or accessed services to assist with arrangements and/or decisions since July 1995 AND after July 2006.	46	5.1%	165	18.4%
YES, I have sought professional help and/or accessed services to assist with arrangements and/or decisions only BETWEEN July 1995 and June 2006.	74	8.2%	191	21.2%
YES, I have sought professional help and/or accessed services to assist with arrangements and/or decisions only SINCE July 2006.	63	7.0%	203	22.6%

The three groups who had accessed services in the three time periods were roughly equal, and when the group that had accessed services at different points over the longer term – from 1995 to the present time – was placed in both the pre-2006 and post-2006 time periods the two remaining groups (pre- and post-2006) remained equal in size.

Age of respondents

The female respondents were a little younger than the males, with 43.9% of women and 54.0% of the men falling into the modal age group of 40 to 49. It is not known whether this reflects the ages of those who responded or the partnership ages overall. Their ages are pictured in Table 14 below.

Table 14: Age distribution of male and female adult respondents to the survey

Answer options	Male	Male%	Female	Female%
Under 20	0	0.0%	2	0.3%
20–29	8	3.4%	51	7.5%
30–39	47	20.0%	232	34.3%
40–49	127	54.0%	297	43.9%
50–59	41	17.4%	85	12.6%
60+	12	5.1%	9	1.3%

Location of respondents: capital city, regional city and town, rural area and remote area

The survey respondents came from across Australia with an appropriate representation from capital cities (48.2%), regional towns and cities (34.8%), rural areas (16.5%) and remote areas (0.6%). The

distribution of respondents was much the same for women as for men, but with fewer women (48.7%) coming from the capital cities as compared with men (57.9%), more women from regional cities and towns (38.5%) than men (32.8%), and more women from rural areas (11.5%) than men (8.1%), but with the same percentage from remote areas (1.3%). Table 15 (below) shows the geographical distribution of the respondents.

Table 15: Geographical distribution of male and female respondents

Answer options	Male	Male %	Female	Female %
Capital city	136	57.9%	329	48.7%
Regional town or city	77	32.8%	260	38.5%
Rural area	19	8.1%	78	11.5%
Remote area	3	1.3%	9	1.3%

Location of respondents: states and territories

The representation from the various states was mostly but not entirely typical of each state's population representation in Australia. In addition two Australian people currently living overseas answered the survey without saying which state they had previously lived in.

Respondents came from every state and territory. The largest number of respondents (24.4%) came from Queensland with an atypically large number of respondents; the next largest number (22.5%) came from NSW, the most populated state in the nation, the next largest number (20.6%) from South Australia, with an almost identical number (20.0%) from Victoria, then Western Australia (6.3%), Tasmania (5.6%), the Australian Capital Territory (0.6%) and Northern Territory (0.1%). It is possible to explain the prominence of Queensland and South Australia as being two of the three bases of the research team and the prominence of Tasmania might relate to the high degree of interest that state's services took in the study.

All of the three groups of service users were represented in each state and territory. The gender distribution was not the same in the small states and territories as the gender distribution as a whole or as in the larger states. The Northern Territory had equal numbers of men and women and, while Tasmania had more female respondents than male, they did not have as high a proportion as the other states. Taking the numbers of respondents from each state and territory, together with their gender balance and the representation of all three groups of services users, the representation of all states and territories and within each state and territory was most satisfactory.

Cultural background of respondents and their former partners

The cultural backgrounds of respondents was typical of the general population with 3.2% coming from Indigenous backgrounds, 72.3% from other Australia, 10.5% from the UK, 1.8% from New Zealand, 7.0% from Europe, 1.4% from Asia, 0.2% from Africa, 0.5% from North America, 0.8% from South America, 1.1% from another English-speaking country, and 1.1% from another non-English-speaking country. There appeared to be little difference in the representation of men and women from the various cultural backgrounds with the exception that no women of African background responded to the survey and men from Europe were more heavily represented in the prior to 2006

group than in any other group of men or women. The cultural background of the respondents according to gender and group is illustrated in Table 16 below.

Table 16: Distribution of male and female respondents according to cultural background

Answer options	Male	Male%	Female	Female%
Indigenous Australian	5	2.1%	24	3.6%
Other Australian	167	70.8%	491	72.8%
UK	22	9.3%	74	11.0%
NZ	3	1.3%	13	1.9%
European	25	10.6%	39	5.8%
Asian	2	0.8%	11	1.6%
African	2	0.8%	0	0.0%
North American	2	0.8%	3	0.4%
South American	1	0.4%	6	0.9%
Other English-speaking country	2	0.8%	8	1.2%
Other non-English-speaking country	5	2.1%	5	0.7%

The distribution of the cultural backgrounds of the respondents' partners was much the same as that of the respondents and there was little difference in terms of gender, as illustrated in Table 17.

Table 17: Distribution of male and female respondent's partners according to cultural background

Answer options	Male	Male%	Female	Female%
Indigenous Australian	7	3.0%	26	3.9%
Other Australian	154	65.3%	453	67.8%
UK	18	7.6%	62	9.3%
NZ	6	2.5%	18	2.7%
European	26	11.0%	55	8.2%
Asian	10	4.2%	13	1.9%
African	3	1.3%	1	0.1%
North American	1	0.4%	7	1.0%
South American	3	1.3%	6	0.9%
Other English-speaking country	3	1.3%	13	1.9%
Other non-English-speaking country	5	2.1%	14	2.1%

Was family violence an issue in their relationship?

Respondents were asked whether family violence had been an issue in their relationship with their former partner before, during or after their separation. As Table 18 illustrates, the responses taken together showed some 82% of women said that family violence had been an issue and some 56% of men said this too. Thus for most of these people, more of whom were women, family violence was an issue in their partnership.

Table 18: Percentages of men and women who thought family violence was an issue in their relationship

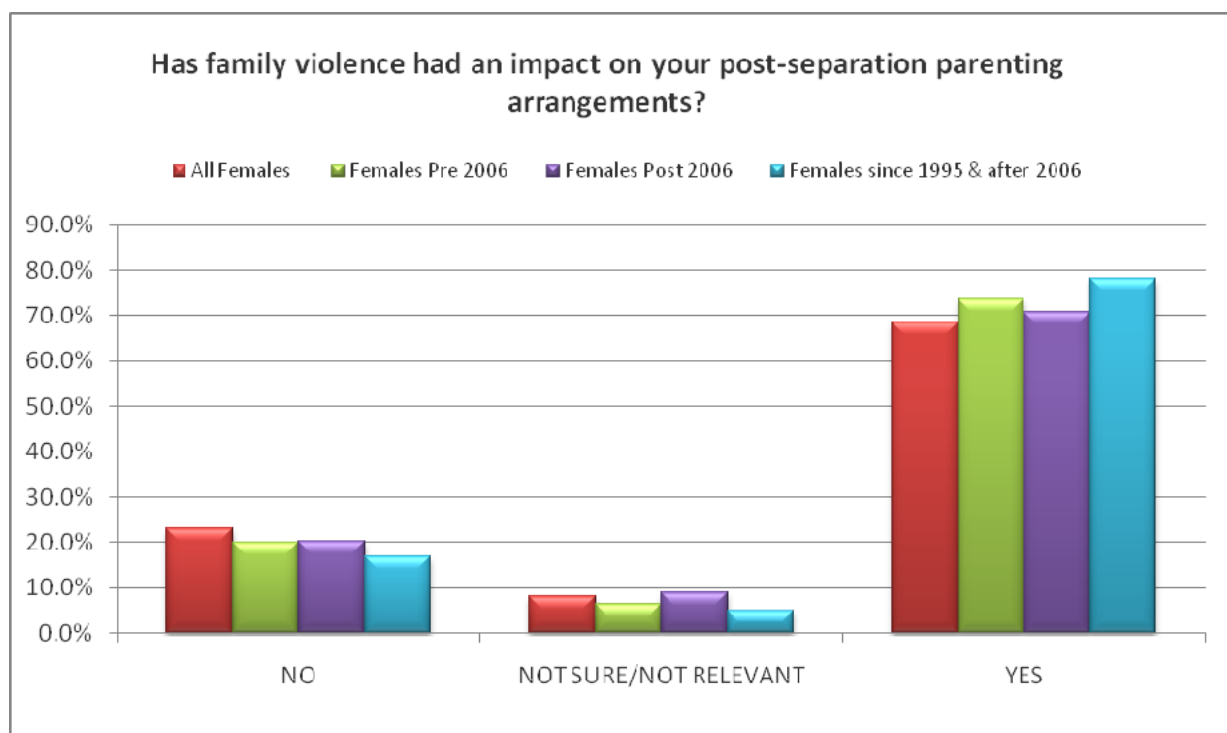
Answer options	Males						Females					
	Pre-2006	%	Post-2006	%	Since 1995 and after 2006	%	Pre-2006	%	Post-2006	%	Since 1995 and after 2006	%
NO	30	40.5%	24	38.7%	15	32.6%	21	11.0%	22	10.8%	13	7.9%
NOT SURE	4	5.4%	2	3.2%	2	4.3%	6	3.1%	9	4.4%	4	2.4%
YES	40	54.1%	36	58.1%	29	63.0%	164	85.9%	172	84.7%	148	89.7%

Looking at Table 18, it can be seen that in the pre-2006 group, 85.9% of women and 54.1% of men said family violence was an issue; among those separating and using services after 2006, 84.7% of women and 58.1% of men said it was an issue; and for those using services from 1995 onwards 89.7% of women and 63% of men said it was an issue. These results suggest that family violence leads its sufferers to need services for a long period as the proportion of those with family violence was greatest in the group that had been involved in the service system for the longest period of time.

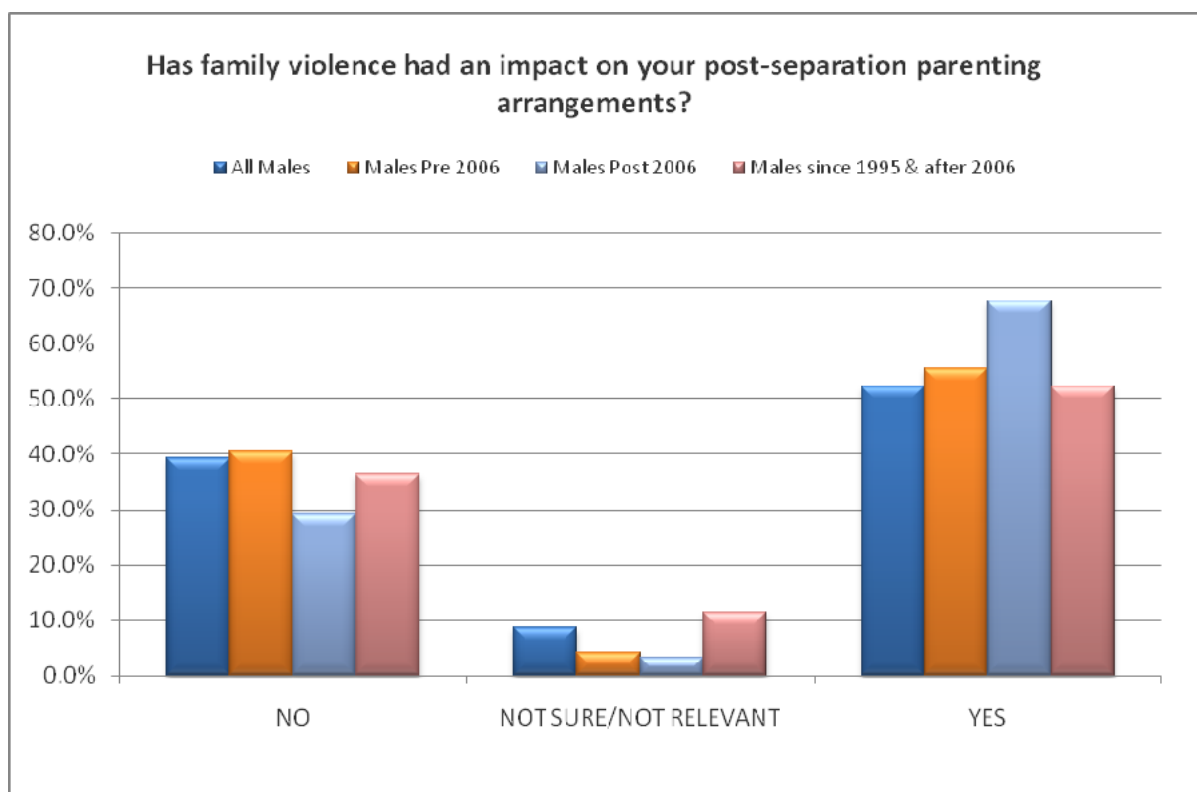
What was the impact of family violence on parenting arrangements?

Respondents were asked whether family violence had impacted on their parenting arrangements and, as Graphs 8 and 9 illustrate, the majority, 68.7% of women and 52.2% of men, said that it had.

Graph 8: Percentage of women in relation to the impact of family violence on parenting arrangements for women in the four cohorts



Graph 9: Percentage of men in relation to the impact of family violence on parenting arrangements for men in the four cohorts



However, the pattern discerned in the replies to the previous question was not maintained in the replies to this question. While more of the women in the group that had been accessing services for the longest period said family violence was an issue in making parenting arrangements, this was not so for the male respondents. By far the largest proportion of males bringing it up as an issue was in the post-2006 group.

The impact was described in detail by the respondents. The replies are presented according to the respondents in each group.

The impact of family violence on parenting arrangements post-1995 and pre-2006

Almost all respondents reported family violence that involved them as well as their children and they reported that parenting arrangements led to, or allowed the opportunity for, ongoing family violence. Some 25% of the violence to the children was very serious, for example injuries to children included head injuries, overdoses of sedatives requiring hospital admission, abduction of children and confirmed sexual abuse of children. Most of the mothers reporting serious violence directly to the children did not find any easy solution. Some 10% had obtained no contact orders and a smaller group had supervised contact (mostly with a relative), but as they reported constant threats and harassment this protection was not as tight as one might imagine. There was a small number of mothers who had found no contact with the perpetrator to be successful. In some of these cases the absence of contact was by consent; in some the violent parent had mental health problems and had

lost any connection with the children. A small group of children had organised no contact for themselves with their violent parent.

The most commonly reported impact was the continuation of a violent relationship between the partners, with the children seeing the violence either at changeover, or when living with the victim or the perpetrator and thereby seeing the ongoing abuse. After separation the violence reported by women included threats (such as threats of murder of the respondent and/or their children, other threats of physical harm to the respondent and children, and threats of property damage and financial losses), harassment by letter or phone (such as 15 calls in one day) and stalking, for example to the extent of keeping a daily log on the respondent. Also frequently reported was the terror the respondent felt and that they reported their children felt too. Some saw themselves as having great difficulty in parenting as a result.

Many reported that their children were profoundly affected by the continuing violence although they were not injured. Rather they were psychologically affected and were frightened, anxious and/or depressed. Most of these children were in primary school when the separation had occurred but some had been in the 0 to 4 category and respondents were most distressed about this group. In fact it was among this group that the most serious injuries occurred, including drug overdoses and head injuries. Some respondents pointed out that the other parent had often had little parenting expertise and being distressed and violent meant that their parenting was worse. Some respondents reported their partner as being mentally ill and felt that this was not taken into account in making parenting arrangements.

Some of the female respondents reported that they had felt powerless at separation and still felt this way, although this was the smallest group. These respondents felt particularly powerless over sharing care of the children and finances and felt they had been pressured into agreements that were unfair. For example, as one respondent said: *'the power he held over me during the relationship continued afterwards in regard to parenting arrangements and finances'*. She was bluffed into thinking she must agree to the equal time, although this was prior to the 2006 legislation. Another respondent just said: *'I made decisions based on my fear of him'*.

Most of the female respondents who were victims of violence reported not being able to attract help. Often they were not believed and when they were they still did not gain protection. As one mother said, *'The judge said that he was violent ... he agreed that he was violent ... but he ordered overnight contact'*. In this section of the survey, these respondents did not report accessing many services other than solicitors or courts.

While there were many male respondents who answered this section, and who reported ongoing violence to themselves and abuse of the children, their reports did not include physical or sexual violence or threats of harm to the children. Rather they reported ongoing harassment and psychological abuse. Some of the men, while very distressed, were not fearful of their former partner nor did they report feeling powerless. As one man said, *'My ex-wife is very violent to me but I have been able to block her access to the children and so it is not such a problem'*. However, while not fearful, some men felt powerless, particularly those who believed their ex-partner was using accusations of violence to stop them having access to their children.

The impact of violence on parenting arrangements post-2006

Those in the post-2006 group were closer in time to the separation than the previous group and this might have been expected to produce somewhat different views. However their responses were much the same in most respects. They all reported ongoing violence to themselves and to the children, continuing fear, ongoing threats, harassment and stalking, all of which made parenting very difficult. At the same time they mentioned threats over finances more often and they mentioned services such as mediation, family relationship centre services and private counselling more frequently, as well as mentioning legal services like solicitors, barristers and courts more often.

There were many references to financial blackmail or threats similar to the report of this mother: *'My ex used our son as a bargaining tool. He would threaten to have more access if I did not agree to a particular financial arrangement ... He also logged my emotional and psychological states ... He refused to let my son be babysat by my parents to stop me from going to university ... He did not want me to continue studying'*. Some one third of respondents spoke of financial abuse, a much higher proportion than previously. The respondents reported financial threats and actual pressure ranging from being made homeless, by being forced to leave the family home or by obstructing a court-ordered settlement, withholding assets held by the bank, and by withholding clothes and furniture. Some of the threats were linked to the desire of the main breadwinner to obtain more time with their children.

More of the respondents had used services and some had found some helpful and some had not. As one person said, *'Family Relationship Centre worked well and mediation there was helpful'*. Some thought that the Family Relationship Centre pre-mediation and information sessions did not focus on family violence and thought the topic needed to be more firmly addressed. Some had used Parenting Orders Programs and found them helpful in managing the violent ex-partner's behaviour but some had not. Some children had been ordered an Independent Child Lawyer (ICL) and some parents found them helpful and some did not. More respondents had been granted some kind of intervention order where the violent parent could not see the other parent and/or the child. More reported these as being effective in stopping the violence than had done so before but their replies did not indicate why this was so.

The court was still seen more negatively than positively; the *'violence has been ignored by the court'*. Some of this was linked to the notion of shared parenting and the point that many made that the focus on shared parenting took the emphasis away from violence. As one mother said, *'I have felt pressured by the court to give the father contact even though he is unsafe; the court believes he must have access every weekend'*. Another mother said, *'My concerns [as to his violence] were ignored by the court. He says he has overcome his anger problem. However, since then he has attempted to force me into a deserted isolated car park but as I did not go and he did not assault me, I cannot take any action. His intimidation of me and the children did not count in court.'*

Another parent, a father, expressed similar problems, as did other fathers, in being a father with a violent wife. He thought the legal system, solicitors and courts, had *'virtually ignored him and his son's problems'* as a result of psychological, sexual and financial abuse from a partner who was the breadwinner and who had a number of admissions to a psychiatric facility. Like some other men, he reported that his ex-wife made allegations of violence against him to ensure agreement with her

parenting plans. Many of these men reported that their ex-partners had mental health or substance abuse problems.

The impact of violence on parenting arrangements post 1995 and post 2006

This group of respondents, those who had used services from 1995 and after 2006 and who had experienced the two different systems, reported different impacts from family violence than did the other two groups. For both women and men the impacts they described were related to the longer period of time during which violence had been taking place. For all of these respondents family violence, particularly physical violence toward the women and the children, had continued after the separation and was a long-term issue causing them to use services (especially court and court-related services like contact centres, the police and child protection services) over many years. Taken as a whole this group were the most frustrated and dispirited, with women reporting being highly anxious and fearful, and men being angry and detached. Few of these respondents thought they were managing the family violence issues well and most saw the services as unhelpful and believed that the violence they had reported had been given little or no consideration.

For this group the first issue was their having to work for years to convince services that there was violence that was threatening to them and or to their children. Women reported more success in this than men did. The women spoke of years of their own exhaustion, of their high anxiety levels, of their fear and of the long-term psychological problems for their children. As one mother reported, *'the children don't sleep well ... they now accept his violence as normal but they are always afraid he will come over and kill us'*. Some three quarters of these women spoke of great fear, in particular that they and or their children would be killed by their former partner. They said things like *'I fear for my life and for my daughter's life'*, *'I fear for my daughter's life'*, *'I live in fear'* and *'I am surprised every day that we are still alive'*. These women spoke of former partners who were extremely violent, who had criminal histories for violence, and who had substance abuse problems. For some women the continued substance abuse meant their male partners drifted away and ceased the connection and for this they were grateful. A typical comment was *'I now have sole care of my children due to his drug use and consequent absence'*. The most difficult position for this group of women was when their children were young, from 0 to 12, for, as the children became older, they responded to the direct abuse of themselves by cutting their ties with their father regardless of court orders and parenting agreements.

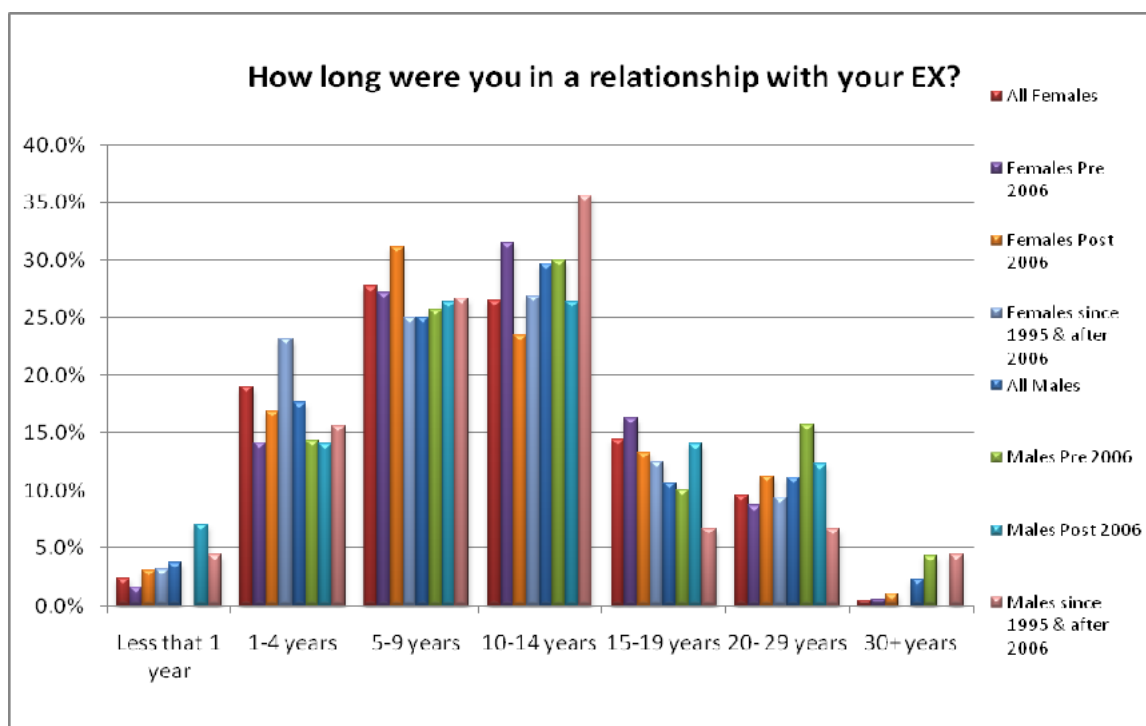
The men reported similar long-term physical violence that was not believed but they responded somewhat differently. They did not speak of ongoing fear and they did not attribute greater power to their partners but rather spoke of their anger with their situation. They were angry with their former partner and with the services. They had a view that a rational use of services should have been able to protect them and their children. Some of these men reported that their spouses had made allegations of violence against them and were angry that the services took a long time to investigate the allegations. They spoke of having evidence that supported their innocence but they knew that this was not enough for services and courts. Thus they relied on investigations and these could go on over many months during which time they were losing their relationship with their children. For half of this group of men the ultimate impact was that, despite investigations that supported their views, they lost their relationship with the children; sometimes walking away was the easiest thing to do. By way of contrast none of the women took up this option.

While all members of this group used services, they did not speak of any of the new services introduced in 2006 or subsequently. Almost all were involved in the courts – the Federal Magistrates Court or the Family Court of Australia. Despite the availability of the new services, this group had not been referred to them or moved to use them.

Partnerships and partnership breakdown

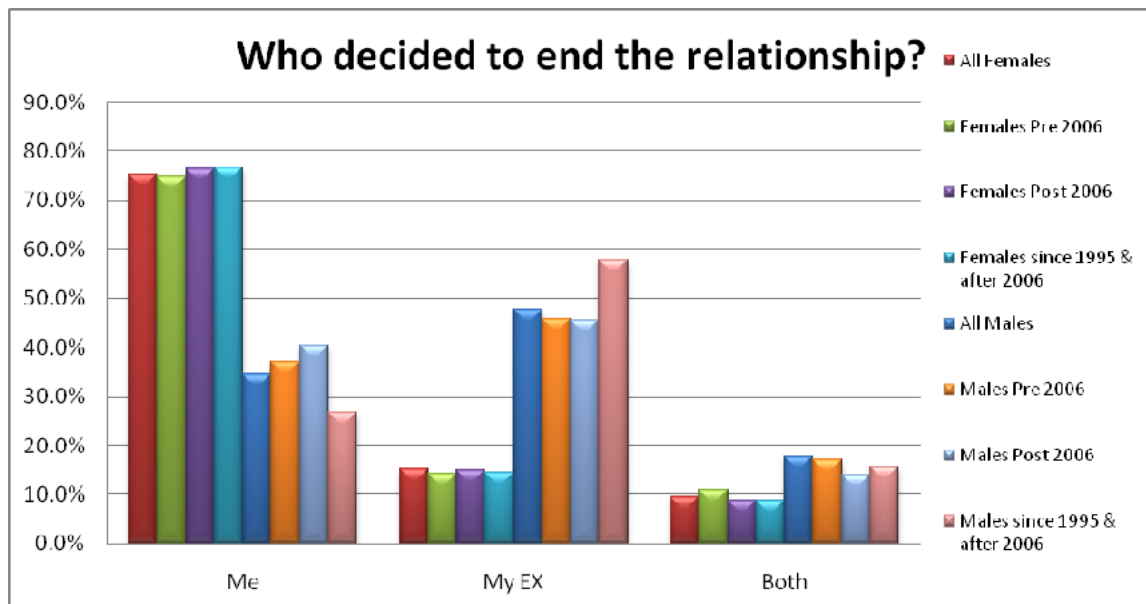
Despite the often severe nature of the violence reported by respondents, results show that the majority of them were in long-term relationships. Roughly a third of all female and male respondents placed themselves in the 5–9 year category or the 10–14 year category, as Graph 10 shows.

Graph 10: Percentage of women and men in the four cohorts in relation to the length of their relationship



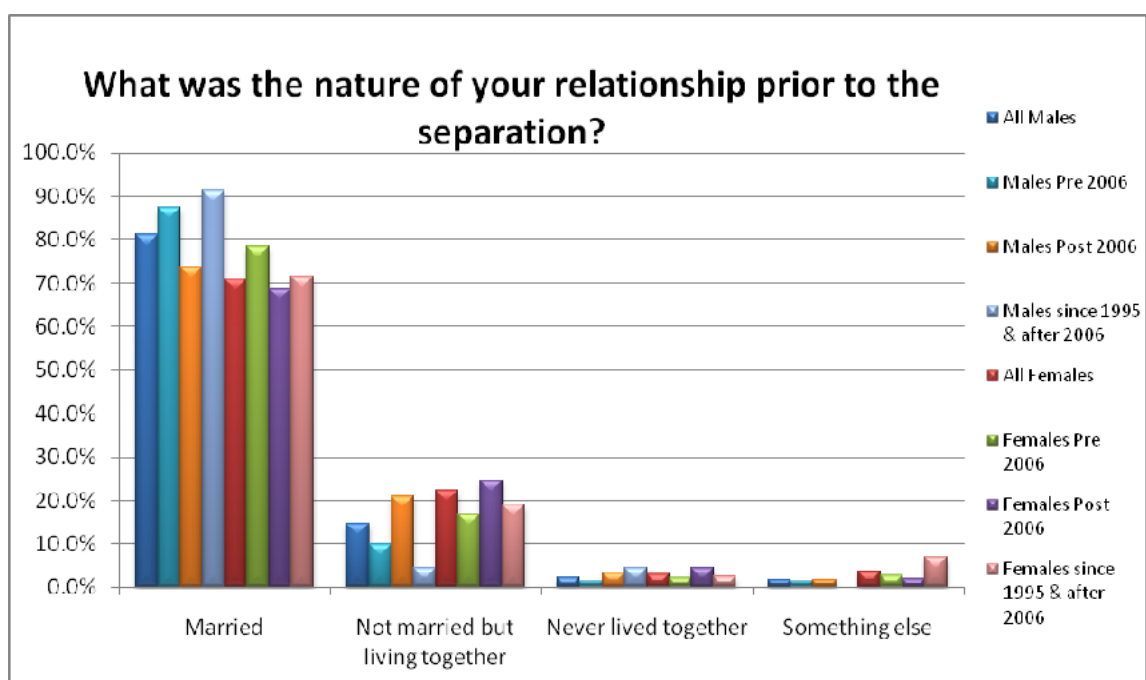
Respondents were also asked to disclose who ended the relationship – overwhelmingly females came out as the ones to put an end to the relationship. This was further confirmed by the majority of men stating that it was their former partner who ended the relationship.

Graph 11: Percentage of men and women in the four cohorts in relation to who decided to end the relationship.



In terms of the nature of the relationship it was clear that most of the respondents to the survey had been married to their ex-partners, followed by those who were living together but were not married. We also recorded a sample of the population that defined themselves as ‘something else’. When the extended answers (question 6, section 3) were read it became obvious that these respondents had had very complex, and sometimes violent, relationships but that most of them were conventional marriages or de facto partnerships. The need to categorise their relationship as ‘something else’ points to the fact that the respondents with complex needs felt as though they belonged to a different cohort and that they did not fit into standard categories due to their circumstances.

Graph 12: Percentage of men and women in the four cohorts in relation to the nature of the relationship



Perhaps the most revealing answers in this section were the ones that related to the reasons for relationship breakdown (question 7, section 3). Respondents were asked to choose from a list of possible reasons for why the relationship ended. The respondents could choose more than one reason so to analyse their responses we have used the frequency of response. That is, we have categorised the responses in terms of which ones were selected most often.

The results indicate that there was a clear gender difference as to why the relationships had broken down. The reasons most frequently cited by men were different to those cited by women and confirmed that in our sample family violence was clearly a gendered phenomenon that predominantly affected women and their children.

Female respondents were adamant that the main reason for the relationship breakdown was the violence or abuse from their former partners directed at themselves. This reason was consistently the most cited one throughout the three cohorts. Overall the second most frequent reason for the separation was communication breakdown. For the pre-2006 cohort, however, their partner's abuse of alcohol and other drugs was the second most common reason, for post-2006 females and those who had been in the system since 1995 and after 2006 the second most common reason was also communication breakdown.

Overall, the third most common reason for the separation was abuse of alcohol or drugs by the respondents' ex-partner for those women who were in the post-2006 cohort, but for the females in the pre-2006 category an unfaithful ex was the third most cited reason for breakdown. For those females who had been in the system since 1995 and after 2006 their ex-partner's mental health problems was the third most common reason.

All of these reasons were later provided by women as grounds for fathers' diminished capacity to parent and as the origin of the danger for their children. Most female respondents argued that it was impossible to share parental responsibility with someone who was capable of hurting them, had serious unresolved mental health issues or substance abuse issues, or had no desire to communicate with the mother to arrange contact or handovers.

Table 19: Percentage of men and women in the four cohorts in relation to the reasons for relationship breakdown

Female respondents								
Answer options	Overall		Pre-2006		Post-2006		Since 1995 and after 2006	
Communication breakdown	210	31.0%	54	28.3%	74	36.5%	52	31.5%
We grew apart	110	16.2%	35	18.3%	28	13.8%	21	12.7%
Parenting issues	96	14.2%	27	14.1%	35	17.2%	21	12.7%
I was unfaithful	21	3.1%	6	3.1%	6	3.0%	6	3.6%
My ex was unfaithful	163	24.1%	58	30.4%	48	23.6%	39	23.6%
I had physical health problems	14	2.1%	5	2.6%	7	3.4%	1	0.6%
My ex had physical health problems	19	2.8%	7	3.7%	4	2.0%	5	3.0%
I had mental health problems	25	3.7%	7	3.7%	9	4.4%	8	4.8%
My ex had mental health problems	158	23.3%	44	23.0%	48	23.6%	49	29.7%
I had money problems	13	1.9%	3	1.6%	6	3.0%	3	1.8%
My ex had money problems	75	11.1%	24	12.6%	24	11.8%	17	10.3%
My work pressures	15	2.2%	8	4.2%	3	1.5%	3	1.8%
My ex's work pressures	35	5.2%	9	4.7%	13	6.4%	10	6.1%
High level and/or frequent mutual conflict	165	24.4%	46	24.1%	54	26.6%	39	23.6%
Violence/abuse of me by my ex	406	60.0%	128	67.0%	125	61.6%	108	65.5%
Violence/abuse of our child/ren by my ex	186	27.5%	53	27.7%	56	27.6%	54	32.7%
I was violent towards or abused my ex	10	1.5%	5	2.6%	2	1.0%	1	0.6%
I was violent towards or abused our child/ren	8	1.2%	4	2.1%	2	1.0%	1	0.6%
My abuse of alcohol or other drugs	20	3.0%	6	3.1%	7	3.4%	1	0.6%
My ex's abuse of alcohol or other drugs	201	29.7%	62	32.5%	64	31.5%	47	28.5%
Something else	97	14.3%	28	14.7%	25	12.3%	29	17.6%

Men cited communication breakdown as the most frequent reason for the relationship breakdown; the cohort of men who had been in the system since 1995 and after 2006 also cited their ex's mental health problems as the most frequent reason. For the other cohorts mental health issues were the second most common reason for breakdown.

The majority of all men and the post-2006 men cited violence from their ex's as the third most common reason for relationship breakdown. The pre-2006 males cited 'something else' as the reason for breakdown and the men who had been in the system since 1995 and after 2006 cited 'growing apart' as the most common reason.

Similar to women, men regard communication breakdown and unresolved mental health issues as grounds for women’s diminished parenting capacity. Men frequently disclosed that their former partners suffered from serious mental health issues that affected their ability to parent their children. Though a considerable number of men said that their partners were violent towards them, when asked to provide details they rarely did so. It would be possible to associate this with the difficulty men might have in coming to terms with being victims of women’s violence but it may also have to do with competing notions of violence and victimhood.

Table 20: Percentage of men and women in the four cohorts in relation to the reasons for relationship breakdown

Male respondents								
Answer options	Overall		Pre-2006		Post-2006		Since 1995 and after 2006	
Communication breakdown	97	41.1%	31	41.9%	24	38.1%	18	39.1%
We grew apart	61	25.8%	18	24.3%	16	25.4%	13	28.3%
Parenting issues	34	14.4%	12	16.2%	13	20.6%	5	10.9%
I was unfaithful	11	4.7%	3	4.1%	5	7.9%	0	0.0%
My ex was unfaithful	58	24.6%	15	20.3%	17	27.0%	11	23.9%
I had physical health problems	5	2.1%	1	1.4%	3	4.8%	1	2.2%
My ex had physical health problems	4	1.7%	2	2.7%	1	1.6%	0	0.0%
I had mental health problems	8	3.4%	3	4.1%	3	4.8%	1	2.2%
My ex had mental health problems	74	31.4%	22	29.7%	21	33.3%	18	39.1%
I had money problems	16	6.8%	4	5.4%	8	12.7%	2	4.3%
My ex had money problems	27	11.4%	8	10.8%	10	15.9%	5	10.9%
My work pressures	25	10.6%	8	10.8%	8	12.7%	5	10.9%
My ex’s work pressures	5	2.1%	1	1.4%	1	1.6%	1	2.2%
High-level and/or frequent mutual conflict	50	21.2%	15	20.3%	14	22.2%	14	30.4%
Violence/abuse of me by my ex	61	25.8%	18	24.3%	18	28.6%	12	26.1%
Violence/abuse of our child/ren by my ex	27	11.4%	10	13.5%	9	14.3%	3	6.5%
I was violent towards or abused my ex	3	1.3%	0	0.0%	2	3.2%	0	0.0%
I was violent towards or abused our child/ren	2	0.8%	0	0.0%	2	3.2%	0	0.0%
My abuse of alcohol or other drugs	8	3.4%	1	1.4%	5	7.9%	0	0.0%
My ex’s abuse of alcohol or other drugs	27	11.4%	10	13.5%	10	15.9%	2	4.3%
Something else	54	22.9%	21	28.4%	14	22.2%	11	23.9%

Section 4: experiences of family services during and since the separation

Part 4 of the adults' survey related to the use of family relationship services, pathways through the family law system and to satisfaction with family law services used. The questions in this section of the survey were designed to measure aspects of the quality and effectiveness of family law services.

Fragmentation in use of family services

Despite attempts to streamline the family law system since 2006, some fragmentation was observed in the services used by separating parents. The data indicate that since 1995 many of the services most commonly used by adult respondents, individually or in conjunction with their ex-partner, would not usually be considered to be part of the formal family law system, including the family and friends of respondents (used by 78% of respondents), Centrelink (68%), health services (general practitioners and psychiatrists, 58%), counsellors in private practice (54%), the police (54%) and lawyers in private practice (74%). Some well-established family law services were also highly utilised by respondents, including the Child Support Agency (used by 73% of respondents), the Family Court of Australia (55%), Family Relationship Centres (42%) and legal aid services (40%).

This fragmentation mirrors that noted by the Family Law Pathways Advisory Group (2001) (hereafter 'the Pathways Report') who concluded that the family law system was not designed as a system and did not always operate coherently. The Pathways Report established that some of the myriad of services and institutions that constituted the family law system did not even see themselves as part of any system and failed to link up with other services (Family Law Pathways Advisory Group 2001). The Pathways Report (2001: 9, 11) revealed the extent to which this confusion and disjuncture impacted upon families so that many felt frustrated and discontented with the operation of the system.

The unusually high levels of dissatisfaction with family services expressed by respondents to this survey support this picture of fragmentation. This frustration may be a result of difficulties experienced in accessing services and a lack of understanding of the family law system.

The diversity of services consulted by family law disputants makes streamlined family service provision potentially problematic. That is despite the clear trend in the survey data after 2006 towards an increase in the use of Family Relationship Centres and away from use of the Family Court of Australia. Many agencies or services commonly used by respondents are not parts of programs run and funded by the federal Attorney-General's Department or the Department of Families, Housing, Community Services and Indigenous Affairs. Without funding control of these much frequented services, it is more difficult for service provision to be more tightly controlled in conjunction with the formal family law system. The Pathways Report (2001: 16, 37) acknowledged that in the pre-reform system there was an element of luck in whether parties found appropriate services. The significance of such randomness was that it implied a lack of overall planning in the family law system and that key messages (such as the message to settle disputes early) did not always reach families (Family Law Pathways Advisory Group 2001: 15). Different services provided different messages to families within the system and inconsistencies were rife. This meant that '[t]he key messages, the fundamental principles, are not necessarily reinforced in the policy development process or in the way policy is implemented across government agencies' (ibid).

The challenge for government in the context of fragmented service provision is to coordinate the messages received by disputants through the diverse range of services commonly frequented by parents who need assistance following separation.

Changes in service usage before and after the 2006 reforms

Not unexpectedly, the clearest change in service usage between the pre- and post-2006 cohort of separated parents was a dramatic drop in reported attendance at the Family Court of Australia, dropping from reported use by over 67% of respondents before 2006 to just under 50% after 2006, a fall of just under 18%. Correspondingly, the reported usage of Family Relationship Centres jumped 22% amongst respondents after 2006 to just over 57% (although it is apparent that some respondents had difficulty distinguishing between Family Relationship Centres and other family services). A more detailed analysis can be found in the appendices in Volume 2 of this report.

It is clear that amongst survey respondents more men used more family services after 2006 than they did before the 2006 reforms (with some exceptions, which are highlighted below). After 2006, women reported using the same or slightly more family services as they had prior to 2006. Those changes mean that after the implementation of the 2006 reforms, there was less of a gap between men's and women's use of family services in some key areas, especially in the area of legal services (such as legal aid, community legal centres and lawyers in private practice).

Use of family lawyers alongside family dispute resolution

Since 2006, the high usage of both family lawyers (used by 81% of respondents since 2006) and Family Relationship Centres and other family dispute resolution services (almost all respondents since 2006 indicated that they had received assistance from one or both of these services)⁵ supports the policy shift, initiated by the federal Attorney-General in July 2009, which encouraged the use of legal advice around family dispute resolution. Most respondents to the survey had been using legal services in conjunction with family dispute resolution services since 2006. Batagol and Brown argue:

Access to quality legal advice and legal representation may be beneficial for parties in family dispute resolution. Such advice may help parties to agree on interpretations of law and therefore limit exploitation of legal uncertainty in family dispute resolution by stronger, more strategic negotiators. (forthcoming 2010; see also Batagol 2008)

A policy framework that supports greater integration and coordination of legal and family dispute resolution services will most likely assist families to understand the information they receive from their lawyers and increase the use of that advice in their negotiations in family dispute resolution. That may help empower and protect more vulnerable negotiators in family dispute resolution. This, in turn, may enhance the quality and fairness of outcomes negotiated in family dispute resolution.

On 24 July 2009 the Federal Attorney-General announced a number of initiatives that were designed to encourage the use of legal services around family dispute resolution in a coordinated manner. The Attorney stated: 'My view is that, in the right circumstances, lawyers can assist parties to resolve their disputes out of court, including in family matters' (McClelland 2009). The changes announced

⁵ Survey respondents were able to nominate multiple services that they had used. Some respondents may have used both Family Relationship Centres and other family dispute resolution services, which increased the number of positive responses to this question to over 100%.

included the removal of an absolute ban on participation by lawyers in family mediation sessions at Family Relationship Centres and the funding of a pilot program to provide legal representation in mediation sessions for families who have experience violence or who are at risk of violence. This was in addition to the existing funding for localised 'Pathways Networks', created to encourage intra-professional collaboration between lawyers and family dispute resolution practitioners. We consider that any reforms to law and policy that encourage collaboration should be properly and independently evaluated (Batagol 2008). It appears from the responses to the survey that further integration and coordination of family dispute resolution and legal services would support higher quality outcomes for victims where there is family violence. An independent evaluation of initiatives to integrate legal advice and family dispute resolution would gauge the effectiveness of these programs further, including from the perspective of parents and children.

The powerful role of personal networks

Analysis of the data indicates that personal networks played a powerful role in assisting respondent parents to make decisions about matters arising from their separation. The most common source of assistance received by all separating parents in the survey was informal help from family or friends. Parties reported relying on their personal networks to a greater extent than any formal services. This suggests that initiatives such as community awareness raising and public education programs that address the nature, tactics and effects of family violence and highlight the important role and nature of informal support for the victims of family violence are warranted.

Men's usage of family services and satisfaction with services

Men reported using different and fewer family services than women, although men's use of family services increased amongst respondents after the 2006 reforms. There were gaps, sometimes quite large, between the sexes for use of most family services. Men were much *less* likely to have reported using the following family services than women: Centrelink (used by 77% of women but 39% of men), followed by domestic violence services (used by 46% of women but 11% of men), Legal Services Commissions or legal aid (used by 45% of women but 26% of men), informal help from family or friends (used by 83% of women but 64% of men) and health services (used by 62% of women but 45% of men).

By a much smaller margin, men were *more* likely than women to have used lawyers in private practice (79% of men compared to 73% of women), mediators in private practice (19% of men compared with 14% of women), the Family Court of Western Australia (8% of men compared to 5.2% of women) and Family Relationship Centres (44% of men compared with 41% of women).

More men used more family services after 2006 than they did before the 2006 reforms. After 2006, compared to reports of men who separated and used services before the reforms, 29% more men reported using Family Relationship Centres,⁶ 14% more men reported using counsellors in private practice, 13% more men reported using Legal Services Commissions or legal aid, and 10% more men reported using specialist domestic violence services. Services that men reported using less frequently after 2006 are religious persons or groups (for which 12% fewer men reported using this service after 2006 than before), lawyers in private practice (9% fewer), the Child Support Agency (7%

⁶ It is clear that some respondents had trouble differentiating between various family services in their responses

fewer) and both the Family Courts of Australia and Western Australia (4 to 5% fewer men reported using this service after 2006 than before).

The higher rate of male usage of family services after the 2006 reforms possibly indicates a higher level of proactivity after 2006 amongst men in seeking out information about their family law dispute and in seeking a better deal for themselves. It has been argued that the debates around and leading up to the 2006 reforms reflected a growing societal interest in fatherhood and also reflected escalating criticisms of the family law system by men as well as the views of 'influential fathers' rights groups with a conservative agenda to rid women of perceived power within the family law system' (Batagol 2003: 230; see also Rhoades and Boyd 2004; Fletcher and Visser 2008). It may be that the messages from the debates leading up to 2006 around the reforms to the *Family Law Act* and the reforms themselves, as well as the changing societal norms about fatherhood, have raised men's expectation of participation in the lives of their children after separation and have triggered an upsurge in the use of family services by men.

Amongst our survey respondents there was a much lower use of family services by men than women. Fletcher and Visser show that across the population

Men are generally less likely to access or take part in counselling or relationship assistance services, have lower rates of successful engagement with practitioners and are thought to require different styles of engagement than women. (2008: 56)

Fletcher and Visser (2008) argue that methods employed by family service providers may engage women more readily than men in the skills they expect of clients, such as a degree of self-awareness and an ability to discuss problems openly and freely. Berlyn, Wise and Soriano (2008) suggest that there are a number of barriers to successful family service provision for men and fathers. These are entrenched stereotyped values amongst service providers about the gendered family roles of men and women; an unwillingness, among men generally, to acknowledge their support needs and to seek out professional help; a 'mother-oriented' service culture; a lack of appropriate services for clients from culturally and linguistically diverse (CALD) backgrounds, including men; a lack of knowledge amongst men about appropriate family services; men's longer working hours as a barrier to service attendance; as well as a lack of transport options to and long commuting times to local family services. These reasons may explain the gender gap in service usage in this survey.

In our survey, men were generally much less satisfied with the family services they received than women were. For an explanation of the difference between satisfaction and dissatisfaction rates, please refer to the analysis under the section 'General client satisfaction with main service used' (below). The low male satisfaction rates and high dissatisfaction rates suggest the presence of a large cohort of men who felt moderately or strongly alienated from the family services they attended, certainly amongst respondents to this survey. This is true across family violence services, children's services and property and financial services in the family law system.

The services for which men were the least satisfied compared to women were family violence services (22% of men expressed satisfaction about this service compared to 55% of women, a huge gap of 34%). Men were also less satisfied than women with services used to assist with making decisions about finances and or property matters arising from separation (37% of men expressed satisfaction with these services while 54% of female respondents expressed satisfaction, a gap of

almost 17%). Men also expressed less satisfaction than women with services used to assist with decision making about children's matters (32% of men expressed some level of satisfaction with these services, while under 49% of women expressed some satisfaction with services, a slightly smaller gap of 12%).

The call-back data (see section entitled 'Call-Back with Parents', p. 125) suggest that a key reason why men felt alienated from family violence services was because of a reluctance on the part of police and other family service providers to consider that men could also be legitimate victims of family violence and that women could be perpetrators of violence. This frustration appeared to arise from a lack of understanding amongst service providers of the specific needs of men and fathers during and after relationship breakdown.

More men were prepared to express dissatisfaction across all family services than women. Higher dissatisfaction rates may indicate a high level of alienation by men from and disenfranchisement with family services than women. Male dissatisfaction rates with family services were generally high, around 60% to 70%. The male dissatisfaction rate with services used to assist with making decisions about finances and/or property matters arising from separation was 11% higher than the rate for women (almost 60% compared with 49%). The male dissatisfaction rate with services used to assist them with decisions about children's matters arising from separation was just under 6% higher than the dissatisfaction rate for women (68% for men compared with 62% of women). The male dissatisfaction rates for family violence services were only marginally higher than the dissatisfaction rate for women who used family violence services (57% for men compared with 55% for women).

There was no uniform increase or decrease in satisfaction levels for men through the reform period (post-2006). According to survey respondents, since the amendments in 2006 men's satisfaction with family violence services decreased by 6%. Men's satisfaction with services used to assist with making decisions about finances and or property matters arising from separation remained virtually unchanged through the reform period at around 38%. However for services used to assist with decision making about children's matters, men expressed a 9% increase in satisfaction with those services after the reforms than before. This increase in satisfaction with children's services over the reform period implies that although general satisfaction rates amongst men were low and dissatisfaction rates high, the 2006 reforms may have improved some men's experiences with services used to assist respondents with decisions about children's matters arising from separation.

The combination of low service usage and high dissatisfaction with family services amongst men demonstrated in this survey may mean that family service providers and government regulators need to consider how best to respond to the needs of men. There may also need to be some wholesale consideration of ways to improve recruitment of male clients to family services after separation. Fletcher and Visser (2008) specifically examined the issue of how Family Relationship Centres (FRCs) could better engage fathers in service provision. They suggested that practitioners at FRCs may need to achieve a heightened 'cultural competency' in order to engage men and fathers further which reflects 'an awareness of masculine cultural values and the clinician's understanding of his/her own assumptions and biases about men' (ibid: 46).

Berlyn, Wise and Soriano (2008), based on their interviews with fathers and family service providers, suggest a number of strategies that could be used by family service providers to recruit more men

and fathers and, once they are there, to ensure successful service provision for this client group. These are:

- tapping into networks of other local service providers
- ‘nesting’ new services for fathers in existing successful family services
- using the strong informal word-of-mouth referral system amongst men and fathers
- locating fathers’ services with services for their children
- promoting family services in workplaces and other male ‘spaces’
- marketing strategies for family services that use ‘male’ language and that attract men
- highlighting program benefits to attract males who may be more ‘outcome focused’.

In summary, analysis of the data suggests that family services should explore how best to respond to the needs of men and how to engage fathers and men with family services after separation. Further research to examine the specific issues affecting men following separation and divorce, and their service needs, would also assist this process.

Respondents who did not use formal family services

Overall for the survey, just over 10% of respondents (n=92) told us that they had made arrangements following separation without using formal family services to assist with property, relationship or parenting arrangements following separation (refer to analysis for survey question 8 following).

