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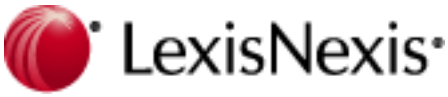

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1 of 1 DOCUMENT: Australian Journal of Family Law/(2010) 24 AJFL No 1/Articles/The Australian Institute of Family Studies' Evaluation of the 2006 family law reforms: Key findings

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Articles

The Australian Institute of Family Studies' Evaluation of the 2006 family law reforms: Key findings

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The Australian Institute of Family Studies' Evaluation of the 2006 family law reforms was released in January 2010. It is based on an extensive amount of empirical research, unprecedented in Australia and arguably internationally, comprising 17 separate studies involving 28,000 people, 1724 court files, administrative data and legal analysis. This article presents some key findings of the Evaluation. Specifically, the Evaluation found that for the majority of families, the family law system is working satisfactorily. At the same time however, the Evaluation findings underline the existence of complex issues, including family violence and child abuse concerns, mental health problems and substance misuse which affect many families that rely on the federal family law system^ for assistance. While the introduction of family dispute resolution with exceptions+ has resulted in more disputes being resolved without court action, there is a need for refinement of processes and understandings with respect to cases that are unsuitable for such processes or cases that require additional support in order for disputes to be resolved safely and responsibly. Similarly, while children in shared care represent a minority overall, and while the majority of families with shared care appear to be doing well, there is evidence that these arrangements are sometimes being made even in circumstances where parents have safety concerns, with adverse consequences for the well-being of children.

1 Introduction

The Australian Institute of Family Studies' (AIFS) Evaluation of the 2006 family law reforms (the Evaluation) found that the 2006 reforms have had a positive impact in some areas and have had a less positive impact in others. Among the main findings was evidence of an increase in the use of relationship support services among separated families and a reduction in the overall number of children's cases being dealt with by the courts.[1] Although there was widespread support among professionals and parents for the philosophy of shared parental responsibility, the Evaluation found that a range of difficulties stem from misunderstandings of the law,[2] with a community misconception that the changes provided for '50/50 custody'. It also concluded there was clear evidence that the family law system as a whole had a way to go in achieving an effective response to families presenting with significant levels of dysfunction -- especially issues connected with family violence and child abuse.

The purpose of the Evaluation was to assess the extent to which, by 2009, the 2006 reform package implemented in response to a parliamentary inquiry[3] had been effective in achieving its policy objectives and to provide a baseline against which further changes can be compared.[4] The Evaluation was commissioned in response to recognition of a need for a more extensive evidence base to inform policy development in the family law area.[5] The Evaluation report was released by the Attorney-General, The Hon Robert McLelland in January 2010.[6]

The next five parts of this article examine the key findings from the Evaluation, focusing on areas where particular challenges for professionals working in the system are evident. The first part outlines the Evaluation findings on the characteristics of the families who rely on the family law system for help. The operation of family dispute resolution is examined in the second part. The third part considers how the 2006 amendments to the Pt VII of the Family Law Act 1975 (Cth) (FLA) have influenced bargaining dynamics and advice-giving practices.The fourth part discusses the

patterns in parenting arrangements reached by negotiation and through court action, and the extent to which these have changed following the reforms, including the extent to which children living in shared care arrangements have parents who express ongoing safety concerns and the impact of this on the well-being of children. Finally, professionals' perspectives on how the system deals with issues relating to family violence and child abuse are considered. A description of the methodologies applied in key studies referred to in this article is in Appendix A.

2 Service use and client characteristics

The Evaluation findings confirm what has been popular wisdom among many family law system professionals for many years: that there is large group of separated parents who sort things out themselves with little or no use of services. There is also a smaller group of parents for whom resolution of post-separation parenting issues comes much less easily, and it this group which is the core client base of the family law system. Amongst this group, only a small proportion file court applications aimed at resolving disputes about their children, with a considerably smaller proportion proceeding to judicial determination.[7] The evaluation data shed new light on the trajectories of parents across the family law system as whole.

Of the 10,000 separated parents who participated in the Evaluation's Longitudinal Study of Separated Families (LSSF W1 2008), 71% of fathers and 73% of mothers indicated they had sorted out arrangements for their children at the time of interview, which took place up to 26 months after separation.[8] A little under a fifth of parents (19% of fathers and 16% of mothers) indicated they were still in the process of doing so, and a tenth of the sample indicated that nothing had been sorted out within this time frame.[9]

Of parents who had sorted out their parenting arrangements, 81%said that the arrangements were mainly arrived at through discussions (66%) or they 'just happened' (16%) (Table 1). Another 7% nominated counselling, mediation or family dispute resolution (FDR) as their main pathway used to sort out their arrangements, 6% said using a lawyer was their main pathway and 3% identified the courts as the main pathway.

While the majority of parents who had sorted out their parenting arrangements did this through discussions or indicated that it had 'just happened', over a half of these parents had used services (Table 2). Of those who said that they had mainly sorted out their arrangements through discussions with the other parent, 38% had used counselling, FDR or mediation and 31% had seen a lawyer.In the 'just happened' sub-group, 30% had used counselling, mediation or FDR while 28% reported using a lawyer.

Table 1: Parents who had sorted out arrangements: Main family law pathway used, fathers and mothers, pre- and post-reform

	Pre-reform [a]			Post-reform		
	Fathers	Mothers	All	Fathers	Mothers	All
	%			%		
Counselling, mediation or FDR	5.9	6.2	6.0	6.9	7.7	7.3
Lawyer	10.3	11.0	10.6	6.1	5.4	5.8
Courts	8.3	7.2	7.8	2.4	3.3	2.8
Discussions	57.6	50.7	54.1	62.7	69.0	65.8
Nothing specific, it just happened	13.1	20.5	16.8	18.7	12.4	15.6

Notes: [a] Pre-reform information relates to parenting arrangements sorted out in the year of the separation. Data have been weighted. Percentages may not total 100.0% due to rounding and a small percentage of parents nominating an 'other' main family law pathway.

Source: LSSF W1 2008 and the Looking Back Survey (LBS) 2009.

In the group that indicated that they had mainly sorted out their arrangements with assistance from services,[10] many used more than one service with the highest use of services evident among parents who nominated courts as the main pathway used for sorting out parenting arrangements (a mean use of 3.5 services, compared with means of 2.9 for those who had used lawyers and 2.7 for those who had used counselling mediation or FDR) (Table 2). Two-thirds of the group that nominated lawyers as the main pathway had also used counselling, mediation or FDR and a little over half had also used the courts. About three-quarters of those who nominated counselling, mediation or FDR as their main pathway to resolution had also made use of lawyers and a third had also used courts.

It is clear from the data in Table 2 that the use of multiple types of services is common for those whose main pathway to resolving their parenting issues involved using services, lawyers or the courts. The parents who had not sorted out their arrangements at the time of survey are probably more likely than the other parents to make multiple use of services. Also, for some parents, changes in arrangements and circumstances may mean that negotiations and service use are ongoing.

Table 2: Services contacted/used during/after separation, by main pathways used by parents who had sorted out arrangements, post-reform

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

Source: LSSF W1 2008.

The multiple use of services is explained in part by the fact that a substantial proportion of parents in the LSSF 2008 report being affected by issues such as family violence, mental health problems[11] and substance abuse, confirming evidence from a range of previous studies in Australia and elsewhere.[12] In relation to family violence (physical hurt prior to separation and emotional abuse before, during or after separation), 65% of mothers and 53% of fathers reported such experiences. Most parents who reported that they had been physically hurt prior to separation indicated that their children had witnessed some form of abuse or violence (72% of mothers and 63% of fathers). In total, 8% of mothers and 3% of fathers said that they held safety concerns for themselves and/or their focus child as a result of ongoing contact with the child's other parent. Parents were also asked to indicate whether there had been issues with mental health problems or alcohol or other drug use before separation. Overall, mental health problems were reported by 29% of mothers and 23% of fathers, and substance misuse was reported 37% of mothers and 20% of fathers.

The evidence from the Evaluation also shows that at an average point of 15 months after separation, a little under two

thirds of the LSSF 2008 sample of 10,000 separated parents[13] reported that they had friendly and cooperative relationships with each other.

