

# Child Contact, Domestic Violence, and Family Law in Australia

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# List of Abbreviations

ADHD – attention deficit hyperactive disorder

AVO – apprehended violence order

BIC – Best interests of the Child

DV – domestic violence

ESPR – equal shared parental responsibility

FCC – Federal Circuit Court

FCoA – Family Court of Australia

FLA – Family Law Act

FM – Federal Magistrate

FMC – Federal Magistrates Court

FV – family violence

ICL – Independent Children’s Lawyer

NRF – non-resident father

NRP – non-resident parent

PTSD – post traumatic stress disorder

UNCRoC – United Nations Convention on the Rights of the Child



# List of Cases

Pseudonym	Reference	Magistrate
Cloake & Cloake	[2011]FMCAfam784	Neville
Goldstein & Hopkirk	[2010]FMCAfam469	Monahan
Houlis & Houlis	[2010]FMCAfam972	Baker
Howard & Birnie and Anor	[2010]FMCAfam16	Bender
Katzer & Katzer	[2011]FMCAfam85	Harman
Marino & Marino No.2	[2010]FMCAfam951	Brown
Meeker & Loucks	[2010] FMCAfam345	Altobelli
Starkey & Starkey	[2011]FMCAfam940	Harman
Vogel & Abel	[2010]FMCAfam1189	Harman



# Abstract

Divorce is a common experience for many children - around half of Australian divorces annually involve children under 18 years. Research indicates these children are worse off on several measures of well-being than children from intact families. Evidence suggests children can benefit from contact with the non-resident parent (NRP), usually the father, although not if he exhibits anti-social behaviours including violence and substance abuse.

Domestic violence (DV) is a pervasive, endemic, significant social and public health issue that can have a range of physical, emotional, social, legal, economic and political ramifications. The full extent of the problem is not understood due to considerable underreporting; however, studies reveal 25-34% of women who have ever had an intimate partner have experienced at least one form of violence in their lifetime.

A popular belief is that women should leave the violent/abusive partner, yet separation creates significant risk for women and children - more than 30% of women are murdered by their intimate partner at this time. These women are then required to arrange residence and contact agreements, frequently resorting to litigation.

This dissertation examined three elements of the family law process – court orders; the effects of contact with violent/abusive fathers on children subjected to orders; and finally, for young adults who have ‘aged out’ of the orders, their opinions about spending time with their NRP, particularly where violence/abuse was present.

Study one explored the application of the presumption of equal shared parental responsibility (ESPR) in cases with DV and apprehended violence orders (AVOs). Published judgments from the Australian Federal Magistrates Court for 2010-2012 were examined. Of 105 cases containing the term ‘domestic violence’, 68 had evidence of AVOs, 15 of these had an order for ESPR. Judgments fell into two groups: group one were “one off incidents”, group two recognised “severe violence”. The results indicated that some judges are unwilling to remove decision making responsibility from parents even when they acknowledge serious DV.

Study two examined the effects of court ordered contact for children of violent/abusive fathers. The sample comprised eight mothers whose children were ordered to spend time with fathers who were violent/abusive to the mother during their relationship. Qualitative interviews investigated mothers’ experiences of ex-partners’ behaviour at handovers, their parenting, and children’s behaviours before and after visits. Respondents were also asked about the attitude of legal practitioners, including judges who were often perceived as tending to minimise fathers’ behaviour or being towards mothers for wanting to protect their children. The results highlighted the potential links between problematic child behaviour and contact with their violent and/or abusive fathers.

Study three used a survey to assess the opinions of young adults (N = 210, 18-25 years) about contact with their NRP, usually the father. Most participants experienced maternal primary care; almost all had contact with their father post-separation, although the type of contact varied. The perception of contact as found to be related to the pre-separation relationship with the father. Good relationships predicted positive contact, whereas the reverse held for negative relationships.



# Declaration

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in my name in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission in my name for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint award of this degree.

