

Smoothing the Way: Investigating the Enforcement of Parenting Orders

A thesis submitted in fulfillment of the requirements for the degree of
Master of Arts (Applied Criminology)
by Research

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Declaration

I, Tracey Carmen Spiteri, declare the following:

- That the work is mine and mine alone,
- The work (in whole or in part) has not previously been submitted,
- The contents of the work has been carried out by myself since the commencement date of the approved research application and,
- Any editorial work by a third person/party has been acknowledged

Signed: _____

Date: _____

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Abstract

Family Law within Australia has undergone extensive legislative and operational changes since its inception. It is an area of law that impacts upon a number of stakeholders such as children, parents, law enforcement agencies, the Government and judicial officers.

The research took a small facet of the operation of the *Family Law Act 1975*, namely the enforcement of parenting orders by police services. The focus of the research was to unfold the process and difficulties encountered by police services when executing a recovery order issued by the Courts under s.67 of the *Family Law Act 1975*. It further explored police perspectives, training and organisational service delivery, in carrying out their duties.

A recovery order gives police services within Australia the authority to locate a child and return them to the applicant, in instances where it is believed that a parenting order has been contravened and a child has been wrongfully withheld.

Two qualitative methodological approaches were used in this research. The main approach used was Grounded Theory. As per Corbin and Strauss (1990), Grounded Theory allows for theory to be developed from the data rather than the need to have preconceived ideas. This was of particular benefit as little research has previously been conducted in this area of law from the perspective of law enforcement agencies within Victoria.

Narrative Inquiry was also incorporated into the research. The objective of Narrative Inquiry is to create social context from story telling. Participants were asked to describe their experiences when executing recovery orders.

Interviews were undertaken with members from the Victoria Police and the Australian Federal Police (AFP) who have had experience with the execution of recovery orders. These participants were also asked to construct the process when a recovery order is executed and to describe the atmosphere. These responses were analysed separately and provided the basis for the Narrative Inquiry component of the study. In addition, journaling and observations were used. These observations took place in the Family Court and Federal Magistrates' Court in Victoria.

The findings and relevant literature indicated that police disliked becoming involved in executing recovery orders. The Police perceived family law in general not to be a central area of policing. These findings parallel earlier findings from an Australian Parliamentary report in 1992. Furthermore, the findings indicated that little organisational commitment was placed on the function of enforcing recovery orders. This was indicated by the limited and inconsistent resources provided by the Australian Federal Police (AFP) to fulfil their obligations, and the lack of training offered to police members.

The findings indicated that the Police would take initial steps prior to executing the order. They would contact the applicant parent to assist with inquiries to locate a child, assess variables such as the potential for violence and arrange with the applicant parent where a child would be delivered. In addition, even though the findings outlined that recovery orders were

fairly non-complex to execute, at times there would be difficulties in locating a child and finalising arrangements for a child to be returned to a parent.

The findings also indicated that there was no clear practice as to which section of the Victoria Police would execute a recovery order if requested by the AFP.

Whilst the findings need to be considered carefully in light of the small sample group, it did indicate that there are some difficulties with the process and value placed by police services within Australia on the execution of recovery orders.

1. Introduction

The area of family law is complex and constantly evolving. It has undergone extensive legislative change, and operational developments. There are a number of stakeholders in such an area of law, ranging from parents, children, counsellors, law enforcement bodies and judicial officers.

The *Family Law Act 1975* came into operation on the 5th January 1976 under the Whitlam Government, replacing the *Matrimonial Causes Act 1959*. Since the introduction of the Act, no single piece of legislation in Australia has undergone such controversy and public scrutiny. At the time of the Act's implementation, the then Attorney-General, Lionel Murphy, believed that the Act would make divorce within Australia less complex, more simplified and promoted equality of rights of both husbands and wives. In the late 1960s and early 1970s women lobbied for change and equality and the *Family Law Act 1975* was one major piece of legislation that reflected the social movements at the time.

As the family law system impacts upon family dynamics and functioning, it continues to attract public scrutiny and controversy. There is continued widespread debate and criticism that the process and procedure remains complex, expensive and there is discontentment with its outcomes.

There has been vast research, literature and legislative changes in the area of family law, which will be expanded on in Chapter 2. Family law continues to be developed through recommendations made via research that is predominately conducted by various government

bodies such as the Family Law Council and Australian Law Reform Commission. A major area of change and ongoing discussion relates to the way the Courts deal with matters relating to children.

The Court has jurisdiction to make a parenting order that deals with where a child is to live (previously referred to as residency) and with whom they are to have contact with (previously referred to as contact). The Act aims to promote ongoing parental responsibility whilst making decisions based upon the best interest of a child. Given that the majority of this research was conducted prior the introduction of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* which saw a change in terminology. The research does make reference to “residency” and “contact” which has now been replaced with whom the child lives with, spends time with and communicates with.

The Courts have jurisdiction to be able to issue a recovery order that directs police services within Australia to locate a child and return them to the applicant¹ parent in circumstances where a parenting order has been breached by failing to return a child. The Police are given the authority to search any vehicle, vessel or aircraft and to enter and search premises or place pursuant to locating the child. However, the Courts can issue a recovery order when there are no other parenting orders in place if an application is lodged.

Currently, the literature relating to the role of police in family law involving children, is limited. Given this gap, chapter 2 will contain information on related areas to this study. Section 2.2 will explore family law issues relating to children, the context for change to family law in Australia, and some of the legislative and operational changes. This will

¹ An applicant is a person who applies to court for an order.

provide background and understanding to some of the difficulties encountered by the Government and Courts when considering issues relating to children. Section 2.4 will also discuss the role of police services within Australia, their competing demands and exploration of literature relating to police beliefs and values when dealing with family matters, such as family violence. The final section of the literature review (section 2.5) will examine the emotional and social implications divorce has on children and families.

1.1 Aim of the Study

The aim of this study was to unfold the process and difficulties encountered by police services when executing a recovery order as issued by the Courts under s.67 of the *Family Law Act* 1975. It further sought to examine the service delivery, training and police perspectives in dealing with such an area of law.

Encapsulating the perspective of police on the execution of recovery orders makes this research unique and unusual. The research takes a small aspect of the operation of the *Family Law Act* 1975 and explores this facet from various angles. It is believed that this research will provide understanding as to the process of recovery orders and establish the importance placed upon the execution of recovery orders by police members and the organisation.

1.2 How the Objective Will Be Achieved (Methodology)

Two methodological approaches were used in this research and are discussed further in chapter 3. The research approach was qualitative which allowed the research to be descriptive

and provided a social setting. The main methodological approach was Grounded Theory. Grounded Theory is the building of and discovery of theory that is systematically obtained from the data. The main objective of Grounded Theory is that the researcher does not start with a hypothesis or question and then sets out to prove it. Rather, the researcher starts with an area of study and allows the theory to emerge. This particular approach was used as the research was innovative and allowed the study to be conducted without any preconceived thoughts, ideas or beliefs.

Narrative Inquiry was also used as a methodological approach. The rationale for using Narrative Inquiry (also known as Narrative Analysis) was that it allowed the researcher to construct reality based on story telling. The use of Narrative Inquiry in this way not only provided a social setting and context for the research but also brought to life the findings. As the object of the research is the story itself, it allowed for participants to have a voice. Narrative Inquiry was incorporated into the research by asking participants to describe from beginning to end the process in executing a recovery order, the feeling portrayed and the atmosphere of their experience.

The main source of data collection was eight semi-structured interviews with members from the AFP and the Victoria Police Sexual Offences and Child Abuse Units (SOCA units). Random observations (twenty in total) also formed part of the data collection. The observations were conducted in the Family Court of Australia and the Federal Magistrates' Court, in Victoria. The main limitation of the study was that it only incorporated a small sample group and therefore the findings need to be considered tentative and no well-supported findings could be made. Despite this limitation the findings added knowledge and insight into

the process of recovery orders and indicated that there were problems with the way recovery orders were executed in Victoria. Further discussions of the processes undertaken to collect the data, the difficulties and limitations of the study will be discussed in chapter 3.

1.3 Summary of Findings

The study demonstrated that police play an essential role in the execution of recovery orders, although the findings indicate that there is little organisational commitment to this function, as it is not considered an important policing role in comparison to other policing duties. This was evident by the (i) lack of and inconsistent resources placed to fulfil their obligations and (ii) lack of training given to police members.

The findings also raised concerns regarding police beliefs and attitudes when dealing with family law matters. Participants from the Victoria Police Sexual Offences and Child Abuse units (SOCA units) had no training in the area and felt that no related training was required, thus indicating that they did not give priority to family law matters. Participants also demonstrated a dislike for executing recovery orders. Comparisons were drawn between this study and a report conducted by the Australian Parliament Joint Select Committee (1992) on the difficulties encountered by police services enforcing parenting orders in Queensland. The 1992 report and the findings from this study indicated that police were hesitant to become involved in enforcing parenting orders. This comparison further indicates that little has changed within a fourteen-year period to resolve this issue. To further support this perspective literature relating to family violence and police attitudes and indicated that, police had a negative view of and disliked becoming involved in family violence as they considered it to be either a private or family law matter, and not a matter for the Police.

In addition, the participants from the Victoria Police SOCA units believed that allegations associated with child abuse in the context of family law were often unproven and used as a tactical advantage by parents. This finding was at odds with relevant literature in this field and given that the findings were based on four interviews no firm assumptions could be made. This however, suggested that police over rely on stereotypes rather than having evidence based perspectives. Whilst it is dangerous to make firm assumptions supporting this finding based on four interviews particularly given that literature in this area states otherwise, it does however further support the findings that police have a negative view of dealing with family law matters and risked becoming involved.

The findings indicated that participants demonstrated standard principles to the processes adopted prior to an order being executed. This would include (i) discussions with the applicant parent to assist with locating the child, (ii) assessing variables such as the potential for violence and (iii) arranging for the return of the child to the applicant upon execution of the order.

Whilst participants expressed the opinion that executing a recovery order was not a complex task, the study found that police at times did experience some difficulties including, (i) locating a child, (ii) logistical matters (for example if a child was located interstate and needed to be returned to Victoria) and (iii) finalising arrangements with the applicant parent.

Participants reported that recovery orders were executed as soon as practical. No workload issues were identified by participants from the Victoria Police SOCA units given the small

numbers they received. However, at times the Australian Federal Police (AFP) Family Law Team experienced workload issues, particularly around Christmas and school holidays, that at times could create a backlog. Although participants from the AFP expressed an increased workload during holiday periods and that it could be problematic at times to find members to execute recovery orders, they generally were able to locate members to execute the orders. Members from other operational areas within the organisation or the Victoria Police were required to assist when necessary. Members who were not a part of the AFP Family Law Team, were likely to have had less exposure to family law and did not necessarily have the expertise and skills in family law matters.

The AFP is the primary body responsible for the execution of all recovery orders around Australia as family law is an area of federal jurisdiction. In Victoria, the AFP office located in Melbourne rely upon the Victoria Police to execute orders in particular if the child is located within regional or rural Victoria, due to the travel involved for the AFP. One of the gaps noted by the findings indicated that there was no clear process as to which section of the Victoria Police would execute the orders. When the researcher attempted to locate participants from the Victoria Police to participate in the study the Victoria Police Research Coordinating Committee indicated that participants could be drawn from the SOCA Co-ordination Unit in Melbourne. It was thought that SOCA units role and expertise in child-related matters was most likely unit in the Victoria Police to execute the orders. However, participants from the AFP indicated that they forwarded orders to the Victoria Police uniform sections to be executed. This finding indicated that it was not clear within the Victoria Police as to which section should be responsible for executing recovery orders. This raised concerns in relation to organisational accountability and commitment regarding the execution of

recovery orders and re-enforced that the Victoria Police placed limited importance on this function.

In conclusion, the study has provided a platform for more research to be conducted in this field. Whilst the findings need to be considered in light of the small sample it has helped add knowledge and insight into the process of recovery orders and their execution by police services. The findings indicated that there was little organisational importance placed on the function of family law, in particular, the execution of recovery orders in comparison to other policing responsibilities. This was suggested by the limited and inconsistent resources, the limited value placed on training, and unclear processes when referring recovery orders to the Victoria Police. Furthermore, police members demonstrated an unwillingness to become involved in the execution of recovery orders or other areas of family law, such as allegations of child abuse. The findings indicated, although tentatively, that the Police need to reflect upon how to increase their organisational commitment to the execution of recovery orders if they are going to maintain the responsibility for this function.

2. Literature Review

2.1 Introduction

Family law has received a considerable amount of media attention over the past decade, from legislative change and interpretation to judicial discretion and decision-making. The Family Court of Australia was established by the *Family Law Act 1975* to interpret the law in each individual case. The aim of the legislation was to introduce no fault divorce, simplify court procedures and introduce an avenue of justice that was accessible and less expensive. The driving force behind the introduction of the *Family Law Act 1975* was public dissatisfaction, predominately by women, in the way matters relating to marital breakdown were being handled. Women perceived family law to be an area where they lacked equality and recognition.

The *Family Law Act 1975* replaced the *Matrimonial Causes Act 1959* and established the Family Court of Australia as a specialised forum to deal with disputes relating to property, children, and the dissolution and nullity of marriage. As a result of recommendations made by various governmental bodies such as the Family Law Council and the Australian Law Reform Commission the Act has undergone legislative change. The legislative changes were undertaken in an attempt to reflect the changing times and remedy some of the difficulties encountered by the systems operation.

The operation of the *Family Law Act 1975* deals with a number of issues pertaining to the breakdown of marriage. However, for the purpose of this research, the chapter will focus

upon issues relating to parenting orders, in particular, recovery orders that are issued by the Court when a parenting order has been breached. There is a large amount of literature in relation to Australian family law, and it would not be pragmatic and relevant to discuss all the areas of decision making under the *Family Law Act 1975* in this chapter. As such, the literature review will focus on material specific or closely related to the research question.

Difficulties were encountered in ascertaining literature relating to recovery orders and their execution. Given the gap in literature, the information contained in this chapter will focus on three areas:

- i. *The Government's response and the number of legislative and operational changes on family law issues relating to children.* The material is relevant to this research study as it assists in understanding the context and significance of such an area of law. It gives perspective and background to some of the difficulties encountered by the Government and the Courts when considering issues relating to children. This will be further discussed in sections 2.2.4, 2.2.5 and 2.2.6.
- ii. *Australian Police Services roles and relationships.* The material outlined in sections 2.4.1 and 2.4.2 is relevant in understanding not only the role police services play in executing recovery orders, but also the role of police services in other policing matters and responsibilities. This material will also highlight some of the competing factors for police services and the diverse functions they must fulfil on a daily basis. A closely related topic that will be discussed extensively (section 2.4.3) is domestic violence and police responses and attitudes. Historically, matters relating to domestic

violence were considered to be a private issue. Research findings indicate that police are reluctant to become involved in such matters, as it is believed that incidents of spousal conflict and violence are social and private issues and therefore not a matter for the Police. Parallels can be drawn from such literature in relation to police attitudes and willingness to become involved in disputes relating to family law. This is an important aspect of the study as it focuses upon organisational service delivery, police perspective and training.

- iii. *The effects of divorce on children and families.* The material contained in section 2.5 provides background information in relation to the emotional and social implications of divorce on children. Although this is only discussed in brief as it is not the focus of the research, it is still of particular relevance and significance as participants were asked through narrative, to describe the emotions and reactions displayed by children and parents when recovery orders were executed.

The Australian Police Services in particular the AFP, are given the role of enforcing recovery orders, which may include international child abduction. Police services within Australia maintain law and order not only through crime prevention but also by ensuring social order and justice is preserved.

The information contained in this chapter will be descriptive rather than a critical review. The literature review will take a constructivist approach, keeping with the theoretical paradigm of this research. This will be explained in more detail in the research methodology chapter (section 3.1.2).

2.2 Family Law in Australia

2.2.1 The Commonwealth Government, led by Gough Whitlam

During the late 1960s and early 1970s there were a number of different social movements. There was the human rights movement and the movement of women's rights. Women in Australia and all around the world pushed for change and equality. It was felt that women's concerns and needs had been neglected and denied by all levels of government. The Commonwealth Government, led by Gough Whitlam at the time offered hope and excitement to women of something better. Gough Whitlam (1985) stated:

The agitation and activity of the women's movement steadily mounted during the late 1960s and early 1970s. Women's groups throughout Australia launched energetic campaigns demanding equality of economic, social, political and sexual rights and improved government services. My Government, more than any other, met these demands through the initiation of a series of reform programs to extend the degree and quality of social opportunities available to women.

Many women support groups, such as the Women's Electoral Lobby supported the Whitlam campaign as Gough Whitlam appeared to understand women's issues that had been neglected for some time. Up until this point women in Australia had lived without visible social power or influence (Evatt, 2003:35-38; Nicholson & Harrison, 2000:3-4; Whitlam, 1985:509-521).

On the 2nd December 1972, Gough Whitlam led the Australian Labor Party to its first electoral victory since 1946 to govern and lead Australian politics. After twenty-three years of continual conservative rule and little legislative reform, Gough Whitlam embarked on a massive legislative reform program within three years of appointment, which addressed many issues that women were concerned with such as equal opportunity in pay and employment, equal access to education and free contraceptive services.

In April 1974, the Government announced the Royal Commission on Human Relationships (1974-1977), as the Bill to amend abortion laws in the Australian Capital Territory could not be resolved. This Bill if passed, would have introduced lawful termination of a pregnancy (no more than twelve weeks old) by a general practitioner. The Commission's role was to look into a wide range of matters relating to the relationships, roles and responsibilities of men and women within society. There was a large public response to the Commission, which assisted in establishing the views of Australian society in the mid 1970s. The Commission was to look at issues of divorce, family law and other related concerns such as domestic violence. Family law or issues pertaining to the family unit were traditionally conservative with little political activity or government reform program. It can be argued that issues relating to family relationships were unmarked and would prove to be controversial (Evatt, 2003:39-47).

Traditionally, the laws relating to marriage and divorce had been an area of discrimination for women. They did not have equal guardianship of their children, and little value was placed on the role and importance of a homemaker. In the 1970s these views were being challenged and family law within Australia was outdated and did not reflect the changing times.

The Family Law Bill 1974 instigated immense public scrutiny, particularly by churches in Australia. They believed that the proposed changes to the area of family law did not place importance on the sanctity of marriage and it was believed that divorce undermined the preservation of the family unit (Golder & Kirkby, 1995:150-167). Those who opposed the legislative reform in parliament supported these views, however also raised other concerns such as:

- It would be difficult if not impossible to eliminate no fault divorce. This is because parties would take into account the causes for the marriage dissolving, therefore in any marital breakdown there would always be a basis of fault; and
- A husband's role in society is perceived as being to take responsibility for protecting and providing for his wife and children. Divorced wives would be disadvantaged as they would need to take on responsibilities that they were traditionally not accustomed to, such as entering the workforce (Commonwealth of Australia Parliamentary Debates (Handard), 1975:1379-1391).

However, through various opinion polls, government inquiries and women lobby groups there was clear support for the legislative change as the *Matrimonial Cause Act* 1959, was viewed as being harsh and did not reflect the changing times (Hocking, 1997:214-217; Scutt, 1987:86-87).

At the time, Senator Lionel Murphy introduced the Family Law Bill into the Senate in December 1973. The Bill was based on no fault divorce and husbands and wives were to be given equal rights and responsibility towards each other and their children. The Family Law

Bill had to be introduced twice more in parliament in early 1974 and again in August 1974. The Bill was referred to the Senate Committee, and in October 1974 produced a report that supported the principles of the Bill. After lengthy debate and consideration the Senate passed the Bill in November 1974. On the 28th November 1974, the then Prime Minister, Gough Whitlam made the second reading speech in the House of Representatives. The Bill was finally passed by both houses in May 1975.

One may argue that given the Whitlam Government had the majority and power in parliament; it gave the Government at the time the opportunity to make a number of legislative changes with little pressure from the opposition. However, this was not the case with the passage through parliament of The Family Law Bill 1974, whereby the members in both Houses were given the opportunity to vote freely on the legislation due to the controversy and opposition that surrounded the Bill.

In his second reading of the Family Law Bill 1974 in the House of Representatives Gough Whitlam stated:

It is a change that is, if anything, well overdue, not only in comparison to the reforms in this field in other countries, but in the light of the evidence submitted to the Senate Committee and to the Attorney-General. I am aware, of course, as we all are from the letters and petitions we have all received in such volume, that there is opposition to this change. However, it was the experience and expertise in the areas of social welfare and family law possessed by the persons and bodies that have expressed support for the

proposed ground of divorce, as well as the strength of their numbers, that convinced the Attorney-General of the desirability of this reform...It has been frequently said in opposition to the proposed ground of divorce that it will change the nature of marriage and encourage persons to move into, and out of, marriage at will. That there has been apprehension about the possible effects of such a substantial change in an area that affects us all, namely the family, is understandable. But Mr. Speaker let me make it clear, and repeat yet again, that this Bill, and this ground in particular, is a response to public demand and is supported by the majority of the real experts in this field – the marriage counselling organisations (Commonwealth of Australia Parliamentary Debates (Handard), 1975:4321).

When the *Matrimonial Causes Act 1959* was replaced by the *Family Law Act 1975* it introduced the Family Court of Australia as a specialist forum and allowed judges to be appointed, and counsellors and registrars to be employed. The impact of the Act was great, at the point of its introduction divorce rates (though temporarily) significantly increased. The *Family Law Act 1975* became the principle Act and its purpose was to:

- Eliminate the need for parties to provide the Court with evidence that one party had been guilty of misconduct during the marriage, such as adultery. The Act introduced ‘no fault’ divorce based on irretrievable breakdown.
- Simplify procedures and introduce a less expensive avenue of divorce.
- Decrease hostility between parties in hope that the parties would maintain an amicable relationship after divorce.

- Ensure that the best interest and welfare of children was the paramount consideration when dealing with matters relating to children.
- Provide a forum for dispute resolution through conciliation and mediation rather than litigation.
- Promote the interests of children through the provision of counselling services within the Court and welfare officers.
- Promote equality of rights and obligations of both husband and wives.
- Recognise the contribution of a homemaker and parent by giving them full consideration (Evatt, 2003:50-51; Scutt, 1987:86-87).

The *Matrimonial Causes Act* 1959 was primarily fault based and there was little provision in relation to children and their right to maintain contact with both parents. The *Matrimonial Causes Act* 1959 primarily focused on the grounds of divorce and the need for parties to prove that their partner had been guilty of misconduct. In addition, The *Matrimonial Causes Act* placed little emphasis on children of divorced parents, particularly with whom they are to live with and contact arrangements. The introduction of the *Family Law Act* 1975 shifted the perspective in relation to issues around custody and access. The *Family Law Act* 1975 enabled separate legal representation for children in custody and maintenance proceedings and enabled the Courts to enforce compliance with such orders. The focus was placed on the interests of the children from the marriage rather than the parents.

The Commonwealth Government led by Gough Whitlam was also responsible for other legislative reforms such as the introduction of support benefits for single-parent families and Medibank (now know as Medicare) that still stand today. Despite Gough Whitlam's many

concrete achievements whilst in power his administration came under criticism. Under his Government the economy had declined, inflation was high, and unemployment had significantly increased. In 1975, amidst a series of ministerial scandals that were rocking the Whitlam Government, Malcolm Fraser (Liberal leader at the time) decided to use his Senate numbers to block supply, preventing the Government's budget bills from passing the Senate, thus forcing Labor out of office. After several months of deadlock, Gough Whitlam was dismissed as Prime Minister and Malcolm Fraser was appointed as caretaker until a federal election could be held. Malcolm Fraser was elected as Prime Minister until March 1983. The dismissal of Gough Whitlam was a historic chapter in Australian politics, known as the Australian Constitutional Crisis of 1975 (Kelly, 1994:71-93). Even though there were criticisms of the Whitlam's Government's administration, he was viewed as being a Prime Minister who fought for the rights and freedoms of individuals, particularly women who were traditionally excluded from the decision-making process at all levels of government. Whitlam understood the issues of women that had been neglected and ignored by previous governments.

It can be argued that legislation is always a manifestation of a political stance that is driven by beliefs and ideologies. Whilst in power Gough Whitlam's series of reform programs heavily focused upon extending the social and equality opportunities for women. Newly elected governments may not have such a view and therefore, are given the difficult task of inheriting the previous government's legislative programs and any problems associated with such change whether anticipated or not. Even though at the time of its implementation they may have opposed the legislative reform, when issues associated to the legislation begin to emerge

they are often criticised for such difficulties and are looked upon to address the issues. This is the case with the *Family Law Act 1975*.

An example of this can be seen in 1981 when in the House of Representatives it was brought to the attention of the then Liberal Prime Minister, Malcolm Fraser (who initially opposed the legislation being passed) that government expenditure on support for single mothers in Australia significantly increased as a result of the introduction of the *Family Law Act 1975*. The Labor Government at the time had not anticipated such high figures even though it did make provisions for financial support to single mothers who had sole custody and care of a child (Whitlam, 1985) . In 1974, mothers receiving supportive benefits from the Government numbered 26,000. In 1981 that figure increased to 102,000. In the same period the number of the children also affected rose from 43,000 to 185,000. Given these figures, concerns were raised in parliament questions time by Mr. Fraser's own party member, Mr. Donald Cameron (Member for Griffith, Queensland) that the importance of marriage and the preservation of a nuclear family was slowly being eroded and that such trends needed to be reviewed in order to address the growing concern. The then Prime Minister, Malcolm Fraser's statement in relation to these figures and concerns went even further and made reference to the fact that children who were from single parent families would be disadvantaged. He stated:

This must be a matter that causes very significant concern to a large number of members of this House. The family unit is integral to Australian society and to the well-being of this country. In most civilised societies that same view would be held. It is not only unfortunate for the single parent concerned but also very unfortunate for the children who would find it very difficult to establish a

circumstance in which they really would get an equal chance in life. That is not implying criticism of the individuals involved; it is just a commentary on the circumstances established by single parenthood. The Commonwealth has instituted a number of policies to strengthen the family (Commonwealth of Australia Parliamentary Debates (Hansard), 1981:169).

Since the *Family Law Act 1975* was enacted in 1976 it has been under constant scrutiny by committees. It is arguably the most examined area of law both in principle and in practice. The Family Law Council was established to evaluate and make proposals for reform whilst the Institute of Family Studies was introduced to understand factors that contributed to family stability or failed relationships that would assist the Government on its social policy reforms. There have been many amendments made to the Act since its introduction some of which will be discussed in this chapter. Despite the many changes to the Act, the basic principles of the Act as outlined above remain relatively the same. The then Chief Justice of the Family Court, Alastair Nicholson stated:

The challenges that family law generally and the Family Court of Australia in particular, have faced since 1976 will undoubtedly continue to arise, albeit in constantly changing legal and social contexts. The content and direction of family law itself will also undoubtedly evolve as new developments emerge (Nicholson & Harrison, 2000:12).

2.2.2 Understanding the *Family Law Act 1975*

The *Family Law Act 1975* has undergone many legislative changes and covers a wide variety of complex and challenging areas of justice. The Act deals with property disputes, matters pertaining to children, dissolution of marriage, property, maintenance and injunctions. However, for the purpose of this study the focus will be on parenting orders. This is because the study focuses on the enforcement of parenting orders when they are breached under s. 67 of the *Family Law Act 1975* and a recovery order by the Courts has been issued to be enforced by the Police. To discuss all other aspects of the operation of the *Family Law Act 1975* would be irrelevant to the research question.

A parenting order is an order that deals with any parental responsibility of a child, as per s. 61D(1) of the *Family Law Act 1975* (Schultz, 1999:26-28; Szarski, 1991:124-128). The Court must consider whether it is practical and in the child's best interest to have equal, substantial or significant time with each parent as per s.65DAA of the Act. There is a general requirement for parties to attend counselling prior to court proceedings to discuss the matter and try and resolve the issues (s.65F). If the Court determines that there is an urgent need for a parenting order or that there are special circumstances such as family violence then counselling is not a requirement.

The parenting order may be made in favour of a biological parent or any other person, as per s. 65 (c) of the Act. The Court may make an order as they deem fit taking into account that the paramount consideration is the child's best interest (s. 60CA and s.65AA) (Bagshaw, 1997:182; Family Law Council, 1998a:11-13; Office of Legislative Drafting and Publishing Attorney-General's Department, July 2006:120-153). The child's best interest does not mean that the Court must act upon the child's wishes, but the judge must determine what is in the

best interest of the child as in *R and R*² (Sandor, 2000:16). The child's best interest principle is also the paramount consideration in enforcement applications and not the competing rights of the parents.

A court can make a parenting order based on an agreement filed by the parties (consent orders) or after a court hearing or trial. When a parenting order is made, each person affected by the order must follow the order (s.65M-s.65P). The order can cover:

- Where a child shall live and with whom (previously referred to as 'residency')
- Time spent and communication with a child (previously referred to as 'contact')
- Financial support for the child (referred to as 'maintenance')
- Any other aspects of the care, welfare or development of a child (previously 'referred to as specific issues') (Family Court of Australia, 1997:18-19; Graycar & Harrison, 1997:24-25; Rhoades, Graycar, & Harrison, 2001:1-3; Schultz, 1999:27-28).

Alternatively, parents are able to make their own agreement in relation to the care and responsibility of a child. A parenting plan under s. 63 of the Act allows parents to make their own arrangements in relation to the care of their children instead of the Courts making an order. It is a voluntary agreement between parents and must be signed by parties involved. It does not have the same legal status as a parenting order or consent order and is not enforceable under the law (Family Court of Australia, 1993:2; Family Court of Australia, 1997:18; Hughes, 1997: 30-32; Szarski, 1991: 27). It is argued that parenting plans are useful in re-enforcing parental responsibility and a useful way for parents to come to a mutual and

² *R and R*: Children's Wishes ("Family Law Amendment Act 2000,") FamCA 43

flexible agreement in the best interest of the child without the need of exposing the child to ongoing conflict and acrimony that is often associated with family law disputes (Hughes, 1997:30; Szarski, 1991:124-217).

2.2.3 An Insight into Recovery Orders

In extreme circumstances where a parent has breached an existing parenting order by failing to return a child as required, the Court is able to issue an order to recover the child and be returned to the applicant parent. In such instances, the Police are given powers to locate and return the child. The Court has the power to issue a recovery order under s. 67U of the Act, and a Form 2 along with an affidavit is used to apply for a recovery order. The Court may issue a recovery order with or without an existing parenting. A recovery order normally remains in force for a period of 12 months (s. 67W), unless otherwise specified (Dalby, 1997:95; Szabo, 1998:8-27).

The order directs a person or persons (usually police forces in Australia) to locate and search any vehicle, vessel or aircraft and to enter and search premises or place pursuant to locating the child, as per s. 67S of the Act. When deciding whether a recovery order should be issued the Court must consider the child's best interest under s. 67V of the Act (Office of Legislative Drafting and Publishing Attorney-General's Department, July 2006; Schultz, 1999:28).

An application for a recovery order is usually heard *ex-parte* as it is considered to be urgent. As a result, the respondent is not aware or notified of the proceedings. Such applications arise where (i) the welfare or where the child is to live is in question; or (ii) the child's contact with a specified person outlined in the parenting order has been contravened (Altobelli, 1999:112-

122; Szabo, 1998:8-25). The Family Law Council (1992b) in its report outlined that *ex-parte* warrants (recovery orders) should be avoided where possible particularly if the party that is absent from the proceedings is a victim of domestic violence. Parents may have significant and justifiable reasons as to why they are refusing the other parent to have contact with the child. The issues relating to domestic violence and the enforcement of parenting orders will be further discussed in sections 2.2.5 and 2.4.2.

To contextualise the operation of recovery orders, an instance of where a recovery order was issued and received considerable media attention was in 1994. The case involving seven-year-old Victoria Talbot was a headline story in Melbourne's leading newspapers. Mr Talbot, Victoria's father, on the 18th of November 1993, was granted primary care of Victoria by the Family Court of Australia. Prior to this Victoria was residing with her maternal grandparents after the death of her mother in 1991. It was reported that Victoria went missing whilst on a contact visit with her maternal grandparent. On the 10th January 1994, Justice Kay granted an *ex-parte* application and issued a warrant (recovery order) for Victoria to be returned to her father's care. It was unclear at the time whether the child went missing as a result of 'foul play' or as a result of a protracted custody dispute between the child's father and her maternal grandparents. A warrant was issued to give the Police the power to locate Victoria as it was viewed that being with her father was in her best interest. Headlines through the Melbourne Age newspaper, such as "*Judge grants search warrant for missing girl*" and "*Reported sightings of seven-year-old,*" indicated that such circumstances sparked community fear in regards to the safety of a child when parenting orders are breached (Saunders, 1994:3; Unknown, 1994:2). Victoria was missing for ten days before she was handed to police in Western Australia. Her maternal grandparents were jailed upon being convicted for

kidnapping (Johnson, 1994:7). Victoria's grandparents later applied for custody of Victoria but were denied. They believed that she was being abused in the care of her father and considered the decision to be unjust (Johnson, 1994:7).