Less positively, 19% of this same sample of 10,000 parents rated their relationship at the time of interview as distant. Of greatest concern from the perspective of the children however, was the finding that at the time of responding to the survey, 14% of the parents reported that the post-separation relationship was highly conflicted; and 5%(7% of mothers and of 3% fathers) rated their relationship as fearful.The evidence pointing to the many adverse consequences of negative parental relationships on children is extremely robust[14] and has been borne out by the Evaluation evidence.[15]

The picture in relation to the impact family violence has on ongoing post-separation relationships is complex. As noted above, 19% of parents' post-separation relationships were dominated by high conflict or fear.At the same time, many of the parents who reported friendly and cooperative post-separation relationships had also experienced family violence.Among the parents who reported family violence, a majority described their current relationship along a negative continuum, being 'distant' (22-24.6%), or having 'lots of conflict' (20-29%) or being 'fearful' (10.5-18.5%).[16] Minorities of parents in this group reported relationships at the less problematic end of the continuum, namely, those described as 'friendly' (16%) or 'co-operative' (21-23%) at the time of interview.

Compared with parents who reported their parenting arrangements had 'just happened' or been sorted out through discussions, those who nominated courts, lawyers, or counselling/mediation and FDR as their main means of resolving their dispute were much more likely to report experiencing family violence. The data presented in Table 3 reveal that reports of having been physically hurt were most common among those who nominated the courts as the main pathway used for sorting out parenting arrangements (48%), followed by those who had mainly used lawyers (37%), then those who nominated counselling, mediation and FDR as their main pathway to developing their parenting arrangements (25%). The experience of physical hurt prior to separation was reported by only 12% of parents who said that they had mainly sorted out their parenting arrangements through discussions with the other parent and 17% who said that the arrangements had, in the main,'just happened'. These data indicate that matters are less amenable to settlement where there has been a history of family violence, and that a matter that involves family violence is more likely to proceed down a legal/court pathway.

Table 3: Main pathways used, by parents' reports of family violence, parents who had sorted out parenting arrangements, post-reform

	Counselling, mediation or FDR	Lawyer	Courts	Discussions	Nothing specific, just happened	All pathways [a]
			%			
Physical hurt	24.9	37.0	48.0	12.2	16.7	16.8
Emotional abuse alone	52.5	47.1	43.2	32.0	34.3	35.4
No violence reported	22.7	15.9	8.9	55.8	49.1	47.8
Total	100.1	100.0	100.1	100.0	100.1	100.0
No. of observations	535	442	225	4,548	1,086	7,097

Notes: [a] Includes parents who reported other pathways. Percentages may not total exactly 100.0% due to rounding, and a small percentage of parents nominating an 'other' main family law pathway.

Source: LSSF W1 2008.

These findings show that a substantial proportion of parents who require significant support from the system are facing complex issues, a point reinforced by data from family law system professionals themselves, most of whom indicated that concerns about family violence and/or child abuse were relevant to a significant proportion of their client base. Similarly, data from court files indicate that more than half, and up to 70% depending on the court,[17] of the matters that proceed involve allegations of family violence and/or child abuse. This is consistent with the findings of previous research.[18]

The data indicate that the implications of a history of family violence for ongoing co-parenting relationships after separation are complex. For some, the violence may have been what Johnston Roseby and Keuhnle[19] refer to as 'separation related violence' and may not have been a feature of the pre-separation relationship. For others, separation itself may have solved the problems that were contributing to the violence while the relationship was intact. For another group, the reported history of violence precedes ongoing difficulties, including distant, conflictual or fearful post-separation relationships, ongoing concerns for safety and possibly ongoing violence.

3 Family dispute resolution

In support of the reform objective concerning the resolution of disputes without recourse to courts, the 2006 amendments to the FLA included provisions requiring parents to attend FDR to attempt to resolve post-separation parenting disagreements (s 60I). The reforms meant there were essentially two ways a matter could reach court.[20] The first involves filing an application pursuant to one of the exceptions to s 60I, namely, where a matter was urgent (s 60I(9)(d)) or involved concerns about family violence (s 60I(9)(iii) and (iv)) or child abuse (s 60I(9)(b)(i)(ii)).The second involves obtaining a certificate from a FDR practitioner that indicates that a matter is not amenable to resolution through FDR and this paves the way for a court application to be lodged. The Evaluation data suggest that practices and understandings around the exceptions and the grounds on which certificates may be issued lack clarity in day-to-day legal and FDR practice.[21] Among parents who had separated after the reforms, 31% of fathers and 26%of mothers reported that they had 'attempted family dispute resolution or mediation'.[22] Of these parents, 9% were not sure of the outcome and/or were not sure if they had been issued with a certificate. The remainder can be divided into three groups.

First, about two-fifths of the parents who attempted FDR or mediation reached an agreement as a direct result of the process. Of these, about three quarters reported that arrangements had been sorted out and about a fifth reported that arrangements were in the process of being sorted out at the time the survey was conducted. This was, as noted above, an average of 15 months after the separation had occurred.

Second, of the parents who did not reach agreement as a direct result of FDR/mediation, 31% reported that they did not receive a certificate. Most of this group (65%) reported that arrangements had been sorted out at the time the survey was conducted, while 23% were in the process of sorting out arrangements.

Third, just over a fifth (21%) of parents who attempted FDR/mediation reported that they did not reach agreement and were given a certificate.The situation for this group contrasts considerably with the situation that existed for the other two groups. At the time of the survey, 47% reported being in the process of sorting arrangements out, while only 36% had actually sorted arrangements out.

Interestingly, of those who had reached agreement at FDR and who also reported that arrangements had been sorted out at the time of the survey, just under a half suggested that the main pathway to sorting things out was 'counselling, mediation or FDR', while a little over a third claimed that the main pathway consisted of discussions between themselves. Very few of these parents saw lawyers or courts as their main resolution pathway.

By contrast, 61% of those parents for whom arrangements had been sorted out at the time of the survey, but who had neither reached agreement via FDR/mediation nor received a certificate, reported that the main pathway was via 'discussions'. Courts were seen as the main pathway by only 7% of this group and lawyers by 13%.

Those who had received a certificate and had sorted out arrangements by the time the survey was conducted saw courts and lawyers as their main pathway considerably more often (30% and 26%). They were the least likely of the three groups to rate 'discussions' as their main pathway.

Across the three groups, those parents who were in the process or sorting out arrangements at the time of the survey were more inclined than who had sorted out arrangements to see lawyers and courts as the main pathway. Just over 30% of the original agreement group and just under 33% of the 'no agreement/no certificate' group were in this category. Again by contrast however, over two thirds of the 'certificate' group saw lawyers or courts as the main pathway towards helping them sort things out at this time.

Relatively small percentages of the three groups described above reported that nothing had been sorted out at time the survey was conducted.A little over 6% of the original FDR/mediation agreement group were in this category, while this applied to almost 12% of those who did not reach agreement at FDR but did not receive a certificate. Almost 17% of the certificate group had sorted nothing out at the time of the survey.

More broadly, the data suggest that most disputes referred to Family Relationship Centres (FRCs) appear to be complex, and that lawyers not infrequently appear to refer cases to FRCs right from the outset.There is evidence that referral of difficult cases, either to FRCs or to an FDR service, is sometimes regarded as an insurance policy.Thus although some of the cases clearly meet one of the criteria for an exception under s 60I(9), lawyers reported not always being confident that courts will see the situation this way. For some lawyers, early referral to an FRC or to an FDR practitioner and the subsequent issuing of a certificate lessens the chance of referral'back' to FDR by a court.

The problem with this strategy in cases in which there are serious allegations or other issues of urgency is that some FRCs and FDR services reported delays for first appointments of weeks or even months. Clearly, families in which there are serious concerns may eventually receive a certificate from these services that permits them access to the courts -- but at what cost (in terms of time and possible safety concerns) to at least one of the parents and/or the children? Conscious of this problem, many FRCs and some FDR services try to offer early triage and information sessions, even if first appointments for possible FDR are some time away. At best, such families will then experience processes that lead back into the court system (in which interim decisions can be made) but at the same time are offered a range of other supporting services.

The Evaluation found that clients in the 'exception' category seem to be referred by lawyers to an FRC or FDR for a variety of reasons. Some appeared to want their clients to try this route first because they had little faith in the capacity of the court system to respond speedily and appropriately. Others appeared to refer to these services routinely almost regardless of the issues raised by the case. Amongst these lawyers were those who advised their clients to go to an FRC and simply 'ask for a certificate'[23] and those who were more conscious of the range of services that an FRC could provide, even if FDR proved to be unsuitable.