There are few other studies of family disputants who have chosen not to access formal services, because of the obvious difficulty of accessing them. One large-scale 1986 Australian Institute of Family Studies (AIFS) study of financial agreements after separation suggested that as many as 20% of agreements may have been finalised without substantive formal assistance at that time (McDonald 1986: 44). Batagol and Brown (forthcoming 2010) in a small-scale study of family mediation clients, have suggested some of the reasons why parties might choose to keep their post-separation agreements informal and choose not to use law to finalise the agreements. These reasons were a lack of belief in the enforcement power of family law, an acceptance of the status quo and also the lack of need for the protective power of law. In her contact cases research, Trinder (2003: 30) uncovered a cohort of families who were content with their contact arrangements and who did not therefore seek legal advice to help them reach settlement. Amongst these families, Trinder identified almost no trace of the law’s shadow, finding that these families preferred to apply their own norms to the resolution of their issues. She suggested that in a system where legal advice was not universal, not all disputants would understand the law, meaning that agreements would be made informally according to individual norms without consistent reference to the law.

In our survey, just over a quarter of those who did not access formal services said that they preferred private resolution of their parenting dispute over the use of established services because their separation was amicable, there was no disagreement, they wanted to avoid what they perceived was an adversarial legal system or there was family violence that had ceased. We have some concern about this last reason for preferring private dispute resolution. Despite the violence being ostensibly over, the approach of negotiating without professional support or structures means that there may be few protections provided for victims of family violence, limited outside scrutiny of agreements made, and family violence may be further pushed into the private domain where it has traditionally been out of sight.

Worryingly, just under 19% of those who did not access formal services indicated that they made that choice because family violence perpetrated against them made use of the services dangerous or impossible, that is, that victims were bullied into agreements outside the formal system or that the victims rejected formal services because they would provide further avenues for abuse (such as through family dispute resolution).

We are deeply concerned about the connection between the presence of family violence and a choice to not use any family services. The responses to this survey suggest that (mostly female) victims of family violence may be failing to use, unable to access, or actively avoiding use of family services as a direct result of the family violence. There is no previous research that we know of on this issue. The fact that so many respondents to this question proffered family violence as a reason for failing to use family services makes this issue worthy of further consideration and investigation.

Satisfaction with service provision

Party satisfaction is a commonly accepted measure of the quality of any family service, although on its own it does not present a comprehensive picture of program quality.

Caution with relying on satisfaction as a key measure of service quality

In research on alternative dispute resolution, party satisfaction with the process and outcomes is a standard measure of the fairness of the mediation process. The problem, though, with party satisfaction is that it does not measure in any objective way how fair the outcome of processes such as family dispute resolution, the agreement, are. Critics of client satisfaction as a measure of outcome quality such as Tyler warn that

disputant satisfaction has a dangerously seductive quality as a criterion of evaluation. It is easy to measure and seems to have face validity. Reliance on satisfaction may not, however, be objectively justified. Disputants may not be aware of the rights to which they are entitled and may, as a result, not realize what they are giving away in an alternative dispute resolution procedure. (1989: 432)

Tyler (1989: 432–3) also argues that satisfaction with a mediocre outcome may simply reflect the mediating party's belief that they deserve little and that mediating parties may not have experienced other dispute resolution processes and consequently are not well-placed to make a judgement about the suitability of a process for them.

General client satisfaction with main service used

The survey measured both satisfaction and dissatisfaction with family services amongst separated parents. Satisfaction and dissatisfaction rates measure discrete but related phenomena (although it is acknowledged there may be some overlap: see below). Satisfaction rates tend to measure client approval or disapproval of a service. Dissatisfaction rates tend to indicate a more active alienation from and unhappiness with a service attended. As the survey responses show, low satisfaction and high dissatisfaction do not always correspond. A low rate of satisfaction usually suggests a more passive disapproval of a service than a high rate of dissatisfaction would.

Respondents were asked about their level of satisfaction with the service used. In the analysis for this question, the general 'satisfaction rate' is taken as including responses where the options 'very satisfied', 'satisfied' and 'partly satisfied' were checked. The 'dissatisfaction rate' is measured by

including the responses 'partly satisfied' and 'not satisfied.' It is acknowledged that this method may artificially inflate the number of respondents who are counted as satisfied and dissatisfied, because some of those who have checked 'partly satisfied' are both somewhat dissatisfied and somewhat satisfied. Further, some respondents are counted more than once using this method. In interpreting these results, it should be taken into account that the actual rate of satisfaction or dissatisfaction with family services may be slightly lower than what is listed here.

Adults surveyed were asked about their level of satisfaction with the main service they used for each of their finance or property matters, their family violence issues and their decisions about children's matters. These services collectively are referred to as 'family services' in this report. Respondents reported being most satisfied with services assisting with decisions about finances or property matters and least satisfied with services assisting with decision making over children. Reported satisfaction rates were low, ranging from 46% of parents satisfied with services assisting them to make decisions about children's matters, to 50% for services assisting respondents to make decisions about finances or property matters, to 48% for services assisting with family violence issues. The way we have measured satisfaction in this survey may overestimate slightly the levels of satisfaction with family services. The low level of satisfaction with family services in this survey can be contrasted with the very high level of satisfaction commonly expressed about family mediation in studies worldwide (in the 60% to 85% range), even in cases involving family violence.

The analysis of the call-back data for this survey further explores the reasons for these low satisfaction levels.

The data indicate little change in the satisfaction rates between the pre- and post-2006 cohort of parents. Satisfaction with services used for property/finance and children's disputes marginally decreased after the 2006 reforms and satisfaction rates with family violence services marginally increased for couples who separated after the 2006 reforms. This result is surprising since the 2006 reforms heralded the introduction of the Family Relationship Centre service, with a key aim of streamlining post-separation family service provision. This finding suggests that the main change between the pre- and post-2006 period in relation to family service satisfaction was a marked increase, amongst survey respondents, of dissatisfaction with the services used to assist with decision making for children's matters. Dissatisfaction rates are a useful tool for gauging levels of alienation and perceptions of poor service provision within the family law system. Dissatisfaction with children's services amongst the pre-2006 cohort was 58%, which increased to 68% after 2006, a significant increase. That more than two-thirds of respondents expressed some level of dissatisfaction with children's services after the reforms is concerning.

These figures suggest that the reporting of family violence in a relationship in itself (without differentiating between the reporter's status as perpetrator or victim) had no discernable effect on respondents' levels of dissatisfaction with family law services used for assistance with making decisions about children's or finances and/or property matters arising from separation. It may be that further analysis of data according to gender or self-identified status as perpetrator or victim of family violence could reveal an effect on satisfaction rates. Certainly the qualitative data gathered through the call-backs indicated high levels of dissatisfaction with children's services expressed by women who stated they were victims of family violence. Their responses suggested their dissatisfaction was due to their experiences of family violence being ignored, minimised or

suppressed by lawyers and judges in the system (see call-back analysis at page 125). Where respondents identified that violence was 'an issue' in their relationship with their ex-partner (without differentiating between perpetrators or victims) there was very little variation in the satisfaction rate between the violence cohort and the general satisfaction rate for all respondents, with services used to assist with both children's and property and finance matters. The low level of satisfaction with family services in this study can be contrasted with the very high level of satisfaction commonly expressed about family mediation, even in cases involving family violence, in other studies. Almost all studies of mediation in all countries indicate satisfaction rates with family mediation as being in the 60% to 85% range (Benjamin and Irving 1995; Kelly 1996: 377–8). Tyler (1998) argues that these reports of higher levels of satisfaction with mediation over adjudication reflect the fact that people value the opportunity to participate by expressing their opinions and stating their case. This is sometimes named 'procedural justice'. One 1995 Australian study of satisfaction with the conciliation counselling service then offered by the Family Court of Australia for parenting cases (similar to mediation), suggested that 84% of clients reported being satisfied with the service, with no significant difference between cases where family violence was reported as being a 'significant' issue and where it was not, nor between men and women (Davies, Ralph et al. 1995). There was also no significant difference with satisfaction with the way that the domestic violence issue itself was handled between the group that reported domestic violence as an issue and a comparison group that did not report domestic violence (ibid: 338). That finding accords with our own.

It is unlikely that the discrepancy between satisfaction rates in earlier studies and the satisfaction rates expressed by the respondents in our survey can be attributed to the fact that family dispute resolution services are now mandatory and therefore less palatable for clients. Clients completing our survey who had used services since 2006 have almost certainly been mandated to attend mediation (*Family Law Act 1975* (Cth) sec 60I(7)), probably even in cases of family violence (see Field 2005: 39). A similar scheme for compulsory family mediation was introduced in California in 1981 for child custody and visitation issues. A study of Californian family mediation in 1991 showed that 76% to 82% of clients felt generally satisfied with their mediation experience, even though it had been compulsory there for a decade (Depner, Cannata et al. 1994). That study suggested that mandatory mediation, even when the mediator had the ability to recommend a resolution to the court if mediation was unsuccessful, can produce high levels of client satisfaction.

Satisfaction with family violence services

Respondents were asked about their satisfaction with the main service used to assist with family violence issues. Family violence services were self-defined by respondents. When separated parents were asked which service they mainly used to assist with family violence issues (n=471), they most commonly listed state police services (n=133, or 28% of respondents to the question), specialist family violence services (n=113, 24%), not-for-profit community services including some of those funded under the Family Relationship Centre and Family Relationship Services Programs (n=62, 13%), counselling or psychological services, including counselling helplines (n=54, 11%) and state magistrates' or local courts (n=44, 9%). A reference to 'family violence services' in this analysis therefore is not just a reference to specialist family violence services but to a broad range of services – community, government and court based at both state and federal levels – that were employed by respondents to address issues of family violence.

For all respondents, the satisfaction rate with the main service used to assist with making decisions about family violence was just under 48%. The number of respondents who expressed dissatisfaction overall was slightly higher at 50%. This near-equal level of satisfaction and dissatisfaction with family violence services suggests a strong division of feeling about these services amongst the adult survey respondents.

Male respondents had strikingly lower satisfaction rates (22%) with family violence services than female respondents (55%). A few males expressed disappointment about the lack of support available at family violence services for male victims of violence. Both male and female respondents who stated that they were not satisfied with family violence services named state and territory police services, the Family Court of Australia and state and territory child protection services as the organisations they were least happy with. Numerous female victims of violence indicated they had visited multiple family violence services and were still not satisfied.

The gender differences in levels of satisfaction suggest that while women were generally moderately satisfied with services used to assist them with family violence in the family law context, men were less satisfied. Nevertheless, the gap between men's and women's responses was much less extreme amongst those respondents who described themselves as 'dissatisfied' with family violence services. While men may not be as satisfied as women with services used to assist with family violence, men's extreme dissatisfaction with these services is much closer to the dissatisfaction rate for women with the same services.

Looking closer at male satisfaction rates with family violence services, it appears that male respondent's satisfaction with these services has dropped since the 2006 reforms. Of the pre-2006 male cohort for the adult survey, 21% expressed satisfaction with family violence services, a figure nearly identical to the general male satisfaction rate for family violence services. However after the 2006 reforms, just 16% expressed satisfaction with the same services, a drop in satisfaction of almost 6%.

Women's satisfaction with family violence services increased slightly after 2006. This increase in women's satisfaction provides a clear juxtaposition to men's satisfaction with the same services which dropped over the reform period. Of the pre-2006 cohort of females, 51% expressed some level of satisfaction with the services they used for family violence. Fifty five per cent of women after 2006 expressed satisfaction with the same services, a small increase in satisfaction rates with family violence services of almost 4%.

Satisfaction with children's services

Of all respondents almost 46% expressed some level of satisfaction with services used to assist them with decisions about children's matters arising from separation. This is the lowest level of satisfaction expressed by all respondents with any of the services we asked about in this survey (satisfaction for all respondents with services used to assist with property or finance matters was almost 50% and was 48% for family violence services).

The dissatisfaction rate expressed by all respondents with services used to assist them with decisions about children's matters arising from separation was a high 64%. This figure suggests a significant sense of disenfranchisement and disillusionment with children's services amongst respondents to this survey. The dissatisfaction rate with children's services contrasts to the much lower levels of

dissatisfaction expressed by all respondents with property services (almost 52%) and family violence services (50%).

Men were clearly much less satisfied with services used to assist with decision making about children's matters than women. Men were also more dissatisfied with these services than women, although the gap in dissatisfaction rates was less significant than for satisfaction rates.

There was little movement in satisfaction rates with services used to assist respondents with decisions about children's matters arising from separation after 2006. However dissatisfaction with the same services rose markedly after the 2006 reforms were introduced.

By further dividing the pre-and post-2006 cohorts by gender, there were clear gender differences in satisfaction levels with children's services within the cohorts. Despite minimal movement in the general satisfaction levels with children's services between the pre- and post-2006 cohort, men's satisfaction with children's services increased while women's satisfaction decreased after 2006. The 2006 reforms may have improved some men's experiences with services used to assist them with decisions about children's matters arising from separation. However, women appeared to be much more disillusioned with children's services after the 2006 reforms than before. Whereas men appeared to have felt appeased by the reforms, women appeared to find themselves worse off than before 2006 when using services to assist them with decisions about children's matters arising from separation.

This fragmented and gendered response to the 2006 reforms echoes that identified by Dewar and Parker (1999: 18) following the introduction of the *Family Law Reform Act 1995* (Cth). Dewar and Parker argued that not only is the same message of law 'heard' more readily by some than others, but that the same message acquires *different meanings* in different parts of the system. They provided clear evidence of the existence of a differing reception and impact of the same reform Act. They claimed that fragmented understandings about the impact of law are a natural product of modern family policies, which attempt to use law to speak directly to disputing families and radiate messages about how families should resolve their post-separation disputes and re-structure their relations after separation (ibid). Without a lawyer, parties negotiating in the shadow of discretionary legal principles become heavily reliant upon 'folklore' – common, often inaccurate, understandings of what the law is and what judges and lawyers say.

Client satisfaction with services for property and finances

The satisfaction rate with the main service used to assist with making decisions about finances and/or property matters arising from separation was just under 50%. This is the highest level of satisfaction expressed by all respondents with any of the services we asked about in this survey (satisfaction rates of all respondents with family violence services was 48% and 46% for services used to assist with decision making for children's matters.)

The number of respondents who expressed dissatisfaction overall was slightly higher at 52%. The near equal division between satisfaction and dissatisfaction rates for respondents to this survey indicates that family services provision may have some way to go before more customers are happy with the service level they received.

There was minimal variation before and after the 2006 reforms in the satisfaction rates with the main service respondents used to assist with making decisions about finances and or property matters.

Gender provided the key variable in satisfaction rates with the main service used to assist with making decisions about finances and/or property matters arising from separation. Men appeared much less satisfied with these services than women. Of male respondents, 37% expressed satisfaction with the services used, while of the female respondents, 54% expressed satisfaction, a gap of almost 17%. The male dissatisfaction rate (almost 60%) was much higher than the female dissatisfaction rate (49%) with the main service used to assist with making decisions about finances and or property matters arising from separation. These figures suggest a large cohort of men amongst respondents to this survey who were particularly dissatisfied with the services they received for property or finance issues. That lower satisfaction rate for men did not vary between the pre- and post-2006 cohorts.

Client satisfaction with outcomes of disputes

Respondents appeared to be strongly dissatisfied with the outcomes of parenting decisions and, to a lesser degree, believed their children to be dissatisfied with the decisions made about parenting. A division on simple gender lines indicates that male dissatisfaction with the current parenting arrangements was slightly greater than female dissatisfaction. For men, 62.8% (n=103) either disagreed or strongly disagreed with current parenting arrangements whereas 58.4% (n=263) of females indicated such responses. Conversely 27.4% (n=45) of men and 29.9% (n=135) of women agreed or strongly agreed with this statement. Thus among both men and women levels of dissatisfaction with current parenting arrangements were high.

These satisfaction rates are much lower than the satisfaction rates expressed in the survey with the services used to reach the decision about parenting (approx 45–50%). That may add weight to the procedural justice argument: respondents to the survey appear to have valued the opportunity to participate in decision making by expressing their opinions and stating their case.

Dissatisfaction rates with outcomes in parenting cases were high. Of the respondents to the question, 59.3% (n=307) expressed disagreement with the statement 'I am satisfied with decision made about the current parenting arrangements', while 42.0% (n=260) expressed strong disagreement. Fifty one per cent (n=315) of respondents thought that their children were dissatisfied with the current parenting arrangements, with 29.8% (n=186) stating their children were very dissatisfied.

Again these satisfaction rates with the outcomes of parenting decisions are significantly lower than satisfaction rates previously seen in evaluations of family mediation and legal aid conferencing services.

An Australian study conducted early in 2000 examined legal aid family conferencing (a type of family dispute resolution) and found that three quarters of clients were satisfied or very satisfied with the outcomes and thought it was somewhat or very fair (Hunter 2002). A previous Australian study examining Melbourne community-based family and child mediation in detail (Love, Moloney et al. 1995) found that 81% of clients of both sexes from the Family Mediation Centre and 89% of males and 78% of female clients from Marriage Guidance Victoria (now Relationships Australia Victoria)

agreed that the outcome they reached in mediation was fair. Bordow and Gibson's (1994) study of the Australian Family Court Mediation Service found similarly that 87% of clients were satisfied that the agreement they reached in mediation was fair.

The call-back for this research further explored the reasons for these satisfaction and dissatisfaction rates.

Section 5: children and parenting post-separation

Part VII of the *Family Law Act 1975* (Cth), headed 'Children', provides a pathway for courts exercising jurisdiction under this legislation to exercise their discretion and impose parenting arrangements on separated parents. These arrangements may include who will have parental responsibility and make decisions relating to children's long-term future. They may also include where the children will live and with whom they will spend time.

In 2006 the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) amended Part VII. It now places emphasis on 'shared or co-operative parenting following separation'. The pathway to decision making for parenting arrangements has recently been variously described as 'complex and difficult' (Kaspiew, Gray et al. 2009:335) and 'of considerable complexity' (Chisholm 2009a: 91). Given its intricacy and density, the interpretation of this legislation has been the subject of much commentary and debate (see for example Parkinson 2006; Trinder 2009; Chisholm 2009a). In reaching parenting arrangements parties are obliged to bargain in the shadow of this legislation, and if recourse is made to the court system the court will embark upon an 11-step process to arrive at decisions considered to be in the best interest of the child (Kaspiew, Gray et al. 2009).

To achieve its objective of cooperative parenting a presumption was enacted that states, subject to certain qualifications including instances of violence and abuse, 'that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child' (section 61DA). Once an order for shared parental responsibility is made parties are obligated to share decision making relating to the long-term interests of the child (section 65DAC). Furthermore, the making of an order for equal shared parental responsibility creates an obligation on the court 'to consider' making an order for the child to spend equal time with both parents and if not equal time 'substantial and significant time' with both parents. Substantial and significant time includes weekdays, days on the weekend and holidays so that the parent may be involved in the child's daily routine (section 65DAA). The legislation does *not* create a presumption that children must spend equal time or substantial and significant time with their parents.

Section 5 of the online adults' survey asked respondents' about post-separation decision making regarding children and parenting post-separation. The object of this section is to assess the impact of the 2006 changes to the *Family Law Act 1975* on parenting arrangements. A number of significant issues/themes become apparent from the analyses and these are described in this section. A detailed analysis of questions 32 to 50 contained in Part 5 of the adult survey can be found in Volume 2, Appendix 6(d).

Parenting children pre-separation

As the survey was designed to assess parenting arrangements following separation, parents were asked who the primary caregiver(s) was prior to separation. Results indicate that despite the law

promoting equal parenting regimes or situations where children spend substantial and significant time with both parents after they separate, in the majority of cases prior to separation women were the primary caregivers. An additional interesting factor that emerged from the data is that male and female perceptions of what constitutes a 'primary caregiver' differed. Many more men than women considered themselves to be either the primary or a joint caregiver. These results largely mirror the recent findings of the Australian Institute of Family Studies (AIFS) report which noted that '[o]nly a minority of mothers in each care-time arrangement saw fathers as being involved in their child's everyday activity' (Kaspiew, Gray et al. 2009: 146). For this reason we think that, so far as reasonably practical and in the best interests of the child, post-separation parenting arrangements should be consistent with pre-separation parenting arrangements, as long as the children are safe.

Pathways to parenting arrangements

The survey examined in detail the manner in which parties arrived at their parenting arrangements and the factors that influenced these decisions. The responses to the question 'who decided on the parenting arrangements' reflected that there were three main pathways for concluding parenting arrangements:

- Parties made these arrangements on their own with the assistance of family and friends.
- Parties consulted a lawyer to obtain legal advice, and once the arrangements were concluded, a court may with the consent of the parties have made the agreements orders of court.
- Parties were embroiled in an intractable conflict and as a result parenting arrangements were judicially imposed.

A small number of respondents made parenting decisions with the assistance of a family dispute resolution practitioner. However, when responding to questions determining the factors that *influenced* the way parenting decisions were made 'information and guidance from a mediator or family dispute practitioner' received considerable support, mostly from those who accessed such services after the 2006 reforms. Data also indicates that there was a greater use of counselling services after the 2006 reforms. The increase in the number of respondents who after the 2006 reforms utilised mediators, counsellors and family dispute resolution practitioners to resolve parenting issues is likewise reflected in the AIFS report (Kaspiew, Gray et al. 2009).

Dissatisfaction with parenting arrangements was high with results indicating that, where children spent time with both parents, a large number of parents were dissatisfied with decisions made about current parenting arrangements. Moreover, the cohort of parents who had separated since the 2006 reforms showed higher rates of dissatisfaction than those that separated prior to the 2006 reforms.

Understanding the law

A number of recent reports have commented that the presumption that the 2006 reforms created in favour of shared equal parental responsibility has created widespread misunderstanding of the operation of the law. Separating parents have believed that equal shared parental responsibility meant that they were entitled to equal time, that is, 50–50 shared care arrangements for their children (Family Law Council 2009; Kaspiew, Gray et al. 2009; Chisholm 2009a). Richard Chisholm encapsulated the general confusion regarding the law: '[M]any people continue to misunderstand

the 2006 provisions as creating a right to equal time, or a presumption favouring equal time' (2009a: 125).

This study sought to determine the influence of the presumption in favour of equal shared responsibility on respondents when making parenting decisions. Results indicate that these factors have had some influence on parenting decisions, especially for women who separated after the 2006 changes to the *Family Law Act*. Apart from the quantitative evidence from which this observation is drawn, the qualitative comments in the survey responses are replete with references to '50/50 arrangements', 'equal time', '50% parenting' and the like, indicating the influence of the incorrect understanding of the law on parenting arrangements. The pressure for women to agree to such arrangements, despite them being contrary to the interests of the children, is evidenced in their comments. The responses also indicate that some men felt that their expectations about equal time parenting arrangements were discounted by the court because of systemic bias on the part of family law professionals (e.g. due to a perception that some men do not make good fathers). These findings would suggest that guidelines in the *Family Law Act 1975* (Cth) for determining parenting arrangements for the care of children (sec 60CC) should be independent of the provisions dealing with parental responsibility (sec 61DA).

Feelings of coercion and parenting arrangements

The so called 'friendly parenting' provision contained in sec 60CC(3)(c) of the *Family Law Act* appears to be one of the most controversial amendments introduced in 2006. In essence when making a parenting order one of the factors the court is required to take into account is 'the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent'. Richard Chisholm (2009a) has coined the phrase the 'victim's dilemma' to describe the difficulties that this section may present to victims of violence. Problematically, this section may discourage parents from disclosing violence to the court for fear that if the allegations are unproven they will be viewed as an 'unfriendly parent' and the very children whom they are trying to protect will be exposed to the perpetrator for longer periods (Chisholm 2009a; Family Law Council 2009).

The results of this survey support anecdotal evidence that for women in particular the fear of losing the primary care of their children was a factor influencing decision making. For the men, the fear of losing contact with their children was a serious consideration that influenced their decision making. Disturbingly, one fifth of the sample of female respondents who accessed services post-2006 said they felt 'forced' to agree or were 'bullied' into agreeing to equal time parenting arrangements with the other parent because of a fear they would lose primary care of their children.

Considerations of safety

The failure of the existing legislation to protect victims of family violence has been the subject of two recent reports (Family Law Council 2009; Chisholm 2009a). In an attempt to rectify the situation, both reports have suggested amending portions of the legislation.

A large proportion of men and women in our study indicated that concerns for their safety and the safety of their children were not heard or considered when parenting decisions were made. Females who had accessed services from 2006 onwards were more likely to express these concerns. A larger proportion of women than men emphatically responded that their children were 'not safe' when

with the other parent. The answers to the open-ended question emphasised the constant acts of violence to which child and adult victims were exposed as a result of inappropriate parenting arrangements. They also describe some of the negative consequences resulting from this behaviour. The Australian Institute for Family Studies (AIFS) report also confirmed the high proportion of parents who reported family violence prior to separation as well as current safety concerns (Kaspiew, Gray et al. 2009).

Considerations of safety were prominent in the open-ended responses to our survey, with a large proportion of women noting safety concerns for their children. These women were concerned about their children's safety because of previous violence towards them or their children by their ex. Female respondents noted that their ex had 'assaulted', 'hit' or 'thrown' the children across a room, had accessed 'guns' in front of the children, 'exposed' them to domestic violence, or 'threatened' to 'throw' their child down three flights of stairs, with a small number noting that their children had made allegations that they had been sexually abused by their father.

Men also reported physical, sexual and/or emotional abuse by the other parent typically directed towards their children. However, very few men reported having been hurt by the other parent or that they had been fearful of the other parent. This finding is replicated in the AIFS report where it was noted that mothers who held safety concerns were more likely than fathers to report that their relationship was a fearful one (Kaspiew, Gray et al. 2009).

The findings of our study, and the other studies that we have mentioned, suggest that consideration should be given to amending section 60CC(3)(c) of the *Family Law Act 1975* (Cth) to ensure so far as possible children are protected at all times from violence and abuse and parents are not discouraged from exposing violent behaviour for fear that they will be regarded as an 'unfriendly parent'. Children's safety should be given the highest priority in all parenting decisions.

Mental health and misuse of alcohol or other drugs and illegal activity

In the answers to the open-ended questions in the survey asking respondents about their concerns for the safety of their children, one quarter of the women and just over one quarter of the men said that mental health problems and/or misuse of alcohol or other drugs and/or criminal activity were a factor in their concerns for the safety of their children following separation. The AIFS report makes a similar point but their findings indicated a higher proportion of parents who reported that mental health problems and/or misuse of alcohol or other drugs were issues in their family before separation (Kaspiew, Gray et al. 2009).

Patterns of care after separation

Parents in our survey reported that the majority of children were still spending most of their time with one parent and rarely saw the other parent. However, the responses from those who had accessed services after the 2006 reforms indicated that the proportion of children spending most of the time with one parent had decreased and the likelihood of children having overnight stays with the other parent had increased. It was also more likely that children from the post-2006 cohort would spend time during the week and the weekend with each parent, that is, with shared care involving significant time with each of their parents. The qualitative responses from both men and women suggested that more mothers were litigating because fathers were making more applications in the court for shared care time with their children.

The AIFS report supports the findings of our survey and notes that ‘traditional care-time arrangements, involving more nights with the mother than father remain the most common but shared care time is increasing’ (Kaspiew, Gray et al. 2009: 135). In addition, the AIFS report supports the results from this survey indicating that parenting arrangements are not static and for the majority of respondents these arrangements have changed since separation (Kaspiew, Gray et al. 2009).

Section 6: family violence

The analysis of the data in Section 6, which focuses more deeply on family violence, clearly shows that both males and females responding to the survey experienced family violence. However reading the quantitative data alone did not show the complex nature of family violence and the contextual differences in experiences of violence for males and females. The qualitative responses to questions regarding fear and experiences of violence showed that overwhelmingly females were the victims of severe abuse, intimidation and threats. This supports Bagshaw and Chung’s (2000a) argument that quantitative data alone cannot measure or show the more complex, non-physical aspects involved or the subtle nature of the abuse of power and control in family violence, which give rise to fear and intimidation. The findings from this survey show how family violence experiences are gendered and therefore issues of gender and power cannot be ignored by service providers in the family law system when examining male and female experiences of abuse.

For example, analysis of the quantitative data showed that both men and women were frightened before, during and after separation. However, when men and women were asked to describe why and how often they were fearful, the qualitative data clearly showed that females were significantly more likely to have experienced severe, traumatic and violent acts compared to males. This was further supported by the quantitative data that showed males and females predominantly experienced verbal, social and financial abuse, but females were significantly more likely to experience physical and sexual abuse as well as threats to their life. Furthermore, compared to males, females reported that they experienced this fear on a continuing basis and this constant fear impacted on their mental health.

The analysis of the data also showed that when both men and women were asked if they thought they frightened their partner or if they perpetrated abuse, the majority always said ‘no’. This suggests that generally the respondents did not see themselves as using violence or abuse or did not admit to perpetrating such acts. It is worth pointing out that, despite the severe violence reported by females, the male respondents in this survey (who were not necessarily the partners of the female respondents) did not indicate they were the perpetrators of abuse.

Participants’ comments on the type and frequency of the violence

Men’s and women’s comments varied in their descriptions of violence and abuse and the triggers for such events. Their accounts of the violence reflected changes over time from before, during and after separation. Women described escalating abuse during their relationship, moving from verbal and emotional abuse to physical forms of abuse. For most women the violence/abuse reduced after separation because there was less contact between the parties. For some women, the existing violence and abuse escalated at the time of separation then subsided. A group reported that they

were continuing to cope with high levels of continuing abuse after separation which centred on processes related to child contact arrangements.

Examples of women's qualitative comments on the frequency of violence:

- *It started out as yelling then progressed to pushing and throwing and the silent treatment then moved on to rape and physical destruction of property.*
- *Frequency increased when I was pregnant, sick and/or we had moved away from where my family lived.*
- *It just escalated when he wasn't able to control me like he had done in the beginning and I started to stand up for me and the kids.*

The types of abuse named spanned the spectrum, but non-physical forms of abuse were more prevalent for men than for women. Men's accounts of violence were more likely to include women's relationship to agencies such as the family law system and the Child Support Agency as an abuse of them. Withholding child contact and inducing the children to have a poor view of them was named by men as abuse of them. Men also saw women's poor behaviour as an abuse of them. For example, women gambling, drinking or telling lies were named by men as being abusive toward them.

Examples of men's qualitative comments on frequency of violence:

- *It got worse when I would no longer provide her any more assets.*
- *It was very rare until she became pregnant with our child because until then she didn't feel she had any hold over me.*
- *In the last 6–12 months it became more severe, but I feel it was an intentional aim of my ex trying to get me to react so she would have cause for divorce as she is very calculating.*

Women's accounts of violence tended to more closely follow the categories of physical, sexual, emotional, financial and social abuse. For example, women named men's gambling as a *trigger* for their partner's violence but did not see the gambling itself as an abuse of them, in contrast to the views expressed by men.

The data suggest that some men may view women's non-conformance to the ideals of the feminine social role as being abusive to them as men. Men were also much more likely to attribute women's abuse or violence to physiology than were women. A number of men referred to hormones, moods, pregnancy and menstruation as triggers for women's violence or abuse, along with mental illness, and drug and alcohol use.

Women made links between men's alcohol and drug use and mental health as well as the man's level of control over them as triggers for abuse. Women named normal life events as triggers for violence as such as going to work, pregnancy or having a child, as well as men's stress levels.

The nouns used by men in relation to their ex-partner included some that expressed deep hostility to women, such as 'bitches', 'sluts' and 'prostitutes', and others depersonalised the woman by calling her 'it'. Some men used derogatory words such as 'idiot' and 'imbecile' to refer to their ex-partner.

In contrast, the nouns used by women to describe men denoted the level of threat they felt from their ex-partner such as 'predator', 'perpetrator' and 'violent drunk'.

Men nominated women's drug and alcohol use, mental illness, lack of money, pregnancy and childbirth as times when women's abusive behaviour increased. Separation and a cessation of contact, along with settling post-separation arrangements and being released from prison were named by men as times when women's abuse toward them decreased.

Women named physical, sexual, emotional, financial and social abuse behaviours and abuse of children during contact as the types of violence they were experiencing. Extended family law litigation was also seen as a form of abuse. Beatings, stabbings, strangling, rapes, pet torture, use of weapons and other high-level forms of violence were more frequent in women's accounts.

As with men, women named drug and alcohol use and mental illness as significant factors that increased abuse. Women also named pregnancy and childbirth as times when violence toward them increased. Women commonly nominated men's reduced ability to control them, such as around separation, as a trigger for increased violence.

Women who said violence had reduced since separation nominated strategies they used to limit communication and interaction and opportunities for abuse to occur. One woman noted that her ex had done an anger management course which had shifted his abuse from physical to verbal abuse.

Summary of men's responses

The types of behaviours by women that men found abusive were quite broad. Men's complaints of sexual abuse were rare. There were some complaints of physical abuse but most related to non-physical abuse. Men appeared to include women's parenting as abuse of them – specifically alienating or neglecting their children. Men also included engagement with government agencies and claiming financial support as abuse of them as well as making false allegations against them. Mothers' mental illness and drug and alcohol abuse was also seen by men as being abusive to them. The responses suggest that many men see women's behaviour which does not conform to their expectations as being abusive of them.

Men nominated women's drug and alcohol use, mental illness, lack of money, pregnancy and childbirth as times when women's abusive behaviour increased.

Summary of women's responses

Women named physical, sexual, emotional, financial and social abuse and abuse of children during contact as the types of violence they were experiencing. Extended family law litigation was also seen as abuse. Beatings, stabbings, strangling, rapes, pet torture, use of weapons and other high-level forms of violence were more frequent in women's accounts.

As with men, women named drug and alcohol use and mental illness as significant to increased abuse. Women also named pregnancy and childbirth as times when violence would increase. Women commonly nominated men's reduced control, such as around separation, as a trigger for increased violence.

Women who said violence had reduced nominated strategies of limiting communication and interaction and opportunities for abuse to occur. One woman noted that her ex had done an anger management course which had shifted his abuse from physical to verbal abuse. Separation and a cessation of contact, along with settling post-separation arrangements and being released from prison were named as times when women said the abuse of them decreased.

Frequency of violence

When asked about the frequency of violence, there were 598 responses, with 131 from men and 467 from women. The largest group of men's responses (37 or 28%) reported violence once or twice a month. The largest group of women's responses (165 or 35%) reported violence once or twice a week.

For most respondents, violence was a frequent occurrence of one or two times a month or more with four in five of all respondents accounted for in this category. However there was disparity between men's and women's reports, indicating that women are more frequently exposed to violence than men. Seventy four per cent of men said violence occurred once or twice a month or more frequently, compared to 82% of women's responses

Changes in frequency of violence over time

Two in five men and three in five women said the violence and abuse in their relationship had become more frequent or severe over time. Six hundred and ten respondents answered the question with 136 from men and 474 responses from women. The data indicates that a pattern of escalating abuse is more common for women victims of family violence, compared to male victims.

Duration of violence

There were 608 responses to the question how long violence had been occurring, with 136 from men and 472 from women. The majority group of men (n=39 29%) said violence had occurred for 5–9 years, while the largest group for women was 10 years or more (n=186 39%).

Around two thirds of respondents said the violence had occurred over more than 5 years. This data suggests that people who have partnered with people who use violence may be exposed to violence for many years.

Avoiding disagreement

Respondents were asked if they ever avoided disagreeing with their ex-partner to avoid making them angry. There were 651 respondents with 497 from women and 154 from men. Fifty-two percent of male respondents said they would avoid disagreeing with their ex-partner for fear of making them angry compared to 60 percent of women respondents.

Harms arising from violence

Respondents were asked about the degrees of physical, sexual, emotional, social and financial harm they had suffered as a result of the violence against them. Women generally rated harms arising from violence higher than did men.

A majority of men and women respondents said they suffered considerable or extreme emotional, financial and social harm. Emotional harm generated the highest proportion of men (74%) and women (87%) reporting considerable or extreme harm.

Roughly equal proportions of men and women reported considerable or extreme financial harm with 60% of men and 58% of women in these categories.

Social harm followed a similar profile with 72% of men reporting considerable or extreme social harm compared to 73% of women.

Women were significantly more likely than men to report considerable or extreme harm from physical and sexual abuse. Around one in three women reported considerable or extreme physical (29%) or sexual harm (31%). Around one in seven men reported considerable or extreme physical harm (15%) and one in five men (21%) reported considerable or extreme sexual harm.

Despite some similarities in the rates of harms experienced, particularly social and financial harms, men and women provided different descriptions of some of the harms they experienced.

In describing the harms that the violence had caused, women described social harms in terms of loss of friends due to being 'bad-mouthed' by their ex and their loss of mental health and well-being affecting their ability to form relationships. Similarly, men's accounts of social and emotional harms included loss of friends, fear of being socially denigrated, being anxious and depressed, and being unable to make friends easily.

Women described financial harms in terms of legal costs and loss of property on separation, loss of possessions due to damage or theft, becoming liable for repayment of debts, non-receipt of child support, and loss of earnings due to inability to work as well as loss of health. Men named financial harms as loss of money arising from the separation through legal costs and property settlement, loss of income through paying child support and loss of employment through the stress of separation.

Women described emotional harm in terms of loss of trust and self-confidence, depression, anxiety, PTSD, memories of violence, of knowing their children were being abused and being unable to stop it, and in terms of ongoing vigilance against continuing violence.

- *I live in the same house where it happened and eat at the table where he squeezed his hands around my neck.*

Men also indicated experiences of loss of trust and self-confidence. Men also counted the way that they felt they were perceived by agencies and services as an emotional harm to them. Some examples of this are below:

- *Social pariah, not believed and pre-judged.*
- *Social perceptions by women's action groups that fathers are paedophiles, degenerates, sex maniacs and non-payers of child support ... mud sticks.*
- *I was used and dumped by my ex-wife and the government.*

Both men and women named being emotionally unable to have sex or intimate relationships as a consequence of their abuse experiences. Many respondents spoke of chronic mental health

problems arising from their experiences of abuse. Depression, anxiety and post-traumatic stress disorder were the main conditions named by respondents. Suicidality was a prevalent theme. Respondents with mental health problems arising from their abuse also indicated that they also found it difficult to maintain employment because of their ongoing condition.

Physical and sexual injuries were mainly described by women. Some women reported damage to their vaginas and anuses requiring surgery and leaving them with ongoing problems preventing sex. Other sorts of physical injuries included a 'permanently damaged knee', 'fractured ribs', 'black eye', 'broken jaw', 'fractured skull'. Such injuries were described variously as a result of beatings, rapes, stabbings and being rammed by a car.

The contexts of post-separation violence

Both women and men nominated implementing parenting arrangements (46% men: 54% women) and making decisions about children (47% men: 55% women) as the contexts where violence against them was frequently or mostly occurring.

In no context did a majority of men agree that violence was frequently or mostly occurring. Men's responses were mainly distributed to the 'never' or 'occasionally' end of the spectrum, whilst women's responses were skewed to the 'frequently' and 'mostly' end of the spectrum.

Summary of men's responses

In terms of making decisions about children, some men felt that their ex could force decisions out of the Family Court, another commented that his ex was bitter that she lost custody, and another said he made agreements out of fear of the consequences. The court process was seen as a threat in itself.

With regard to implementing parenting arrangements, men complained that they were not able to see their children or that women wanted their own way with arrangements or that their children's conduct was consistent with them being abused.

Men complained that their ex-wives would abuse them if they did not agree to changes in parenting arrangements.

One man complained that his ex-wife objected to him audio recording child handovers whilst another complained that his ex-wife video recorded handovers. Child handovers were seen as opportunities for abuse to occur. Men complained that women incited their new partners to beat them up and they were worried for their safety.

Men's concerns generally did not involve fear for their own safety or fear for their children, but rather fear of how they were perceived by agencies and by their children.

Summary of women's responses

Women noted that they were threatened with violence and with court action if they did not agree to arrangements for children. In implementing arrangements, mothers' concerns focused on their children's experiences. They complained that their ex disregarded their child's medical needs or

prevented them from having medical care and they complained of hostile communication where they and the children were subjected to verbal abuse and demands.

Mothers worried for their children during contact and the impact of continuing abuse on the children. Attempting to change arrangements was seen by many women as too difficult or dangerous as it required them to engage with their abuser. Some women said they just gave in to avoid escalating abuse.

Child handover was a flashpoint for violence, with mothers complaining of being abused in front of the children, of their ex dropping the children at a distant place or refusing to return them. Women reported being raped, run into by vehicles, stalked, assaulted and verbally abused.

Disclosing violence

Being a victim of violence and being too afraid to tell anyone was a problem for around two in five women and one in three men.

The post-2006 data showed that men's and women's experience of violence from their ex-partner and being too afraid to tell anyone affected around two in five men and women.

Three percent of men and one percent of women had been violent but never admitted to it. In the post-2006 data analysis women's responses remained the same and men's responses fell to two percent.

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

Men (28%) were slightly more likely than women (24%) to conceal violence against them because they were afraid of the consequences. In the post-2006 data 36% of men and 23% of women said they concealed violence against them due to the consequences.

Men (41%) were more likely to have allegations made against them and to deny these allegations, compared to women (16%). In the post-2006 data set, this pattern remained the same for men but 22% of women said they had denied allegations against them, possibly indicating a rise in the number of allegations men have made against women since 2006.

Men (16%) were more likely to have conceded to allegations they had engaged in domestic violence compared to women (5%). Women (42%) were more likely than men (28%) to see this as not relevant to them. In the post-2006 data, 25% of men said they had conceded allegations against them compared to 2.5% of women. This possibly indicates that men's willingness to concede to allegations of violence has increased since 2006.

Men's and women's responses to the issue of being believed

Both men and women claimed there was systemic bias against them. Men tended to locate this bias in the state system of agencies directly responding to violence such as police and state courts, whereas women more often saw this bias expressed in the family law system.

Women wanted the DVOs and the family law system to protect them and their children from violence by their ex-partner. Many women commented that the family law system meant they were unable to protect their children from their ex-partner's abuse. Men commonly saw DVOs and the family law system as being used against them by women to gain advantage for women. Some men also saw the family law system as failing to protect children from exposure to abuse by mothers and their partners.

A minority of men and women felt their allegations of violence were believed or taken seriously. Women (34%) were more likely than men (19%) to feel believed and taken seriously, but around half of both men and women respondents felt their allegations of violence by their ex were not taken seriously. In the post-2006 data 19.5% of men felt believed and taken seriously but the proportion of women who felt this way dropped to 28%. This may indicate that the 2006 changes introducing penalties for false allegations of violence have fostered beliefs that allegations of violence are more likely to be false.

Men (24%) were more likely than women (15%) to feel their denials of family violence were believed than were women. Men (41%) were also more likely than women (30%) to feel their denials of violence were not taken seriously. In the post-2006 data 27% of men felt their denials of family violence were taken seriously compared to 15% of women. The data reveal a trend for men to feel that their denials of family violence have been increasingly taken seriously since 2006 whilst there was no change in women's experience.

In qualitative responses, women reported difficulties in being believed when the violence was not physical, or when they had not moved to secure proof at times of physical assault. Counter-allegations of abuse were a tactic used by perpetrators to confuse the situation.

Women were not always successful in obtaining domestic violence orders (DVOs), either because these were contested, or there was insufficient evidence, or there was a counterclaim for an order. Some women spoke of being abused by their ex during court proceedings to obtain a DVO.

Some women said they felt believed and supported by police and other agencies responding to violence but discounted in the family law system. Many women expressed fear about raising violence they could not prove and being seen as an alienating parent and punished by the family law system. Women spoke of judges being 'abusive', 'scathing', 'trivializing', 'unsympathetic' or 'unwilling'. A number of women felt that there was an active bias towards fathers in the family law system.

A number of men contested definitions of violence and abuse, particularly where the conduct was not 'scary'. They saw allegations of violence as false and a distraction from the mother's conduct. A number of men expressed beliefs that women were believed and men were not believed when they were victims of violence. Some men noted differences in state and federal agencies and saw the family law system as being more inclined than police to support them. Men saw domestic violence orders as a tactic for the family law system. Men too noted that violence to children was discounted in the family law system.

An overview of the women's qualitative responses

Women reported difficulties in being believed when the violence was not physical, or when they had not moved to secure proof at times of physical assault. Counter-allegations of abuse were tactics used by perpetrators to confuse the situation.

Women were not always successful in obtaining domestic violence orders (DVOs), either because these were contested, or there was insufficient evidence, or there was a counterclaim for an order. Some women spoke of being abused by their ex-partner during court proceedings to get a DVO.

Women often felt believed and supported by police and other agencies responding to violence but discounted in the family law system. Many women expressed fear about raising violence they could not prove and of being seen as an alienating parent and punished by the family law system. Women spoke of judges being 'abusive', 'scathing', 'trivialising', 'unsympathetic' or 'unwilling'. A number of women felt that there was an active bias towards fathers in the family law system.

An overview of the men's qualitative responses

A number of men contested definitions of violence and abuse, particularly where the conduct was not 'scary'. They saw allegations of violence as false and a distraction from the mother's conduct.

A number of men expressed opinions that women were believed and men were not believed when they were victims of violence. Some men noted differences in state and federal agencies and saw the family law system as being more inclined than police to support them. Men saw domestic violence orders as a tactic for the family law system. Men too noted that violence to children was discounted in the family law system.

Domestic violence orders (DVOs)

Domestic violence orders had been applied for by 28 men and 239 women respondents to the survey. 45 men and 24 women had a DVO against them. 215 respondents said their DVO had been breached. Of these 22 were men and 193 were women. Police attended breaches of DVOs in 156 cases, of which 24 were men and 132 were women.

Police prosecuted breaches of DVOs in 78 cases (15 were men and 63 were women). On this data police prosecuted a higher proportion of breaches of orders for male victims (15 of 24 = 62%) compared to women (63 of 132 = 48%). There was a guilty verdict in 67 cases of police prosecutions for breaches of DVOs. Nine of these were men and 58 were women.

The data showed that when police did prosecute breaches of women's DV orders, there was a higher rate of success with 44% for women and 37% for men. This indicates that the threshold for prosecution of breaches of women's DVOs was higher and the likelihood of success was therefore also higher.

When the post-2006 data was separately analysed, there was a small (4%) decline in the proportion of breaches of DVOs prosecuted by police. The success of prosecutions also changed post-2006, with a decline in overall successful prosecutions of breaches from 42% to 37%. Post-2006 successful police prosecutions of breaches of men's DVOs rose from 36% to 50% while the success rate for prosecutions of women's DVOs fell from 43% to 35%.

The data indicate that since the 2006 changes it has become harder for women to secure guilty verdicts for their ex-partner's breach of DVOs and easier for men to do so.

Implications for policy and practice

Experiences of family violence and abuse are common in the population of separating parents compared to all families with dependent children.

Women in this study reported more prevalent, frequent and severe violence and abuse and commonly linked the violence to the difficulties of protecting themselves and their children. Men reported primarily non-physical forms of abuse and included conduct such as women's spending and drinking as abuse of them. Men commonly linked women's abuse of them to using the family law and child support systems to deprive them of their children and of financial resources.

Analysis of the data suggests that the qualitatively different experiences that men and women identify as family violence should be better understood by family law professionals and rigorously analysed in further research, including men's and women's descriptions and experiences of the different types of violence (physical, sexual, psychological, emotional, verbal, financial, social and neglect), the motives for violent, abusive and controlling behaviours, the violent tactics used, trigger points for violence, the frequency and duration and the impacts and effects of the violence on male and female victims and their children.

The analysis of our data also highlights that mental illness and substance abuse are important factors that can be linked to domestic violence. Mental illness can be a cause, context for or consequence of separation and can be caused by and/or exacerbate family violence and therefore all screening and assessment processes should take this into account. There also should be improved links between the family law system and state and territory government agencies such as police, corrections, health, child protection and domestic violence services in relation to family violence, in particular with regard to assessment, record keeping and the delivery of timely and professional responses to allegations of family violence. Safety of the victims of violence should be given the highest priority in all family law decision-making processes.

A more detailed analysis of Section 6, Family Violence, with quotes from respondents and tables and graphs can be found in Volume 2 of the report, Appendix 6(e).

Section 7: children and violence or abuse

This section summarises the online survey responses from parents to questions about the nature and effects of family violence on their children. Parents were given the opportunity to provide both quantitative and qualitative data which, in combination, offer rich insights into their perceptions and understandings of their children's experiences. This overview and summary will focus more on the qualitative responses from parents. The more detailed analysis of the quantitative data, with graphs, can be found in Volume 2 of the report, Appendix 6(f).

The respondents were far more likely to report that the other parent had abused their children. The majority of the 628 respondents who said they had engaged in abusive behaviours toward each other (58.9% in total: 76 males and 295 females) said that their children had seen *and* heard abusive behaviours. In addition, 11.9% said their children had *seen* the abuse and 15.9% said their children

had *heard* the abuse. Only 13.1% of these parents said their children had *not* seen or heard the violence and abuse.

Five hundred and eighty-eight parents responded to questions about the extent to which seeing and hearing violence had harmed their children. The majority of parents (on average more women than men) thought it had harmed their children psychologically and emotionally (41% considerably and 23.4% extremely), educationally (28.7% considerably and 16% extremely) and socially (28.4% considerably and 17% extremely).

Respondents (638 in total: 157 males and 477 females) were more likely to report that the *other parent* abused their children. More male respondents, however, said that their ex had *not* directly abused their children *physically* (44% of the males and 35.4% of the females), and more females said that their ex *had* directly abused their children physically (48.3% of the females and 32% of the males).

The majority of the respondents also did not believe that their ex had directly abused their children *sexually* (69.3% of the males and 67.2% of the females) but a significant number from each sex were either 'not sure' (24.2% of the males and 23.3% of the females) or believed that sexual abuse had occurred (6.5% of the males and 9.5% of the females).

The vast majority of male and female parents stated that their ex directly abused their children *psychologically and emotionally* (65.6% of the males and 73.8% of the females, 455 in total).

Respondents were asked to mark on a five-point scale the extent to which direct abuse of the children by one or both of the parents had harmed the children:

- Of 502 respondents, **70.9%** (75 males and 281 females) thought their children were 'considerably' or 'extremely' harmed emotionally/psychologically.
- Of 490 respondents, **60.4%** of the stated that there was 'no harm' or 'little harm' physically, however 24.3% (19 males and 103 females) stated that it had caused 'considerable' or 'extreme' physical harm.
- Of 499 respondents, **50.7%** (54 males and 199 females) thought their children were 'considerably' or 'extremely' harmed socially (e.g. through disrupted peer relationships).
- Of 501 respondents, **46.1%** (53 males and 188 females) thought their children were 'considerably' or 'extremely' harmed educationally.
- Of 485 respondents **19.8%** (15 males and 52 females) thought that their children were 'considerably' or 'extremely' harmed sexually.