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Donna Roberts

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It has been a long and difficult journey to complete this labour of love, a journey that at times I was not sure I would complete, however, here I am! As such, I would like to thank both Peter and my other supervisor, Professor Paul Delfabbro for their insight, support and feedback. I have been blessed to have continued my research under their guidance. Sincere thanks also go to Professor Molly Dragiewicz, for sharing her knowledge and time with me. I would also like to thank Professor Anna Chur-Hansen for her support during the final stages of my PhD. I am deeply grateful to all of these people.

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# Introduction

This thesis examines the nature and consequences of contact between children and their non-resident parent (usually the father) after parental separation. It considers three aspects of the family law process: judicial decision-making; the effects of the contact on children; and, the thoughts and feelings of young adults who have experienced parental separation. Of particular interest is how the Family Court system deals with situations when there has been violence and abuse in the paternal relationship and the extent to which parental contact is necessarily always beneficial.

In Part One, Chapter 1 provides a review of the literature and the statistics relating to marriage, families, domestic violence, the impact of violence and abuse on the predominantly female victims, and their children. It also describes briefly protection orders, also known as family violence orders, and the family law system. Chapter 2 details the Australian Court system, The Family Law Act and its many amendments as well as the personnel involved in the family law system. A third chapter examines attitudes and how they are formed, as well as how they influence the formation of beliefs, including myths about violence against women. Chapter 4 discusses fatherhood, and the parenting of men who perpetrate violence and abuse in their intimate relationships.

Part Two details the first study, which is an analysis of judgments, published on the AustLii website, from the Federal Magistrates Court. The application of the presumption of equal shared parental responsibility in cases where domestic violence is an issue was examined, with some startling findings.

Part Three summarises the methodology and findings from the second study, which involved interviews with mothers whose ex-partners had used violence and abuse during their relationship. The mothers described the effects of contact with their children's fathers on the children.

Part Four details the third and final study, a survey of young, Australian adults, aged 18-25 years who experienced parental separation prior to the age of 16 years. Most of the participants enjoyed the ongoing contact with their non-resident parent post parental separation, however, for some participants, violence and abuse was an issue.

A final section of thesis (Part Five) draws the findings of these studies together and discusses the strengths and limitations of the research and potential future directions for research.

# Part One





# Chapter One

*Families are forever and thus divorce transforms, rather than ends, family relationships*

(Lande & Mosten, 2013, p. 24)

## 1. Introduction

### 1.1. Family, marriage, divorce and family law

Family, to most people, comprises Mum, Dad and usually a couple of kids – the so called ‘nuclear family’ - with marriage forming the basis of the legal family (Eekelaar, 1984). However, this is no longer the most common family structure, despite its popular ideal in the media and political discussions (Dey & Wasoff, 2006; Herring, 2011). Indeed, the law ‘sees’ families where marriage confers the chief means of making families visible in law (Dewar, 2000). Other forms of living arrangements that can be considered ‘familial’ are becoming more prevalent, including sole parents and step or blended families, as well as non-married, cohabiting couples and families (Dewar, 2000; Dey & Wasoff, 2006).

In the last 20 years, there has been a change in the number of people getting married, decreasing from 9.2 per 1000 estimated residential population, to 6.6 per 1000 people in 1991 to 5.4 per 1000 in 2011, and continuing to drop in 2013 to 5.1 per 1000 people (Australian Bureau of Statistics, 2011c; Australian Institute of Family Studies, 2015). A larger proportion of those getting married in 2011 are never married, up from 76.2% for males and 77.2% for females in 1991 to 78.9% for males and 80.5% for females in 2011, whilst those who have been divorced are less likely to remarry in 2011 than in 1991, down from 21.4% for men and 20.1% for women to 19.7% for men and 17.9% for women (Australian Bureau of Statistics, 2011c). Many of those who are getting married have

cohabited prior to marriage, with 77% of couples marrying in 2009 having lived together compared with 31% in 1981 (Qu & Weston, 2012).