Lawyers' decisions to refer clients to an FRC or to FDR are further complicated by the fact that some families that clearly meet one or more of the exception criteria, actively opt for and are accepted for FDR and successfully complete the process. Thus there appear to be no easily predictable 'best' pathway for this problematic end of the dispute resolution spectrum. It may be that in some of these cases, the intake procedures and child focused information sessions change the dynamics sufficiently to make FDR a possibility. In addition, some services offer forms of FDR in which a more vulnerable parent is actively supported through the process.[24]

On the negative side however, some clients reported that they felt pressured into proceeding to FDR or into reaching an agreement once the process had begun. Others with seemingly similar complex family dynamics did not provide such feedback. Thus it would appear that striking the right balance between assessing the appropriateness of facilitated dispute resolution processes and recommending (via a certificate) a more litigation-oriented pathway must be considered to be 'work in progress'.

The complex nature of parental and family separation reinforces the need, articulated by the Family Law Pathways Advisory Group[25] for family law services and courts to operate as a 'system' rather than as a series of disconnected events. In this regard, practitioners from the family relationship sector reported a strong emphasis on triage and referral. Family Relationship Centres, expected to be the primary service delivery gateway, were seen by many of these practitioners (though by no means all) to be providing important direct services as well as referrals to other services inside and outside the sector.

Importantly, the data indicate considerable overlap between client use of lawyers and client use of FDR. Clearly, the advocacy role that lawyers must play on behalf of their clients is capable of complementing or colliding with the work of an FDR practitioner. Therefore, any initiatives which promote a shared commitment to responsible FDR between lawyers and FDR professionals, and between lawyers and the service sector, is likely to improve the efficacy of FDR and help clarify those cases in which parents and children will be better serviced by child focused decision-making provided by a court.[26]

Such increased cross sectional cooperation between legal and family relationship professionals represents another key systemic challenge in family law. For despite relatively high referral rates by lawyers into FRCs, the data suggest continuing concerns by lawyers about FDR and the service sector in general. Active engagement between the two sectors via joint education programs, case conferences and the like can assist in minimising the chance that the dynamics of high conflict and low trust exhibited by difficult clients do not spill over into these important cross sectional professional relationships.[27] It may also be time to explore processes whereby FDRPs can, with the permission of their clients, engage with legal representatives in the service of the parents and children without at the same time being 'pulled in' to potential litigation processes. On an encouraging note, the Evaluation found many instances, most especially from regional centres, of lawyers, FDR and other service professionals working cooperatively towards achieving post-separation arrangements between ex-partners aimed at assisting the children to not only survive their parent's separation, but to flourish.It would be useful to examine these examples in greater depth to see how these cooperative models of cross sectional professional engagement with clients actually function.[28]

4 The impact of the substantive parenting provisions in the 2006 amendments to Pt VII of the FLA

The section discusses the Evaluation findings on the impact of the 2006 amendments to the substantive parenting provisions in Pt VII in relation to post-separation negotiations and advice giving practices.One of the main legislative changes was the introduction of a presumption in favour of shared parental responsibility (s 61DA). This presumption is not applicable in cases where there are reasonable grounds to believe one of the parties has engaged in family violence or child abuse (s 61DA(2)) and it is rebuttable on the basis of evidence that would satisfy a court that its application is not in the child's best interests (s 61DA(4)). The making of orders for equal shared parental responsibility trigger an obligation on courts to consider making orders for the child to spend equal, or substantial and significant time with each parent (s 65DAA). Other significant changes to the substantive parenting provisions in Pt VII included the introduction of two new Objects outlining a connection between 'best interests'[29] and the benefit to children of having meaningful involvement of both parents in their lives (s 60B(1)(c), together with their need to be protected from physical or psychological harm from being subjected to or exposed to 'abuse, neglect or family violence'(s 60B(1)(b)).[30]

The 'meaningful involvement' principle and the 'protection from harm' principle are restated as the two primary considerations s 60CC(2)[31] in the two-tier list of primary and additional considerations that inform the 'best interest consideration'. These provisions exemplify the main aims of the 2006 changes and the promotion of 'meaningful involvement' and 'protection from harm' have been described in a widely endorsed[32] and quoted judgment by Brown J'as the twin pillars'[33] of the parenting provisions in Pt VII. The discussion in this section examines how the changes have influenced bargaining dynamics and advice giving practices in relation to parenting arrangements post-reform.

4.1 Bargaining dynamics and misunderstandings of the law

While the legislative reforms were intended to ensure children's'best interests' remained the paramount consideration (s 60CA), and included elements that placed increased emphasis on family violence and child abuse (eg, s 60B(1)(b)), the Evaluation data show that widespread misconceptions that the changes introduced'50/50' custody are held by parents and some system professionals.Many professionals across the family law system, and particularly those in the legal sector, indicated that the changes were widely understood by many parents and some professionals working in the family law system (although not themselves), to establish 'an entitlement' to equal time for each parent. They indicated this resulted in increased disillusionment among some fathers who find that the law does not allow for 50-50 'custody'. Many professionals, especially those working in the legal and court sector, also said the misunderstanding could make it more challenging to achieve child-focused arrangements in cases in which an equal or shared care-time arrangement was not practicable or appropriate. Legal system professionals in particular indicated that in their view the legislative changes had promoted a focus on parents' rights rather than children's needs.A majority of lawyers surveyed were of the view that the reforms had favoured fathers over mothers and this perception strengthened over time. In 2008, 71% of participants in the Family Lawyers Survey (FLS 2008) said the reforms favoured fathers over mothers compared with 52% in 2006. In 2008, 62% indicated the reforms had favoured parents over children, compared with 46% in 2006.[34]

Many legal and court system professionals also suggested that mothers'were on the back foot' (as one participant expressed it) not only in relation to parenting arrangements but also in post-separation negotiations over property and financial arrangements. This is an area where the Evaluation data offer exploratory insights only, although they suggest trends consistent with those reported by Fehlberg et al.[35] Data from family law system professionals not only suggested a link between motivations on the part of some parents to seek shared care to minimise child support payments,[36] but there is some evidence of a downward pressure on property settlements. More than half (60%) of the lawyers who participated in 2008 Family Lawyers Survey indicated they had changed the advice they give about property settlement entitlement. Their estimates of property settlement ratios varied fairly widely, but the data suggest a 5% drop in estimated ratios allocated to mothers, from an average estimate of 63% to 56%. Further, advice seeking concerning changing parenting arrangements, made either before or after the reforms was common, but advice seeking concerning changing property arrangements was not common. This suggests significant dynamism in children's arrangements not matched by a similar dynamism in property arrangements.This is an area where further research could usefully be conducted and a qualitative project examining these issues is currently underway.[37]

4.2 Advice giving practices about time arrangements

One of the issues of concern raised by the Every Picture report was community perceptions of an informal 80/20 rule influencing parent arrangements and the potential for such perceptions to limit the scope for agreement-making that allowed for fathers to spend more than alternate weekends and half school holidays with their children after separation.[38] The Evaluation examined the question of how advice-giving practices had changed as a result of the reforms. The qualitative data from the Qualitative Study of Legal System Professionals (QSLSP) 2008 and the quantitative Family Lawyer Surveys (FLS) 2006 and 2008 data indicate that advice that could be perceived to support a so-called '80-20 rule'[39] is given less frequently post-reform. Overall, it appears that there is now more creativity in the advice being provided about parenting arrangements, with parents being encouraged to consider a variety of ways in which fathers can be part of their children's day-to-day routine.

Table 4 demonstrates that a substantially lower proportion of participants in the FLS 2008 indicated that they frequently explained to clients that mothers who have had major child care responsibilities would normally obtain residence of their children, compared to the baseline data collected in 2006. Post-reform, 44% of participants stated that they almost always or often advised clients in this way, compared to almost twice this proportion (82%) in 2006. Similarly, in relation to a question asking respondents how often they had advised clients that '[t]he normal outcome is that a father will see his children on alternate weekends and half the school holidays', only 9%of lawyers participating in the FLS 2008 reported giving such advice'almost always' or 'often', compared with 36% of lawyers in 2006. Further evidence of a change in this area comes from responses to the question: 'Because of the reforms, I have changed the advice I give to clients about fathers seeing children.' In 2006, 64% of the sample said they would be likely to change their advice about this, compared with 90% saying in 2008 that they had changed their advice about this.