Qualitative responses from parents about the nature of the family violence that their children experienced

In the qualitative responses from 256 parents (197 mothers and 59 fathers) many of the mothers stated that family violence (violence against women and children in particular) was difficult to prove, in particular when the abuse was not physical, and they stated that they were often disbelieved by professionals in the family law arena, in spite of providing evidence. A few of the 59 fathers who responded to the open-ended question stated that they were falsely accused of being violent or abusive to their children. Even when there was evidence to substantiate claims that children were

being abused and that the abuse was serious there were many concerning reports of child protection services and family law professionals failing to intervene to protect the child. This has already been noted in other sections of the report.

Qualitative responses from mothers

In the 256 qualitative responses from the mothers to the open-ended questions there were many *repeated and overlapping* statements made across the responses about **males' abusive behaviours toward** children and some of these abuses were extreme. The following examples have been clustered under the categories of abuse that they described (please note that the categories interrelate and overlap):

Psychological/emotional abuse

Many mothers described fathers' psychological and emotional manipulation of children through guilt, punishment and by '*using lying tactics*' with children and other people in their family circles, church groups and so on. They also described very controlling and intimidating behaviours of fathers as scaring children who were always on their best behaviour for fear of getting into trouble. Where fathers were the alleged perpetrators of violence the mothers described their children as being fearful of their fathers, e.g. a 2 year old being scared of the front door since access with father started; a father putting a young child in a strange room with the light off and door shut without a comforter (e.g. teddy) when on overnight visits causing fear; other children experiencing fear, panic and anxiety because of fathers refusing requests from children to contact mothers when they wanted to, locking children in rooms and threatening them (e.g. a father saying to his children: '*there is a heaven and hell and some people will be going to hell – your mother is a bad mother and will never win this*'). There were many reports of fathers threatening to kill all the children, one driving dangerously '*using the car as a weapon to kill us all*', other fathers threatening to kill the mother (one three year old saying '*daddy is going to cut mummy and burn mummy*') and other fathers threatening and attempting to kill themselves (all in front of the children). There were many statements about children being alienated from mothers by fathers who constantly denigrated the mothers, by fathers making children's contact with mothers difficult and by asking children to keep secrets from mothers. One father told the children they would be locked up by the police if they contacted the mother. Some stated that grandparents and other paternal family members used emotional and psychological abuse by putting the mothers down in front of the children. There were also many reports of children witnessing ongoing violence by fathers toward their mothers causing the children to have '*ongoing flashbacks*' and other disturbances; fathers frightening children by leaving them alone in the house for long periods of time; fathers prioritising their own needs above the needs of children, e.g. by not providing financially for them, and neglect from fathers having no or little contact with children, not being available to them and not playing an active role in parenting. There were also a few reports of emotional and physical abuse and neglect of children from some stepmothers, in particular when they had their own children, and from paternal grandmothers.

Physical abuse and neglect

Many mothers gave accounts of fathers physically abusing them and the children: for example, fathers physically abusing mothers in front of the children e.g. '*hitting me while they watched and*

couldn't help me'; physical abuse of mothers during pregnancy; many accounts of fathers hitting, punching or smacking children across the head; poking, pushing or shoving them and/or hitting walls; throwing objects (including a computer, plates) at children – often causing serious bruising to various parts of a child's body; throwing a child down the stairs; and of harsh spanking under the guise of discipline. One mother stated that the father *'holds my son out of a window with a 4-metre drop to rocks below'* and the son *'can't find his voice to call for help'*. Many examples were also provided of fathers stalking and of physical neglect of children, e.g. fathers leaving children alone and unsupervised for long periods of time without food; fathers drunk or drugged all day when they were meant to be looking after the child. In one family the children were terrified by a father at changeovers when he kicked the ground and a car, rammed the car when children were in it and smashed the passenger window repeatedly with a steering lock. Many examples were provided of fathers handling small children roughly, for example one drug-addicted father dropped his small daughter twice, gave her gastroenteritis by refusing to wash his hands, threw objects at her and threatened to kill her twice in front of the mother. In this case the mother was encouraged not to present a DoCS report in court as evidence, for fear of being labelled as *'an alienating parent'*. One ex-husband's partner locked herself and her own child away and refused to care for the daughter when on visits.

Verbal abuse

Many mothers reported that fathers yelled at and insulted their children and *'made them scared'*; that fathers used derogatory language toward them, e.g. *'little cunt, fuckin' bastard'* (to a son) and *'fat, no good, hopeless idiot'* (to a daughter) and threatening language, e.g. *'My eldest has nothing to do with his father any more because his father left a threatening voice message saying that he would "come and find where you are working and bash your fucking head in"'*. Many stated that fathers verbally abused the mothers in front of the children and encouraged the children to join in; that fathers constantly said derogatory, denigrating, blaming and guilt-producing things about the mothers to the children and that fathers engaged in *'emotional blackmail'*. Some reported that step-parents verbally abused their children.

Sexual abuse

Statements from mothers about sexual abuse included a father watching 'porno flicks' with his 8-year-old son – she reported this to the police and a child protection agency who told her *'it wasn't a problem, they had more serious cases to deal with, go home'*. Another said the father showed a strong interest in porn in the presence of his daughter and her friends and the daughter now shows unusual and provocative behaviour after returning from her father's house. Other mothers reported father-in-laws being sexually abusive to children. One daughter disclosed to a mother that she had been sexually abused by two men involving strangulation when with her father, muffling her voice. Another mother stated that the children were returning home from visits with the father with *'love bites'* on their face, neck and arm and, in spite of warnings and counselling, the father repeated the behaviour. One mother stated that her children complained that the father molested them in the shower, telling them *'to clean daddy's willie'*; others reported *'sexualised touching'* by fathers and sexual abuse from other family members – one boy from a paternal grandfather when he was 4 years of age, two from uncles, another from a father-in-law; others reported sexual abuse by non-family members (e.g. the father's friend) when in the care of an abusive father. There were other

potentially concerning statements from mothers, such as one father making a young daughter sleep with him and another making his daughter shower with him – both warning the children not to tell the mother; a father exposing his erect penis to a child, pulling down the child's pants to expose her bottom and pinching her on the bottom; another father entering his teenage child's room naked in the middle of the night and frightening the child who screamed and rang her mother on the mobile phone. Mothers stated that child sexual abuse is *'hard to prove'* even when there are symptoms, e.g. one mother said that her 18-month-old son complained about *'being sore on the inside'* and *'bleeds a little and is red'* after visits with father – he also reverted to using nappies, had delayed speech and other symptoms but she stated that she needed more evidence. In another case a GP and a social worker were concerned about sexual abuse because of a child's sexualised behaviours, but there was *'no conclusive evidence'*.

Financial abuse

Many mothers complained about fathers not providing for the children financially.

Systems abuse

One mother claimed that sexual abuse substantiated by DoCS was ignored by a Family Court judge; another claimed that affidavits about sexual abuse were ignored by a Family Court judge; others claimed that hospital and other professional evidence of sexual abuse by fathers was not taken into account by courts when granting shared parenting arrangements. Other mothers also complained that little or no action was taken by courts or child protection agencies when abuse was reported and many said that children were not interviewed or examined. There were also many reports that mothers' and children's statements about abuse were not believed – e.g. *'my daughter made statements to the CPU of the police, her clinical psychologist and GP – but the DCP would not believe them'*. Many mothers also reported that fathers were lying in court and believed without any investigation and others complained that professionals in the family law system failed to listen to professionals who operated outside of the court: e.g. a mother reported that her children told their teachers about their father's cruelty and abuse and also told a Family Court psychologist who met the children once and the mother once; the psychologist said the mother was *'coaching'* the children and *'imagining the acts'*. In one case numerous instances of the father's physical assaults and neglect of his young children were provided to various departments (including police and DoCS) who failed to investigate or act in spite of photographic and other evidence. To quote one mother: *'I have evidence that psychologists, child psychiatrists and doctors think is relevant but child protection does not'*. Another mother said: *'I do not trust the legal system or child support agency to do the right thing'*. Yet another said: *'evidence of abuse was frequently not admissible in court because it was obtained in confidential circumstances, such as in counselling'*. After describing instances of serious abuse, she went on to say: *'Whilst several counsellors told my ex that his behaviour was abusive, they did not mention this in their reports and tended instead to talk about "conflict" and the needs of the children, etc.'*

Mothers also reported that their children were too afraid to go to court. Some mothers also reported failures in their informal support systems, e.g. *'Went to the police, church elders and family, but no follow up or help given. No-one wanted to confront him about it, but all could see the children were mistreated psychologically and emotionally.'*

Additional examples of systems abuse provide by mothers included: one mother claiming that her children were abused financially by the Child Support Agency because they refused to initiate a change of assessment; fathers intimidating mothers '*with knowledge of the system and of what can be used as evidence*'; and systems abuse by the court processes, counsellors and lawyers.

Qualitative responses from fathers

In contrast to the responses from mothers, in the 59 qualitative responses from fathers there was *very little repetition or overlap* in fathers' statements about abusive behaviours towards children, partly because there were fewer and less detailed responses provided and partly because the men tended to focus on different things. When describing the abuse towards their children they focused more on the mothers' emotional and psychological abuse of their children, which they found difficult to prove, and abuse of children from stepfathers. Four stated that false allegations had been made by mothers about them being violent, and many commented on the denigration of them as fathers by their exs and other maternal family members, including grandparents, which they stated had alienated them from their children. Two fathers also believed that the fact that their children were in counselling was evidence that abuse had occurred. The following are examples of other statements from fathers about the abuse of their children, which have been clustered under the same headings as for the responses from the mothers.

Psychological/emotional abuse

One father stated that there was '*ongoing misrepresentation of the facts to the children*' by the mother. Other fathers stated that the mothers spoke about them in derogatory ways in front of the children – e.g. '*urging children to agree*' or '*working on the kids to bring them around to what she wants from the situation*' and used the children as a '*communication conduit*' between them. Mothers, grandparents and stepfathers were accused of undermining children's feelings and emotions in relation to their fathers. One stated strongly that the '*systematic, deliberate and prolonged denigration*' of him with the children '*broke all the rules of fair play*'. Another father reported that family reports have cited '*child alienation*' by the ex and another that his child '*suffered from the Parent Alienation Syndrome and was possibly hypnotised by my ex's friend*'. Other fathers stated that the mothers mentally and emotionally abused their children, one having recorded phone calls to prove it. One stated that the mother's ongoing emotional abuse of the children was extreme, requiring counselling for the children, a statement initially supported by the 'court psychiatrist' but 6 weeks later retracted when the mother was reported as being a 'fit' parent. One father reported that his ex threatened to kill all of the children and was hospitalised. He said that the children ask to stay with him but: '*I say no because the law supports bitches and sluts ... I cannot help you*'. One father stated that his child had witnessed domestic violence which must have affected him and that he was neglectful at times because of depression resulting from the domestic violence. Another stated that he was suffering from 'post-traumatic stress disorder' as a result of false allegations made against him.

Physical abuse

Two fathers described physical and emotional abuse by the mother and her boyfriend(s), stating they had seen bruises; one obtained an intervention order, the other reported bruising to a son's upper arms as a result of being held by the stepfather. Yet another had photos of scratches on his

child's bottom that matched finger nails. One mother was not permitted to let her new partner to physically discipline the children as he had been *'too heavy-handed with them'*, although the father stated that she also *'hit them with belts, burnt them with smokes, etc'*. There were a few descriptions of mothers' partners physically disciplining children. One described punches to a 4-year-old child's mouth by a mother, breaking two front teeth, and stated that this abuse had continued for 5 years. Another described his ex as *'a drug addict, no job, no money, evicted often, has lived with 13 different men since separation. Subpoenaed police records proved violence and abuse in my ex's home with my daughter there.'* One father admitted that he had smacked his child a number of times to reinforce discipline related to safety issues, or to break a tantrum, and on 2 occasions had smacked him and used other forms of discipline because of his *'emotional state at the time'*, which he classified as *'unwarranted'*. The same father described the mother as failing to change soiled nappies, missing meals, giving the child an *'inappropriate diet'*, cutting off contact with the father and instilling *'irrational fears'* in the son with regard to swimming. He had seen bruises on his son and stated that the grandparents had also smacked and shouted at the child. Another stated that his ex was at a hotel until 4 am, leaving the child at home alone.

Verbal abuse

A few fathers described mothers as yelling and screaming at the children, verbally berating them, stepfathers verbally abusing the children and mothers verbally fighting with their new partners in front of the children. One described a maternal grandfather as being *'aggressive, short tempered and constantly yelling'*.

Sexual abuse

One father stated that the stepfather was found guilty of child sex offences against the daughters and only incurred a *'\$700 fine and a good behaviour bond'*. Another stated that his 10-year-old daughter told him that the mother's new partner *'touched her in a way that her made her feel uncomfortable'*; another said his eldest child had complained to the police about abuse from the ex's boyfriend but when DoCS investigated *'she would not talk as she had been threatened by her mother'*. Yet another stated that *'evidence has different meanings in different courts'*, giving an example of evidence of sexual abuse of a daughter by a mother using a metal object to sexually injure the daughter to fabricate evidence, to accuse him of sexual abuse. He said that the Family Court and Children's Court accepted this as evidence of the mother sexually abusing the child, but not the Criminal Court.

Systems abuse

One father stated that his children had been abused financially by the CSA who refused to initiate a change of assessment *'because the legislation says "may" and the SSAT continued that abuse'*. Another father stated that *'the laws favour females in terms of abuse and would need hard evidence'*. Another complained that a court psychologist only saw his children for 30 minutes and the children were *'quiet and refused to answer questions'* and the mother sat outside the door. He stated that the *'system is a complete joke. No-one believes mothers can act like this. The father cannot do anything to get it [abuse] investigated.'* Another father stated that his ex had *'blatantly lied in court'*.

Nature and severity of harm to the children

When asked to describe the nature and severity of the harm to their children as a consequence of family violence, 304 parents also provided extensive qualitative responses.

Summary of the analysis of the qualitative responses from 232 mothers

Many mothers described children who had been abused by their fathers as needing regular ongoing counselling and as having serious psychological, emotional, educational, physical and social difficulties. Statements about the effects of the abuse on their children were repeated and overlapped markedly across the responses from all mothers. Mothers also noted that individual children in a family responded differently and that behaviours improved once contact with the abusive father ceased.

Repeated statements from mothers have been summarised and clustered into different categories (which interrelate and overlap):

Psychological/emotional effects of violence on children: emotional instability and fragility; serious emotional distress; irrational worry; complete emotional breakdown; more deviant; scared, unhappy, timid, moody, confused, sad and/or guilty; high levels of anxiety and/or depression; panic attacks; 'clingy', crying a lot for no reason; low self-esteem, loss of sense of self, less confident; very controlling or passive; extreme bursts of anger and violence or aggression; trying to 'keep the peace' with their father to avoid conflict or abuse, frightened that they may do or say the wrong thing; suicide attempts; young children (male and female) and female adolescents fearful of men; frequent nightmares; episodes of psychosis. Labels given to children's behaviour which were attributed to experiences of family violence included: 'post-traumatic stress disorder' (PTSD), 'ADHD', 'OCD', severe 'CAP disorder' (see the Glossary), dissociative personality disorder, oppositional defiant disorder, autistic-like behaviours, sensory processing disorder, anger management problems.

Verbal effects on children: children swearing, yelling, shouting, abusive; not as communicative; children copying fathers and speaking in a derogatory manner to mothers; young children delayed in speech milestones.

Physical effects on children: evidence of cigarette burns, bruising, cuts, scratches and other physical injuries; experimentation with and abuse of drugs and alcohol; bed-wetting and regression in toileting; physical violence towards other children; physical threats to family members; self-harming; nausea, headaches and other health problems; more frequently sick; comfort eating, anorexia and other eating disorders; difficulty sleeping, won't sleep alone; 'tiredness from going to and fro each house'; nail-biting; young children sometimes demanding constant breastfeeding after visits with father; a child fed a bottle of Panadol by her father 'because she was being a bitch' and brought back to mother unconscious.

Sexual effects on children: inappropriate sexualised behaviour; sexually active at a young age; 'advanced interest in sexual issues beyond his years after viewing pornography'; sexually transmitted diseases; father 'puts objects up the children's bottoms leading to rectal bleeding and tears and fissures in the anus'; sexual abuse linked to eating disorders; 'problems around his bottom'; 'cream on children's genital area when there is no rash'.

Educational effects on children: considerable periods off school; dropped out of school or left school early; truancy; unable to cope with schooling; failure or regression in learning and schoolwork; difficulties making friends at school; bullying or being bullied at school and/or violent behaviour towards other children; poor concentration; frequent punishments from teachers for poor behaviour; academically and socially compromised at school; secretive about home life at school; isolated and withdrawn at school.

Social effects on children: trouble empathising with others; anti-social, poor social skills, difficulty making and maintaining friendships, poor relationships and fewer friends; shy, reclusive, socially isolated and withdrawn; often hitting other children; fearful of adult men; inability or poor capacity to trust others; easily controlled by or controlling of others; hypervigilant, overprotective of mothers; inability to trust or develop healthy connections to adult males; daughters choosing overly aggressive, controlling and/or dominant boyfriends; young people concerned about future relationships; disrupted family relationships; young children afraid to be left alone with other people; isolation from others as a coping mechanism to ensure their own safety; suspicious of new people in their lives; questioning of authority figures. Some mothers reported children experiencing extreme control of their social activities when with their father, e.g. unable to join sporting teams.

Summary of the analysis of the qualitative responses from 72 fathers

There were fewer qualitative responses from fathers on the effects of violence and abuse on their children and those provided were less detailed and less repetitive than the mothers' statements, although there was some overlap between the responses from men. Many fathers' comments tended to focus less on the effects of violence or abuse on the children and more on the effects of their absent, diminished or misrepresented role as fathers on their children. For example:

- *They are given a one-sided view of who their father is.*
- *There is a misrepresentation of truth about fathers.*
- *Criticism of me by my ex and her family which has caused my discipline efforts (non-physical) to be thwarted and viewed as abuse when they were not.*
- *Emotional abuse occasioned by severely reducing our son's time with myself.*
- *Because of no contact how can any of this be my fault?*
- *My children cry and say they miss me.*
- *Poisoning of female children's concept of father and paternal grandparents.*
- *Three of my children have grown up without knowing their own father – so unnecessary.*

One father who reported that his child was 'scared of his mother' complained that 'no-one, especially the children's rep, will protect or recognise the ongoing harm our child suffers'.

Other reports from fathers on the effects of violence and abuse on their children have been clustered into different categories below, however many of these are provided as individual comments as they were not repeated in other fathers' statements.

Psychological/emotional effects of violence on children: emotional distress; low self-esteem and self-confidence; emotional trauma from being cut off from family and friends; a child fearful of anyone drinking alcohol; issues with anger management; confusion; 'elevated anxiety'; 'clingy'; more deviant; children intimidated, scared and unhappy; non-specified effects on a child of watching violent and sexual movies with a mother; children in one family witnessing drug abuse and violence; emotionally neglected by a mother; a boy crying frequently and not sleeping alone or in his own bed for several months; two reports of children being scared of their mothers, including one of children living in constant fear of upsetting their mother. Labels given by fathers to children's behaviour included: ADHD, ODD and attachment disorder; selective mutism; separation anxiety. One mother was labelled by a father as having suspected Munchausen's disease thereby damaging the children emotionally and physically.

Verbal effects of violence on children: one adolescent boy reported as being 'difficult, violent and abusive'.

Physical effects of violence on children: a child affected by being 'bashed' by a mother and her boyfriend and by watching them bash each other; chronic bed-wetting; adolescents more inclined to experiment with drugs and alcohol; a child reported as being hungry as mother was absent all day and the damaging effects on the same (asthmatic) child of a mother's chain-smoking; eating disorders; physical aggression at school including one case of 'biting'; in one case 'stinking clothes due to lack of washing'; developmental delays in one child.

Sexual effects of violence on children: one report of sexual abuse but the details were not specified.

Educational effects of violence on children: serious problems with schoolwork; dropping out of school; boys disruptive and aggressive at school; trouble making friends at school; a child refusing to participate at school for 6 months due to reduced contact with father; schooling affected by a child making many moves, missing school or being late to school; educational neglect.

Social effects of violence on children: effects on children of being cut off from a large, extended family circle including grandparents; 'children confused and socially embarrassed by things being said about their father'; 'may affect future relationships'; damaged ability and capacity to trust others; peer relationships behind for a son's age group; difficulty making friendships; a son a target of bullies as he 'is unable to stand up for himself'; constant reports to father of one son failing to connect socially.

The effects of violence on children: overview of the findings and implications for policy and practice

The data collected in relation to the children's experiences of family violence and the effects of that violence in this section are very similar to data collected in our prior studies of children from separated families, in particular from our research with children whose parents had separated and who had been subjected directly or indirectly to family violence (Bagshaw, Chung et al. 2000; Bagshaw and Chung 2001; Bagshaw, Campbell et al. 2002; Shea Hart 2003, 2004; Bagshaw, Quinn et al. 2006; Bagshaw 2007; Shea Hart and Bagshaw 2008). In spite of considerable research that has demonstrated the devastating long- and short-term effects of direct and indirect family violence on children it is clear from statements made by both mothers and fathers in our survey that their children had been harmed (some severely) emotionally, psychologically, physically, sexually,

educationally and socially by family violence, prior to, during and after separation, and that the system did not always respond appropriately. When responding to questions more emphasis was given by parents who had attended services since the 2006 changes to the *Family Law Act*, in particular by mothers, on their inability to 'prove' violence, their frustration at not being believed when they reported violence, and on the failure of key family law professionals to respond appropriately when violence against children was reported, even when evidence was provided by other professionals outside of the family law system. Many stated that they feel powerless to act and, as reported elsewhere in the report, in many cases they said they were advised by their lawyers not to mention the violence for fear of being viewed as an 'unfriendly parent' and losing their children.

In our research more mothers responded to the online survey than fathers, and when asked the mothers gave much more detailed accounts of the nature of children's experiences of abuse and of the effects of the abuse on children than did the fathers. The fathers who responded tended to focus more on attempts by mothers, maternal family members and the courts to alienate them from their children, in spite of the 2006 changes to the law that promote shared parental responsibility and emphasise the importance of shared parenting. A few fathers also complained about false allegations of violence. Some fathers stated that they were concerned about the abuse that their children were subjected to by mothers, in particular emotional and psychological abuse, and some also reported verbal, physical and sexual abuse perpetrated by their mothers' partners and maternal grandfathers. They also stated concerns about their inability to 'prove' that child abuse had, or had not, occurred and the failure of the system to respond appropriately to reports of the abuse of children both before and after 2006.

In 1991, Australia became a signatory to the United Nations Convention on the Rights of the Child (UNCROC) but it seems that in reality the rights of children are still given little prominence in legislation or in public or governmental discourse (Campbell 2005, 2008b). The particular rights of children under the convention that relate to family law and family violence are outlined in Article 19,⁷ which emphasises the need to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The findings of this study demonstrate that in many cases children's rights to safety had not been prioritised in family law legislation when the parents separated or divorced, or in the application of such legislation, rather the more recent trend appears to be for family law decision makers to focus on shared parental responsibility and the rights of parents to have a 'meaningful relationship' with

⁷ United Nations Convention on the Rights of the Child 1989, Article 19:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

their child(ren), with the overriding assumption that spending equal time with both parents is in the 'best interests' of children. This has also been supported by the recent findings of the Australian Institute of Family Studies research (Kaspiew, Gray et al. 2009) and the report from Justice Chisholm on the Family Court Violence Review (Chisholm 2009a). Evidence is provided in our report to show that this emphasis has led to disastrous outcomes for some children who have been sent to live with a neglectful, abusive or mentally ill parent, sometimes against their will. Considerable evidence has also been provided by parents in this study to suggest that some family law professionals have failed to take into consideration the impact of family violence on children and children's right to be protected from harm when making decisions about parenting arrangements after separation, both before and after 2006.

Rhoades et al.'s research indicated that the concept of ongoing parental responsibility in the 1995 changes to the *Family Law Act* 'created greater scope for an abusive non-resident parent to harass or interfere in the life of the child's primary caregiver by challenging her decisions and choices' (Rhoades, Graycar et al. 2001: 81). Their research suggested that children's welfare was being compromised in the way that allegations of violence were dealt with at an *interim stage* of court hearings. After the 1995 amendments there was an increase in the number of contravention applications brought by non-resident parents (89 percent fathers) alleging breaches of contact orders, many without merit and 'pursued as a way of harassing or challenging the resident parent, rather than representing a genuine grievance about missed contact' (ibid: 82). Interviews with parents in their study suggested that unsafe contact orders were being made by consent, either because mothers felt coerced by their lawyer who advised them that this was the 'usual' approach of the court where there are allegations of violence at the interim stage, or they believed that the father would not agree to any other option, and/or they did not have the resources to fight (ibid). It seems that since the 2006 changes to the legislation the safety of children has been placed in even more jeopardy with the increased emphasis on shared parenting.

From the outset it has been argued by researchers, academics and practitioners (McIntosh and Chisholm 2008), that the new family law system reforms introduced in 2006 had the potential to put children at greater risk than before, in particular where there are serious levels of conflict between parents and acrimonious co-parenting arrangements, and our research evidence suggests that with shared parenting there are increased opportunities for children to either witness or be the direct victims of emotional, psychological, physical, sexual and verbal abuse from a parent. Ever since the reforms were introduced the changes have been seen by many researchers and practitioners to promote the parent's right to contact over the safety of women and children (Kirkwood 2007), whether that was intended or not, and this has been confirmed by the recent Chisholm (2009a) report and AIFS (Kaspiew, Gray et al. 2009) reports and by reports from parents in this study.

It is our considered view that family law professionals, policy makers and legislators should look beyond the rhetoric of parental responsibility, parental rights and parental equality to the actual experiences, safety, needs, rights and expressed wishes of the *children* involved, and the reality of day-to-day caretaking and nurturing practices pre- and post-separation. For young children the importance of their developmental needs, including the need for young children to maintain a strong primary attachment to a parent (Solomon and George 1999; Bruch 2006), should also be taken into account in any decisions made about parenting. The child's needs should be the focus,

not the parents', and the child's need for safety should be given priority over all other considerations.

Family violence is significant in the population of families that attend for dispute resolution and other support services during and after separation and divorce and is even more likely to be present in the client population that proceeds to trial in the family court system (Kaye, Stubbs et al. 2003; Moloney, Smyth et al. 2007b). From the reports from separated parents, both in our survey and other research (Laing 2000; Bagshaw, Quinn et al. 2006; Bagshaw 2007, 2008; Brown and Alexander 2007), the needs of these families and their children are currently not being attended to in any significant way, in particular where children who are at risk of abuse fall between the national family law system and the state child welfare systems.

We reiterate the concerns that have already been expressed in recent reports that the 2006 changes to the Act are making it harder for parents (women in particular) to report violence towards their children as they risk incurring costs or losing their primary caretaking role with the children if they cannot prove it (Kaspiew, Gray et al. 2009; Chisholm 2009a). These concerns have been affirmed by the findings of our study.

Central to family violence is the inappropriate exercise of power and control, leading to fear and intimidation (Bagshaw and Chung 2000a, 2000b; Laing 2000). However, it is difficult, if not impossible, to make an objective assessment about a subjective emotion such as fear in order to say whether or not it is 'reasonable' (Kirkwood 2007), as is required in the current definition of family violence in the *Family Law Act*. There do not appear to be any definitions or guidelines as to what constitutes 'reasonable grounds' to believe there has been family violence or child abuse, and for many parents in our study and other studies (Brown and Alexander 2007) it is not clear what evidence is required to substantiate such grounds. Non-physical forms of violence, including threats of physical violence, are harder to prove than physical forms and appear to be more prevalent. Parents in this study report that even when evidence of abuse, neglect or violence has been provided, their children have still been sent into unsafe situations.

There is evidence both from this study and from other recent research (Chisholm 2009a) that since the 2006 changes to the *Family Law Act* some family lawyers have been advising their clients not to allege violence or abuse against their ex-partners unless there is 'absolute proof' as 'the court looks unfavourably on a parent not willing to facilitate a close and continuing relationship between the child and the other parent' (Fynes-Clinton 2008). It is therefore essential to focus on how to enhance family law professionals' competence to identify and respond to family violence to achieve safe and fair outcomes for victims, who are typically women and children.

The implications of our findings are that all family law professionals, including members of the judiciary, should have regular education and training in order to be able to recognise the difference between family violence and family conflict and to enhance their ability to recognise, understand and respond appropriately to the complex and gendered nature of family violence and its short- and long-term effects on children. Desirably this should occur at undergraduate, postgraduate and continuing education levels and on an ongoing basis. We also consider that all impediments to the disclosure of family violence should be removed from family law legislation and family law practices.

There is increasing criticism of the risks that are taken where decisions are made for children to have unsupervised contact with a parent who is mentally ill (McInnes 2008) or an alleged perpetrator of abuse (McInnes 2004). There are also escalating concerns that allegations of abuse (usually made by mothers against fathers) are often not believed in the Family Court context, in spite of evidence that allegations of child abuse are rarely false and that false denials of abuse are more prevalent (Brown, Sheehan et al. 2001; Saccuzzo, Johnson et al. 2003; Shea Hart 2003, 2004; Brown and Alexander 2007). Based on our findings, we assert that all allegations and denials of family violence should be taken seriously and investigated thoroughly, in a timely manner, by knowledgeable and experienced practitioners, before parenting arrangements are made after separation.

In the last decade the co-occurrence of domestic violence, child abuse and pet abuse has been recognised, and witnessing and hearing violence is also accepted as being a form of child abuse that can have devastating effects on children in the short and long term (Bagshaw, Chung et al. 2000; Laing 2000; Shea Hart 2004; Bagshaw 2007; Brown and Alexander 2007).

In 2007, the Australian Institute of Family Studies found that more than half of the cases studied from both the Family Court of Australia and the Federal Magistrates Court (a total of 300 files) contained allegations of spousal abuse or child abuse (often co-existing) and the most common response was 'no response' (Moloney, Smyth et al. 2007b), which has been confirmed by many parents in our study. 'Regardless of the apparent severity of probative weight of allegations, it remained unusual for some form of contact between the child and the alleged perpetrator to be denied' (ibid: 56). Similar to our findings, the researchers also concluded that many of the allegations 'were on the severe end of the spectrum' (ibid: 11). They speculated that 'legal processes within a settlement-oriented family law "culture" might inhibit the making of fully fledged allegations or responses' (ibid: 14) and encourage a 'downgrading' of violence and child abuse allegations (ibid: 15). These findings were confirmed in Shea Hart's PhD study of 20 Family Court post-1995 judgements in cases where children witnessing family violence had been alleged and in most cases substantiated (Shea Hart and Bagshaw 2008). The judges and professionals advising them readily excused the fathers and made the assumption that violent men could make loving fathers, blamed the mothers who tried to interfere with father-child contact to protect their children, failed to acknowledge or recognise the effect of witnessing violence on children and marginalised the voices of the majority of the children involved.

In the United Kingdom (President of the UK Family Division 2008) research evidence has emerged to indicate that, 'in spite of being regularly involved in childcare activities, violent fathers can continue to physically and emotionally abuse their children' and increased contact in the post-separation context can lead to 'inconsistent parenting behaviour' and to fathers deflecting 'responsibility onto very young children themselves for provoking the abuse' with 'grave implications of harm for the children themselves' (Harne 2003: 12). In 2007, Craig published a summary of a report of a survey undertaken by the Family Justice Council in the UK to the President of the Family Division (Craig 2007). The council's recommendations included a requirement that there be a change in culture and a move away from 'contact is always the appropriate way forward' to 'contact that is safe and positive for the child'. They emphasised that there is no empirical evidence of the positive benefits of contact per se and stated that it is the quality of relationships which contact supports that matter for children (Hunt and Roberts 2004). They recommended that a practice direction be issued that emphasises that child safety should be paramount, that in every case where domestic violence is

alleged or admitted a process of risk assessment be undertaken by the UK child protection agency, Children and Family Court Advisory and Support Service (CAFCASS), before a consent order is made, that there should be: multidisciplinary training on domestic violence issues for lawyers and the judiciary; that solicitors when acting for either parent should consider the safety and welfare of the child first and that feedback should be given to judges and the courts if there has been any harm to a child as an outcome of orders made (Hunt and Roberts 2004). A Practice Direction (Residence and Contact Orders: Domestic Violence and Harm) was issued by the President of the Family Division in May 2008 which put those recommendations into effect and which now applies to any family proceedings in any court in the UK (President of the UK Family Division 2008). ‘Harm’ in relation to a child is defined as ‘ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another’ (*Children Act 1989* (UK), ss 31(9), 105(1)), and the wishes and feelings of the child who has lived in a violent household have to be given appropriate weight in any decisions about parent–child contact.

The analysis of data in our study in relation to children who have directly or indirectly experienced family violence before, during and after separation, leads us to suggest that these recommendations are also relevant to the Australian family law context. We believe that the safety of children should be given the highest priority in all decision making so that parent–child contact is safe and positive for children. In every case where family violence is alleged or admitted a process of risk assessment should be undertaken by an experienced professional or a professional from a child protection agency, in a timely manner, before parenting plans and/or consent orders are made. It is also desirable for all professionals in the family law system to be provided with up-to-date evidence-based research information so that they are clear about when, and under what circumstances, relatively new and untested concepts such as ‘shared parenting’ may be of benefit and for which children, taking into account their age, stage of development, cultural background, their primary attachment needs, their prior relationship with each parent, the level of parental conflict and any allegation or admission of a history of family violence. In addition, where there is family violence, well-resourced parent education groups should be made accessible to parents (separately) to assist them to understand the needs of their children during separation and divorce, the long- and short-term effects that high-level parental conflict and violence has on their children, and the importance of listening to their voices.

A more detailed analysis of the questions in this section can be found in Volume 2 of the report, Appendix 6(f).

Section 8: accessing family services post-separation

This section of the adult survey focuses specifically on respondents’ experiences of accessing family services following their separation. It compares the experiences of those who had experienced family violence and those who had not. Answers to questions in this section indicate that, in general, there were high levels of dissatisfaction and low levels of satisfaction with service responses for all respondents. These levels were more pronounced for those who had experienced family violence and increased following the introduction of the 2006 amendments.

For male respondents, dissatisfaction centred on perceptions of a socio-legal system that is biased against men and fails to recognise them as victims of violence. For female respondents,

dissatisfaction related to their perceptions of poor understandings of the dynamics and effects of domestic violence from services, the prioritising of parental contact over child safety and well-being, and legal advice not to disclose information about family violence. Informal help was rated most highly by both male and female respondents.

Findings relating to family dispute resolution (FDR) service responses to the issue of family violence are a cause for concern. **Only 10.5% of respondents who reported violence to an FDR service were given an exemption from using the service. Women were more likely than men not to disclose violence and twice as likely to report that FDR proceeded if violence was disclosed.**

What is alarming about the responses from women in this section is that they demonstrated that the effects of family violence continued long after separation and psychological abuse continued to be perpetrated during negotiations of parenting arrangements. What their responses show is that women were continually disadvantaged by this as they experienced continued fear from abusive ex-partners and were often trying to recover from the impact of psychological and emotional abuse they had been subjected to in the relationship during times of crucial negotiations. There was also evidence to suggest that the impacts of family violence on victims, and the influence of the violence on decision making, were often ignored by service providers and decision makers in the family law system. Furthermore, what is particularly concerning is that once mothers attempted to negotiate parenting arrangements that centred on the safety of their children they were constructed as antagonistic or as deliberately hindering the process. Many women reported being bullied into making decisions they were not satisfied with and also reported that evidence or disclosure of family violence was ignored or they were advised not to mention it.

When comparing the responses of women and men, there was no evidence of men experiencing any long-term psychological impacts of violence and abuse and family violence did not appear to impact significantly on their ability to negotiate outcomes for themselves. Women were more likely to be constructed as antagonistic during negotiations in efforts to protect themselves and their children. There is no evidence that men were constructed in this way.

This data support the need for gendered understandings of family violence as the effects of abuse are more severe and long-term for females, who are predominantly the victims of intimate partner violence. Women experienced difficulties during negotiations because of fear. The fear also made them more susceptible to being bullied or coerced into decisions they were not happy with. These findings are similar to the findings of other research studies that suggest that psychological abuse contributes to depression, distress, post-traumatic stress disorder, low self-esteem and fear amongst women (Mechanic, Weaver et al. 2008).

In summary, what the responses of females and males in this study showed is that males viewed themselves as the victims of the 'system' and believed services were biased against them. In comparison females were more concerned with the service providers' lack of understanding about the complexities of family violence, including the tactics and impacts of long-term psychological abuse on women.

Women's responses also showed that lawyers were more likely to convince or coerce females into parenting decisions that reflected 50:50 parenting arrangements. Men's responses did not show evidence of this pressure.

Most alarming is the theme of mental health that emerged from the responses from women. Women spoke about developing mental health problems as a result of abuse from their partner. Furthermore, they raised concerns as to how they might be perceived by services should their mental health issues be disclosed, as they believed it was highly likely this disclosure could be used against them. This concern was also supported by their dissatisfaction with psychologists, in particular those who assessed them and their children as part of court processes, and their failure to understand or deal with family violence issues.

Research has demonstrated that psychiatric problems such as depression, anxiety, post-traumatic stress disorders and attempted or actual suicide are very common in women who have experienced family violence (Taft 2003; Vung, Ostergren et al. 2009). Coker states that 'it is important to identify psychologically battered women, because this form of intimate partner violence has been strongly associated with mental and physical health problems' (2007: 1323). In short, what the literature has specifically argued is that the health care costs for women with severe family violence can be double those of non-abused women (Ellis, Chang et al. 2008); and that physical and sexual abuse combined with psychological abuse act synergistically to worsen the health of all women (Krantz and Vung 2009).

Men reported a fear of not being believed or a perception that services favoured women over men. The men in this study also reported a perception that there were few or no services specifically available for them. This suggests that more generic services should be developed for men beyond those that offer anger management and group programs.

The analysis of the data in this section shows a significant post-2006 increase in the numbers of men and women feeling pressured to agree to inappropriate contact between children and their ex-partner. The difference between men's and women's responses is fairly consistent across pre- and post-2006 groups (around 30%), but the proportion experiencing pressure went up by around 13% after 2006.

Parents' responses also indicated high levels of serious harm to children arising from inappropriate contact. The responses indicated that men were primarily concerned about their children's emotional well-being, the quality of the mother's parenting and their own relationship with their child when they referred to 'inappropriate contact'. Women were primarily concerned with issues of child survival, serious physical and sexual assaults on children, children being emotionally traumatised and enduring high levels of stress around contact, as well as alienation from them and ongoing behavioural problems needing professional help. These findings are very concerning, providing a chilling window into the extreme danger, distress and harm that some children are being forced to endure during inappropriate contact. The prevalence of serious violence in the population of separating parents with dependent children highlights the need for children's safety to be the primary concern of decision makers when abuse issues are raised.

The descriptions of consequences for children, predominantly provided by mothers, underscored the severity of the abuses some children were experiencing due to inappropriate contact with their abusive fathers. The descriptions of children's symptoms of withdrawn or aggressive behaviours – regressed toileting, failure to thrive, nightmares and disrupted sleep – are consistent with the symptoms of child traumatisation (Streeck-Fischer and Van der Kolk 2000). Persisting exposures to traumatisation in childhood results in developmental post-traumatic stress disorder which carries

lifelong impacts on health, capacity to learn and earn and to form relationships (Streeck-Fischer and Van der Kolk 2000; Perry 2001). The risk to children of developmental post-traumatic stress disorder increases with the age of onset, frequency, duration and severity of traumatic exposures. Systemic failures to recognise or to take account of the need to protect children from violence or abuse have produced a rising number of children who have experienced repeated severe traumatisation enforced by court orders.

It is notable that reports by parents to police, child protection and to professionals in the family law system did not result in action to protect the children from continuing exposures to physical and sexual abuse.

The data indicate that fathers were more successful than women in achieving the family law outcomes they wanted from engagement with services. Women wanted services to support their own and their children's safety and their ex's compliance with parenting arrangements. Men wanted family law services to force mothers to provide contact with their children.

Family law services appeared to have greater capacity to respond to fathers' expectations that mothers would be coerced into contact, than to respond to mothers' expectations that they would be able to support their own and their children's safety.

Implications of the findings of the analysis of the data from Section 8

The findings from this section of the report reinforce our prior comments about the need for family law service providers to be educated about the gendered nature and effects of family violence (domestic violence and child abuse), risk assessments and responses to support safety when there is evidence of abuse and violence. We stress again that the safety of children should be given highest priority in all decision making so that parent-child contact is safe and positive for children.

Given the traumatic effects that direct and indirect forms of family violence have on children, it is essential that the family law system has investigative processes that are capable of assessing the parents' capacities to safely provide care, including their health status, parenting abilities and criminal histories and with reference to children's health and education and child protection records. Where children have experienced family violence, there is also a need for more specific services that provide child-centred therapy (such as counselling and group therapy) and support for the children affected. It is essential that services for children affected by family violence are appropriately resourced and accessible to families in metropolitan, regional and rural areas.

Suggestions from the survey respondents in this section and other sections of the survey indicate that impediments to the disclosure of family violence should be removed from family law legislation and the emotional, psychological, physical, sexual and developmental safety of children should take precedence over the wishes, needs and rights of parents to contact in all parenting decisions after separation.

The findings also indicate that it may be desirable for relevant professionals in the family law system, including court-appointed experts such as psychologists and psychiatrists, to participate in awareness raising and education programs that address the impacts of family violence on the mental health of women.

Given the prevalence of family violence in family law disputes, it is imperative that universal screening for family violence occurs prior to any intervention with separated families in the family law system. However, this screening should be conducted by professionals who have appropriate education and training so they can recognise and expose the subtle, non-physical, controlling and gendered aspects of family violence. In particular, given that only 10.5% of respondents who reported violence to a family dispute resolution (FDR) service were given an exemption from using the service, and that women were more likely than men not to disclose violence and twice as likely to report that FDR proceeded if violence was disclosed, it is imperative that family dispute resolution services are resourced to deliver mandatory, annual, in-service family violence education and training for all their service providers and to conduct, evaluate and improve routine screening processes for family violence and mental health issues prior to intervention. We also suggest that it may be beneficial for family lawyers and family dispute resolution practitioners (mediators) to engage in more collaborative practices, in particular when dealing with family law cases involving family violence, such as attending case conferences and regular collaborative training programs.

It is important that family law professionals recognise and research the tactics of abuse that occur before, during and after separation that hinder effective negotiations. In particular, there is a need for further research into the impact of psychological abuse on women's mental health and their abilities to negotiate for themselves and their children post-separation. Appropriate support should be made available to them during negotiation phases.

Given that our respondents have reported that they have relied heavily on informal sources of support, which have not always responded appropriately, we suggest that more attention should be given to community awareness raising and public education programs that address the nature, tactics and effects of family violence and the important role and nature of informal support for the victims of family violence. In addition, detailed information packages that explain in-depth how services can help those who have experienced family violence, and the pathways they can take to access appropriate and supportive services to address their concerns, may assist those who have experienced difficulties in accessing services.

Finally, our findings indicate that more general services should be available for men, beyond the specific anger management group programs that are widely available, including services for men who are sole parenting young children after separation and for men who are victims of family violence.

Section 9: the *Family Law Amendment (Shared Parental Responsibility) Act 2006*

The final data collection section of the adult online survey sought to build on information about the impact of specific changes to the *Family Law Act* by asking respondents who had experienced family violence about the impact of the changes associated with the new emphasis on shared or cooperative parenting on their desired behaviour following separation.

Respondents who had experienced family violence were asked to indicate – yes, no or not sure – whether shared parental responsibility, shared care of children, false statements (allegations and denials of violence) and relocation had affected what they wanted to do since they had separated.

As would be expected, those who accessed services and professional help after July 2006 or after July 1995 *and* July 2006 were most likely to report that each of these concepts had affected what they wanted to do. The only exception to this was in relation to false statements, where similar numbers of respondents, pre- and post-2006, indicated that false statements had affected what they wanted to do following separation. It is possible that the pre-2006 responses represent a generalised experience of false allegations and denials in the context of dispute and separation.

Understanding the law

A notable feature of the responses to the questions in this section was the demonstration of limited understanding of aspects of the 2006 reforms. Levels of uncertainty (indicated by the number of 'not sure' responses) were significant and constant in relation to each of the concepts: shared parental responsibility, shared care of children, false statements and relocation. In particular, responses to the concepts of shared care and shared parental responsibility demonstrated confusion and were often used interchangeably. Significantly higher levels of uncertainty were reported by women in relation to every concept except shared parental responsibility, where levels of uncertainty were 14% for men and 15% for women. The lowest level of uncertainty (12%) was expressed about the issue of relocation – probably because this is a more tangible and familiar term to the general population.

Difficulties with cooperative parenting arrangements

The main theme of responses to questions about shared parenting responsibility (and also some responses to questions about shared parental care) indicated that, for the respondents to the survey, shared parental responsibility was difficult or unworkable in the context of family violence. Respondents expressed the view that the sharing of parental responsibility following separation required the kind of cooperative relationship that was at odds with the controlling and coercive behaviour that commonly characterises family violence.

Unsafe parenting arrangements in the context of family violence

The main theme of responses to questions about shared parental care (and also some responses to questions about shared parenting responsibility) was safety following separation from a relationship involving family violence; specifically the way in which shared parental care facilitated contact and physical access that compromised the safety of ex-partners (mainly women) and children. In responses to questions about false statements (allegations and denials of violence), safety concerns were again emphasised by female respondents who commented that allegations of family violence and child sexual abuse were not believed or not sufficiently investigated by the Family Court. The difficulties of producing evidence of family violence were frequently noted in this and other sections of the survey. In contrast, men predominantly reported that they had been falsely accused of domestic violence and/or child abuse and frequently pointed to gender bias in the family law system.

Problems with relocation

The issue of safety was also strongly represented in responses to the questions about relocation. The new emphasis on shared or cooperative parenting in the 2006 amendments has had an impact on the way relocation decisions are made. In determining the child's best interests (section 60CC), 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. Predominantly the female respondents expressed dissatisfaction with their inability to relocate away from their ex-partner in the interests of safety because of a privileging of their child/ren having a meaningful relationship with both parents. Other problems associated with relocation included the need to move in order to be closer to support networks, employment opportunities and more affordable housing.

Recommendations from respondents

The final question in this section asked respondents to identify ways in which the *Family Law Act* and the family law system could be improved. The recommendations that emerged from this question reflected concerns that family violence was inadequately and improperly understood and responded to in the socio-legal system; that the approach to cooperative parenting was not working well for many; and that children's needs and desires were not responded to adequately. The most commonly cited recommendations from the adults were:

- *improved responses to the needs and wishes of children*
- *changes to the presumption of 50:50 shared care*
- *improved understanding of and responses to family violence*
- *improvements to investigative practices and processes associated with separation matters in the Family Court.*

In Volume 2 of the report, Appendix 6(h), the quantitative answers to questions are illustrated in the 4 graphs. Following each graph there is analysis of the qualitative responses to the follow-up questions asking *how* shared parental responsibility, shared care of children, false statements (allegations and denials of violence) and relocation had affected what they wanted to do since they had separated.

When looking at the responses from the online survey, it became clear that there were a considerable percentage of answers from people who identified themselves as not having made arrangements or not accessing services, or having made arrangements without professional assistance. This group contains 157 people (109 females and 48 males); this represents roughly 16.86% of our total sample.

This group follows the general trend in terms of age. Males are predominantly in the 40–49 bracket but females are similarly placed in the 30–39 (35.8%) and 40–49 (38.5%) bracket. They also follow the general trend for gender distribution; the majority of respondents are female 69.4% and 30.6% are male. It is the reasons they give as justifying their course of action that provide an insight into their perceptions of family law, service provision and the effects of family violence. For further analysis please refer to Volume 2, Appendix 6(i) of the report.

Phone-ins with parents

The analysis of the data from the two phone-ins conducted by the research teams have been reported separately as, although the *Family Law Act 1975* is a Commonwealth Act, the family law systems, staff and associated services are different in each state and the locations for the phone-ins were different. One phone-in was conducted in a capital city (Adelaide) and the other in a regional city (Townsville) and the data were analysed by two different researchers.

The reports from the respondents to the phone-ins tended to involve more serious forms of violence than those from the respondents to the online surveys, which may be due to a number of factors. Interviewers were able to probe more deeply on the phone, with some phone calls lasting for two to three hours, and people experiencing more serious forms of violence may have felt more comfortable phoning the researchers rather than responding to a more impersonal survey. The prominence of violence for those separating and involved in the family law system has been noted in recent Australian research (Moloney, Smyth et al. 2007a; Kaspiew, Gray et al. 2009; Chisholm 2009a). This section begins with an analysis of the data from the South Australian phone-in followed by an analysis of data from the Queensland phone-in.

Phone-in with parents in South Australia

Profile of the adult respondents

In total, 41 adults responded to the phone-in in South Australia. The majority of respondents (85%, n=35) were women. Thirty three respondents (80.5%) were non-Indigenous Australians, 2 were Indigenous Australians and 5 were born overseas (including 3 from the UK). Most (63%, n=26) were living in a capital city, just under 20% in a rural location and 17% from a regional town or city. No respondents identified that they lived in a remote location. Table 21 illustrates the age range of respondents, with nearly half (49%, n=20) being aged between 40 and 49 years.

Table 21: Ages, numbers and percentages of men and women who responded to the SA phone-in

Ages	Women	Men	Total	Approx. %
Under 20	0	0	0	0
20–29	2	0	2	4.9
30–39	9	0	9	22
40–49	18	2	20	48.8
50–59	5	2	7	17.1
60+	1	2	3	7.3

Similar numbers of respondents had separated since 1995 (49%, n=20) and July 2006 (46%, n=19). Two respondents had separated prior to 1995.