2.2.4 Legislative and Operational Changes to the *Family Law Act 1975*

Since the introduction of the *Family Law Act 1975* there has been continuous scrutiny from the public and various government bodies. There had been a number of reviews and amendments, as early as 1978. Justice Kirby (1976:462) once stated "*law reform is not just change in the law, but change for the better.*" There have been many persistent problems with the operation of family law within Australia. The various amendments have not only been in an attempt to rectify some of the deficiencies in the system but also to try and enact the main principles of the Act, as previously discussed in section 2.2.1. The problems, which have overwhelmed the Family Court since its introduction, have a number of diverse and complicated causes. Some of the deficiencies of the Court are as follows:

- The lack of resources to deal with the large volume of applications. This was one of the difficulties identified since the start of the Court's operation.
- People being reluctant to give up on the concept of fault divorce; and
- The need for people to access an avenue of justice that is inexpensive and less formal.

These factors along with others, such as gender imbalance before the law, will be discussed further in this chapter. The difficulties encountered by the family law system suggest that the principles or the initial aims of the introduction for the Act are yet to be satisfied. Below is a

discussion in relation to some of the pertinent amendments that have been made to the *Family Law Act 1975* and its operation relating matters involving children.

2.2.4.1 Family Law Reform Act 1995

In 1996, the *Family Law Reform Act 1995* was introduced. The Act incorporated critical amendments to terminology used in the Family Court of Australia in matters relating to children. It was believed that if language implying ownership such as “custody” and “access” was removed and parenting responsibility was encouraged, there would be a reduction in the amount of litigation brought before the Court. The reforms were as a result of political pressure by fathers groups, such as the Lone Fathers. They showed discontentment with the Family Court, believing that the Court was ‘biased’ towards non-custodial parents, who were predominately male. Many argued that the introduction of the *Family Law Reform Act 1995* was due to political pressure and that the implications of the changes would on families, children and the system were not adequately researched (Graycar, 2000; Rhoades, 2000:149-152). The amendments were based upon similar changes adopted by the *Children Act 1989* (UK) in 1991. In 1992, the Joint Select Committee of the Australian Parliament in a report titled, *The Family Law Act 1975: Aspects of its Operation and Interpretation*, considered some of the submissions made by groups in England and recommended that such changes should not be adopted in Australia. However, the Family Law Council’s (1992a) and (1994) reports recommended a number of changes to the legal terminology used in family law matters and within the Act. The recommendations included that the terms, "access" and "custody" be replaced and generally known as “parenting orders”. That a parenting order would “refer to the ‘residence’ of the child, ‘continuing contact’ with the child and contain any ‘special purpose’ arguments which the Courts consider necessary” (Family Law Council,

1994:9). The reports also recommended the introduction of parenting plans, more accessible counselling services and Alternate Dispute Resolution.

The Australian Law Reform Commission's (1995) report *For the Sake of the Kids: Complex Contact Cases and the Family Court* was completed when the *Family Law Reform Bill (no 1)* 1994 was before the Federal Parliament. The focus of the Commission's inquiry was to look at complex contact cases. The Commission believed that one of the difficulties with children's cases was the belief of parental ownership over a child.

Various government bodies conducted four reports in relation to the proposed reforms. Three of these reports supported the changes and its aims to rectify some of the persistent issues associated with child related matters before the Court. The aim of the *Family Law Reform Act* 1995 was to increase counselling and arbitration services for families as it was recognised that divorce or family breakdown was stressful, traumatic and had a long-standing emotional effect on families. Through the use of court services the Act's goal was to promote shared parenting and joint responsibility for parent's care of their child(ren). It is believed that with the use of court services parties would be able to reach an agreement in relation to the ongoing care and responsibility of their children, thus decreasing the likelihood of such agreements breaking down in the future, as they were not court imposed. The Act also aimed to decrease the amount of litigation brought before the Court, particularly intractable cases. That is, matters that continually presented themselves before the Courts.

Academics, judges and other professionals believed that if the Government waited and did not legislate and enact the *Family Law Reform Act* 1995 they may not have adopted the changes.

Research in the United Kingdom indicated that the *Children Act 1989* (UK) increased the volume of litigation and also placed mothers in compromising positions when facilitating contact, particularly where domestic violence was reported (Rhoades, 2000:149-151). This was at odds with the primary aims of the 1995 amendments.

Funder and Smyth (1996) conducted a research report for the Federal Attorney- Generals' Department, as part of an evaluation prior to the Act coming into operation. The findings indicated the following:

- No inferences could be drawn from gender or social class,
- 98% believed that showing emotional support and love was highly significant,
- 97% believed that teaching children between right and wrong was important, and
- 95% believed that ensuring a child's education was supported and of importance.
- Women in comparison to men, along with older parents, also placed greater importance on a child maintaining contact with extended family members.

These findings indicated that parents did not alter or change the importance placed on their responsibility to care for their children after divorce and no difference was noticed between genders on responses to the issues. The findings indicated that the underlying principles outlined in the *Family Law Reform Act 1995* reflected the beliefs and expectations of Australian parent's and that their level of responsibility towards the care of their child did not alter after separation (Funder & Smyth, 1996a; Funder & Smyth, 1996b; Funder, November 1996).

Rhoades, Graycar and Harrison (1999) examined the short and long-term effects of the *Family Law Reform Act 1995* in relation to matters pertaining to children. The findings of the research indicated the following:

- That the reform posed conflict between various professionals;
- Professionals provided inconsistent definitions of the terms “residency” and “contact”. 56% of participants believed that the term “contact” merely replaced the term “access” and the definitions remained the same. Whereas, only 22% believed that the definition of “custody” and its replacement “residency” are the same.
- There had been an increase in applications seeking contact being brought before the Court.
- There had been a reduction in the use of parenting plans.
- There had been no change indicated in the division of parental responsibility; and
- That there was a persistent use of the terms “custody” and “access” rather than the amended terms “residency” and “contact” (Nicholson, 2002b:13-15; Rhoades, 2000:153-155; Rhoades et al., 1999:6-7).

The findings of the research conducted by Funder and Smith (1996a) and Rhoades, Graycar and Harrison (1999) contradicted the fundamental principles of the *Family Law Reform Act 1995*. The findings indicated that there had been a decrease in the number of parenting plans, no change in the division of parental responsibility, an increase in the number of applications made to the Court seeking contact, and therefore an increase in litigation. Furthermore, professionals seemed to lack understanding of the underlying principles of the change in

terminology. This lack of understanding was likely to filter through to parties, and cause confusion and inconsistencies. These concerns along with others, such as that the process of counselling or arbitration could be protracted and expensive, were expressed in parliament prior to the Act being passed. The then House of Representative member, Aston Nugent, stated:

In a time of major upset, trial and turbulence in the life of the children of the marriage, that ongoing, drawn-out process is most destabilising for them. Children need stability; they need to know where they stand. It is highly desirable that these matters be dealt with expeditiously. What this legislation is proposing will, in fact, make the present situation even worse (Commonwealth of Australia Parliamentary Debates (Hansard), 1994:2904).

The findings of the research conducted by Funder and Smith (1996a) and Rhoades, Graycar and Harrison (1999) need to be considered in this study as a further consequence of the *Family Law Reform Act 1995* could be an increase in the number of recovery order issued by the Courts due to breached parenting orders. To date, there has been little empirical research undertaken in relation to (i) recovery orders, (ii) the implications for courts regarding the litigation process and (iii) the effect on law enforcement agencies.

2.2.4.2 *Family Law Amendment Act 2000*

The Family Law Council (1998a) acknowledged that there is no one single solution to deal with the number of difficulties enforcement orders pose for the legal system. From previous research conducted, the Council had an understanding that non-compliance with such orders

was a recurring matter. The aim of this particular research was to identify the reasons why there were persistent difficulties with enforcement orders and make preliminary recommendations as to possible solutions (Family Law Council, 1998a:13-25; Tolmie, 1998:306-307). The findings indicated that both residence and contact parents had problems with enforcing existing parenting orders. The identified issues contributing to difficulties enforcing parenting orders were attributed to:

- Claims of domestic violence,
- Allegations of child abuse,
- The contact parent's failure to return a child on time,
- The adverse change in a child's behaviour upon returning from contact, and
- Residence parents making it difficult for contact to occur, for example moving house or making allegations that a child was ill.

The Family Law Council also identified that contact parents complained about the costs associated with enforcement proceedings through the Family Court, and delays of the system in resolving issues relating to the enforcement of orders (Harrison, 1999b:61-63; Tolmie, 1998:306-307).

The report also considered warrants being issued as a response to a breach of parenting orders and the New Zealand family law system. In New Zealand, a warrant is issued giving the Police or social workers the power to collect a child and deliver him or her to the applicant parent. At the time of the order being made by the Court parents are made aware of the repercussions should the order be breached and that a warrant will be automatically issued.

Given this they are generally compliant with the order. The Courts in New Zealand also have the power to impose heavy penalties for breaches of orders. The prosecution of breaches comes under a criminal standard of proof. The Family Law Council outlined that if Australia was to consider adopting a similar system to New Zealand a study would need to be conducted in relation to the potential effects removing a child forcibly from a parent would have on their emotional well-being. The report did not support that such a system should be adopted in Australia without further research conducted into the potential effects for a child being forcibly removed from a parent. It did however outline that recovery orders should only be used in a small number of cases because of the potential harmful effects it may have on a child's emotional well-being. The Family Law Council in its report acknowledged that only in situations where a parent has no intention of complying with an order that a recovery order be issued. The report raised the question as to whether the benefit of a child having contact with both parents (as it is assumed that it is in a child's best interest) was outweighed by the potential psychological risk. This consideration was applicable in cases that were highly volatile, litigious and where breaches occurred regularly (Family Law Council, 1998a:44-45; Tolmie, 1998:308-309).

The Family Law Council (1998a) recommended the following:

- That an alternative system such as a Federal Magistracy be introduced. This would introduce an avenue of justice that is accessible, decrease costs and also assist with the case backlog. This will be discussed in section 2.2.4.3.
- That contact handover centres be established to decrease parental conflict and reduce non-compliance.

- That parents and legal practitioners with contact conditions be informed about the short and long-term effects of non-compliance.
- That law enforcement officers be appointed to the Family Law Court. The Government rejected this recommendation in 1976-1977, which was made by the Council. These officers would be specifically trained in child development and child safety and would consist of social workers, court officials, police, specialist officers, and legal practitioners. The officers would also have a further role of investigating the reason why contact was breached and attempt to remedy the situation.
- That a “three-tiered” approach to the contravention of parenting orders be introduced. This will be further discussed in the next paragraph.
- That a mechanism is developed that ensures that a child’s best interest is given paramount consideration throughout the enforcement process; and
- That further research is conducted in relation to the New Zealand enforcement procedure (Family Law Council, 1998a; Fehlberg, 2000:52-54; Harrison, 1999b:61-63; Tolmie, 1998:306-311).

The Council's findings were the driving force behind the legislative changes stated in the *Family Law Amendment Act 2000*. Section 60C introduced a three-tiered system for dealing with the penalties for enforcement orders affecting children. The introduction of a three-tiered approach to enforcement of parenting orders aimed to address the imbalances between parents and provided wider and flexible options for imposing penalties for breaches ("Family Law Amendment Act 2000," 2000; Family Law Council, 1998a:50-51). They were:

- i. Educative Stage – to ensure that parents understood the responsibilities of orders through the use of pamphlets. Counselling or conciliation may be ordered to assist with the order being complied with (Duggan, 2001:70; Lanteri, 2001:12).

- ii. Remedial Stage – intermediate consequences for failing to comply with orders could be made if the parent was seen to be contravening the order. The definition of what constituted a contravention is provided under s. 70NC of the *Family Law Act Amendment Act* 2000. There were exceptions to the remedial measures being imposed (s. 70NE) and the Court must be satisfied that the respondent made a reasonable excuse. Section 70NEA provided an onus of proof on the balance of probabilities and the Court was given the power to make an order that a person who has contravened the order attend a specified appropriate post-separation program, such as mediation in an attempt to resolve the conflict between the parties. Power was given to the Court to make a further parenting order to compensate for lost contact or adjourn proceedings to allow parties, to apply for further parenting orders. Other suggestions were also that recovery orders be issued, to award costs to the applicant party for expenses related to the Court proceedings and to use services such as public contact handover facilities (Duggan, 2001:70; Lanteri, 2001:11-13; Tolmie, 1998:310-311).

- iii. Punitive Stage – Punitive measures may be enforced on the first offence by the Courts such as Community Service Orders, a bond not exceeding two years, a fine of up to \$6,000, an imprisonment term for up to twelve months or a variation to the terms of a parenting order that has been contravened (Fehlberg, 2000:53-54; Lanteri, 2001:14; Tolmie, 1998:311-313).

Expectations were also placed on parents to participate in a post-separation parenting program. The main aim of the legislative changes was to help eliminate conflict between parents and therefore decrease the number of enforcement orders that appeared before the Court (Fehlberg, 2000:52-54). A contravention could be established in two ways, (i) intentionally, or (ii) no "reasonable" attempts were made to comply (Nicholson, 2002a:15-17).

Difficulties began to emerge with the implementation of s.60C of the *Family Law Amendment Act 2000*. The Government did not support the new regime with adequate funding for education to professionals. Therefore, professionals received little training in support of the changes and subsequently, were not clear on their role or function. Furthermore, resources were being wasted, as parents were not attending programs. Since the implementation of the changes up until January 2001, figures indicated that 71 post-separation parenting orders were made and the Court received notice that 21 of the participants failed to attend. (Nicholson, 2002a:17-19). Nicholson (2002a:21) believed that counseling rather than parental education needed to be incorporated to work towards minimising parental conflict, which was seen to be major contributing factor to orders being breached. This notion was further supported by the findings in Funder and Smyth (1996) and the findings from the 1995 piloted program titled, *Access Group Program* in the Brisbane (Power, 1995:261-267).

2.2.4.3 Federal Magistrates Act 1999

The Family Law Council's report *Magistrates in Family Law* in July 1995, recommended that a Family Court Magistracy be established in major metropolitan areas, with the power to hear

matters under summary jurisdiction. These recommendations were driven by the need to improve the quality of service delivered and accessibility by increasing resources. This would reduce time delays in hearing cases, ultimately decreasing the backlog of cases before the Family Court. This type of restructuring would have been extremely costly for the Government to fund and implement, as such the recommendation was not implemented. However, as an alternative a central Federal Magistrates Court was developed and established (Family Law Council, 1995).

The *Federal Magistrates' Act* 1999 created the Federal Magistrates' Court in 2000 (Nygh, 2000:65-68). A major intent of the Federal Magistrates' Court was to reduce the workload of the Federal Court of Australia and Family Courts. The objective of the Court was to (i) operate as informally as possible as per s.42 of the Act, (ii) allow the Court to use streamlined procedures, thus providing a faster and less expensive option for parties, and (iii) encourage dispute resolution services. The Federal Magistrates' Court was introduced to encourage parties, to move away from formalities, increase accessibility to justice, whilst not appointing any more judges.

The Federal Magistrates' Court shares jurisdiction with the Family Court and the Federal Court of Australia. Whilst it is not considered to be a "superior court" like the Family Court or the Federal Court, it should also not be confused with Magistrates Courts that have a summary jurisdiction in family law matters. In family law matters, the Federal Magistrates' Court has jurisdiction in the following areas:

- Divorce Applications;

- Property disputes not exceeding \$700,000 (prior to the *Family Law Amendment (Shared Parenting Responsibility) Act* 2006 it was \$300,000). If the property is worth more than \$700,000 then the parties need to consent for the matter to be heard in the Federal Magistrates' Court;
- All matters relating to parenting orders, but not orders relating to with whom a child lives with unless parties consent. The rationale behind this is that issues involving where a child will live tend to be more complex in comparison to matters relating to with whom the child spends time with; and
- Matters relating to enforcement applications including location and recovery orders (Fehlberg, 2000:52-53; Harrison, 1999a:53; Nygh, 2000:65-68; Tolmie, 1998:311).

Prior to the introduction of the Federal Magistrates' Court the Family Court of Australia faced increasing workloads and delays with unacceptably long waiting lists. The Family Court of Australia Annual Report 1996-1997 reported that children's matters being brought to the Court had increased since the introduction of the *Family Law Reform Act* 1995 and 59% of all orders sought from the Family Court of Australia related to children. (Family Court of Australia, 1997:22-23). The table below indicates the applications made in relation to residence and contact parents from the years 1996-1997 to 1999-2000 as outlined in the report *Statistical Snapshot of Family Law 2000-2001* produced by the Family Law Council (2002:9).

Table 1: Applications Seeking Residence and Contact (1996 – 2000)

Year	No. Of applications filed seeking residence	No. Of applications filed for seeking contact
1996-1997	24,930	29,567
1997-1998	28,681	32,691
1998-1999	30,932	35,824
1999-2000	33,420	37,717

There had been a considerable increase in the number of parenting orders sought throughout this period and it was anticipated that with the introduction of the Federal Magistrates' Court workload from the Family Court of Australia could be redistributed to reduce workloads, delays and costs. It was believed that the Federal Magistrates' Court introduced some relief and flexibility that the Family Court system was lacking (Family Court of Australia, 1997:22-23). With limited access to legal aid and the Family Court, it was becoming increasingly complex, difficult and frustrating for parties to obtain a service. It was believed that the Federal Magistrates' Court would provide a more accessible system for parties whilst providing relief to the Family Court and the Federal Court's high workloads.

There has been widespread controversy and debate about the usefulness of the Federal Magistrates' Court. The then Chief Judge of the Family Court, Alastair Nicholson stated, "*An already fragmented and misunderstood system is, as a result, in danger of becoming even less cohesive and more confusing*" (Nicholson, 2000:25). The introduction of the Federal Magistrates' Court was viewed as problematic and concerns were raised by academics such as Belinda Fehlberg (2000:53) that having a separate identity operating under its own separate

guidelines and administration would cause confusion, thus increasing the likelihood of two classes of justice being formed. This is further supported by the fact that the Federal Magistrates' Court only has jurisdiction to deal with matters that were not of a 'complex' nature. There was no formal definition of what constituted a 'complex' case and one may argue that cases in relation to disputes over where a child shall live or contact arrangements with a child were often highly complex and difficult to adjudicate, given the sensitive nature. The Federal Magistrate has the power to transfer proceedings to the Family Court in situations where they determine the Federal Magistrates' Court does not have the resources to hear and determine the matter. Transfer of cases to a higher court would be less likely if parties are unable or unwilling to pay the higher legal costs associated with Family Court proceedings. Therefore, parties are given the opportunity to "court shop" rather than ensuring that all matters pertaining to the *Family Law Act 1975* are dealt with on equal par and with the same expertise to matters that are of similar nature.

A report conducted by the Commonwealth Auditor-General (2004) expressed a number of concerns in relation to the operation of both courts. The findings of the research indicated the following:

- The Federal Magistrates' Court and the Family Court of Australia were often competing for resources and therefore had difficulties in developing a collaborative and joint approach to service delivery,
- Both Courts failed to meet their designated timelines to service delivery,
- There was a need for both Courts to work more effectively together, and
- Communication at the operational level of the system needed to be improved.

These findings contradicted the objective of the Federal Magistrates' Court, which was to provide a simpler and more accessible service and ease the workload of the Family Court of Australia.

2.2.4.4 *The Family Law Amendment (Shared Parental Responsibility) Act 2006*

The *Family Law Amendment (Shared Parental Responsibility) Act 2006* was introduced as a result of the report titled, *Every Picture Tells a Story* (December 2003). The Federal Government viewed the Act to be the most significant changes made to the *Family Law Act 1975*, and the family law system since its introduction. Like the *Family Law Reform Act 1995* the aim of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* was to promote shared parenting and shared parental responsibility, to steer away from litigation and encourage co-operative parenting. The Government felt that the reforms in 1995 did not achieve the cultural shift the Government had initially hoped for. The Government's aim is to "try to bring about social change, by designing a system which it is hoped will change outcomes over a period of time for a large number of the community, both those who do not seek the assistance of the Court and those who do" (Bryant, 23 October 2006:2).

The Act establishes the introduction of Family Relationship Centres to support separating families reach an agreement where appropriate, about the parenting and care arrangements of their children. These services will be established outside of the Court and promotes an environment where parents are more likely to reach a mutual agreement. It is anticipated that sixty-five centres will be established by 2008.

A combined Family Law Registry for the Family Court of Australia and the Federal Magistrates Court is also created as a result of the *Family Law Amendment (Shared Parental Responsibility) Act* 2006. As discussed in section 2.2.4.3 the Family Court and the Federal Magistrates Court were having difficulty in developing a joint and collaborative approach to service delivery. The Family Law Registry creates a simplified pathway for families into the family law system. There will be a single filing point resulting in, a more effective streaming of applications, the sharing of information between the two courts and hopefully it will provide parties with a more timely approach to service delivery.

In addition, the Act allows for a less adversarial approach to matters relating to children. This approach is premised on the Children's Cases Program, which was first piloted in the Sydney and Parramatta registries in 2004 and 2005 and then rolled out in the Melbourne registry in 2005. The key feature of this approach is that the Judge controls the hearing process and its inquiry, and not the lawyers. A family consultant is present in the Court as an expert adviser to the Judge and the interested parties. Furthermore, the parties speak directly to the Judge and inform the Judge as to their concerns and wishes in relation to the matter. In her report Dr McIntosh (March 2006) explored the impact of the Children's Cases Program. The report found that parents experienced greater satisfaction post court with living arrangements for the child, there was less conflict between parents and therefore a parent's relationship with a child post court was less damaged. Children were reported to have greater emotional stability and satisfaction with the Court outcomes (Bryant, 23 October 2006:6-8; McIntosh, March 2006:35-39).

Section 65DAA of the Act requires the Court to decide whether children spending equal time with both parents is “reasonably practicable” or in their best interest. If the Court does not consider it to be appropriate for a child to spend equal time with both parents, then the Court must consider whether they should spend “substantial and significant time” with both parents. This would include involvement in a child’s daily routine and special occasions.

Furthermore, the existing definition of family violence was amended and clarified. The Act stipulates that fear or apprehension of violence must be “reasonable.” The objective of this is to ensure that children are protected from harm caused by abuse or violence when allegations of violence and abuse are raised. The Courts have an obligation under s. 60K of the Act to consider making appropriate orders to ensure the safety and well being of children and parties. The legislative changes in the areas of family violence were implemented to operate in conjunction with the Family Violence Strategy. The Family Violence Strategy is further discussed in section 2.4.3.1. The Chief Justice of the Family Court, Diana Bryant (23 October 2006:9) stated that the strategy aims to “*ensure concerns about family violence and child abuse that arise in family law proceedings are investigated and resolved appropriately*”.

The Act also made important changes to the Courts options to deal with enforcing parenting orders. The aim of the new compliance regime was to expand the powers of the Court and strengthen the previous compliance regime. The report conducted by the House of Representatives Standing Committee on Family and Community Affairs (2003) and the Federal Government felt that the three-tiered enforcement regime introduced by the *Family Law Amendment Act 2000* needed to be extended and strengthened.

As such, if the Court finds a parent has failed to comply with a parenting order without a reasonable excuse it has the power to impose the following penalties:

- Order a parent to attend a post separation parenting program,
- Make an order to compensate for the time lost with a child as because of the contravention,
- Require a parent to enter into a bond,
- Order a parent who has contravened the order to pay some of or all of the legal expenses for the other parties,
- Order a parent to participate in community service,
- Order a parent to pay a fine, or
- Order a parent to be imprisoned

The Court can ensure compliance with these orders through contempt proceedings, location orders, recovery orders or via proceedings to vary a parenting order (House of Representatives Standing Committee on Family and Community Affairs, December 2003:19-20).

The Act also removed references to “residence” and “contact” and replaces them with references to “with whom a child lives with, spends time with and communicates with”. The changes focuses the court and parties on the central issue of parenting rather than ownership.

2.2.5 An Expansion of the Reforms

Since the introduction of the primary act, the *Family Law Act 1975*, a number of amendments have been made. The aim of the Act was to provide an avenue of justice that was non-complicated, inexpensive, non-fault based, to decrease hostility between parties, and promote the quality of rights of both a husband and wife. Since its introduction the Government has continually focused upon achieving the aim of the Act through subsequent amendments (both legislatively and structurally). Presently, the family law system continues to be faced with complexities, high legal costs and an inability to reduce the emotional and traumatising impact the process has on families.

The reforms made to the *Family Law Act 1975*, implemented diverse strategies in an attempt to address the inadequacies outlined above. The *Family Law Reform Act 1995* focused upon non-punitive approaches, whereas the *Family Law Amendment Act 2000* introduced wider and more flexible options for decision makers to impose penalties for breaches of court orders, thus taking a more punitive approach. Both of these amendments aimed to decrease litigation, reduce the risk of arrangements breaking down and decrease the emotional impact on families.

The *Family Law Act 1975* is based on formal equality and whilst laws based on such principles are convincing and relatively easy to justify politically, they often fail to provide substantive equality, particularly in situations where parties are not in equal positions.

Throughout history, the relationship between a male and female has been characterised by power imbalance and gender inequality and these issues are still evident in today's society, particularly where family violence is present. Graycar (2000) argues that family law does not

take into account family functioning and relationships. It merely looks at the break down of a relationship between a wife and husband. There is no exception for the law to take into consideration the functioning of a family unit. If we were asked to define our lives revolving around our marital status it would not fit into a certain category as each relationship and family unit is different. Therefore, it can be argued that the *Family Law Act 1975* is merely one piece of legislation that exists in a wider social setting.

The *Family Law Act 1975* and subsequent amendments have attempted to defy human nature. It assumes that all who access such an avenue of justice want to resolve their issues with decorum and mutual respect. Whereas, in reality if parties are unable to agree throughout a relationship or marriage, they are less likely to agree after separation. It is in these circumstances where parties are reluctant to give up on the idea of fault and become bitter and difficult to reach agreement. The reasoning for the relationships breakdown in the first place often involve issues that within themselves have their own legal, social and moral implications. For example, women often leave relationships because of family violence and child abuse (refer to section 2.4.3 for further discussion). The *Family Law Act 1975* is merely one piece of legislation that sits on the periphery with others. If a relationship breakdown is amicable, parties are less likely to feel the need to access dispute resolution. Parenting orders are more likely to break down in situations where there is a high level of conflict and animosity between the parents. The reasoning for the breakdown of such orders is often based on concerns around a resident's parent own safety and the safety of a child.

The points raised in this section pose the question, whether the *Family Law Act 1975* will ever achieve its primary objective? The family law system has endeavoured to address these issues

over three decades without success. Parties who go through the Family Court process encounter a difficult and painful process and ultimately may still be dissatisfied with the outcome. If parties are dissatisfied with the outcome there is a likelihood of ongoing bitterness and therefore the problems persist. The notion of eliminating “winning or losing” or imposing blame is difficult if not impossible to achieve (Commonwealth of Australia Parliamentary Debates (Hansard), 1994:2904; Graycar, 2000:737-755; Harrison, 1997:43-45). Whilst it is acknowledged that the *Family Law Amendment (Shared Parental Responsibility) Act 2006* adds depth and a new framework to resolve parenting disputes it is yet too early to determine whether the aims of the legislation, to promote a cultural shift as to the way family separation is managed, will be achieved. Nevertheless, the reforms have undertaken the most significant changes to the *Family Law Act 1975* since its introduction and bring a sense of hope and anticipation.

2.2.6 The Magellan Case Management System

The Magellan Project was introduced as a pilot program in 1999 in Victoria as a response to concerns that cases involving children and allegations of child abuse were not being handled in a timely manner and interventions designed to resolve the problems were ineffective. The Magellan Project recognised that cases involving child abuse allegations were frequently appearing in the Family Court. It was also noted that child protection services defined child abuse differently from the Family Court. There was also little communication between child protection services and the Family Court about the outcome of their notifications/investigations. The Magellan Project sought to rectify some of the gaps between

state and federal agencies when responding to child abuse allegations (Brown, 2001:1-7; 2003:1-10; Brown, Frederico, Hewitt, & Sheehan, 1998a: 1-6).

As a result of the Project, the Magellan case management system was implemented in Family Court registries around Australia. The evaluation of the Magellan Project in 2000 found that cases were dealt with in a more timely manner, there was an increase in collaboration between state and federal authorities, a decrease in the number of orders that broke down and there was a decrease in the number of cases that were determined by a judge (from 30 % to 13%) (Brown, 2003:1-10).

The Magellan case management system deals with cases where serious sexual and or physical abuse allegations are made. The cases are managed within the Family Court of Australia with the aim of early intervention and collaboration between services such as the Police, counsellors, legal aid and child protection services. Child protection services and court counsellors investigate the allegations and report their findings to the Court. The Magellan case management system adheres to a strict timeframe and all information need to be produced before the Court six weeks after the first hearing date.

Based on the information prepared a pre-hearing conference is conducted to give the parties the opportunity to settle the dispute. If disputes do not settle, then a directions hearing is scheduled six to twenty weeks later.

Distinct benefits of the system have been identified including that it provides: a collaborative approach to resolving disputes where child abuse allegations are made, better use of legal aid

and court resources, cases are being resolved sooner with only a small number of cases proceeding to a final hearing (McInnes, 2003:4-5; Nicholson, 1999:9-13).

2.3 The Hague Convention on the Civil Aspects of International Child Abduction

2.3.1 The Convention's Objective and Aim

The Convention on the Civil Aspects of Child Abduction was introduced on the 25th October, 1980 at The Hague, however, it was not until the 29th of October, 1986 that Australia became a signatory to the Convention. Before the obligations of the Convention could be enacted in Australia necessary amendments had to be made to *the Family Law Act 1975*. Subsequently, the Convention came into operation on the 1st January 1987 (Bowie, 2001:2; McClean, 1997:387). It is recognised worldwide, that the act of removing a child from their usual country of residence has an adverse impact upon their well-being. A child is likely to feel that they have been uprooted from their home, friends, family, lifestyle, routine, and education. Often children from divorced families experience short-term and long-term emotional effects. A change of such magnitude will not only disrupt a child's relationship with one parent but it would also impact upon their sense of belonging and would have harmful effects on their psychological well-being and stability (Buck, 2005:131). The effects of divorce on children will be further discussed in section 2.5.

In Australia, the first decision under the Convention was *In the Marriage of Lambert and Lambert*³. In this particular case the father removed his 3-year-old child from Scotland to Australia. The father was Australian born and the mother was Scottish. The mother had custody of the child for approximately one year until the father subsequently took the child to Victoria. The Court ordered that the child be returned to his "habitual residence" as exceptions under article 13 of the Convention were not made out.

Article 4 of the Convention refers to the concept of "habitual residence". The term has no concrete legal definition and it is only case law that can be sought for guidance on the issue. The notion behind "habitual residence" is that the child should return to the country which they had the most connection with prior to their removal. Given that there is no binding legal definition this allows flexibility for the Courts to deal with the specific facts of each case rather than the intent for the parent to reside in a particular location (Buck, 2005:139-140). Justice Kay (1999) stated:

In Convention cases, the issue of a child's habitual residence is usually the first and one of the most important issues for determination. Its importance arises in a number of ways. First, to come in scope of the Convention, a child must be habitually resident of the Contracting State. To determine whether a removal or retention is wrongful, and whether a right to custody has been breached, it is the law of the habitual residence that applies. If a return order is made, it is the place of its habitual residence that the child is returned to.

³ (1987) 3 April (unreported)

Article 13 of the Convention outlines the exceptions of when a child should not be returned to their “habitual residence”. The exceptions are (i) where there is risk to the child’s emotional or physical wellbeing, (ii) a child does not want to return and is at the age and level of maturity where the Court is able to consider their views, (iii) a parent has failed to access his/her ‘custody rights’ and has taken no meaningful role in a child’s life or (iv) where a parent initially consented to the removal (Buck, 2005: 141; Rosenblatt, 2000:47).