Table 4: Lawyers' advice giving practices about parenting arrangements: pre and post-reform comparison

	Almost always	Often	Sometimes	Rarely / Never	Can't Say	Total
			%			
Over the past 12 months, how often have you explained that mothers who have had major childcare responsibilities will normally obtain residence of their children						
FLS 2008	11.	32.	34.5	20.4	1.	100
FLS 2006	37.	45.	11.8	4.9	1.	100
Over the past 12 months, how often have you explained that the normal outcome is that a father will see his children on alternative weekends and half the school holidays						
FLS 2008	2.	6.	25.7	64.0	1.	100
FLS 2006	10.	25.	36.9	26.2	1.	100
Over the past 12 months, how often have you explained that substantial sharing of parental responsibilities after separation requires high levels of capacity to cooperate						
FLS 2008	61.	26.	8.2	2.8	0.	100
FLS 2006	65.	28.	4.4	0.8	0.	100

In contrast to the large differences in advice-giving concerning arrangements for spending time, responses to the third question in this set -- concerning cooperation and shared care -- suggest a more static set of practices. In both the pre- and post-reform surveys of lawyers, participants were asked how often they explained to clients that substantial sharing of parenting responsibilities after separation requires high levels of capacity to cooperate. In 2008, almost 62%responded that they explained this statement to clients 'almost always', with a further 26% 'often' explaining this.In 2006, 66% of respondents stated that they 'almost always' explained this statement to their clients.

Despite less change in the set of responses in relation to advice-giving practice and the capacity to cooperate described in the preceding paragraph, most participants in the FLS 2008 indicated that the 2006 changes had resulted in more shared care-time arrangements being made in high-conflict situations. Asked to indicate their level of agreement with the proposition that: '[t]he legislative reforms have resulted in more children in shared care arrangements where there is

high conflict', most respondents (79%) agreed, with 40% strongly agreeing. In contrast, only 16% disagreed, with 4% strongly disagreeing. This is consistent with views expressed by many participants in the QSLSP (2008) that shared care-time arrangements were being made by agreement, negotiation and litigation in circumstances where the parents had a conflictual relationship.

Lawyers also indicated that they believed the exceptions to the parental responsibility presumption were not well understood by many parents and some FDR practitioners. Although there was strong support for the philosophical concept of shared parental responsibility (80%supporting the notion in 2008), a majority (57%) of legal practitioners disagreed that the 'legislative reforms toward shared parental responsibility had benefited children in most cases' (FLS 2008).

5 Parenting arrangements and child well-being: LSSF sample and court files

The patterns in parenting arrangements evident in court orders and among the group of 10,000 separated parents in the LSSF W1 are interesting in light of the discussion in the preceding section. While shared care arrangements (applying a broad definition involving a 35/65 night split between the parents) remain a minority arrangement[40] a higher proportion of such arrangements are evident in court-based outcomes and among parents who have had formal interaction with the system. Orders for shared parental responsibility have increased significantly in arrangements made by judicial determination, consent and consent after proceedings have been initiated.

5.1 Court orders for parental responsibility and time

As noted at the start of this section, a new concept introduced into Pt VII as part of the 2006 changes was a presumption in favour of equal shared parental responsibility with a linked obligation on the courts to consider orders for equal or substantial and significant time where orders pursuant to the presumption are made. Data based on an analysis of 1724 court files show that orders for shared parental responsibility increased after the reforms, in both matters determined by judges[41] and those made by consent. As shown in Table 5, shared parental responsibility was ordered for 44%of children in pre-reform matters determined by a judge compared with 56% of children in such matters post-reform. Similarly, consent orders provided for shared parental responsibility in 80% of pre-reform matters compared with 91% of post-reform matters (of course, in the absence of a court order, parental responsibility is automatically vested in each parent: FLA s 61C).

Table 5: Parental responsibility outcomes, judicial determination and consent, pre- and post-1 July 2006

	Judicial determination		Consent	
	Pre-reform	Post-reform	Pre-reform	Post-reform
	%		%	
Shared parental responsibility	44.0	56.1	79.9	90.9
Sole to mother	27.8	28.2	8.3	5.4
Sole to father	10.3	6.2	2.9	0.9
Other	17.9	9.4	8.8	2.8
Total	100.0	99.9	99.9	100.0
Number of children	251	222	908	1,119

Notes: The shared parental responsibility category includes a small number of cases where there was shared parental responsibility with exceptions (less than 1%). The 'other' category includes sole to maternal grandparent, sole to paternal grandparent or sole to other relatives, along with a small proportion of orders -- both mother and father -- in the post-reform sample. Sample restricted to cases in which a parental responsibility outcome was applicable and the outcome recorded on file. Weighted percentages. Percentages may not total exactly 100.0% due to rounding.

Source: Family Court of Australia, Federal Magistrates Court and Family Court of Western Australia court files.

Orders for arrangements involving shared time also increased after the reforms, although such arrangements remain the minority in matters determined by judges or by consent, consistent in broad terms with the patterns evident among the LSSF 2008 parents. Shared time arrangements (using 35-65% definition) remained less common in court orders than arrangements where children live with mothers and spend time with fathers in court orders, although more such orders were made after the reforms than before. Orders for shared time were made in 14% of cases after the reforms, compared with 9% of cases prior to the reforms. There was a particularly sharp increase in orders for shared care made by judicial determination. These rose from 2% prior to 1 July 2006 to 13% after the reforms. A less dramatic increase was evident in orders made to formalise agreement reached by the parties without any court proceedings being initiated, which stood at 10%prior to the reforms and reached 15% afterwards. The percentage of shared care orders made by judicial determination contrasts with the number of applications for shared care (48-52% time splits) made by parents, with such applications being made by 27% of fathers in our post-reform sample and 10% of mothers.

5.2 Prevalence of shared care: LSSF data

A large majority of children whose parents separated after the 2006 reforms were with their mothers most of the time, with only 16%being in shared care (36-65%) and still fewer (7%) being in near equal (48-52%) arrangements.[42] There was strong link between time arrangements and the age of the child.For example, 51% of 0-2 year olds spent all nights with the mother, compared with 17% of children in the 5-11 year age group (Table 5). Shared care-time was most commonly experienced by 5-11 year olds, with 26% of children in this age group in shared care compared with 8% of 0-2 year old children and 11% of 15-17 year olds.

Table 6: Care-time arrangements: Proportion of nights per year that children spent with each parent, by age of child, 2008

Proportion of nights per year with each parent	Age of child (years)					All children
	0–2	3–4	5–11	12–14	15–17	
	%					
Selected combined care-time groups						
100% nights with mother	50.6	23.9	17.3	24.6	35.6	33.6
Most nights with mother	39.2	51.0	50.9	45.4	37.0	45.1
Shared care time (35–65%)	7.5	20.3	25.7	20.2	10.8	16.1
Most nights with father	1.3	2.6	4.1	5.8	7.9	3.0
100% nights with father	1.4	2.2	2.1	4.2	8.7	2.3
Father or mother never sees child	16.6	9.4	6.2	13.1	17.3	12.1

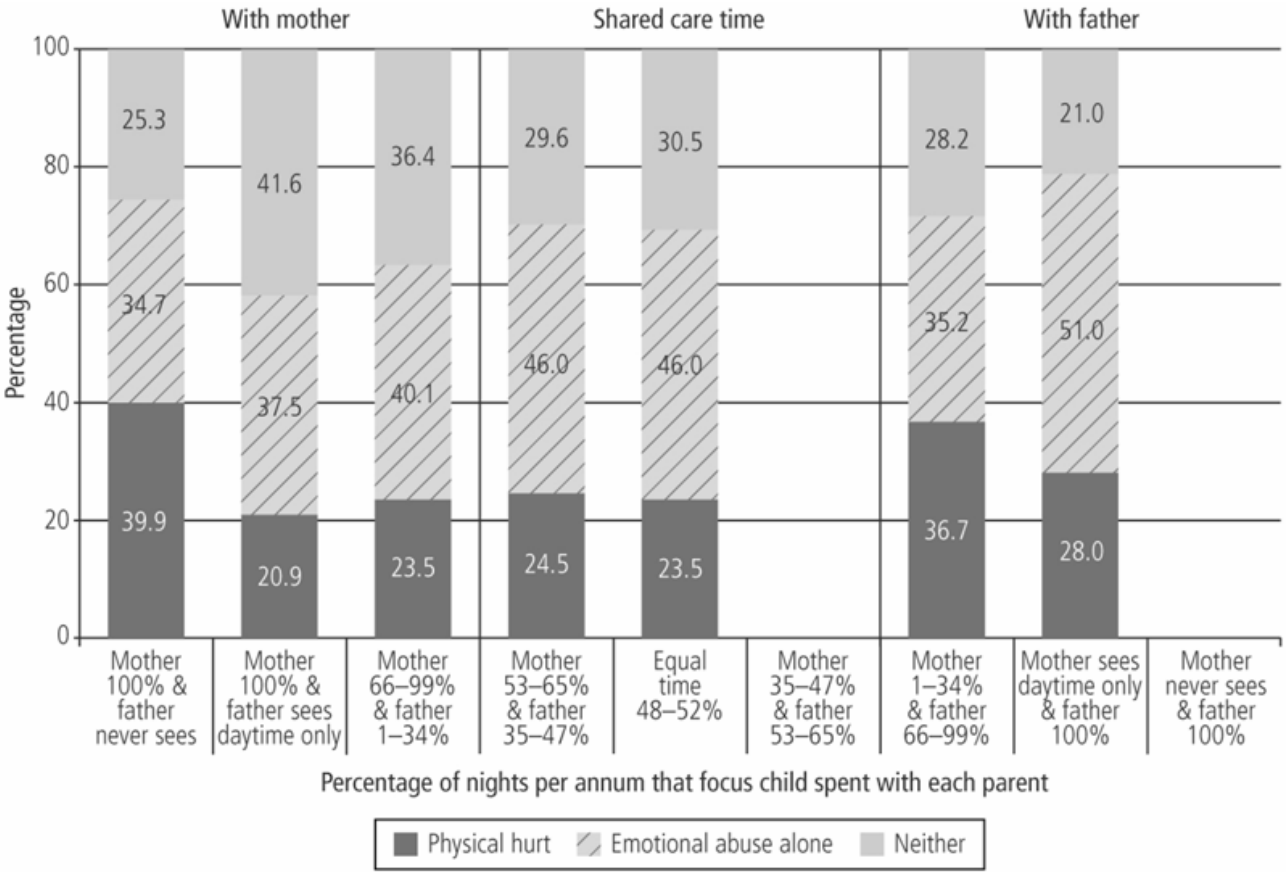
Note: Based on analysis of focus child's care-time arrangements.Percentages may not total exactly 100.0% due to rounding.