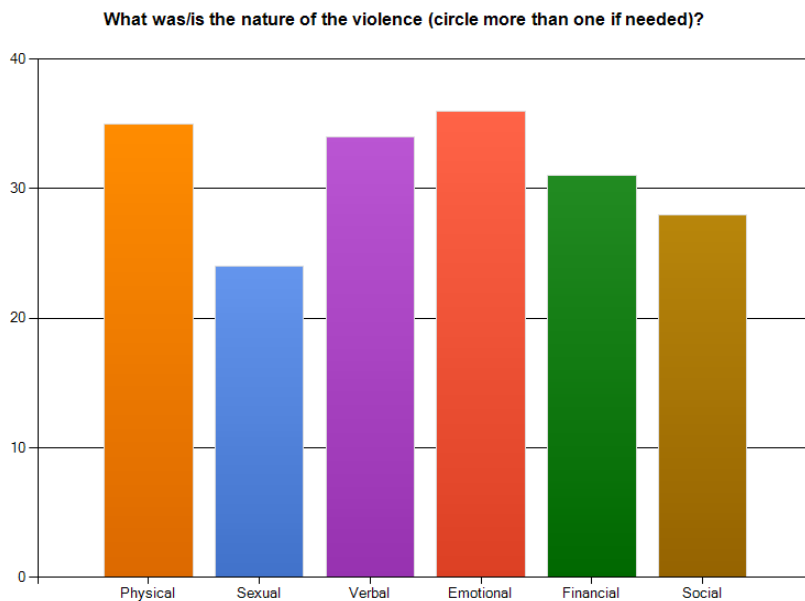
Experiences of family violence

Of the 41 respondents, only one had not experienced family violence and two called on behalf of someone who had experienced violence (one male grandparent and one female grandparent who reported the violence experienced by their daughters). One respondent identified experiencing emotional abuse from her husband’s former partner and is therefore not included in the numbers of those experiencing family violence. Four of the 6 male respondents reported their own experience as victims of family violence. Thirty-three of the 35 female respondents reported their experience as victims of family violence. Therefore, the experiences of violence of 35 women (2 by proxy) and 4 men provide the data that has been analysed from the South Australian phone-in.

The nature and extent of the family violence

In general, respondents to this phone-in reported high levels of family violence which encompassed a range of forms of abuse (which occasioned elevated levels of fear), began during their relationship, were sustained over time and continued following separation. Each of the 35 female victims and 4 male victims indicated that their heterosexual partner was the perpetrator of the violence. The majority of respondents reported violence that took several forms. Graph 13 illustrates the numbers of respondents who experienced physical, sexual, verbal, emotional, financial and social forms of violence.

Graph 13: The number of responses in relation to the nature of family violence



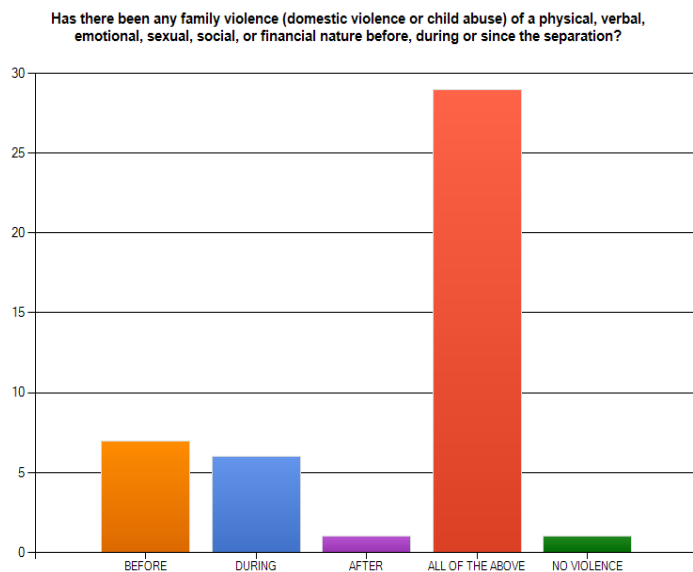
Twenty-five of the 35 women (71%) who had experienced family violence reported experiencing *all* forms of abuse – physical, sexual, verbal, emotional, financial and social. Some particularly calculated and sadistic forms of violence were described by the women. For example, one respondent described how her partner kept a gun loaded with a specific number of bullets – one for her and one for each of their children. Women reported that they were raped, threatened with knives and with being run down by vehicles, burned with boiling water, beaten and had bones broken. Tactics of social isolation and control were commonly described, for example women reported that perpetrators did not allow them to have a key to their home or to the car, prevented them from accessing bank accounts and only permitted phones that took incoming calls. The analogy of being ‘held against their will’ was used by several women:

- *It is hard to notice when the bars of prison are put in place.*
- [One woman felt like] *a horse in a corral, waiting until he left the gate open.*

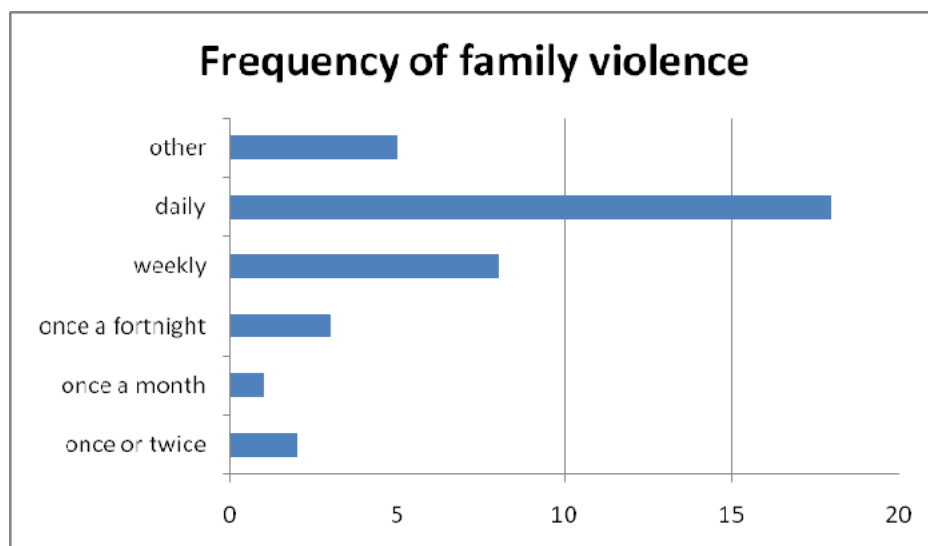
Twenty-five of the 35 women (71%) who had experienced family violence described their children as victims of the family violence too. A range of forms of abuse were described. Children witnessed the physical abuse of their mothers, were physically assaulted themselves, were subjected to verbal and emotional abuse and/or were sexually abused. The links between and co-existence of domestic violence and child abuse are now well-established (Anderson and Cramer-Benjamin 1999; Edleson 1999, 2001). Although in some cases women were able to obtain a statutory investigation into the claims of sexual abuse, no-one reported that a criminal charge was made. Rather, women described frustration with the lack of ability to substantiate claims of abuse, which was attributed to a lack of evidence or to the young age of the children in question, despite research that demonstrates that a significant number of domestic violence and child abuse allegations can be substantiated and only a small number of unfounded child abuse allegations are malicious fabrications (Brown 2003). Fears about what might or did happen to their children following separation and the likelihood of their children having unsupervised access with their violent father was a commonly voiced theme.

All but one respondent who had experienced family violence stated that it had begun before separation (with one reporting that violence had begun during separation). Graph 14 illustrates when family violence was experienced, with the largest number of responses, all from women, (72.5%, n=29) indicating that it was experienced before, during and after the separation. Graph x illustrates the frequency of the violence, with the most common response (49%, n=18) being that it was experienced daily.

Graph 14: Number of respondents who experience of family violence before, during or after separation



Graph 15: Numbers of respondents in relation to the frequency of family violence

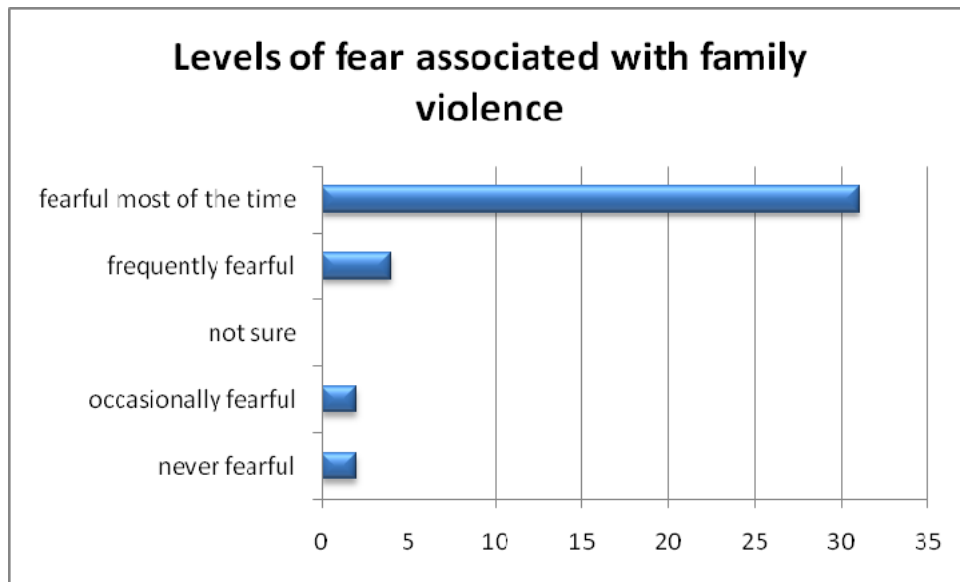


Respondents were also asked when the violence stopped. For almost a quarter (24%, n=10) of those who had experienced family violence, it ended when they separated from their partner. For over

60% (61%, n=25) the violence continued beyond separation or was still ongoing. Following separation it was more likely to take the forms of verbal and emotional abuse. These respondents described the use of texts, phone calls, letters, emails and contact related to parenting arrangements as the means through which abusive behaviour occurred and through which physical threats (including death threats) to them and/or their children were delivered. Some described how involvement in the family law system facilitated the continuation of abusive behaviour.

The nature and frequency of family violence and, for a majority, its ongoing nature, was associated with very high levels of fear. Graph 16 shows the responses to the question of how frightened victims of family violence were. The majority of respondents to this question – almost 80% (79.5%, n=31) – reported that they were fearful ‘most of the time’. The 2 respondents who reported that they were never fearful of the violence were both men (as was one who described ‘occasional fear’).

Graph 16: Numbers of respondents in relation to the levels of fear associated with family violence



Gender differences in the experience of family violence

The majority of respondents who reported their experience of violence were women. However, comparison of the violence experienced by women and men revealed some gendered differences. Women (and the 2 grandparents calling on behalf of their daughters) gave more detailed accounts of prolonged abuse toward them and their children which encompassed physical, sexual, verbal, financial and social abuse.

The 4 men’s experiences of violence from their ex was more commonly described as emotional and verbal abuse but also included one man being threatened with a knife. For all women – unless they had changed their identity and were in an unknown location or the perpetrator had been prosecuted for violence – the abuse was ongoing. For all but one of the men, family violence ended on separation.

Women’s levels of fear were higher than men’s and they described more profound and ongoing effects of the family violence. A significant theme to emerge from the qualitative accounts of women’s experience of violence was its traumatising nature and its effects on their mental well-

being. The identification of trauma and poor mental health is not surprising given the multi-faceted and controlling nature of the family violence described, its frequency and its continuation following separation. Half of the female victims of violence mentioned that they were traumatised or had actually been diagnosed with post-traumatic stress disorder, experienced anxiety, panic attacks and/or depression. The impacts of prolonged exposure to violence have been well documented (Herman 1997). The women commonly used words and phrases such as *'I thought I would die'*, *'I was petrified'*, *'constantly vigilant'*, *'on tenterhooks'*, *'in survival mode'*. In contrast, 3 of the 4 men who described their experience of family violence made comments that linked it to their ex-partner's menstrual cycle, did not emphasise fear and drew on gendered stereotypes such as 'nagging' female behaviour:

- *But [the verbal and emotional abuse was] irritating mostly because it was from a girl, you know.*
- *Her yelling could be a bit scary – you know how some women go off.*

Some differences were also evident in beliefs about the way in which services and legal systems responded to male and female victims of family violence. The male respondents all made reference to their belief that services and legal systems were unfair to men in relation to family violence.

- *Women can give no justification but go to a magistrate and be believed at face value. They should have to have proof ... AVOs are used to deny men access.*

They expressed a belief that there were insufficient services for men, although only one reported not having used a service. Despite hesitance about the response they might encounter, the three men who did use services reported that they received mostly positive assistance and that they were believed. Changes to the *Family Law Act* were understood by these men as having improved men's rights as parents; for example one man said: *'Family Court is better now in that it supports fathers'*.

The women respondents generally expressed positive experiences with domestic violence services and non-government organisations (NGOs) that provided family support. However, they were more likely to describe very negative experiences with police and their responses to their reports of family violence and with the way in which legal practitioners and courts responded to information provided about family violence.

- *Because of his abuse I thought I could leave and the children would be protected. I thought no way would they have to go with him. I thought the court would understand that. I did not know that it would all be doubted.*

Use and experience of services

A wide range of services was used by the respondents to the South Australian phone-in. Only 2 respondents stated that they had not accessed any services (including one man who stated that there were no services for men because of social beliefs that they were supposed to be able to cope). The majority of respondents used multiple services across the NGO, government and legal sectors. The most commonly used were domestic violence services, family relationships services and legal services (from legal aid, the Legal Services Commission, private lawyers and the Family Court). Given the high levels of family violence experienced by the respondents to the phone-in, it is not surprising that most satisfaction was expressed for services that had explicitly taken the experience of family violence into account. Domestic violence services, women's refuges and a range of NGO

counselling and family support services were most often cited as having done this. The positive outcomes from violence being explicitly taken into account by these services related to being listened to, believed, and to having the opportunity to understand the phenomenon of domestic violence and that they were not alone in their experience or to blame for the violence. Specifically, women's increased understandings of domestic violence related to its non-physical manifestations and controlling features. Although these services helped respondents to cope, they were rarely considered to have any influence on family court processes or decisions. In the words of one respondent:

- *The DV service gave some useful information but it has no influence in court – the Family Court overrides everything.*

Most dissatisfaction was expressed with services that had not taken family violence into account and/or had not believed that family violence had occurred. Legal services (legal aid, the Legal Services Commission and private lawyers) and the Family Court were most frequently reported in this regard. There were mixed responses to the participants' experiences of family relationships services and family dispute resolution in particular. Some reported that such services demonstrated helpful understanding of the dynamics of family violence, while others considered that violence was not taken seriously and felt coerced into mediation. The most common effects of family violence not being taken into account were extreme distress, fear and unsafe parenting arrangements.

- *You get fearful because you know the kids could be victimised ... so what's the point of saying anything?*
- *I am immensely fearful of the law since 2006. Fearful the children will come home in a box or will be emotionally traumatised.*

Disbelief and disrespectful language and behaviour from members of the legal system (including judges and lawyers) were frequently described by respondents and were experienced as a continuation of their abuse, as the following quotations illustrate:

- *I was shocked that the Family Court had no respect, kindness or understanding. I had never experienced feeling that I had no rights, no intelligence and other people needing to decide what would happen. It was just the most horrible, violating feeling. It was just too horrendous.*
- *This judge slammed me for mentioning DV, saying 'I am sick of this' and implied I was coaching the children.*
- *As I went down the path in the Family Court I realised how futile family violence evidence actually is as no-one is interested. All they would say is why didn't you do something about it back then and so the violence was seen as irrelevant because I didn't act on it back then. They have no idea about the complexity of family violence and the fear and how it shames you, embarrasses you. It is so dangerous too, but all this is ignored.*

Two women for whom English was a second language described particularly unhelpful responses from police and the Family Court. It is worth considering their circumstances in more detail.

The first woman had called the police following a physical assault from her husband but, because they did not arrange for an interpreter, she was unable to sufficiently describe what had happened and was also unable to follow the process to obtain an apprehended violence order (AVO). Following

separation, when the couple went to Family Court to organise the parenting arrangements for their son, she did not mention her experience of family violence, believing that she had no evidence without an AVO and deciding to concentrate on her allegation that her husband was sexually abusing their son. She described the Family Court process as bewildering, found the legal language and procedures very hard to follow and only had occasional access to an interpreter in court. The court's judgement that her son should go to live with his father was made on the basis of a report from a psychologist who labelled her as suffering from Parental Alienation Syndrome and stated that she had made up the sexual abuse to take him away from his father.

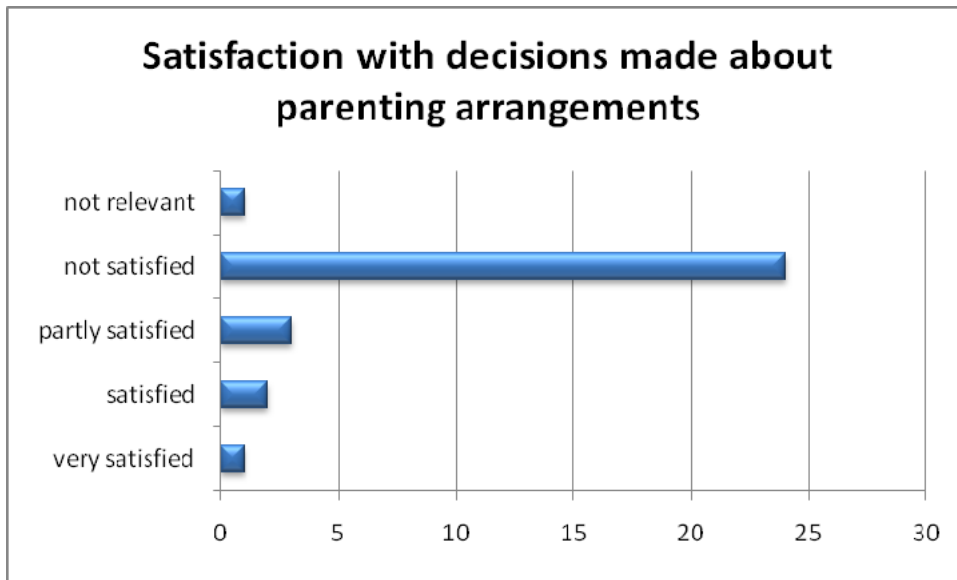
The second woman also experienced family violence from her husband. However, she was on a dependent visa because her husband was in Australia to study. She tried to report the violence to police but was told that what she described was a 'normal argument'. When she left her husband to escape the violence, he cancelled her visa, leaving her with no Australian residence entitlements. She was granted a bridging visa by the Department of Immigration and Citizenship. When she was required to leave the women's refuge that she had been staying in, she found it very hard to find accommodation. She also found access to interpreting services at the Family Court to be inadequate. She reported that, at first, she was not given access to an interpreter and was told by Family Court officials that because she had been able to sign an affidavit she did not require such assistance. When the judge realised that she was not able to follow proceedings, she was told to use the interpreter who was assisting her husband. When she questioned this and stated that she did not trust the interpreter (who she had witnessed laughing and getting on well with her husband) the judge said she could use that interpreter or have none because they were not easy to obtain. Her husband countered her allegations of family violence and said that she had been the perpetrator. This woman lost residential parent status for her son and now has limited access to him.

Informal support was an important supplement to many respondents' use of services. Sixty-one per cent (n=20) reported using a support person (family and friends) or advocate and described the benefits of having someone 'on their side' during adversarial legal processes. The tangible and intangible benefits included having someone to talk to, being listened to and believed, receiving advice about what to expect and not feeling so isolated.

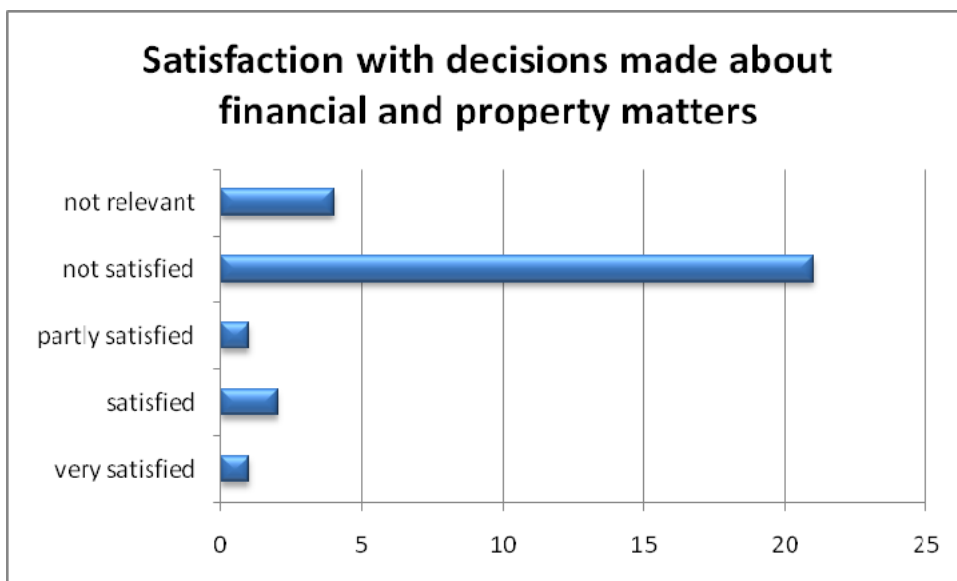
Experience of family court decisions

Decision making and use of services in the context of family violence were most commonly described as being characterised by confusion, fear and concern for children's well-being. Very high levels of dissatisfaction were reported for decisions relating to parenting arrangements by 77% of respondents (n=24) and those relating to financial and property matters (72%, n=21), illustrated by Graphs 17 and 18. In each case, the majority of those reporting dissatisfaction were those who had separated since July 2006.

Graph 17: Numbers of respondents in relation to levels of satisfaction with decisions about parenting arrangements



Graph 18: Numbers of respondents in relation to satisfaction with decisions about financial and property matters



Dissatisfaction with parenting decisions was primarily and most frequently related to the way in which information about family violence was not included in the decision making, not believed or not appropriately responded to. Specifically, respondents described:

1. feeling hesitant about raising the issue of family violence in case they were seen to be making false allegations in order to reduce their ex-partner's contact with their child/ren
2. receiving specific advice from their private or legal aid lawyer not to raise the issue of violence as this would not be viewed sympathetically by the Family Court
3. not being believed or being disregarded when the issue of family violence was raised
4. feeling shocked at court decisions that ordered shared care in the context of family violence.

For those who separated following the 2006 amendments (44% of respondents), the concepts of shared care, shared parental responsibility and false statements were understood to be significant and to have an impact on Family Court decisions. A consistent finding was that women reported receiving advice from legal practitioners to withhold information about family violence and concerns for their children's safety because this would not be looked on favourably by the courts. The advice was often based on the belief that such information would be likely to be considered vexatious and contrary to the 'friendly parent' provision by the court. In line with the findings of Chisholm (2009a), the data described here suggests that the 'friendly parent' provision in the *Family Law Act* was deterring victims from disclosing experience of family violence. The following are representative of comments that were frequently made:

- A woman was told by her lawyer '*not to upset the dad as courts want to see cooperation*'.
- '*The magistrate said 50:50 is the way it is.*'
- A woman described how she was advised to agree to her son's access to his father as if she didn't the judge would give the father more time. She did not raise the issue of family violence '*for fear of being seen as vindictive*'.

Dissatisfaction with decisions relating to financial and property matters were most frequently related to women victims' fear of retribution if they pursued financial claims that were against the interests of the partners from who they had separated. Many women spoke of the ways in which their decisions to settle out of court, or for less than they were entitled to, were related to their desire to reduce conflict, accelerate the separation and to prioritise their safety.

Suggestions from adult respondents for improvements

Respondents offered a variety of suggestions for improvements to the *Family Law Act*, family law policies, the family law system and associated services. The most frequently cited have been grouped under seven broad categories:

1. Improved understanding of the nature and dynamics of domestic violence
2. Better investigation into and use of evidence relating to family violence
3. Improved attention to children's safety
4. Better processes for listening to children and including their views
5. The introduction of formalised systems for following up the outcomes of court-ordered parenting agreements.
6. Better access to affordable legal support
7. Improved responses to and services for women from non-English-speaking backgrounds.

Respondents suggested that non-physical forms of violence and the effects of the tactics of control were poorly understood by the Family Court, legal practitioners and police in particular. A better understanding of domestic violence was also mentioned in the context of the need for improved attention to children's safety. A strong message from the respondents was that the safety of

children should be prioritised above the need for a child to have a relationship with both parents. The suitability of shared care arrangements was frequently challenged, both in a general practical sense and specifically in the context of domestic violence. Information from Children’s Independent Lawyers and Family Reports was described as inadequate and based on limited knowledge and little meaningful contact. The implementation of a formal process for monitoring the impact of parenting agreements ordered by the court was seen as providing a level of accountability and adding safety measures for children, particularly for those where family violence had been identified. The equity issues of access to adequate and affordable legal advice and for services that meet the specific needs of those for whom English is not the first language were also cited as needing attention by respondents.

Phone-in with parents in Queensland

General overview

This section reports on the analysis of the Queensland phone-in responses from 65 adults. The quotations used in the following summary are taken from detailed notes made by researchers during and immediately after each phone interview. Care was taken to accurately record the words and intentions of the caller. A total of 65 adults contacted the Queensland phone-in. Of these, 52 or 80% were women. Ten women and one man were from an Indigenous background; 19 women (and no men) were born in a country other than Australia. Of this group, English was not a first language for twelve women (2/12 prior 2006; 10/12 post 2006). The majority of respondents were from a regional city (28 of the 65 or 43%), with 35% from a capital city, 15% from a rural location and four of the 65 from remote areas. Respondents were most likely to be aged between 40 and 49 years (35%) and 30–39 years (27%).

Table 22: Age of male and female respondents to the Queensland phone-in

Ages	Women	Men	Total	Approx. %
Under 20	0	0	0	0
20–29	13	0	13	20
30–39	14	4	18	27
40–49	15	8	23	35
50–59	5	1	5	9
60+	5	0	5	8

Twenty respondents (31%) had separated post-1995 but before the 2006 family law amendments came into play. Forty-four respondents (68%) had separated after 2005 and, of these, 43 reported experiencing some form of family violence.

The experience of family violence

Respondents were asked to discuss their experience of family violence through the following questions.

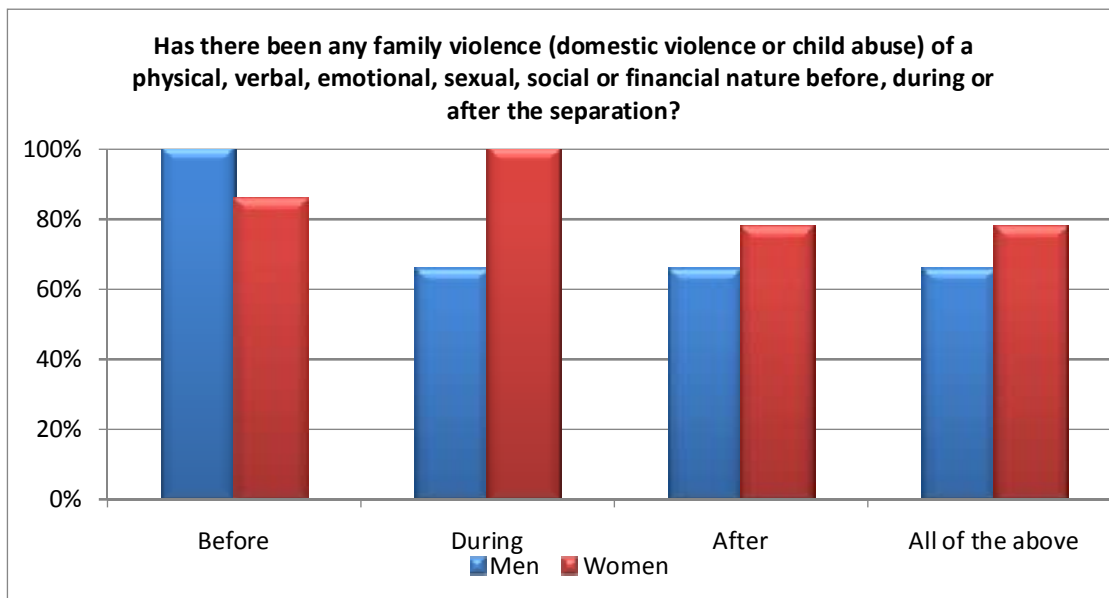
Q. 10. Has there been any family violence (domestic violence or child abuse) of a physical, verbal, emotional, sexual, social or financial nature before, during or since the separation?

Q. 11. If YES, can you please tell me more about the violence in your family?

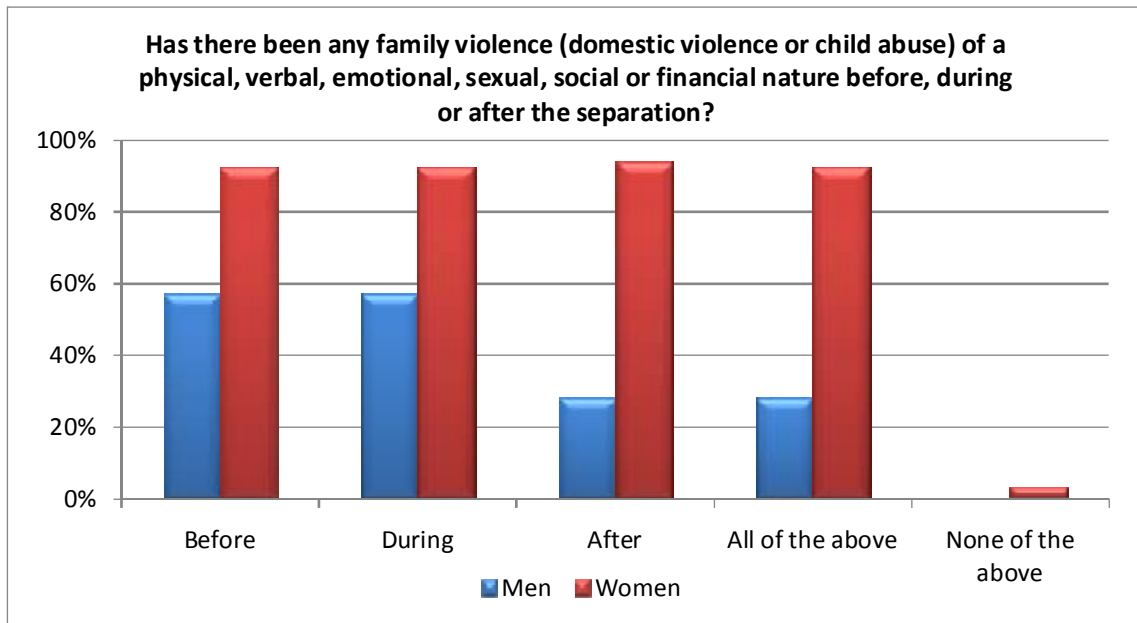
Q. 12. Who was/is the perpetrator(s)? Victims(s)?

Q. 14. How frequently did/does the violence occur?

Graph 19: Percentage of men and women who had experienced family violence before, during or after separation post-1995



Graph 20: Percentage of men and women who had experienced family violence before, during or after separation post-2006



All but one respondent (a woman) indicated that family violence had occurred in the relationship. Of the 13 men interviewed, 6 reported violence occurring before, during and after separation (46%). In comparison, 46 of the 52 women interviewed (88%) described violence occurring before, during and after separation. A total of 64 of the 65 respondents reported family violence and the analysis of the data will now show the experience of these 64. In all cases pre- and post- the 2006 amendments, the callers identified their ex-partners as the perpetrator and themselves as victim.

Violence was a characteristic of the relationship prior to separation for nearly 90% of respondents (57 of the 64). Two men reported violence beginning during the separation process and two women also reported the same. The violence continued during and after separation for a significant majority (52 of the 64 or 81%). There appeared to be few differences between the experiences of the respondents pre-2006 amendments and those post-amendments. However, there was a slight increase in post-separation violence for the 37 women who separated after 2005 (36 out of 37 as opposed to 35 out of 37 before and during). The 14 women who separated prior to 2006 had a peak of violence occurring during separation, with all 14 reporting violence at this point. The prevalence of violence fell slightly to 11 of the 14 after separation. The men's experience pre- and post-2006 appear to be consistent: more reported violence before or during separation and fewer reported violence after separation.

Allegations against the caller

Prior to the 2006 amendments, 30% (4 of the 14) of female respondents stated their partner had alleged that they (the women) had been the perpetrator of family violence and all four agreed this was correct. The four women spoke of verbal abuse – screaming or yelling at their partner – and/or of retaliating to the violence from their ex. Each expressed remorse and shame over their actions. None disclosed incidents of violence against children. All 6 of the men interviewed stated their

previous partner had alleged they had perpetrated abuse and only half of these men (3 of the 6) agreed with this view. The violence that the 3 male callers admitted to included hitting, punching, property damage, yelling and attempting to run a partner over. Two also disclosed '*losing it*' with the children. The notes taken by interviewers did not include statements of remorse.

A much higher percentage of women who had separated *post-2006 amendments* reported that their partner had alleged that they (the women) had perpetrated family violence (21 out of 37 or 57%). Six of the 37 agreed they had perpetrated violence (approximately 30%). They described yelling and/or refusing to speak to their former partner, and belittling him when he was too intoxicated to fight back. None of these women disclosed that they abused their child. Six of the seven men interviewed stated their partner alleged they had been abusive; 3 of the 7 men agreed they had used violence. The men described their violence as a form of retaliation or response after severe provocation, and gave examples of pushing, kicking, punching, property damage and yelling at their former partner. One man said he accidentally hurt his child while intending to let out his frustration on a 'safe' object (a chair).

Violence against children and other victims

Violence against children was alleged to have occurred in families separating pre- and post- the 2006 amendments. Twenty (9 of 14 women; 4 of 6 men) of those separating prior to the 2006 amendments named children as victims. For those families where separation had occurred post-2006 amendments, 35 of the 44 named violence against children (30 of the 37 women; 5 of 7 men).

Other victims of violence included family members and friends. No men in the survey identified their own friends and family members as victims of their ex-partners' violence, although one man said that his ex-partner had been violent towards her own family members. In contrast, 9 of the 14 women separating prior to the amendments and 15 of the 37 women separating post amendments identified family members as victims of their partners' violence. A further 7 of the 14 pre-amendments women and 9 of the 37 post-amendments women said that their friends had been victims of violence perpetrated by the former partner.

Nature of the violence

Respondents were asked to discuss the nature of the violence they had been subject to.

Q. 13. What is the nature of the violence?

Women reported more prevalent, frequent and severe violence and abuse, with the abuse contributing to a fear that they or their children would be badly injured by their former partner. Women gave examples of threats against their lives and the lives of their children and described repeated acts of humiliation, and physical, sexual and verbal violence.

Men spoke of finances being used as a form of abuse and the impacts of verbal and emotional abuse on themselves and their children. Three of the 13 men reported their former partner had been physically, emotionally and verbally abusive to their children.

Only one male caller (1/13) described experiencing sexual violence. Another caller requested that his complaint against the inclusion of this question be noted. He saw such a question as an example of *gender bias* and something that men were unlikely to describe or admit to. Forty-one of the 51

women (or 80%) described sexual violence from their former partner. These were not necessarily the same women who identified an occurrence of physical violence.

It was reported most frequently that violence occurred on a daily basis. This question was not easy to answer; most respondents reported that the violence increased in frequency over time whilst the victim remained in the relationship.

An end to the violence

Respondents were asked to consider if the violence had stopped and if so why.

Q. 15 When did the violence stop and why?

None of the respondents recorded the violence ending before separation. The majority of women (11 of 14 prior to 2006 and 35 of 37 post-2006) stated the violence was ongoing. Prior to the amendments, men reported the violence as 'ongoing' or 'finished when separated' in equal numbers (3 of 6 in both). After 2006, the majority of men reported violence finishing after separation (5 of 7) as opposed to 2 of 7 reporting the violence was still continuing. Women participants reported the violence stopped after intervention from the courts because of a custodial sentence or penalties for breaching a domestic violence protection order. These women stated that this gave them an incentive to continue using the courts.

Fear

Respondents were asked to describe their experience of fear.

Q. 16. On a scale of 1–5 with 1 being 'not fearful at anytime' and 5 being 'very fearful all of the time' how frightened is/was the victim of the perpetrator of the violence? Please explain why that is/was so?

There were qualitative differences in the way men and women described their fear of their former partner. Men spoke of a fear of humiliation, a fear of their children being withheld from them and a fear of the separation being used as a tool for financial abuse. One man expressed fear of physical harm from a new partner or relative of his former wife. Women spoke of fear for their physical safety and that of their children, based on previous threats or actions from their former partners. Women also spoke of the fear interrupting their sleep and eating cycles, of being in a state of hyper-vigilance and/or a sense of constant exhaustion.

The experience of fear was different for the male respondents. Men tended to identify as 'never fearful' (8 of 13) or 'frequently fearful' (5 of 13). Only one woman (from the post-1995 group) described herself as 'never fearful'. Twenty-three of the 51 or 45% of women said they were fearful most of the time, with 20 of the 51 saying they were 'frequently fearful'.

Women from remote areas spoke of the impact that geography (isolation) and a lack of services can have on their level of fear. Indigenous women spoke not only of their fear of their former partner, but an ongoing fear of the structures and systems that privilege white understandings of 'family'.

The effect of violence on decision making and choice and use of services

Respondents were asked how family violence had affected their decision making since the separation and on their choice and use of services.

Q. 17. In what ways has the family violence affected your decision-making since the separation?

Q. 18. In what ways has family violence affected your choice and use of services?

The respondents spoke of the impact that family violence had on their capacity to make decisions and on the limitations that being victimised brings to the range of options available. Women and men spoke of feeling 'emotionally debilitated', with poor concentration, exhaustion, sleeplessness and a continuing hyper-vigilance and attributed these directly to the abuse they had experienced. A fear of repercussions – how particular actions of, or disclosures to, services would be taken by the perpetrator – had the effect of silencing victims of violence.

Most women reported that their choice and use of services had been affected by the family violence in some way (49 out of 51 women or 96%). This was most frequently because of a fear that their former partner would retaliate if they chose to use a particular service or that they may be more at risk accessing a service near his place of work or home. Two of the 13 men also reported the violence having a negative effect on their use of services. The men stated that the financial constraints arising from abusive behaviours of their ex-partners limited their access to their preferred legal support. In addition, the men noted that allegations made against them by their former partner had made them ineligible for services providing support for victims of family violence. Three out of 13 men reported that there were no services available for them, although these men had indicated earlier that they had used the Family Court and private lawyers.

Use of services

Respondents were asked the following questions about their use of services:

Q6. Have you accessed services to assist you with decision making after your separation/divorce?

Q7: if NO, why not?

Q8. If YES, what services have you accessed and when (post-1995/post-2006)?

Q9. Please specify the main services you have used and for what purposes.

Table 23: Percentage of men and women’s responses post-1995 and 2006 in relation to the services they accessed

Services	Post-1995 (%)		Post-2006 (%)	
	Men	Women	Men	Women
Family Court of Australia	83	100	100	79
Lawyer (in private practice)	100	78	100	63
Centrelink	0	78	0	79
Legal aid	0	71	57	68
Child Support Agency	66	71	57	76
Police	66	71	57	68
Mediator (most often Relationships Australia)	50	57	85	32
Counsellor	83	57	85	53
DV service	0	50	57	58
Health service	66	50	57	32
Friends/family	83	50	85	34
Women’s service	N/A	50	N/A	34
Women’s Legal Service	N/A	43	N/A	0
Contact Centres	50	43	43	32
Federal Magistrates Court	50	43	43	40
Child Protection Service	50	43	43	26
Religious person or groups	50	21	43	21
Dad’s in Distress	50	N/A	0	N/A
Men’s Helpline	16	N/A	0	N/A
when the separation continued after 2006				
Family Relationships Advice Line	50	28	71	53
Family Relationship Centre	50	57	85	89

Respondents identified a range of services they accessed for support to assist with decision making after separation and divorce. These included legal services, domestic violence services, income and welfare support services and statutory bodies such as child protection services. The number of services accessed varied across location (respondents from rural areas had far less opportunities for support), culture (with Aboriginal and Torres Strait Islander people least likely to access more than 3 services) and age (older women using less than four services).

The most frequently accessed were legal services (Family Court, lawyer in private practice, legal aid) and domestic violence or counselling services. All of the men accessed a lawyer in private practice compared to 67% of the women (35 of the 52). Men were also more likely to report accessing a counsellor. Women were more likely to report using Centrelink, the Child Support Agency, police and legal aid. After the 2006 amendments, men and women also accessed the new Family Relationship Centres (FRCs) with men more likely than women to report that they were supportive.

A number of respondents discussed accessing many different services as they negotiated the separation process. For most, however, it was easy to identify a key service used during that period. Prior to the 2006 amendments, women nominated a DV service or women’s centre as their primary source of support, followed by the Family Court and private lawyers. Men nominated private lawyers as their primary source of support, the Family Court and a counsellor (one gave both counsellor and private lawyer). Men had more contacts with counselling services than women but most stated legal support was the most useful.

For men who separated in or after 2006, the primary service accessed had not changed greatly. Four of the 7 men nominated a private lawyer as their main support, followed by 2 of the 7 identifying the Family Court and 1 of the 7 their counsellor. Women described the Family Court as the main service accessed, followed by legal aid and private lawyers, and then a DV service or women's centre. Only two women (and no men) identified a Family Relationship Centre as the main service they used, despite 26 of the 45 having accessed their local FRC service. Women from Indigenous backgrounds and those whose first language was not English all nominated DV or women's services as their main source of support.

Most satisfaction was expressed for services that had explicitly taken the experience of family violence into account. Women identified domestic violence services and a range of counselling and family support services as having done this. Men identified private lawyers, the Family Court and mediation services as taking the violence into account (and these services were more likely to be nominated by women as *not* taking the violence into account). The positive outcomes from this related to being listened to, believed and having the opportunity to understand the nature and effect of domestic violence (in particular its controlling features) and being reassured that they were not alone or to blame. Considerations of safety, both of the mother and the children, were also appreciated. Apart from the obvious exceptions from men who nominated the Family Court and private lawyers, the services identified helped respondents to cope but were rarely considered to have an influence on the Family Court processes or decisions.

Most dissatisfaction was expressed with services that had not taken family violence into account and/or had not believed violence had occurred. For women, legal services and the Family Court were most frequently reported in this regard. Men were more likely to nominate Contact Centres as the service that did not take the violence into account. The most common effects of family violence not being taken into account were extreme distress, risks to personal safety and unsafe parenting arrangements.

Support persons

Respondents were asked about their use of a support person when accessing support services.

Q. 27 Did you have a support person or advocate to help you when you were using services? If no, would you have liked one, who would it have been and how could they have helped?

If yes, who were they and how did the person help?

Very few of the respondents had someone they identified as a support person in the separation processes. Ten of the 51 women and 5 of the 11 men had a support person, though in each case that support was not available for at least part of the formal separation process. Those that did have a support person described the usefulness of having someone present to provide information, consider safety concerns and advocate to ensure family violence protocols were utilised.

The five male respondents who had a support person relied on them primarily during the Family Court processes, finding the information provided by an experienced person extremely helpful. In each instance, the support person came from a men's support agency, such as Dads in Distress. Women who used a support person were most likely to meet this person through domestic violence services.

Very few services across Australia have funding to provide Family Court support; workers may attend if the situation is considered a priority but staffing resources are such that services cannot afford a worker to be absent for several hours. In the situations where a support person was available to the respondents, the benefits were quite marked. Despite a significant number of respondents identifying using informal supports (31 of 64 or 48%), very few spoke of having family or friends as support people (4 of 51 women, 2 of 11 men). The shame of exposing 'family secrets' made it difficult for some to involve people they knew in court processes. Others were more concerned about the safety of their support person. Respondents from rural and regional areas (64% of respondents) also noted the physical distance from their family as a barrier to receiving support.

Expectations from the separation processes

Respondents were asked about the expectations they may have had as they traversed the formal separation processes. The questions were relevant for respondents who separated after 2006.

Q. 28. After separation did you think someone in the family law system would be likely to decide that you and your ex would jointly share responsibility for all long-term parenting decisions, such as where your child would go to school?

Q. 29. Do you think that after separation someone in the family law system would require you to spend equal time with your ex?

Q. 30 Did you think that if you stated there was family violence and could not prove it you could be punished e.g. costs could be awarded against you in court and/or you may lose your children?

Q. 31. If you answered yes to any of the last three questions, did this belief influence your decisions and agreements regarding parenting arrangements?

If you answered yes, please explain how these arrangements were influenced.

When asked if they *expected parenting arrangements to be jointly shared*, a significant majority (24 of 37 women and 6 of 7 men) agreed that, by the time formal agreements were prepared, they were aware that shared responsibility was likely. Most stated that when they first separated they did not understand the implications of shared responsibility, and that it was only as parenting agreements were written up that the practicalities of this became apparent. About a third of women (13 of the 37) stated that they did not believe the court would decide in favour of shared parental responsibility due to the family's history of family violence and were surprised when this eventually became a reality.

The sharing of the parenting of children using an 'equal time' formula seemed to be well understood by respondents. Most reported knowing this was a possibility but were surprised to hear it would be likely to happen in their case because of the violence (30 of 37 women, 5 of 7 men).

The belief that someone could be punished if they could not prove the violence was a cause for concern for more women than men. None of the men believed this to be the case although 4 of the 7 men commented that this was an excellent idea if indeed it occurred. Thirteen of the 37 women (35%) believed that they could be punished if they could not provide proof of violence. Most stated

they had been warned this was the case by their legal counsel, and in two cases, by the Family Court judge.

The men interviewed stated that their understanding of the 'equal time formula' raised their expectations of a fairer outcome. Unfortunately, for 4 of the 11, they did not get the shared parenting arrangement they were hoping for. Women spoke about having to learn to live with the idea of shared parenting, despite their concerns, as they were not able to provide evidence of the family violence.

Satisfaction with separation agreements

Respondents were asked the following questions regarding their satisfaction with separation agreements.

Q. 25 On a scale of 1–4 with 1 being 'very satisfied and 4 being 'not satisfied', how satisfied were/are you with decisions made about current parenting agreements and why? What should have been done differently?

Q. 26 On a scale of 1–4 with 1 being 'very satisfied and 4 being 'not satisfied', how satisfied were/are you with decisions made about current financial and property agreements and why? What should have been done differently?

Parenting agreements

The majority of men expressed 'satisfaction' with the parenting arrangements (7 of 13 or 53% of men), compared with 12 of 51 or 24% of women. Those who were satisfied believed the children were safe in the parenting arrangements that had been put into place. They spoke of the arrangements finally recognising the experience of violence. Those who were 'partly satisfied' were most often seeing the current arrangement, while not perfect, as better than it could be. No men identified as 'partly satisfied' compared with 12 of the 51 women (23%). Those who were 'not satisfied' included 27 of the 51 women (52%) and 3 of the 13 men (23%). For women, dissatisfaction with parenting arrangements increased after the 2006 amendments.

Dissatisfaction was largely due to a belief the orders were not putting the children's best interest at the centre of the decision making. There were concerns about orders that placed children in extended, unsupervised contact with a parent who had been violent towards the child or the child's other parent. Other concerns included the length of time parents were separated from young children as a result of particular shared parenting arrangements, particularly the 'week and week about' model and one mother was concerned about having to wean her baby from the breast in order for the baby to stay overnight with the father.

Financial and property decisions

Only one respondent out of the 64 men and women interviewed stated they were 'satisfied' with financial and property arrangements made during the separation processes. The woman had received no financial settlement and was not receiving child support but was relieved to be out of the relationship. Thirty-six of the 51 women (70%) said they were 'partly satisfied'; 2 of the 13 men agreed.

The majority of men (11 of the 13) were 'unsatisfied' and described the financial impact that the legal processes and settlement had on them. Most respondents said that the problem with their property settlement was not so much the process used by the courts as the behaviour of the ex-partner and the intention of their ex-partner to ensure that the victims of family violence received as little money as possible.

Finance and property settlements were particularly problematic for women who had been born overseas and had come to Australia on a visa, which made them dependent on their ex-partner. These women were suffering from acute financial hardship and were ineligible for social security benefits until their lengthy independent visa application was finalised.

Suggestions for improvements from the respondents

The research sought to identify the views of parents on strategies that may enhance the safety and experience of parents and children post-separation. Respondents were asked the following questions:

Q. 33 Based on your experiences, views and understandings of the current Family Law Act, family policies and the family law system, what do you think could be changed or improved to help people establish safe, workable arrangements for parents and children post-separation?

Q. 34. What are your suggestions for improvement or change in relation to specific services for families who have separated, in particular families who have experienced violence or abuse?

The suggestions most frequently cited by respondents to the Queensland phone-in were similar to respondents to the South Australian phone-in. These included improvements to the *Family Law Act*, family law policies, the family law system and associated services. The most frequently cited have been grouped under 7 broad categories:

1. Improved understanding of the nature and dynamics of domestic violence
2. Improved attention to children's safety
3. Better processes for listening to children and including their views
4. The introduction of formalised systems for following up the outcomes of court-ordered parenting agreements
5. The introduction of a formal court support program in the Family Court and Federal Magistrates Court for victims of domestic violence
6. More services for all victims of family violence accessing formal separation processes, including male victims of violence, victims from non-English-speaking backgrounds, and victims from Aboriginal and Torres Strait Islander backgrounds
7. Better access to affordable legal support.

The suggestions raised by respondents varied across gender, cultural background and the location of the respondent. Men were more likely to suggest the system be restructured to ensure men receive a fairer outcome in parenting and property decisions. Women were more likely to request that children's safety be addressed first and foremost in any parenting decision, over and above the need to have a relationship with both parents. Women were also more likely to request better access to affordable legal support. Both women and men recommended that the Family Court ensure that children who have a parent who has been abusive do not have overnight, unsupervised contact until they have proven they are capable of parenting without violence. Regular follow-up with trained professionals to ensure compliance with agreements and to check how the family is coping with the changed dynamics was another frequent suggestion.

Verbal abuse, emotional abuse, threatening behaviour and acts of control and domination are particularly difficult to prove. Respondents suggested that recognition of threatening behaviours in the *Family Law Act's* definition of family violence would enable a more complete picture of the nature of violence.

Ensuring all professionals in the legal and family support services have an improved understanding of the nature and dynamics of domestic violence was a frequent suggestion. Additional training for Family Court report writers in the assessment of all forms of violence was seen as crucial in order for the safety of child and adult victims to be prioritised.

Both men and women requested a funded support service for victims of family violence when attending Family Court, using a similar model to the Queensland Magistrates Court. It was also suggested the workers be specifically trained in the nuances of family law as well as have an excellent understanding of the dynamics of family violence. Men requested more male-specific services and male court support workers.