The objective of the Convention is:

“...to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the States or their habitual residence, as well to secure protection for the rights for access”
(The Family Law (Child Abduction Convention) Regulations, 1986:2)

Thus, the main aim of the Convention is to deter parents from abducting their child whilst allowing both parents to maintain contact, as held by the High Court of Australia and the Court of Appeal in the United States in *Lops v Lops*⁴. The purpose of the Convention is to give a child protection from possible trauma and implications for their safety and well-being that could arise from the wrongful removal of a child from their usual residence. The Convention was set up in order to ensure that children were returned back to their usual residence. In *McOwen v McOwen*⁵ the Family Court of Australia held that if a child’s safety and wellbeing is not ensured under the Convention then a judicial officer would be reluctant to return that child back to their home (Bourke, Green, Kay, & Sandor, 2000:2).

⁴ United States Court of Appeals, Eleventh Circuit (7 May 1989) Friedrich, 78 F.3d at 1064 at para 81
⁵ (1994) FLC 92-451

In *Murray v Director, Family Services ACT*⁶ and re-enforced in *McCall and McCall*,⁷ concluded that issues pertaining to the best interest of the child, including parenting orders are issues that should be dealt with by the Courts where the habitual residence of the child is, unless exceptions as referred to in regulation 16 of the Convention are made out. That is, the Court must only determine whether the child has been wrongfully removed and should therefore be returned. Issues relating to the care arrangements of a child are of a separate nature. The principle that governs child related matters in Australia, the best interest of the child, does not govern applications made involving the Convention and therefore cannot be applied. Countries such as New Zealand, the United States of America, Canada and Scotland also held this position (Bourke et al., 2000:3-4). It was later held in *ZP v PS*⁸, in a decision given by the High Court of Australia that if a child is abducted and the relevant country is not a part of the Convention then the best interest of the child is of paramount consideration as stated in the *Family Law Act 1975*, rather than the “mandatory return” of a child. However, in situations where a child has been removed to a country that is not a signatory to the Convention then it is usually considered necessary for the child’s parents to begin legal proceedings in that country to recover the child.

2.3.2 The International Interpretation

International child abductions involving countries covered by the Convention are increasing. In Australia, for example, 17 children were reported as abducted in 1989-90, and at 31 March 1999 there were 113 cases of reported abductions (Kay, 1999:7). It is believed that the

⁶ (1993) FLC 92-416

⁷ *State Central Authority (Applicant): Attorney General of the Commonwealth (Intervener)* (1995) FLC 92-551

⁸ (1994) 122 ALR 1

number of applications is increasing because international travel is more accessible, thus increasing the number of inter-cultural marriages or relationships. In such circumstances, the AFP play an important role in acting upon the request of the Courts to ensure that Australia continues its obligation in accordance with the Convention (Bowie, 2001:2; Fogarty, 1995:1-3). The role of the AFP and police services in family law issues will be further discussed in section 2.4.1.

Whilst it is recognised by each country that the underlying principle of the Convention is to protect children and to ensure their welfare, each country view aspects of the Convention differently. As such, each principle of the Convention may be given a different interpretation or level of importance depending upon culture, religion, social values and family dynamics. For example, in the United States of America there is a strong commitment to the enactment of the Convention and thus any contravention is viewed as serious. This is noted through the level of sanction imposed for a contravention of the Convention. Congress in the United States of America passed the *Federal Kidnapping Crime Act of 1993* thus giving the ability to impose criminal sanctions for the abduction of a child by a parent (Bowie, 2001:6). Whereas, under Australian law parental child abduction is not a criminal offence. The Family Law Council (1998b) produced a report in relation to whether parental child abduction should or should not be a criminal offence. The Family Law Council recommended that parental child abduction should not be criminalised as it would not be a deterrent and that the nature of the incidents were not of a criminal nature. The usual motivation of parents who wrongfully removed or retained a child are (i) parent's desire to return to live or obtain the support of family and friends who are overseas following the breakdown of a relationship, (ii) A parent's desire to move overseas to where a new partner lives, (iii) a parent attempts to prevent the

child from having access with their other parent and (iv) a parent wanting to flee a situation involving domestic violence. If parental child abduction were to be criminalised, this may have an adverse impact upon a child's relationship with a parent and decrease the possibility of a child being returned voluntarily by a parent to their "habitual residence" (Bourke et al., 2000:32-37).

2.3.3 Enforcement of Return Orders

Section 111B was inserted in the *Family Law Act* 1975 to give government authorities the power to enforce regulations as stipulated within the Convention. Australian domestic laws have incorporated terms as outlined within the Convention through the introduction of the *Family Law (Child Abduction Convention) Regulations*(1986). The type of orders Australian authorities are able to order are outlined in regulation 14 (1) and 15(1) (Bourke et al., 2000:37-38). Regulation 14(1) states the following:

14(1) [Application where child removed to, or retained in Australia: Form2]

In relation to a child who is removed from a convention country to, or retained in, Australia, the responsible Central Authority may apply to a court in accordance with Form 2 for:

- a) *An order for the return of the child to the country in which he or she habitually resided immediately before his or her removal or retention; or*
- b) *An order for the issue of a warrant for the apprehension or detention of the child authorising a person named or described in the warrant with such assistance as is necessary and reasonable and if necessary and reasonable by for, to:*
 - i. *Stop, enter and search any vehicle, vessel or aircraft; or*
 - ii. *Enter and search premises;*

If the person reasonably believes that:

- iii. *The child is in or on the vehicle, vessel, aircraft or premises, as the case may be; and*
- iv. *The entry and search is made in circumstances of such seriousness or urgency as to justify search and entry under the warrant; or*

- c) *An order directing that the child not to be removed from a place specified in the order and that members of the AFP are to prevent removal of the child from that place; or*
- d) *An order requiring such arrangements to be made as are necessary for the purpose of placing the child with an appropriate person, institution or other body to secure the welfare of the child pending the determination of an application under regulation 13; or*
- e) *Any other order that the responsible Central Authority considers to be appropriate to give effect to the Convention.*

Regulation 15(1) allows a court to make an order in relation to what is stated in regulation 14(1) or make an order to give effect to the Convention. Regulation 20 allows for orders or arrangements to be made for the child to be returned to his habitual residence.

In rare circumstances does the child need to be removed from the respondent parent prior to them returning to their habitual residence. *In the case of DM v Director – General, Department of Community Services*⁹ a order was issued for the child to be taken into custody, as the respondent father had intentionally abducted the child from the applicant mother after their separation. The then Chief Justice of the Family Court believed the father might move the child from his current address and ordered a warrant for the child to be removed from the father’s care. The Court, in the majority of circumstances would impose restrictions around a child such as the removal of passports in order for a child not to be placed at risk or kept from authorities (Bourke et al., 2000:37-38; Nicholes, 1996:38-40).

2.4 Australian Police Services

2.4.1 Police Services Models, Roles and Relationships in Justice

⁹ [1988] FamCA 1557; (1998) FLC 92-831

The police role and function is viewed as being complex but integral to community safety, order and the enforcement of criminal law. The police services within Australia are given diverse powers through legislation and are viewed as the primary body that maintains law and order. There is no doubt that police duties have a privileged importance by the Government and by the public.

There are individual states and territory police forces and the federal police force. Family law matters are federal matters and as such, the responsibility of enforcement lies primarily with the AFP. However, if directed, state and territory police services are able to enforce orders issued under the *Family Law Act 1975* (Bryett & Harrison, 1994:78-85).

In relation to parenting orders a relevant court must issue a warrant (recovery order), giving power to the Police to act and enforce a parenting order. An existing parenting order issued by the Court does not automatically allow police services to enforce that order, a further application to the relevant court must be made and a warrant would need to be issued in order for the Police to act (Penteado, 1993:22-25). This is because all matters pertaining to family law issues are of civil matters and the police services need a court order to permit their intervention (Schultz, 1999:26-33).

The police have a key role in crime prevention and the detention of those who break the law. Many community members view this role as the cornerstone of policing, “to catch the bad guys”. However, the police have many diverse roles and functions within the community. Maintaining social order is also an integral role that police members incorporate within their

work duties on a daily basis (Avery, 1981:34-39, 47-49; Bryett & Harrison, 1994:78-85; Lewis, 1999:8-17; Nicholson, 2002b).

However, there is broad debate by researchers such as Katzen (2000) that police services are not adequately funded by the Government to fulfill all their obligations. The role and function of police services within the community is diverse and has many aspects to its operation, it is difficult to quantify in terms of finances. Lack of funding and resources often place police services under strain to meet all of their job requirements and may cause organisational difficulties within the workforce. It can also be argued that police involvement in maintaining social order is difficult to measure in terms of efficiency and effectiveness, and therefore police productivity cannot be accurately quantified (Grabosky, 1989:152). In situations where there are insufficient resources and competing duties to be undertake, police services are required to prioritise their duties in rank of importance.

Despite the large amount of funding and resources put to law enforcement agencies it is nonetheless difficult to demonstrate their level of accountability (Lewis, 1999:31-34). The AFP evaluates its work in accordance with its Case Categorisation and Prioritisation Model. The model was developed by the AFP to “*consider various issues which lead to the acceptance, rejection, termination, finalisation or resourcing of operational matters*” (Australian Federal Police, 2005:1). The model is used to provide a transparent, objective and consistent system for the evaluation of operational activities. This would include the evaluation of the outcome/output of activities that are team based. The model is of importance to the organisation as the AFP recognises that the number of offences reported

against the Commonwealth exceeds its investigation capacity. Therefore, the AFP must ensure that its limited resources are directed into operations of the highest priority.

This is of particular importance in relation to the current study. One of the objectives of the study is to look at police services obligations, resources, organisational structure and training to fulfill their duties in relation to family law, which are civil matters. The AFP view the organisation's role as being the primary law enforcement body responsible for "*investigating criminal offences against Commonwealth laws*" (Australian Federal Police, 2005:1). The enforcement of recovery orders and other family law matters is primarily the responsibility of the AFP. Given that such matters are not of a criminal nature, it would be of value to determine what priority is placed by the organisation in fulfilling their obligations.

2.4.2 AFP vs State Police Services

There is an ongoing dispute between the Federal and State police services that the area of the enforcement of family law continues to be a federal jurisdiction issue and therefore a matter for the AFP, particularly in relation to the enforcement of parenting orders, and injunctions pertaining to domestic violence.

The police tend to be reluctant to assist in the enforcement of these sorts of orders. State police sometimes tend to take an approach that its a Federal matter and not their concern...obviously, they try to avoid it because it is a difficult area for them to work in (Australian Parliament Joint Select Committee, 1992: 182).

The Victoria Police Manual (2005) in section 116-6 outlines that employees of the Victoria Police have certain responsibilities when there are civil processes that require a service. This includes if a summons is issued under *the Family Law Act 1975*. The manual does not go into extensive detail about the role police play in matters under the *Family Law Act 1975*. The only reference made is in section 5.2 that states:

A summons issued under the Family Law Act should be forwarded to the AFP, except in remote areas of the State where the process should be served if there is no warrant involved. Any other process should be returned to the relevant solicitor, applicant or court (Victoria Police, 2005:2).

The Victoria Police Manual makes no reference to their role in the execution of recovery orders issued under the *Family Law Act 1975*. It in fact outlines that Victoria Police members should only serve a summons in remote areas of the State “if there is no warrant involved”. Even though the Victoria Police Manual does not make reference to the joint responsibility in the execution of recovery orders issued by the Family Court, as previously outlined in section 2.2.3, recovery orders gives authority to all police services within Australia to enforce such orders, thus not solely relying on the AFP to fulfill this role.

Although there is some debate in relation to the role and responsibility of enforcement orders by police services in Australia, in a report conducted by the Australian Parliament Joint Select Committee (1992) there was consensus between the AFP, the Queensland Premier’s Department and the Police Commissioner’s Advisory Group in relation to the difficulties that surrounds the enforcement of parenting orders. They expressed the following limitations:

- There were inconsistencies in the powers given to police services within their warrants. In some cases a Judge would limit the terms of their search for a child, for example to a vehicle. This would result in delays in the execution of the warrant because the police would need to seek amendments for the search provisions.
- Judges would make orders that were difficult to interpret and are impractical, thus causing great difficulty to enforce.
- Police were reluctant to act and become involved in situations where they did not know the full facts.
- Police were unclear on their ability to care for children prior to delivering them to the applicant parent. For example, if the child was located in a separate state to where the applicant parent was.

The report recommended with the support of the state and federal police services that mechanisms for the regular exchange of information and viewpoints need to be improved between the Federal and State Police and the Family Court, in an attempt to rectify some of the issues that surrounded the enforcement of family law orders.

The concerns held by police services in 1992 are of particular relevance to this study as it will look at the difficulties encountered by police services in the execution of recovery orders (enforcement orders), and some parallels and comparisons may be drawn.

2.4.3 Policing Domestic Violence

As outlined in the introduction of this chapter a closely related topic to the area of study is police involvement in family violence (also known as domestic violence). Similarities can be drawn between police attitudes and responses to domestic violence and family law.

Domestic violence can be described as a ‘tool’ to achieve power and control over partners and children. The violence or control does not necessarily require physical force but can involve psychological abuse, a process of destruction or even ‘mind games’.

Historically, government and police initiatives to domestic violence were fairly limited. Domestic violence was perceived to be an issue between a man and his wife and interference by the Government or police was not viewed as being necessary. In the 1970s, feminists argued that family violence was a violation of human rights and no longer should be considered a private issue. The women’s movement helped place family violence on the public agenda and legitimised government action.

Family violence affects one in five women in Victoria. While domestic violence affects people throughout the community, statistics indicate that victims are mostly women and children. The New South Wales Crime Statistics and Research recorded that in 2004, 71% of victims of domestic violence were women and 80% of the offenders were men. It is clear that women are frequently the victims of spousal abuse and a lot of the time women do not report such incidents of violence to the police. It is believed that in Victoria less than 20% of women affected by violence make police reports. Indigenous women in Victoria are 8 times more likely to be victims of domestic violence which is also often unreported (People, 2005:6; The Department of Human Services, 2005:2).

While all social classes experience violence, research suggests that individuals with lower socio-economic status are more vulnerable. Factors such as unemployment, poverty, inadequate housing, cultural factors, excessive alcohol use and violence being a learnt behavior contribute to spousal abuse. Often women are constrained from leaving such circumstances due to financial difficulties, accommodation problems, the possibility of losing their child(ren), threats made by their partner, cultural factors, social stigma and isolation, fear, shame, lack of confidence and self-esteem (Evans, 2005: 36; McMurray, 2005: 223; Nixon, 1987: 137-138; Parker & Lee, 2002: 142-146).

There is a vast amount of literature exploring police attitudes and responses to an area of law that was historically believed to be private and should be “kept behind closed doors” and arguably not a matter for the Police. However, the issue of domestic violence is of considerable public concern and the State and Federal Government have placed significant importance and focus on addressing the impact of domestic violence on families and children, through government bodies such as the Courts and the Police.

In 2003/2004 the Victoria Police recorded more than 28,000 family violence incidents. Furthermore, demand for police to respond to such incidents increased by 45% within a three-year period. In the same time frame police reported that 36% of attended incidents of violence were repeated visits to the same households. There is no doubt that police services play an integral role in responding to domestic violence and are often the first service involved in assisting and attempting to break the cycle of violence. In addition, the role of police is pivotal in providing immediate protection to victims and secondary victims such as

children (Kolar, 1995:24; New South Wales Ombudsman, 1999:8; The Department of Human Services, 2005:2).

However, in various research reports, the Police have been criticised for their lack of involvement or intervention in domestic violence situations. The New South Wales Ombudsman Office (1999), the Australian Capital Territory Ombudsman (2001) and Ombudsman Western Australia (2003) all produced reports in relation to the policing of domestic violence. The Ombudsman offices each received a number of complaints in relation to the way police services handled situations of domestic violence. Each report indicated that policing violence is a difficult task and police attitudes along with community attitudes are influenced by historical and social factors such as the perception of domestic violence is a private matter and should be handled within the family unit. Police officers indicated a strong dislike for attending domestic violence incidents and problems in police not adhering to their own policies and procedures for responding to family violence. The reports further indicated that there was a lack of training for police officers and police having limited resources to adequately deal with the problem of family violence.

The concerns relating to the lack of response by police services to incidents of domestic violence are not only confined to Australia. Mei-Kuei Yu (2002) conducted research into police responses to domestic violence in Taiwan and England. In both countries domestic violence was viewed as being a private matter and not a matter for police. Overall, 40 battered women were interviewed from both countries and interviews and focus groups took place with police officers in Taiwan. The research found that in Taiwan police responses to domestic violence were criticised in terms of the attitudes of police and blaming of victims.

Whereas, in England the Police were disapproved of for not arresting the abuser. The findings indicated that police responses to domestic violence in both countries were inadequate and failed to help victims of violence. Both countries had similar problems implementing policy regarding the manner in which police should respond to family violence. The outcome of the research expressed that training and education for police was necessary however, it was conceded that the most difficult task would be to change the attitudes and views of police members in relation to dealing with domestic violence.

However, in examining police responses to domestic violence in culturally diverse communities, Wakim (2002) found that there had been a shift by police and communities perceiving domestic violence to be 'private' matter. Surveys with 200 police officers in New South Wales and 74 community leaders and service providers to people from ethnic backgrounds were conducted. The main findings suggested that there has been a shift in police attitudes when dealing with victims of domestic violence and, that the level of support offered by police to ethnic communities was positive. The study also illustrated that the majority of police felt that specific training and networking with external agencies was insufficient.

In each Australian State and Territory there is legislation under which victims of domestic violence can seek protection. In most States and Territories such orders are termed as a 'protection order'. The order generally seeks to protect victims and /or their children from being exposed to further violence, threats or verbal harassment by the defendant. A breach of an order is considered to be a criminal offence and is enforceable by police services. A major difficulty in obtaining a protection order is that women who leave violent relationships are

often exposed to a number of different legal jurisdictions. That is, women often attend state jurisdictional courts to obtain protection orders and then are required to attend the Family Court or the Federal Magistrates Court to obtain a parenting order relating to their child. The complexity is magnified where child protection issues arise. Furthermore, women experience difficulties in enforcing intervention orders when they are required to facilitate court ordered contact arrangements that are in existence. Magistrates are given the power under the *Family Law Act 1975* to revise, vary, discharge or suspend a Family Court order relating to contact.

Many women and children who leave violent relationships often continued to be exposed to further violence particularly when facilitating contact. This was one of the criticisms of the *Family Law Reform Act 1995* as the legislation focused on both parents providing continuity of care and situations involving family violence were often not addressed, went unnoticed or dismissed. On the contrary, the Australian Law Reform Commission's (1995) report recommended that decision-makers should be more firm in refusing to make an order allowing contact if it is in the best interest of the child, particularly in abuse and domestic violence cases. Rhoades, Graycar and Harrison (1999) found that non-resident parents were more likely to be granted interim contact with a child, unless there was risk of physical harm. Whereas prior to the *Family Law Reform Act 1995* it was more common for access to be suspended or supervised until the final hearing (C.Brown, 1995:251-259; Rhoades et al., 1999:24-26).

Katzen (2000) investigated the response by police in rural New South Wales to breaches of Apprehended Violence Orders that occurred during child contact handovers. The research canvassed the views of those who had taken out an Apprehended Violence Order, all of whom

were women and the views of the New South Wales Police Service. The study found that police were not willing to respond to family disputes because:

- They believed they could not act unless there was evidence of a breach of the order;
- Police responses were influenced by officer's attitudes towards women and non-resident fathers; and
- The exchange of children and contact arrangements were family law matters and not police matters.

Further to the findings outlined above, the research found that police discretion hindered the recording of such incidents and that the Police had poor administrative and educational training in relation to family law disputes. The Police viewed breaches of Apprehended Violence Orders as a social issue rather than a law enforcement issue. Even though police were to "*treat all breaches seriously, no matter how minor,*" the research strongly indicated that the Police do not have the resources to deal with family disputes (Katzen, 2000:119-141).

Kaye, Stubbs and Tolmie (June 2003) reported on negotiating and facilitating child residence and contact arrangements where there has been a history of domestic violence. The research found that most women interviewed ended their relationship with the perpetrator of violence but did not necessarily end the violence and the majority of post separation was linked to the negotiation and facilitation of child contact. The report further found that the protection of women and children who are victims of domestic violence was often overlooked by the competing view that it was in the child's best interest to have contact with both parents. Women are often pressured to consent to the father having contact with the child or even to

become a non-resident parent when in court, due to fear and repercussions. The report found that there were many instances where unsafe contact arrangements were being made whether through private arrangement or by the Courts. If the Court ordered for contact to be supervised, women would often place themselves in unsafe situations in order to supervise the contact, as there are limited contact centres with long waiting lists. Women and children are continually being exposed to violence and threats upon handover. It is widely recognised through literature that the exposure of domestic violence has detrimental impact upon a child's development, emotional and physical well-being. Many women who decide to leave violent relationships and attempt to break the cycle of violence are often placed in situations where it makes it difficult or even impossible to do. The findings indicated that 97.5% of women had experienced violence or abuse after separation and most women went to great lengths to deny the child from having contact with their father's. However, due to fear and pressure they often conceded.

In the same study participants discussed their experience with police. Nineteen women participated in the study and all reported different feelings on their experiences with police when dealing with circumstances of domestic violence. Three reported that police were consistently helpful, nine found police consistently unhelpful and seven found police assistance as both helpful and unhelpful depending on the officer or station. Women who reported difficulties with the Police stated that, the Police did not take their report seriously until a serious incident of violence had occurred (Kaye, Stubbs, & Tolmie, November 2003:82-85).

Even though the focus of this study is not in relation to domestic violence the information outlined above has significant relevance and similarities can be drawn. Not only because domestic violence is a likely contributing factor as to why parenting orders are breached, but also consideration need to be given to police attitudes and ideologies when dealing with recovery orders. Domestic violence has traditionally been viewed as being a ‘private’ matter and therefore not a role for police. The research outlined above indicates that there is a link between police attitudes and police behaviors, which informs their daily practice. Consideration to be given as to whether the Police are also reluctant to become involved in enforcing of recovery orders due to factors such as unfamiliarity, lack of support, training, personal beliefs and/or resource issues.

2.4.3.1 *Addressing Domestic Violence*

Whilst it is acknowledged many initiatives have been implemented to address issues of domestic violence through state, federal and local government, these initiatives are outside the scope of this study to discuss in any detail. Consequently, the primary agencies utilised in the methodology, being the Courts and the Police will be discussed in this section.

Within Victoria, intervention orders can be applied for through the *Crimes (Family Violence) Act 1987*. In 2002, the Victorian Government introduced the Victorian Women’s Safety Strategy. The Strategy was responsible for developing a Police Code of Practice regarding police responses to family violence and assisted in establishing two specialised Family Violence Courts, located in Heidelberg and Ballarat (Peirce, 2005:1-3).

In August 2004 the Victoria Police *Code of Practice: For the Investigation of Family Violence* (2004) was introduced and aimed to re-enforce that family violence was a fundamental responsibility of policing. It further acknowledged that responding to domestic violence required a collaborative and multi-agency response between service providers.

The Code firmly stipulates police accountability when responding to incidents of family violence. The Code outlines a systematic process in relation to how police will respond to all reports made regarding family violence. The Code aims to ensure the safety of victims, early intervention and that investigations and prosecutions of criminal offences occur (Victoria Police, 2004:x-xiii). Police are given the responsibility to assess immediate and future risk and take appropriate action, whether that is of a criminal or civil nature. The Police may apply for an intervention order under the *Crimes (Family Violence) Act 1987* or the *Family Law Act 1975*. The Code indicates that police are to make an application for an intervention order on behalf of the aggrieved family member when the safety, welfare or property of a family member is in danger by another person (Victoria Police, 2004:37-44).

Consideration need to be given to the impact the Code would have on other areas of policing. The responsibilities specified are resource intensive and this may impact on police being able to fulfil other duties. As previously outlined in section 2.4.3 one of the criticisms was that police did not have appropriate resources to deal with problems associated with domestic violence adequately.

In 2000, statistics indicated that 68 out of 91 judicially determined cases by the Family Court, reported violence as a contributing factor in decision-making (Family Court of Australia,

2004c:1). In 2004, government bodies and policy makers placed greater awareness and emphasis on family violence, and the impact exposure would have on the emotional and physical well-being of aggrieved family members including children. There was also recognition that family violence placed extreme pressure on family dynamics and functioning. Consequently, the Family Court of Australia implemented the *Family Violence Strategy 2004-2005* (2004b) . The Strategy focuses on the following areas:

- Information and communication;
- Safety;
- Training;
- Resolving of disputes; and
- Decision-making.

The Strategy has established a steering committee that oversees its implementation. The focus of the Strategy was to improve the way in which court officials dealt with cases involving family violence. By educating court staff and clients, and assessing the methods used to deal with family violence, it was anticipated that the Court would be better equipped to tackle the long-term effects of family violence on victims and children through the use of services (Family Court of Australia, 2004b:1-12; 2004c:1-2). The amendments made via the *Family Law Amendment (Parenting Responsibility) Act 2006* as discussed in section 2.2.4.4 supports the Courts focus on improving the resolution of cases involving family violence via an avenue that would ensure the children's safety and the safety of parties.

2.5 The Effects of Divorce on Children

It was outlined in section 2.4.3 that family violence can have a detrimental impact upon a child's emotional and physical wellbeing, and that the cycle of violence may often continue in circumstances of divorce. However, it is important to acknowledge that circumstances surrounding a separation may still have a major impact upon a child's emotional well-being, despite violence not be a contributing factor to the breakdown of a relationship.

The effects of divorce on children varies, however one effect that is unavoidable is change. Children do not like change, as it is unsettling and at times can be deeply disturbing. This is largely because a child's sense of safety and security develops through consistency and stability. One of the major effects of divorce on children is that the stability or 'what they know' is gone. Most children find divorce to be distressing and wish that their parents would reunite. There are short-term responses of children to parental separation, however there could also be longer-term outcomes, which are often described in terms of children "not recovering" from the separation. These are different in quality and often represent more than the persistence of a short-term reaction.

The main focus of this research is not on the emotional or psychological effects of family law matters on children. Participants from this study were asked to describe their own experiences in relation to the execution of recovery orders, and their observations of the emotions and reactions displayed by parents and children through narrative. Therefore, it was felt that the impact of divorce on children should be briefly discussed.

Banks (1994:87) outlined some of the all too common scenarios told by parents, children and relatives about access arrangements and situations children are exposed to by their parents.

She outlined the following:

- Children as young as two and three years left waiting on the footpath by their resident parent for their access parents who may or may not show up,
- Infants pulled screaming from resident parents' arms and forcibly restrained in the car by the access parent,
- Children exposed to their parents physical fighting before and after access visits,
- Siblings separated according to the access parent's preferences; the 'rejected' child is left at home with no warning or explanation.
- Children from the ages of 2 –12 are often under regular psychiatric care to help them cope with the constant changing environment.
- Children tend to display symptoms of psychosomatic illness. This would include vomiting, total rejection of both parents, and sometimes outbursts of physical violence.

The circumstances surrounding divorce often presents with many challenges for children this includes; a degree of conflict pre and post separation between their parents, a decline in the interaction between a child and both parents, a decrease in economic resources and other stressful changes such as leaving the family home. Not all children experience all of these changes, however most experience some which may have a traumatising effect on a child depending upon the degree of exposure (Amato, 1997:22-23; Cartwright, 2005:1-7).

Infants of divorced or separated parents often experience insecurity and disorganisation in their attachment with their primary carer, particularly if their primary carer is going through their own difficult period of adjustment. It is during the infancy years that development of attachment is critical.

Pre-school children often experience confusion as to what is occurring and why one parent has left the other. Pre-school children are frightened and anxious that when a parent leaves they too will be left alone. Pre-school children in comparison to children of other ages are the most vulnerable to feelings of loss and rejection. Their behaviour may regress to more immature kinds of behaviour, as a reaction to stress and a way for them to return to more happier times (Clarke-Stewart & Brentano, 2006:109-112).

School aged children have a better understanding about divorce and separation, however they still experience high levels of anxiety, grief and sadness. Children of school age yearn for things to be as they were and wish to spend more time with the non-resident parent. Older school aged children (approximately 9-11 years old) internalise their grief and sadness. They may show anger, animosity and blame towards a parent because of the divorce (Clarke-Stewart & Brentano, 2006:115-125; De Vaus & Gray, 2003:10-18; Stern-Peck, 1989:81-105).

Young adolescents who experience divorce are often required to mature faster. They are often given greater responsibilities in the family home; and are generally the pillar of strength for the resident parent. The early push for maturity however, can have a detrimental impact upon a young adolescents emotional well-being and may lead to depression. Young adolescents have a good sense of what is occurring but find it frustrating as they are unable to

control or rectify the situation. The responsibilities placed on a young person and the change in family dynamics at times lead them to engage in risk taking activities such as criminal activity, drugs and alcohol (Clarke-Stewart & Brentano, 2006:115-125; De Vaus & Gray, 2003:10-18; Stern-Peck, 1989:81-105).

Buchanan et al (1991) conducted a study involving 522 adolescents between the ages of 10-18. The interviews explored the participants feelings of being caught between their parents conflict that had separated four years prior. The results of the study suggested that adolescents who felt caught between their parent's marital problems were more likely to exhibit behavioral problems, including deviant behaviour and depression.

The effect of divorce on children is exacerbated with the likelihood of long-term repercussions in situations where there is a high level of parental conflict. This may include behaviours such as (i) high levels of anger, hostility and distrust, (ii) displaying physical aggression and verbal abuse, (iii) sabotaging a child's relationship with the other parent, (iv) inability to communicate and cooperate in relation to the care of the children, and (v) unsubstantiated allegations about a parents behaviour (eg drug use and violence) and parenting. Children are likely to be exposed to high levels of conflict following a separation. However, when post-separation conflict occurs between parents, it is less likely to involve a level of compromise and the child is likely to be the topic of conflict. Research shows that children of high conflict divorcing families are often pre-occupied with trying to survive emotionally in their current climate and are confused about their loyalties. This creates anxiety for a child and their everyday activities such as play and learning decreases, as they are absorbed with their emotions and internal struggle to cope (Clarke-Stewart & Brentano,

2006:143-145; McIntosh, May 2002:2-4; Noller, Feeney, Peterson, & Atkin, 2000:68-73; Oppawsky, 1989:139-151).

Another repercussion of high levels of conflict is when one parent takes their child against the will of the other parent or court order. Section 2.3.1 and 2.2.3 outlines the legal recourse available to deal with such instances. What policy and legislation often fails to indicate is the real emotional impact this would have on a child and parent. Parents would often state in such circumstances that their child had been ‘kidnapped’. When one thinks of kidnapping images of a child screaming and being snatched away from all that they know comes to mind. When a parent abducts a child and refuses that child the right to see the other parent it may leave them frightened that they will never see the other parent again, they need to change their routine and their loyalties are divided. As discussed above this would create anxiety and emotional instability and uncertainty (Marquardt, 2005:72-76).

Parental conflict explains many of the difficulties and adjustment problems children face after divorce. Children of separated or divorced families are likely to be low achievers academically, in comparison to children from intact families. They are more likely to exhibit behavioural problems, such as anger outbursts and are more likely to develop mental health issues later in life, including depression or anxiety disorders (Guttman, 1993:171-198; Kienhuis, Wilks, & Reece, February 2003:1-3).

The emotional, social and economic factors of separation are likely to cause a number of problems for a child. The quality of a resident parents level of care and parenting is likely to decrease and a resident parent can experience stress and depression, economic hardship, the

loss of contact with a parent, ongoing conflict between parents, and the necessity to undertake additional household responsibilities can lead to rebellion. Some children maybe troubled prior to the separation and the breakup may intensify these difficulties (Clarke-Stewart & Brentano, 2006:132-142; Guttman, 1993:158-164; McIntosh, May 2002:3-8).

Children do not wish for their parents to separate as divorce represents a collapse in their family structure, external world and the way they perceive themselves. A majority of children experience various emotional and physical reactions to the divorce; such as sadness, anger, confusion and guilt. Whilst adjustment to this change generally improves over time, children require a stable and supportive network to be able to assist them getting through and coming to terms with the changes. Without such a network and without a nurturing home environment, the effects of divorce on children can be long-term.