Source: LSSF W1 2008.

However, parents who have interactions with various parts of the formal family law service system (counselling, mediation and dispute resolution services) are more likely to report arrangements different from the most common 'most nights with mother' arrangement.For example, 30-32% of mothers with shared care reported reaching arrangements with formal assistance, compared with 8-19% of other mothers. Similarly, 30% of fathers who reported their child saw their mother during the daytime had formal assistance compared with 11-24% of other fathers.[43] These data indicate that parents who have contact with various parts of the family law system are more likely to have shared care arrangements than parents who don't.

In relation to connections between parenting arrangements and experiences of family violence, the Evaluation data reveal a complex pattern (Figure 1). Arrangements involving little or no daytime contact with one parent were more likely to have a history of violence than some other care-time arrangements. However, a history of violence is very prevalent across all care-time arrangements. For example, for parents with shared time, around 70% of mothers with equal (48-52%) or shared time (35-65%of nights) reported having experienced physical or emotional abuse compared with 64% of mothers whose children spent 66-99% of nights with them and 58% of mothers whose child saw their father during the daytime only.

Figure 1: Reports of violence, by care-time arrangement, mothers, 2008

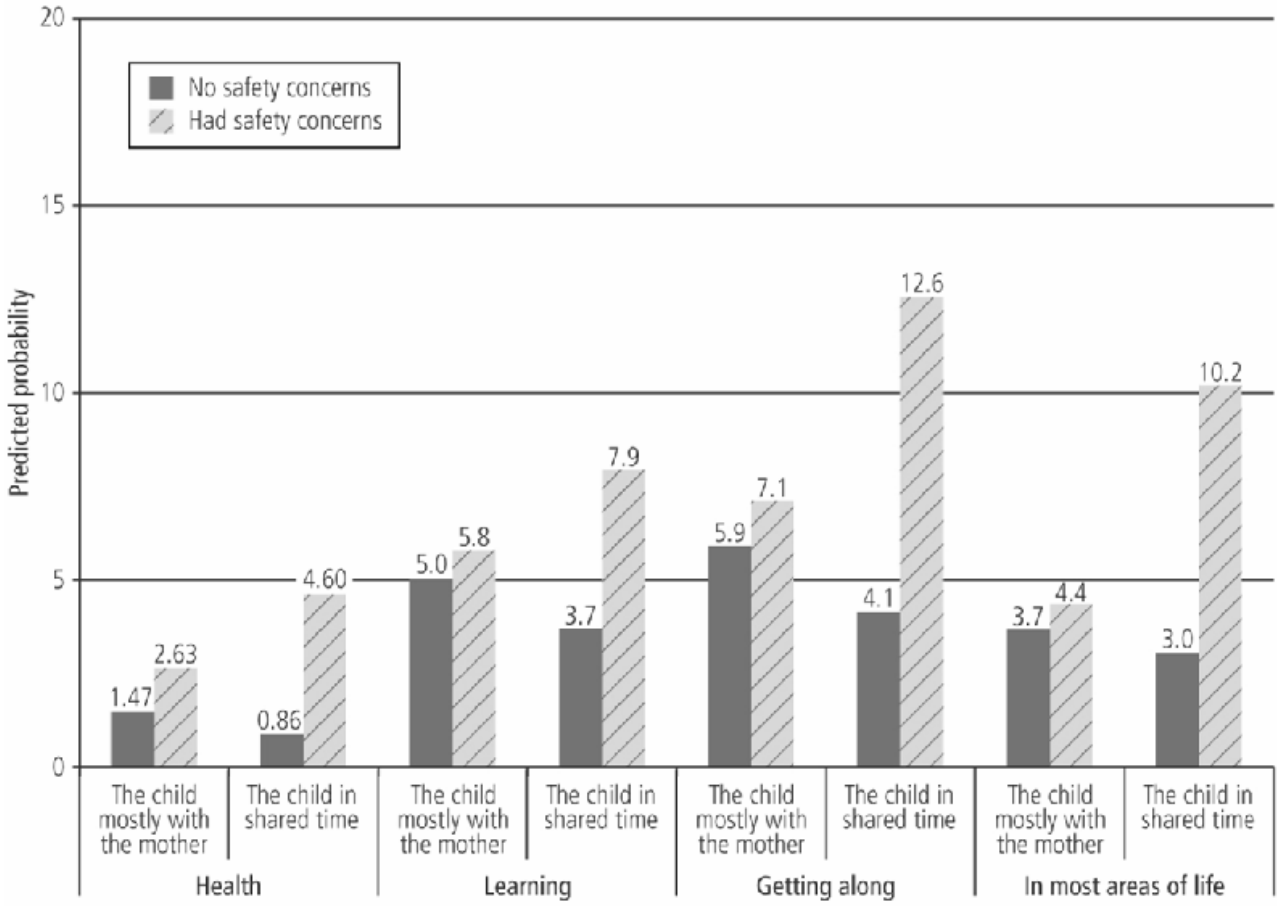


Source: LSSF W1 2008.

5.3 Parenting arrangements, safety concerns and child well-being

Parents with a shared care arrangement reported concerns for their own safety or that of their child associated with contact with the other parent at a similar rate to that reported by parents with other care arrangements (shared care arrangements were reported by 22-23%of father with safety concerns and 11-12% of mothers with such concerns). The implications of this finding are underlined by Evaluation findings in relation to children's well-being (Figure 2). The analysis of child well-being in the Evaluation shows that the presence of ongoing safety concerns was linked to poorer well-being for children in all types of care arrangements, across a range of measures designed to assess health, education and social outcomes. However, children in shared care arrangements where there were safety concerns were particularly likely to be faring more poorly than such children in other types of arrangements. Put another way, the outcomes on a range of measures of children's well-being for children in shared care arrangements where the parent reports ongoing safety concerns are significantly worse for children in shared care arrangements than for children in other arrangements. This indicates that the family law system, in assisting parents to make arrangements for children, has difficulty in distinguishing between children families for whom shared care is appropriate and those for whom it is detrimental.

Figure 2: Negative measures of child well-being, by care-time and safety concerns (health, learning, getting along, overall progress), mothers' reports, 2008



Source: LSSF W1 2008.

It is notable that parents who had shared care arrangements and reported ongoing safety concerns included groups who had interacted with all the different parts of the system and were more likely than other families with shared care to report reaching their arrangements with formal assistance. Between 13% and 17% of shared care parents with safety

concerns reported using counselling, mediation or family dispute resolution, compared with 6-7% of shared care parents without safety concerns. Similarly, lawyers were nominated as the main pathway used by 15-18% of parents in this group compared with 4-5% of parents without such concerns. Fifteen per cent of fathers and 8% of mothers with shared care and safety concerns and only 2% of shared care parents without safety concerns nominated courts as the main pathway used.