Women requested additional support services for children whose parents are going through the family court where there have been allegations of violence and they suggested the attendance at such groups or services be put into any parenting agreements.

Call-back with parents

The sample

The call-backs were made following the collection of the online data and included some of the participants who responded to the adults' online survey in which they indicated that they would consent to being phoned back to answer some more directed questions. Each participant left a first name (usually false) and phone number in their online survey response, which were used by the researchers and their assistants to contact them. The sample was selected from a database of all participants who indicated they would not mind being phoned back. The researchers attempted to make the sample representative of the wider Australian population by reflecting proportionately the population for each state and territory. However, only half of the number of respondents selected for the call-back phone interviews were able to be contacted because of the different time zones across states, although interviewers accepted calls until 10 pm at night. Men were less likely to return calls. The method of calling back was to ring to set up a time for the interview and almost invariably the respondents were not available at the time of the call. Researchers had to wait for a

return call and to gain this they had to call on a number of occasions. Nevertheless 33 interviews were carried out.

There was a total of 31 individuals who participated in the call-backs, of which 20 (65%) were females and 13 (39%) were males. Two participants (6%) were aged between 20 and 29 years, 12 (39%) were aged between 30 and 39 years, 14 (45%) were aged between 40 and 49 years, and three (10%) were aged between 50 and 59 years. They were drawn from five Australian states: four (13%) were from New South Wales, 10 (32%) were from Queensland, 2 (6%) were from South Australia, 11 (35%) were from Victoria and 4 (13%) were from Western Australia. The majority of participants, 21 (68%), lived in Australian cities, while 9 (29%) lived in regional towns or centres and one (3%) was from a rural area. Twenty-six (84%) participants were Australian born, four (13%) were born overseas, and one (3%) was an Australian-born Aboriginal.

Analysis of the data

The raw data from the call-back surveys has been analysed according to four themes that clearly emerged from the data:

1. feelings of anger and disappointment at being 'let down' by the system for those with issues of family violence
2. dissatisfaction with family law services
3. how equal time and shared care arrangements are working out
4. the devastating long-term impacts of experiencing court and family law processes.

Please note the quotations for the call-backs have been taken from the call-back notes and therefore are not always the exact words of the participants as the calls were not recorded or transcribed.

Theme 1: Feelings of anger and disappointment at being 'let down' by the system for those with issues of family violence

During the call-backs, men and women were asked to reflect on the beginning of their separation journey before they accessed any family law services. Specifically, they were asked to describe how they thought they would manage the separation and any family violence. Ten women and 4 men indicated that they did not think about services that could possibly help them; instead they thought it was something they needed to bear on their own. For example one woman said:

- *Felt that I had to do something and the responsibility was mine. Didn't realise there were services out there to help with this sort of thing, or that I should use a service to help. Just thought it was all on my shoulders.*

Seven women and two men thought that separation would be manageable and ultimately would make life better, or that services would be there to support them should they need it. For example:

- *I thought he'd leave me alone. He had no interest in custody at all. I had no inkling that all of this would happen.*
- *I thought I had enough evidence to prove family violence and I was counting on services to investigate and confirm. I did not know about the burden of proof being on me. I also assumed there would be supervised visitation.*

In comparison, 4 women and no men stated that they were frightened and unsure about how they were going to cope throughout and after the separation.

- *I had no idea, no idea how to end the relationship. I knew I wanted to and I knew I wanted him to, I didn't know how he would react. He told me that if I ever took his children away he would kill me.*

Both men and women were also asked to talk about the effect the process of separation had on them and their children in the longer term. Both mothers and fathers predominantly discussed the impact for their children, believing the impact to be negative and that safety concerns for their children increased. Seven females and three males raised the issue of complying with court orders or court processes as resulting in negative impacts or safety concerns for children. For example:

- *My 11 year old has really suffered. She doesn't want to go with her dad but she is forced to. She is exposed to his girlfriends; she has seen sexual activity whilst in his care and other inappropriate activities. She went through a period of vomiting the day before and in the car on the way there and she would cry and beg me not to take her there. It really upsets her that she is prevented from calling me.*
- *The baby was premature and so his development has been well documented. He has recently regressed developmentally, stopped walking and talking, because of the treatment at contact centres, one in particular. They let him cry for hours and don't supervise him properly during the contact visits. Once they called me to collect him after a short time because he wouldn't stop crying. I'm worried about his mental health but no-one will take responsibility for this and I'm forced to keep returning him to the contact centre even though I know it is damaging him.*
- *From my kids' point of view it is being exposed to things they shouldn't have been exposed to like Daddy being arrested on the front lawn of his house by police who had made a stereotypical judgment about me. Daddy was being wrestled on the ground by police who thought the mobile phone in his hand was a gun. So my daughter was exposed to this awful scenario.*

Respondents' recommendations for reform

Given that both men and women were expressing dissatisfaction about their experiences of accessing services, specifically the Family Court, they were also given the opportunity to make recommendations regarding changes to the family law services system to help separating couples with family violence, separation and divorce. Specific recommendations were correlated.

First, 9 women and 3 men raised the concern that the 'system' does not understand the complexities, experiences and tactics of family violence and that there is an absence of trained specialists within the Family Court that fully understand family violence and can respond to it appropriately. For example:

- *They need to start listening to women, not immediately assuming that the woman is trying to be spiteful and they need to understand the power dynamics and listen to the victims. The reports are there so you think it would be getting into them. I assumed they would know about it so I was shocked when I first went.*
- *A change is the way domestic violence is only understood to affect women because it affects men as well. It is hard to tell anyone that your wife is abusing you. No-one would have believed me.*

Second, 6 women and one man referred directly to the Child Support Agency. The lack of communication between the Family Court and Child Support Agency was raised as an issue and mothers predominantly raised the concern that it was easy for their ex-partners to avoid making payments and to continue financial abuse patterns. Respondents suggested that more resources and power are needed to assist the Child Support Agency to investigate false claims in relation to income or non-payments. For example:

- *CSA should be given more power from the Family Court to delve into fathers' 'creative accounting' and find the money they hide. CSA know there's money being hidden but they can't do anything about it.*

Third, men (4) and women (4) spoke generally about the need for more funding and improvement of services.

- *Better education – more emphasis on boy's and men's health and well-being. Better support services that are government funded for men. Better trained people to help men deal with the feelings of anger, violence that arises from the experience. All men see is AVOs, police coming around to arrest them, or being evicted. They don't see government departments that are supportive; they only see them making life harder for them.*

Fourth, 4 women and 2 men specifically spoke about legal aid and pointed to concerns about the cost of legal support and time spent in court fighting for outcomes.

- *A more expeditious process that is a lot cheaper. It should be a whole new system where it is mandated that there has to be a solution within 6 months and parents can't use lawyers.*
- *The process is very expensive; you spend so much money getting affidavits that are not even taken into consideration because the reports matter more. It's a lot of money that gets poured into that system and it is wasted.*

Fifth, three women and one man specifically complained about Independent Children's Lawyers and court-appointed psychologists, specifically stating that these professionals do not have a grasp on the reality of people's lives and long-term impacts of family violence.

- *I think one thing that psychologists need to do is work with the families over a long period of time, that a one off assessment is not helpful. Over a longer period of time the psychologists could get a feel for the pattern and see it for what it really is.*

The following recommendations were specifically made by women only, reflecting the gendered nature of family violence and gendered concerns regarding safety.

First, seven women recommended that children's voices and experiences must be heard and acted upon. These women specifically spoke about the need to centre the best interests and safety of children in Family Court processes and decisions, especially where family violence is present.

- *They say they act in the best interests of the children but this is hogwash. My ex is a violent alcoholic but this doesn't register with them. I am forced to either keep returning him to the contact centre, which I know is doing him damage or risk breaking the law by not doing what the court says. There's nothing I can do. They don't take into consideration the needs of a baby.*

Second, eight women recommended that perpetrators of family violence should have to prove they can provide a safe home for their children and/or actually should not be allowed access to their

children. Furthermore, women were recommending that breaches of court orders need to be followed up and enforced.

- *I think the perpetrator should have to prove that he has the right to half-time custody of the children. The legislation the way it is, is too simplistic. It is not in the best interest to put the child in their care just because they are the biological fathers.*
- *My ex is very extreme and since he would not give in I had to agree to consent orders but he has always breached them and the courts have never done anything.*

Thirdly, four women expressed concern about the nature of the leadership of judges within the Family Court and their ignorance about family violence. Furthermore, women wanted judicial decisions made public and for judges to be held accountable for outcomes that impact on the safety of children and women.

- *I'd say I really want to see some leadership from judges, stand up and not accept bad behaviour. Basically, be accessible. As I said I've never seen the judge other than twice.*

The following recommendations were specifically made by men only, again reflecting the gendered nature of family violence.

First, four men recommended decision making be transferred away from courtrooms. Men preferred mediators or trained professionals to make decisions regarding parenting arrangements.

- *I would give the responsibility to people like the mediators we dealt with because they made decisions that made a lot of sense to me. The courts seemed to make decisions out of fear of accountability.*

Second, four men raised the concern of having to disprove allegations of abuse against them. Males said they were disadvantaged by allegations of abuse, felt that the system was biased against them, and constructed females as making false claims to be manipulative.

- *I would demand proof of any allegations of violence instead of allowing magistrates to make a decision that a father can't see his children, and relationships can be torn apart.*

In summary, both men and women were generally dissatisfied with their experiences of services and especially with the processes and outcomes of the Family Court. Responses also show the importance of recognising the gendered nature of family violence. Females were more likely to be fearful of accessing services and fearful of outcomes for their children's safety.

Furthermore, the recommendations made by both men and women showed differing concerns. Women were more concerned with their safety, their children's safety, and breaches of orders not being followed up by appropriate authorities, whereas men were more concerned with having to disprove allegations of abuse and about taking decision making away from judges.

Implications for policies and service delivery

Although the number of responses was low, there are a number of implications for policies and practices that arose from this section of the call-backs. Above all, the safety of children should be given the highest priority in all decision making so that parent-child contact is safe and positive for

children. Breaches of court orders should be followed up and action enforced, particularly when children's and women's safety are compromised.

There are also strong indications that education and training programs should be mandatory for professionals working within the Family Court system, including judges, particularly emphasising the complexities and impacts of family violence and the gendered nature of abuse and experiences. It would also be beneficial for Family Court and associated family services to be widely advertised in the community to raise awareness of professional assistance that is available during separation, especially where family violence is present.

Theme 2: Dissatisfaction with family law services

Family lawyers and family violence

Call-back respondents were asked whether they had used a legal practitioner and, if so, how the practitioner had reacted to anything the respondent had said about family violence.

21 people responded to this question: 18 women and three men. Half of the female respondents (n=9) were of the opinion that their legal advisers did not listen to them or take their issues of family violence seriously. These feelings are evidenced in the following quotation:

- *They were very cold about the subject; there was no empathy. They had an attitude that was based on 'this happens all the time'. It was a pain in the arse for them and they didn't want to go in depth but they knew.*

Although the numbers were small, making it difficult to generalise, a minority of female and male respondents (19%, n=3 female and 33%, n= 1 male) thought that their legal advisors did not see any point in pursuing the issue of violence or raising it in evidence. For example:

- *They said don't mention it. Put it in the affidavit but don't make a big deal about it because you won't be believed and will be labelled an unfriendly parent. Don't apply for an AVO.*

Conversely, 17% (n=3) of women made positive comments about their lawyers and found them to be supportive and satisfactory. A further 11% (n=2) of women and 33% (n=1) of men thought their legal advisors had acted professionally.

The responses to this question, in particular from many women who had been subjected to family violence, also indicated that their lawyers showed little empathy towards them and their experiences of abuse. In instances where family violence was recognised, lawyers tended to avoid dealing with the issue for fear of the repercussions this may have had on decisions about parenting arrangements. Although the numbers were small this was also a finding reflected in the survey and phone-in data, the implication being that family lawyers should be required to engage in mandatory continued professional development (CPD) programs that address the nature and impact of family violence and be trained in using family violence risk assessment tools routinely in their practices.

Client satisfaction with services for property and finances

Call-back respondents were asked questions so we could better understand the reasons for their varying levels of satisfaction and dissatisfaction with the family services they used following separation. The question teased out the answers provided in the online adult survey. In the adult

survey, the satisfaction rate with the main service used to assist with making decisions about finances and or property matters arising from separation was just under 50%. This is the highest level of satisfaction expressed by all respondents with any of the services we asked about in this survey (satisfaction rates of all respondents with family violence services was 48% and 46% for services used to assist with decision making for children’s matters). However a 50% satisfaction rate is quite low in comparison with satisfaction rates generally received for other family services. The 50% satisfaction rate is slightly lower than the 52% of survey respondents who expressed dissatisfaction with property and finances services. The near equal division between satisfaction and dissatisfaction rates for respondents to this survey indicates that family services provision may need to improve before clients are happy with the service level they received.

The qualitative data received from the call-backs reaffirmed this picture of quite disparate attitudes to services used to assist with making decisions about finances and/or property matters arising from separation. Twenty respondents provided answers on this issue, 14 women and 6 men. Table 24 outlines the responses we received to the question of why the parties were satisfied or dissatisfied with the services used to assist with property or finance issues following separation.

Table 24: The number of males and females in relation to their reason why they were satisfied/dissatisfied with the main service they used for property and finance matters

Response type	Frequency FEMALES (n=14)	Frequency MALES (n=6)
Strong feeling that the system is unfair	4	1
Feelings of powerlessness	2	3
Satisfied or partly satisfied with lawyers	4	
Felt legal representatives did not present their evidence, experience or point of view accurately or at all	2	
Experienced a lack of empathy and/or complaint about the manner in which they were treated.	2	
Satisfied with family courts	1	1
Ex-partner gets away with hiding or not declaring income in order to avoid paying child support.	2	
Felt there was no avenue for complaint	1	
Felt the court or the judge didn’t listen or take into account the evidence or information presented	1	
There were no formal services involved	1	
Satisfied with counselling offered by religious organisation but something more was needed		1

Eight of the respondents (40%) expressed satisfaction with the property and finance services they used. Half of these satisfied respondents (n=4) had used lawyers to assist with property division or finances following separation and were happy with their experiences and all of these respondents

were women. The responses indicate that what clients valued in their lawyers was both the ability to negotiate the resolution of disputes without being adversarial and the skill to advocate for clients if the matter did go to court. These twin skills, negotiation and advocacy, are an important part of the armoury of any family lawyer. Here are some of the call-back responses on this issue:

- *Lawyers, they were fantastic. My ex-husband lied about his income and the judge found out about it and I got 75% of his super.*
- *I was satisfied because the lawyers got what they could without having to go deep into court. The lawyers did the negotiating for me and that took away some of the pressure.*

Further, two call-back respondents expressed satisfaction with the services they received at family courts and it is clear that these respondents valued the settlement processes employed by the courts. One male respondent described his conciliation experience at the Family Court of Western Australia.

- *They were straightforward. Through the court, the Registrar told me what would happen. We had a meeting all together. They told us to stop arguing. I think that kind of arbitration works more than letting people confront each other. It was good.*

Expressions of dissatisfaction with services used to assist with making decisions about finances and/or property matters arising from separation outnumbered expressions of satisfaction. Eighteen 'dissatisfied' responses were received for this question (representing 90% of the responses to this question).

Five respondents attributed their dissatisfaction to a strong feeling that the system was unfair when dealing with property and finance issues. Some of these respondents felt that the rules governing property division were unfair whereas others felt that the process was unfair, allowing a recalcitrant partner to refuse to settle so that the matter proceeded to an expensive court battle. The following responses illustrate those views:

- *Before you go into the system you think justice will prevail, but then you realise that the system is unfair. There's nothing you can do. No course for appeal. It all depends on the judge you get.*
- *Everything was 50/50 which was ridiculous because when we married I had a house and a mortgage and he had nothing.*
- *We had a conciliation meeting and met someone in court. My ex did not provide the documents or give any offer so we could settle and I have had to go and get it myself and this has made it very expensive for me and not once has the court said that it was not OK for him to not abide by the court.*

A further five respondents explained that their dissatisfaction arose from strong feelings of powerlessness within the family law system. Three men and two women expressed this view. Those respondents felt a powerful pressure to settle their cases on terms which they did not want. The cost of court proceedings was the strongest source of the need to consent to unfavourable arrangements, hence engendering feelings of powerlessness:

- *My lawyer told me that I needed to agree to what she wanted regarding financial matters. What I agreed to was what she [my ex] wanted because she had legal aid and I had to pay for my own lawyer and pay for my lawyer to go to RA if I wanted to contest these matters.*
- *I was told by the solicitor that the law isn't on my side, you can't go and do what you want, there is no fault/no blame. And he told me that the law sees the woman as getting 90% of custody of the*

children. I was told I didn't have a say and these things had already been set up in the family law system. They weren't concerned about the people involved, only who was going to pay for the children and court costs.

Many of the 'dissatisfied' responses suggested a strong frustration with the services received from family lawyers in relation to post-separation property and finance matters. Respondents' complaints about their lawyers were mostly focused on the settlement-orientation of their family lawyers but also related to the limited service provided by lawyers funded by legal aid. For example:

- *The lawyer was very passive and amenable whereas I needed someone who could fight for what I wanted in response to ex and ex's lawyer's bullying tactics.*
- *I was told by the [legal aid] lawyer that there was only so much he could do because the funding was not very good so he was not prepared to do the same job as if he had been paid full fees.*

Men were more likely than women to feel that the system was framed against their interests when dealing with property and finance matters (such as a perceived preference in law towards women in property division). Their feelings of dissatisfaction stemmed from their feelings of powerlessness in the face of this predisposition. Women's dissatisfaction arose more from unhappiness with the decision-making processes used to determine property and finance issues.

Client satisfaction with children's services

In the adult survey, almost 46% expressed some level of satisfaction with services used to assist them with decisions about children's matters arising from separation. This was the lowest level of satisfaction expressed by all respondents with any of the services we asked about in this survey (satisfaction for all respondents with services used to assist with property or finance matters was almost 50% and was 48% for family violence services).

The dissatisfaction rate expressed by all survey respondents with services used to assist them with decisions about children's matters arising from separation was a high 64%. This figure suggests a significant sense of disenfranchisement and disillusionment with children's services amongst respondents to this survey. The dissatisfaction rate with children's services contrasted to the much lower levels of dissatisfaction expressed by all respondents with property services (almost 52%) and family violence services (50%).

Men were clearly much less satisfied with services used to assist with decision making about children's matters than women. Men were also more dissatisfied with these services than women, although the gap in satisfaction rates was less significant than for satisfaction rates.

However men's satisfaction with children's services increased while women's satisfaction decreased after 2006. The 2006 reforms may have improved some men's experiences with services used to assist respondents with decisions about children's matters arising from separation. Correspondingly women appeared to be much more disillusioned with children's services after the 2006 reforms than before. Whereas men appeared to feel appeased by the reforms, women appeared to find themselves worse off than before 2006, when using services to assist them with decisions about children's matters arising from separation.

The qualitative data received from the call-backs reaffirmed this picture of unhappiness with children's services. We received 26 answers on this issue, 16 from women and 10 from men. Table

25 outlines the responses we received to the question of why the parties were satisfied or dissatisfied with the services used to make parenting arrangements for children following separation.

Table 25: Numbers of men and women in relation to the reasons why they were satisfied/dissatisfied with the main service you used for making parenting arrangements for children

Response type	Frequency FEMALES (n=16)	Frequency MALES (n=10)
Felt legal representatives did not present their evidence, experience or point of view accurately or at all	6	2
Felt the court or the judge didn't listen or take into account the evidence or information presented, particularly in relation to family violence/abuse	7	1
Experienced a lack of empathy, and/or complaint about the manner in which they were treated or the conduct of a court-appointed professional	6	
Dissatisfied with mediation/mediators	5	1
Felt they were not believed (that there was family violence)	5	
Delays, length of time involved, and the ramifications	3	2
Feelings of powerlessness	1	2
Satisfied or partly satisfied with Federal Magistrates Court	2	
Unhappy with the process, although happy with the outcome		2
Felt forced into contested situation		1
Happy with the process/lawyers, although not happy with the outcome	1	
Dissatisfied with legal aid		1

Of the responses we received for this question, just 5 (19% of the responses) expressed some satisfaction with the children's services they used. This satisfaction was provided in a qualified manner. Two of these satisfied respondents were relatively happy with the services they received at the Federal Magistrates Court, although their satisfaction was not complete. One of these respondents stated:

- *The Federal Magistrates Court was better because of the report and the outcome. I suspect it is pot luck because we just happened to have the magistrate we had. I think they see it as 2 people having a fight and not as 1 person protecting the children. And I'm fully aware that if the child psych was not there the result would have been different.*

A further three respondents expressed mixed satisfaction, either that they accepted the outcome but disliked the processes used to get there (n=2) or that they were happy with the process but not the outcome (n=1). It was the legalistic nature of the processes that upset two of these respondents:

- *But while I am happy now with these arrangements, I was not happy with the legal process.*
- *I was satisfied with the outcome of the court case but not satisfied with the way the lawyers operated, and that is speaking as a corporate lawyer.*

Women, family violence and their dissatisfaction with children's services

Sixteen respondents (13 women and 3 men) stated that they were dissatisfied with either their lawyers or with the court processes used to determine children's matters arising from separation. Most of these respondents were women who felt that their experiences of family violence had been ignored, minimised or suppressed by lawyers and judges within the legal system. The following responses from women demonstrated these concerns:

- *The lawyers minimised the family violence in court.*
- *Even though the lawyer was sympathetic she didn't want to include certain pieces of information about the family violence (e.g. documentation of incidents, texts etc).*
- *I went to court with evidence – dates, worst incidents [of family violence] – and the magistrate did not read my affidavit but read his and claimed to know enough to make a decision.*
- *Things that were relevant to me were not relevant in court, i.e. the family violence.*
- *The Family Court ordered shared care in 2007 despite the existence of violence and even though he didn't ask for 50/50. Now we have week about shared care, but he's never even taken them full-time even though he pays less child support.*

There were many further expressions of dissatisfaction from women who felt like their experience of family violence was not properly taken into account when determining children's matters in the family law system. A further five women felt that the presence of family violence in their relationship was not believed. These women felt that the professionals they dealt with in the family law system viewed the presence of family violence as an inconvenient disruption to a care arrangement that allowed the violent father to care for their children. The following responses are their views:

- *I had a sense of not being believed.*
- *The justices acknowledge there is violence but it is minimised and then ignored when orders are made. One judge gave the father permission for him to take our daughter overseas despite him actually naming it as family violence.*
- *I was called a liar by his legal representative and it felt like by everyone else as well.*
- *I strongly felt that because of the 50/50 attitude it was assumed I was making up the violence.*
- *The court mediator was really angry at me because she seemed to think I was making things up and telling me it would be easier if we were in the room together. I was railroaded into an agreement that meant more time with the father but I found out that he was leaving them on their own and I was worried about their well-being. I tried to tell people but the lawyer said no-one would pay attention to this. The children were telling me about their father being violent but I always felt that no-one believed me and wasn't sure what to do.*

For one woman, attendance at family dispute resolution provided a further avenue for bullying and intimidation by her violent former partner. She thought that the mediation process was inappropriate for her case, because the family dispute resolution practitioner was not empowered to intervene to prevent further abuse:

- *Mediation was just another opportunity for him to bully and intimidate and the mediators could do little about it. I was expecting something different. I was expecting the mediators to have some authority and to be able to make suggestions. Needs someone with the authority to say stop it, that's not on, let's get back to the mediation.*

We are deeply concerned about the tendency, suggested in these statements and in other findings in the report, for professionals in the family law system who are assisting parents with children's disputes to minimise, ignore or simply not understand the nature of family violence. These practices undermine the safety of women and children who have been subjected to family violence and may present continued opportunities for control and abuse.

Views expressed in the call-backs help to explain the high levels of dissatisfaction with children's services expressed by mothers overall in this report, especially those who have used the family law system since the 2006 reforms. The *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) introduced provisions that attempted to ensure that more Australian children had a meaningful relationship with both their parents after separation (specifically by spending more time with their fathers). At the time the reforms were being debated, concerns were raised that a range of proposed provisions in the new Act would encourage the sublimation of family violence and endanger the safety of women and children in the family law system (Banks, Batagol et al. 2005). These provisions were the 'friendly parent' criteria (now in section 60CC(3)(c) of the *Family Law Act 1975*), the obligations upon professional advisers to promote shared care parenting arrangements (now section 63DA, *Family Law Act 1975*) and the provisions mandating attendance at family dispute resolution, even with an express exception made for family violence (section 60I, *Family Law Act 1975*). Kaspiw (2005) has previously described how it may be tactically dangerous for women before the family courts to object to contact on the grounds of family violence except in the most extreme cases.

Chisholm (2009b) identified three provisions in the *Family Law Act* that he recommended be amended because they deterred victims of violence from making appropriate disclosures in family law proceedings. These provisions were the friendly parent provision (section 60CC(3)(c)); the specific and separate costs provision for raising false allegations of family violence (section 117AB); and the section that requires advisers to canvass equal time care arrangements with parents following separation (section 63DA). Based on the findings of our research, we agree with these recommendations.

The responses to the call-backs and other data from the adult survey suggest that there is a high incidence of failure to disclose evidence of family violence in court proceedings. Some non-disclosure may be a product of tactical withholding of information by legal representatives, and we hope that the recommendations made by Chisholm (2009b) for the reforms to the three specific provisions of the *Family Law Act* may help redress those practices. However it is clear from the call-back responses that there may be practices within Australian family courts that prevent proper recognition or understanding of the nature of family violence and its consequences, as well as a failure to disclose violence by victims out of fear.

On 25 February 2010 the Chief Justice of the Family Court of Australia, Diana Bryant, suggested that the court might have access to family dispute resolution records if there was evidence of a risk to the safety of parents or children in family law disputes (Nader 2010). That suggestion was made in recognition that the court had some way to go in better identifying the presence of violence amongst its litigant population. However, we have concerns about this suggestion and instead we suggest that Section 10H of the *Family Law Act 1975* is amended to allow a further very limited exception to the confidentiality of family dispute resolution so that family dispute resolution

practitioners are required, in the certificates they must already produce under section 60I(8), to disclose a 'flag' that suggests the presence of family violence in a particular case. That 'flag' will signal to court officers that they should investigate the case more for the presence of family violence. We strongly recommend that family dispute resolution practitioners are not required or permitted to disclose any further information, beyond the bare existence of family violence in a particular case, for fear of compromising the ability of parties to negotiate freely within family dispute resolution or of hindering the disclosure of family violence in family dispute resolution. The existing limits to the confidentiality of family dispute resolution must remain intact.

There are also strong indications that have emerged from the data in this report, supported by the call-back data, that all judicial officers who deal with family law matters receive education and training in the complex and gendered nature and effects of family violence and that all family courts in Australia have family violence risk management procedures, similar to those now used by the Family Violence Court Division and the Specialist Family Violence Service at the Magistrates' Court of Victoria, to investigate and understand the risk of family violence in each particular case. For example, in the Magistrates Court of Victoria, applicants for intervention orders are interviewed by specially trained court registrars before each case to determine the risk of family violence. Both applicants and respondents can be referred to specialist family violence support services.⁸

Men, parenting and their dissatisfaction with children's services

Men's dissatisfaction with the services used to make parenting arrangements for children following separation centred upon delays and lack of resources in the system which prolonged the finalisation of their matters and, consequently, their contact with their children. The chief frustration for these men using children's services in the family law system was that they did not see as much of their children as they had hoped. Examples of their views are as follows:

- *Seemed more interested in covering their own butts so felt they delayed the process. If there was any hint or inkling something was wrong they dragged the process out. There was a delay of 10 weeks between the directions hearing and the hearing and the next hearing was delayed again for 10 weeks a number of times. All this time, contact with the children was severed.*
- *Allegations were so easy to delay the process which would mean I wouldn't have contact with my children.*
- *It is sometimes thought that for males to have success in the family law system they can't behave like a bully themselves but they should have a bully act on their behalf. But I didn't want this because I wanted to be amicable so that we could come to an agreement where I could see as much of my daughter as possible. So it didn't go in my favour.*
- *Legal aid started off good but then they did nothing.*

Client satisfaction with family violence services

Call-back respondents were asked which other service providers they had told about family violence and how the service provider had reacted. There were 17 women and 9 men who, in addition to the main service they used, said they had told another service provider about family violence. Just over

⁸ Further information can be found at <http://www.magistratescourt.vic.gov.au/wps/wcm/connect/justlib/Magistrates+Court/Home/Specialist+Jurisdictions/Family+Violence+Programs/>

half of the women and just under half of the men from the call-backs said they had told police about family violence and reported dissatisfaction with their response. A key theme that ran through their reasons for dissatisfaction with the police was that they felt that their concerns were not believed or taken seriously. As illustrated in some of the female responses, the reason for their dissatisfaction was because they felt that the police could not be bothered or were not paying sufficient attention. However, other women's comments are of greater concern because they suggest that there was little police could do to protect a person from family violence unless they (the police) physically witnessed the alleged perpetrator breaking the law. The following statements illustrate the women's views of police services:

- *Didn't take me seriously and made an incorrect statement/report. Since then I haven't bothered to report it. The police don't want to know.*
- *The police came and took me and the baby and my mum away and put us in a safe house but still didn't arrest him. A policeman at the police station said it was because it was coming up to the end of a shift and they didn't want to have to pay overtime.*
- *I used the police to get some personal things from the house and when I got there my ex was standing at the door and he was saying he was not going to give me anything and the police didn't do anything. The police said they could only intervene if there was a disturbance to the peace. One policeman said I had to give back some photos because it was not fair he didn't have any pictures of his children. I thought it was like a bad joke.*
- *When my son was abused the police told me it was assault. The DV officer was not helpful.*

Other responses by mothers who contacted services such as a family violence service or legal aid also showed high levels of dissatisfaction with these services. One mother, who said she was dissatisfied, said that she '*contacted a DV service ... and was put on a waiting list*'. Another mother who contacted legal aid and raised concerns about family violence described how they were '*unhelpful, obstructive and belligerent*' and that she was told to '*jump off a bridge*'. This was, apparently, because of her perception that they were '*stringing out*' her case so they would not have to '*deal with it*'.

Not surprisingly, the data from the call-backs suggested that there was a stark difference in the nature of the concern expressed in the male and female responses when asked about their perception that police did not believe them or did not take their concerns about family violence seriously. As a number of the male responses illustrated, a key reason that men felt this way was the reluctance on the part of police to consider that, like women and children, men and fathers could also be legitimate victims of family violence and that women could be legitimate perpetrators of violence. There was one father who said that he felt that the police sided with his female ex-partner against him because '*she took out a DVO against me*' and later gave '*false evidence in court*'. A more specific example can be found in the response by a father who said he was very distressed that his concerns about having experienced family violence from his ex were not being believed or taken seriously by police, as the following remark illustrates:

- *NSW Police admitted to me that they did not have an understanding of male victims of DV by women in their directive. NSW Police told me that what I was experiencing did not fit within the current statutory definition of DV. It has to be physical and you have to have evidence to prove it.*

Another father also said he was very disappointed about the reaction of a DV service when he reported family violence. He stated there was '*no point going because I was a man and I wasn't the*

perpetrator'. However, yet another father who sought advice from a men's health group reported a more positive response:

- *They were very, very helpful because they don't take the view that anybody is at fault. They take the view that how can we all stand together and prevent you from committing suicide? What can we do to help you get through this? A bit like AA [Alcoholics Anonymous].*

It was clear from section 4 of the adults' survey that male respondents had strikingly lower satisfaction rates with family violence services than female respondents (22% compared with 55%). Further, as noted in section 2 of the analysis of the adult survey, and to a lesser degree in section 5, people's experiences of violence varied according to gender. The call-back responses show that men more commonly described experiences of emotional and/or psychological abuse on the part of their female ex-partners, whereas the experiences for women were more serious and gave rise to overwhelmingly high levels of fear.

Some fathers reported that they did receive support from the system to overcome allegations of violence. For example, one father noted that *'there was one officer who was involved with interviewing me about the allegations of sexual abuse who knew how the system worked and gave me some advice'*.

Another gender issue that was highlighted was the difference between male and female responses in relation to mental health problems (see also section 5 of the adults' survey). For example, one mother said she didn't tell anyone about family violence or use any services out of fear and commented that:

- *My GP was worried that I was depressed but it was me in a horrible situation and I didn't want to tell anyone. The father was just an absolute nightmare so right from the start I avoided services and the father was trying to tell the court that I had an anxiety disorder and it might have worked out for the better because he could have used that against me.*

One father who commented on the different suicide rates for men and women said he was of the view that there were very few services for men following separation and divorce.

- *My experience is that this country has a poor record of supporting men. The suicide rate is double for men than it is for women. If you look at the statistics there are very little services for men that are funded by the government. But I paid for my own counselling and this is what prevented me from committing suicide.*

In summary, the women's and men's dissatisfaction rates with existing family violence services were low and their reasons for this dissatisfaction differed. There may be a variety of reasons for this – for example, it may be that some family services may deal with family violence in a manner that does not match the perceived needs of both male and female clients.

These findings suggests that in instances where allegations of family violence are raised in any service by men and women it is vital to ensure that specific strategies are in place to protect their interests and their safety and also the safety of their children. In addition, a sector-wide education campaign will assist family service providers to better understand the specific issues affecting men following separation and divorce (such as anger, mental health problems, etc.).

Family dispute resolution services and family violence

Call-back respondents were asked whether they had used family dispute resolution and, if so, whether they had told anyone at the service about family violence. They were then asked how the family dispute resolution service managed family violence.

There were 11 people who responded to this question: 8 females and 3 males. Half of the female respondents said that they felt that their allegations of family violence were not believed or were trivialised during the family dispute resolution process. For example, according to one mother, she said she felt that the family violence was 'not managed' properly by the family dispute resolution practitioner because it was misinterpreted by them and was redefined by her ex as 'stress'. Another mother noted that when they told the FDR practitioner about the family violence, they were declared 'unsuitable' for mediation. Despite this, she wanted to proceed with mediation, but was prevented from doing so, which made her feel *'totally rejected'*.

A more specific example of practices on the part of family dispute resolution practitioners that tended to trivialise or minimise women's concerns about family violence can be found in the response by another mother who commented that although *'they were very good at getting things sorted out with arrangements for the children'* she didn't feel it was appropriate to raise her concerns about family violence again, because in her opinion *'it was a secondary issue'* for the FDR practitioner.

These statements illustrate concerns that have been identified in a number of studies that have shown women's experiences of mediation can inhibit rather than assist in their disclosure of family violence (Keys Young 2006; Field 2006). Although the numbers of women who noted this in the responses to the call-backs are relatively small, their responses correlate with the findings made in a number of studies that have shown the potential disadvantages of mandating family dispute resolution for women in particular. For example, in one recent study Rachel Field noted the potential for such experiences to 'create great post-separation injustice for women, and consequently for many children' (2006: 46). As the statements by some of the women above suggest, while mediation can be, to use a term expressed by Field (2006: 45), 'good' for women (e.g. as illustrated by the mother above who wanted to proceed with mediation despite being told that they were 'unsuitable') the experience of mediation can also be an 'ugly' experience, particularly if victims (most often women and children) feel disempowered by the process.

As indicated in an earlier study by Keys Young (1996), although some women will make a choice not to disclose family violence, these women can still have a positive outcome from mediation. However, it is important that FDR agencies adopt specific practices to assist rather than inhibit disclosure of family violence. One such practice to assist disclosure identified by Keys Young is to follow up a disclosure of family violence with a discussion about specific safety strategies (Keys Young 1996). However, none of the women (or men) who we spoke to on the phone and who raised concerns about family violence said that they had been provided with an opportunity to discuss strategies for safety with the FDR practitioner concerned. The implications of these findings for service delivery are that all family dispute resolution service providers should be required to follow up a disclosure of family violence with a discussion with the clients about specific safety strategies.

The numbers of fathers who answered this question, was very small (n=3). However, two of the fathers who felt that their concerns about family violence were not believed or were trivialised by the FDR practitioner said that it was because they did not say there were in ‘fear’ of their ex, as illustrated by the following remarks:

- *She didn't believe it. She just ignored it by moving on to the next thing we were talking about because I wasn't saying I was in fear so it was trivialised.*
- *We went to the mediation session and I told them about her abusive behaviour, drinking and carrying on, and that she shouldn't have as much time with the children as she had. But they didn't say much about this at this stage because it was more about my conditions of access and I sort of understood that her behaviour issues were issues for a court. But the reason for this was because I didn't say I was in fear or felt threatened by her behaviour.*

Another father noted that *'I don't think they fully understand what they are dealing with is a time-bomb'*.

These comments support a theme that has arisen in the data analysed in other sections of the adults' survey (e.g. sections 2 and 5) that point to a perception on the part of fathers that the family law system is biased against men and fathers. However, it is important to recognise that this perceived bias may be a symptom of other factors, such as a poor fit of services with client need. Further, there may be a failure of different service providers in the family law system to adopt a comprehensive understanding of the gendered nature of family violence. We suggest that further research is needed to identify the services separated or separating fathers use the most and why, and which critically examines their experiences of accessing those services. Research is also needed to identify the overall gaps in services for men, in particular for men who are victims of family violence.

Pressure to agree in family dispute resolution

Call-back respondents were asked whether they felt pressured in family dispute resolution to reach an agreement. There were 11 people who responded to this question: 8 females and 3 males. Over half of the women reported that they felt ‘pressured’ or were told to ‘compromise’ into reaching an agreement. One mother commented that this was ‘why we were there’ and another said that she agreed to parenting arrangements otherwise her ex would take her to court.

A number of women felt pressured into making agreements about parenting arrangements largely to avoid going to court. Arguably, we could infer that this was precisely the aim of the introduction of mandatory family dispute resolution to the Australian family law system in 2006 (Field 2006). However, what appears to be the case from the responses from men and women who participated in the call-backs and the survey is that there are many people who are not happy about their experiences of mediation. This suggests that the desired change for a positive shift ‘to a culture of agreement making’ is having a number of adverse and potentially discriminatory effects for both women *and* men. As Rachel Field noted (2006), mediators not only exercise a considerable degree of power and control over the mediation process, their level of influence in the family law context is also gendered. Mediators, Rachel Field has explained, can not only ‘selectively facilitate discussion of issues ... this selective facilitation can be gendered’ with the effect that it ‘can potentially compromise the possibility of just outcomes for women in mediation’ (2006: 52). What the comments from fathers who participated in the call-backs also suggest is that they too have formed

the view that mediation fails to deliver ‘just outcomes’ for men and fathers but there is little recent research on the issue of how men and fathers experience mediation vis-à-vis women. There is a need for research that critically examines the qualitatively different experiences of women and men who access family dispute resolution services.

Call-back respondents were then asked *how they resolved the pressure to agree in family dispute resolution*. There were 7 people who responded to this question: 5 females and 2 males. Nearly all of the women said that they agreed to an arrangement to either avoid going to court or because they felt they didn’t have a choice, as the examples below illustrate:

- *I had to come to terms with losing the children. I thought I had to keep trying and I had to be strategic because I was in a hostile environment. If I don’t do the handovers he doesn’t react.*
- *I just agreed because I wanted to get out of there. The outcome was wrong but I have seen so many people get ruined in court that I just agreed to avoid it.*
- *I agreed to share custody because I could no longer fight. Courts are non-responsive; father’s rights override everything.*
- *The mediator thought I was neurotic and I expected to be supported. In the end I gave in and [my son] ended up in his care for a few nights.*

In light of these findings, we endorse the recommendation made by the Attorney-General at the Family Violence in Focus Conference (21 August 2009) that a pilot program be established to provide legal assistance in mediation sessions to those who have experienced or are at risk of violence.

Theme three: How equal time and shared care arrangements were working out

During the call-backs, men and women were asked if it had occurred to them before and during separation that family violence and shared care together might be difficult to manage.

Eight of the 15 women and one of the six men said they did not give the possibility of having to share care of the children with their ex-partner much thought because they knew little about shared care or thought everything would be OK.

- *Hadn’t considered it, because to me the priority was to get out. I thought I was better off leaving than staying. Shared care wasn’t even around then. (woman)*
- *I didn’t think there would be any shared care. I was the primary carer and we didn’t live together. It [shared care] was not there before so why later? (woman)*
- *No, it was only afterwards that I thought that family violence was an issue, that it would be difficult to manage. (man)*

Four men and one woman said it had occurred to them that family violence and shared care may be an issue.

- *Of course. It was a major issue. (man)*
- *Yes and I was reluctant to separate because of that but I had nowhere to go to report it – no services for men, no recognition that there are male victims of DV. (man)*

Four women identified they had been fearful about their safety and that of their children. The effects of such worry were such that the women believed their lives may be at risk. Such fears were compounded each time a domestic homicide was reported in the media.

- *I was not sure how violent 'violent enough' is; I was only really worried for the lives of my children a couple of times so I was not sure. I had an awful feeling when that other father drowned his children and I thought that maybe he might do the same thing as he was talking about the 'poor father'. (woman)*
- *I knew it would be difficult to manage and it is difficult but I feel like I didn't have a choice. I feel that if I took him to court he would kill me. (woman)*

One woman and one man noted that they did not think it would be as difficult as it subsequently turned out to be. One woman simply stated she had no opportunity to consider the logistics of shared care in a context of family violence.

- *I had no idea about shared care at the time. I just had to get out.*

Parents were also asked if the 'equal shared time' or 'shared care' was a problem for their children or themselves. Seven men and sixteen women answered this question. Only one woman reported a positive experience from shared care arrangements. The rest discussed difficulties arising from ongoing conflict, children's concerns, children's fears, the age of the children, and a lack of adequate housing or care. Men's experiences were more evenly divided, with 3 stating shared care was not a problem, two noting difficulties in communication or ongoing conflict, one noting children's concerns, and one noting a lack of appropriate housing or care.

Half of the women (8 of the 16) and two of the seven men said the shared care was difficult because of issues relating to their relationship including ongoing communication problems, having to see the former partner on a regular basis because of the children, or because of ongoing conflict and abuse.

- *I think the thing is there is so much conflict that it is almost impossible now. I think the conflict is the cause of major problems and I don't see the conflict will ever go. (woman)*
- *Yes, the shared care was hard on everybody, but it was easy for my ex because she wouldn't have a bar of it. I had to do everything. I had to pick up the kids all the time. She was happy for me not to see the kids at all. (man)*

A further seven of the women and one male expressed concerns about the behaviour of their children, children not wanting to go to the other parent or different parenting styles or routines causing problems.

- *The child psychologist told me I had to stop contact and that the children were not doing well. I sent the oldest one (to the psychologist) because there were clear changes in his behaviour and he has become increasingly violent towards animals. (woman)*
- *Anytime I wanted to see the kids I had to negotiate in court. This made the kids feel guilty for seeing me. It was a nightmare for the kids. (man)*
- *It is a problem in the fact that she really doesn't want to go as much as she does. She wants to have some time with her dad but she doesn't want half-half. It just hurts to know she doesn't want to go there. (woman)*

Four of the women said their children were scared of going to the other parent. The children feared their mother would be penalised if the violence against them could not be substantiated.

- *The children are scared of him. Scared of where he lives, the people he has over at his house, etc. They don't tell him how they feel because they're scared that he thinks I'm brainwashing them or making it up. (woman)*

- *Once the father became very violent at changeovers. I sought help because the youngest one did not want to go at all. (woman)*

One woman discussed the challenges presented by shared parenting given her children's ages. One was three years of age and the other a newborn at the time shared care commenced. Two women and a man identified concerns that arose from a lack of appropriate housing or care.

- *I don't see my children very often. I see my son every second weekend. I live in a little unit so can't really accommodate them. I don't see my daughter at all. I believed if I went for the 50/50 arrangement I formed the view that I wouldn't be able to care for them as good as my ex, so the best option was for them to live with her, but as a father that has terrible consequences. (man)*
- *They go to their father's two afternoons per week and every second weekend. He is not capable of looking after them. They've had lots of accidents, illnesses and he hasn't taken them to the doctor or gotten appropriate medical care. They don't have beds at his house.(woman)*

Three of the men found the shared care works well. In contrast, only one woman agreed that it was not a problem.

- *I didn't think it would be a problem. My ex loves the child so I was not worried. (woman)*
- *No, shared care would be a benefit. We don't have 50/50. I have 5 nights a fortnight, an outcome I was reasonably happy with, although I would have been happier if it was 50/50. When a child spends more time with one parent they feel an allegiance to that parent and that is more difficult for them. In our case there is no reason why 50/50 wouldn't work well. (man).*

Theme four: The devastating long-term impacts of experiencing court and family law processes

Parents were asked about the long-term impacts of their experiences in the family law system. There were 11 responses to this question from men and 20 from women. Respondents identified mostly adverse effects of their engagement with family law processes.

The areas of adverse impact included children's and parents' physical, emotional and mental health, children's behavioural changes, parents' relationship with their children, parents' ability to form new relationships, family finances, employment and lost time.

There were gendered patterns to the responses that were similar to the findings of the analysis of Section 7 of the online adult survey data. Women were primarily concerned with the impacts on their own and their children's physical, emotional and mental health and the children's behaviour, as well as the financial impacts. Men were primarily concerned with the financial impacts and loss of relationship with their children.

Mothers' accounts of harm to their children from their experiences in the family law system included diagnoses of depression and anxiety, eating disorders and children's violent and aggressive behaviour. They also provided detailed accounts of their own struggles with anxiety and worry for their children when they were with their father.

Mothers' accounts of financial harm pointed to the devastating impact of high legal bills. They were also financially destitute after fleeing violence and abandoning their possessions.

Both mothers and fathers were concerned about changes in their relationship with their children. Men were mainly concerned about not seeing their children and losing an ongoing connection with them. In contrast, mothers were concerned that their children were being adversely influenced against them during contact with their violent fathers and that they were returning from contact with violent behaviours and attitudes.

Respondents were asked if they now felt able to manage their situation. There were 17 responses from women and 8 responses from men. The most common response for both men and women was the benefit of support from new relationships, which enabled them to better manage their situation. The next most common response from mothers was the continuing difficulty of managing shared parenting arrangements. One mother noted that her child had felt obligated to care for his father, even though this had exposed him to adverse experiences.

Women reported continuing mental health problems arising from their experiences of violence. Women also commented on the impact of being isolated from family and friends to comply with court orders, and the ongoing difficulty of coping with financial problems and the prospect of more court activity.

Both men and women commented that despite the difficulties they endured, they were better off after the relationship had ended. A couple of women also commented that they were determined to advocate for better outcomes from the family law system.

The data confirm that women and children with abusive ex-partners and fathers experience continuing serious adverse impacts from the family law process itself and the outcomes of family law processes that leave children exposed to continuing abuse and mothers unable to protect their children, isolated from supports, financially impoverished and dealing with the harms to their children. The data confirm that loss of relationship with their children is the main concern experienced by fathers along with the financial impacts of family court processes.

The data also highlight the relatively greater severity, frequency and duration of harm experienced by mothers and children when they are forced to continue relationships with dangerous and abusive men. Men report losing money and relationships with their children. Mothers report losing their own and their children's physical, mental and emotional health, money and a safe future.

Implications for policy and practice

The analysis of the data from the call-backs indicates that shared care of children is not necessarily an appropriate or safe option for adult and child victims of family violence. It confirmed other data that suggested the need for all service providers involved in parenting separation decisions to be fully educated and trained to be able to recognise and appropriately respond to domestic violence and child abuse. It also confirmed that where there is family violence that has resulted in children feeling unsafe in the presence of the perpetrator of the violence, then a consideration of the child spending significant amounts of time with that parent is contra-indicated.

The overall findings in this report and the data from the call-backs strongly suggest that all allegations and denials of family violence should be listened to and taken seriously by family law professionals and investigated by professionals with appropriate expertise before parenting arrangements for shared care are made. In every case where family violence is alleged or admitted a

process of risk assessment should be undertaken by an experienced professional or a professional from a child protection agency, in a timely manner, before parenting plans and/or consent orders are made.

We consider that Section 60CC(3)(c) of the *Family Law Act 1975* (Cth) should be amended to ensure so far as possible children are protected at all times from violence and abuse and parents are not discouraged from exposing violent behaviour for fear that they will be regarded as an ‘unfriendly parent’. The emotional, psychological, physical, sexual and developmental safety of children must take precedence over the wishes, needs and rights of parents to contact in all parenting decisions after separation. In addition, it is imperative that all children who have been exposed to family violence have the opportunity to have their opinions heard and acted upon in court proceedings and other procedures that directly affect them, such as family dispute resolution.

The next section analyses the data collected from the children themselves via an online survey and a phone-in in Queensland and South Australia.

What children had to say in the online survey

Survey of children overview

This section of the report analyses the data collected from 105 children who completed the children’s online survey. The children were aged between 5 and 25 years with a mean age of 13 years.⁹ The survey was designed for children between the ages of 8 and 18 years but the research team decided to include the survey data from the younger and older respondents who answered the questions as child witnesses of family violence for the reasons outlined in the section on ethical considerations.

The results from the children’s survey indicate a number of concerns. First, the children expected to be heard in relation to their opinions and concerns about their lives. Being heard does not mean just listening and acknowledging their words, but acting upon what they say in a respectful and appropriate manner. For some, this meant accepting that they were talking the ‘truth’ of their lives and that they had strong reasons for voicing their concerns.

In spite of attempts to recruit a sample of children for individual interviews in both Perth and Adelaide, this research team was unsuccessful in gaining access to any children for this purpose. This, coupled with the opposition given to this research, both from one man who sought to ‘sabotage’ the surveys by responding inappropriately and from another man who sought to stop the children’s survey through charging the research team with unethical practice, indicates the degree of emotionality that arises in discussions about children’s participation (see the discussion under ‘Ethical considerations’ above). It has previously been highlighted that the strength of the gate-keeping role assumed by parents, service providers and other professionals and organisations effectively stifles children’s voices in many forums (Cree, Kay et al. 2002; Gilbertson and Barber 2002; Campbell 2008a).

⁹ The quotations used in this analysis are in the written words of the respondents and have not been edited or altered in any way from the original.

As long as the system relies on gatekeepers to first consent to children's participation, children themselves will continue to have their voices muted. For children themselves to participate more fully in family law processes that directly affect them it will be important for adult decision makers and professionals to construct children as fully able to act independently, even at a quite young age, as 'experts' in their own lives. One possible way to achieve this would be to ensure that informed consent from children over a certain age is sought before gaining consent from other people in their lives, and for their consent to take precedence over that of their parents and other gatekeepers. For the children's survey the research team decided that by 8 years of age most children are able to comment on factors that affect them when their parents are separating or have separated and should be given the opportunity to do so.