2.6 Conclusion

Family law is a complex area of justice that has undergone many legislative and structural changes. From the area being governed by ecclesiastical law (the law of the church) through to the developments that have seen family law be established into its own specialised arena, with specifically enacted legislation to deal with such civil legalities that impact significantly upon family dynamics and functioning. Family law within Australia today continues to develop through recommendations made via research conducted by various governmental bodies, such as the Family Law Council and the Australian Law Reform Commission. Such changes may be viewed as a reflection of the shifting social beliefs and the need to improve the quality of service delivered to those within the community.

Issues relating to family relationships in Australia and the promotion of equality particularly for women, were left untouched by the Government prior to the Whitlam Government being elected. The introduction of the *Family Law Act 1975*, was one piece of legislation introduced by the Whitlam Government that promoted equal opportunity for women.

The *Family Law Act 1975* deals with property disputes, matters relating to children, dissolution of marriage, injunctions and maintenance. The focus of this chapter however was on parenting orders, in particular the issuing of recovery orders once a parenting order is breached. Amendments to the legislation, through the *Family Law Reform Act 1999*, and the *Family Law Amendment Act 2000* have seen crucial changes undertaken regarding parenting orders. The main rationale for such changes was due to re-occurring non-compliance with orders.

The *Family Law Reform Act 1995* changed the terminology of parenting orders to eliminate parental possession of a child and re-enforce parental responsibility for the care of their child(ren). However, various research conducted by Rhoades, Graycar and Harrison (1999) and the paper by Tolmie (1998), indicated that the change in terminology did not decrease the number of applications brought to the Family Court of Australia. These reports reflected an increase in applications for contact and no evidenced shift by parents in relation to their responsibilities as a parent. These findings were the driving force behind the implementation of the *Family Law Amendment Act 2000* that saw significant changes made to the penalties for breaching parenting orders. The changes also gave Judges/Magistrates a wider scope to enforce penalties with a greater consequence, incorporating greater use of dispute resolution services and criminal sanctions.

The Federal Magistrates' Court which is governed by the *Federal Magistrates Act 1999* was introduced to help deal with the increasing workload and delays with unacceptably long waiting lists. Due to the apparent an increase in the number of applications brought to the Court since the introduction of the *Family Law Reform Act 1995*, these organisational changes were introduced to increase community accessibility with less formalities and costs.

However, the most significant changes to the *Family Law Act 1975* that has strengthened and developed some of the previous amendments is the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. As the *Family Law Reform Act 1995* did not achieve the cultural shift the Government had anticipated, it was recommended that the Courts required wider range of options when imposing penalties for breaches of parenting orders in order to deter parties from further breaches. The *Family Law Amendment (Shared Parental Responsibility) Act 2006* aims to promote shared parenting and parental responsibility in an environment that enables parties to resolve their disputes outside of the Court setting, through the use of services such as Family Relationship Centres. Furthermore, greater emphasis is placed on ensuring a child's safety from exposure to family violence after separation and also less adversarial court procedures in child related matters, thus ensuring a greater focus on a child's well-being.

However, the role of police services in family law matters has not altered. Police services within Australia, in particularly the AFP, are viewed as being the primary agents in enforcing orders made under the *Family Law Act 1975*. The Police are given the primary task of maintaining law and order not only through crime prevention, but also social order. There

have been ongoing difficulties in relation to resource allocation as police productivity is often difficult to quantify in terms of finances. The Case Categorisation and Prioritisation Model used by the AFP seeks to evaluate operational activities and priorities such duties, as the organisation recognises that demand exceeds capacity. Given this, one of the challenges for the organisation is to rationalise the level of priority placed on fulfilling their obligations in relation to family law matters in comparison to other policing duties, that are of a criminal nature and are viewed as core business.

The Police are given the integral role of enforcing recovery orders, which may incorporate situations relating to International Child Abduction. Police involvement in the later area of law is complex and police members may need to deal with situations swiftly and with expertise and professionalism. The objective of the Civil Aspects of Child Abduction is to protect children from the wrongful removal from their habitual residence and ensure that they are returned safely.

A closely related area of study is police involvement in domestic violence. Given that there is little research in relation to police involvement in the execution of recovery orders this area of discussion in this chapter is of importance to gain insight into police perspectives in dealing with family situations. Research indicates that police disliked attending domestic violence incidents, often did not adhere to police policy and procedures and did not have sufficient training.

Many women leave relationships because of domestic violence. However, women are continually place their own safety and the safety of their child(ren) at risk when facilitating

contact. In a study conducted by Katzen (2000) police were not willing to respond to family disputes unless there was evidence that a breach had occurred. Police were also reluctant to become involved in such disputes as they viewed the exchange of children and contact arrangements as a family law matter and not their responsibility.

Through various research and changes imposed, the primary focus of such amendments has been to enhance the operation of the court system and decrease the potential emotional and psychological consequences of divorce on children and families. There is a vast amount of literature on these aspects of family law, however, there has been little research or consideration given to the role and function police services play within such an important area of law. Given that the Police are entrusted with the role of enforcing not only civil orders but also recovery orders, previous research has failed to look at how this responsibility would impact on police systems, the value they place on the function and their perspectives.

3. Research Methodology

This chapter has two themes that will be addressed in two sections. Section 3.2 will look at the theory that forms the research and guides the research practice. Whereas section 3.3 will look at the techniques and approaches used to conduct the research.

3.1 Introduction

This chapter looks at the theory that underpins the research methodology. The content of this chapter looks at the theoretical perspectives that formed the conduct and analysis of this study. Theoretical paradigms are a set of theories that help shape how people interpret what they observe, and the process in which they interpret the observations. May (1997:28) outlined the importance of theory in the conduct of social research. He stated:

The issue for us as researchers is not simply what we produce, but how we produce it. An understanding of the relationship between theory and research is part of this reflexive project which focuses upon our abilities not only to apply techniques of data collection, but also to consider the nature and the presuppositions of the research process in order that we can sharpen our insights into the practice and place of social research in contemporary society.

Two qualitative research methods were used in this research, Grounded Theory and Narrative Inquiry. Qualitative research focuses upon the examination and development of theories, through methods focus upon providing meaning and interpretation to social structure and processes. A detailed discussion in relation to Qualitative Research, Theoretical Paradigm, Narrative Inquiry and Grounded Theory is discussed below.

The focus of this chapter is not only to provide a theoretical framework for the research but also to describe how such theory can shape the general interpretation of the data collected. Theory provides a framework to guide research practice. The chapter takes readers through a journey of the modes and techniques used to conduct this research, from data collection and analysis, to the difficulties encountered throughout the course of the research.

3.2 Research Theory

3.2.1 Qualitative Research

Research is about taking a topic of interest, researching it and providing solutions or a better approach; it is about problem solving, developing theory or testing a theory and expanding knowledge (Higgs, 1998b:137). Social science research in comparison to scientific research means the study of human behaviour. The aim of social science is to build theory about people and the human behaviour. Applied social science can be distinguished by focusing upon one particular area of human behaviour, for example, social work and family studies (Punch, 1998:8-9).

There are two broad methods of classifying research *Qualitative* and *Quantitative*. In the 1960s, the main research method of quantitative research was being challenged and the interest of qualitative research became recognised, thus causing a split in the two fields (Punch, 1998:2-3). Qualitative research unlike quantitative methods uses non-mathematical methods and is primarily observation and interpretation based. No one research method is more superior than the other and when choosing a research method consideration need to be given to which method would be more appropriate to the research problem or aim. For example, if the research aim were to make systematic comparisons then quantitative methods would be more appropriate in achieving this aim. The primary concern of qualitative research is to look at what things might mean within a particular field of study. It allows researchers to immerse themselves into the data and its aim is to discover and understand (Denzin & Lincoln, 2000:9-14; Ezzy, 2002:2-6; Higgs, 1998a:1-2; Punch, 1998:13-14; A. L. Strauss, 1990:2-3).

Those who seek to look at efficiency and effectiveness may choose to use quantitative methods. However, if researchers are looking for a more descriptive method or people's experience as part of the process, as in this particular study, then qualitative methods are used. Why conduct social research using qualitative methods? It may be argued that qualitative research allows for exploration of social structure, belief systems and life. It allows for fields to be complete, and the ability to incorporate human experience (Liamputtong & Ezzy, 2005:257-261; Neuman, 2000:16-18).

The use of qualitative research is essential to this particular phenomenon, as the area of study focuses upon people's experience in relation to a particular process, the exploration of social

structure and is interpretation and observation based. Thus the aim of the research is to unfold the process and difficulties encountered by police services when executing a recovery order issued by the Courts under s.67 of the *Family Law Act 1975*.

3.2.2 Theoretical Paradigm

There is no one clear definition of what the term ‘paradigm’ means. Therefore, not having a single definition allows for individuals to use such a term as deemed necessary within its constraints. Guba (1990:17) defines paradigm as “*a basic set of beliefs that guides actions, whether of the everyday garden variety or action taken in connection with a disciplined inquiry.*” One may argue that there are a number of paradigms that are used to guide our actions and beliefs. For example, the education paradigm guides our learning and teaching. Qualitative paradigms can be used to interpret observations and findings of qualitative research. Such paradigms are viewed by Guba (1990:17-18) as being “*everyday garden variety*”. Crotty (1998:7-8) described a theoretical paradigm as the “*philosophical stance informing the methodology and thus providing a context for the process and grounding its logic and criteria.*” It is the way we view the world and the life around us.

There are a number of paradigms that guide a disciplined inquiry. Authors such as Guba and Lincoln (1985), and Crotty (1998) have focused upon a variety of disciplined inquiries such as positivism, critical theory and interpretivism. With each paradigm/theory there is a set of assumptions that underlies the methodological approach. Not only do these assumptions provide the principle of examining a particular methodology, but also allows for social research to be viewed in different ways and not in a confined manner like in scientific approaches. The difference separating the paradigms is the answers given to three principles.

These principles are known as the *ontological*, the *epistemological* and the *methodological*.

Guba (1990:18) outlined the meaning of these principles as follows:

1. *Ontological*: What is the nature of the “knowable or reality”?
2. *Epistemological*: What is the nature of the relationship between the researcher and the known?
3. *Methodological*: How should the researcher go about finding out knowledge?

Interpretivism is a theoretical paradigm to attempt to explain social settings and human behaviour. Interpretivism is often linked to the likes of Max Weber (1864-1920) and emerged as a counterbalance to positivism. Weber wrote that within social sciences the researcher is concerned with *Verstehen* (understanding). The German sociologist was looking at the willingness of the researcher to immerse themselves into the subject matter and develop concepts that would increase the understanding of reality (Crotty, 1998:66-67; Hagan, 2000:19). If the three principles as outlined above were to be applied to interpretivism the paradigm assumes that there is more than one reality (relative ontology) and approaches the society with a set of beliefs or ideas. Weber’s *Verstehen* looks at the interaction of human beings and also their own sole actions. Weber stated:

Interpretive sociology considers the individual and his action as the basic unit, as an ‘atom’ ...In this approach the individual is also the upper limit and the sole carrier of meaningful conduct... In general, for sociology, such concepts as ‘state,’ ‘association,’ ‘feudalism’ and the like, designate certain categories of human

interaction. Hence it is the task of sociology to reduce these concepts to 'understandable' action, that is without exception to the actions of participating men (Weber, 1970:55).

The researcher creates understanding from participants through a set of specific questions, thus having a subjective epistemology. These understandings come from the participants observations and actions. Such a paradigm is paramount to this research particularly in relation to the methodology and the adoption of Narrative Analysis.

There is wide debate in relation to Grounded Theory paradigms. Corbin and Strauss (1990) assume that the reality is objective, the data collection is unbiased and that the theory sets technical procedures and allows for verification (Denzin & Lincoln, 2000:509-511).

Constructivists assume that by using Grounded Theory there is more than one reality; that the knowledge can be created with a number of differing views by the researcher and the participants, and “*aims towards interpretive understanding of subjects' meanings... Thus diverse researchers can use Grounded Theory methods to develop constructivist studies derived from interpretive approaches*” (Denzin & Lincoln, 2000:510).

This research takes a constructivist view, as it cannot be assumed that only one reality exists. It would not be pragmatic given that the research incorporates the belief and value system of the participants. It would be reasonable to state that each participants view is influenced by a number of factors such as their personal and professional exposure to this particular field of study.

3.2.3 Narrative Inquiry/Analysis

Narrative Inquiry also known as Narrative Analysis is a form of story telling. Its aim is to construct reality, based upon stories that are shared. It is particularly useful to indicate social structure and function, allowing for story telling to be depicted in a chronological sequence of events (Delgado, 1989:2411-2415). Narrative Inquiry is used in a range of disciplines including education, a therapeutic approach for illnesses such as cancer, and linguistic studies (Stevenson & Greenberg, 1998:741-762). Narrative Inquiry differs from other qualitative methods, such as Grounded Theory. Narrative Inquiry refers to the whole account of a person's story. Other qualitative methods tend to focus upon themes and categories rather than looking at people as units of analysis. (Wilkinson, Silliman, Nitzberg, & Aurilio, 1993). Narrative Inquiry does not neatly fit into one particular field. It is known to be interpretive but crosses numerous boundaries of social science. Ezzy (2002:95) outlined that the interest for social researchers is not confined to the meaning of the story or event itself, but also to its broad interpretation of patterns that emerge from a number of narratives. It is these interpretations that give meaning to processes, structure and dynamic. He stated:

The emphasis on whole people and whole narratives represents a radical change of focus. First, it emphasises that the nature of an event or belief is not to be found in the event or belief itself, but in the relationship of the event or belief to a broader interpretive framework or narrative. This places 'purpose' at the forefront of the meaning of something, he or she must locate the event or belief in a broader narrative that defines its purpose, and therefore its significance.

Why do Narrative Inquiry? It allows for insight and understanding to be developed into the narrative account. The interpretation of such data takes the form of expressions of understanding. However, more importantly it allows the participants to have a voice (Higgs, 1998a:64-66). Narrative Inquiry also takes a constructivist view and encourages the researcher to engage with rather than deny the paradigm principles (ontological, epistemological and methodological) of social theory (Ezzy, 2002: 98)

However, Narrative Inquiry has no clear definition and tends to differ depending upon the field or approach of study. There has been considerable debate in relation to Narrative Inquiry having a specific definition. Academics such as Young (1989) state that Narrative Inquiry occurs in "*consequential sequencing*." That one event causes another and these events do not necessarily occur in a chronological manner (Kohler Riessman, 1993:17; Liamputtong & Ezzy, 2005:129). There is no one definition as to how narratives are to be structured. This depends upon the area of study and the purpose of the study. Kohler Riessman (1993) argues that the definition of what constitutes Narrative Inquiry is so broad that it includes everything.

Narrative Inquiry in this particular phenomenon will be incorporated by asking participants to describe and facilitate case scenarios when a recovery order is executed, describing what occurred from beginning to end, the feelings conveyed by people present and the environment and atmosphere of their experience. Narrative Inquiry in this research is to be used to provide illustrations from stakeholders, social context and realism to the research.

Kohler Riessman's (1993) book titled, *Narrative Analysis*, brought together a range of authors in the field of Narrative Inquiry which up until recently were limited. Kohler Riessman (1993:8) stated:

Qualitative researchers often seek to depict others' experiences but act as if representation is not a problem...I share the goal but am more cautious. We cannot give voice, but we do hear voices that we record and interpret. Representational decisions cannot be avoided; they enter at numerous points in the research process, and qualitative analysts including feminists must confront them.

Kohler Riessman (1993:9-17) further discussed that there are five levels of representation in the research process in relation to Narrative Inquiry.

- i. *Attending* – By attending the experience individuals choose what to notice and reflect upon. Things strike individuals in different ways depending upon their values and interest.
- ii. *Telling* – To describe a particular event through our linguistic ability from the way we perceive, understand and experience the event.
- iii. *Transcribing* – Capturing the experience is essential. Recording devices are mostly used in order to attempt to preserve the actual telling of the story. A pause and emphasis may add to the meaning of the story. There is wide debate that transcribing discourse is an interpretive practice as there are many ways to transcribe, for example if the material is to be transformed into written text, how would one document tones and silences?

- iv. *Analysing* – The researcher will analyse the transcript(s) and certain issues will be more critically looked at than others. The researcher makes decisions in relation to ordering, the style and presentation of the information turning. The researcher creates a “hybrid story”.
- v. *Reading* – The final stage looks at how the reader encounters the written and finished product. Those who read the information are able to bring their own meaning to the written information.

These five levels of Narrative Inquiry as outlined by Kohler Riessman (1993:9-17) are incorporated into this particular research. The five levels give a distinct process that would allow researchers to follow when conducting Narrative Inquiry. This process also allows for the researcher to bring to light the essential aspects and bring meaning to the data collected, presenting the information in a manner that will make sense in correspondence with the research aim.

3.2.4 Grounded Theory

In 1967, sociologists Glaser and Strauss developed Grounded Theory as a result of their research into the American health system. However, authors such as Corbin and Strauss placed different emphasis on the analysis of data, focusing upon the opportunities to explore every aspect of the data collected. Strauss and Corbin’s approach to Grounded Theory is becoming more frequently recognised as the better known and used model. Strauss and Corbin (1990: 23) defined Grounded Theory as:

One that is inductively derived from the study of the phenomenon it represents. That is, it is discovered, developed and provisionally verified through systematic data collection and analysis of data pertaining to the phenomenon. Therefore, data collection, analysis, and theory stand in reciprocal relationship with each other. One does not begin with a theory, then prove it. Rather, one begins with an area of study and what is relevant to that area is allowed to emerge.

The aim of Grounded Theory is to explore social processes and also understand the complexities of the interactions produced within these processes. The theories and hypotheses are generated from the interaction with the data. Grounded Theory has the belief that generating new theories, rather than analysing data with existing theories, can increase knowledge (Denzin & Lincoln, 2001:230-232; Heath & Cowley, 2003:2; A. Strauss & Corbin, 1990:23-24). Grounded Theory is not only used by academics but also has a particular utility in research into ordinary daily situations. In this particular study, in the specifics under investigation, little research has been conducted. As a consequence, Grounded Theory, which encourages theory to emerge from the data rather than supporting or not supporting pre-existing theory or studies, is particularly well suited.

Strauss and Corbin (1990:23-24) outlined that Grounded Theory needed to meet a criteria in order to ascertain whether a particular phenomenon fits within the principles of Grounded Theory. It is argued that this particular research fits within the principles of Grounded Theory. The application criteria was further discussed in Denzin and Lincoln (2001:233-241).

- i. *Fit* – Grounded Theory need to be trustworthy to the realities of everyday and fit within a substantive area where the data has been *induced*.
- ii. *Understanding* – The understanding of the theory is crucial. There is a need to allow readers to acquire an understanding as to how such theory can be incorporated or used, whether by sociologists or other laymen. Concepts and hypotheses may be developed to facilitate understanding; this ensures that theories are developed to allow them to be incorporated into everyday realities.
- iii. *Generality* – The categories for generating theory should not be limiting but also not general. The researcher need to allow for categories to have some level of flexibility in order to allow for changing situations to be understood, and to allow the categories to be re-formulated should aspects within the reality change, or if other researchers wish to incorporate or improve the theory.
- iv. *Control* – The theory generated need to allow for individuals wishing to apply the theory in everyday situations enough control to allow the application to be worthwhile. Therefore those who are applying the theory need to be given the opportunity to produce and predict change and also predict consequences for these changes. The crux of controllability is the production and control of change through “controllable” variables and “access” variables” (Denzin & Lincoln, 2001:238). Thus, having a theory that is controllable yet allows individuals to apply the theory whilst having access and control to the data. These aspects are prominent in organisational structures.

Coding in Grounded Theory is essential. Glaser and Strauss (1967) originally described two levels of coding. However, in Strauss and Corbin (1990) the two levels became three. The first level of data coding by Strauss and Corbin is described as *open coding* whereas Glaser and Strauss call it *substantive coding*. Both are very similar in meaning (Heath & Cowley, 2003). Open coding relies upon codes being applied to every unit of meaning within the data. The object of this particular stage is to keep the ideas as open as possible. A coding list or key is generated. It is important that all concepts within the data are coded. The second level of coding is *Axial coding*. Axial coding is used to elaborate on the concepts outlined in level one. This level allows for questions to be asked of the data. For example, in what circumstances does x occur, or what strategies are incorporated to manage x. By using axial coding it will allow the researcher to see common themes emerging and the research begins to take course. *Selective coding* is the final level and allows for categories with similar themes to be linked. This is done by systematically relating the categories with one another (Denzin & Lincoln, 2000: 254; Heath & Cowley, ; Higgs, 1998a: 30-31; A. Strauss & Corbin, 1990: 61-74, 96-142). The purpose of the coding process in Grounded Theory is outlined further within the chapter.

Grounded Theory allows for those who have little knowledge in the area of research, the novice, to conduct qualitative research efficiently and effectively as the methods of Grounded Theory give structure to data collection and analysis.

The use of Grounded Theory in this particular study is essential given that there has been limited research in this field of study. By using Grounded Theory themes, are able to emerge rather than attempting to prove a theory from the outset. The use of Grounded Theory in this

research allows for flexibility in order to adapt to changing situations. This is significant given that the area of family law is constantly evolving and adapting, depending upon social standards and beliefs.

3.3 Methods

The methods component of the research focuses on how the study was conducted, the sources of data, how the data was collected and also how it was analysed. During the life of this study the research has undergone many changes in its scope and data collection methods. There were a number of modes and techniques of data collection used in this study. They are (i) interviews with police members, (ii) observations and, (iii) Journal. A more detailed outline of the methods used is explored in the following sections of this chapter.

3.3.1 Location

The research focused upon the two primary law enforcement bodies within Victoria. That is, the AFP and the Victoria Police. Police services within Victoria, are responsible for the enforcement of parenting orders when a recovery order has been issued under the *Family Law Act* 1975.

The following provides a rationale as to why Victoria was chosen as the basis of the research:

- There was limited previous research focusing upon this particular phenomenon and therefore there were a number of unknown variables, and

- It provided a basis for future research to be conducted on a larger scale (for example nationally) or a more microscopic scale (for instance within the AFP).

3.3.2 Interviews

Eight interviews were conducted with police officers serving in the AFP and the Victoria Police. The participants from the AFP (at the time of data collection) were a part of the Family Law Team or had previously been a member of the Family Law Team. A total of four Federal Agents were interviewed. The participants from the Victoria Police were attached to the SOCA unit. A total of four participants from the SOCA units were interviewed and were at the rank of Senior Constable or Sergeant. SOCA units are responsible for providing the initial response to circumstances/crimes involving adult sexual assault or child abuse. There are thirty-one SOCA units across Victoria and regularly work in conjunction with other services and statutory agencies such as the Department of Human Service (DHS), Child Protection.

The rationale for such a sample is both the AFP and other police services within Australia have the authority to execute recovery orders issued under s. 67 of the *Family Law Act 1975*.

The process in obtaining the participants to participate in the interviews was undertaken in two parts. Firstly, in obtaining participants from the AFP contact was made with the Family Law Team based in Melbourne. Secondly, locating study participants from the Victoria Police proved more difficult. The Victoria Police Research Coordinating Committee, indicated that the SOCA Co-ordination Unit in Melbourne was the most appropriate unit from

which participants could be drawn, given their role and expertise in child related matters. The Victoria Police SOCA Co-ordination Unit sought study participants on behalf of the researcher without success. Consideration was given to whether the Victorian Police database (LEAP) would be of assistance in locating members who had executed recovery orders. However, such information could not be ascertained from the police database. Correspondence was sent to the Family Court of Australia, Statistics Services Unit requesting assistance, in the hope that the data retained by the Courts would identify the names of officers who had previously extended recovery orders. The Statistics Services Unit outlined that the Courts does not seek specific assistance from the Victoria Police in the execution of recovery orders, but rather from the AFP. Therefore, the Family Court of Australia was unable to assist. As a final resort contact was made with the AFP, Family Law Team, in an attempt to locate possible participants from the Victoria Police. The Family Law Team indicated that on occasions they request assistance from the Victoria Police in executing recovery orders, on their behalf, in regional and rural Victoria. This was due to time and resource constraints. Consequently, the researcher contacted regional and rural SOCA units in an attempt to locate participants. As a result, four participants were located who had some exposure to executing recovery orders.

Given the sensitive nature of the areas of discussion, informed consent was sought from participants (see appendix one). A plain language statement was provided to all participants outlining the nature of the research (see appendix two) and also a copy of the approval obtained from the AFP or the Victoria Police.

3.3.3 Observations

A total of twenty observations were conducted. These observations took place randomly at the Family Court of Australia or the Federal Magistrates' Court, Melbourne Registry.

Although the study primarily focuses upon the perspective of police, the purpose of the observations was to provide a holistic picture and provide greater depth to the study. In interviews police described emotional and real life situations. The researcher conducted observations to directly observe, first hand, the dynamics in play that the police described, in order to gain a better understanding of the atmosphere and process of Family Court matters.

3.3.4 Journal

The researcher also maintained a journal. The journal was used for the recording of the processes and avenues taken throughout the research experience. The journal documented the brainstorming of ideas and concepts, obstacles encountered and contact made with various stakeholders. The journal provided to be a useful tool, particularly in the writing of this chapter.

3.3.5 Limitations of the Study

The study has undergone many changes throughout its life. Many of the changes were as a result of unforeseen circumstances and difficulties in obtaining consent to conduct the study.

Initially the scope of the research, including the perspective of decision-makers such as Registrars, Judges and Magistrates with the aim that attention would be given to the processes taken in determining recovery order applications and some of the difficulties for decision-

makers. An application was submitted to the Family Law Court of Australia to seek approval to conduct such research. The Family Law Court of Australia declined to participate in the research. Therefore, the research had to be tailored to focus solely upon police services within Victoria. This is seen as a limitation of the study as such views would have been fruitful to the course, aims and findings of the research.

A further limitation of the study is that only eight interviews were conducted with police officers within Victoria from the AFP and the Victoria Police. At the commencement of the data collection it was anticipated that ten to twelve interviews would be conducted, however as previously outlined, difficulties were encountered in obtaining and locating participants. Given there was only a small sample group, which formed the primary basis of data collection it is acknowledged that saturation was not achieved in this study. This in turn impacted upon the chosen methodologies. For example, Grounded Theory was used, as there were unsupported and limited theories in this field that were current.

The observations were incorporated to try and compensate the small data set of interviews conducted and enrich the analysis process. The researcher recognises that with such a small data set, no firm or concrete findings can be established.

3.3.6 Data Collection Strategy

As previously discussed, eight interviews were conducted to form the primary source of data collection. The interviews were recorded and took place either (i) in person or (ii) via telephone.

The interviews conducted were semi-structured to allow the researcher to probe beyond a standardised answer and explore issues by giving participants the opportunity to elaborate on their responses. (May, 1997:111-112). These are also fundamental principles of Grounded Theory (Heath & Cowley, 2003: 2; Strauss, 1990: 23-24;Denzin, 2000: 230-232). Only one interview was held with each participant as it was considered at the time that all the issues in one interview could be exhausted.

The Interview Schedule (see appendix three) covered five major areas. They were:

- i. General social/employment background;
- ii. Narrative Scenario;
- iii. Administrative processes and current practices;
- iv. Organisational changes; and
- v. Perceptions of what can be done.

Prior to formulating the questions for the semi-structured interviews, the researcher had read various literature on recovery orders, police services and family law. The questions chosen for the semi-structure interviews were formulated to co-inside with the aims of the research. That is, to unfold the process and difficulties encountered by police services when executing recovery orders. The research focuses upon police perspectives, training and organisational service delivery. All interviews were audio recorded and transcribed, including the questions asked by the researcher, as it was determined this might be of importance in the analysis of the information.

Participant observation seeks to allow the researcher to engage, feel, understand and explain a social setting. It involves becoming a part of a group. The observation component of the data collection was a secondary source of data collection. In this particular research the method allowed the researcher to become a part of the Court setting and atmosphere. However, this was not solely confined to the Courtroom but also observations that took place within the Court complex, for example the corridors. The researcher observed cases that were being litigated before the Courts. The researcher noted the details of the cases being heard before the Courts, the reaction of people's behaviours and the Court atmosphere. The researcher's role in participant observation was to create a snapshot of a natural setting for the purpose of developing an understanding of that association. Participant observation recognises that social relationships may differ, however some may have similarities (May, 1997: 132-155). Critics argue that observation research makes no firm assumptions as to what is important. However, participant observation along with other forms of data collection, such as interviewing, may prove to be a useful method in supporting the results and provides social context to the research by directly observing places, people and events. Interviewing alone would not be able to achieve these objectives.

One of the important factors of participant observation is the recording of the field notes. May (1997) outlined that the note taking process and focus would depend upon inquiry and what the researcher set out to achieve. It is also noted that a "*data logging process*" is essential in order to allow for researcher's observations to remain consistent and have some form of structure. (May, 1997: 144-145). For this particular research a observation checklist was created (see appendix four). In creating the observation checklist a number of categories for example, *description of legal proceedings* was developed in order to form a template.

3.3.7 Data Analysis

To prepare for the coding process the researcher transcribed the interviews and observations to enable for the contents to be heard or read on more than one occasion. This approach was not only undertaken in order to become familiar with the data collected, but to also ensure that there were no errors in the transcribing process. The researcher transcribed each interview or observation directly after they were conducted.

The data was transcribed and analysed through the use of Microsoft Word software. Microsoft Word was chosen instead of other better known qualitative data analysis programs such as QSR (formally known as N.U.D.I.S.T). Although Microsoft Word is not a qualitative data software package there are techniques that allow researchers to use some of the functions of Microsoft Word to assist in qualitative data analysis. Microsoft Word being used is becoming more widely adopted as a data analysis program as it gives the novice researcher familiarity, flexibility and structure(Fielding, 1993).

Microsoft Word was used for the following reasons:

- The data set was only of a small scale and researchers who primarily use QSR have a larger sets of data, and
- Microsoft Word like QSR, allowed for flexibility and manipulation of the data to create a more detailed analysis.

All of the transcribed data was placed into one large Microsoft Word document and the *Find and Replace* function of Microsoft Word was used to depict emerging themes from the data through key word searches.

Coding of the data followed the approach developed by Glaser and Strauss (1990), previously discussed in section 3.1.4 of this chapter. Ground Theory outlined that there are two levels of coding. The *substantive coding* technique adopts a multi-coding approach to allow ideas to be as open as possible. The codes emerged from the data and were categorised into themes. Fifty primary codes were generated and the majority of these also incorporated a number of sub-codes. This process allowed for a coding list to be generated, showing the frequency of each code, description and context (see appendix five).

By adopting the *substantive coding* technique the data could be analysed from differing angles, highlighting possible areas of strength in the data from which themes were identified. It also allowed for a greater breakdown in the themes and issues in the data to provide a more accurate and holistic view.

Axial Coding was used to elaborate on the concepts of level one. This particular level gives the researcher the ability to ask questions of the data, refine the categories and themes that start to emerge. Throughout this reflective and systematic process common themes were grouped and the categories were amalgamated (see appendix six). The rationale for this was as follows:

- To avoid duplication and possible loss of data,
- To allow for complexities and difficulties to be grouped and analysed,
- To eliminate the overlapping of themes or sub-themes, which proved to be difficult to differentiate, and
- To allow for the researcher to attain the primary aims of the study, to reflect upon the processes and resources of Family Law issues by police services.

This reflective process assisted in generating the table below. This table is a summary of the themes as they emerged from the first level of coding (see appendix 5). From analysing the first level of coding it became apparent that there were three broad areas of information gathered. The type of questions asked through the interview process was likely to have influenced these broad areas of information gathered. The three broad areas of information gathered is as follows:

- i. Background in family law: A police perspective on parenting orders.
- ii. Process and issues surrounding the execution of recovery orders and Hague Convention matters by police officers, and
- iii. Police organisational issues (structure, resources and training).

These broad areas of information hold no value base but assisted in grouping the information into categories and eliminated the overlapping of themes or sub-themes. The table also demonstrates how the large number of codes and sub-codes generated in appendix 5 (substantive coding) was significantly condensed (see appendix 6). The main themes in the

data, were ultimately re-categorised into the table below that was to form the basis of the findings chapter.

Table 2: Results - Enforcement of Parenting Orders

Description	Frequency
Background in Family Law: A Police Perspective	
The non-compliance of parenting orders	161
Collaboration and knowledge between law enforcement bodies	157
Case demographics (eg socio-economic backgrounds and gender)	157
Police Process in the Execution of Recovery Orders and Hague Convention Matters	
Process undertaken to execute recovery orders and Hague Convention matters	368
Complexities and difficulties encountered	113
The perceptions/emotions of police involvement in family law issues.	338
Priority in the execution of recovery orders	68
Police Structures, Resources and Training	
Resources and organisational structure	157
Police training	150

The numerical value placed in the *frequency* column represents the issues mentioned the most often. As can be seen from the table above, the most common response was regarding the process to be undertaken by police in relation to the *execution of recovery orders and Hague Convention matters*. An illustration of this kind of response would be that police are required to establish the location of the child. For example, whether the child is interstate, regional or overseas.