The marriage celebrant used has shifted dramatically from a Minister of Religion (96.2% in 1902, 62.4% in 1991, 27.4% in 2013) to a Civil Celebrant (37.6% in 1991 to 70.1% in 2011, to 72.5% in 2013) (Australian Bureau of Statistics, 2011c; Australian Institute of Family Studies, 2015). The number of divorces have also increased (45,652 in 1991 to 48,935 in 2011), although the crude rate per 1000 of estimated residential population has decreased (2.6 in 1991 to 2.2 in 2011, to 2.1 in 2013) (Australian Bureau of Statistics, 2011b; Australian Institute of Family Studies, 2015), and couples are staying married longer on average (10.3 years to divorce in 1991 to 12.2 years in 2011) (Australian Bureau of Statistics, 2011b). Children under 18 years of age are represented in around half of all divorces, which has also decreased over time - in 1986, 59.7% of divorces involved children under 18 years, and this has decreased to 47.4% in 2013 (Australian Institute of Family Studies, 2015), with 1.9 being the average number of children per divorce (Australian Bureau of Statistics, 2011b). The type of applicant has undergone a shift in the last 20 years, away from female sole applicants (48.3% of applications in 1991 to 35.6% in 2011) to joint applicants (15.7% of applications in 1991 to 38.0% in 2011) (Australian Bureau of Statistics, 2011b). Sole parent families have stayed at a similar level of the population of families with children, with a 0.2% increase between 1997 and 2009-2010 (13.3% to 13.5%) (Australian Bureau of Statistics, 2011a), however according to the 2011 census, sole parent families were 15.9% of the population (Australian Institute of Family Studies, 2015). Sole mother families decreased from 84.2% of sole parent families in 1997 to 82.3% of sole parent families in 2009-2010, accounted for by the rise in sole father families (from 15.8% in 1997 to 17.7% in 2009-2010). Sole mother families make up around 11% of the population of families with children, with sole father families

accounting for 2.4% of families with children (Australian Bureau of Statistics, 2011a). Couples without children have increased from 28% in 1976, to 37.8% in 2011, reflecting the decrease in the number of couples with dependent children, which has decreased from 48.4% in 1976 to 36.7% in 2011 (Australian Institute of Family Studies, 2015).

Rates of divorce around the world are similar to those seen in Australia, with around 40% of children experiencing the divorce of their parents in the US, prior to reaching adulthood (Tach & Eads, 2015; Tartari, 2015), affecting approximately 1.5 million children a year (Tartari, 2015). The UK has one of the highest rates of divorce in Europe, with more than 30% of children experiencing parental separation prior to the age of 16 years (Culpin, Heron, Araya, Melotti, & Joinson, 2013; Fortin, Hunt, & Scanlan, 2012).

Marriages, particularly stable and satisfying ones, have been shown to contribute to improved physical and mental health for both the adults and any children, as well as increasing longevity and improving material wealth (Karney & Bradbury, 1995; Wolcott & Hughes, 1999). However, such protective benefits are not similarly afforded by marriages characterised by conflict or where a spouse has severe mental health issues (Karney & Bradbury, 1995; Wolcott & Hughes, 1999). Indeed, there are clearly examples where the family environment can prove to be deadly, with almost two out of every five homicides occurring within the family (Mouzos & Rushforth, 2003).