An analysis of the data in the children's survey highlighted that support systems were very important for the children who had experienced domestic violence. Overwhelmingly, the most significant source of support appeared to be from mothers. Friends, extended family and the school were also useful supports for children. While a number of children expressed positive reactions to support from counsellors and other professionals, this support did not appear to be as effective as that provided by those closest to them. Removing the support, especially from mothers, in order to address the concerns of other adults such as fathers, may be significantly detrimental for children who have experienced domestic violence. Other research (Campbell 2008b) indicates that children rely on associated supports such as routine, certainty and clear boundaries. These factors are enhanced and become more important for children in situations where there has been family violence.

The findings detailed below support other national and international research that indicates that children have an overwhelming desire to be consulted on issues that directly affect them (Smart 2001; Maundeni 2002; Neale 2002; Campbell 2008b; Cashmore and Parkinson 2009). The content of this consultation, however, may require some review. While the 2006 revisions to the *Family Law Act 1975* included a change of terminology in relation to ascertaining information from children (from 'wishes' pre-2006, sec 68F, sec 68G, to 'views' post 2006, sec 60CC), the literature suggests that there is confusion about this change, with the terms 'wishes' and 'views' being used interchangeably (e.g. Taylor 2006; Cashmore and Parkinson 2009). While the current study received comments from 2 respondents who suggested that they did want a choice in decisions about their futures (that is, a 'wish', expressed in comments such as *'That they can say that they do want to see the other parent and that the parent they live with, can't refuse to let the child go to the other parent'; 'being able to decide where to live without having other people involved and making there decisions for them'*), three other children argued that their views and opinions might be more important (e.g. *'It should be about the kid having a good life and realising the court fighting is bad'; 'Someone to talk to the court for us – letting the court know what is happening with mum and dad ... rather than making us go to dads when we don't want to go'*). In other research, children have more often stated that they do not want to make a decision, but that their views and opinions, as distinct from their 'wishes', should be taken into account (Neale 2002; Campbell 2008b). This indicates a need to revisit this issue in greater detail. Indeed, the debate about the difference between children's 'wishes' (defined in the Collins dictionary as 'a want or desire') and their 'views' (opinions) centres on possible different outcomes for children.

This study received significant responses via email and on chat sites from adults who urged others to 'sabotage' the survey by posing as children. Indeed, as reported in the section on ethics, one adult appeared to have attempted to do that. This mirrors ongoing concerns that when children are asked for their 'wishes' or where they are obliged to choose between their parents, they are placed in danger, especially where family violence exists. Children can also be placed in a 'no-win' situation when adults decide that their 'best interests' cannot be best served by agreeing to their wishes (Thomas and O'Kane 1998) leading to children's perceptions that they are not believed. While there is an argument to suggest that children are not under any obligation to express a 'wish', the power differentials between children and adult interviewers may make it impossible for children to express a wish. In family violence situations the pressure placed upon them to express a wish has the potential to place them in significant danger of retaliation from the violent parent (Shea Hart and Bagshaw 2008). In contrast, when children are asked directly for their views or opinions, this pressure is removed.

Valuable information can be gained from 'children's viewpoint and understanding in a general sense' (Chisholm 2009a), especially with regard to their understandings about their parents' conflict, violent behaviours, the environment in which they exist, their support systems and their views about their own worlds (Lansky, Swift et al. 1996). It would appear that the change in terminology could be more strongly communicated across the sector in order for greater clarity to be achieved in understanding the focus of children's participation.

The detailed analysis of the data from the children's survey is included in this main report as we considered it to be essential that their voices were fully represented and heard in this research.

Demographic information

A total of 105 respondents began the survey, and 68 (64.76%) completed it. Of the 88 respondents who answered the question about their gender, 53.4% (47) reported that they were girls and 46.6% (41) reported that they were boys.

Eighty-four of the 105 respondents gave information about their ages, while 3 others replied to this question with nonsensical responses. No responses were recorded for the other 18 respondents. Table 26 shows the ages of those who provided this information and the frequency of respondents at each age.

As indicated, the youngest respondents were aged 5 and the oldest was aged 25 years, with the mean age at 12.92 years. The small number of respondents above the age of 18 (7 respondents, 8.3% of the sample) indicates that some young adults wished to complete the survey retrospectively.

Sixty-eight point six percent (59 of 86) respondents identified as 'other Australian', with the next largest group being 'European' (6 respondents, 7.0%). One 15-year-old girl identified herself as 'Indigenous Australian'. She stated that she currently lived in Sydney, although not with either of her parents. In terms of country of origin, 68 of 91 respondents (74.7%) who answered this question stated that they were from Australia. The next largest group (7 respondents, 7.7%) were from the UK and another 3 (3.3%) were from the United States of America. One child each identified as Ukrainian, Iranian, Israeli and Dutch respectively.

Most of the respondents' parents had been separated for longer than a year (69 of 83 respondents, 83.1%), with the next largest group having separated for less than one year (8 respondents, 9.6%).

Table 26: Respondents' ages and the number and frequency of ages

Age	Number	%
5	2	2.4
6	0	0
7	0	0
8	10	11.9
9	4	4.8
10	8	9.5
11	8	9.5
12	13	15.5
13	6	7.1
14	4	4.8
15	9	10.7
16	7	8.3
17	6	7.1
18	0	0
19	1	1.2
20	1	1.2
21	2	2.4
22	1	1.2
23	0	0
24	1	1.2
25	1	1.2
TOTALS	84	100.0

Profile of the respondents

The majority of respondents (n=87, 86.13%) were children or young people who completed the survey (or most of it) appropriately. A number of online surveys (n=15, representing 14.28% of the sample) had been opened but contained either no responses at all or very few. Of these few, some appeared to have been begun by respondents who may have wished to contaminate the survey. Examples of these included one male who only responded to the first few questions and gave his age as 43 years; another who gave his age as 12, said he was born in the Ukraine, that his family identified as Asian, that he had a 67-year-old sibling and that he currently lived with 'A random guy from IGA' and 'at the back of IGA'. Yet another gave his age as 25, said he was born in Iran and his family self-described as Asian, but gave no other responses. One other respondent opened the survey and responded to only one question, replying that s/he felt 'very happy' with the time s/he spent with his/her mother. Finally, one respondent answered some of the questions with meaningless numbers (including his age), stated that his family described themselves as 'South American' (while not stating where he was born) and did not complete the survey beyond the first page. We have removed these responses from the analysis that follows.

Of those who 'skipped' questions, a significant number (ranging from 99 down to 53 respondents, mean number 54 respondents) left the qualitative questions blank. This finding suggests that children and young people were very selective in choosing what to respond to and what to skip. For example, while only 56 respondents skipped the question asking what their parents did that helped most, a large number (99 respondents) skipped the question that asked them whether someone else apart from their parents started fights in the home.

In contrast, respondents appeared more ready to respond to the multiple-choice questions, with the numbers of those who skipped these ranging from 19 through to 61, with the mean number being 38 respondents who skipped the multiple-choice questions. This difference in numbers of responses to the questions suggests that children and young people were exercising significant choice in deciding what to respond to and what to leave. This behaviour supports the validity and reliability of the survey measure used.

Residence decisions

The majority of children (63 of 85, 74.1%) resided with their mothers 'most of the time' following separation. Eight children (9.4%) resided equally with both parents and 6 (7.1%) with their fathers most of the time. It was interesting to note that these six appeared to have strong attachments to their fathers, often stating that their father was '*good to me*' or '*was looking after me*'. A further 7.1% lived with 'someone else' and 2 (2.4%) moved to their grandparents' care. While 57.5% (46 of 80 respondents) reported that they still lived with the same adult, 32.5% (26 children) reported they were no longer living there. Eight others (10% of respondents) stated that they lived with that adult 'sometimes and sometimes somewhere else'.

When asked how happy or unhappy they were with the time they spend with each parent, respondents were roughly equally happy and unhappy about the arrangements, as shown in Table 27 below, although there was a slight trend towards general happiness with the time spent with mothers and general unhappiness with time spent with fathers. This finding suggests that, even when there has been violence within families, children and young people may still wish to spend time with the violent parent.

Table 27: The numbers of responses from children in relation to time spent with each parent

How happy are you with the amount of time you spend with your Dad?			How happy are you with the amount of time you spend with your Mum?	
Response	Percent	Response count	Percent	Response count
Very unhappy	33.80%	27	32.50%	27
A bit unhappy	20.00%	16	10.80%	9
Don't know	10.00%	8	8.40%	7
A bit happy	10.00%	8	12.00%	10
Very happy	26.30%	21	36.10%	30
<i>answered question 80</i>		<i>skipped question 25</i>	<i>answered question 83</i>	<i>skipped question 22</i>

When asked who decided where the respondents would live after their parents separated, 42.2% (35 of 83 respondents) reported that a judge, magistrate or mediator had made this decision. (It would be interesting to contrast this finding with data from children who had never experienced domestic violence. As it stands the findings indicate that the level of acrimony between parents who have experienced domestic violence in their relationships creates significant difficulty in reaching decisions independently of the court system.) Of the rest, 16.9% (14 respondents) said their mother had decided, while only 3 respondents (3.6%) reported that their fathers had decided where they would live and with whom after separation. A further 6% (5 respondents) stated that the decision was made jointly by both their parents.

After separation, 43.8% (28 of 64) of the respondents reported that their mothers left home, while 48.4% (31) reported that their fathers had left. Thirty-six point four percent (n=24) of respondents reported that they left home with their parent and 42.4% (n=28) reported that they stayed in the home. While it is difficult to gain a deep understanding of the relationship between these figures, it is likely that the experiences of this sample reflected those from other research (Campbell 2004) that indicated that in a significant number of families the children remained with their mothers following separation and that the decisions made about where the children would reside and with whom they would reside continued this arrangement, almost by default.

Twenty-eight of 79 respondents (35.4%) could not remember if they had been asked what they wanted, while nearly the same number (n=24, 30.4%) said they were not asked by their parents. Nor were they asked by court professionals (judges, magistrates, mediators), with 53.8% (n=42 of 78 respondents) reporting this.

A smaller sample reported that they were asked what they wanted but that the adults did not do what they asked (12.7% for parents and 14.1% for court professionals).

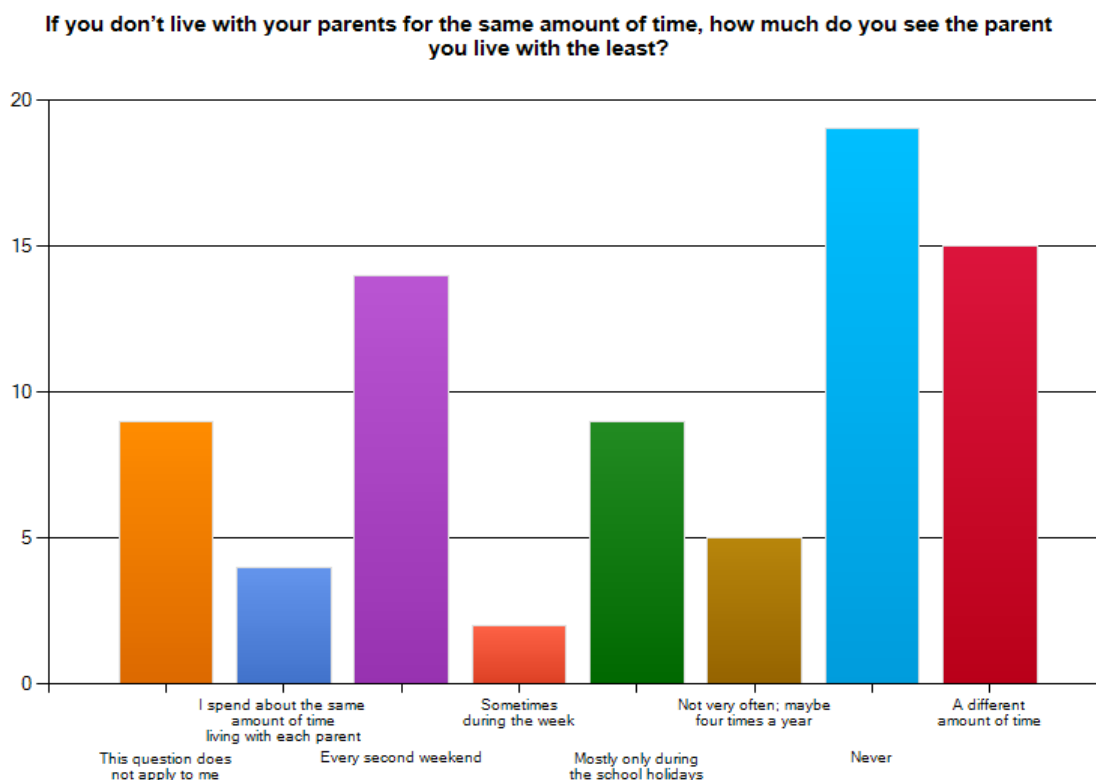
In another 21.5% of cases, parents did ask and act upon their children's concerns, but the frequency of this occurrence amongst court professionals was lower (10.3%).

In contrast, the majority of respondents (66.2%, 51 of 77 respondents) stated that they themselves would have liked to have made a decision about their residence and contact arrangements following separation. This decision, though, would have been communicated to another adult, such as a judge or magistrate (37.7%), a lawyer (28.6%), a counsellor or mediator (24.7%). This suggests that children and young people might find it easier to communicate their choices for residence to a adult professional rather than to members of their families. This might be especially important for those children who have experienced significant abuse and violence within their families. While some respondents would have liked their mothers (n=21, 26%) or fathers (n=15, 19.5%) to have asked them about where they might live, these frequencies seem to reflect the literature that suggests that parents can put their children in difficult positions if they ask them for their 'wishes'. The respondents in this study appear to be aware of this concern, thus reporting less willingness to have their parents ask them what they would have liked.

Contact arrangements

Respondents were asked about arrangements for seeing the parent with whom they did not live. Graph 21 indicates that 24.7% (n=19 of 77) of the respondents reported that they never see their other parent, while 18.2% (14) reported seeing that parent every second weekend.

Graph 21: Numbers of children and the amount of time they spend with the parent they lived with the least



When asked whether different arrangements were in place for seeing the other parent, 31 respondents (29.5% of the total number of respondents) reported a range of arrangements. Table 28 summarises these arrangements.

Table 28: Number of children's responses in relation to frequency of contact with the non-resident parent

Frequency of contact	Number of responses
Frequent including during week	7
Frequent but with restrictions	3
Infrequent, child's decision	4
Infrequent, other reason	9
No contact, some rejection	4
No contact, other	1
Unclear or invalid responses	3
Total respondents	31

Seven of the 31 respondents (22.6%) reported that they had more 'liberal' arrangements than would be thought of as 'the norm.' Most of these arrangements included spending time with the parent with whom they are not living during the week, for dinner or to stay over. One respondent described

very frequent contact: *'from Thursday to Tuesday each second week'* as well as spending half of every holiday period with each parent.

Where restrictions were in place for contact, these involved seeing the parent at a contact centre or under an unspecified supervision arrangement. One respondent (an 8-year-old boy) reported seeing his mother *'every Saturday only for 6 hours'*. He stated, *'It's not fair what court did to me. I would like to live all the time with my mum.'*

Nine respondents (29%) reported having infrequent contact for either unspecified reasons or because of distance. Responses included, *'Mum decided to take us to live 1,600 km away from my dad. Now I live that far away from my brothers and Mum'*; and *'I see my dad barely and my mom all the frickin time. I hate it.'* This was a 14-year-old girl who was born in the United States and whose parents separated when she was *'little'*. She reported feeling *'so frickin mad'*, described her father as *'really protective'* and stated that if things were different *'I would be so happy and be with my dad'*.

Four respondents reported that they now have infrequent contact with the *'non-living-with'* parent by their own choice. Responses included, *'When I want to see my dad, then I see him'*, and that the contact was *'every second weekend but I stopped going'*. These respondents appeared satisfied with their decisions.

Four other respondents described an active rejection by their parent, leading to a cessation of contact with that person. The responses given by these young people indicated that in some cases this rejection was quite stressful. For example, one respondent reported:

- *My father doesn't want us, because my younger sister was not wanted by him. He wanted a boy and that's why he doesn't want us. My mother says that if he don't want my sister, he also don't get me.*

Other comments included:

- *I haven't seen my dad for 4 months because he's been in America and he told me he was coming back to live here and he told my sister he was ... [going] to live back in America.*
- *Mum used to hit me with a studded belt and I left and now she said to never come back.*

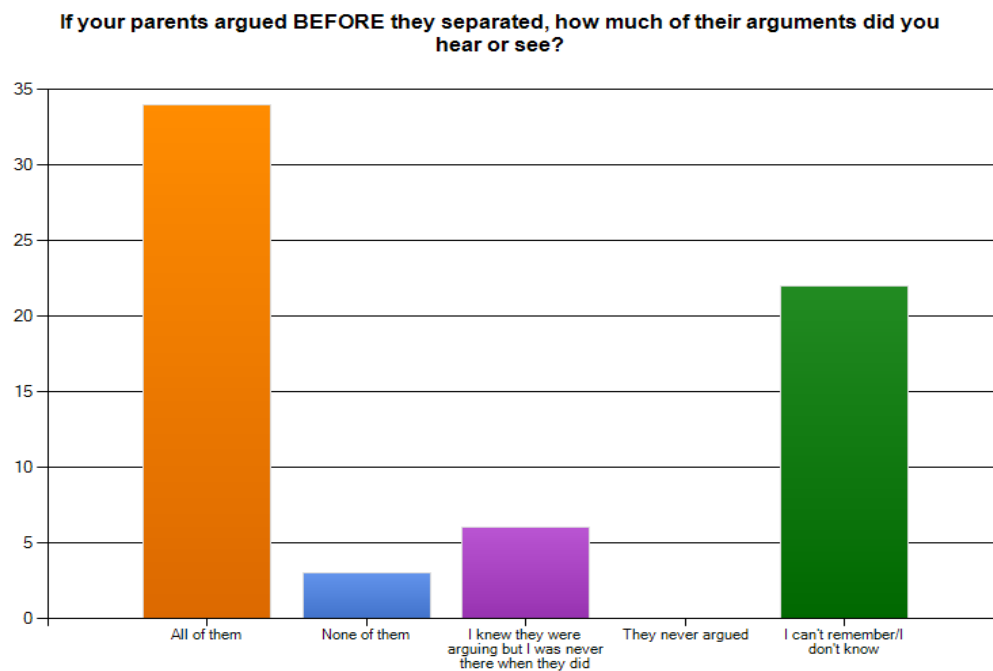
Before the separation

Children's exposure to parents' arguments

Graph 22 shows respondents' answers to the question, 'How much of your parents' arguments did you see or hear before they separated?' The results demonstrate that of the 65 who answered the question, the majority (n=34, 52.3%) were present when their parents argued. This finding is interesting in the light of criticisms that this research would *'harm'* children and young people in some way and mirrors the findings of other researchers, including those of Campbell (2008a), which suggested that children have more understanding of their experiences than adults believe. If they already have been exposed to their parents' arguments during the life of the marriage, attempts to protect them after the separation would appear ill-conceived, given that any *'harm'* that might have befallen them would, in all likelihood, have already occurred. The results might also reasonably reflect children's attempts to protect themselves. 33.9% of the sample (n=21) reported that they could not remember or did not know whether they heard or saw their parents' arguments. A

positive coping mechanism for managing negative experiences is to deny that they occurred. It is possible that a number of those who reported not remembering the arguments could be denying their occurrence in order to protect themselves from these negative experiences. If that were so, the results would support the notion that children are social actors who operate on their own worlds rather than mere passive recipients of their parents' behaviours.

Graph 22: Numbers of respondents in relation to the frequency of parental arguments seen or heard

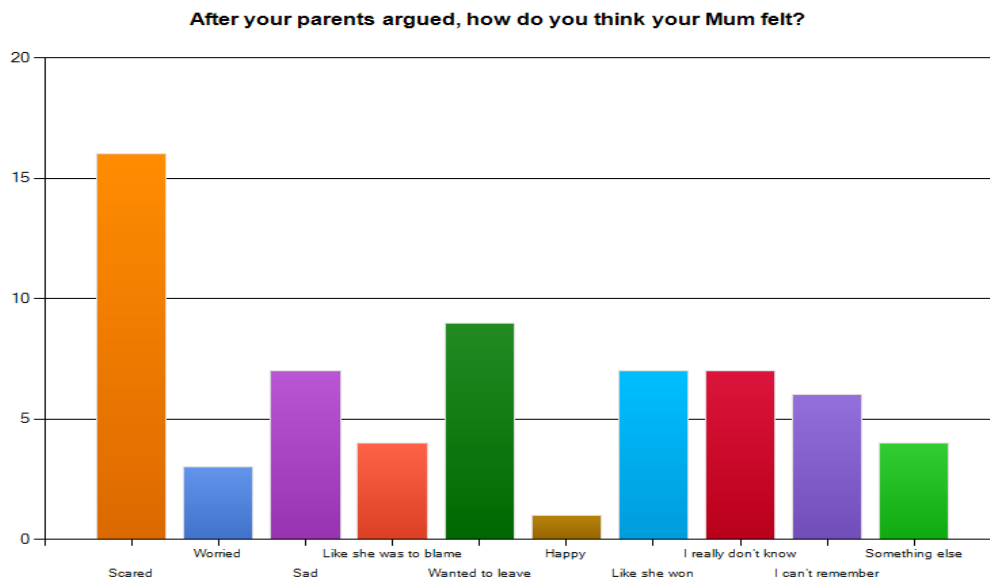


Respondents were asked how they thought their mothers and fathers might have felt after they had argued. Graphs 22 and 23 present the results of this question, which was answered by 64 respondents.

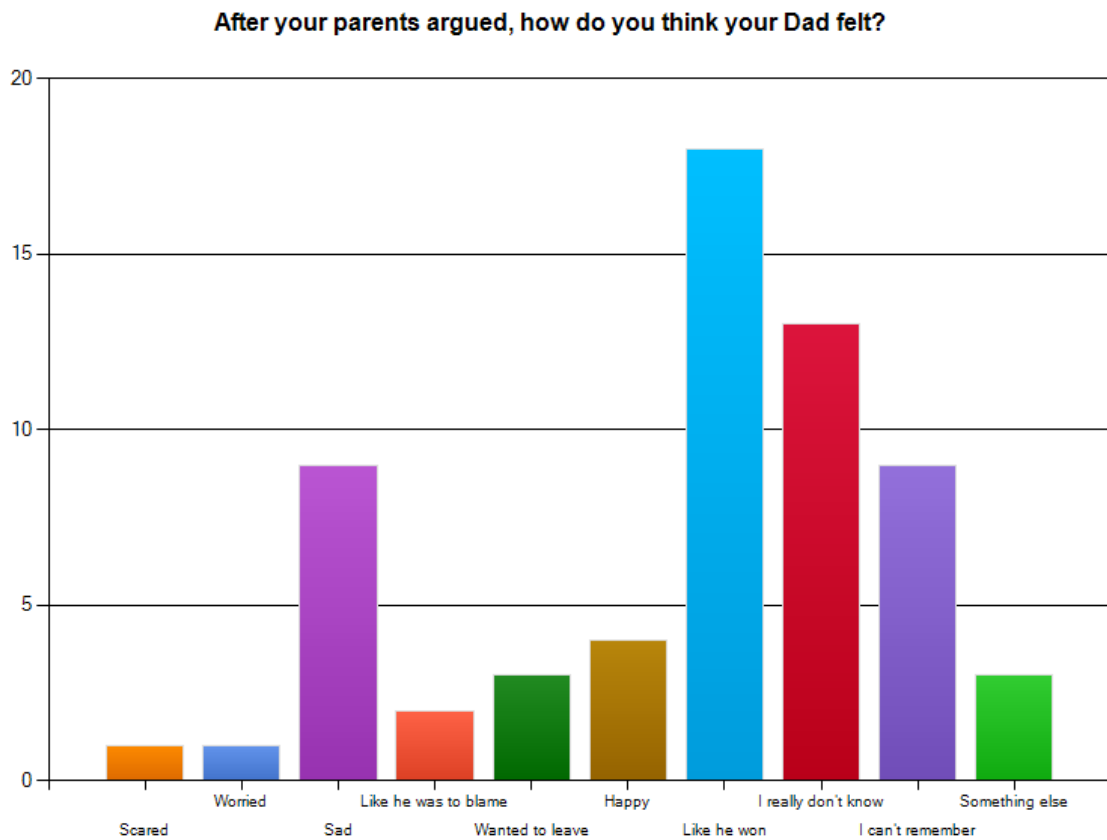
Responses indicated a difference between participants' perceptions of their parents' feelings. Sixteen respondents (the largest number, representing 25% of the sample) reported a perception that their mothers would have felt 'scared' after the arguments, while 18 (28.6%) perceived that their fathers would feel 'like he won'. While these figures do not appear significant, there is nevertheless a trend for this sample to perceive that their mothers would be more in touch with their emotions than would their fathers, who would appear more competitive in the marriage relationship. Of further interest is the large response to the statement 'I really don't know' in the question about the children's fathers: 20.6% (13 respondents) stated that they do not know how their fathers would have felt, while only 10.9% (7 respondents) reported not knowing how their mothers might have felt. These responses indicate that children may have experienced difficulty in accessing their fathers' feelings, especially where there was domestic violence. Such difficulty may lead to a child wanting to get closer to her/his father in order for him to experience the same level of comfort they may receive from their mothers.

These perceptions were, to a degree, supported by the questions, 'If you think your Mum/Dad felt something else, please tell us'. The range of responses relating to mothers used a large range of emotion words to describe their mothers' feelings (e.g. scared, worried, guilty, upset, sad, 'like she was to blame' and devastated), while the responses for fathers reflected a smaller range. Fathers were described as being angry, excited, as having a "Not my problem" feeling, or 'like he's the best one in the world because he did that'. Other respondents stated that they did not know how their fathers might feel, saying: 'I am unable to understand his irrational and immature thought processes', or 'He probably felt a lot of different things but you could never tell as he just showed anger'. There were, though, some comments in support of fathers, such as 'My dad was really scared and sad and he felt sick all the time. He new my mum mite kill him and my uncle' or 'He did not yell and shout, it was my mum. He was quiet and upset.'

Graph 23: Number of respondents in relation to their perceptions of their mothers' feelings following an argument



Graph 24: Number of respondents in relation to their perceptions of their father's feelings after an argument



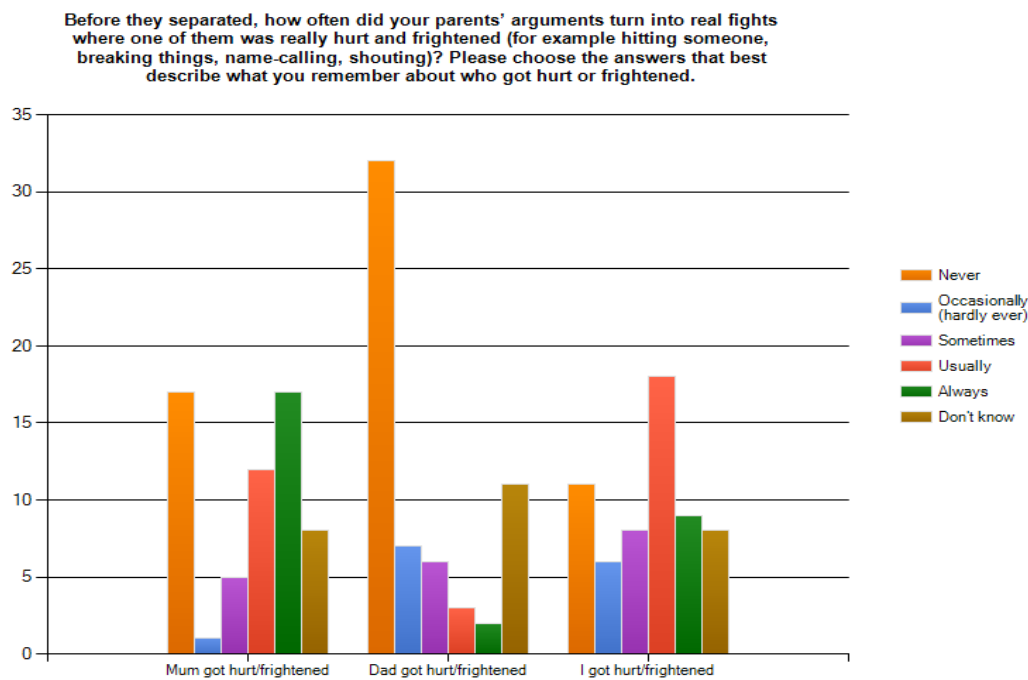
Significantly, the number of qualitative responses given for the questions relating to respondents' perceptions of their parents' feelings following a fight indicate a difference in respondents' response rates. Twenty-two children and young people (21% of the total sample) gave information about their perceptions of their mothers' feelings compared to 14 responses (13.3%) for fathers. There are several possibilities for this. First, respondents may not have a clear understanding of how their fathers feel (though, as illustrated above, respondents perceived clear differences between each parent's feelings). Second, it is possible that responses to the qualitative questions are due to a non-caring approach to their fathers' feelings, if these fathers were perpetrators of violence in the home. Third, the level of responses generally to the qualitative questions suggests that children and young people were discriminating between questions to the degree that they only responded to those they felt were relevant to their own circumstances. Nevertheless, the findings suggest that there were clear differences between respondents' reactions to each of their parents, with significant discrimination being directed towards the parent who may have perpetrated violence within the family.

Safety issues

Graph 25 shows the frequencies of responses to the question relating to levels of hurt or fear following arguments before parental separation. It is interesting to note the significant number of responses (52.5% of 58 responses) suggesting that fathers were never hurt or frightened following an argument, especially when compared with the perceptions for mothers, of whom an equal

proportion were either ‘never hurt or frightened’ or ‘always hurt or frightened’ (28.3% in each case). One possibility for this result might be that children were confused by the question itself, which asked whether their parents were frightened or hurt while activities such as hitting or throwing were occurring. It could be that children were focusing on the activities rather than the result, leading to a skewing of the results for the question.

Graph 25: Number of responses in relation to perceptions of level of hurt or fear following parental arguments before separation



Significantly, 30% (18) of the respondents reported that they were usually hurt or frightened following their parents’ arguments. This finding appears to support other research that indicates the close connection between domestic violence and the abuse of children. Indeed, the link between domestic violence, child abuse and pet abuse is reinforced by one respondent’s comments. In reporting how he kept himself safe, this respondent stated:

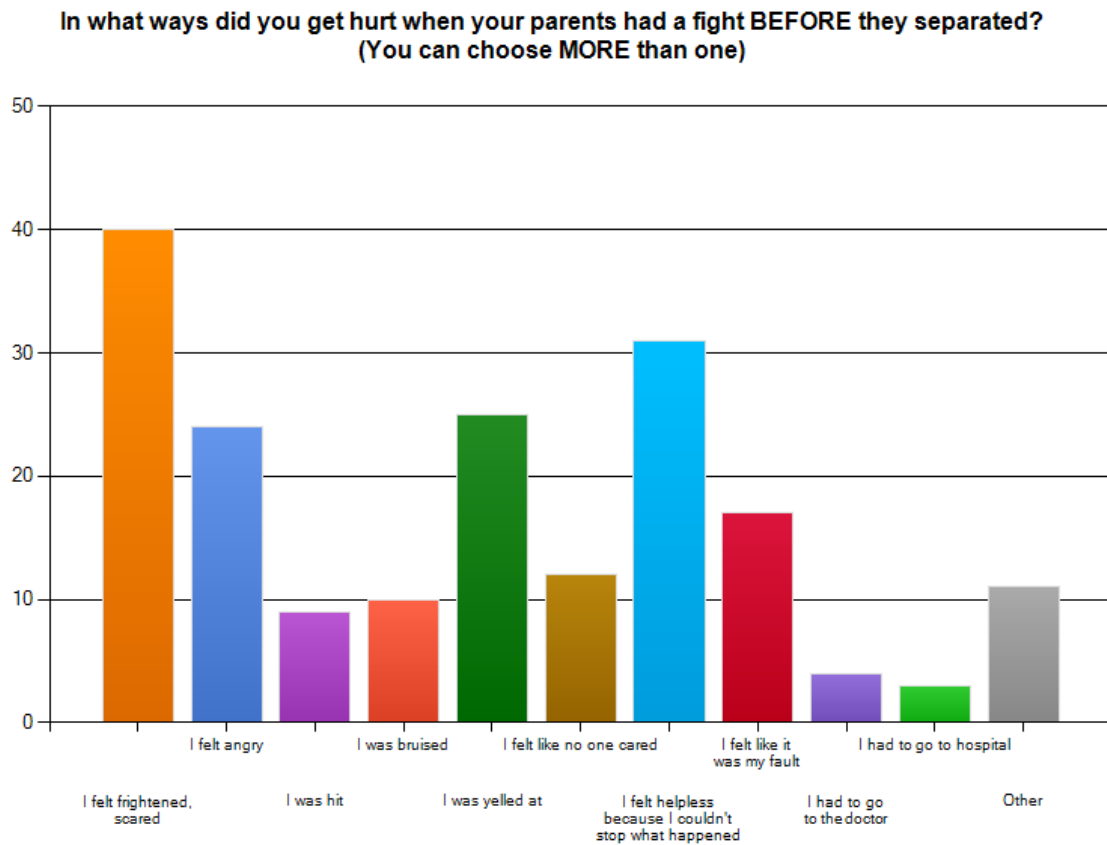
- *you wont let me give you more answers so I did lots of things you put but mum killed my dog and my bird and I am not aloud to use a phone and no one can help me*

Another respondent reported being held by her father while he was hitting her mother. These examples indicate the level of stress under which some children were placed where violence had been a factor in the family’s life. Keeping children safe from being hurt or frightened is a significant issue during domestic violence events.

The respondents were asked in what ways they were hurt during their parents’ fights. The results are recorded in Graph 26 below. While 67.8% (40 of 59 responses) reported that they felt frightened or scared when their parents fought, a significant proportion of these also felt both helpless because they could not stop the fights (52.5%, 31 responses) and also thought that the arguments and fights were their fault (28.8%, 17 respondents). These findings suggest that parental arguments and fights can directly affect children’s emotional health, especially in relation to their feelings of self-worth,

agency and efficacy. When these feelings are pervasive they can lead to adjustment difficulties in later life (Carpenter and Stacks 2009; Postmus and Merritt 2010).

Graph 26: Number of responses in relation to how children were hurt during their parents' fights before separation

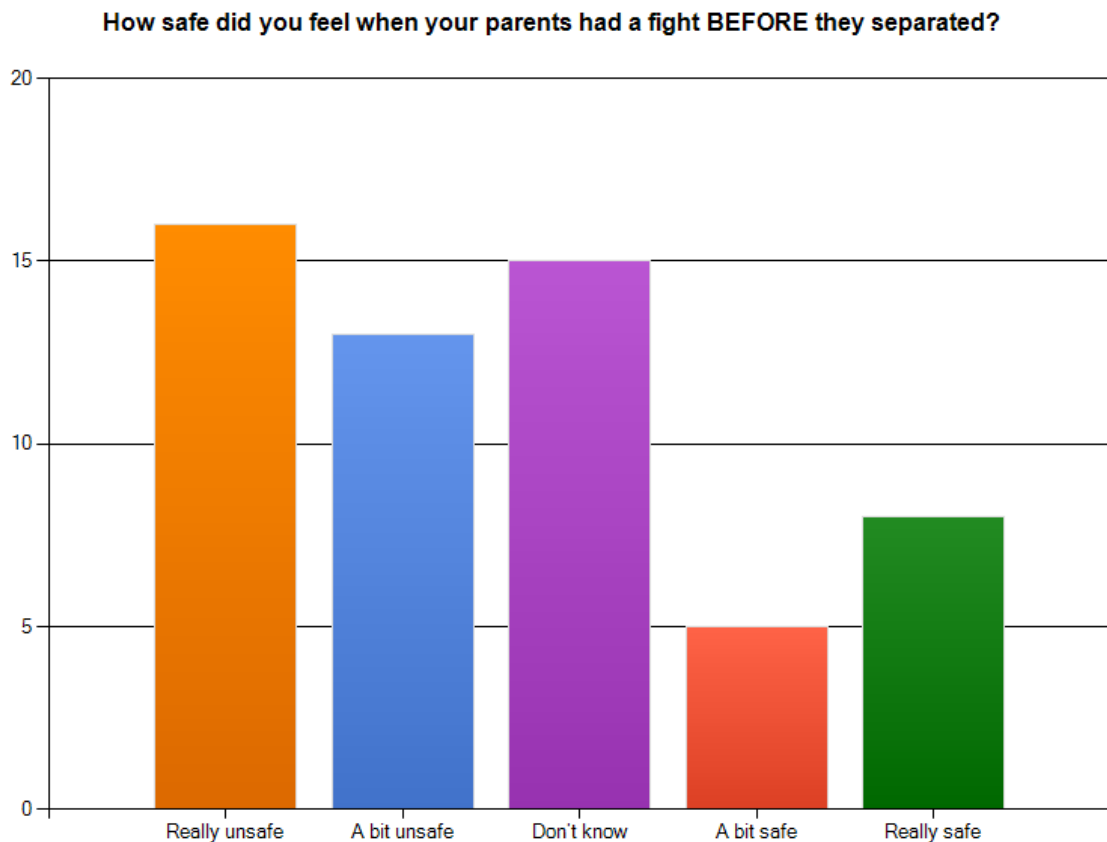


As Graph 27 shows, 28.1% of 57 responses reported feeling ‘really unsafe’ during their parents’ fights, while another 22.8% felt ‘a bit unsafe’. In contrast, a total of 13 respondents (22.8%) reported feeling either ‘a bit safe’ or ‘really safe’ when their parents fought.

Qualitative responses indicated five main themes for feeling safe or unsafe, the first of these being the **unpredictable nature of their parents’ behaviours**, reported by 18 (47.4%) of the 38 respondents. For example, one respondent reported, *‘It was like living with a semi dormant volcano you knew it would explode there was just no warning’*. Others expressed concern that significant damage might occur: *‘dad could have done anything’*; *‘I thought he could kill someone’*; *‘dad would have a scary face and look scary and say he would kill us’*; *‘I was uncertain whether or not one of them would lash out at me’*.

The second strongest theme was related to those who **felt safe even when their parents were fighting**. Nine of the 38 respondents (23.7%) reported feeling safe for various reasons, including, *‘Because my older sister use to take me into her room to get me out of the fight’*, *‘because my mum looked out for me’*, or even *‘mum would never let us get hurt ... she got it all’*. These comments indicate that even though some children felt safe during their parents’ fights, there was a cost in terms of others feeling hurt or being abused.

Graph 27: Numbers of responses in relation to children’s perceived levels of personal safety during parental fights before separation.



The third theme was related to the **respondents’ feeling personally responsible**, either for the fights themselves or for trying to stop them. This was raised by 5 respondents, or 13.1%. Reports that indicated this included, *‘cause mum couldn’t stop him and I couldn’t help her’; ‘I didn’t know what to do’; ‘Because I didn’t want anyone to get hurt’; ‘I wish I had the strength/wisdom/knowledge to call the police for help. I just wanted the yelling to stop.’*

Fourthly, **children felt confused and worried by their parents’ fights**. Examples of quotations related to this theme include, *‘I didn’t know what was happening’* and the use of one word in capitals: *‘WHY’*.

For three children, two themes were evident in their responses, suggesting confusion over their own feelings and situations. Two children commented on the **unpredictability of the outcomes of their parents’ fights while also feeling safe**: one said *‘I felt %100 safe but extremely worried when dad got ma. I knew he’d never hurt me he said I was his favourite daughter and he loved me more than anything in the world’*; and another said *‘I thought that dad could come up and hurt me, yelling and all that. I felt safe with mum.’* These conflicting feelings have the potential to build hyper-vigilance in children, leading to their being always alert for the dangers that a parental fight might contain.

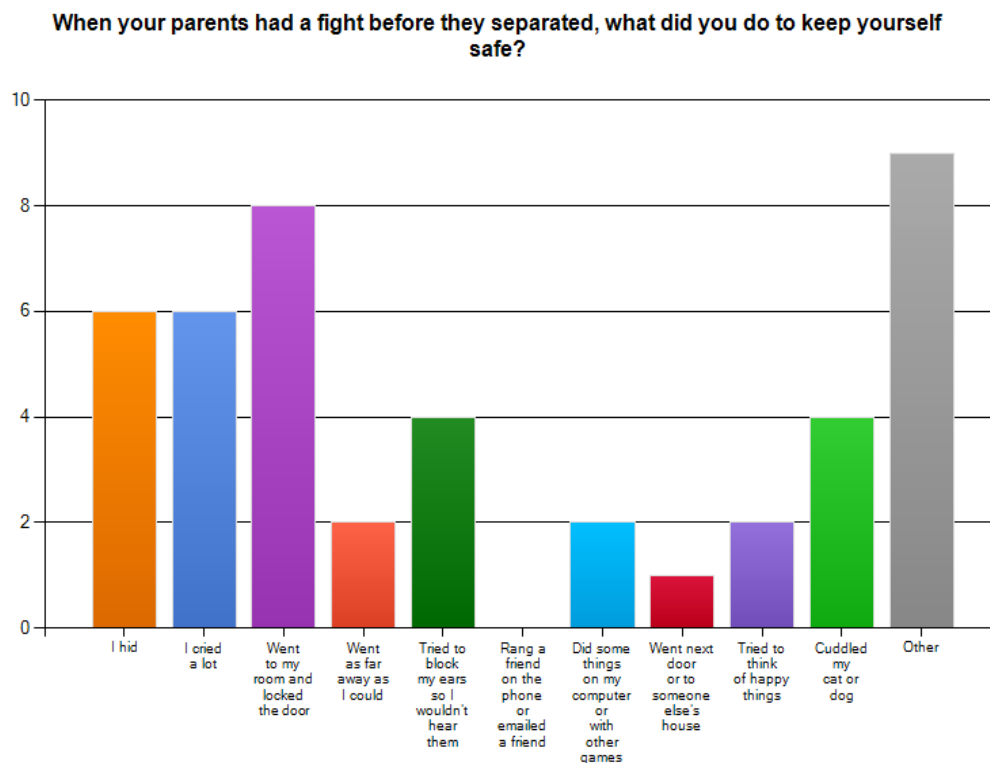
A third of these children expressed similar worries to the two quoted above, but with an extra concern: that they **may have been the cause of her parents’ fights**. One reported, *‘I felt safe, but I was worried about either one of them leaving. I was worried that they’d be upset because of*

something the other had done or I had done’. Again, feelings such as these may be difficult to overcome when confronted with ongoing domestic violence.

The final theme in the qualitative data relating to perceptions of safety was related to the age of the child when the parental fights were happening. Two children reported that they were very young when the fights occurred while a third child reported not remembering the events. One child stated: *‘I didn’t even know they were fighting’*.

To keep themselves safe, children and young people reported resorting to a number of strategies (see Graph 28). Eighteen point two percent of respondents (8 of 44) reported that they ‘went to my room and locked the door’ while another 18.2% ‘tried to stop them from fighting’, a strategy that could lead to their feeling more unsafe if the outcome was not positive.

Graph 28: Number of responses in relation to actions children took to keep themselves safe



The qualitative responses provided by the respondents in the survey mirrored the list of actions in Graph 28. One respondent reported:

- *I did not need to call the police before Mum and Dad separated. I did after because Mums new partners were violent when Mum hit them and threw things at them. My dad never hurt my Mum.*

Five of the 28 respondents who reported doing other things reiterated that they had tried to stop their parents’ fighting; but, as one of them said, *‘It didn’t help’*. Another tried to comfort her mother after the fights, even to the point of reporting that she had *‘helped her when she was vomiting’*.

Those who had siblings reported staying close to them during the fights and arguments, either cuddling each other, using distractions such as games and food, or 'pretended it wasn't happening'. Three of the 28 respondents blocked their ears to drown out the fights, while one child reported, *'One day I got a radio and I would turn it up really loud so I couldn't hear it [the fighting]'*.

Overall, the results indicated that the children used a number of strategies to keep themselves safe including relying on their siblings or friends (9 of the 28 qualitative responses; 32.1%) and removing themselves from the situation. These findings agree with earlier research (Kitzinger 1990) that suggests that even though some of these strategies do not appear effective from an adult's point of view (they do not stop the violence from occurring again, for example), they do assist children to cope with their situation and help to build their resilience. Even so, as Bagshaw, Campbell and Jelinek (2002) found, when children are repeatedly exposed to their parents' violence their coping mechanisms work for a short time only. Continued exposure to violent behaviours may result in significant feelings of sadness and guilt and may lead to clinical depression.

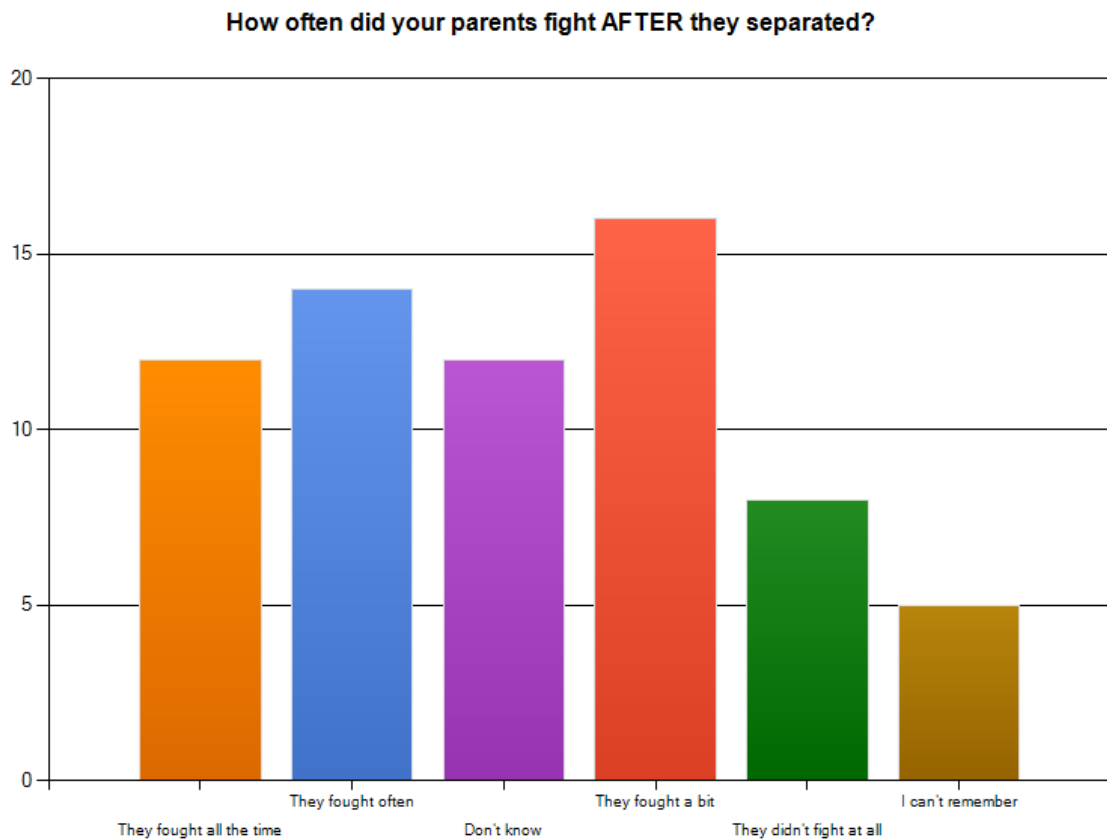
After the separation

The conflict

While fights and arguments still occurred after separation, respondents reported that they decreased in frequency over time after separation. Twenty-three point nine per cent of respondents (16 of 67) reported that their parents 'fought a bit' while 17.9% (12 respondents) stated that their parents 'fought all the time'. Another 17.9% stated that they did not know how much their parents fought. In the majority of cases, fathers were reported to have started the fights after separation (37.3%; 25 of 67 respondents), compared to 13.4% or 9 respondents who said Mum started the fights and 17.9% (12 respondents) who reported that sometimes Mum and sometimes Dad started the fights. When asked if someone else started the fights, 10 respondents reported others such as parents' new partners, grandparents, the judge and the courts. One respondent stated:

- *The court made me go to counsellors and the lawyer who tried to make me say I was making stuff up about Dad and he was nice but they were wrong. They told me if I didn't do what they wanted they would put mum in jail.*

Graph 29: Number of responses in relation to children’s perceptions of the frequency of fighting after separation



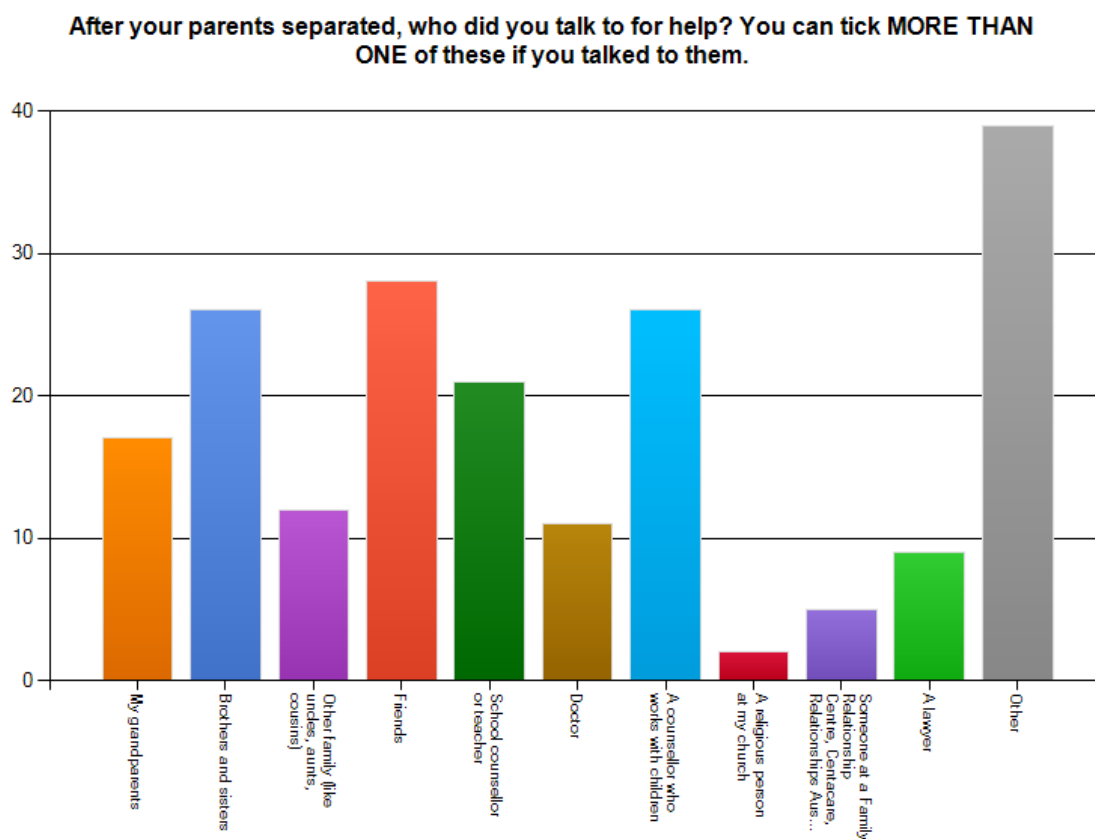
Children’s and young people’s responses to these fights and arguments were similar to those reported for before the separation, though 39% of respondents (23 of 59) reported that they ‘cried a lot.’ They also reported running away, calling Kids Helpline, and sitting and watching the fights while doing nothing. Qualitative responses supported these actions but included further information about how the children reacted to the fights. Three of 22 respondents (13.6%) reported running away when the fights began, mainly because ‘*I didn’t want to go with my dad*’. Three others watched the fights without intervening. This seemed to be due to the timing of the fights: ‘*fights were normally when I was picked up or dropped off from Mum’s*’, so children may have been either sitting in a car at the time or walking into the house. Two of the 22 children (9%) appeared to feel helpless to do anything about their situation, blaming it on the courts: ‘*I told the judge I want my dad but he won’t listen*’; ‘*I now know I was forced to go [with Dad] because of the court*’. These reports suggest that children and young people continued to feel helpless after their parents separated.