The second most common response is concerns *the perceptions/emotions of police involvement in family law issues*. An illustration of this kind of response would be as to how police perceive their role in the execution of recovery orders as law enforcers, agents of the Court, and as mediators or negotiators.

The most common response in the section titled *Background in Family Law: A Police Perspective* was *the non-compliance of parenting orders*. An illustration of this kind of response was the participants perceptions as to why a parenting order has been breached, for example a dispute over the primary care of the children or financial issues.

The most common response in the section titled *Police Services Structure, Resources and Training* was *Resources and organisational structure*. An example of this kind of response would be staffing issues, the structure of the units within the police service and communication between police services, in the execution of recovery orders.

As previously discussed, the methodology was divided into Grounded Theory and Narrative Inquiry. The second section of the findings chapter forms the Narrative Inquiry component of the research. From the initial eight interviews conducted, participants were asked to construct a real life example of an execution of a recovery order. Participants were asked to describe such an experience from beginning to end with as much detail as possible. This exercise required participants to describe the feelings, atmosphere and process encountered during the execution of the order. Some participants chose to re-create experiences they have had in relation to family law and not specifically the execution of a recovery order.

The participants' stories were audio recorded in an attempt to preserve as much as possible the telling of the story. The data containing the narrative was coded with a single numerical code. In this case it was number 19 (see appendix 5). The one numerical code was used to differentiate where the narrative responses were within the transcripts. There were fifteen narrative responses, all of which were then copied into a separate document to be analysed.

Kohler Rissman's (1993) five levels of representation (as discussed in the beginning of the chapter) were followed to form the research process in relation to Narrative Inquiry. In analysing the data the aim was to capture the processes, feelings and environment. The data was analysed by manual process given that (i) there was a diminutive data set and (ii) allowed for greater control in relation to ordering the style and presentation of the information.

3.4 Conclusion

Through qualitative research, a descriptive process was to be undertaken to explore the social structure, beliefs and operation of the execution of recovery orders issued by the Courts, by police services within Victoria. The main paradigm (set of assumptions that underlines the methodological approach) used to conduct the research was Grounded Theory. There has been wide debate in relation to Grounded Theory paradigms. The research took a constructivist approach, as it cannot be assumed that only one reality exists, as participants views on the research topic would be influenced by their personal beliefs and their professional exposure to the field of study.

The main rationale for the use of Grounded Theory was that it allows researchers to generate theories from the data set, without preconceived ideas. This was of great importance given there had not been limited empirical research conducted previously in such a microscopic area of law, which encompassed the viewpoint of the police services within Australia.

Narrative Inquiry was also used in a small section of the research. The use of such a research paradigm was to provide social context and illustration to how an area of law impacts upon family life. The use of Narrative Inquiry was to merely provide social context.

Eight semi-structured interviews were conducted with members from the Family Law Team, AFP and members from the SOCA unit, Victoria Police. In addition, twenty observations were conducted randomly at the Family Court of Australia and the Federal Magistrates' Court, Melbourne Registry. A journal was also maintained to document the processes and avenues taken throughout the research.

The journal was useful in recording the obstacles encountered and the pathways to completing the research. The main obstacle encountered was locating participants from the Victoria Police who had experience and exposure to the execution of recovery orders. It was noted that the Victoria Police tend to be the primary agents in the execution of recovery orders in regional Victoria, primarily at the request of the AFP.

Due to the difficulties encountered in locating participants and the interviews being the primary source of data collection it was assessed that no firm assumptions would be able to be drawn. Twenty observations were incorporated in attempt to not only compensate for the

limited number of interviews conducted but also to allow the researcher to observe first hand, the emotional and real life situations that participants described in their interviews.

Given the small scale set, the data was transcribed and analysed through the use of Microsoft Word, as it afforded the researcher flexibility and control. As two theories were used in the study, both having different objectives, coding of the data was divided into two separate processes. The data set which was used to form the Narrative Inquiry component was analysed using Kohler Rissman's (1993) five levels of representation. Although the data for the Narrative Inquiry component of the research was obtained from the interviews conducted, this information was separated and analysed on its own. However, the main data set (interviews and observations) were used to generate the primary findings of the research took the approach coined by Glaser and Strauss (1990). That is, two coding techniques were used, *substantive coding* and *axial coding*.

The use of two complimentary theories was fruitful in providing findings not only on the process and the operation of police services (Grounded Theory), but also with obtaining a solid understanding as to the social context the execution of recovery orders (Narrative Inquiry). Many changes have taken place throughout the conduct of the research due to unforeseen circumstances that required persistence, creativity and determination by the researcher. Initially the scope of the research included the perspective of judicial decision makers however, the research had to be tailored as the Family Court of Australia declined to be a part of the research process. This is viewed as a limitation of the research given that decision makers are key stakeholders in family law. Nevertheless, the research is unique in

conceptualising the trickle down effect for police services who are viewed as agents of the Courts, the enforcers and the peacekeepers.

4. Findings

This chapter has four themes that will be discussed in four sub-sections which are 4.1 Background in Family Law Issues: A Police Perspective, 4.2 Police Process in the Execution of Recovery Orders and Hague Convention Matters, 4.3 Police Structures, Resources and Training and 4.4 Recovery Orders – A Story Telling.

The contents of the first 3 sub-sections are the findings from the research taken from Table 2: Results - Enforcement of Parenting Orders, as previously discussed in section 3.2.6

Sub-section 4.4 of this chapter is the results of the Narrative Inquiry component of this research.

The observations were inserted in various parts of this chapter. The observations were used to contextualise the participants views (refer to section 3.3.3 for further discussion on the use of the observations) and provided an understanding as to the atmosphere and processes within a court setting to family law issues relating to children.

4.1 Background in Family Law Issues: A Police Perspective

4.1.1 Issues Surrounding Residence and Contact Parents

Participants were asked about their knowledge of family law issues, and why they believed orders relating to the residence and contact of a child were breached. There was a unanimous response by participants that issues surrounding residence and contact derive solely from

parental animosity and feuds. Participants felt children who are involved in such disputes are used as instruments or tools against the other parent, as a form of malice and assertion of power over the other party.

Participant 1:

I do not think you would be able to remove that ...using children, to further their disputes and bitterness and all the rest of it. That is probably the most unfortunate part about it all. It is got nothing to do with the children; its two adults going on fighting between themselves and using the children as some sort of an instrument in that.

Participant 4:

A lot of the time it is payback, spite from the parents. It is one of those areas that is very sensitive I guess. A lot of it has to do with the fact that you only have one child and you cannot split it in half. It is just an area where there is no way that both parents are going to be entirely happy, especially if they both want the child all the time.

Participant 6:

I suppose power, who has the kids, who gets them and sometimes I think they get used in the pieces of game between the parents while they are fighting it out in court.

Participant 7:

People wouldn't come to violence over a property matter. People with significant amounts of property they weren't accustomed to dealing with things in that way, they would use lawyers to deal with property matters. They are generally complicated and need some expertise, well you're not gonna get it. But with children normal people are

being placed under abnormal stress and that is when their behaviour becomes uncharacteristic sometimes. Particularly if the other side seems to be taunting, and yeah if they are also unrepresented.

The second theme, which was apparent in relation to the issues surrounding residence and contact parents, was that participants felt that parties may not have the knowledge around processes and procedures to remedy issues when a parenting order has been contravened.

Participants expressed that parties would regularly make contact with police services, whether state or federal seeking assistance. Parents would make contact with police services to enforce an existing parenting order which had allegedly been breached or they would contact police services for general advice and direction when there is no parenting order in existence. Participants expressed that many people were not aware about (i) the legal process and (ii) that once a parenting order is breached an application needed to be made for an enforcement order, and therefore questioned what type of information is made available to parties by the Family Court.

Participant 2:

A lot of people come in to talk to us about access and custody. Weekends are the worst, I suppose when kids aren't given back and they come in here and we need to tell them to see their solicitor and tell them what is going on and perhaps they need to take out a recovery order and then they would need to come back here with it and maybe we can help them then. But before that or during that we cannot help them.

Participant 3:

In regards to the community knowledge I would be, I mean I've had phone calls about this sort of stuff, more regularly than I would receive a warrant. They think that people at the Victoria Police, that it is their role to get children. They think that it is kidnapping and they do not realise, that the AFP people, they do not realise that they have offices in every state. They probably just think that it is restricted to Canberra. People do not realise the difference between federal and state laws so their first port of call would be the Victoria Police. Again that's probably not a bad thing to have them contact the Victoria Police first, most of the police members would refer them onto appropriate avenues. So I'm sure that the public aren't aware or haven't got a great deal of knowledge of them (referring to recovery orders) at all.

Participant 4:

We do get a lot of those calls; parents have got no idea on what to do. They have been to the state police and the state police have said to call the Federal Police. There are a lot out there that do not know that they need to go to the Court and have the orders first. They seem to think that we can just go and get their children back for them. Especially when they have got parenting orders. One partner has the child for the weekend, and on a Monday they have not returned the children. People assume that we can carry out the orders that they have already got. They do not realise that they have to go back to court and get a recovery order.

Participant 8:

... We are only an information booth if you like really. People come in ra ra ra, got this problem and this problem. We are basically only giving them the information that you need to go and speak to your solicitor, you need to go and do this, you need to go and do that. We might record the fact that we have spoken to them and given them that advice. But with Family Court issues, we are pretty clear cut on that they need to go to their solicitors, they need to make an application ...and we try and give them that sort of advice. We do not really take on much of another role...Often you would get people who phone up and say "my daughter doesn't want to go and visit her father, why should she have to, and I think that now that she is 9 she shouldn't have to." We would say well this is not something that it is a police matter...

Participants from the SOCA units in regional Victoria expressed the view that there were limited services or avenues to obtain information regarding issues surrounding residence for parents due to geographic remoteness.

Participant 3:

I think that there should be a one stop place, which should be the Family Law Court where the people could go and get a simple introductory package of what their rights are the process that they would need to go through etcetera. But they may have that, I do not know but it certainly not accessible in this city and this is the second biggest city in the state and it is really not accessible in this city at all. So for people in that situation they need to travel to Melbourne, which is a long way, and find the law court building it could be quite difficult for people I reckon in that situation.

Participant 8:

In remote places there are not a lot of services for people like these, you are removing the child from. They're saying, "oh I want a solicitor" well it could be 5 o'clock on a Friday night and we would have to say well Monday morning, drive 2 hours down to Bairnsdale there is a solicitor there who might be able to fit you in at some stage. It is not great services. Whereas, hopefully if they were in the city they would have far more and be able to access other things. We have nothing here like community nurses or whatever, so people are feeling very isolated. It is a lot different from when you are in the middle of the City where you can still probably get some after-hours services or what have you. But here it is only phone link ups and stuff like that.

Participants acknowledged that financial pressure and high legal costs associated with family law applications was a contributing factor to residence and contact parents and have the potential to increase parental conflict and financial hardship.

Participant 3:

...People who have just recently been separated are in enough emotional and financial turmoil without having to have extra bills coming in. They've basically gone from owning a fair bit to at least having that halved or probably even less in a lot of circumstances. For in my case maybe a parent would go from paying 50% of his property to maybe 20 or 30% if that, over night. A non-custodial parent is obliged to pay child support, depending on how many children that cost would be tremendous, basically to have their wages reduced of course how are they then going to access the information from a Family Law

Court solicitor if they haven't got the money to do so? It should be a free public service with the amount of divorce of rate and stuff like that in the country.

Participant 3:

It is bizarre and if somebody goes and breaches one of the orders well what do you do, you go and see your solicitor again at more cost and you apply to the Family Law Court at more cost and have the matter heard at more cost. It is ridiculous.

Observation 4 below supports the participants views that high legal costs associated with family law add to financial hardship and parental conflict.

Observation 4:

The father has a history of initiating proceedings before the Court and not following through with his applications. The father began proceedings in 1994 and since then he had made a number of applications. In 1994 the father gave "sole guardianship" to the mother and since had little contact with his two daughters aged, 9 and 11. The father had not paid maintenance since 1998 and had lodged numerous proceedings under the Family Law Act 1975 which have been dealt with in a variety of settings including the Family Court of Australia and also the Federal Magistrates Court.

Given the father's actions the mother was before the Court to (1) dismiss all proceedings and (2) ask that costs be awarded to her, given the father's pattern and history.

The Judge awarded costs in favour of the mother because the father continues to bring applications and not seeing them through. He has not paid maintenance for approximately 8 years and the mother is on a pension and therefore experiences hardship particularly when she is forced to respond to applications lodged to the Family Court of Australia by the father.

4.1.2 AFP - Collaboration and Knowledge Between Law Enforcement Bodies

The AFP is viewed as being the primary body and specialist in family law issues, given they are the primary enforcing body of the federal jurisdiction. Participants from the AFP had a high level of knowledge and familiarity with family law issues, in particular the execution of recovery orders and matters falling under the International Hague Convention.

Participant 5:

Family law I mean you do not only have recovery orders, we do arrest warrants, we execute arrest warrants, writs of possession anything to do with family law. Normally family law matters is only what the Family Law Team does here, nothing else. We do not do court work, drug work, just family law and that is more than enough to keep us busy.

Participant 6:

Researcher: How many approximately would you execute within a week (recovery orders)?

Participant: I would say a minimum of four and possibly anywhere up to maybe 10-15 depending upon the week. Leading up to school holidays there is a

lot more. After school holidays there were a lot more, so possibly up to 15 a week.

Participant 5:

...A lot of the stations we have sent recovery orders to do them before and they know how to do them. A lot who have never done a recovery order ask, what have we got to do? How do we do it? But all recovery orders have got to come to us the AFP in the first instance and we send it off from there.

Participant 6:

Well it is child recovery overseas and that the Victorian Government social workers would go and assess the situation and we'll go out hanging around outside and if they think that the child should be recovered then we would recover the child, otherwise if social workers think that the child is ok there or legal proceedings will happen without the AFP, fine. I think that it is a lucrative area for a few legal firms.

Observation 5 below supports the view that the AFP has a prominent level of knowledge and expertise in family law matters. Furthermore, Observation 5 outlines the Court processes, circumstances and expectations of when a recovery order is issued.

Observation 5:

The applicant mother has one child to the respondent father who was born in 1995. The child was with the father and the mother had residency. The whereabouts of the child and father were unknown. It is highly unlikely that the father would take the child abroad as

the child does not have a passport and it is unlikely that he is able to obtain one. Given that the child's whereabouts was not known the mother's legal representation requested that a recovery order and location order be made to assist the AFP with their endeavours to locate the child.

The Judge granted that a recovery order be issued, but not a location order. The Judge outlined that the applicant must take the order to the AFP as soon as possible. The Judge clearly expected that the AFP had capability, capacity and expertise to deal with the matter at hand. The Judge further stated the following:

- *That the mother to be present upon execution of the recovery order,*
- *He issued a restraining order prohibiting the child from being taken overseas,*
- *Until further parenting orders were made that the contact between the child and the father be suspended,*
- *The father is given liberty to apply given the short notice of the order, and*
- *The father to pay the mother costs of \$1,500.*

4.1.3 Victoria Police - Collaboration and Knowledge Between Law Enforcement Bodies

The Victoria Police is not the primary law enforcement body in relation to the execution of recovery orders. Police officers in the SOCA units had minimal to low level of exposure to family law. Given this, study participants from SOCA units had a lower level of knowledge in relation to the process and expertise in the execution of recovery orders.

Participant 8:

My previous one would have to be close to three years ago. That is my own actual working on. This other one another member in my office worked on it 3 months ago...

Participant 3:

...Nothing specifically in relation to recovery orders. I mean it is such a minority of our work, like I haven't seen one for two or three years...

Participant 2:

Researcher: What's the procedure once a recovery order has been issued, how does your unit become involved, or yourself become involved?

Participant: Well, we deal mainly with DHS at this office from the station. If DHS bring the recovery order to the watch house, they'll get us involved, the watch house people will get us involved and we'll take it over cause we're sort of in that field all the time.

Researcher: So the Department will bring it across rather than it (recovery order) being faxed through to you straight from the Court.

Participant: Yeah we, recovery orders are made at court and there (pause) I am trying to think of one.

Researcher: Recovery orders are basically an order that issued through the Family Law Court were there has been a breach of a parenting order.

Participant: We haven't had a great deal of those actually, umm. How they get to us? Umm... I feel that a bit disappointed because we do not do so

many recovery orders, I was sort of thinking more execution of the Children's Court warrants which come in fairly frequently.

The participants interviewed from the Victoria Police, SOCA unit, primarily conduct criminal investigations in relation to sexual and physical abuse against children. Often child abuse allegations of a physical or sexual nature are heard by the Family Court when deciding matters relating to where a child shall live and with whom they shall have contact with.

Participant 1:

We quite often investigate matters that are reported to us which have a family law background. One parent would make allegations against another parent in relation to child abuse, which is one of our main roles to investigate child abuse. That is probably the main area of family stuff that we do is investigate child abuse and recovery orders are only a small issue.

Participants from the Victoria Police, SOCA units expressed concerns that at times parents used the Police requirements to investigate all claims of child abuse as a tactic to influence parenting orders rather than because the parent had sufficient and substantive evidence to base their concerns upon. Participants were of the view that at times their service is used as (i) a means of being granted primary care through the Family Court (ii) as a means of “getting back” at the other parent and (iii) parents do not have the financial means to pursue the matter through the Family Law Court and therefore try other avenues that offer a public service such as DHS and the Police.

Participant 3:

The police have many roles. Police are counsellors, police are pawns, and I see this as our speciality. Police or the authority of police are utilised sometimes in an attempt for one parent not to have contact. Because the system allows them to report things and it is done just out of spite. The other person involved, i.e the mother or the father, are punished as a result, and that punishment is forced suspension of contact with their children.

Participant 3:

...It may be a case of they do not have the financial ability to contact the family law court system or they do and then they get their first bill and can't do this anymore so then they use the services that are government funded and are free, Victoria Police, DHS things like that. Point being, they make vexatious complaints as a form of corporal punishment. It happens, I have no doubt that it happens.

Participant 8:

Um I do not like, often I feel like we are played in the Family Law Court system like 'I think my child possibly did have a red rash on her vagina'. Right stop this Family Court hearing, I want a full SOCAU/DHS investigation so we do get used a hell of a lot in the Family Law Court game solicitors all play.

Allegations of child abuse or concerns expressed in relation to the welfare of a child are frequently dealt with through the Family Court of Australia or the Federal Magistrates Court. From the 20 observations conducted, 13 of them expressed substantial concerns in relation to

possible child abuse and/or concerns for the child's welfare. The three observations below are examples of child abuse allegations raised in court.

Observation 7:

The father had residency of the children (two boys aged 5 and 8). The children went to their mother's on contact and have not been returned to the resident father. The mother raised concerns that the children were displaying sexualised behaviour and this was the rationale as to why she refused to return the children.

The father had residency of the children for 3 years. The mother in the past had ongoing substance abuse issues and also mental health issues. The mother was homeless at the time the children went into the father's care. At this point consent orders were made in 2001 for the father to have residency of the children.

The current application was filed on the 28th January 2004 after the mother did not return the children from contact. The children were supposed to be returned from contact on the 25th January 2004. It was alleged that the father went to collect the children, however the mother would not allow him to take the children back into his primary care. The mother raised allegations that the father threatened to kill her. The mother claimed that the children were displaying inappropriate sexualised behaviour. The mother stated that she had contacted the police and DHS, but neither was willing to become involved. The mother claimed that both boys were caught 'tongue kissing'. It was for these reasons the mother was refusing to return the children. Further allegations were raised that the

children informed the mother that the father would hit them with a wooden spoon and on one occasion the child had a bruise to his back.

The Judge decided that the children are to be returned to the father. The rationale for such a decision was because he felt that the allegations raised had little substance to them, given that DHS and or police were not taking any action. It was assessed that it is highly likely that these concerns are not probable at this point to warrant that the children not be returned to the resident father. A child representative was appointed to further look into the allegations raised. The Judge also took into consideration that the father has cared for the boys over the past three years.

Observation 8:

The respondent mother expressed concerns in relation to the likelihood of harm/abuse should the applicant father have unsupervised contact with the child as per Family Law Court order. The child was a 10-year-old female. The father had lodged an application to the Family Court of Australia as the mother had deliberately contravened the order, (form 49). The mother's justification for not allowing the child to have access with her father as in the past (approximately 3 years ago) there were allegations that the father sexually abused his two stepdaughters and also his biological daughter. Both stepdaughters made statements to the police, however his biological daughter was refusing to make a complaint or acknowledge that she had been abused. The father was charged and appeared before the County Court however, was acquitted by the direction of the Judge, given that the evidence lacked an independent witness or forensic testimony.

It was for these reasons the mother was refusing to allow her youngest daughter have contact with her father.

Given that the mother deliberately contravened the Family Court Order, legal aid would not represent her at the hearing and therefore the mother was forced to self-represent.

The unsupervised contact orders were granted as the child wanted unsupervised contact and also a psychologist's report was written which indicated that the father should have unsupervised contact. This independent report influenced the Registrar's decision to grant unsupervised contact. The child representative acknowledged that they had not (1) spoken with the police informant or made attempts to obtain the police brief (2) attempted to obtain the County Court transcript or (3) conducted a criminal check on the father.

Observation 16:

The applicant mother had made a notification to DHS, stating that the respondent father assaulted her and there is a history of domestic violence. The mother claimed that she was getting the children ready to leave the home; the father would not allow her to take the baby and pushed her. The mother left with the other two older children (not the father's biological children) and left the baby in the father's care. The child was approximately 5 months old.

Allegations were made that the father threatened to harm the baby and that he has thrown the baby in the past before by grabbing the baby by the neck.

The Victoria Police attended the father's home to conduct a welfare check, however the father was not present. The police went to the father's son's home and confirmed that the child was with the father. Police took no further action.

DHS were also unable to take further action as allegations of harm towards the child could not be corroborated, and therefore unable to indicate that the child was at significant risk of harm as per the Children and Young Person's Act 1989 (Victoria). The parents have a history of making allegations against each other regarding abuse to state authorities.

The mother was granted recovery order due to the allegations of physical abuse; the mother was the primary carer and concerns of domestic violence. The matter was listed on the Judicial Registrars list for June 2004 for a further hearing.

4.2 Police Process in the Execution of Recovery Orders and Hague Convention Matters

This section looks at the process in which participants execute recovery orders or International Hague Convention orders, the difficulties encountered with the execution of recovery orders and the participants perspective on the role police play in such a dynamic area of law.

4.2.1 The Execution of Recovery Orders

Once a recovery order is issued by the Courts it is then sent to the AFP given that they are the primary body responsible for the execution of such orders.

Participant 5:

Participant: All recovery orders have got to come to us the AFP in the first instance and we send it off from there

Researcher: So even from the Country Courts?

Participant: Yeah they come into us. For Victoria, we are only talking Victoria here, they all come to us and we would send them out to the state police.

Researcher: What about in circumstances where lets say a recovery order has been issued and a child is located in NSW. For example do you negotiate with the Federal Police in NSW?

Participant: Yes, what we would do is ok lets say the recovery order was issued here in Victoria. We would put it on our computer system, and it is the same computer system that is used by the AFP country wide, throughout the country. If we find the child is lets say in NSW, we would send it off to our people in NSW as a task um through what is called our OMC (operations monitoring centre), which is Sydney's operations monitoring centre, they would send it to the Family Law Team, Sydney it would either be executed by them or state police in NSW.

Observation 11 below outlines that the Courts has the ability to make an order to recover a child but, may make a condition that its execution be “stayed” for a specific period of time to allow the parents the opportunity to return the child voluntarily without police involvement.

Observation 11:

The applicant father and the respondent mother were both present in court. A recovery order was issued but stayed until 6pm that night to give the mother the opportunity to meet the father at a neutral place to hand over the child on a voluntary basis. The mother had to take the child to Mc Donald’s in Whitehorse Road, in order to be returned to the father. If the mother did not hand over the child on a voluntary basis then the recovery order would be issued and the AFP would be directed to deliver the child back to the father. The mother initially withheld the child as she believed the child was at risk of abuse and neglect in the father’s care.

Participants expressed that the AFP would at times request assistance from the Victoria Police to execute recovery orders in regional Victoria. Participants from the AFP indicated that in most cases the AFP would request the uniform section of the Victoria Police to execute the orders due to time constraints and resource issues. However, there was no clear process as to which section in the Victoria Police would execute such orders.

Participant 5:

Researcher: So when you say there are three Federal Agents to cover the whole state that is not a lot?

Participant: When I say that you have got to also remember that a lot of these jobs we would send out to Victoria Police and Victoria Police will execute the recovery orders for us as well.

Researcher: So mainly where would you send them to if you send them to Victoria Police?

Participant: Country, country. Some of them we would do our selves, but others we would send out to Victoria Police to execute on our behalf.

Researcher: So would you send it basically to their SOCA units or uniform?

Participant: Uniform, uniform in most cases. We always go through the uniform Sergeant.

Participant 7:

The dividing line when you have a recovery order in the country. I think that anything outside greater Melbourne really should be done by VICPOL (Victoria Police). Because recovery orders are addressed as you know, to the AFP and all State and Territory police.

Participant 4:

Yes a lot of the time in the country that happens. Where it is going to take a long time for the AFP to travel there and once again we haven't got the people and at times local police can often do it that day. Whereas, we've got lots of orders and the parent may have to wait a week or two for us to be able to go and do it. So we would ask Victoria Police and most of the time they would be able to do it fairly quickly.

The majority of participant responses indicated that if recovery orders were going to be executed by the Victoria Police, SOCA units were the best equipped to execute these orders given their training and background. Furthermore, as SOCA units specifically deal with child related matters or offences, they have the experience and expertise to deal with such sensitive issues.

Participant 6:

With SOCA units they have the background in relation to matters relating to children, they're closer to where everybody is at the time and therefore they would get executed faster, the faster it is done, the less stress there is on the whole family.

Participant 7:

Yes, I think so because they are used to dealing with children. It would be the most logical thing.

Participant 8:

Researcher: So do you feel that the SOCA units are the best equipped to deal with recovery orders?

Participant: Of course we are (laughs) we are fabulous didn't I tell you that. I just think it seems to be the most appropriate process as we deal with children in our office all the time. I mean I am just sitting in a room talking to you with cuddle toys, books and videos in our office. We are equipped to have children here. Whereas a station is equipped to have criminals. Like you have just got to put it in perspective. Not all SOCA

units are probably not as child friendly as ours but most of them would have far more use of having children in their office than what the general duties would have. General duties are going to have criminals it is going to have drunks...and you are asking those people to be jack-of-all-trades. They can only do the best to their ability.

However it is worth noting that in one instance a participant from the Victoria Police SOCA units reported that they believed that the uniform sections of the Victoria Police were as capable as SOCA Unit members to execute recovery orders.

Participant 3:

For some reason our unit are better handling them than what uniform would be. I do not know whether that's still the case, I do not reckon it is, and that's maybe why we do not see so many here.

Upon receiving a recovery order participants would firstly attempt to locate the child, by conducting “checks” on the computer system. The “check” assisted members in making an assessment in relation to (i) the possible demeanour of the respondent and others who may also be at the location and (ii) the likelihood of violence. These were the primary steps participants felt needed to be conducted prior to the execution of a recovery order.

Participant 3:

...You do your checks on the computer on the data system and check out who will be at the address and whom you are going to speak to and the type of people you are going to be

dealing with. I mean you can't tell that off a computer screen, but you get some idea who they are going to be and what they are going to be like to a certain extent. So after you have done that you attend the address that is on the order and ah make inquiries from there.

Participant 3:

You would be checking the database, the LEAP database, for the people involved and ah and normally common sense would be to contact at least the applicant person of the order anyway. You can also glean information from them about where you are actually going to, what you are actually looking for, description of the kid, description of whoever, the kids mother, dad whatever, what sort of car do they drive, are they going to be a threat, how are they going to react when we take the kids away, things like that.

Participant 2:

...You would do your checks on the computer on the person involved to check what their background is like, and any knowledge of our other areas, such as firearms, any domestic violence, violence for the person against and that sort of stuff.

Participants indicated that the outcome of the 'checks' and pre – execution follow up determined the outcome of how many police members were involved in the execution of a recovery order. There would be no less than two members involved in the recovery of a child. Participants from the AFP would regularly request the assistance of the Victoria Police uniform sections or the response members from the AFP to attend with them to execute the orders as a back up role.

Participant 6:

Often there were two, just the two of us. Unless we were aware that a particular respondent has a history of violence or something like that then we would get others. But more often than not it was just two... At one point we used local Victoria Police officers a lot, and at other times we had response available to us a lot of the time.

Participant 8:

Researcher: So do you always go as two members?

Participant: Yeah, we do

Researcher: So how do you come to that conclusion that you need two members, three or whatever?

Participant: Because it is the same old thing when you first join the job. You can tell a druggie that he is a druggie, but you can't tell him that he doesn't know how to look after his kids. They are far more volatile if you try and take their kids off them than if you tried to take their drug crop off them.

Participants outlined the same process was adopted, once the child was recovered and returned to the applicant parent. The court order was endorsed and sent back to the issuing court. Police services play no further role after this process. Participants from the AFP indicated that they would complete their paper file and electronic database.

Participant 1:

Once the child is back in the care of the person who has applied for the order we just bow out. The order is returned to the Court and that is the end of the story.

Participant 4:

We do not have anything to do with either the applicant or the respondent again. We would come back and finalise our files and return the original order to the Court and write on it order executed at such a time at such a place. Basically just tidy up the file and put it away, and notify the Court that the order has been executed.

Participant 4:

No, once the order has been executed, that is it. We will not have anything to do with it again unless there are other recovery orders or a restraining order.

The participants from the Victoria Police SOCA units stated that they might record the execution of recovery orders on the Police database. This was considered to be good practice rather than a requirement.

Participant 8:

If we have done a recovery order that would go on our database. Not all SOCA units we do down here because of our remoteness...I mean I know we work very differently to other SOCA units, we still have a lot of the old fashioned, I mean we still wear uniforms and you know we do our own thing, we do not get stuck doing what they tell us to do. So I do not know, but my theory is that by putting them on the case book, where it is a job that we have done, it is a welfare issue, because that child has been removed from one parent and

taken to another and if in six months time we are back there doing it again, we've got that knowledge. We do a check and go hang on a minute that recovery order was done twelve months ago and now we have another one. To give some sort of continuity for ourselves. That is the only reason as to why we decided to do them.

4.2.2 International Child Abduction

The police role in relation to Hague Convention matters, also known as International Child Abduction, was briefly explored with participants, as it is not the primary focus of the research. International Child Abduction cases at times required the removal of a child from a parent, thus being similar to a recovery order. The AFP has the role of executing a warrant where it is assessed that a child should be removed from a parent's care. Participants from the SOCA units had no knowledge and no involvement in such matters. Participants from the AFP indicated that the number of matters relating to International Child Abduction were minimal.

Participant 8:

Researcher: So what about Hague Convention matters or International Child Abduction do you guys do any of those?

Participant: No

Researcher: So do you know what they are at all?

Participant: No

Participant 1:

I have never had an international one, I have had interstate, but never international and ah that is probably another issue.

Participant 7:

Yeah, they come around maybe every few months, maybe every three months. Maybe there would be a Hague Convention one.

From the observations conducted only one (observation 2) related to the Hague Convention and even then there was no indication of police involvement.

Observation 2:

The child was wrongfully removed from his 'habitual residence' that being the United Kingdom. The father was the applicant who was residing in the United Kingdom. Consent interim orders were made for the child to remain in the care of the mother until final proceedings. Minutes of the court orders produced to the Judge outlined that the child's passport be removed and given to the Court for safekeeping. The Judge felt that because the mother was consenting to the orders that they were able to make such an order to hold the child's passport. However the Judge did not reach this decision until he firstly stood the matter down to consider whether he had the jurisdictional power to remove and hold a passport that was not the property of Australia.