6 Family violence and safety concerns: professionals' views and parents' pathways

The Evaluation provided clear evidence that the family law system has some way to go in achieving an effective response in cases where there has been family violence and where concerns about child safety are relevant.[44] The patterns in arrangements where shared care arrangements co-exist with safety concerns, with evidence of worse outcomes for children, demonstrate this point quite clearly.

Additional significant findings in relation to the difficulties reported by parents with ongoing safety concerns relate to the number of services they used and the length of time it took to resolve parenting disputes in the face of those ongoing safety concerns. Parents in the LSSF 2008 with safety concerns were less likely to indicate their parenting arrangements had been sorted out than those without such concerns -- ie, 41-42% in the safety concern group, compared with 69-74% in the other group. Greater service use was evident among the parents with safety concerns, with 48% of such fathers and 55% of such mother indicating they had contacted at least three services, compared with only 16% of fathers and 20% of mothers without such concerns.

The Evaluation provides evidence of a greater emphasis on routine screening for family violence and child abuse after the reforms across some parts of the system. For example, routine screening occurs in FRCs and in the Family Court of Australia and the Family Court of Western Australia. However, in terms of the efficacy with which the system as a whole deals with family violence and child abuse, a lack of confidence is evident among many system professionals. Indicative of this are the response patterns among family relationship sector professionals and family lawyers to survey questions examining their views as to the extent to which the system places adequate priority on two key issues -- the child's right to a meaningful involvement with each parent and the need to protect children and other family from harm from family violence and abuse. Agreement that adequate priority was placed on meaningful involvement (between 86%and 92% among lawyers and most service sector professionals) was much stronger than that in relation to protection from harm (55% of lawyers agreed and between 53 and 66% of service sector professionals, depending on the part of the system they worked in).

A range of complex issues underlies the less-than-ringing endorsement by professionals of the system's ability to deal with issues involving family violence and child abuse. Service sector professionals and legal system professionals each expressed concern about the way the other part of the system operated.[45] Some family lawyers suggested that services were insufficiently sensitive to the needs of people who had experienced family violence and reported concerns about FDR being conducted despite such histories and in ways that did not take account of client concerns. Family relationship sector professionals expressed similar concerns about the legal and court sector, asserting knowledge of arrangements made with lawyer and/or court assistance that they believed put children at risk.

There are four noteworthy issues highlighted by the Evaluation data in this regard. The first relates to the theme outlined earlier in this article -- the need for inter-professional communication and collaboration about cases where family violence and child abuse are involved. Legal system professionals and family relationship sector professionals need to build a common understanding about the circumstances in which a case should be regarded as an exception to s 60I, the requirement to undertake FDR prior to filing a court application.It is clear that this is a line that is not necessarily easily drawn, and case-law on this issue is in its infancy, but practices and dialogue concerning this issue clearly need further development. Similarly, the finding that families who had ongoing safety concerns were no less likely that other families to have shared care, despite interaction with all parts of the system indicates a need for all professionals across the system to develop a common understanding about circumstances where shared care arrangements should not be encouraged or endorsed.

Second, in common with the Chisholm Report and the Family Law Council report,[46] the Evaluation evidence indicates that some aspects of the 2006 legislative reforms have created impediments to effective handling of matters where family violence and child abuse are alleged. The misunderstanding of the law referred to above, in combination with a lack of awareness among some system professionals of the implications that family violence and child abuse may have for post-separation parenting arrangements, raises one set of concerns.A participant in an AIFS Evaluation study, for example, said that: '[t]here are many judicial officers who appear not to know how to deal with allegations of family violence or how it impacts on children especially.' While this comment raises concerns about judges particularly, the Evaluation data points to this lack of understanding being relevant across the system, with uneven levels of understanding being evident within different professional groupings.[47] Both the Chisholm Report[48] and the Family Law Council[49] report recommend that training and professional development be improved. It should be noted that both practice and knowledge in the area of family violence and parenting are developing and are in some respects contested. In order to ameliorate the implications of this, the Family Law Council Report recommends the establishment of a 'core common knowledge base' on family violence to ensure that professionals working in different parts of the system have access to high quality, evidence-based information to guide practice and decision-making.[50]

Third, all three reports indicate that two aspects of the legislative framework in particular may inhibit concerns about family violence and child abuse from being raised at all or in a way that links them to the future involvement of a parent in a child's life. The first, which has raised concerns about making such disclosures at all, is the provision that obligates courts to make costs orders against parties found to have 'knowingly made a false allegation or statement' (s 117AB) in proceedings. This provision was identified in all three reports[51] as a legislative mechanism that may discourage disclosure of concerns about family violence and child abuse. The Evaluation report indicates that though this provision has been applied in a variety of circumstances, it is used infrequently.[52] Further, lawyers showed decreased concern about its capacity to discourage disclosure of genuinely held concerns and decreased confidence in its ability to discourage false allegations between mid-2006 and late 2009. However, it was also clear that lawyers were concerned about the impact the existence of the provision had on advice giving practice and client decisions about whether to raise allegations. Both the FLC report and the Chisholm report recommended amendments to this provision.[53]

The second provision of particular concern is what is referred to as the 'friendly parent' criterion (s 60CC(3)(c)) which requires courts to consider the extent to which a parent has facilitated the involvement of the other parent in the child's life. Each report[54] indicated that this provision contributes to a reticence among advisors and parents in raising concerns about the other parent's involvement even where family violence and/or child abuse concerns are relevant. The Evaluation data showed that in litigated matters, arguments relating to s 60CC(3)(c) are raised frequently, as are concerns in relation to family violence and child abuse[55] (Table 6). Indeed, the issues raised most frequently across the sample of litigated matters (ie, those that proceeded to a judicial determination and those that settled by consent after proceedings were initiated) were those relating to child abuse and family violence, the impact of substance misuse on a parent's capacity to care for their child and arguments relevant to s 60CC(3)(c). In comparing settlement patterns in cases where s 60CC(3)(c) arguments were raised, the data indicate that such cases are more likely to proceed to judicial determination than other cases. For example, of the cases where arguments about s 60CC(3)(c) were raised, 31% required a judicial determination while 18.5% settled after proceedings were initiated. This pattern contrasts with patterns evident in relation to matters where other issues relevant to the s 60CC list of factual considerations are raised, where similar rates of occurrence between the two sub-samples are evident. In relation to children's views (s 60CC(3)(a)), for example, evidence concerning this was on the court file in the parties' material in 14% of cases that were judicially determined compared with 10% of cases that settled by consent after proceedings were initiated. These data, together with the analysis of case law in the Evaluation report which shows that s 60CC(3)(c) is relevant to some court decisions that involve change of residence determinations,[56] indicate the significance that is placed on the 'friendly parent' issue relative to other s 60CC(3)(c) factors.

Table 7: Factual Issues alleged during proceedings, by type of proceeding, ranked from overall most frequent to least frequent, post-reform

	Judicial determination	Consent after initiated proceedings
	%	
Factual issue[1]		
Impact of substance misuse on capacity to parent	32.5	27.2
Parent's assertion of family violence—physical	33.5	23.3
Parent's facilitation of child's relationship with other parent	30.9	18.5
Parent's assertion of family violence—emotional/psychological/threatened	26.4	20.7
Family Violence Order	19.5	12.7
Benefit to child of meaningful relationship with parent	15.4	13.9
Need to protect child from physical harm	19.1	9.4
Views expressed by child	14.3	10.1
Psychological/mental capacity of parent to meet child's needs	13.7	10.7
Need to protect child from neglect	13.8	9.6
Need to protect child from emotional/psychological harm	17.9	7.4
Need to protect child from witnessing family violence	13.2	9.9
Parents' attitude towards parenthood	9.5	10.1
Parental history—spending time	16.3	6.8
Other relevant fact or circumstance	11.7	8.1
Parent's ability to put child's needs before own	5.1	6.1
Need to protect child from sexual harm	8.2	4.1
Parental history—exercising responsibility	6.7	3.7
Effects on child due to change in arrangements	7.3	2.7
Capacity of parent to meet physical and material needs of child	4.8	3.7
Child's relationship with parent and/or new partner	6.1	2.1
Possibility that child's views were influenced	2.7	3.3
Parental history—financial/child support	5.8	1.8
Parent's assertion of family violence—sexual	3.5	3.1
Impact of parenting arrangement on child's psychological health	2.8	3.0
Child's relationship with siblings/step-siblings	2.0	3.3
Impact of social relationships of parent on child	1.8	2.7
Capacity of parent to meet psychological/mental needs of child	3.6	1.6
Physical capacity of parent to meet child's needs	1.9	1.6
Parental history—communicating	2.4	0.9
Impact of parenting arrangements on child's special/extracurricular activities	2.1	0.9
Parental history—other	0.5	1.3
Facilitation, if child is Indigenous, to enjoy his/her culture	0.4	1.4
Capacity of parent to meet educational needs of child	1.3	0.5
Impact of parenting arrangements on child's physical health	0.9	0.4
Special needs of child with regards to maturity, sex, lifestyle	1.0	0.2

Source: Family Court of Australia, Federal Magistrates Court and Family Court of Western Australia court file post 1-July 2006.