Seeking help

While children and young people reported continuing to be exposed to parental conflict after separation, they were able to seek help and actively sought out people who would assist them, as Graph 30 shows. Interestingly, many children and young people sought help from their friends during this time (28 of 66 respondents or 42.4%). Alongside friends, they sought assistance from their siblings and/or counsellors who work with children (26 respondents, 39.4% in each case). In Graph 30, the category ‘Other’ included court personnel (9%; 6 respondents) and other people

(25.8%; 17 respondents). The response 'I didn't talk to anyone' (19.7%, 13 respondents) is a concerning finding and so is the response 'I can't remember'.

Graph 30: Number of responses in relation to the people from whom children sought help after their parents' separation



When asked who else they talked to, 23 respondents listed a number of sources. Eight of these (34.78%) stated that they talked with their mother or her friends, with one reporting, 'When I was at church with my dad I seen my mum's friends and I asked her for help'. A number of others reported seeking help from counsellors, therapists or Kids Helpline (5 respondents, 21.74%), their father (3, or 13.04%), or other adults such as family friends. One respondent reported feeling 'too embarrassed', leading her to talk to no-one: 'My best friend didn't even know'. Two respondents criticised the court as a place where one is not listened to at all: 'no one at court has talked to me, they are not interested in what I have to say or don't care'; 'when I talked to the court and the lawyer they made it worse'. An 11-year-old girl reported feeling torn between her parents in a 'no-win' situation: Even so, 40.4% of respondents (23 of 57 responses) reported that it was helpful to talk with these people.

- Also told dad bad things about mum so he does not get angry with me as I had to live with him. I cannot say good things about mummy because he hates it. So I say bad things because he is very happy, but I know my mum is a good person.

When asked what actions were most helpful, 49 respondents provided information about what helped them. Of significance were reports that the people from whom the respondents sought help talked to them, listened to their concerns and gave good advice (19 responses, 38.8%). Distracting

activities (such as games and visits to people) also helped (6 respondents, 12.2%) and emotional support such as hugs, 'always being there' and reassurance were valued (17 responses, 34.7%).

Forty-three respondents answered the question, 'What kinds of help do you think other children might need when their parents separate?' Replies indicated 5 broad themes, identified as:

- General support: *'Someone to talk to them and help them to keep them calm and happy'; 'someone to listen to what they want'; 'Support from a loving, unbiased person. Emotional support. Maybe financial support/resources'; 'friends and support just people who care'*. This also included a need to *'be believed'* rather than simply being listened to (17 of 43 respondents, 39.5%).

This specific finding is important when considering the legal and social imperatives for determining the 'truth' of an issue in order to arrive at an informed decision. When interviewing children, the types of questions asked can influence the responses they give, and the potential to accept one 'truth' among a possible large number of different 'truths' (thus disbelieving the child) can be increased (Horowitz 2009). This can occur in interviews for family reports as well as those conducted by children's representatives and other family law personnel. Children's wishes and views can be discounted as a result, leaving children themselves feeling betrayed and marginalised by the system that they thought might help them.

- Effective counselling: *'counselling support from family external'; 'I remember trying to ring Kids Help Line and finding it really shit'; 'talk to kids helpline and it should be kept secret'; 'Pastoral Care (I have one at my school and they are really helpful)'* (9 of 43 respondents, 20.9%).
- Effective parents: *'They need mum and of God of cause'; 'make sure that both of the parents are important to us and that they must not fight over us'; 'naughty dads should not see kids', 'protection from family'; 'People have to make sure that both of the parents are important to us and that they must not fight over us and say that we must choose between them'* (8 of 43 respondents, 18.6%).
- A voice: *'To have their wishes considered – kids should have a say where they live and when they see other people'; 'More consideration given to their needs and not just what the parents want'; 'let them go to court so they can be heard too'* (5 of 43 respondents, 11.6%). This theme especially was raised again in later parts of the survey and will be discussed in more detail below.
- An effective court: *'Not to have the court make their life worse'; 'for the stupid court to actually listen to them'* (3 of 43 respondents, 7%).

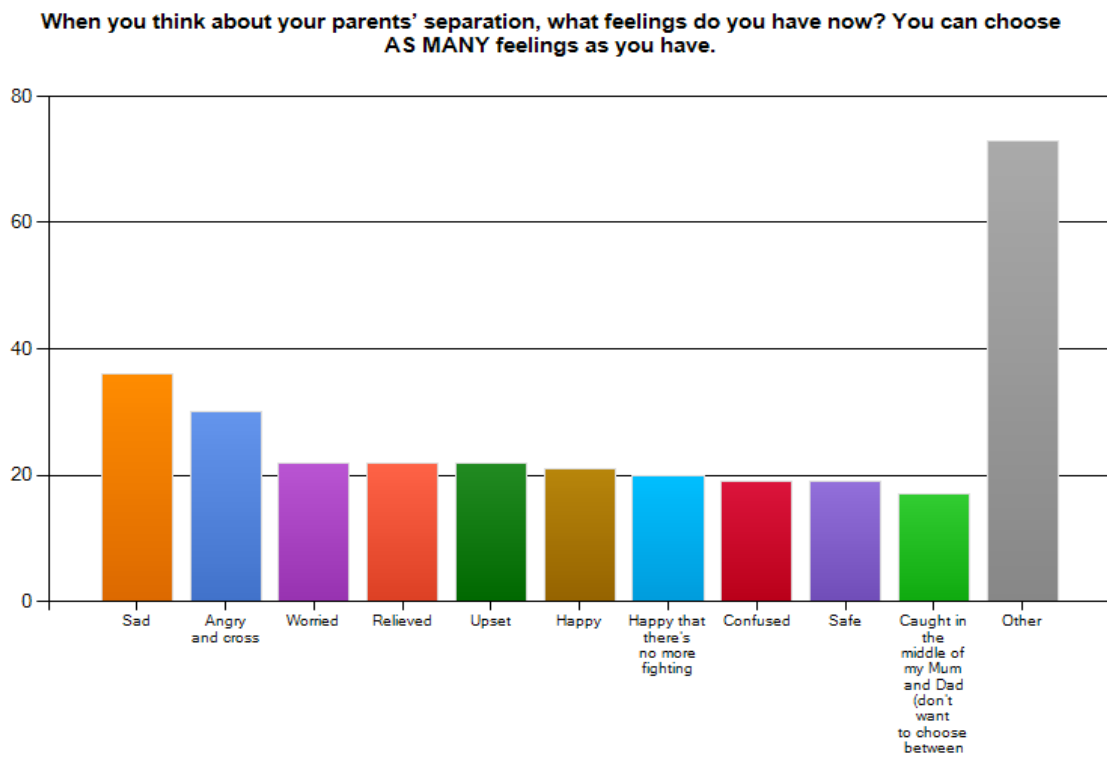
What about now?

Current feelings

Graph 31 shows participants' responses to the question, 'When you think about your parents' separation, what feelings do you have now?' While a large proportion of the 64 respondents reported still feeling sad about the separation (36 respondents, 56.3%), a total of 6.72% reported feeling relieved and happy (32.8%, or 21 of 64 respondents reporting feeling 'happy', with 34.4% or

22 respondents reporting relief). A further 31.3% (20 participants) reported feeling *'happy that there's no more fighting'*. However, 22 qualitative responses indicated that there were still significant negative feelings associated with the children's parents' separation. These included feeling *'like running away'* and *'scared'* when having to visit the identified abusive parent, feeling *'poor and sometimes hungry'* and lonely, *'like no one cares for me anymore'*. These responses were made by 5 of the 22 respondents (22.7%).

Graph 31: Number of responses in relation to children's current feelings about their parents' separation

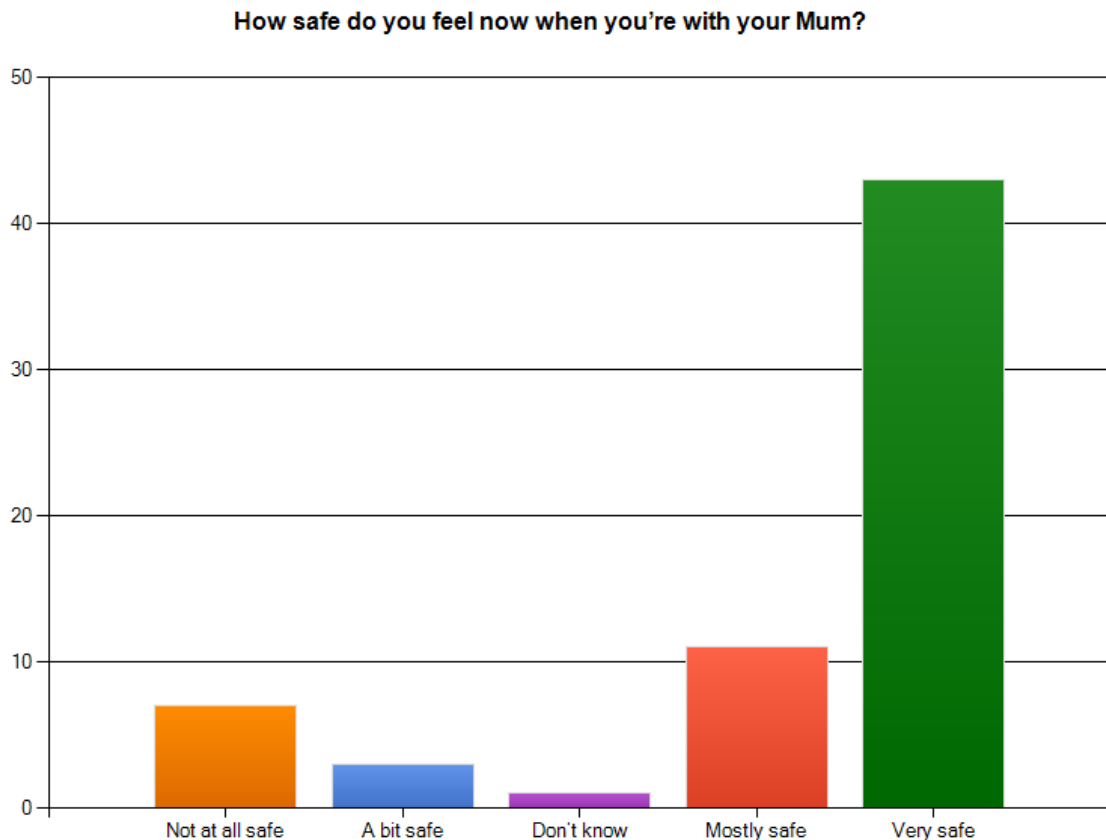


Two respondents (9.1%) reported feeling safe with the identified victim of the abusive behaviours, while six others (27.3%) either missed, or felt significant concern for, the parent with whom they were not living. Examples of comments included, *'I want my dad'*; *'sad when I am with my dad'*; *'Feel sorry for Dad. He's the one who lost everything. Just wish I could have chosen to stay with him so I could be there for him. Really didn't understand how much he was going thru back then til now.'* Three respondents (13.6%) expressed anger over their situation: *'So frickin mad'*; *'I sometimes feel a little bit angry, but it's hard to tell'*. One respondent reported feeling happy now that their parents had separated: *'Awesome and happy that they are happy'*.

When asked how safe the respondents currently felt when with each of their parents, a number of differences arose. Graphs 32 and 33 below demonstrate some of these differences. First, participants reported feeling far safer with their mothers than with their fathers. Indeed, 66.2% of participants (43 of 65) reported feeling 'very safe' with their mothers while 16.9%, (11 of 65) reported feeling 'mostly safe'. In contrast, while 38.7% of participants (24 of 62 respondents) reported feeling 'Not at all safe' with their fathers, almost the same number (32.3%, 20 of 62

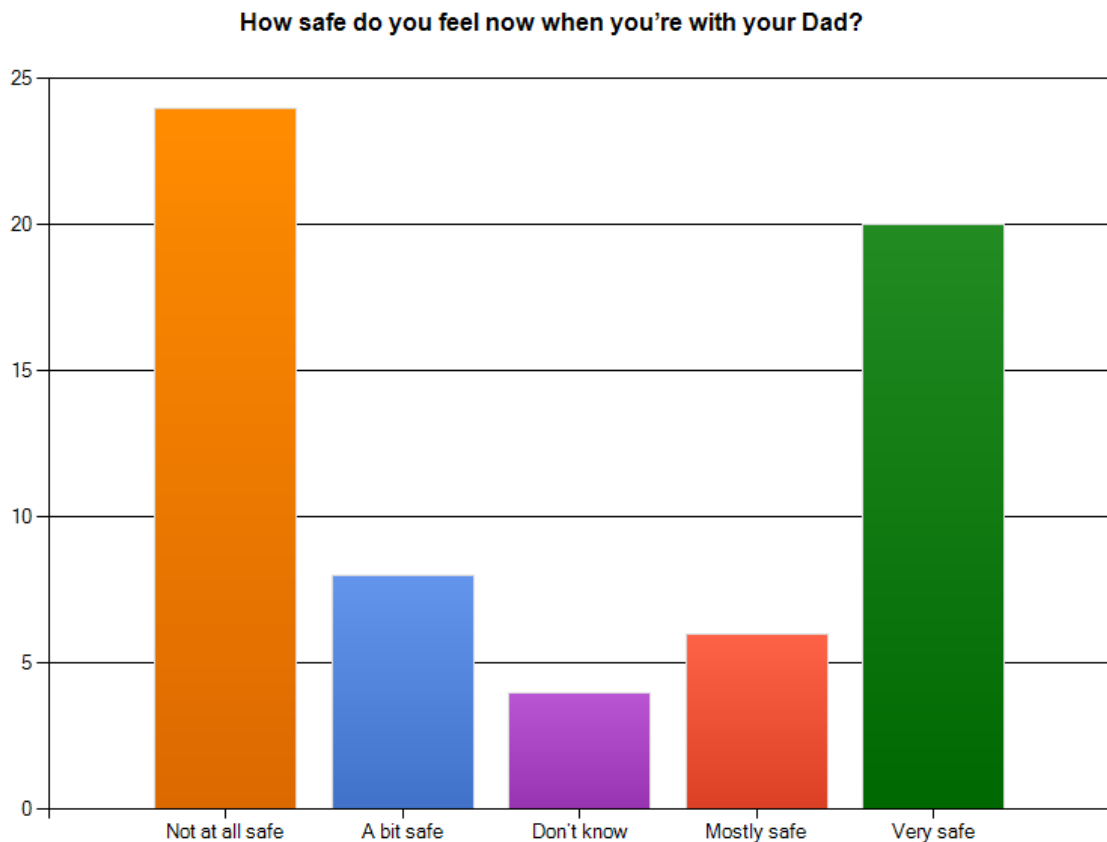
participants) reported feeling 'very safe'. The results do, however, support research that suggests that domestic violence can irreparably damage children's relationships with one or both parents, leading to their feeling unsafe in their company for many years following the violence (Carpenter and Stacks 2009; Zerk, Mertin et al. 2009).

Graph 32: Number of responses in relation to children's current perceptions of safety when with mothers



The second difference is in terms of the intermediate measures of safety used in the scales in Graphs 32 and 33. These measures (feeling either 'A bit safe' or 'Mostly safe') show differences between the respondents' perceptions of their mothers and fathers. Sixteen point nine percent of respondents (11 of 65) felt 'Mostly safe' with their mothers compared to 9.7% (6 of 62 respondents) feeling 'Mostly safe' with their fathers. In contrast, 4.6% (3 respondents) of children reported feeling 'A bit safe' with their mothers compared to 12.9% (8 respondents) reporting the same feeling for fathers. These findings suggest that overall, the children felt less safe in their fathers' company than they did in their mothers'. This finding has significant implications for current family law provisions that require family dispute resolution practitioners and other court personnel to consider the provision for the child to spend substantial and significant time with each of the parents (S65DAA, *Family Law Act 1975* (Cth)), in particular where one parent is violent or abusive.

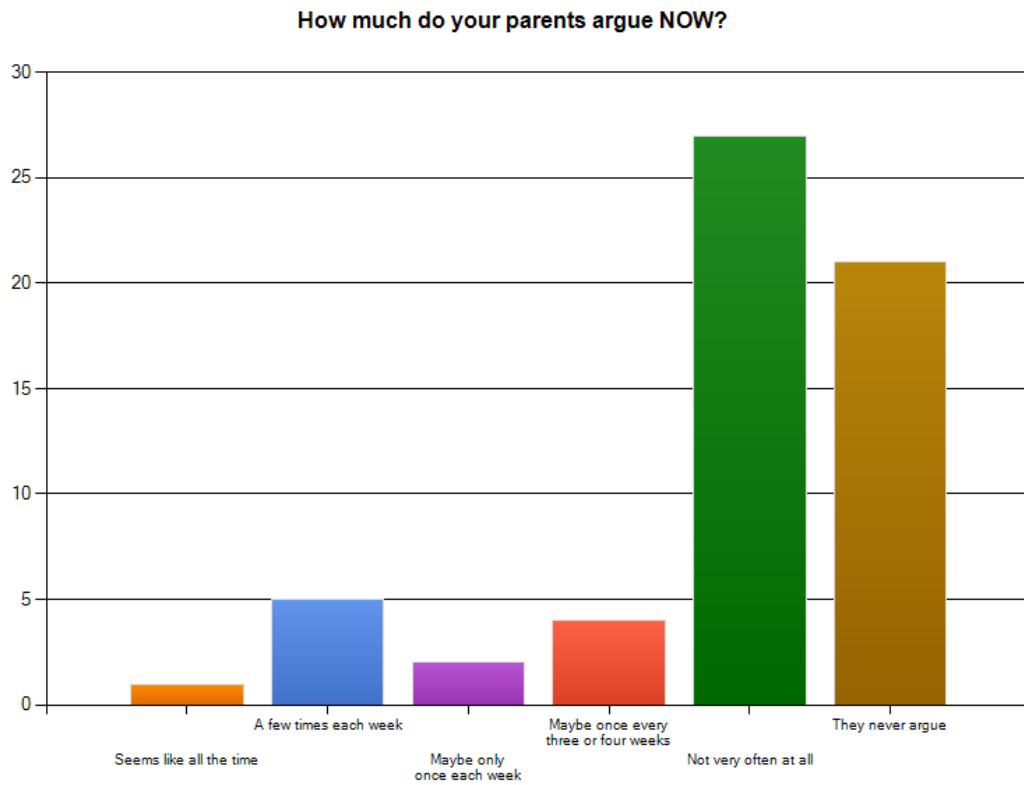
Graph 33: Number of responses in relation to children’s current perceptions of safety when with fathers



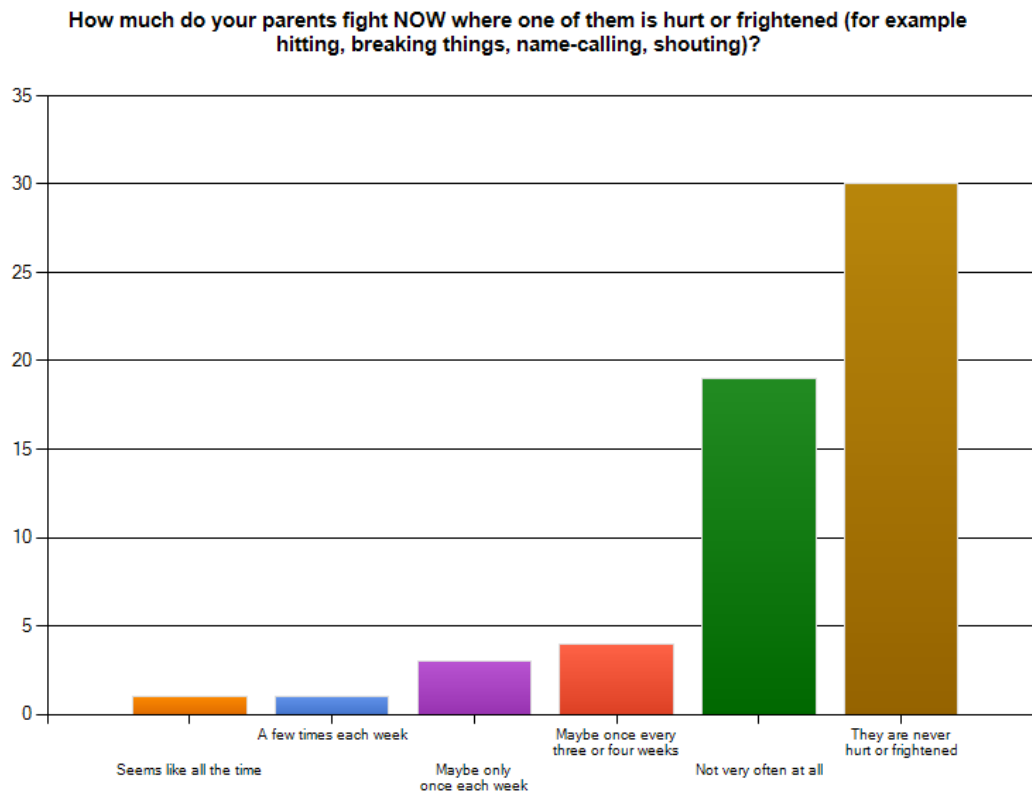
Current conflict

The above finding is reflected in reports of the level of current conflict between parents, as indicated in Graph 34 below. A total of 48 of 60 respondents (80%) reported either that their parents do not often argue or that they now never argue. This finding indicates that once the parents did separate and began a ‘new’ life their conflict slowly decreased. A similar finding emerged in relation to the level of fights leading to emotional or physical hurt (Graph 35, below), with 84.5% of the sample (49 of 58 respondents) reporting that their parents engaged in these activities ‘not very often’ (32.8%) or that they were never hurt or frightened (51.7%). These figures are significantly different from those reported before and after the separation and they indicate that the children and young people in this study may have returned to a calmer state of life after their parents separated. These findings do not, though, negate the respondents’ feelings of safety following separation, reported above. Having experienced violence during their parents’ marriage, children and young people appear to have remained vigilant about the possibility of its reoccurrence even when they reported a significant reduction in the conflict.

Graph 34: Number of responses in relation to children’s perceptions of the current conflict between their parents



Graph 35: Number of responses in relation to children’s reports of current parental fights that led to emotional or physical hurt



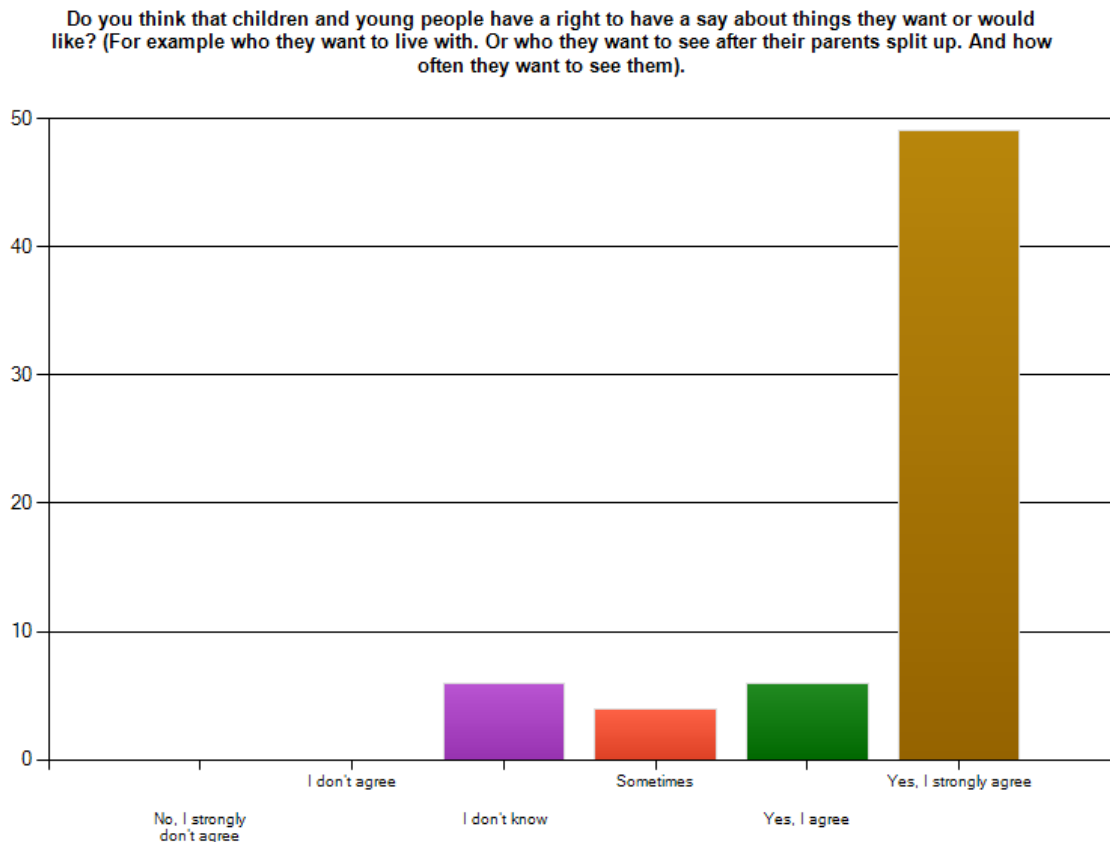
Children’s views on what they need and what the family law system requires

Children need to have a voice

Respondents were asked if they thought that children and young people had ‘a right to have a say about things they want or would like’. Results are shown in Graph 36.

Of the 65 responses to this question, 75.4% (49 responses) strongly agreed that children should have this right. A further 9.2% (6 responses) agreed with the question, with 6.2% (4 respondents) suggesting that children and young people should sometimes have a say. A further 9.2% (6 respondents) said they did not know if children should have a right to have a say in relation to decisions that directly affect them. No responses were recorded for disagreement about the right of children and young people to have a say.

Graph 36: Numbers of responses in relation to children's views about their right to have a voice



Improving children's lives

Forty-five responses were received for the question, 'What do you think are the most important things that would help children and young people when their parents separate?' The following themes emerged.

General support: this theme included contact with friends, family and school support systems: 'A secure environment at school where they are not bullied'; 'Good Friends and family to lean on when u feel like shit, a SAFE happy (or somewhat happy) environment'; 'It would help for someone to listen to the kids and tell the parents not to get angry at the kids because of what they say'; 'They get to talk to someone'. This theme was referred to by 16 of the 45 respondents (35.5%).

Safety: respondents expressed a need for a 'safe place' where 'parents shouldn't fight in front of kids', 'to make them feel safer'. Seven of the 45 respondents (15.6%) suggested this theme.

A respectful relationship: 'to not to take out their emotions on the children or to un-necessarily say bad things about the other parent'; 'No court fighting. It was worse than being hit by dad and made my life hell'; 'That they don't fight any more'; 'Their parents to co-operate with each other for the sake of the child'. This theme was referred to by 6 respondents (13.3% of the sample).

Professional support: six respondents (13.3%) referred to this theme. Their responses were characterised by comments such as 'talk to a counsellor, magistrate, judge psychologist etc';

'Support groups ... and counselling'; 'an advice telephone line' and 'all children should call kids helpline for help if they have problems'.

The results suggest the significance of children having a strong support mechanism that includes cooperative parents, extended family, friends and professional support. Interestingly, though, having professional support does not appear as positive for children and young people than more intimate supports that can be provided by friends, family and the school.

Advice for other children

Six themes emerged in the responses to the question about what advice respondents would give to other children. The most significant three of these six were:

Talk with others: 11 of 41 respondents (26.8%) referred to this theme: *'Talk about it'; 'Talk to people, it helps some'; 'talk to your friends'; 'to talk about what you want to happen and where you want to live and don't say just what your parents want you to say because then you are very unhappy'; 'If you can, tell your parents how you feel about everything'; 'talk to other kids and find out that they did nothing wrong'; 'Talk to the parent who you visit, if the other parent talks negative about the visits'.*

Take personal responsibility and speak up: mentioned by 8 of the 41 respondents (19.5%). This theme was related to children being able to say what they want and feel and being heard. Examples of this theme included: *'keep in touch with both parents and be where you want to be'; 'Do not always listen to what a parent has to say about the other. They do not always tell the truth. Ask both their mum and dad what really happened'; 'Be brave and speak up about what YOU want'; 'Fight the court people if they don't listen to you and trust what you know. Be brave and speak up when they try to make you say what they want.'*

Have hope: advised by 7 (17%) of the respondents. This theme was related to advising children and young people that everything will be fine in the end: *'It will get better'; 'every thing is all right'; 'be brave and strong because they will get to see them again soon'.*

Other themes related to caring for oneself (*'they should focus on their interests'; 'Stay in your room and cuddle a pillow or something'*); to reject personal blame (*'Not blame themselves. Not take on their parent's crap'*); and to take time to think about issues that arise (*'Reason everything out, why do you feel this way? Is it necessary?'*).

Overall, these six themes can be related to a need for children to protect themselves from adult influences. This advice indicates that children do not see themselves as passive recipients of their parents' and other adults' behaviours, violence and inadequacies. On the contrary, the data suggest that children perceive themselves as intentional actors in their worlds with the ability to alter their environments to protect themselves and gain personal power over their own lives. This view of children is echoed in the literature on children's rights and the social construction of children by adults (Campbell 1992; Archard 1993) and suggests that the family law system could benefit from a view of children as social actors whose opinions should be considered separately from those of their adult counterparts.

What would these children and young people wish for?

This question, which asked respondents to think about how things would be different if things changed in the way they wanted, was answered by 52 respondents. There were many different ideas about what it would be like for these children and young people. For 8 of the respondents (15.3%) the difference would be that their parents would still be together, while a further 8 stated that they would be happy. These concepts suggested feelings of comfort and ease. For example, one respondent stated, '*We would [not] have to be so careful about wearing school uniforms out to shops and could relax some*'.

Six respondents (11.5%) expressed a wish to live with a particular parent, while 8 others (15.3%) stated that they would not see their other parent at all. Indeed, two of those 8 suggested that they would be happy if the abusive parent (one father, one mother) was dead while another expressed a wish to see his father in jail. Other issues included having a parent return the children's passports to them, seeing the father happy and settled, seeing more of siblings, and having parents who respected each other. Three respondents reported that their situation was 'all good' and they did not wish for anything to be different.

These results support other findings in this report that suggest that following the experience of domestic violence, children lose a level of trust in the parent who perpetrated the violence. While they expressed a desire to live with feelings of happiness and without violence (which may include a fantasy of parents returning to cohabitation) the results indicate that for some children this desire would be difficult to fulfil. Expecting children to visit the parent who has been violent within the family can perpetuate the violence for children by forcing them to re-live unpleasant memories over and over whenever they come into contact with that parent.

Finally

One respondent felt that he had not been able to respond in the way he wanted throughout the survey. In the final question, he wrote a long response explaining this. It is an interesting quotation that warrants repeating in its entirety:

If I was still 7 mum and dad wouldn't be separated. At 15 I know that isn't possible. Since there is no where else to make comments on this survey, I will do it here. My mum and dad separated when I was 7. Before 2004 we all spent every weekend with dad and half of school holidays. In 2004 we asked to spend the same amount of time with dad as mum. In 2004 we all went to Canberra with dad for a march for equal parenting time. In 2006 we were the introduction family filmed for the Sunday show on channel 9 on shared parenting. In 2007 my big sister left school and started working and we went away from shared time. This year my mum nearly broke my arm so I ran away, and dad came looking for me, and now I hardly see mum. This survey thinks things are always the same. You didn't ask a lot of questions or give areas to talk about changes.

Phone-in with children

This section provides a summary of the analysis of the phone-in responses from 12 children and young people to questions about their experiences of family separation process and outcomes. The quotations used are taken from detailed notes made by researchers during and immediately after each phone interview. Care was taken to accurately record the words and intentions of the caller.

The information shared by the respondents provides insight into the effects of current legislation from the point of those it seeks to protect.

Demographic information

Table 29: Demographic information about the child participants in the phone-in

	<i>Age</i>	<i>Gender</i>	<i>Cultural group</i>	<i>Year of separation</i>	<i>location</i>
1	15	Male	Other Australian (OA)	Post-2006	Regional
2	14	Female	OA	Post-2006	Rural
3	16	Female	OA	Post-2006	Capital city
4	13	Female	OA	Post-2006	Capital city
5	15	Female	Aboriginal	Post-1995	Capital city
6	15	Female	OA	Post-2006	Regional
7	13	Male	OA	Post-2006	Capital city
8	17	Male	OA	Post-1995	Regional
9	14	Female	OA	Post-2006	Capital city
10	12	Male	OA	Post-2006	Regional
11	14	Female	OA	Post-1995	Regional
12	9	Female	OA	Post-1995	Capital city

A total of 12 children and young people participated in the children’s phone-in interview, held over 23 and 24 November 2009 in Adelaide and Townsville. Respondents were aged between 9 and 17 years, 8 were female and 4 were male. All but one respondent identified as non-Indigenous Australian, the exception being a young person who asked to be identified as Aboriginal. There were no respondents who were born overseas. All 12 respondents were from families with heterosexual parents, made up of a biological father and biological mother at the time of separation. Six young people lived in the city, five in a regional area and one in a rural area. Four of the respondents had parents who separated prior to the 2006 amendments; the remaining eight had experienced family separation during the past three years.

Contexts of violence

Children and young people participating in the phone-in were not asked whether they had seen or witnessed family violence. Instead the questions sought to gather information about children’s feelings about the experience of separation, their satisfaction with current living arrangements and their recommendations for keeping children safe. Despite this, all 12 respondents disclosed experiences of abuse from the adults in their family, including property damage, physical assaults,

sexual assault, and acts of violence against the family pet. Each respondent (12/12) volunteered information about abusive acts from father to mother (including shouting and swearing, property damage and physical assaults). Four described acts of abuse directed at themselves, again each identifying the father as perpetrator. Two described acts of harm by the father against the family pets. Where mothers were included in the descriptions that could be interpreted as 'abusive', these were in statements such as '*mum and dad were always shouting and swearing at each other*'. There were no reports of property damage or physical acts of violence from mothers to fathers or children.

All of the respondents had parenting decisions decided by the Family Court or formal separation support services. Family violence is often a barrier to the ability to negotiate difficult separation decisions, such as parenting and living arrangements (Bagshaw 2007; Shea Hart and Bagshaw 2008). At different points in the interview, respondents disclosed that the abuse from the offending parent continued to occur. In the eyes of the children and young people interviewed, separation had little effect on the violence.

Current living and contact arrangements

Respondents were asked the following questions in relation to their living arrangements.

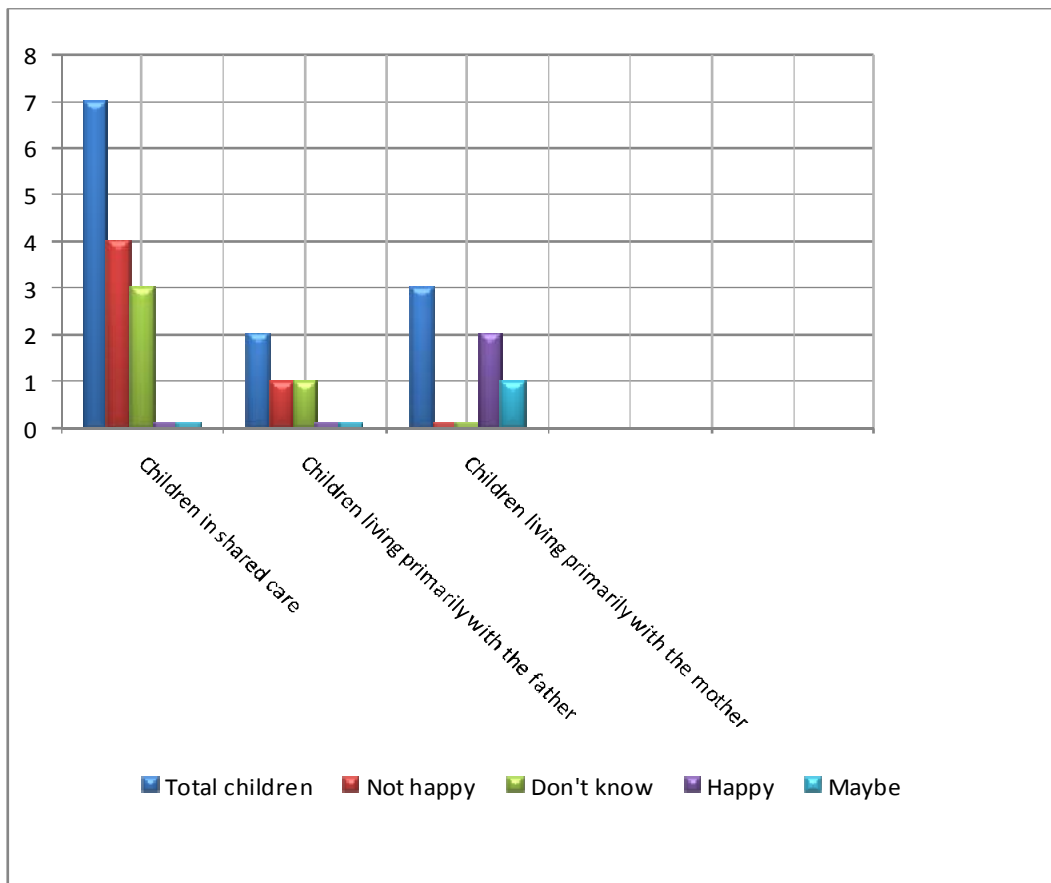
8. Can you tell me about your family life right now – who do you live with most of the time?

9. How often do you spend time with your other parent?

Despite the frequency of violence in the lives of these children and young people, all were expected to remain in contact with both parents and seven of the twelve (or 58%) were currently living in shared care arrangements. This number included three of the respondents whose parents originally separated prior to the 2006 amendments. Each of these three reported the non-resident parent had returned to the Family Court to request shared care. None was happy with the change.

For those not in shared care, three were living primarily with their mother and two primarily with their father. In both cases where the respondents lived primarily with the father, court orders were for a shared parenting arrangement but the mother was unable to find appropriate accommodation near the father's house (one father was living in a rural mining community, the other in a capital city). The three residing primarily with their mother appeared to do so as a result of court-ordered parenting plans. In two of these three cases the respondents disclosed allegations of abuse against themselves or siblings that had been investigated through the criminal justice system.

Graph 37: Numbers of responses in relation to children’s feelings about their living arrangements



Levels of satisfaction

The satisfaction of with post-separation living arrangements was explored through the following questions:

10. *Is family life better for you than it was before your parents separated? Why is that so?*

21. *Do you like your current family arrangements? Why is that so?*

A majority of the respondents (8 of the 12) stated the family separation had been a good thing although only two reported being ‘happy’ with the current arrangements (both were living primarily with the parent they identified as non-offending and had regular contact with the other parent). Almost half (5 of the 12) were not happy, with four living in shared care arrangements and one primarily with her father. Those who were not happy pointed to the difficulties of living unsupervised with the parent whose behaviour seemed unpredictable or violent, and a frustration that their concerns for their safety had not been listened to in the separation processes. A third of the group (4 of the 12) ‘didn’t know’ how to describe what they felt about the current arrangements. The ‘not knowing’ was explained as *‘preferring the current arrangements to living with the abuse that was occurring prior the family separation, however not particularly liking the current arrangement’*. One young person answered ‘maybe’, saying he felt sad his father was no longer around frequently but at times he was glad too.

Sense of participation in the decision making

Respondents were asked the following questions about their participation in decision making regarding post-separation parenting and living arrangements:

16. When your parents split up, did you have any say about what you wanted to happen, like where you lived or how often you saw the other parent? Who did you talk to and what did you talk about?

17. Did those people listen to what you had to say and take into account what you wanted to happen?

18. Do you think children should be able to decide who they live with and how often they see their parents or should they just tell people what they want or what matters to them and then have someone else make up the decisions?

None of the respondents felt as though they had ‘a lot of say’ in the current living arrangements. Half (6 of the 12) stated they had had ‘a little say’, and described participating in Family Report interviews and counselling sessions. Only one received the outcome they had requested. Of the remaining respondents, five reported having ‘no say’ and one ‘didn’t know’. The majority (9 of the 12) believed it to be important for children and young people to be given at least some say in the parenting decisions. The remaining three ‘didn’t know’; no respondents believed that young people should not have a say. Respondents described the care that would need to be taken to ensure parents were not aware of the preference of the child or young person (in case the parent became hurt or angry). It was also suggested by 5 of the 12 that there was a particular ‘age’ after which children should have the right to decide (and they all believed they had reached that level of maturity).

Support people

Respondents were asked about the support options they had accessed during and after the separation:

12. Have you talked to anyone outside your family about your parents splitting up?

13. If yes, who have you talked to? What did you talk about?

14. If no, would you have liked to talk to someone about your parents splitting up? Who would you have liked to have been able to talk to?

15. What do you think children need to talk to someone about when their parents split up?

All of those interviewed had supports outside the family, including youth workers and counsellors. It was generally agreed that talking to someone was important, to ‘let the feelings out’, to discuss private information and to develop strategies to manage the current situation. Some had worked with the support person to prepare safety plans after decisions about residence and contact were formalised in the formal court procedures. Others continued to use the support person as they navigated the effects of witnessing or experiencing violence from a parent.

What would they change?

Respondents were asked if they could identify areas of their family life they would like to alter:

22. If you could wave a magic wand, what, if anything, would you change right now about family life?

When children and young people spoke of what they would like to change, 7 of the 12 described wanting their father's behaviour to change (he had been abusive in the past), and for their father to be in a 'good mood' or 'happy' as he had been at other times. Half (6 of the 12) wished to change their current living arrangements and to have some control over where they stayed each week.

Improvements for young people

The children and young people were asked what they thought could be done to improve the experience for children when parents separate:

23. In your opinion, what would help to make things better for children when their parents split up?

24. Is there anything you'd like to say about keeping children safe from harm when their parents split up?

25. Finally, what advice would you give to other children when their parents split up?

Suggestions for improvements ranged from practical solutions, such as addressing poverty and making crisis accommodation more child-friendly to recommendations for formal separation decision making to improve the safety of children and young people. Advice to other children and young people whose parents were separating was qualified by whether there had been family violence involved. If violence had occurred, they recommended talking to a friend or a counsellor (6 of the 12) and making plans to enhance safety (6 of the 12). The youngest respondent provided a number of practical strategies for managing the practicalities of living between two houses. These included 'not unpacking the bag with your favourite things' when you stay with the parent you see less of (in case you lose belongings) and to seek out sports close to each parent's house.

- *For example you could tell your Mum you want to play netball and your dad you want to play basketball. Then they are just let you do it, 'cause it is close to their house and then they are happy. (female, aged 9).*

The advice to law makers and those deciding on the future of parenting decisions focused on the value of including children's understandings in assessments regarding safety. Five of the 12 identified 'asking children what they think, if they think it is safe to live with the other parent and then to listen to what they say'. One third of the respondents (4 of the 12) recommended thoroughly investigating violence and not leaving the parent that hurt them alone with the child until the offending parent had demonstrated they would never hurt the children again. Two argued that children and young people should not have to stay overnight at a parent's house unless they wanted to and that they should be able to make up their minds on a nightly basis, depending on if they felt safe. Some young people (5 of the 12) spoke passionately towards the end of the interview about the frustration of feeling unheard in the decision making about where they would live and what is considered 'safe'.

- *They need to think about whether it's better to know your dad but maybe get hurt by him or not to know him but not get hurt by him. I think that's the biggest question. (female, aged 14).*

The children and young people participating in the research were generally glad separation had occurred but disappointed with the current living arrangements. In addition, there were poignant stories about the difficulties of maintaining equal shared parenting time with each parent, and the challenges presented by being ordered to spend unsupervised time with the parent who frightened them.

Implications of the analyses of the children's survey and phone-in data for policy and practice

The findings from the children's survey and the phone-in with children imply that priority should be given to children's developmental, physical, sexual, psychological, emotional safety at all times and consideration should be given to amending the *Family Law Act 1975* (Cth) so that priority is given to children being protected from violence and abuse.

Many of the children who responded to the survey and phone-in who had been exposed to family violence wanted to have the opportunity to have their opinions heard and acted upon in court proceedings and other procedures that directly affect them, such as family dispute resolution. We suggest that further research is conducted with children whose parents have separated and who have experienced family violence to ascertain from them the most appropriate ways to involve them when decisions are being made about parenting. In addition it may be helpful to ask young adults whose parents separated when they were children, and who had experienced family violence, for their views.

It was clear from our analysis of the data from both the adults and children that where family violence results in children feeling unsafe in the presence of the perpetrator of the violence, then a consideration of the child spending any time, let alone significant amounts of time, with that parent is contra-indicated and children's views should be canvassed.

We also suggest that, based on the data in this research and from the prior research with children in the *Children and Families in Transition Project* (Bagshaw, Quinn et al. 2006) all family law matters relating to children whose parents have separated should be directed by a strong focus on children's concerns rather than adults' concerns and where children are involved all language, proceedings and the design of services should closely reflect a child-centred approach.

Based on the feedback from children, we also suggest that when a child's wishes or views have been obtained by a family law professional, but are not acted upon, then decision makers should personally discuss with the child the rationale for not acting and should clarify any concerns that the child may raise.

We reiterate that, given that family violence tends to escalate during separation and is often ongoing after separation, the Family Court and Federal Magistrates Court should continue to monitor those families where family violence has been identified and ensure that children's safety from violence continues to be placed at the centre of decision making.

Finally, we suggest that where children have directly or indirectly experienced family violence, which can have devastating and traumatic effects, specific services should be readily accessible for the

children affected, including services providing individual and group child-centred therapy and support for children who need to attend court. It is essential that these services are appropriately resourced and accessible to children from metropolitan, regional and rural areas, including to children from Indigenous families.

6. Conclusions

In this research, we have collected data from all states and territories through two online surveys, one for adults who were separated and divorced post 1995, with or without a history or presence of family violence, and one for children. Two widely advertised phone-ins, involving lengthy phone interviews with separated parents, children and young people attracted those who may not have been able to use an online survey, one taking place in South Australia and the other in Queensland. A sample of national call-backs to the online survey respondents also pursued some themes further and checked the reliability of the survey data.

Ethical issues and the men's movement

Two men submitted individual complaints to the university ethics committees at the University of South Australia and Monash University as to the unsuitability of making online surveys available to children. The university committees acted jointly and the research team responded to these criticisms. The Ethics Committees considered the complaints and the responses from the research team carefully, rejected the views of the complainants and informed them of the reasons. The team's refuting views were that online surveys were appropriate for children, now internet skilled, and that they offered more protection to children than face-to-face interviews, which were also seen as desirable as an additional tool for eliciting children's views and experiences (see 'Ethical considerations' earlier in this report).

Response rates

Information about the first data collection – the online surveys – was circulated through the Chief Executive Officers of services jointly funded by the Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs and various other services and service networks in Australia known to the research team. Almost all organisations were very cooperative. Some asked the research team to submit additional ethics applications or research requests. The team did this and none were refused.

The response rates to the online survey were high with a strong representation from across Australia. Responses were received from city, regional and rural or remote locations, from Indigenous people, from the overseas born and from other Australian born. The gender breakdown favoured women but roughly one third of respondents were male. Most of those who responded identified family violence as an issue for them. The responses covered four cohorts – all respondents, those who had separated or divorced 'post 1995', 'post-1995 and before 2006' and those who done so 'after 2006', allowing for a comparison between the three latter groups.

Primary theme

The study showed that family violence frequently occurred before, during and after parental separation and the most serious violence was perpetrated by men toward women and children, which is consistent with other studies (see a summary in Marcus and Braaf 2005). Men and women

who separated with a history of, and/or a current presence of, family violence said that the violence substantially affected their post-separation decision making and their post-separation parenting arrangements. They expressed considerable dissatisfaction with the services of the family law socio-legal service system and their dissatisfaction slightly increased after the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act* in 2006. Their constant complaint was that, instead of receiving sympathy and support from the service providers, they received disbelief and disregard in relation to their experiences of family violence and their concerns for their children's safety. Furthermore, a higher proportion of mothers reported increased fears as to their own and their children's safety subsequent to the new legislation, and the intensity of their fear was much greater than for men.

Adult victims were frequently advised by lawyers and others not to report family violence for fear of losing their children, even when the violence could be substantiated, and when they did report violence they were often not believed, or were accused of trying to alienate the child from the other parent. Women complained that the perpetrators (who were more often than not men) falsely denied that family violence occurred and this was not investigated. Women also feared for their children's safety when they were in their violent father's care. Male and female respondents were also extremely concerned that allegations and denials of child abuse were rarely investigated by the state child protection agencies when they were reported.

Given the extent of family violence among the separating and divorcing population in Australia, referred to in many other recent reports (Moloney, Smyth et al. 2007b; Chisholm 2009a), the extent of the respondents' dissatisfaction with services reported in this study, which is high by international standards, and the wide range and serious nature of the problems and fears the respondents and their children experienced, the complaints are of major concern and suggest the need for urgent service system reform.