From participants who have had exposure to the area of International Child Abduction (AFP participants), they outlined that they do not have the primary role or decision making in such

matters. Participants indicated that DHS have the primary role in assessing whether the child remains with the respondent parent or if they are removed. Should DHS assess that the child is able to remain with the respondent parent until the matter is finalised in the Family Court, the order is not executed by the Police and is returned to the Court. Should DHS assess that the child should be removed, then the Police would execute the order and place the child in the care of DHS.

Participant 5:

The only thing is with Hague Convention matters DHS are leading bodies, I mean they come out with us as well. It is DHS's decision to what happens to the child.

Participant 6:

When a child has been taken from a country that is subject to the Hague Convention or from here to a country. The government solicitors make applications on behalf of the applicant, you get an order, which requires the police with the appropriate jurisdiction, and well here we go out with DHS. The stability of the home is evaluated by DHS, if DHS see fit we remove the child, if DHS are satisfied with the living conditions the child remains in the home. We advise the Court that we have attended and from our perspective that was our involvement. We either removed the child or we didn't.

Participant 6:

It was very similar to another recovery order, but a lot more organising went into arranging DHS to be there, if they had any intentions before they get there, whether they knew if the child had to be removed or what was going to happen.

4.2.3 Complexities and Difficulties Encountered

Participants identified several areas of difficulty with the execution of recovery orders. The difficulties primarily occurred prior the recovery of a child. The primary responses were:

(i) Difficulty in finalising arrangements with the applicant to deliver the child into their care.

Participant 4:

Participant: ...Family Court is a Federal Court so an order issued interstate is still valid in Victoria. Quite often one parent would be in one State and the children have been taken to Victoria. You would have to make arrangements for the mother or father or the applicant to be able to come to Victoria to collect the children or visa versa.

Researcher: So that obviously is a longer process?

Participant: Yes it is, you have to organise flights and often they do not have the money to pay upfront for a flight.

Participant 4:

You could but also there is the difficulty that if that negotiation takes place and the respondent realises that the children would have to go back to the applicant and they would go into hiding and that is the reason why we do not phone parents. We might have a contact number and an address and it would be a lot quicker to ring them up and say we have got a recovery order we want you to hand the child back, rather than us having to

leave the office go out to the house and that situation. But it would save time, but a lot of the parents would then just disappear they do not want to hand the children back. They would go underground and it would be harder for us to find them down the track.

(ii) Difficulty in locating the child

Participant 1:

Yes we had one going back probably last year I think it was. A fellow obviously playing games with us we got the recovery order one weekday afternoon. I had contact with him by phone and basically told us where to go, and ah he was a fellow that had several addresses and some of them were in the country and some of them were in the metro areas. The mother of the child, who was the applicant of the order, made some inquiries on our behalf and located this fellow in Melbourne. They had made contact with him via phone. Whilst she was watching his house we didn't know that of course. We then had to send two or three units to attend to that. It would be highly likely that he would take off.

Participant 5:

...Sometimes we cannot find the child or the respondent for up to twelve months, maybe even longer. Recovery orders normally run for twelve months, but they can get a second recovery order after the twelve months if for some reason we are not able to locate the child.

(iii) Coordinating the execution of the recovery order if a child is located interstate, regional or in metropolitan Victoria.

Participant 7:

Usually they have some sort of interim arrangement before you rush off and on one occasion we had a child who had to go back interstate we had all the plans in place before we actually went and recovered the child. And ah there was a relative living in the area who was able to assist with the transport down to the airport and that sort of thing.

Participant 5:

...our people in New South Wales if they are executing the recovery order speak to mum, say mum before we execute this recovery order we've got to have you up here so we can hand the child over to you as soon as the recovery order is executed. I mean we are not babysitters we will not keep the child with us longer than is necessary, and in most cases before the recovery order is executed, the applicant whether it be mum or dad has got to be there. So we can hand the child directly over to them. There are instances however, where due to possible family circumstances they can't afford to travel or whatever, in some cases we would pay for travel for the child or maybe fly the child back from New South Wales into Victoria the child will be picked up, lets say from Melbourne airport by the mother. Maybe a Federal Agent will travel from New South Wales to Victoria with the child, depending upon the age of the child and all that.

Participants did not outline that they would contact the respondent informing them about the recovery order and requirement to execute the order. One participant outlined that they would not normally make contact with the respondent parent, as they may not be receptive to cooperating with the Police. This may cause difficulties when trying to recover a child.

Participant 1:

The only difficulty is if you do get this person that won't play ball and to chase them. Once you have physically come in contact with them there's no problem. But it is when you try and do it over the phone or by some other means to minimise our involvement for the child's benefit, that is when they can drag on a bit. If we can actually physically encounter the person and say this is the story we've got a recovery order we must return your child...

Participants felt that once the child was located and arrangements were made as to how the child would be handed over to the applicant parent, the recovery order was easy to execute.

Participant 1:

...Most of them are fairly clear cut, once you locate the child they are fairly easy to execute and that's the end of the story.

Participant 3:

...The Family Law Court recovery orders are pretty slim. As far as my view is that they are relatively straight forward, like I say you get the information and then you go and act on it. The warrant usually, I think like every other warrant where it tells you exactly what is required and you go and do it, no big deal.

Participant 7:

...Make sure that you've got the right size of child seat and you prepared to hand over what you are going to say and what you are going to do just really be prepared. It is really a flying by the seat of your pants sort of things. I do not think it is a lot of theory really involved.

Even though participants felt that the retrieval of a child was not difficult, most participants demonstrated a dislike in executing recovery orders.

Participant 2:

We do not like doing them, no, but that's part of our role and therefore we have to do it. I think those sorts of things are best done as soon as you get them, before any other build up becomes evident. You might get emotions too high.

Participant 8:

... I would hate to be working with the Family Law Court and I find that a lot of their legislation and stuff is difficult to work with and they do not seem to have the same rules for everybody in relation to custody and stuff of children...

Participant 2:

It is something that I would not like to get involved in. It is like a never-ending can of worms. That is why we do not become involved in access and custody.

4.2.4 Police Perspective in the Involvement of Executing Recovery Orders

Participants were asked what their perspective was in relation to the role they play in the execution of recovery orders. Participants indicated that they are the agents of the Family Court, and therefore must enforce the order.

Participant 2:

...Where there are recovery orders it is like a warrant, I suppose, to pick up the child. It gives us power to do that.

Participant 1:

...We do try to always in the first instance, explain that we are only the meat in the sandwich sort of thing. We are here because we have a court order which says that we must do something, and we do not have any discretion in it.

Participant 2:

Once it is made, it is made. We have to execute it. We can't go back and say we didn't execute it because they gave us a good story and in our view the child should remain where he is.

Participants placed high priority on ensuring the safety of all parties involved was maintained upon the execution of a recovery order. That is, the safety of the child, the safety of the respondent and also their own personal safety.

Participant 3:

It was just like any other job I suppose where we do our best to minimise the risk to everybody, keep it safe for everybody and keep it nice and cool and calm.

Participant 4:

...Parents can become violent and they may have firearms themselves. Whoever executes the order need to be able to protect themselves and the children primarily. But also anybody else who would happen to be there and getting people out...

Participant 5:

I mean the first thing we have to think of is our safety and of course the safety of the children we are recovering as well. It is a very emotional area family law.

Participant 3:

... if I was to get a recovery warrant on my desk today the last people that I would be taking is unarmed, untrained DHS workers. Particularly if it turns out to be a volatile situation. The less people you have to worry about the better.

Participants acknowledged that their initial approach when retrieving a child from a respondent parent was to negotiate, communicate and attempt to intervene with as little disruption and conflict as possible in order to decrease the potential for violence or confrontation.

Participant 5:

...You have to be able to speak to all sorts of people. I mean communication is one of the necessary things, I mean it is a very emotional environment, you are speaking to a parent of a child and you are going to take that child off one of those parents and give it back to the other parent. Normally there is a lot of dislike by both parents; one would virtually hate the other. It is still their child. You are taking it off one of the parents and giving it to the other.

Participant 5:

I mean I have talked people into handing the child over, but I find I can do it. It doesn't always happen. There are times when it is not the case. I mean one case that we executed last week, we were taking the child from the father, let me see what his words were "you're not taking my kid, you're gonna have to shoot me". We had uniform police with us as well and eventually it was a struggle, we got the child. The father was pinned to the floor.

Participant 7:

I think you need patience, common sense, um sympathy with people, be able to deal with all types of people, being under pressure. I do not think it works having a big ego and we're the Police and you do as we say I think you are getting yourself in a confrontive type situation.

The participants outlined that when police made contact with a respondent in order to retrieve a child often respondents would have a negative view of the Police because they were required to remove the child.

Participants 2:

If anything I dislike taking the child away from its parents. I know we get blamed a lot that we do it, it is very emotionally draining. Especially with younger children, the mother is holding her child, how are you going to execute the recovery order when she is holding the child just all those sort of things.

Participant 3:

Sometimes it is good and sometimes it is bad. Sometimes a uniform has an effect on people to do as they are told. For some people it is like throwing a red rag to a bull.

Participant 8:

We were just the enemy from the minute we turned up. Whereas, that would be your first thought. They are the enemy, they are coming to take away from me what belongs to me, which is my child and that is a natural thing.

Even though the Police are purely agents of the Court in such circumstances, the study participants commented that when they went out to retrieve a child, the respondent parent would give their account of what had happened and why they felt the child should remain in their care. Often the Police were unclear as to the substantiated concerns as parties would give them differing stories, therefore the Police did not have a clear reason as to why the parenting order was breached and a recovery order was issued.

Participant 7:

...You often find out the story when you get out there and in general you do not know whether to believe it or not. Sometimes they're making up stories, sometimes it is the complete truth, sometimes it is partway between, you do not know which is the case.

Participant 1:

...They give us all sorts of stories about what is happening, we have to quite clearly explain and we do try to always in the first instance, explain that we are only the meat in the sandwich sort of thing.

Participant 2:

The other party is always wanting to give their story as to why the child should remain with them. You just can't take sides. Once that order's there it has to be executed...

Participants were asked whether they believed that the role police play in the execution of recovery orders could be outsourced. It was their view that the execution of recovery orders could not be outsourced to another body because of issues around safety, authority, and the public perception of the role and function of police in society. Concerns were expressed that without police presence the situation could become uncontrollable and dangerous.

Participant 1:

I think you need the police to be able to do it as they are technically a warrant to apprehend and they have the powers to search buildings and vehicles and all that sort of thing. So you I do not really know who you would outsource that to any other agency

apart from federal and state police, and really the time that they take they're not a huge consumer of resources for us.

Participant 3:

You are saying that because a recovery warrant is more a social justice matter rather than a criminal matter you saying that, do I think that role could be outsourced along with other matters that are not particularly criminal? Um the short answer is no, well look it would just depend. It could be and absolutely it ... um no I am not going to change my answer, no I do not think it could be. You could possibly be in a situation in the most extreme level; to go and execute a recovery order could turn into a siege situation. The police are there anyway. If you had the police there from the get go this may contribute to a peaceful solution. It could escalate into a bad situation if the police did not attend in the first place.

Participant 5:

I think that without having police there would be a lot of problems in trying to execute a recovery order. My belief and it is not necessarily the AFP's belief, I believe that you need police to execute a recovery order. Do not forget you are taking a child off a parent.

Participant 6:

I think for parents who are reluctant to return the child to another parent, police presence is probably a benefit, because the people who execute the orders have been empowered to execute the order and I think, well I would like to think that there still is a public perception police are doing the right thing and perhaps people would be a little bit more

co-operative which of course is less stress for the child, if police were still doing them. If they can arrange an amicable handover, I think that is terrific it saves stress for everybody, but if not I think they still be better executed by police.

Participants were asked to describe the reactions and emotions parents conveyed when they came to retrieve a child. Participants acknowledged that while each situation was different, parents were generally distressed and their emotions high. Participants believed this was because of their concerns about the child in the applicant's care, the conflict and animosity between the parents or because they did not want to cooperate due to police involvement.

Participant 4:

The most difficult is dealing with the respondent. You turn up to the house when you do locate the children and they are not happy. A lot of the times you're fine, but its one parent and they are fighting off against each other and the children are being used in the middle. You get two sides to the story one is from the applicant and then from the respondent. A lot of the time they become violent and they do not want to hand the children back. It is just a stressful situation for everyone, but mainly the children.

Participant 6:

I had one that took 4 ½ hours where the child was hidden in the roof and the father was not mentally well, and I have had one where I have more or less said what I was there for and they handed over the child to me. So they all vary. On average they can take 30 minutes to 45 minutes, beginning to end.

Participant 7:

No, they haven't and but you there's always potential. I've known some of them punch the wall or yell and scream, stamp their feet and yell, but never actually move to strike me or my colleagues.

Observation 11 outlined below also shows that parents can also be distressed whilst at court. It illustrates that high emotions were not only confined to the execution of recovery orders, but issues relating to children and family law are often sensitive matters.

Observation 11:

The researcher observed the respondent mother not only in the courtroom but also in the foyer awaiting the court case.

The mother was anxious and shaking. Her behaviour was also erratic and to some degree manic. The mother was observed all day to be holding a child's plush toy, namely a brown horse and a picture drawn by a child. She was showing the picture to the court network volunteer and was clenching it.

In the courtroom the mother was sitting behind her legal representative. The mother was sitting to the left of the courtroom and sitting next to her was the court network volunteer for support. The mother was extremely distressed and was verbally muttering underneath her breath. At one point the mother had to be held back by the court network volunteer (who was female and middle aged) as the mother was in the process of physically retaliating against the applicant father who was sitting on the other side of the courtroom.

Upon the mother leaving the courtroom she was distressed and crying. Later at around 5pm when the researcher was leaving the Court the mother had collapsed at the front of the Court building. An ambulance was present but the mother would not allow paramedics to transport her for medical treatment.

4.2.5 Priority in the Execution of Recovery Orders by the AFP

Whilst participants from the AFP commented that family law issues have a lower priority than other core responsibilities of policing, participants maintained that it remains an important function.

Participant 4:

It is viewed as one of the lower priorities um matters that we deal with but essential. In principal they are a process that we have to carry out. It is given a lower priority over other things but as I said it has to be done

Participant 5:

Participant: I mean it is core function of the AFP and it is got to be done anyhow. I am talking about family law. Family law comes under Commonwealth jurisdiction so it is a core function of the AFP so something that has got to be done.

Researcher: I suppose what importance is placed on it?

Participant: A lot less, a lot less than the normal sort of work we do, but as I said it is still a core function of the AFP

Researcher: So when you say it is viewed a lot less, how can you tell? Is it through the resources that are given to the area?

Participant: Yeah. The resources are a lot less than what you would have in other areas. Then again as I said there is a lot less investigation type things you can't do in family law. For Victoria there is virtually at this stage there is three Federal Agents doing family law matters for the whole of Victoria. We've got all the jobs for Victoria so it is a lot less than all the other areas, so we are busy all the time, all the time.

Participant 7:

I think that it is a role that the AFP really doesn't hold particularly highly. It is um against lets say terrorism or people smuggling or people trafficking or drug importations or six figure frauds against the Commonwealth. Um it is hard to justify that.

Participants from the AFP indicated that when they received a recovery order, the priority placed on its execution depended upon a number of factors such as:

(i) Availability of personnel

Participant 4:

It can, depending upon other work that is going on at the time. Whether we have other big jobs that take a higher priority, how many members are in the office, all of those sorts of things. Umm the time of year that it is, it is harder around Christmas period with everybody on leave. Other times it is during the middle of the year, so it varies a lot.

(ii) Whether the child can be located

Participant 4:

It depends on the workload at the time. Sometimes, what comes in first gets dealt with first and it is also a lot of the time you'll know exactly where a child is other's you won't have a clue where they are. So as you have identified the location of a child that order takes priority over the others because of their unknown location.

(iii) The age of the child

Participant 4:

Yes a lot of the time in the country that happens. Where it is going to take a long time for the AFP to travel there and once again we haven't got the people and at times local police can often do it that day. Whereas, we've got lots of orders and the parent may have to wait a week or two for us to be able to go and do it. So we would ask Victoria Police and most of the time they would be able to do it fairly quickly.

(iv) The number of recovery orders they may have at any given time.

Participant 5:

We would, we would, and that priority would depend on a number of things, the age of the children, circumstances, mum or dads got the children and he's on drugs or something like that. It would bump up the priority of that particular job. The child may be under 6 months old, the baby is only 6 months old and that would jump up to the top of the cue.

Participant 6:

Researcher: So would there be times when there would be a massive backlog?

Participant: Only for a couple of days, but yeah there were times when we had so many of them and just try and do one after the other after the other to get through them as fast as you could.

4.2.6 Priority in the Execution of Recovery Orders by the Victoria Police

Despite the primacy of the AFP's role in relation to recovery orders, the Victoria Police SOCA units placed a high priority on the execution of recovery orders because of the volatile nature of the situation and issues relating to the safety of a child. Although the Victoria Police are only formally subsidiary agents in this process, participants expressed a higher level of commitment and concern regarding their role. This might be because of the relative infrequency of their active involvement in the execution of recovery orders.

Even though the execution of these orders is given high priority, other core functions or responsibilities take priority over the execution of such an order.

Participant 1:

We would enforce it ASAP, to actually enforce it would depend on ah, how quickly we can track the person down because some of them play games.

Participant 1:

...My biggest fear is that recovery orders if you get a recovery order unless you have something major on your plate at the time you do something about them, because if you end up with a dead child because of some sort of a delay in attempting to execute them. You obviously can't always rush out and execute them for various reasons, but if we do not um we can have the other scenario if we do not.

Participant 3:

...That would depend... If for example, a very recent sexual assault, I would prioritise that, because it is a crime scenes, exhibits, you have a victim in distress etcetera, etcetera, etcetera. Whereas a recovery order is not necessarily a life or death matter. To get that information straight up you wouldn't put a recovery order above your core duties that are urgent core duties. I mean your investigation sort of stuff you could do after the recovery orders done, it wouldn't be a problem. But you wouldn't put a recovery order, the priority of that above a recent sexual assault victim.

4.3 Police Structures, Resources and Training

Information in relation to organisational structure, resources and training was gathered. The AFP structure, allocation of resources and training differs significantly from that of the Victoria Police and therefore is discussed separately.

4.3.1 The AFP - Resources and Organisational Structure

As previously discussed, the AFP, Southern Region, has a separate team that deals specifically with family law issues. The structure of the Family Law Team is heavily dependent on the resources that are allocated to its functioning. Participants have indicated that the resources allocated to the team have varied from one member to five members. Participants commented that the variation in the number of staff placed depends on other policing duties that are given priority. Participants said there are ongoing difficulties with the number of staff allocated to the Family Law Team.

Participant 6:

We play an important role as far as returning the children to the custodial parents. But the AFP, obviously because it is not core business doesn't necessarily put the resources into it that it could use.

Participant 6:

There were only two of us doing the whole of Victoria. Um including all the paper work. The execution of the orders, the returning of children so yeah there were serious resource problems.

Participant 4:

I do not think the structure has any impact on it, as long as we've got the members there to do the work. The only time that it impacts on the way we carry out our duties is when there is a lack of resources to be able to carry out the order. We can get 5 orders in one week and then one or even none the next week. It varies all the time. You might get a lot of orders but it does not mean that you would be able to necessarily work on all of those.

Participant 5:

The resources are a lot less than what you would have in other areas. Then again as I said there is a lot less investigation type things you can't do in family law. For Victoria there is virtually at this stage there is three Federal Agents doing family law matters for the whole of Victoria. We've got all the jobs for Victoria so it is a lot less than all the other areas, so we are busy all the time, all the time.

Participant 4:

Researcher: You sort of touched on it before, you said that there used to be four in the Family Law Team and now it has gone down to two with an administrative assistant. Is there any reasoning for that change? For example, has there been a decrease in the number of recovery orders issued and therefore the resources are not needed?

Participant: No, if anything there has been an increase in the work that we are doing. The decrease is more to do with, I reckon like policing commitments in the Solomon Islands, the Canberra situation, we perhaps are sending members there and we have just not got enough situations here at this point in time to be able to do everything and there are resource requirements in Timor and things like that, that are taking resources away.

Participants from the AFP recommended that the Family Law Team remained as a specialist team with sufficient staff members including an administration assistant in order to provide continuity, uniformity, and greater liaison with other services.

Participant 6:

Participant: *A really well-trained specialised team who spend at least a year in there, who work together day in and day out and who are confident in their abilities and each other's ability and are there for long enough to get a really good grasp of the legislation and how it all works. Um and the resourcing, basically to have enough people there to do it.*

Researcher: *What about having an administrative assistant attached, do you think that is essential?*

Participant: *Definitely yeah, because that leaves police officers free to execute the orders.*

Participant 7:

I think you need continuity of people there. Instead of just people there for three months. I think that it is an area where you need to develop expertise and build up relationships the members, the Court staff the Judges Associates, the cops. Over the years you would deal with a number of VICPOL places but eventually you would be coming back to the same ones. And with international child recovery's with Victorian Government solicitors with one or two legal firms we deal with ahh, just working with the same person, how they operate, their strengths and weaknesses and just the paper work, there is a lot of paper work. So I think you need continuity not just channel people through there. In terms of

the paper work by the time you train someone, they would be gone because of the three-month rotation and it has taken a lot of time. It is slower to train someone than to do it yourself.

Even though participants believed that staffing in the Family Law Team is at times problematic, they said they were able to receive assistance in the execution of recovery orders from other areas within the organisation so they could fulfil their duties. The Victoria Police also plays an integral role in assisting the AFP execute such orders.

Participant 5:

... Normally if we need assistance from other members we would get that assistance. Same in a lot of cases we would like to have uniform with us, so we call on VICPOL to come out with us as well, and normally we've got no problems whatsoever. I mean there are circumstances and obviously times when VICPOL are busy, they haven't got enough people to help and they are doing other jobs. Umm only us would do it.

Participant 6:

I think we always get resources to recover the child. I wouldn't say. All we would need to say is that we have a recovery order we need more people um I do not think that's a problem. But sometimes because of all the other duties that team may have it can be a problem.

Participant 6:

Researcher: So whom else would you turn to if there were resource issues?

Participant: Ahh response teams, but they do not have the same knowledge of the legislation and the process and the Court process to try and relieve the respondent when you are taking the child.

4.3.2 The Victoria Police - Resources and Organisational Structure

Given the low numbers of recovery orders the Victoria Police execute, they did not encounter difficulties with resources as members from the SOCA units were able to seek assistance readily from other units within the police station.

Participant 1:

Well it varies, usually perhaps three on day shift and one on afternoon shift. We run basically a sixteen-hour service here. There is no nightshift. It is highly unlikely that would do anything in relation to recovery orders on night shift anyway. So the resources are not really much of an issue.

Participant 1:

...Really the time that they take they're not a huge consumer of resources for us.

Participant 2:

Probably not, not really but then we have a big station that helps out, and help us go out and execute orders.

4.3.3 Police Training

Participants were given little training in relation to both family law issues and the execution of recovery orders. Participants from the AFP were given basic training in legislation, and recent practice indicates that some new members are rotated through the Family Law Team to give them on-the-job training and exposure. Participants from the Victoria Police outlined that they received little to no training on the execution of recovery orders but felt that their general skills training could be applied.

Participant 1:

Very little. It is something that I have picked up myself over the years and speaking with people, in particular the Federal Police in relation to what they are all about and what the powers are and that sort of thing.

Participant 3:

Specifically nil. In general terms I suppose our safety tactics training once every six months, a refresher course every 6 months. We cover things like firearms training, defensive tactics training, what they call verbal judo.

Participant 4:

No, it is fairly brief. You would probably do a day you also learn the legislation on family law and what a recovery order is and what powers you have got under it, and also restraining orders are also thrown into it. You would spend around a day to half a day.

Participant 5:

Certainly when I came in the area, I've got no training whatsoever, here's a recovery order go out and do it. Um now certainly, up until recently we had new members rotating through the Family Law Team. Certainly in those sort of instances we give those members training, what's required, what we have to do when we are executing a recovery order. Certainly we go out with people who have never done recovery orders before, certainly we tell them what is required from them.

Participants from the AFP stated they enjoyed a positive and strong relationship with the Family Court of Australia and thus are informed of relevant legislative or organisational changes that impact on their duties.

Participant 6:

None now, because I have absolutely nothing to do with it. Back then we had regular contact with the Marshal of the Family Court, the Judges Associates and we were notified if there were anything that were different.

Participant 5:

We have a very good relationship with the Family Court, an excellent relationship, Judges up there and I speak with the registry members, certainly any changes would be brought to my attention by the Court.

Participant 4:

The Courts, we have contacts with the Marshals of the Family Court. I have not had the situation occur, where there have been changes and we have had to be notified. That would be what I would expect to happen.

Whereas, participants from the Victoria Police commented that the Family Court of Australia does not directly inform them of any legislative changes and as such, they accessed this information through their own organisational networks. Participants from the Victoria Police believed that the Family Court of Australia should play a greater role in informing the Victoria Police of organisational or legislative changes.

Participant 2:

We have district training officers giving the spiel to all the troops, they do their training courses on all the new legislation that comes in and then they come back to the region and tell all the troops about the new legislation changes. It is up to them really.

Participant 2:

I suppose with everything else the Gazette that comes out every fortnight and new legislative changes is something that comes out of the co-ordination office. I have to say that it is not enough and extra communication is always a help.

Participant 3:

Well look, we have a database, which is law online these days, through the electronic media, which is pretty handy. I have never actually tried to look this up in relation to

Family Law Court; we do not have a necessity to do that. Perhaps they may notify us of it, but we would have to search it ourselves, specifically. I mean we wouldn't want to know every change in legislation unless it effectively affects police core duties... If there is a change in family law legislation, the only way that I would be aware of that is that ah via the media or if I was to seek it myself. But we are rarely notified of Family Law Court changes, as it does not really affect us.

Participants were asked about the sufficiency of training and whether further training in the area of family law, in particular in recovery orders, would be useful or beneficial. Some Victoria Police participants believed further training and information would be of great benefit. Others believed further training would be impractical and current practices were sufficient.

Participants from the AFP believed that further training was required; saw further training as of benefit to those attached to response teams or new recruits. Participants from the AFP believe that personnel who assist in the execution of such orders should have a comprehensive understanding of the legislation and processes required to execute the order appropriately.

Participant 6:

So yeah, it would probably be a benefit, particularly for new members going through recruitment to do a bit of training on it.

Participant 4:

It wouldn't be sufficient to give an order to a new member and say, here you go, go and execute it. But if they are going out with senior members and they are getting on- the- job training and follow up afterwards then yes.

Participants from the Victoria Police SOCA units felt that written instructions as to police powers within a recovery order and processes would be of greater benefit rather than skills training. Participants from the Victoria Police formed this view because they do not deal with the execution of recovery orders on a frequent basis and concrete written instructions would give them a guide they may refer to if required to refresh their memory.

Participant 1:

They do not tell us a lot about family law, maybe because we just do not do a lot of it. But recovery orders is something that we could do with the training of them because of the powers of them and the one thing that I see is a problem that would arise if you didn't do something.

Participant 1:

But if we get a recovery order... It does not tell us a lot about what we can do apart from saying that we do have the powers to take people into custody. Perhaps a cover sheet with an explanation of what our powers are that sought of thing might be something that would assist police who are not familiar with them. .

Participant 8:

Everyone always, because it is not something that we deal with all the time, everyone is always scratching their head as to what do we do, what do we do now. It is not like your normal everyday run of the mill warrants where you got the power to kick the door in, do this dot that, all that sort of stuff. Recovery orders are always like I said to you previously. My previous one would have to be close to three years ago. That is my own actual working on. This other one another member in my office worked on it 3 months ago, but yeah. Even if we had all the training its like when you do a form one week, or that week the next month but if you have had a couple months where you haven't had to fill that form out or do that form, it is like what do I do now, like it is not free flowing type of thing.

Participant 3:

But nothing specifically in relation to recovery orders. I mean it is such a minority of our work, like I haven't seen one for two or three years. So to be in a position to train 15 or 16 people in an office to do that by the time you actually got a recovery order warrant to go and execute, you may have forgotten all that training in the first place. It would be impractical as far as cost I would imagine and time wise.

4.4 Recovery Orders - A Story Telling

Participants were asked to describe examples of particular cases from start to finish regarding the execution of a recovery order. Clear themes emerged from the responses, they were (i) that the execution of recovery orders was stressful on all parties involved, including the

executing police officers, (ii) that possible violence was always a factor, (iii) that there was always ground work and planning conducted to ensure that the process occurs as smoothly as possible and (iv) that communication and collaboration between federal and state police services was essential.

Case example 1 (participant 1):

The latest one I did I suppose is the easiest one to remember, it was 3 –4 weeks ago, the mother appeared at the reception area here at the police station and she had a support person with her who was an aunty, I think. This mother had moved to our town from the metropolitan area and she had gone to live with her aunty, sought legal advice about, hang on I'll go back a bit. She had arrangements with her daughter's father to have regular access or whatever they call it now. This time the child had gone with the father, but the father was refusing to return the child so the mother had sought legal advice through our community legal centre, gone to the Court, had a recovery order issued, and she just wandered into the police station here with it and presented it to us. We then had to take steps to try and execute it. I initially contacted in this case the Federal Police to see if they would handle it because the child was not in our immediate location and was in the metropolitan area. They said ok so I faxed the information down to them. They made attempts to recover the child; this must have been late in the week. On Friday afternoon I had a call from the mother saying that the Federal Police contacted her stating that they have been unable to find anyone at home at the metropolitan address, so I took steps because at this stage she was getting fairly anxious about it all, her emotions were quite high, I took steps to actually make contact with the father myself by phone to see what he was up to. I spoke to him and he said that he was aware that a recovery order was in

existence. When I had contacted him he had just left his solicitors and was in the process of making arrangements to return the child. This was fairly late on Friday afternoon, and the child was eventually returned on the weekend, not sure either Saturday or Sunday, but was returned on the weekend. Police involvement was required because of an ongoing problem between the mother and the father and a violence issue. The police attended and saw the handover of the child and that was it.

Case Example 2 (participant 4):

We get a recovery order, we do our background checks, it is a Recovery Order, the mother is the applicant and the children were with the father at the grandmother's house. We do our background checks, find out they're got a little bit of a criminal history of violence so we take out 3 members on this occasion to the house. General approach is to knock on the front door, the grandmother answers the door, we explain calmly at the door the situation that we have a recovery order ask her where the children are, she tells us that the children are not at her house at the time, we explain to her that we would like to come in as the order allows us to search if we believe the children are there. It is the only address that we believe the children are at. Grandma at that point in time becomes quite upset about the fact that we want to come into the house. At the same time we hear a child running around in the house, we realise at that point we know that the children are there. She becomes quite upset and tries to push us out of the house, she was abusive and partially physically abusive. She was trying to slam the door in our faces. We eventually get into the house around through the back door, a child has run into a rear toilet, grandma had run into the toilet with the child. She shut the door in, so she locked herself in the toilet with the child. We call Victoria Police for assistance, because the matter is

becoming a bit of a problem at the time. The father of the children is not there at the house and nor is one of the children that we are looking for. Victoria Police turn up to assist us, the father comes home shortly after with the other child. At that point in time grandma comes out of the toilet. We sit down and discuss the situation, the father was verbally aggressive more than physically.

Case Example 3 (participant 7):

This was unusual instead of usually its mum and dad arguing over the children. In this case it was mum the respondent and her mother was the applicant. Her mother lived interstate, and she believed with some justification her daughter was a prostitute and a drug addict. And that the, was it one child? Yeah one child was in danger for those reasons. She should, this is the grandmother, she should have residence of the children. So it was arranged that she would fly down from Sydney and we were told where the child was and we went out to see, to pick up the child. Usually we always go with more than two AFP members... We did it with just the two of us and we thought that we would never do it again, because it seemed that it would be straightforward and it wasn't...But anyway we arrive at this place, at this unit in St Kilda, we previously rang up the local VICPOL and they made two members available. VICPOL are invariably always helpful. I mean if they are dealing with something on the street we would wait, and you can understand that, they have their own priorities. They will make two people available, they will leave them with us. They won't pull them off if a murder happens or a rape or something. So there were two members, they were male, often they are male, male/male or male/female. We explain what we see their role is to look after our back, to stand in the background and look tough. We'll do the talking and they're quite happy for that. What they have

commented VICPOL is that you guys AFP are far quicker than the social services people, DHS who will talk all morning, afternoon or day about the issue. Well the order says to take child from one person and place with another person so what is the point of talking about it. Just explain what their rights are what their options are. We may have great sympathy with the parent, with the child. It may seem to us that that person is a better parent but we haven't been to court and we have got the court order and um really there is not a lot that we can do about it. So we went out there and the child was playing with another child who had turned out to be no relation, but with a neighbour in a neighbouring unit, and the woman and her partner them seemed in good health, the place seemed clean and tidy. The first thing the guy said to us we explained to them, well you see VICPOL by the uniform, explain to them the order, given them a copy of the order. "We're not using", so obvious, "we're not using", we're not using drugs. I explained what the situation was and we would have to take the child to the maternal grandmother who's waiting in Melbourne. And so the other child left, we rang up and her mother came and picked her up and so we then have to make sure that the people who are wandering around getting things for the child that they are not getting a pair of scissors or something like this, or in the kitchen, you want to get them out of the kitchen, because it is an arsenal kitchen, um we eventually took the child and ah took the child to the grandmother waiting at Tullamarine. She seemed a very normal sort of woman and the next day I get a call from the respondent's partner abusing me, so this is sort of the factors you will get.