Note 1: Factual issues alleged at stage during the proceedings.

Conclusion

The AIFS Evaluation of the 2006 family law reform package found that the 2006 reforms have had a positive impact in some areas and have had a less positive impact in others. It identified some key areas in which the way in which the family law system (as a whole) needs to be improved. The Evaluation provides a better evidence base for future policy and decision-making than has ever been available before.

It is clear that the experiences of families who experience separation vary considerably. Most separated parents report cooperative and friendly relationships a year or so after separation and most report that parenting matters have at this time been sorted out. At the same time, there is a core group with complex needs who rely on the system for help.The Evaluation evidence indicates that there are key points in the post-separation trajectories of these parents and children where their needs could be better addressed. Two fundamental areas are in the application of dispute resolution processes and decision-making and advice-giving concerning parenting arrangements. In relation to dispute resolution, it is clear that FDR works for some families with complex needs but not for others. Distinguishing families in the former group from the latter is a key challenge and requires refinement of assessment procedures and active inter-professional engagement to ensure that families can access the dispute resolution pathway appropriate to their needs expeditiously. The Evaluation identified both structural and attitudinal problems with respect to promoting effective links between the work of family relationship service providers and the work of legal advisors and the courts. There is an ongoing challenge in finding ways to coordinate FDR and other services provided by the family relationship sector, with the advisory and advocacy roles that professionals such as lawyers must necessarily play on behalf of their clients. For families with serious problems, a key systemic challenge identified by the Evaluation was not only how to ensure the timely delivery of high quality screening and risk assessment, but how to ensure that such cases are then promptly provided with appropriate services and access to courts. This latter challenge includes the question of whether, and, if so, how courts are to be made aware of the potential seriousness or urgency pertaining to matters assessed during the screening component of FDR to be in this category.[57]

In relation to parenting arrangements, the Evaluation evidence shows that advice-giving and arrangement-making practices are more oriented toward encouraging shared care arrangements post-reform, but these arrangements are not always made in circumstances where they are beneficial for children. Indeed, the Evaluation shows that shared time is detrimental to children where there are ongoing safety concerns, but such arrangements are no less common among families where there are ongoing safety concerns than families where there are no such concerns. In common with the Chisholm Report and the Family Law Council report, the Evaluation evidence indicates that some elements of the 2006 amendments to the FLA (eg, s 60CC(3)(c) and (s 117AB)) compromise the clarity with which some other key messages in the legislation about protecting children from family violence and ensuring their safety (eg, ss 60B(1)(b), 60CC(2)(a)) are understood and acted upon. The Evaluation findings on child well-being underscore the need for professionals across the system to exercise caution in encouraging or endorsing shared care arrangements where are concerns about family violence and child safety.

Appendix A

Summary of methodologies of key relevant studies[58]

1. The Legislation and Courts Project

The LCP was designed to gather data on the impact that the legislative changes have had on: (a) advice-giving practices; (b) negotiation and bargaining among those who sought the advice and assistance of lawyers; (c) how the main new legislative provisions were applied in court decisions; and (d) how court filings were affected by the reforms.

A further priority was to examine what, if any, unintended consequences may have arisen as a result of the changes. The LCP encompassed five components:

(1) the Qualitative Study of Legal System Professionals (QSLSP) 2008;
(2) the Family Lawyers Survey (FLS) 2006[59] and 2008;
(3) analysis of FCoA, FMC and FCoWA judgments, 2006-09;
(4) analysis of FCoA, FMC and FCoWA court files, pre- and post-1 July 2006; and
(5) analysis of FCoA, FMC and FCoWA administrative data, 2004-05 to 2007-08.

1.1 QSLSP 2008

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

1.2 The Family Lawyers Surveys

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

The two surveys were conducted online, with the first taking place in mid-2006 and the second from mid-November 2008 to early February 2009. Both samples were recruited with the assistance of the Family Law Section of the Law Council of Australia. The first comprised 367 participants. The second comprised 319 participants.

1.3 FCoA, FMC and FCoWA court files

The aim of this component was to gather systematic quantitative data from court files (FCoA, FMC and FCoWA). Part 1 involved the collection of data from matters initiated and finalised after the reforms (total of 985 files), including matters finalised by consent (752 files) and judicial determination (233 files) in the FCoWA and the Melbourne, Sydney and Brisbane registries of the FMC and the FCoA. Part 2 involved the collection of data from matters initiated and finalised prior to the reforms (739 files: 188 judicial determination files and 551 consent files) in the FCoWA and the Melbourne Registry of the FCoA and the FMC.

2. The Service Provision Project

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

The services included in the Evaluation can be categorised as early intervention services (EIS) or post-separation services (PSS). The early intervention services are: Specialised Family Violence Services, Men and Family Relationships Services, family relationship counselling, Mensline and Family Relationship Education and Skills Training. The post-separation services are: FRCs, FDR, Children's Contact Services, the Parenting Orders Program, FRAL, and the Telephone Dispute Resolution Service (a component of FRAL). The components of the Service Provision Project are: the Qualitative Study of FRSP Staff; the Online Survey of FRSP Staff; the Survey of FRSP Clients; and analyses of administrative program data (FRSP Online, FRAL, TDRS and Mensline).

2.1 Qualitative Study of FRSP Staff

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

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

The Qualitative Study of FRSP Staff 2007-08 involved interviews with organisational CEOs, managers and staff (137 participants in 57 interviews) from the first 15 FRCs, 8 early intervention services, 8 post-separation services, Mensline and FRAL. The 2009 study involved interviews with managers and staff[60] from all of these services, with the addition of staff from a further 10 FRCs, a further 10 post-separation services and the Telephone Dispute Resolution Service.

3. The Families Project

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

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

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

3.1 Family Pathways: The Longitudinal Study of Separated Families

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

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

3.2 Family Pathways: Looking Back Survey

The LBS 2009 is a national study of some 2000 parents with at least one child under 18 years old who separated between January 2004 and June 2005, prior to the introduction of the reforms. The study involved a one-off interview with parents who were registered with the CSA in 2007.

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

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

* Australian Institute of Family Studies. The views expressed in this article are those of the authors and may not reflect those of the Australian Government or the Australian Institute of Family Studies. The assistance of John De Maio, a member of the Evaluation team, in the preparation of this article deserves particular acknowledgement.

^ The term 'the family law system' in this article and in the Evaluation report refers to a suite of services, including those funded through the Federal Family Relationship Services Program, legal services (including private practitioners) and courts that provide services to separated parents. See 1.2 of the AIFS Evaluation of the 2006 family law reforms (2009) for a description of what this 'system' encompasses.

+ This is the term used to refer to the process described in FLA ss 10F and 60I. The term was introduced as part of the 2006 reforms but of course a range of 'alternative' dispute resolution processes, beginning with 'family conferences' conducted by family court counsellors, has been endorsed at different times by the legislation.

1 Court filings in children's matters in the three family law courts (Family Court of Australia, Federal Magistrates Court, Family Court of Western Australia) decreased by 22% from 2006-07 to 2008-09: Evaluation, pp 304-8.

2 The Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth) amended the Family Law Act 1975 (Cth).

3 House of Representatives Standing Committee of Family and Community Affairs, 'Every picture tells a story: report on the inquiry into child custody arrangements in the event of family separation', Parliament of the Commonwealth of Australia, 2003 (Every Picture Report).

4 The Evaluation was commissioned by the Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs (at the time, the department was called the Department of Families, Communities and Indigenous Affairs).

5 Every Picture Report, above n 2, rec 19.

6 Two other reports dealing family violence and child abuse in the federal family law system were released at the same time: R Chisholm, 'Family Courts Violence Review', 2009 (Chisholm Report) and Family Law Council, 'Improving responses to family violence in the family law system: an advice on the intersection of family violence and family law issues' (Family Law Council Report).

7 For example, the Family Court of Australia submission to the Every Picture Inquiry, above n 2, indicated that only 6% of disputes where a court application was lodged proceeded to judicial determination: Family Court of Australia, 'Submission of the Family Court of Australia: Standing Committee on Family and Community Affairs Inquiry into Joint Custody Arrangements in the Event of Family Separation', 2003, p 5.