The violence reported and its relationship to separation

The domestic violence and child abuse reported in this study was of a kind that had occurred during the partnership, increased as the partnership progressed over time and ultimately became a reason for the separation. The most commonly reported length of time of the violence from male victims was 5–9 years and from women victims was 10 years plus. For most women the violence persisted after separation and often escalated but, while it persisted for a few men, none reported that it increased after separation.

For most respondents family violence posed problems that had to be dealt with after separation and within the family law socio-legal service system. Most women reported that they lived in an ongoing state of fear (no men reported this) and this contributed to some of them becoming mentally ill, which was not linked to the violence by service providers and instead was used against them when decisions were made about parenting. Consequently the reported inability and incapacity of the family law services to assist the victims of family violence is of considerable significance.

Men and women constructed family violence differently – they reported different experiences of violence, different definitions and different attitudes towards it and to their violent partners, which is consistent with other studies (Bagshaw and Chung 2000a; Mulroney and Chan 2005; James, Seddon and Brown 2002). While all reported experiencing the same disbelief from services, and a

bias against them, the violence by women directed at men was described as being more defensive or retaliatory violence, violence linked to mental illness and in the form of verbal violence and abuse. A failure of women in their wifely role was often described by men as a form of abuse.

Women, however, reported violence toward them by men as being unprovoked, more often physical (including destruction of property) and sexual, and was described in many ways as extreme forms of social, emotional, psychological and financial control. Women more commonly reported serious violence by men (fathers, stepfathers and male relatives) towards their children. Women reported violent acts that were life threatening but men did not. One in three women reported extreme physical or sexual harm whereas only one in seven men did. Many women had taken out Domestic Violence Orders (DVOs) from state courts. More than three times the number of men than women had a DVO taken out against them. Police did prosecute breaches for one quarter of these and breaches were far more likely to be prosecuted successfully against women than against men, an ironic outcome considering the greater frequency of orders taken out against men.

Major themes

Within the atmosphere of widespread dissatisfaction with services in the socio-legal system were a number of themes that related to and contributed to that dissatisfaction.

Use of pathways

For some women, their fear as a result of the violence and the threats of retaliation from their male partners was so great that they reported they could not use any services relevant for separating couples. Another small group of adults did not use any services because they were able to make all post-separation arrangements themselves. This latter group remained the same in size before and after the 2006 legislation. However, the majority of adult respondents did use the formal service pathways available before and after the 2006 legislation and they were able to develop service pathways for themselves. Some dead ends existed in the new pathways but fewer than previously.

People accessed their own families and friends for assistance first and in greatest numbers. They then turned to health services, usually general practitioners (GPs), and these two forms of assistance were reported as being those with which people were most satisfied. Most then approached professional lawyers. The use of private lawyers remained high after the 2006 legislation. They then moved on to other supporting services including domestic violence services and Family Relationship Centres. Subsequent to the 2006 legislation the use of Family Relationship Centres began and reports of the use of the Family Court, the Federal Magistrates Court and private mediators and other family dispute resolution services fell.

Dissatisfaction with services

By far the majority of people, more women than men, accessed formal services but their experiences with them left them most dissatisfied, far more dissatisfied than is the case in reports of satisfaction levels in similar circumstances overseas. This study showed a ranking of satisfaction or dissatisfaction with services from men and women (children will be covered separately). As reported, the services most distant from the family law socio-legal services system were the ones with which people reported the most satisfaction. Most satisfaction was expressed regarding family and friends, followed by domestic violence services, then health services, then private lawyers, then

police, then the Child Support Agency and Centrelink and then Family Relationship Centres. Some respondents experienced confused responses from Family Relationship Centres in the 2006–2007 period.

One issue to consider is whether the dissatisfaction with services relates to the nature of the services, for example for family dispute resolution practitioners. Do the services that seek only to assess and represent the individual who seeks the service rate better than the services that are trying to address both parties' problems and their joint dispute? There is evidence that this may be so. However, why do the family dispute resolution services rate so low when compared with similar overseas services, in particular when violence exists? Is it linked to the professional backgrounds and education and training programs for, and/or the supervision of, family dispute resolution practitioners? Is it possible that the overseas services are not given the authority to mediate where there is violence or to mediate with such serious consequences as in Australia? The lowest satisfaction ratings came from services relating to decision making over children's matters. Satisfaction ratings did not improve with the new legislation but instead decreased slightly but satisfaction with family violence services generally increased marginally. Post-2006 men remained far more dissatisfied with family violence services than women did.

Disbelief and disregard in relation to reports of family violence

The most frequent complaint about all of the services, with the exception of the domestic violence services, was the disbelief or disregard that confronted victims when they reported family violence and a consequent lack of assistance that ranged from their problem and themselves being ignored, to their being belittled and labelled as alienating or unfriendly parents, to being offered patently unsuitable proposals (with a sense of coercion about them), to actual further harm. The respondents felt they were fighting the services as well as the violent parent. They found they had to produce concrete evidence of abuse when they had not expected to have to do so and also that producing such evidence did not necessarily dissipate the disbelief. Such responses imply a large amount of ignorance about the nature (motives and tactics) and effects of family violence, in particular the non-physical forms of violence and an inability to tailor services to respond appropriately to keep the victims safe, even when the services were dealing with it frequently.

A sense of coercion in coming to parenting arrangements

Respondents, in particular mothers, reported a sense of coercion in coming to parenting arrangements under the new legislation that related to the clash between the need to protect their own and the children's safety and the ideal of shared parenting or shared care of children. Respondents were confused about the concepts of equal parental responsibility, shared care and shared time and hence were probably more affected by formal and informal advice on the issue than they might have been if they were better informed. Many reported that their lawyers advised them that there were risks in reporting family violence and that a consequence might be a fine or the loss of all care of their children, or more frequently that the violence would not over-ride the notion of equal parental responsibility and equal time of care. While it might be said that this advice was not correct, it was valid in one sense because these outcomes *could* have happened. Many respondents reported that they had accepted this view and that they and the children then became victims of arrangements that they felt were forced on them. These arrangements gave increased opportunities for family violence at handovers and during contact. When added to the other problems they

experienced, such as the difficulty in presenting evidence of violence, of counter-allegations of violence being believed, or of denials without substance (not investigated), and a greater difficulty in relocation despite the violence, then one can understand the sense that people had of being coerced. Some reported feeling trapped and without hope. Thus the reported decrease in satisfaction with parenting arrangements and with the safety of victims of violence since the 2006 legislation is understandable.

Fears for the safety of children

The reports from parents about their children and from children themselves suggested that children had been abused prior to the separation and were continuing to be abused after the separation, and that opportunities for abuse increased when the non-abusive parent was not present. Some 51.6% of the children who responded to the children's online survey reported they had seen every fight and heard every one of their parents' arguments and violent episodes prior to the separation. In addition they reported being further traumatised when their pets were harmed, or when a parent threw things, destroyed property or restricted their freedom at home. For most of the children the separation led to a decrease in the violence as time went by, but not to its complete disappearance. For some, the damage was severe and some 16.3% of children wished the abusive parent to be removed completely from their lives. A small number reported ongoing severe violence.

Many parents were very concerned about their children post-separation, believing they were being physically and/or sexually abused during the unsupervised time they spent with the other parent. Just over one quarter of fathers and a quarter of mothers who responded to the question thought they had evidence that the children were being physically or sexually abused by their former spouse, and around 18% thought that someone other than a parent was physically abusing their children during the time they spent with the other parent.

The children themselves said they needed more professional support and services than they had received, such as from Kids Helpline and group educational and counselling programs, and they wanted more involvement with their extended family. They were concerned about their distance from decision making and wanted more involvement, some by being consulted by their parents, some by the court and some by a court advisor, or a mediator or even someone at school. Some 54.7% reported that decisions about them had been made by the court. This raises an issue in relation to the current reliance on mediated decisions regarding children.

From the data we have analysed the picture is clear - there was not much satisfaction felt by the respondents with the socio-legal family service system's efforts to overcome the post-separation problems they faced when there was a history or a presence of family violence (domestic violence and child abuse).

Themes emerging from the overall analysis of the data

When analysing the data for this study each of the researchers in the research team took responsibility for analysing one or more sections of the survey and/or the phone-in and call-back data. This strategy served to ensure that any individual biases were minimised and checked and that any suggestions for change were clearly supported by the data collected from the parents and children involved in the research.

When reviewing all of the data collected in this study there were clear themes that emerged from the responses from parents and children which can be summarised as follows. We have indicated the sections from the report that have suggested these themes.

Changes to service delivery

- All legal, social and support services for families undergoing separation should place the safety of children and adult victims of family violence at the centre of decision making (this suggestion appeared in many sections of the report).
- The safety for all victims of family violence should be given highest priority in all family law decision making (see sections 6, 8 and 9 of the parents' survey and the call-back with adults section).
- Where there is family violence, the safety of adult and child victims should be given priority over children's contact with the perpetrator of the violence, over shared parental responsibility and over shared care (see section 9 of the adults' survey).
- Family law professionals need to recognise that tactics of abuse occur before, during and after separation and hinder victims' ability to negotiate effectively (see section 8 of the parents' survey).
- The impacts of psychological abuse on women's ability to negotiate for themselves and their children need to be recognised and appropriate supports made available to them during the negotiation phases after separation (see section 8 of the parents' survey).
- Allegations and denials of family violence should be listened to and taken seriously by family law professionals and investigated by professionals with appropriate expertise in a timely manner (see Section 7 of the parents' survey and call-back with adults section).
- There needs to be improved links between the family law system and state and territory government agencies such as police, corrections, health, child protection and domestic violence services in relation to family violence, in particular with regard to assessment, record keeping and the delivery of timely and professional responses to allegations of family violence (see section 6 of the parents' survey).
- Professionals in the family law system should be provided with information so that they are clear about when, and under what circumstances, 'shared parenting' may be of benefit and for which children, taking into account their age, stage of development, cultural background, their primary attachment needs, their prior relationship with each parent, the level of parental conflict and any allegation or admission of a history of family violence (see section 7 of the parents' survey).
- Where there is family violence, well-resourced parent education groups should be accessible to parents (separately) to assist them to understand the needs of their children during separation and divorce, the long- and short-term effects that high-level parental conflict and violence has on their children, and the importance of listening to children's voices (see section 7 of the parents' survey and the Queensland parents' phone-in).

- Victims of family violence should be able to access private legal advice and assistance on a sliding scale of fees similar to that used in community-based organisations (see section 8 of the parents' survey).
- Family law service providers should implement a 'no wrong door' policy to improve the likelihood that family violence victims will proceed through the processes involved in accessing assistance from family services (see section 10 of the parents' survey).
- Where there are allegations of family violence, more time and professional expertise should be allocated for assessment and for the writing of family reports for family courts (see Queensland parents' phone-in section).
- Where there is family violence both women and men (separately) should have access to a support person (of their own sex) from a funded service when attending the Family Court or the Federal Magistrates Court (see Queensland parents' phone-in section).
- Family services should explore how best to respond to the needs of men and develop ways to engage fathers and men with family services after separation (see section 4 of the parents' survey and the call-back with adults section).
- More general services should be available for men, beyond the specific anger management group programs that are widely available (see section 8 of the parents' survey).
- Families should be referred routinely to appropriate services in situations where there is family violence (see section 8 of the parents' survey).
- Breaches of court orders should be followed up and action enforced, particularly when children's and women's safety are compromised (see the call-back with adults section).
- In instances where allegations of family violence are raised by women who report a poor service response, it is vital to continue to ensure that specific strategies are in place to protect their interests and their safety and also the safety of their children (see call-back with adults section).
- All family dispute resolution service providers should follow up on a disclosure of family violence with a discussion with the clients about specific safety strategies (see call-back with adults section).

Service integration, coordination and cross-disciplinary collaboration

- Further integration and coordination of family dispute resolution and legal services is encouraged to support higher quality outcomes for victims where there is family violence (see sections 4 and 8 of the parents' survey).

Services in rural and remote areas

- Services for victims of family violence in rural and remote areas need to be adequately resourced and offer means of contact that maximise the safety of the victims, including services for victims of violence from Indigenous families (see Queensland phone-in with parents).

Screening and risk assessment

- The family law system should have investigative processes capable of assessing the parents' capacities to provide care safely, including their health status, parenting abilities and criminal histories and with references to children's health, education and child protection records (see section 8 of the parents' survey).
- Given the prevalence of family violence in family law disputes, universal screening for and assessment of family violence should be conducted by professionals who have appropriate education and training so they can recognise and expose the subtle, non-physical, controlling aspects of family violence (see sections 8 and 9 of the parents' survey).
- The assessment tools for family violence should be continually reviewed and evaluated in order to ensure victims of violence receive an appropriate, thorough and respectful assessment and that the assessment for family violence considers the impact of tactics of coercion, power and control (see Queensland phone-in with parents and also section 6 of the parents' survey).
- All allegations and denials of family violence should be taken seriously and investigated thoroughly, in a timely manner, by knowledgeable and experienced practitioners, before parenting arrangements are made after separation (see sections 7 and 9 of the parents' survey and the call-back with adults section).
- Family violence should be recognised and responded to as a gendered issue (see section 8 of the parents' survey).
- Screening for mental illness and substance abuse should form part of an intake and assessment process for separating parents in all services in the family law system, in particular where there is family violence (see section 6 of the parents' survey).

Changes to legislation

- The safety of victims of family violence (domestic violence and child abuse) should have priority in family law legislation, policies and practices and in all family law decision-making processes, higher than shared parental responsibility or shared care (see sections 6 and 7 of the parents' survey).
- Legislation should ensure that children are protected at all times from violence and abuse and parents are not discouraged from exposing violent behaviour for fear that they will be regarded as an 'unfriendly parent' (see section 5 of the adult survey, the Queensland phone-in with parents and the phone-in with children).
- Guidelines for determining parenting arrangements for the care of children should be independent of the provisions dealing with parental responsibility (see section 5 of the adult survey).
- The friendly parent provision (sec 60CC(3)(c), *Family Law Act 1975*) should be amended so there is recognition that parents sometimes need to take action to protect children from risk (see call-back with adults section).

- Legislation should reflect not only the importance of parental involvement but also the importance of safety for children, including the need to protect children from witnessing abuse of and by their parents (see call-back with adults section).
- Legislation should ensure that so far as reasonably practicable and in the best interest of the child, post-separation parenting arrangements are consistent with pre-separation parenting arrangements, as long as the children are safe (see section 5 of the adult survey).
- The definition of ‘family violence’ contained in section 4 of the *Family Law Act* should be widened to include a range of threatening behaviours (Queensland phone-in with parents).
- Impediments to the disclosure of family violence should be removed from family law legislation (see sections 7 and 8 of the parents’ survey).

Here we suggest that section 10H of the *Family Law Act 1975* should be amended to allow a further but limited exception to the confidentiality of family dispute resolution so that family dispute resolution practitioners are required, in the certificates they must already produce under section 60I(8), to disclose a ‘flag’ that suggests the presence of family violence in a particular case. That ‘flag’ will signal to court officers that they should investigate the case for the presence of family violence. We do not believe that family dispute resolution practitioners should be required or permitted to disclose any further information, beyond the bare existence of family violence in a particular case, for fear of compromising the ability of parties to negotiate freely within family dispute resolution or of hindering the disclosure in family dispute resolution of family violence. The confidentiality of family dispute resolution must remain intact (see the call-back section for adults).

Decisions about parenting and children

- The safety of children should be given the highest priority in all decision making and other family law arrangements so that parent–child contact is safe and positive for children (see section 7 and 8 of the parents’ survey and the call-back with adults section).
- Family violence should be examined and explored in decision-making processes about parenting arrangements (see sections 6 and 8 of the parents’ survey).
- In every case where family violence is alleged or admitted, a process of risk assessment should be undertaken by an experienced professional, or a child protection agency, in a timely manner, before parenting plans and/or consent orders are made (see section 7 and 9 of the parents’ survey and the call-back with adults section).
- Where there is a history of family violence, the emotional, psychological, physical, sexual, social and developmental safety of children should take precedence over a parent’s wish, need or right to have contact with children after separation (see sections 7 and 8 in the parents’ survey, the children’s survey and children’s phone-in sections and the call-back with adults section).
- Where there is family violence that has resulted in children feeling unsafe in the presence of the perpetrator of the violence, then a consideration of the child spending significant

amounts of unsupervised time with that parent is contra-indicated (see section 7 of the parents' survey, the section on the children's survey and the call-back with adults section).

- The Family Court and the Federal Magistrates Court should ensure that children who have a parent who has been abusive do not have overnight, unsupervised contact with that parent until they have proven they are capable of parenting without violence, and then trained professionals should conduct regular follow-up assessments to ensure compliance with agreements and to assess how the children are coping (see the section on the Queensland phone-in with parents).
- All children who have been exposed to family violence should have the opportunity to have their opinions heard and acted upon in court proceedings and other procedures that directly affect them, such as family dispute resolution (see the children's survey section).
- Given that family violence tends to escalate during separation and is ongoing after separation, the Family Court and Federal Magistrates Court should continue to monitor those families where family violence has been identified and ensure that children's safety from violence continues to be placed at the centre of decision making (see the phone-in with children).
- When a child's wishes or views have been obtained by a family law professional, but are not acted upon, the decision makers should personally discuss with the child the rationale for not acting on their wishes and clarify any concerns that the child may raise (see the children's survey and phone-in sections).

Children's services

- There should be improved services and processes for children who have experienced family violence and children should be appropriately consulted and listened to, post-separation parenting arrangements should concord with their wishes and be in their best interests, and children should be developmentally, physically, sexually, emotionally and psychologically safe from harm (see section 7 of the parents' children's survey and parent's and children's phone-in sections).
- Children whose parents are attending the Family Court or the Federal Magistrates Court, and/or who are required to attend the court themselves, should be provided with their own separate support person who is knowledgeable and experienced in working with children (see the Queensland phone-in with parents).
- Where children have experienced family violence, specific services should be funded to provide child-centred therapy (such as counselling) and support for the children affected, and the services should be appropriately resourced and accessible to families in metropolitan, regional and rural areas (see phone-in with children).
- Special educational and therapeutic groups should be established for children who have experienced family violence and when children choose to voluntarily attend these groups this

decision should be built into parenting plans (see the section on the Queensland phone-in with parents).

- All family law matters relating to children whose parents have separated should be directed by a strong focus on children's concerns rather than adults' concerns and, where children are involved, all language, proceedings and the design of services should closely reflect a child-centred approach (see section on the children's survey).

Education of the community

- Community awareness-raising and public education programs should address the nature, tactics and effects of family violence and the important role and nature of informal support for the victims of family violence (see sections 4 and 8 of the parents' survey).
- Family Court services and associated family services should be widely advertised in the community to raise awareness of professional assistance that is available during separation, especially where family violence is present (see the call-back with adults section).
- Detailed information packages should be available that explain in depth how services can help those who have experienced family violence and the pathways they can take to access appropriate services to address their concerns (see section 8 of the parents' survey).

Education, training and supervision of professionals in the family law system

- All family law service providers should be educated in the nature and effects of family violence (domestic violence and child abuse), risk assessment and responses to support safety when there is evidence of abuse and violence (see section 8 of the parents' survey).
- Education and training of socio-legal family law professionals should focus on strengthening the understanding of the power and control dynamics associated with family violence, its non-physical covert and overt tactics, emotional/psychological manifestations and the effects on victims, including children (see section 9 of the parents' survey).
- Education and training programs on family violence should be mandatory for professionals working within the Family Court system, including for judicial officers, and should emphasise the nature and consequences of family violence, complexities of family violence and the gendered nature of experiences of abuse (see the call-back section for adults).
- Family lawyers should be required to engage in programs that address the nature and impact of family violence and be trained to use family violence risk assessment tools routinely in their practices (see the call-back section for adults).
- Family dispute resolution services should be resourced to deliver family violence (domestic violence and child abuse) education and training for all their service providers and to conduct, and evaluate, improved routine screening for family violence prior to intervention (see section 8 of the parents' survey).

- All family law professionals should recognise and understand the different dynamics and effects of ‘conflict’ and ‘violence’. (Parents report that there appears to be confusion between the two in the family law system as a whole and therefore a tendency to ignore or minimise the controlling, intimidating and damaging effects of non-physical forms of family violence, which tend to be ongoing after separation.) (See section 6 of the parents’ survey).

On the basis of the findings from the survey we also suggest that:

- Family dispute resolution practitioners (mediators) should be provided with considerable supervised experience and regular ongoing supervision from an experienced practitioner in order to be able to competently screen for violence and handle complex cases involving family violence.
- Students and professionals in the multidisciplinary family law field should be educated in undergraduate, postgraduate and mandatory continuing education courses to analyse critically the relevant socio-legal research literature and should be encouraged to question and/or challenge untested concepts and assumptions (such as the reification of ‘shared parenting’ and the indiscriminate use and abuse of the controversial ‘parental alienation syndrome’) and evaluate the effectiveness of processes and outcomes in family law decision making (see section 7 of the parents’ survey).
- Family law professionals should be educated and trained to recognise that mental illness can be a cause, context or consequence of separation and can be exacerbated by or exacerbate family violence (see section 6 of the parents’ survey).
- Annual awareness-raising information and education programs that address the impacts of family violence on the mental health of women should be available to relevant professionals in the family law system, including court-appointed experts such as psychologists and psychiatrists (see section 8 of the parents’ survey).
- Service providers in the socio-legal family law field should undergo cross-cultural education and training to build knowledge and awareness of culturally appropriate responses to family violence (see section 10 of the parent’s survey).
- A sector-wide education campaign should be conducted to assist family service providers to understand the specific issues affecting men following separation and divorce (such as anger, mental health problems, etc.).

Further research

- Further research should be resourced to investigate in more depth the reasons why women and men choose not to access family services where there is family violence and how family violence services can be made more accessible for victims during and after separation, including for women, men and children and for families from rural, remote, CALD, and Indigenous backgrounds (see section 8 in the adults’ survey).

- The qualitatively different experiences that men and women identify as domestic or family violence should be rigorously analysed in further research, including men’s and women’s descriptions and experiences of the different types of violence (physical, sexual, psychological, emotional, verbal, financial, social and neglect), the motives for violent, abusive and controlling behaviours, the violent tactics used, trigger points for violence, the frequency and duration and the impacts and effects of the violence on male and female victims and their children (see section 6 in the adults’ survey).
- Research should be funded to examine critically the qualitatively different experiences of women and men who access family dispute resolution services (see call-back with adults section).
- Further research should be conducted on the impacts of psychological abuse and associated mental health issues on women’s ability to negotiate post-separation (see section 8 of the parents’ survey).
- Further research should be conducted into the reasons why women are advised not to disclose family violence in court processes regarding parental arrangements (see section 6 of the adults’ survey).
- Further research should be conducted to examine the specific issues affecting men following separation and divorce and their service needs (see section 4 of the parents’ survey).
- Further research should be conducted to identify which services separated or separating fathers use the most and why, and to critically examine their experiences of accessing those services (see call-back with adults section).
- Further research interviews should be conducted with children whose parents have separated and who have experienced family violence to ascertain the most appropriate ways to involve children when decisions are being made about their parenting (see section on the children’s survey).
- An independent evaluation of initiatives to integrate legal advice and family dispute resolution should be funded to gauge the effectiveness of these programs, including from the perspective of parents and children (see section 4 of the parents’ survey).

7. References

Anderson, S. A. and D. B. Cramer-Benjamin (1999). "The impact of couple violence on parenting and children: An overview and clinical implications." American Journal of Family Therapy **27**: 1-19.

Archard, D. (1993). Children: Rights and childhood. London, Routledge.

Attorney General's Department (2009). Integrated Client Service Delivery Featuring Mental Health Support Final Report. Canberra, Commonwealth of Australia, http://www.familycourt.gov.au/wps/wcm/resources/file/ebdce241f11fd22/ICSDP_Report_March2009_lowres.pdf

Australian Government House of Representatives Standing Committee on Family and Community Affairs. (2003). "Every Picture Tells a Story. Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation." Retrieved 4/5, 2008, from <http://www.aph.gov.au/house/committee/fca/childcustody/report.htm>.

Bagshaw, D. (2003). Contested Truths: Family Mediation, Diversity and Violence Against Women. Handbook of Conflict Management. W. J. Pammer and J. Killian. New York, Marcel Dekker, Inc: 49-84.

Bagshaw, D. (2007). "Reshaping Responses to Children When Parents are Separating: Hearing Children's Voices in the Transition." Australian Social Work **60**(4): 450-465.

Bagshaw, D. (2008). Shared Parental Responsibility, Family Violence and Children's Best Interests in Family Law. Family Relationships Services Inaugural National Conference. Collective Wisdom: Together We Are Better, Cairns, Family Relationships Services Australia.

Bagshaw, D. (2009). Mediation of Disputes in the Australian Family Law System. In the Shadow of the Law: The Legal Context of Social Work Practice. P. Swain and S. Rice. 3rd ed., Sydney, Federation Press: 317-339.

Bagshaw, D. and A. Campbell (2008, April) - Convenors of the 'Shared Parental Responsibility and Family Law: Implications for Children' Seminar. The powerpoint presentations by speakers are available on the Centre for Peace Conflict and Mediation website, Hawke Research Institute, University of South Australia.

Bagshaw, D., A. Campbell, Jelenik, L. (2002). Creating the Future: Evaluation of a program for children and families affected by domestic violence. Adelaide, Attorney-General's Department Crime Prevention Unit.

Bagshaw, D. and D. Chung (2000a). "Gender Politics and research: male and female violence in intimate relationships." Women Against Violence: An Australian Feminist Journal(8): 4-23.

Bagshaw, D. and D. Chung (2000b). Men, women and domestic violence. Canberra, Office of the Status of Women, Commonwealth of Australia.

Bagshaw, D. and D. Chung (2001). "The needs of children who witness domestic violence: a South Australian Study." Children Australia **26**(3): 9-17.

Bagshaw, D., D. Chung, et al. (2000). *Reshaping Responses to Domestic Violence*. Canberra, Partnerships Against Domestic Violence and Department of Human Services.

Bagshaw, D., K. Quinn, Schmidt, B. (2006). *Children and Families in Transition. Towards a Child-centred Integrated Model of Practice*. Magill, University of South Australia, Document Services.

Banks, C., B. Batagol, et al. (2005). "Review of the Exposure Draft of Family Law Amendment (Shared Parental Responsibility) Bill 2005." *Australian Journal of Family Law* **19**(79): 86-87.

Batagol, B. (2003). "A rebuttable presumption of joint custody: Research vs ideology in the battle over our children." *Alternative Law Journal* **28**(5): 230-234.

Batagol, B. (2008). "Tormenters of Strife, Gladiatorial Champions or Something Else Entirely? Lawyers and Family Dispute Resolution." *Queensland University of Technology Law and Justice Journal* **824**.

Batagol, B. and T. Brown (forthcoming 2010). *Bargaining in the Shadow of the Law? The Case of Family Mediation*. Themis Imprint, Federation Press.

Benjamin, M. and H. Irving (1995). "Research in Family Mediation: Review and Implications." *Mediation Quarterly* **13**(1): 53-82.

Berlyn, C., S. Wise, et al. (2008). *Engaging fathers in child and family services: Participation, perceptions and good practice*. *Stronger Families and Communities Strategy 2004–2009 National Evaluation Consortium*, Social Policy Research Centre at the University of New South Wales and the Australian Institute of Family Studies.

Bickerdike, A. (2007). "Implications for family dispute resolution practice: Response from Relationships Australia (Victoria) to the Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings report." *Family Matters. Australian Institute for Family Studies*.(77): 20-25.

Black, M. and A. Ponirakis (2000). "Computer-Administered Interviews with Children about Maltreatment: Methodological, Developmental and Ethical Issues." *Journal of Interpersonal Violence* **15**(7): 682-695.

Bordow, S. and J. Gibson (1994). *Research Report no. 12: Evaluation of the Family Court Mediation Service* Family Court of Australia Research and Evaluation Unit

Braaf, R. and C. Sneddon (2007). *Family Law Act Reform : The potential for screening and risk assessment for family violence*, Australian Domestic and Family Violence Clearinghouse. Accessed online: <http://austdvclearinghouse.unsw.edu.au>

Brown, T. (2003). "Fathers and child abuse allegations in the context of parental separation and divorce." *Family Court Review* **41**: 367-380.

Brown, T. and R. Alexander (2007). *Child Abuse and Family Law. Understanding the issues facing human service and legal professionals*. Crows Nest, Allen and Unwin.

Brown, T. and J. Armstrong (2008). *A New Model of Family Mediation: FDR in One Family Relationship Centre*. Family Relationship Services Association Annual Conference, Cairns.

Brown, T., M. Frederico, et al. (1998). Violence in Families, Report No 1. The Management of Child Abuse Allegations in Custody and Access Disputes Before the Family Court of Australia. Melbourne, Victoria, Family Violence and Family Court Research Program, Monash University.

Brown, T. and R. Hampson (2010). An Evaluation of Interventions with Domestic Violence Perpetrators. Melbourne, Department of Social Work, Monash University, Rotary Health Research Foundation and Lifeworks.

Brown, T., R. Sheehan, et al. (2001). Resolving family violence to children : The evaluation of Project Magellan, a pilot project for managing Family Court residence and contact disputes when allegations of child abuse have been made. Melbourne, Monash University.

Brown, T. and S. Smale (2006). The Gordoncare Parent Orders Program: An Evaluation. Caulfield, Victoria Department of Social Work, Monash University.

Brown, T., Lundgren, A., Stevens, L. and Boadle, J. (2010). "Shared Parenting and Parental Involvement in Children's Schooling Following Separation and Divorce". Children Australia, Melbourne:7-13.

Bruch, C. (2006). "Sound Research or Wishful Thinking in Child Custody Cases? Lessons from Relocation Law." Family Law Quarterly **40**(2): 281-314.

Campbell, A. (2004). The voice of the child in family law: Whose right? Who's right? Unpublished Doctoral Thesis, University of South Australia.

Campbell, A. (2005). Like Stubbing Your Toe and Then Like Suing the Ground: Children, Their Rights and Their Ability to Participate in Decisions that Directly Affect Them. Australian Institute of Family Studies, Melbourne.

Campbell, A. (2008a). "For Their Own Good: Recruiting children for research." Childhood **15**: 30-49.

Campbell, A. (2008b). "The right to be heard: Australian children's views about their involvement in decision-making following parental separation." Child Care in Practice **14**(3): 237-255.

Campbell, T. D. (1992). The rights of the minor: As person, as child, as juvenile, as future adult. Children, Rights and the Law. P. Alston, S. Parker and J. Seymour. New York, Oxford University Press.

Carpenter, G. L. and A. M. Stacks (2009). "Developmental effects of exposure to intimate partner violence in early childhood: A review of the literature." Children and Youth Services Review **31**: 831-839.

Cashmore, J. and P. Parkinson (2009). "Children's participation in family law disputes: The views of children, parents, lawyers and counsellors." Family Matters **82**: 15-21.

Cheers, B. (1998). Welfare Bushed: Social Care in Rural Australia. United Kingdom, Ashgate.

Cheers, B. and J. Taylor (2005). Social work in rural and remote Australia. Social Work Fields of Practice. M. Alston and J. McKinnon. South Melbourne, Oxford University Press.

Chisholm, R. (2006). The Family Law Amendment (Shared Parental Responsibility) Bill 2006 : Putting Children at Centre Stage ? Contact and Relocation - Focusing on the Children. Convened by the

Centre for Children and Young People, Southern Cross University, Byron Bay, New South Wales, Unpublished.

Chisholm, R. (2009a). Family Courts Violence Review: A Report by Professor Richard Chisholm. Canberra, Australian Government Attorney-General's Department.

Chisholm, R. (2009b). "The meanings of 'meaningful' within the Family Law Act Amendments of 2006: A legal perspective." Journal of Family Studies **15**(1): 60-66.

Coker, A., C. Flerx, et al. (2007). "Partner Violence Screening in Rural Health Care Clinics." American Journal of Public Health **97**(7): 1319-1325.

Commonwealth (8 December 2005). Parliamentary Debates, Legislative Assembly. Phillip Ruddock Attorney-General. Canberra.

Craig, J. (2007). "Everybody's Business: Applications for Contact Orders by Consent" Family Law **37**(26).

Cree, V. E., H. Kay, et al. (2002). "Research with Children: Sharing the Dilemmas." Child and Family Social Work **7**(1): 47-56.

Davies, B., S. Ralph, et al. (1995). "A study of Client Satisfaction with Family Court Counselling in Cases Involving Domestic Violence." Family Court Review **33**(3): 324-341.

Depner, C., K. Cannata, et al. (1994). California Family Court Services Snapshot Study Report 3: Client evaluations of Mediation Services: The Impact of Case Characteristics and Mediation Service Models, California Statewide Office of Family Court Services.

Dewar, J. and S. Parker (1999). "The Impact of the New Part VII Family Law Act 1975." Australian Journal of Family Law **13**(2): 1-21.

Domestic Violence and Incest Resource Centre (2007). Behind Closed Doors. Family Dispute Resolution and Family Violence. Discussion paper. Melbourne.

Edleson, J. L. (1999). "The overlap between child maltreatment and woman battering." Violence Against Women **5**: 134-154.

Edleson, J. L. (2001). Studying the co-occurrence of child maltreatment and domestic violence in families. Domestic Violence in the Lives of Children: The Future of Research, Intervention, and Social Policy. S. A. Graham-Bermann and J. L. Edleson. Washington, D.C., American Psychological Association.

Ellis, K., C. Chang, et al. (2008). "Rural mothers Experiencing the Stress of Intimate Partner Violence or Not: Their newborn health concerns." Journal of Midwifery and Women's Health **53**(6): 556-562.

Family Court of Australia. (2004). "Family Violence Strategy 2004 - 2005." from www.familycourt.gov.au/presence/resources/file/eb00ad0e6c7f4c2/violence.pdf.

Family Court of Australia (2008). Annual Report, 2007-8. Canberra

Family Law Council (2009). Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues. Canberra, Australian Government Attorney-General's Department.

Family Law Pathways Advisory Group (2001). Out of the Maze: Pathways to the Future for Families Experiencing Separation. Canberra, Family Law Pathways Advisory Group, Commonwealth Department of the Attorney-General, Family and Community Services. 1-115.

Faulks, J. (2008). In the Best Interests of the Children: A Perspective of the 2006 Amendments to the Family Law Act. Shared Parental Responsibility in Australian Family Law and the Impact on Children - Seminar, Hawke Research Institute, University of South Australia, Adelaide, Centre for Peace Conflict and Mediation.

Fehlberg, B. and F. Kelly (2000). "Jurisdictional Overlaps Between the Family Division of the Children's Court and the Family Court of Australia." Australian Journal of Family Law **14**: 211-233.

Field, R. (2005). "Federal Family Law Reform in 2005: The Problems and Pitfalls for Women and Children of an Increased Emphasis on Post-Separation Informal Dispute Resolution." Queensland University of Technology Law and Justice Journal **5**: 28-51.

Field, R. (2006). "Using the Feminist Critique of Mediation to Explore "the Good, the Bad and the Ugly" Implications for Women of the Introduction of Mandatory Family Dispute Resolution in Australia." Australian Journal of Family Law **20**: 45.

Fletcher, R. and A. Visser (2008). "Facilitating father engagement: The role of the Family Relationship Centres." Journal of Family Studies **14**(1): 53-64.

Fynes-Clinton, M. (2008). Blind eye to abuse. Burden of proof makes lawyers tread carefully. Courier Mail. Brisbane: 7.

Gardner, R. (1999). "Assessment for the stronger, healthier psychological bond in child custody evaluations." Journal of Divorce and Remarriage **31**(1/2): 1-14.

Gilbertson, R. and J. Barber (2002). "Obstacles to Involving Children and Young People in Foster Care Research." Child and Family Social Work **7**(4): 253-258.

Gribben, S. (1990). "Mediation of Family Disputes." Australian Journal of Family Law **5**(2): 126-136.

Grinnell, R. (1997). Social Work Research and Evaluation: Quantitative and Qualitative Approaches. Itasca, Illinois, F.E Peacock, Inc.

Harne, L. (2003). Childcare, violence and fathering - Are violent fathers who look after their children likely to be less abusive? - Copy of an unpublished paper soon to be published in. R. Klein and B. Waller (eds). Gender, Conflict and Violence Vienna, Studien Verlag Wien.

Hay, A. (2003) "Child Protection and the Family Court of WA". Paper presented to Child Sexual Abuse: Justice Response of Alternative Resolution, Australian Institute of Criminology Conference, Adelaide, May.

- Herman, J. (1997). Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror. New York, Basic Books.
- Hester, M., L. Kelly, et al., Eds. (1996). Women, Violence and Male Power. Buckingham, Open University Press.
- Higgins, D. (2007). Cooperation and Coordination: An Evaluation of the Family Court of Australia's Magellan Case-Management Model. Canberra, Family Court of Australia and the Australian Institute of Family Studies
- Horowitz, S. W. (2009). "Direct mixed and open questions in child interviewing: An analogue study." Legal and Criminological Psychology **14**: 135-147.
- Humphrey, J. (2005). PAS, 'Unacceptable Risk' and the Culture of the Australian Family Court: How current judicial paradigms are violating CRoC and failing to protect abuse children, A submission to the Federal Attorney-General, the Hon Phillip Ruddock MP.
- Hunt, J. and C. Roberts (2004). Child Contact with Non-Resident Parents. Family Policy Briefing Paper No 3 Oxford University Department of Social Policy and Social Work
- Hunter, R. (1999). Family Law Case Profiles, Justice Research Centre.
- Hunter, R. (2002). "Border Protection in Law's Empire: Feminist Explorations of Access to Justice." Griffith Law Review **11**: 263-285.
- Hunter, R (2006a) "Child-Related Proceedings Under Pt VII Div 12A of the *Family Law Act*: What the Children's Cases Pilot Project Can and Can't Tell Us." Australian Journal of Family Law **20**: 227.
- Hunter, R. (2006b). "Narratives of Domestic Violence." Sydney Law Review **28**: 733.
- James, K., Seddon, B. and Brown, J. (2002). 'Using it' or 'losing it'. Men's constructions of their violence toward female partners. Australian Domestic and Family Violence Clearinghouse Research Paper. Accessed online: <http://austdvclearinghouse.unsw.edu.au>
- Kaspiew, R. (2005). "Violence in Contested Children's Cases: An Empirical Observation". Australian Journal of Family Law **19**: 112-143.
- Kaspiew, R., M. Gray, et al. (2009). Evaluation of the 2006 Family Law Reforms. Canberra, A.I.F.S, Commonwealth Attorney-General and Department of Families, Housing, Community Services and Indigenous Affairs.
- Kaye, M., J. Stubbs, et al. (2003). Negotiating Child Residence and Contact Arrangements Against a Background of Domestic Violence. Brisbane, Family Law and Social Policy Research Unit, Griffith University.
- Kelly, J. B. (1996). "A Decade of Divorce Mediation Research: Some Questions and Answers." Family Court Review **34**(3): 373-385.
- Kelly, L. (1988). Surviving Sexual Violence. Oxford, Polity Press.

Kelly, L., S. Burton, et al. (1996). Beyond Victim or Survivor: Sexual Violence, Identity and Feminist Theory and Practice. Sexualising the Social: Power and the Organization of Sexuality. L. Adkins and V. Merchant. Houndmills, Basingstoke and London, Macmillan Press Ltd: 77-101.

Keys Young (1996). Research Evaluation of Family Mediation Practice and the Issue of Violence. Canberra, Legal Aid and Family Services, Attorney-General's Department, Commonwealth of Australia.

Kirkwood, D. (2007). Behind Closed Doors, Family Dispute Resolution and Family Violence. Discussion Paper. Collingwood, Melbourne, Domestic Violence and Incest Resource Centre. Domestic Violence and Incest Resource Centre, Discussion Paper No. 6.

Kitzinger, J. (1990). Who are you kidding? Children, Power, and the Struggle Against Sexual Abuse. Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood. A. James and A. Prout. Basingstoke, Falmer Press.

Koch, T. (2008). "Ruling debunks custody diagnosis." Retrieved April, 2008, from <http://www.theaustralian.news.com.au/story/0,25197,23495760-2702,00.html>.

Krantz, G. and N. D. Vung (2009). "The role of controlling behaviour in intimate partner violence and its health effects: a population based study in rural Vietnam." BMC Public Health **9**.

Laing, L. (2000). Children, young people and domestic violence. Sydney, Australian Domestic and Family Violence Clearinghouse. Issues Paper 2. Accessed online: <http://austdvclearinghouse.unsw.edu.au>

Laing, L. (2003). Domestic Violence and Family Law. Australian Domestic and Family Violence Clearinghouse Topic Paper, Sydney, University of New South Wales. Accessed online <http://austdvclearinghouse.unsw.edu.au>

Lansky, D. T., L. H. Swift, et al. (1996). "The role of children in mediation." Mediation Quarterly **14**(2): 147-154.

Love, A., L. Moloney, et al. (1995). "Federally-Funded Family Mediation in Melbourne: Outcomes, Costs and Client Satisfaction " Family and Conciliation Courts Review **30**: 50-61.

Marcus, G. and Braaf, R. (2007). Domestic and Family Violence Studies, Surveys and Statistics: Pointers to Policy and Practice. Domestic and Family Violence Clearinghouse Stakeholder Paper, Sydney, University of New South Wales. Accessed online <http://www.austdvclearinghouse.unsw.edu.au>

Maudeni, T. (2002). "Seen but Not Heard? Focusing on the Needs of Children of Divorced Parents in Gaborone and Surrounding Areas, Botswana." Childhood **9**(3): 277-302.

McClelland, R., Attorney-General, (2009). Speech to the Albury-Wodonga Family Pathways Network Event. Albury.

McDonald, P., Ed. (1986). Settling Up: Property and Income Distribution on Divorce in Australia. Sydney, Prentice-Hall of Australia

McInnes, E. (2004). "The Impact of Violence on Mothers and Children's Needs during and after Parental Separation' " Early Childhood Development and Care **174**(4): 357-368.

McInnes, E. (2008). System Failure and Children at Risk: When Family Law, Mental Illness and Family Law Come Together Shared Parental Responsibility in Australian Family Law and the Impact on Children University of South Australia, Centre for Peace, Conflict and Mediation.

McIntosh, J. (2003). "Enduring Conflict in Parental Separation: Pathways of Impact on Child Development." Journal of Family Studies **9**(1): 63-80.

McIntosh, J. and R. Chisholm (2008). "Shared Care and Children's Best Interests in Conflicted Separation." Australian Family Lawyer **20**(No 1): 1-11.

McIntosh, J. and C. Long (2006). Children Beyond Dispute. A Prospective Study of Outcomes from Child Focused and Child Inclusive Post-Separation Family Dispute Resolution. Final Report. Canberra, Australian Government Attorney-General's Department. **Final Report**.

McIntosh, J. and Long, C. (2007) The Child-Responsive Program Operating within the Less Adversarial Trial: A Follow-Up Study of Parent and Child Outcomes. Canberra, Family Court of Australia.

Mechanic, M., T. Weaver, et al. (2008). "Mental Health Consequences of Intimate Partner Abuse: A Multidimensional Assessment of Four Different Forms of Abuse." Violence Against Women **14**(6): 634-654.

Moloney, L., B. Smyth, et al. (2007a). Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study. (Research Report No. 15). Melbourne, Australian Institute of Family Studies.

Moloney, L., B. Smyth, et al. (2007b). "Allegations of Violence and Child Abuse in Family Law Children's Proceedings: Key Findings of Australian Institute of Family Studies Research Report No. 15." Family Matters(77): 8-15.

Mullender, A., G. Hague, et al. (2002). Children's Perspectives on Domestic Violence. London, SAGE Publications.

Mulroney, J. and Chan, C. (2005) Men as Victims of Domestic Violence. Australian Domestic and Family Violence Clearinghouse Topic Paper: Accessed online: <http://www.austdvclearinghouse.unsw.edu.au>

Nader, C. (2010). Family Court Wants Access to Mediation. The Age. Melbourne.

Neale, B. (2002). "Dialogues with Children: Children, Divorce and Citizenship." Childhood **9**(4): 455-475.

Parkinson, P. (2006). "Decision Making about the Best Interests of the Child: The Impact of the Two Tiers." Australian Journal of Family Law **20**(2): 179-192.

Perry, B. (2001). The neurodevelopmental impact of violence in childhood. Textbook of Child and Adolescent Forensic Psychiatry. D. Schetky and E. Benedek. Washington, American Psychiatric Press: 221-238.

Postmus, J. L. and D. H. Merritt (2010). "When child abuse overlaps with domestic violence: the factors that influence child protection workers' beliefs." Children and Youth Services Review **32**: 309-317.

President of the UK Family Division. (2008). "Practice Direction (Residence and Contact Orders: Domestic Violence and Harm)." Retrieved December 4, 2008, from <http://www.lexisnexis.com/uk/legal/>.

Rathus, Z. (2007). "Shifting the Gaze: Will Past Violence be Silenced by a Further Shift of the Gaze to the Future Under the New Family Law System?" Australian Journal of Family Law **21**: 87.

Rhoades, H. and S. B. Boyd (2004). "Reforming Custody Laws: A Comparative Study." International Journal of Law, Policy and the Family **18**(2): 119-146.

Rhoades, H., R. Graycar, et al. (2000). The Family Law Act 1995 : The First Three Years. Sydney, University of Sydney.

Rhoades, H., R. Graycar, et al. (2001). "The first three years of the Family Law Reform Act 1995." Family Matters(58).

Saccuzzo, D., N. Johnson, et al. (2003). "Mandatory Custody Mediation : Empirical evidence of increased risk for domestic violence victims and their children." Retrieved 4/5, 2008, from www.ncjrs.gov/pdffiles1/nij/grants/195422.pdf.

Salthouse, S. and C. Frohmader (2005). "Real trouble in the home: the domestic violence reality for women with disabilities." DVIRC Quarterly(4).

Shea Hart, A. (2003). "The silent minority: The voice of the child in family law." Children Australia **28**(4): 31-38.

Shea Hart, A. (2004). "Children exposed to domestic violence: undifferentiated needs in Australian family law." Australian Journal of Family Law **18**(2): 170-192.

Shea Hart, A. and D. Bagshaw (2008). "The idealised post-separation family in Australian family law: A dangerous paradigm in cases of domestic violence." Journal of Family Studies **14**(2-3): 291-309.

Sheehan, G. and B. Smyth (2000). "Spousal Violence and Post-Separation Financial Outcomes." Australian Journal of Family Law **102**(14).

Smart, C. (2001). Children's Voices. 25th Anniversary Conference, Family Courts of Australia. Sydney, NSW.

Smart, C. and S. Sevenhuijsen (1989). Child Custody and the Politics of Gender. London and New York, Routledge.

Solomon, J. and C. George (1999). "The Development of Attachment in Separated and Divorced Families: Effects of Overnight Visitation, Parent and Couple Variables" International Journal of Attachment and Human Development **2**(9).

Strategic Partners and Research Centre for Gender Studies (1999). *Meta Evaluation of the Partnerships Against Domestic Violence, Current Perspectives on Domestic Violence: A Review of National and International Literature*. Canberra and Adelaide.

Streeck-Fischer, A. and B. Van der Kolk (2000). "Down will come baby, cradle and all: Diagnostic and Therapeutic Implications of trauma on child development." *Australian and New Zealand Journal of Psychiatry* **34**(6): 903-18.

Sweet, L. and Power, C. (2009). "Family Law as a determinant of child health and welfare: shared parenting, breast feeding and the best interests of the child." **18**, 1:108-118.

Taft, A. (2003). *Promoting Women's Mental Health: The challenges of intimate/domestic violence against women. Issue Paper 8*. Canberra, Australian Domestic and Family Violence Clearinghouse.

Taylor, N. (2006). "What do we know about involving children and young people in family law decision making? A research update." *Australian Journal of Family Law* **20**: 154-178.

Thomas, N. and C. O'Kane (1998). "When children's wishes and feelings clash with their 'best interests'." *International Journal of Children's Rights*(6): 137-154.

Tinning, B. (2008). *Law Reform, domestic violence and safety of women: Considering the effects of the 2005 Family Law Reform on women who are victims of domestic violence.* . Brisbane International Feminist Conference, Brisbane, Australia.

Trinder, L. (2003). *Contact After Divorce: What Has the Law to Offer?* *Frontiers of Family Law*. G. Miller. Aldershot, Ashgate Publishing Limited.

Trinder, L. (2009). "What might children mean by a 'meaningful relationship'?" *Journal of Family Studies* **15**(1): 20-35.

Tyler, T. (1989). "The Quality of Dispute Resolution Procedures and Outcomes: Measurement Problems and Possibilities." *Denver University Law Review* **66**: 419-436.

Tyler, T. (1998). "Public Mistrust of the Law: A Political Perspective." *University of Cincinnati Law Review* **66**: 847-876.

United Nations General Assembly (1989). *The Convention on the Rights of the Child*.

Victorian Indigenous Family Violence Task Force (2003). *Victorian Indigenous Family Violence Task Force Final Report*. Melbourne, VLRC.

Vung, N. D., P. O. Ostergren, et al. (2009). "Intimate Partner Violence against women, health effects and health care seeking in rural Vietnam." *European Journal of Public Health* **19**(2): 178-182.

Walby, S. and J. Allen (2004). *Domestic Violence, Sexual Assault and Stalking: Proceedings from the British Crime Survey*. London, Home Office Research Study 276, Home Office Research Development and Statistics Directorate.

Weinbach, R. (2005). *Evaluating Social Work Services and Programs*. USA, Pearson Education Inc.

Wendt, S. (2009). *Domestic Violence in Rural Australia*. Annandale, The Federation Press.

Wendt, S. and B. Cheers (2004a). "Rural cultures and domestic violence: Stories from the South Australian Wine Country." Rural Social Work **9**(Special issue from the International Conference on Human Services in Rural Communities): 97-105.

Wendt, S. and B. Cheers (2004b). "Rural Cultures, Domestic Violence, and Stories from a Rural Region." he Australian Feminist Journal: Women Against Violence. **15**(Special Rural Issue): 1-11.

Wilson, R. F. (2002). "Fractured Families, Fragile Children: The Sexual Vulnerability of Female Children in the Aftermath of Divorce." Child and Family Law Quarterly **14**(2): 1-23.

Zerk, D. M., P. G. Mertin, et al. (2009). "Domestic violence and maternal reports of young children's functioning." Journal of Family Violence **24**(7): 423-432.