Case Example 5 (participant 8):

The last one I had I would just tell you the last one I had was three years ago and that is where the mum was at the back of Gelantipy back of Buckram. The parents had been

together living in Queensland, he and her had broken up, She came down to Victoria to be around family and friends. She hadn't allowed him to have any access to the child and so he went to the Family Law Court to get a recovery order in relation to the child and that is where we became involved. So once we spoke with him and arranged for him to come to Lakes Entrance. The Senior Sergeant because of the remoteness he would come out with me and we arranged for the father to meet us at the police station when we got back. So it is like a 1 and $\frac{3}{4}$ drive to get there. When we actually got to this remote farm, we had to actually get a farmer to drive us in because we didn't even know what farm we were going to. Um the mum was pretty understandably upset. First of all she was like "what the hell are the police here for," "what are you doing?" We said, look could we have a talk with you in the other room. It was in the morning when we got there, I think we were there by about 10 o'clock in the morning. So we said, lets put on a video for the little one to watch the video and how about we come into the kitchen and have a cup of tea and a bit of a chitchat. So the little one was basically in the lounge room and we were in the kitchen sitting down having a cup of tea, just chatting. The mum was just hysterical thinking that this child was going to be removed from her care forever in a day. So we had to sit there and talk about that is not what has happened, this is what has happened and explained the situation of how he had gone to the Family Court, first in best dressed type of thing for a recovery order and cause you had no orders in place as to who had residency of this child. He has basically put the application in first. The child wasn't at risk being with the mother at all, even though she was living a transient sort of life. The child was cared for and we told her that that would go to her advantage if it was ever required at court, that we could say when we arrived unannounced the child was well cared for and looked great. We talked about the trip back with the child and how we

didn't want to distress the child and distress her. She decided that she was going to tell the child that he is going on a holiday to his dad's, thinking that it would be great fun. So mum and I went into the bedroom with the child and we started packing clothes and cause of the length of the trip I said can we pack food because it is nearly two hours for this child in the car... The child had a great time, we took a couple of little toys with him, so he wasn't distressed and you know and we took the child back to Lakes Entrance police station where the child was met by his father and all the orders were looked at from there.

All participants indicated that they attempted to minimise the level of stress a child may feel in situations where a child was retrieved and placed great importance on the needs of the child. Participants indicated that attempts were made to get the respondent parent to play a role in calming the child's anxieties. However, a child's reaction to such situations varied, depending upon their age, their relationship with both parent, and the respondents reaction to the execution of an order.

Participant 6:

I used to attempt to keep the child out of the room while I was discussing it with the parent and everything was angry and then get the parent to explain to the child that they are going to mummy or daddy whoever it is, and that they are going for a ride in the police car and that they are going to play with flashing lights and it is all going to be fun. With the older kids they often get angry or relieved depending on the situation and how they have been kept where they are.

Participant 5:

The child was a little two year old, the child was screaming and crying because his father was being restrained. I mean the father wanted us to shoot him. We didn't shoot him, I assure you of that and we got the kid.

Participant 7:

A common scenario is that the child seems rather bewildered, what's happening and we explain to the respondent that it is best that you try and have the child as stressed at a minimum so that you pack his or her things, her favourite toys. Explain to them that they are going to be away for a while with someone that they know, another parent and that you are coming back for them... So the child can be a bit upset or a lot upset. You get times when a child is older and doesn't want to go but usually they see it as two men of authority and other people there. So they are reluctant really and often as quiet as a mouse in the car. We get to the applicant parent, they become all cheerful again.

Participant 8:

I distinctly remember one where I had to physically sit in the back of the car with the child in the car seat and hold the child in the back of the car whilst we were going along cause I figured that the child would be out the car and out the back window and gone.

Participant 5:

Ohh he was initially distressed. Took the fellow back to the police station in the car and he had calmed down, he was playing with the lights and sirens.

5. Discussion and Analysis

5.1 Introduction

To summarise the focus of the research as outlined in the introductory chapter (section 1.1), the research sought to look at the time, process and difficulties encountered by police to enforce recovery orders. It furthermore sought to highlight the important role and function that police play in such an area of law and to bring to the surface some of the limitations of the process. There is a vast amount of literature and research focusing upon the Family Court of Australia and its operation. This research differed, and provided a unique insight into the process of recovery orders and how parenting orders actually work and enforced.

This chapter will focus upon discussing detail the related findings to the original questions the thesis sought to investigate. Interpretation of the findings and comparison to previous research and literature will also be discussed. Discussion will also take place around the limitations of the research findings.

5.2 Police Perceptions as to Why Parenting Orders were Breached

The Courts in exceptional circumstances can issue a recovery order under s.67 of the Family Law Act 1975 when a parenting order is contravened. The order gives the Police the power to return a child to the applicant, as discussed in section 2.2.3 of the literature chapter.

Participants expressed that parenting orders were breached because of ongoing parental dispute and animosity, and that the children were used to further their disputes with one another. Common factors that contribute to parents having an acrimonious relationship would

be financial pressures, changes in family dynamics and allegations of child abuse. The case-examples further highlighted the potential for distress and anxiety for a child when police become involved in the execution of a recovery order.

The findings outlined above illustrate and supports the literature and research outlined in section 2.5. The changes associated with divorce for children and families are often taken for granted and not realised. There is often a decline in financial resources, living and care arrangements. The impact of divorce is exacerbated when there are high levels of parental conflict. Parents often attempt to sabotage a child relationship with the other parent by withholding a child from having contact with them. It is in these types of circumstances where police are required to execute a recovery order. The circumstances that surrounds divorce often presents many challenges for children such as, feelings of loss and rejection that would have an adverse impact upon their emotional stability and wellbeing. This is intensified in circumstances where children are exposed to high levels of conflict and uncooperation between their parents (Clarke-Stewart & Brentano, 2006:143-145; McIntosh, May 2002:2-4; Noller et al., 2000:68-73; Oppawsky, 1989:139-151).

However, participants were able to outline methods of trying to minimise the level of stress a child is exposed to by trying to keep the respondent and the situation composed. Participants described case-examples where they would ask the child to leave the room whilst they discuss the situation, they would ask the respondent parent to play a part in decreasing the child's anxiety and provide reassurance to the child. Participants placed a great importance on using negotiation and mediation skills to decrease the potential for confrontation.

Interestingly participants did not describe or consider domestic violence to why parenting orders being breached. However, it is acknowledged that the researcher did not explore this further with participants. Many women would leave relationships due to violence as discussed in section 2.4.3. Although women and children would leave violent relationships, they were often still exposed to violence or placed in compromising situations when facilitating contact. Domestic violence may not involve physical violence but can also include the use of power and control over a person. Participant 6 described the use of power and control as to why parenting orders were breached. However, power and control was described in the context of animosity between parents.

Given the high figures of reported domestic violence there is a greater likelihood of parenting orders being breached by a parent due to circumstances involving domestic violence, as opposed to other reasons. The Victoria Police in 2003/2004 recorded more than 28,000 family violence incidents and the demand for police to attend family violence reports increased by 45% within a three-year period. In order to break the cycle women were often forced to leave the relationship. In Kaye, Stubbs and Tolmie (June 2003) the findings indicated that 97.5% of women who had experienced violence or abuse after separation went to great extremes to deny a child from having contact with their father due to fear of harm.

5.3 Allegations of Child Abuse and the Family Court of Australia

SOCA units have the primary role in investigating child abuse and only on occasions are they requested to execute recovery orders. The participants indicated that allegations of child abuse was a contributing factor as to why a child was withheld by a respondent in the first

instance. From the 20 observations conducted, 13 of them expressed substantial concerns in relation to possible child abuse or concerns regarding a child's welfare in the respondent parent's care. The findings indicated that SOCA units undertake criminal investigations pertaining to allegations of child abuse in the context of family law and that these allegations often lack sufficient or substantive evidence. Participants indicated that parents would use alternate systems such as DHS and police, to obtain primary care or to withhold a child from having contact with the alleged offending parent. It must be noted however, that this finding is as a result of interviews conducted with four police members and therefore no firm assumptions can be drawn due to the limited sample, although it is an area that is worthwhile discussing further.

This particular finding from this study was unexpected. The literature relating to the Family Court of Australia and its role and decision-making in cases of child abuse is diverse and complex. Statistics indicate that 33% to 43 % of women separate from their partners because of child abuse and or family violence. Separation does not necessarily bring abuse to an end with 20% of cases reporting continued abuse throughout contact (Brown, 2001:1-7). A study conducted by Brown, Frederico, Hewitt and Sheehan (1998b), firmly disproves myths of false reports associated with child abuse and parental separation or divorce. The research outlined that there is a public perception held by those in the community and professionals that allegations made by a parent in private disputes were false and were fabricated by a parent as a tactical advantage. The study found that false allegations of child abuse were found in only 9% of cases. False allegations made to the Family Court were no more frequent than that made in other instances, with only 22.5% of cases being previously involved with state child protection services. The study found that allegations of child abuse was only reported in 5%

of child related matters before the Family Court of Australia. However, the research anticipated that such numbers would increase for the following reasons:

- Child protection services refer matters of child abuse to the Family Court in instances where a non-cohabiting parent or extended family members make such allegations.
- There is a growing number of cases that court staff are identifying child abuse concerns, and
- There is increasing public awareness on what constitutes child abuse.

Furthermore, the research indicated that cases where allegations of abuse are reported are resource intensive, time consuming and the issues were not adequately addressed with the co-operation of other professionals, such as child protection services or the Police.

In Victoria, the Children's Court is the primary jurisdiction for dealing with issues involving allegations of child abuse. Through a dual track system police are often involved in joint investigations on such matters between DHS and the Police. The Australian Constitution devolves responsibility for child welfare legislation to the States and Territories. However, the Federal Parliament can enact legislation in private law and family matters, which includes child related matters. There is a growing view that the Family Court of Australia, is a key court in addressing concerns of child abuse when matters are brought to the forum by a parent or caregiver as a result of matrimonial matters. The legislative framework and the operation of the systems that governs child related matters in Federal and in the State of Victoria are different and both have different thresholds. For instance, DHS may not necessarily

investigate concerns of child abuse if a child was in the care of a non-offending parent and is acting protectively. The report may not meet their threshold, as the child is not assessed to be at risk of harm. This however does not necessarily mean that a child has not or will not be harmed (McInnes, 2003:4-5; Nicholson, 1999:9-13). In response to these indifferences the Magellan case management system (as discussed in section 2.2.6) was introduced to increase coordination and collaboration between external government services, such as DHS and Victoria Legal Aid (Brown, 2003:1-10; Brown et al., 1998a:1-7).

The findings relating to the conception that reports made to police of child abuse that have a “Family Court flavour” and therefore are likely to be malicious in nature, is contradictive to the literature. Given that the findings were not the focus of the research and were from a small sample group of four participants from Victoria Police SOCA units (in different locations) it would be unjust and premature to challenge previous research conducted and the findings outlined by Brown, Frederico, Hewitt and Sheehan (1998) cannot be refuted. It does however, suggest that police over rely on stereotypes and myths rather than having evidence based opinions.

Another finding from this research was that participants expressed a dislike for having to execute recovery orders when issued by the Court. There is no direct literature that supports or disproves this finding.

The two research findings, (i) belief that allegations of child abuse in the context of family law are often unsubstantiated and used as a tactical advantage, and (ii) the dislike by police having to execute recovery orders, raises an interesting point when considering police beliefs

and attitudes to dealing with child related matters in the context of family law. As previously discussed in section 2.4.3 of the literature review, police had a negative perception and disliked becoming involved in family violence as they viewed these situations to be a private matter opposed to a police matter. Allegations of child abuse in the context of family law and also the execution of recovery orders can also be perceived in the same light, and there is a possibility that police have a unwillingness towards dealing with child related matters in the context of family law. This is merely a consideration and there is no clear evidence to support this belief.

5.4 Police Perception: An Increase in Recovery Orders

Participants from the AFP indicated an increase in the number of recovery orders issued by the Courts. However, a limitation of this finding was that participants were not able to indicate figures to confirm or support this perception. If this finding is accurate then it does not support the objective of the *Family Law Reform Act* 1995. The objective of the Act was to decrease parental conflict and decrease the amount of litigation in relation to complex contact cases by shifting the focus onto joint responsibility of parenting rather than ownership (Graycar & Harrison, 1997:24-25; Rhoades, 2000:142-159; Rhoades et al., 1999:6-14; 2001:1-8).

Research conducted by Rhoades, Graycar and Harrison (1999) and later affirmed in their research conducted in (2001), indicated that the *Family Law Reform Act* 1995 created conflict and inconsistent definitions between professionals. The Family Court of Australia statistics indicated that there was an increase in the number of applications for contact to be made.

(Graycar & Harrison, 1997:24-25; Helen Rhoades et al., 1999vii-xi, 50-52; 2001:1-8).

Between 1996-1997 there were 29,567 applications made requesting contact. Between 1999-2000 applications made to the Court increased to 37,717 (Family Law Council, 2002). Whilst it is acknowledged that these statistics are somewhat outdated they provided an indication that breach applications had steadily increased since the introduction of the Act and that such applications were usually brought before the Court by the non-resident parent (Rhoades et al., 2001:1-8). The findings of the research conducted by Rhoades, Graycar and Harrison (1999) and later in (2001) potentially supports the findings that there has been an increase in the number of recovery orders issued by the Family Court. There is a likelihood that if more parenting orders are being issued by the Courts, this increases the likelihood of a order being contravened, resulting in a recovery order being issued.

The *Family Law Amendment (Shared Parental Responsibility) Act* 2006 was introduced as the Government felt that the reforms in 1995, did not achieve the cultural shift it had initially hoped for. Like the *Family Law Reform Act* 1995, the aim of the reforms in 2006 are to promote shared parenting and shared parental responsibility, and reduce litigation and promote and encourage co-operative parenting through service delivery, as discussed in section 2.2.4.4 (Bryant, 23 October 2006:2). Given the recent implementation of the 2006 reforms it is still too early to comment as to whether the aims of the Act are being achieved, and any filtering effect this may have on the number of recovery orders issued by the Courts for the Police to execute.

5.5 Police Services and the Community

The findings also indicated that parents often contacted police services as the first port of call for advice and assistance. Participants only made reference to verbal advice being given to parents and no other resources such as information packages or pamphlets. Participants expressed that parents would contact the Police in attempt to remedy issues when a parenting order has not been adhered, to or the unwillingness of one party to return the child when there were no formal orders in place. Possible explanations for this could be:

- In most instances police stations are local and therefore easy to access for assistance and advice. That police have a diverse role and as discussed in section 2.4.1 one of their functions is to maintain social order.
- Parents are unaware of the processes and procedures, as they have not had to deal with such a situation.
- The belief that a criminal offence has been committed. As discussed in section 2.5 of the literature chapter, parents often refer to instances where one parent is refusing for the other parent to have contact as “kidnapping”.

There is a high likelihood that parents are not aware of the processes and procedures to deal with situations where a child is being withheld by another parent, thus requesting the advice and assistance of the Police. Police Services have a greater community presence; most people in the community have a better understanding of their system, role and functions in comparison to the Family Court. The Family Court of Australia has a substantive, informative, and educative website which is easy to access for information outlining legal processes and issues, such as the manual titled, *The Family Law Book* (2004a). However, the

Family Court does not make a point of advertising their service and in most situations if a parent has never had contact with the Family Court or the family law system they may be unclear as to how and where to access information.

5.6 Recovery Orders: Police Process and Procedure

The research indicated that when the Courts issued a recovery order it is sent to the AFP who has jurisdictional authority to execute it. This was a clear and standard response from all participants, even though recovery orders as outlined in section 2.2.3 are usually addressed to all police forces within Australia. However, given that family law is a federal jurisdiction the primary responsibility for all family law matters remains with the AFP who in Victoria has established a specialist team who solely deal with family law matters. Whilst the research focused only on the Victorian office of the AFP, it is the researchers understanding that other AFP offices in Australia operate differently when fulfilling their duties and responsibilities in family law.

There are no clear guidelines as to how to proceed when a recovery order is forwarded from the AFP to the Victoria Police. Participants expressed that this would occur in most instances where a child needs to be retrieved from regional Victoria. Participants from the AFP outlined that in most instances, the recovery order would be forwarded to the local Victoria Police Station because of the time constraints.

When a recovery order is referred to the Victoria Police to execute, there is no policy or agreement as to how they are executed or by which section. Participants from the AFP were

of the view they would request the uniform section of the Victoria Police to execute the order. However, when attempting to locate research participants from the Victoria Police as outlined in section 3.2.2, the Victoria Police Research Coordinating Committee, indicated that the SOCA Co-ordination Unit in Melbourne, who are responsible for training and policy issues relating to sexual assaults and child abuse were the most appropriate unit from which participants could be drawn, given their role and expertise in child related matters. Thus indicating that SOCA units were most likely to execute recovery orders. However, difficulties were encountered when the researcher attempted to find participants from the Victoria Police. It may be concluded from the findings and also the investigation of this research that there are no clear processes or implemented systems as to which section of the Victoria Police executes such orders. Given this it is unlikely for members from the Victoria Police to gain expertise and understanding of recovery orders and family law issues, there is no consistency as to which section should be responsible for executing recovery orders. Furthermore, while it was viewed as good practice from SOCA Unit participants to record the execution of the recovery order on the computer system, this was not a requirement and not all SOCA units recorded such information. Whilst it is acknowledged that the Victoria Police seldom deal with the execution of such orders, it is still of importance for the organisation and other external agencies to have a clear guideline as to which section of the Victoria Police should be responsible to fulfil this function. This in turn would increase accountability, consistency in practice and organisational commitment.

The majority of the study participants from the Victoria Police SOCA units believed that they should execute recovery orders if requested, as the nature of their work and surroundings are more child focused. However, participant 3 from a SOCA Unit felt that although it is the

organisation's view that the Victoria Police SOCA units were better equipped to deal with the execution of recovery orders in comparison to uniform police, she/he did not believe this to be true. This statement contradicts the organisational beliefs that SOCA units are best equipped to execute recovery orders despite their role and expertise in child related matters. They stated:

For some reason our units are better handling them than what uniform would be. I do not know whether that's still the case, I do not reckon it is, and that's maybe why we do not see so many here.

The findings indicated that the following preparations would take place prior to executing an order:

- Locating the child through discussions held with the applicant,
- Assessing variables such as possible violence when retrieving the child via checking police databases, and also
- Arranging with applicants logistics as to the delivery of the child. Further discussions would be held with the applicant in relation to the respondent's demeanor and other factors such as other people present in the home.

This planning process determined the amount of members required to execute the order, however there is always to be a minimum of two members. Participants from the AFP expressed that Victoria Police uniform members and other members from the AFP often

assisted the Family Law Team, as secondary workers, by attending the premises to retrieve a child when it had been assessed that more than two members were required.

Participants reported that the two police services would work collaboratively and assist one another in executing recovery orders. The Victoria Police SOCA units expressed a willingness to assist the AFP in the execution of recovery orders on request. This contradicts the literature presented in section 2.4.2 indicating that the state police services were reluctant to assist in the enforcement of family law orders as it was not their responsibility or jurisdictional concern. One of the possible reasons for this difference is that participants from the Victoria Police SOCA units were from regional Victoria and understood the logistical constraints placed upon the AFP. If metropolitan participants from the Victoria Police were incorporated into the research then this finding may have been different.

Should the Family Law Team require additional assistance from members due to workload issues they are able to seek assistance from police members who were previously attached to the Family Law Team or other operational areas. Participants expressed that members who attended and assisted with the execution of recovery orders required some understanding of their role and responsibilities when it comes to family law.

Participants indicated that the initial approach in retrieving a child is to negotiate, communicate and remove a child in a manner that would require minimal intervention. The participants expressed that ensuring the safety of the child, the Police members and others who may be present was of importance. Such techniques are adopted to decrease the risk of emotional harm and distress upon the child. The data indicates that members who execute

such orders need to have good conflict resolution skills. This finding is paralleled by Feather (1997) who outlined that conflict resolution and a multi-disciplinary approach to policing is required in order for members to adequately fulfil their duties and responsibilities.

Even though participants indicated that they always attempt to remove a child in a harmonious manner, there was real potential for hostility, violence and force. For example participant 5 (section 4.2.4) outlined that the Police had to restrain a father because he wanted the Police to shoot him. Although planning prior to the execution of a recovery order takes place there are a number of unknown variables upon retrieving a child that may affect the outcome. It is acknowledged that each situation would differ, however matters pertaining to children increases the risk for the environment to be emotionally charged. This heightens the risk for violence.

Participants also outlined that police presence could at times exacerbate a situation.

Participants expressed that often respondents would have a negative view of the Police.

Participant 3 stated:

Sometimes a uniform has an effect on people to do as they are told. For some people it is like throwing a red rag to a bull.

One of the complicating factors or difficulties encountered in relation to the execution of such orders is physically locating the child. Participants indicated that in instances they would not know where the child was located. Participants did not indicate that they would make contact with the respondent parent to try and negotiate for the child to be returned without police

intervention. One of the possible explanations could be that the process may take longer as the respondent would not comply. Participant 1 stated:

The only difficulty is if you do get this person that won't play ball and to chase them. Once you have physically come in contact with them there's no problem. But it is when you try and do it over the phone or by some other means to minimise our involvement for the child's benefit, that is when they can drag on a bit. If we can actually physically encounter the person and say this is the story we've got a recovery order we must return your child...

If a child was located interstate and they needed to be returned to Victoria, or on the other hand a child needed to be returned to another state this would prove to be a complicating factor, as more stringent arrangements would need to be made prior to the execution of the order. This often required requesting interstate police services to execute the order and arrangements needed to be made for a child's transport back to Victoria. Given the additional planning required these orders take longer to execute.

Once a child is conveyed to the applicant, the warrant is endorsed and sent back to the issuing Court with the Police playing no further role.

The findings above indicate that a police response to the execution of a recovery order is process driven; even though the Police have some discretion in the process they must execute the recovery order as they are purely agents of the Court. The Police are also given no

background information by the Courts as to the circumstances surrounding the reasons as to why an order has been issued.

As discussed in section 2.4.2, a report conducted by the Australian Parliament Joint Select Committee (1992) discussed the difficulties surrounding the enforcement of access and custody orders by police services in Queensland. It is important to recapitulate on the findings of the report, as there are similarities that can be compared to the findings of this study.

The limitations expressed in the report conducted by the Australian Parliament Joint Select Committee (1992) were:

- Police were given inconsistent and limited powers within the warrants. This would result in delays in the execution of the warrant,
- Judges wording on warrants would be unworkable and difficult to interpret therefore making them difficult to enforce,
- Police were reluctant to become involved in situations where they did not know the full facts, and
- Police were unclear about their ability to care for the children prior to delivering them to the applicant parent, particularly when a child was required to be transported to a different State.

Whilst it is acknowledged that the findings were not identical, similarities may be noted particularly when looking at police beliefs and attitudes in becoming involved in family law.

As discussed previously in section 5.3 of this chapter, the study participants outlined a dislike for executing recovery orders and described the task as being unpleasant. The 1992 findings indicated reluctance by police to become involved in the enforcement of access and custody orders. One of the major factors identified supporting the unwillingness by police services in Queensland to become involved in the enforcement of parenting orders was that they were not made fully aware of the circumstances of the situation. The findings of the study conducted in 1992 and the findings from this study showed no change in police services outlook on the enforcement of parenting orders. The issues surrounding police hesitation and unwillingness to become involved have not been addressed. Findings and discussions in relation to training and priority placed on the execution of recovery orders further supports this perception and will be discussed further in the following section.

5.7 Priority and Resources in the Execution of Recovery Orders

The findings indicate that as an organisation the AFP placed a low priority on fulfilling their responsibilities associated with family law in comparison to that placed other policing matters of a criminal nature. Further supporting this finding was that the AFP placed inconsistent and insufficient resources into the Family Law Team in order to fulfil their obligations. The findings indicated that there were ongoing difficulties with the number of staff allocated within the Family Law Team, thus causing instability and structural difficulties. This limitation often requires members to seek assistance from other Federal Agents and the Victoria Police who may have a limited knowledge or exposure to such an area of law in order to fulfil their duties.

Budgetary constraints on the organisation could be an alternative explanation regarding why the Family Law Team experienced structural difficulties. The Government may not be allocating sufficient funding to the organisation to satisfactorily meet all of their competing demands, thus placing a strain on the organisational structure as demand exceeds capacity. As outlined in section 2.4.1 despite a large amount of funding and resources given to law enforcement agencies to carry out their duties, the AFP recognises that the number of offences reported against the Commonwealth exceeds its investigation capacity. Therefore, the AFP evaluates their work in accordance with its Case Categorisation and Prioritisation Model to ensure that its limited resources are directed into operations that are of the highest priority (Australian Federal Police, 2005:1). Whilst the AFP may not assess family law obligations as a high priority operation in comparison to other policing duties, such as terrorism and fraud, it is still an obligation that they must fulfil.

As stated previously, the AFP in Victoria has designated a specialised team and has implemented internal processes such as calling on other Federal Agents not attached to the Family Law Team, to ensure that they meet their requirements. Whilst this may not be regarded as being ideal, as members outside of the Family Law Team often had little exposure to family law it does get the job done. There are some positive aspects to the Family Law Team remaining as a specialised team including; (i) it provides continuity, (ii) expertise, (iii) greater ability to network with external agencies such as the Victoria Police and the Family Court, (iv) accountability and (v) less confusion and (vi) there is a central point of contact for external agencies and the public. Participants from the AFP expressed that the Family Law Team should remain as a specialised team with sufficient staff members, including an administrative assistant, for the reasons outlined above.

When exploring the time it would take for a recovery order to be executed and the number of orders that were required to be executed at any given time, participants indicated that this would depend upon the time of year one was referring to. It was apparent that during certain times of the year, such as Christmas and school holidays, there was an increase in the number of recovery orders issued, this increasing the workload of police services. The AFP upon the following factors prioritised the execution of orders:

- The availability of members to execute the orders,
- Whether the child is able to be located,
- A child's age. A child who is of a young age is considered to be more vulnerable, and
- The workload the Family Law Team has at that time.

Even though participants expressed that workload and finding members to execute recovery orders at times could be problematic, particularly if there were some orders awaiting execution, they did not indicate this to be a difficulty when questioned about some of the difficulties encountered with executing recovery orders. Participants expressed that although it could be testing at times, they were able to locate resources to assist them even if this meant utilising members who had low level of exposure in dealing with the execution of recovery orders.

Participants expressed that the Victoria Police SOCA units placed a high priority in the execution of recovery orders, however the execution of a recovery order never overridden

other core responsibilities of investigating crimes, relating to children and sexual offences. The case-examples also indicated that the AFP accepted that the Victoria Police placed a low priority on the execution of recovery orders, in comparison to their other policing responsibilities. Resources to execute such orders are not of concern, given the small number of orders they required to execute each year. If however difficulties are encountered in relation to resources, other units within the region or police station were readily available.

Therefore, the findings indicated that police services placed a lower level of priority on the execution of recovery orders in comparison to other policing functions of crime prevention. This finding in conjunction with service delivery and training will be discussed further in this chapter.

5.8 Police Training in Family Law

The research indicated that whilst at the Police Academy police had little training in relation to recovery orders or family law matters. There is some emphasis placed on training for new members from the AFP to provide them with basic legislative and on-the-job training. However, participants from the AFP expressed that they received no training and taught themselves as to the power they had in relation to recovery orders. Given this, participants felt that further training was required particularly for members not attached to the Family Law Team.

Participants from the AFP expressed that some new recruits were provided with on-the-job training, via secondment to the Family Law Team. This gave new members experience with the legislation and the processes involved in the execution of a recovery order.

Participants from the Victoria Police SOCA units expressed that they did not have a lot of exposure to executing recovery orders. Consequently, police members from the Victoria Police had little exposure to on-the-job training in relation to the execution of recovery orders. Even though participants expressed they did not have any specific training as to the legislative framework and process for executing recovery orders, they believed that the compulsory training they must complete in relation to safety tactics, negotiation and conflict resolution was transferable and sufficient enough. They did not believe that practical skills or information training sessions were required. The findings indicated that those who have had little or inconsistent exposure to such an area of law (participants from the Victoria Police SOCA units) believed that information, by way of written instructions around processes and police powers, would be beneficial but other training was not necessary.

This finding is worthwhile discussing as it further supports that the Police place little organisational commitment on family law matters. The fact that little training is provided to police members supported the findings that were discussed earlier in this chapter that police services placed little emphasis or priority on family law matters. The AFP provided little training to its members apart from on-the-job training and in some instances, participants expressed that they were required to execute an order with no training, knowledge or background. Family law matters, in particular the execution of recovery orders, is of a sensitive nature involving vulnerable children and may involve situations that have the

potential to become volatile. When considering that the AFP has the core and central responsibility in ensuring that all orders are executed, the investment placed in training members to deal with these situations is arguably insufficient. Comparisons to this finding can be drawn with the literature presented in section 2.4.3 relating to police training and domestic violence. Literature relating to Australian and international policing of domestic violence outlined that police were not given adequate training and resources to appropriately deal with family violence.

Participants from the SOCA units felt that training was not even necessary even though they had little knowledge and expertise. Whilst it is acknowledged that participants from the SOCA units had relatively few numbers of orders to execute in comparison to the AFP, it raises discussion around their level of commitment and willingness to become involved in matters that are family law orientated. As previously discussed, participants disliked executing recovery orders but do them because they are required to, they also have no training and felt that no training was required. This further highlights that police place limited value on the role that they play.

5.9 Outsourcing Police Responsibility in Relation to Recovery Orders

Given that participants expressed that they did not like executing recovery orders and that they were not viewed within the organisation as a priority participants were asked whether policing responsibilities in relation family issues could be outsourced/privatised, either to another government or non-government body? Whilst it is acknowledged that the execution of court orders has to be carried out by statutory authorities, the consideration is whether other

statutory agencies or adjunct services could execute recovery orders if given the legislative mandate to do so. The participants believed that policing responsibilities in relation to family law issues could not be outsourced to a body other than a police service for reasons such as safety, authority and based upon the public perception of the role of the Police within the community. Participants viewed the outsourcing of such power and responsibility would be dangerous and increased the risk of harm and liability.

One of the reasons given by participants as to why police powers could not be outsourced is because of public perception on the role that police play within the community. There is no doubt that police services play an important role within the community, some participants expressed the view that police presence was counter-productive.

The Police could maintain the responsibility for executing recovery orders, however there are other avenues worthwhile exploring to either take over the responsibility of executing recovery orders from the Police or be mandated in conjunction with the Police to fulfil this role. Below two alternatives will be discussed (i) the role and power being referred to privately operated services and (ii) the responsibility and power is given to existing statutory authorities, such as DHS.

Previously government-operated services have been outsourced and many other areas of policing have been taken over by privately operated organisations. For example, certain security functions and the Police Air Wing operations were privatised as the Police did not view these functions as core responsibilities and resources would be best utilised in other areas of policing. The findings of this research indicated that police services do not perceive the

execution of recovery orders as being a core function and therefore consideration is given as to whether the execution of such orders could be outsourced.

Privatisation is often viewed by its supporters as being more efficient, more effective, increases accountability and less costly. On the contrary, it is argued that privatisation is slowly eroding civil liberties and quality of service delivered is inefficient. Privatisation of previously government-operated services is a growing trend and raises the questions as to what the limits and boundaries of this phenomenon ought be? The Family Court has already included services that are privately operated such as counselling services and court security. Whilst it is acknowledged that these are adjunct services and do not undertake core legislative activities, the Government could, if it regarded as advantageous, enact legislation to give authority to a private body to execute recovery orders. Privatisation involving giving the private sector powers and authority normally associated with the Government exclusively has already taken place in Prisons in Australia.