8 At the time of interview, almost all had been separated for between 6 months and 2 years.

9 Presumably the latter parents were implying that they had not yet commenced sorting out their parenting arrangements.

10 The options to nominate were: counselling mediation or FDR, lawyer, courts, legal service (advice line, private or legal aid), a domestic violence service, Child Support Agency, Centrelink, Police, other).

11 Participants in LSSF W1 2008 were asked: 'Before finally separating, were there ever issues with: Alcohol or drug use?Mental problems? Another addiction?' Participants who mentioned another addiction was apparent were then asked to indicate the nature of this addiction: The Evaluation, Table 2.5, pp 28-9.

12 See Ch 3 in L Moloney, B Smyth, R Weston, N Richardson, L Qu and M Gray, Research Report No 15, 'Allegations of family violence and child abuse in family law children's proceedings', AIFS, 2007.

13 The study is identified in the Report as the 2008 Longitudinal Study of Separate Families (LSSF 2008). Parents in this study provided information about the state of the relationship with their former partners between 6 months and 26 months after separating.

14 See, eg, J McIntosh and R Chisholm, 'Cautionary notes on shared care of children in conflicted parental separation' (2008) 14(1) *Jnl of Family Studies* 37.

15 Evaluation, pp 268-73.

16 Evaluation, Table 2.7, p 31. From the perspective of child well-being, relationships in these three categories were linked to poorer child well-being: Table 11.3, p 268.

17 The files were drawn from the Family Court of Western Australia and the Melbourne, Sydney and Brisbane Registries of the Federal Magistrates Court and the Family Court of Australia.

18 R Kaspiew, 'Violence in Contested Children's Cases: An empirical exploration' (2005) 19 *AJFL* 112; L Moloney, B Smyth, R Weston, N Richardson, L Qu and M Gray, 'Research Report No 15: Allegations of family violence and child abuse of family law children's proceedings: a pre-reform exploratory study', AIFS, 2007.

19 J Johnston, V Roseby and K Kuehnle, *In the name of the child: a developmental approach to understanding and helping children of conflicted and violent divorce*, Springer, New York, 2009.

20 Implementation of this aspect was staged: from 1 July 2006, s 60I applied to disputes where there had not been prior court proceedings. It applied to all disputes from 1 July 2008.

21 The problematic aspects of the lack of legislative definition of the concept of 'genuine effort' (relevant to two grounds for issuing a s 60I certificate) (s 60I(8)(b) and (c)) have been examined by H Astor, 'Making a "genuine effort" in family dispute resolution: what does it mean?' (2008) 22(2) *AJFL* 102.

22 This is referred to in the Evaluation as the narrow definition of FDR/mediation. The figures that follow correspond to those who answered this narrower question. To the broader question of whether counselling, mediation or a dispute resolution service had been contacted, 50% responded in the affirmative.

23 Family relationship practitioners frequently referred to this phenomenon as clients wanting 'to get their bus pass stamped' so they could then attend to the 'real' negotiations between lawyers and/or proceed into the court system.

24 As an example of this, see H Cleak, A Bickerdike and L Moloney, 'Family mediation and women's services: Towards effective referral' (2006) 12(2) *Jnl of Family Studies* 185.

25 Family Law Pathways Advisory Group, *Out of the Maze: Pathways to the future for families experiencing separation*, 2001.

26 Rhoades et al identified some positive features, but also many tensions, in the way professionals from different disciplines interacted with each other in the family law context in studies that traversed pre and post reform samples: H Rhoades, H Astor, A Sanson and M O'Connor, *Enhancing inter-professionals relationships in a changing family law system, Final Report*, 2008. Some Evaluation findings are consistent with this research.

27 This dynamic is known by relationship professionals as 'parallel process'.

28 On a closely related issue, it should be noted that the Attorney-General's Department is supporting two pilot initiatives designed to encourage higher levels of cooperation between lawyers and family relationship practitioners. One involves legal assistance services such Legal Aid Commissions and Community Legal Centres providing support (eg, information and advice) for clients in FRCs (see Attorney-General's media release, 4 December 2009, at <http://www.attorneygeneral.gov.au>). The other involves a multi-disciplinary, legally-assisted mediation process where there has been family violence (Attorney-General, Speech to the Albury Wodonga Family Pathways Network Event, at <http://www.attorneygeneral.gov.au>).

29 This of course remains the paramount consideration: s 60CA.

30 The way these two principles fit together has been the subject of significant commentary and debate. See, eg, R Chisholm, 'The meaning of "meaningful": Exploring a key term in the Family Law Act amendments of 2006' (2006) 22(3) *AJFL* 175; P Parkinson, 'The values of Parliament and the best interests of children -- A response to Professor Chisholm' (2007) 21 *AJFL* 213; M Wright, 'Best Interests, conflict and harm -- a response to Chisholm and Parkinson' (2008) 22(1) *AJFL* 72.

31 The wording in relation to meaningful relationship is slightly different in s 60CC(2)(a) from that in s 60B(1)(a).

32 Eg, *Moose v Moose* (2008) FLC 93-375;[2008] FamCAFC 108 at [67]; *McCall v Clark* (2009) 41 Fam LR 483; [2009] FamCAFC 92; BC200950264.

33 *Mazorski v Albright* (2007) 37 Fam LR 518; [2007] FamCA 520.

34 For analysis supportive of such a view, see Chisholm, above n 5, pp 125-9. There is also other consistent empirical research: B Fehlberg, C Millward and M Campo, 'Shared post-separation parenting in 2009: An empirical snapshot' (2009) 23(3) *AJFL* 247.

35 B Fehlberg, C Millward and M Campo, 'Post separation parenting, financial settlements and children's best interests', Paper Presented at 'Children and the Law: International approaches to children and their vulnerabilities' international conference, Prato, Tuscany, Italy, 7-10 September 2009.

36 Evaluation, pp 222-3.

37 B Fehlberg, C Millward and M Campo, 'Post separation parenting and financial settlements, ARC Discovery Grant-funded project, 2008-2011.

38 Above n 2, at 2.13.

39 This was a perception, widely held in the community according to Every Picture Report, above n 2, that the outcome of family court matters was, usually, the mother gaining sole residence (80% of time) and the father having contact with their children on alternate weekends and half the school holidays (20% of time).

40 Eg, B Smyth (Ed), *Parent-Child Contact and Post Separation Parenting Arrangements*, Research Report No 9, AIFS, Melbourne, 2004; see also B Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15(1) *Jnl of Family Studies* 36.

41 Such orders may have been through application of the presumption or by exercise of the best interests discretion where the presumption has been deemed not applicable. Parental responsibility is varied only to the extent provided for in any court order: s 61D.

42 The data in this section are from the LSSF W1 2008.

43 See Figures 7.15, 7.16, Evaluation, p 152.

44 It should be noted that concerns about the way family violence and child abuse are dealt with in the family law system are long standing and pre-date the reforms. See, eg, *Out of the Maze Report*, above n 24, p 5.

45 Similar points have been made by Rhoades et al, above n 25.

46 Above n 5.

47 See also Fehlberg et al, above n 34.

48 Chisholm Report, above n 5, rec 4.2.

49 Family Law Council report, above n 5, rec 3.

50 Ibid, rec 2.

51 The Chief Justice of the Family Court of Australia, Diana Bryant (speaking extra-judicially) has also expressed concerns about this provision: the Hon Diana Bryant, Chief Justice of the Family Court of Australia, 'Family Violence, Mental Health and Risk Assessment in the Family Law System', Queensland University of Technology Lecture Series, 21 April 2009, p 20.

52 Evaluation, pp 248-50.

53 FLC 8.6.

54 Evaluation, p 250; Chisholm Report, above n 5, p 101; Family Law Council, above n 5, p 83.

55 Evaluation, p 341.

56 Evaluation, pp 357-9.

57 The Chisholm Report, above n 5, recommended that screening for risk identification and assessment be undertaken in each parenting application filed in court: rec 2.3. At the same time, the Evaluation found (see Section 3) that 21% of clients who present for FDR are given certificates. It could be safely assumed that most, if not all, of these clients had experienced a screening process. This raises an important question about whether and, if so, how core information derived from this process might be passed on to a judicial decision-maker.

58 Only methodologies for the studies referred to in this article are summarised here. See App B of the Evaluation report for a full description of all the methodologies.

59 The FLS 2006, which also formed the basis of the FLS 2008, was designed by Bruce Smyth, Lawrie Moloney and Richard Chisholm.

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