A further alternative may be to give the power to execute recovery orders to existing statutory authorities. In exploring international models for the enforcement of parenting orders, the New Zealand system gives the Police or a social worker the power to collect a child and deliver them to a applicant parent when a warrant has been issued by the Courts as discussed in section 2.2.4.2. Therefore in New Zealand, the Police do not have the sole responsibility in retrieving children. Legislation could be enacted to give the power to child protection services to execute recovery orders. Whilst it is accepted that child protection laws are governed by the States and Territories and thus do not come within the ambit of federal jurisdiction, it is not impossible for legislation to be passed allowing for child protection services in all States

and Territories, to be given the authority to execute such orders. It can be argued that child protection services have a better understanding of the family law system and the context would be more familiar as they are, already working in the field, they are better at dealing with vulnerable families and children, they have a better understanding of family functioning and family breakdown, they are more child focused and deal with volatile situations on a daily basis. Furthermore, child protection services regularly are regularly entrusted with the responsibility of removing a child from the care of a parent(s) due to concerns around safety and harm. They would perform this function without police involvement, but could call on police assistance if required. However, there are some arguments against child protection services being given the authority to execute recovery orders, they are:

- Child Protection resources are already stretched, and
- Difficulties could be encountered particularly if a parent was withholding a child from returning or having contact with a parent because of concerns around child abuse and neglect in that parent's. As discussed in section 5.3, child protection services would not necessarily investigate concerns of child abuse if the child were in the care of a non-offending parent. This would place child protection services in a compromising position and legal issues may arise.

In conclusion, if the Police want to continue to be responsible for the execution of Recovery Orders, they need to reflect on how they will increase their organisational commitment to this particular aspect of policing. This can be measured through the lack of training and resources provided in this area. The fact that participants felt that the responsibility could not be outsourced because of reasons surrounding public safety and public perception, are not

convincing arguments. The lack of organisational commitment and focus by police services in Victoria regarding family law issues, in particular the enforcement of Recovery Orders, raises an argument for other statutory bodies to be given the powers/authority to execute these orders.

6. Conclusion

The purpose of this chapter is to present the major conclusions which can be drawn from the results and discussions of the research, and how they directly relate to the aims of the research as stated in the introduction. Furthermore, the problems and limitations of the research are discussed to qualify any conclusions drawn.

6.1 Complexities and Limitations of the Findings

As outlined in section 3.2.5 the study has undergone many changes due to unforeseen circumstances. One of the major complexities encountered was obtaining and locating study participants from the AFP and the Victoria Police. This in turn had a major impact upon establishing firm and definitive findings. The observations undertaken by the researcher were incorporated to try and compensate for the small sample group of only eight interviews.

Whilst the observations were useful in complementing some of the findings, particularly around the exploration of the emotions and reactions portrayed by parties involved in family law matters, it provided little support to the main objectives of the study. The aim of the study was to describe the process adopted by police in relation to the execution of recovery orders, and to identify any difficulties encountered with the process. It further sought to examine service delivery, training and police perspectives in dealing with such an area of law.

Consideration should also have been given to conducting more than one interview with participants to further explore certain points of interest in more detail to add weight and depth to the findings.

Given the limitations of the study the findings need to be considered as being provision and would require further supporting evidence before being confirmed. They do however give a glimpse that there are problems with the process and service delivery in Victoria by police in relation to the execution of recovery orders.

6.2 Summary of Major Findings

The findings indicated that participants demonstrated standard principles to the process adopted to execute the order and preparation would occur prior to executing the order. This would include (i) discussions with the applicant parent to assist with locating the child, (ii) assessing variables such as the potential for violence and (iii) arranging with the applicant the return of a child upon execution of the order.

The participants expressed that the execution of recovery orders was not fairly complex and that generally difficulties in executing orders were encountered prior to attending the location where a child is believed to be. The study found that complexities surrounding the enforcement of recovery orders is often dependent upon (i) the ability to locate a child, (ii) the logistics involved in executing the order, for example the child is interstate and (iii) the ability to finalise arrangements with the applicant. The study found that participants had standard and broad principles to the process adopted to execute such orders. They also focused upon

ensuring the safety of those who are present when executing an order by attempting to negotiate with a respondent parent.

Recovery orders are executed as soon as practical, however at times the AFP experienced workload issues that would delay this from occurring. Even though participants expressed that workload and finding members to execute recovery orders could be difficult at times, generally they were able to get assistance from other members within the organisation. One of the identified problems associated with this practice was that members might not have expertise and knowledge in family law matters.

The study demonstrated that police play an important role in the execution of recovery orders, even though the findings indicated that they did not place a high level of importance in comparison to other policing responsibilities. Even though lower priority was placed on executing recovery orders, participants felt that the responsibility could not be outsourced due to concerns surrounding public safety, authority and public perception of the role that police have within the community. However, the findings indicated that there was a lack of organisational commitment to this particular aspect of policing, which could be measured through the lack of training and resources provided in this area.

The research findings also raised concerns around police beliefs and attitudes when dealing with dealing related matters in the context of family law. The findings that support this statement are (i) police demonstrated a dislike for executing the recovery orders, (ii) participants from the Victoria Police SOCA units perceived allegations of child abuse in the context of family law to be often unsubstantiated and used as a tactical advantage, and (iii)

participants from the Victoria Police SOCA units were given no training in relation to the execution of recovery orders and believed that no direct training was required, thus placing limited value on the role.

A similar area of law where supporting comparisons could be drawn from is police beliefs and attitudes in dealing with family violence. As discussed in section 2.4.3 of the literature review, police had a negative view of and disliked becoming involved in domestic violence matters as they viewed them to be private and therefore not a police matter.

The findings further indicated that little has changed since the report conducted by the Australian Parliament Joint Select Committee (1992) where police indicated a resistance to become involved in the enforcement of parenting orders due to systems issues.

However both policing jurisdictions (federal and state) work collaboratively, and offer assistance to one another when required to enforce a recovery order. This finding contradicts the literature presented in section 2.4.2 indicating that the state police services were reluctant to assist in the enforcement of family law orders as they perceive this to be not their responsibility or jurisdictional concern. One of the possible reasons for this difference is that the participants from the Victoria Police SOCA units were not from metropolitan Victoria but from rural or regional Victoria and understood the time and resource constraints on the AFP if they had to travel long distances to retrieve a child.

There are no clear guidelines identified as to how to proceed when a recovery order is forwarded from the AFP to the Victoria Police. Participants from the AFP outlined that in

most instances, the recovery order would be forwarded to the uniform section of the Victoria Police to execute. Whereas, the Victoria Police assumed that SOCA units would execute the order as they have the expertise within the organisation to deal with child related matters. However, given that the AFP forwards the orders to the local uniform section highlighted that there was no consistent practice. This again raised concerns around the level of commitment to family law matters by the Victoria Police.

In conclusion, the findings indicate that there was little organisational importance placed on the function of family law, and that members exposed to the areas placed little value on the role in comparison to other policing requirements. This was suggestive by (i) the limited and inconsistent resources placed in the Family Law Team by the AFP, (ii) the limited value placed on training by individuals and the organisation, (iii) unclear processes when referring recovery orders to the Victoria Police, (iv) police members expressed dislike in having to execute orders, and (v) the perception held by participants from the Victoria Police SOCA units that allegations of child abuse in the context of family law were often unsubstantiated and used as a tactical advantage. The findings indicate, although tentatively, that the Police need to reflect upon how to increase organisational commitment to the execution of recovery orders if they are going to maintain the responsibility for this function. The study has provided a platform for more research to be conducted in this field in the future. Whilst the findings need to be considered in light of the small sample, it has helped add learning's and insight as to the process to be undertaken in the execution of recovery orders by police services.

6.3 Recommendations

The research has provided an unusual insight into the process of recovery orders and has helped, albeit tentatively, on a small-scale to continue to add knowledge and insight into the process of recovery orders. Given this the following recommendations should be considered to further build upon the findings of this study:

- More exhaustive research using a greater number of participants from both the AFP and the Victoria Police to be undertaken. This will generate more concrete findings that will assist with policy and operational development.
- The Victoria Police should clarify with section 87A primary carriage for the execution of recovery orders and that this information is shared with the AFP.
- Greater liaison and networking between the AFP and Victoria Police in relation to family law matters to be undertaken. For example setting up bi-yearly liaison meetings with key stakeholders.
- The AFP conduct a review of various ways it has structured its family law function in the States and Territories to improve systems and processes.
- Research comparing how different countries approach the operation of recovery orders or their equivalent to be undertaken.

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7. Appendices

7.1 Appendix One – Prescribed Consent Form

PRESCRIBED CONSENT FORM

RMIT University
Faculty of Education, Language and Community Services

Research title: Smoothing the way: Investigating the Enforcement of Parenting Orders

Prescribed Consent Form For Persons Participating In Research Projects Involving Interviews, or Disclosure of Personal Information

Name of participant:		Title	
Name of investigator:		Phone:	

1. I have received the Plain Language Statement, which clearly outlines the interview involved in this particular project.
2. I consent to participate in the above project, the particulars of which - including details of the interviews - have been explained to me.
3. I authorise the investigator, Tracey Carmen Spiteri, to interview me.
4. I acknowledge that:
 - (a) Having read Plain Language Statement, I agree to the general purpose, methods and demands of the study.
 - (b) I have been informed that I am free to withdraw from the project at any time and to withdraw any unprocessed data previously supplied.
 - (c) The project is for the purpose of research and/or teaching. It may not be of direct benefit to me.
 - (d) The confidentiality of the information I provide will be safeguarded. However should information of a confidential nature need to be disclosed for moral, clinical or legal reasons, I will be given an opportunity to negotiate the terms of this disclosure.
 - (e) The security of the research data is assured during and after completion of the study. The data collected during the study may be published and any information, which will identify me, will not be used.

Participants Consent

Name:		Date:	
<i>(Participant)</i>			

Name:		Date:	
<i>(Witness to signature)</i>			

Participants should be given a photocopy of this consent form after it has been signed.

Any complaints about your participation in this project may be directed to the Secretary, RMIT Human Research Ethics Committee, University Secretariat, RMIT, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745.

7.2 Appendix Two – Plain Language Statement

Plain Language Statement

My name is Tracey Spiteri and I am a Masters Student in the Faculty of Education, Language and Community Services at RMIT University. The title of my thesis is:

Smoothing the way: Investigating the Enforcement of Parenting Orders

The research will seek to look at and unfold the difficulties encountered by the public, the court system and police services in regards to applications being made to the court when a parenting order is breached under s.67 of the *Family Law Act 1975* (Commonwealth). This will primarily be conducted through the interviews and focus groups of selected stakeholders such as Magistrates and police officers. Another method of development is to create a hypothetical scenario to envisage the feelings and emotions within the conduct of such legal proceedings.

By looking at the time, process, resources and difficulties of the family law arena, the aim of the research is to see if the current process can be streamlined to give priority to enforcement applications. Therefore, the purpose of the research is to bring about organisational change in relation to the enforcement of parenting orders.

I invite you to participate in the data collection for my thesis and advice that you are requested to undertake:

- One interview or focus group interview of one hour's duration that will be tape-recorded and remain the property of the researcher (Tracey Spiteri) for five years.

Also you should be aware that:

- Your identity will not be revealed in the research, i.e you will remain anonymous;
- Any information provided by you will be used solely for the project;
- My supervisors and myself will only have access to the raw data.
- You are free to withdraw from participating in the research, including the unprocessed data.

I can be contacted on 0412 218 666. My supervisors are Julian Bondy and Kathy Douglas in the Department of Justice and Youth Studies at RMIT University. They can be contacted on 9925 7920

Tracey Spiteri

Any queries or complaints in regards to your participation in this project can be directed to the Secretary, RMIT Human Research Ethics Committee, RMIT University, GPO Box 2476V, Melbourne, 3001. The telephone number is (03) 9925 1745

7.3 Appendix Three – Interview Schedule

General Social/Employment Background

Gender.

Age.

Occupational title.

Length of experience in the police force

Length of time in current occupational position.

Extent of experience in the area of Family Law.

How would you describe your experience?

Narrative Scenario

Participants will be asked to take part in a Narrative Analysis exercise. To describe in the form of narrative (storytelling) from their own experiences a common case scenario. To discuss the story from beginning to end in chronological sequence and with as much detail as possible.

What is the atmosphere, feelings, reactions and emotions displayed by yourself, the parents/parties, and the child(ren)?

Administrative Processes and Current Practices

Outline the procedure and process adopted when parenting order has been breached and a recovery order under s. 67Q has been issued by the Court?

What is the estimated time frame to enforce a recovery order from the point of being issued?

What are some of the difficulties encountered with the above process consider the delivery of service, police resources and current organisational structure?

Who and how many police members are involved in the execution of the recovery order?

What planning/organisation need to take place?

Are there or have there been situations where other professionals or services have been involved in the execution of the recovery order? If so, who and what role did they play?

What role do state police services play in the execution of recovery orders? How often would they execute recovery orders and in what circumstances?

Is there a particular unit within Victoria Police that would execute recovery orders?

Once the child is returned to the applicant what role (if any) does the police play?

Primarily who are the applicants?

Once the child is recovered by the police/returned what is the process?

What type of training is given police members in relation to investigating and the enforcement of recovery orders?

What is the estimated length of time of the training? Do you think it is sufficient?

What are some of the difficulties or complexities experienced with the enforcement of such orders? Consider social and organisational difficulties, ie availability of police members.

What is your perception of the role police play in Family Law Issues, particularly recovery orders? What scale of importance is placed by the AFP or Victoria Police in relation to such an area of social justice in relation to other policing roles and functions? What recommendations do you have?

Is there any data collection/analysis taken in relation to the role of the family law team to assess or justify the allocated resources required?

Hague Convention Matters/ International child abductions:

What is your understanding of matters relating to the Hague Convention?

What experience do you have in this area?

Are you given any related training to deal with matters related to the Hague Convention?

How confident are you in to deal or in dealing with such matters?

What are some of the issues and complexities associated with such an area?

Organisational Changes

What processes are there in place for you to be aware of the legislative/ organisational changes within the family law arena?

Do you think that these processes are sufficient enough? If not, what are some recommended changes?

Do you think it is important to be informed and up to date with the changes within the area of family law?

What are some of the organisational/legislative changes you are aware of in the area of Family Law? (Federal Magistrates' Court, *Family Law Amendment Act 2001*)

The Federal Magistrates' Court has recently been introduced. Have you been trained in relation to the jurisdiction and function of the Federal Magistrates' Court? If so, by whom?

Has this altered practices? Have there been any difficulties in relation to recovery orders issued by the Federal Magistrates' Court, in comparison to those issued by the Magistrates' or Family Courts?

Since the introduction of the Federal Magistrates' Court and the *Family Law Amendment Act 2000* has there been an increase in the number of recovery orders issued.

What impact (if any) has the introduction of the Federal Magistrates' Court or the Family Law Amendment Act 2000 has made to current practices?

What are some of the difficulties encountered with such changes? Consider the delivery of service, court resources and current organisational structure.

What are some of the benefits of the introduction of the Federal Magistrates' Court?

Perceptions of what can be done

What is your opinion on the current methods/structure to deal with parenting orders that have been breached and a recovery order under s. 67Q has been issued by the court? (e.g how effective is the legislative and organisational structures that have been implemented to help deal with such matters)

What are some of your suggestions to further enhance the current system? (e.g further organisational change, further funding and resources, educative programs, outsourcing of services etc)

What factors do you think may influence breaches of parenting orders to occur? Why?

7.4 Appendix Four – Observation Checklist

Observation Checklist

Date: _____

Court: _____

Observation No:	
Time	
Description of legal proceeding	
People present in matter	
Description of situation	
Ex-parte (Y/N)	
Legal representation present	
Describe presentation of applicant	
Describe presentation of respondent	
Outcome	
Time end	
Total time	
Additional comments	

7.5 Appendix Five – Generated Code List (A)

Code	Description	Frequency
1	Occupation <i>(Police self descriptions of their organisation of employment)</i>	
1a	Victoria police	
1ai	SOCAU	
1aii	Uniform	
1b	AFP (AFP)	
2	Age of participant	
2a	Age [18-25]	
2b	Age [26-35]	
2c	Age [36-45]	
2d	Age [46-55]	
2e	Age [56 –65]	
3	Rank <i>(Police self description of their rank within there organisation)</i>	
3a	Sergeant	
3b	Senior Constable	
3c	Constable	
3e	Federal Agent	
3f	Team Leader AFP	
4	Length of experience in the police force	
4a	[0-5] Years	
4b	[6-10] Years	
4c	[11-15] Years	
4d	[16-20] Years	
4e	[21-25] Years	
4f	[26-30] Years	
4g	[31-35] Years	
4h	[36-40] Years	
5	Gender	
5a	Male	
5b	Female	
6	Police knowledge/familiarity with recovery orders, Hague Convention or Family Court process	17
6a	Very Familiar/Good Knowledge	7
6b	Not familiar/does not have a good knowledge	10
7	Length of time in SOCAU/ (AFP) Family Law Team	

7a	[0-2] Years	
7b	[3-5] Years	
7c	[6-10] Years	
7e	[11-15] Years	
7f	[16 -20] years	
8	Frequency of recovery orders <i>(Police self description of how frequent they would deal with recovery orders)</i>	36
8a	High levels of involvement	10
8b	Medium level of involvement	2
8c	Low level of involvement	13
8d	Recovery orders are made readily available from the Courts for police to execute	11
9	Primary role of police services <i>(Police self description of what they view their primary role in their organisation)</i>	24
9a	Primary role is to execute recovery orders	11
9b	Primary role is to investigate child abuse/sexual offences	13
10	Parental allegations of child abuse <i>(Police self description of how frequent parents make allegation of child abuse)</i>	25
10a	Are made frequently	9
10b	Are made minimally	2
10c	The allegations are dealt with through the Family Court	14
11	Applicant of recovery orders <i>(Police self description of who primarily are the applicants of recovery orders)</i>	26
11a	Mother applicant	10
11b	Father applicant	8
11c	Extended family members as applicants	5
11d	50/50 (mother and father as applicants)	2
11e	Unknown	1
12	Execution of recovery orders <i>(Police self description of whether the execution of recovery orders are difficult and whether they enjoy this role)</i>	15
12a	Easy to execute	10
12b	Difficult/complex to execute	0
12c	Dislike executing recovery orders	5
12d	Enjoy executing recovery orders	0
13	Difficulties encountered with the execution of recovery orders <i>(Police self descriptions of what some of the difficulties encountered with the execution of recovery orders)</i>	107
13a	Locating the child	24
13b	The child is interstate	16
13c	Making contact with the applicant to arrange the execution of the order	18
13d	Finalising arrangements for the execution	27
13e	Child is regional/metro	11

13f	Impacts on other job functions/responsibilities	9
13g	Dealing with the respondent	2
14	Family background <i>(Police self description of the socio-economic status of the parties involved)</i>	11
14a	Parties come from a poor socio-economic background	5
14b	Parties come from a middle socio-economic background	4
14c	Parties come from a high socio-economic background	2
15	Contact with professional services <i>(Police self description of collaboratively working with external services in family law matters)</i>	55
15a	Child protection (notifications) of concerns around child abuse and neglect	22
15b	Joint investigation with AFP or VICPOL	9
15c	Family law issues being a federal jurisdiction and whether police feel that it is a joint responsibility rather than just the AFP's	19
15d	Contact with other professionals regarding Hague Convention matters, eg Government solicitors	5
16	Knowledge of role and function of Child Protection Services <i>(Police awareness/knowledge of the role and function of child protection services)</i>	8
16a	Police have a High knowledge	3
16b	Police have a Medium level of knowledge	1
16c	Police have no knowledge	4
17	Other role within Family Law Issues <i>(Police self description of other roles and responsibilities in issues relating to family law)</i>	28
18	Process in execution of recovery orders <i>(Police description of the process they would undertake pre and post execution of a recovery order.)</i>	91
18a	Computer Checks	15
18b	Taking into account Violence as a factor	20
18c	Avenues/investigations to locate the child	26
18d	Other	4
18e	Handover of the child by police	13
18f	Handover of child voluntarily by respondent	13
19	Narrative <i>(Police self description of a real life example of a the execution of a recovery order)</i>	
20	Issues regarding residence /contact <i>(Police self description of why parenting orders are not complied with)</i>	137
20a	Disputes over who will have primary care of the children.	38
20b	Children used as tools in relation to the parents disputes	28
20c	Financial matters	6
20d	Parties/community members lack education or knowledge of the family law process regarding issues relating to children.	19

20e	Family members reside in remote areas	12
20f	Systems abuse	14
20g	Issues relating to the family are complex	12
20h	Other	8
21	Legal representation/advise via: <i>(Police self description of the quality of legal representation or legal advise available for parties/people within the community)</i>	78
21a	Self-representation	13
21b	Legal aid	22
21c	Private	21
21d	Unable to access	5
21e	Unknown/other	17
22	Communication & Assistance between police services <i>(Police self description of the level of collaboration between the AFP and VICPOL in the execution of recovery orders)</i>	26
22a	Positive communication/collaboration	15
22b	Negative communication/collaboration	4
22c	Can be improved	7
23	Respondents emotions <i>(Police self description of the emotions portrayed by respondents when police are executing a recovery order)</i>	56
23a	Respondents emotions – High	6
23ai	High because they raise issues around the child’s safety and wellbeing	15
23aii	High because there is Conflict/animosity with applicant	13
23aiii	High because they are uncooperative due to police involvement	10
23b	Respondents emotions – low	10
23c	Respondents emotions – vary	2
24	Applicants emotions <i>(Police self description of the emotions portrayed by applicants when police are executing recovery orders)</i>	20
24a	Applicants emotions are high	1
24ai	High because the child can not be located	1
24aii	High because they have concerns for the safety and wellbeing of the child in the respondents care.	4
24aiii	High because of other factors	4
24b	Applicants emotions are low	10
25	Location of child <i>(Police self description of issues that arise in relation to the location of children subject to a recovery order)</i>	35
25a	Regional	16
25b	Metro	1
25c	Interstate	17
25d	Overseas	1

26	Child/s reactions/emotions <i>(Police self description of a child's reaction when executing a recovery order)</i>	30
26a	Child's reactions/emotions – Vary	1
26ai	Vary because situations all have different backgrounds and problems	2
26aii	Vary because of the child's age	2
26aiii	Vary depending upon respondents reactions	3
26aiv	Vary depending upon family problem/dynamics	4
26b	Child reactions/emotions – High	1
26bi	High because respondent is distressed/aggressive	5
26bii	High because do not want to leave and respondent and return to the applicant	4
26biii	High because of fear of the unknown	1
26c	Child Reactions/Emotions – Low	1
26ci	Low because respondent is calm	1
26cii	Low because respondent assisted with the process	4
26ciii	Low because child wants to return to applicant	1
27	Perspective of the role police play in recovery orders <i>(Police self description of the role they plan in the execution of recovery orders)</i>	145
27a	They are to intervene as minimal as possible (minimal intervention)	21
27b	They are agents of the Court	16
27c	They are to be a Negotiator/mediator	21
27d	They are law enforcers	22
27e	They provide parties/community members with education around family law matters	29
27f	They are to ensure the safety of everyone involved	22
27g	Other, eg. Communication.	14
28	Parties perspective of the police re: Family law issues <i>(Police self description of whether parties perceive their involvement in family law matters to be a positive or negative)</i>	27
28a	Negative perception of police	11
28b	Positive perception of police	4
28c	Want police to take sides in relation to the dispute between the parties.	12
29	Best interest of the child <i>(Police understanding of the best interest of the child principle)</i>	12
30	Family Court orders in place <i>(Police description/understanding of the type of family court parenting orders in place)</i>	10
31	The expectations of the Police <i>(The police self description of the expectations placed upon them as law enforcers in relation to family law issues)</i>	43
31a	A recovery order is technically a warrant and therefore the role of police to execute	34
31b	Police are expected to enforce orders	9
32	Police perception of the community's understanding of family law issues.	24

32a	There is a lack of community knowledge of family law and processes	12
32b	Parties/public would attend police station for enforcement of parenting order	8
32c	Community's understanding/knowledge of processes within family law.	1
32d	Other	3
33	Referral of recovery orders to police <i>(Police understanding as to where the recovery order is referred from for them to execute)</i>	33
33a	Recovery orders from courts go to local police	3
33b	Recovery orders from courts go to AFP	13
33c	Recovery orders from courts go to AFP and then to local police	9
33d	Recovery orders from courts go to local police and then to AFP	0
33e	Recovery orders from local courts to local police	5
33f	Do not know	3
34	Priority of enforcement of recovery orders <i>(Police perception on the level of priority placed on the execution of recovery orders by their organisation)</i>	48
34a	Enforcement of recovery orders – priority	8
34ai	Priority depending upon the age of the child eg, younger more vulnerable	1
34aii	Priority depending upon the circumstances eg, could go interstate harder to execute	5
34aiii	Priority because of issues raised around the safety and wellbeing of the child.	5
34aiv	It is a priority but it depends on the number of other jobs may have at one time	11
34b	Enforcement of recovery orders – not of priority because of other core functions within the unit.	5
34c	Organisation places low importance on execution of Recovery Orders in comparison to other policing commitments.	13
35	Police Resources <i>(Police perception on the organisational resources attached to deal with family law matters)</i>	104
35a	Staffing	3
35ai	Difficulties with staffing numbers	24
35aii	There are no difficulties with staffing numbers/resources	16
35b	Hours of operation	1
35bi	Hours of operation – after hours involvement expected	7
35bii	Hours of operation – not expected to work afterhours	1
35c	Structure	0
35ci	Difficulties with organisational structure	12
35cii	No difficulties with organisational structure	8
35ciii	Organisation has other core business	11
35civ	The organisations use of police resources to fulfil family law obligations varies and no set standard	21
36	Lead and secondary roles in the execution of recovery orders. <i>(Exploration of police self description of who has the lead role and secondary role in the execution of Recovery Orders depending upon the organisation)</i>	87

	<i>(AFP/VICPOL) and their level of understanding to the process and role they must fulfil)</i>	
36a	Uniform (primary role in execution)	8
36ai	Positive understanding of recovery orders	8
36aii	Negative understanding of recovery orders	5
36aia	Assistance (manpower)	6
36aiv	Given to by SOCAU to execute	1
36b	Uniform (secondary role in execution)	0
36bi	Positive understanding of recovery orders	0
36bii	Negative understanding of recovery orders	2
36biii	Assistance (manpower)	10
36c	SOCAU (primary role in execution)	0
36ci	Positive understanding of recovery orders	7
36cii	Negative understanding of recovery orders	0
36ciii	Assistance (manpower)	2
36civ	SOCAU given primary role because of training and background	12
36d	SOCAU (secondary role in execution)	1
36di	Positive understanding of recovery orders	2
36dii	Negative understanding of recovery orders	0
36diii	Assistance (manpower)	1
36e	Joint execution between AFP/SOCAU	4
36f	AFP (primary role in execution)	0
36fi	AFP Family Law Team	3
36fii	AFP - other members, eg response teams	7
36fiii	Positive understanding of recovery orders	4
36fiv	Assistance (manpower) eg, response teams	3
36fv	Negative understanding of recovery orders	1
37	Number of police members to enforce recovery orders <i>(Police perception as to the number of police officers required to execute a recovery order)</i>	13
37a	2	7
37b	2 to 4	5
37c	4 to 6	1
37d	6 to 8	0
37e	8 to 10	0
37g	Varies	1
38	Role of police after execution of recovery orders <i>(Police perception as to the role/obligations they must fulfil after an order has been executed)</i>	42
38a	Police have no role with parties	10
38b	Only maintain a role if criminal offences detected	2
38c	Administration	0
38ci	Administration – endorsement of order to courts	9
38cii	Administration – office file completion	11
39	Training	49

	<i>(Police understanding as to the level of training that they have to deal with family law matters)</i>	
39a	None to little training	15
39b	On the job training	14
39c	A little through police academy	9
39d	Through other government bodies	2
39e	Other, eg database	9
40	Sufficiency of training <i>(Police perception as to whether they view the level of training given to deal with family law matters is sufficient or not)</i>	26
40a	Not sufficient enough	10
40b	Sufficient enough/further training would be impractical	13
40c	Important to be trained	3
41	Accessibility of training <i>(Police perception as to how accessible training or education would be to fulfil obligations relating to family law matters)</i>	7
41a	Not accessible	0
41b	Accessible through own organisation – electronic etc	7
41c	Accessible through the courts	0
42	Recommended changes <i>(Police self description as to recommendations they have to enhance the way police deal with family law matters)</i>	56
42a	More training in the area of family law and recovery orders	9
42b	Increase knowledge in child development and welfare	6
42c	Ensure sufficient number of staff to deal with workload (AFP)	6
42d	Greater liaison with other enforcement agencies, eg between AFP/VICPOL	5
42e	Greater instructions given with recovery orders	8
42f	Greater awareness of community services for parties to be referred to	6
42g	Greater case recording regarding the numbers of execution orders across both VICPOL and SOCAU	6
42h	Improve the organisational structure to be consistent	10
43	Outsourcing of police powers in recovery order <i>(Police perception as to whether police powers to execute recovery orders can be outsourced to a different body)</i>	17
43a	Unable to outsource.	8
43b	Intimidate steps can be put in place in attempt to resolve the issue prior to police becoming involved.	6
43c	Yes can outsource completely	3
44	Awareness of legislative/organisational change <i>(Police self description as to the level of awareness they have or are given to the changes both legislatively and organisationally made to the family law system)</i>	45
44a	No to little processes put in place to be made aware of changes	17
44b	Adequate & sufficient process put in place to be made aware of changes	4
44c	Able to access this information through organisational structure/technology.	15

44d	Being made aware of changes is not relevant unless effects their role	6
44e	There has been no legislative changes	1
44f	There has been organisational changes	2
45	Hague convention <i>(Police self description as to the level of involvement they have in Hague Convention matters)</i>	11
45a	They have no involvement	4
45b	They have minimal involvement	7
45c	They have a frequent involvement	0
	Pattern of the number of recovery orders <i>(Police perception as to the pattern and trends on the number of recovery orders being issued for execution)</i>	17
46		
46a	Recovery orders are steady increasing	1
46ai	Do not know why/other	7
46aii	Greater number of divorce/separation of parents	1
46aiii	Greater knowledge on Family Court processes	1
46aiv	Service provider has taken on more of a responsibility and role	1
46b	No change in the number of recovery orders issued for execution	0
46c	The number of recovery orders issued over the years for execution has decreased.	2
46d	Varies, eg time of year.	5
47	Police self description as to the level of understanding they have on Hague Convention matters	11
47a	Positive understanding	6
47b	Negative understanding	5
	Hague Convention Process <i>(The process and joint collaborative work with other government agencies in the enforcement of Hague Convention matters)</i>	28
48		
48a	Police leading role	0
48b	DHS (Child Protection services) leading role	10
48c	Removal of child	2
48ci	Child removed and placed with DHS	5
48d	Child remains	0
48di	Child remains with parent and warrant not executed	9
48diii	Warrant returned to court	2
49	AFP involvement in the protection of Family Court staff	5
	Ex-parte Applications <i>(Police self description as to whether they are aware if the process before the family court was heard ex-parte)</i>	20
50		
50a	Yes, it is a ex parte application	6
50b	No, it is not a ex-parte application	14
50c	Do not know	0

7.6 Appendix Six – Generated Code List (B)

Description	Code	Frequency
Background in Family Law: A Police Perspective		
The non-compliance of parenting orders	20,32	161
Collaboration and knowledge between law enforcement bodies	9, 10, 15, 16, 17, 6, 20f, 8	157
Case demographics (eg socio-economic backgrounds and gender)	11, 14, 21, 29, 50, 30	157
Police Process in the Execution of Recovery Orders and Hague Convention Matters		
Process undertaken to execute recovery orders and Hague Convention matters	18, 25, 33, 37, 38, 45, 46, 47, 48, 36	368
Complexities and difficulties encountered	12, 13	113
The perceptions/emotions of police involvement in family law issues.	23, 24, 26, 27, 28, 31, 43	338
Priority in the execution of recovery orders	34, 13f, 35ciii	68
Police Services Structure, Resources and Training		
Resources and organisational structure	35, 42c, 42d, 22, 42h, 42g, 49, 42f	157
Police training	39, 40. 41, 42a, 42b, 42e, 44	150