Despite the frequency with which divorce occurs, it is still seen as happening when ‘things going wrong’ in a marriage (Eekelaar, 1984) with divorced families viewed as flawed environments that are not positive or nurturing for children, when compared with intact families (Kelly, 2000). Several studies have identified multiple factors associated with the perceived causes of dissatisfaction as well as the occurrence of marital breakdown

(Amato & Rogers, 1997; Burns, 1984; Cleek & Pearson, 1985; Kitson, Babri, & Roach, 1985), with most of the factors being accounted for as demographic or life course variables, psychological characteristics, and interpersonal variables (Wolcott & Hughes, 1999). Three major dimensions were used by Wolcott and Hughes (1999) when analysing the data from the Australian Divorce Transition Project – ‘affective reasons’ which included communication problems, incompatibility and infidelity; ‘abusive behaviours’ such as physical violence, drug or alcohol abuse and emotional and/or verbal abuse; and ‘external problems’ such as financial pressures, family interference, health issues. The vast majority of their respondents (75.6% of men and 62.7% of women) cited ‘affective reasons’ for their marriage ending with communication problems the largest difficulty, experienced by 33.3% of men and 22.6% of women. Abusive behaviours were named by 23.4% of women versus 4% of men, with drug/alcohol abuse causing the greatest problems (11.3% of women, 2.5% of men) followed by physical violence (9.6% of women, 0.4% of men) and then verbal/emotional abuse (2.5% for women, 1.1% for men).

The consequences of parental separation and/or divorce on a family unit have been examined previously (Allison & Furstenberg, 1989; Amato, 1993a; Amato & Gilbreth, 1999; Furstenberg, Morgan, & Allison, 1987), with the literature showing that children who experience the separation or divorce of their parents are generally worse off on a number of measures of well-being, such as peer relations, stress aggression, psychological adjustment, self-esteem as well as academic achievement, when compared to children in intact families (Amato, 1993a; DeBell, 2008; Hess & Camara, 1979; Hetherington, Bridges, & Insabella, 1998). Amato posits that children’s adjustment to divorce revolve around five central concepts: the loss of the non-resident parent, who is usually the father; the adjustment of the resident parent, usually the mother; inter-parental conflict; economic hardship, and stressful life changes. Some of the outcomes associated with living in a

single parent family are explained by income differences, with single mother households experiencing a decline of around one third of their pre-divorce income (Hetherington et al., 1998) and more likely to be living at or below the poverty line (DeBell, 2008). Children often experience a decrease in the amount of time, and the quality of the time spent with the non-resident parent following divorce (Amato, 1993a; Arendell, 1994-1995; Hetherington et al., 1998).

The vast majority of couples who separate and divorce will negotiate the details of property settlement and child ‘custody and access’<sup>1</sup> without resorting to using the legal system. However, a small minority of separating couples, around 10%, will litigate to resolve their differences (Dallam & Silberg, 2006; Divorce Peers, 2009; Johnston, Lee, Olesen, & Walters, 2005; Neely, 1984; Saposnek & Rose, 2004). Of these approximately 10% of cases, 70-80% will involve allegations of violence and/or abuse (Alexander, 2015; Bow & Boxer, 2003; Johnston et al., 2005; Meier, 2003).

## **1.2. What is domestic violence?**

Domestic violence is a pervasive, endemic and significant social and public health issue (F. Buchanan, 2008; G. L. Roberts, Lawrence, Williams, & Raphael, 1998; Theran, Sullivan, Bogat, & Stewart, 2006) with a wide range of physical, emotional, social, legal, economic and political ramifications (Dal Grande, Hickling, Taylor, & Woollacott, 2003; Jordan, Campbell, & Follingstad, 2010) that is recognised by the World Health Organisation as “a fundamental violation of women’s human rights” (Garcia-Moreno et al., 2013) who also went on to say “[v]iolence against women is a violation of basic human rights that must be eliminated through political will, and by legal and civil action in all sectors of society” (Garcia-Moreno, Jansen, Ellsberg, Heise, & Watts, 2005).

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<sup>1</sup> ‘custody’ and ‘access’ are still frequently used in general speech but were replaced in Australian Family Law with the terms ‘residence’ and ‘contact’ and then ‘equal parental responsibility’ and ‘equal or substantial time’

Although women can also exhibit violent and abusive behaviours (Brush, 1990; Felson & Cares, 2005; Straus, 1993), the majority of domestic violence is perpetrated by men against women, with injury rates for women six times greater than for men (Straus, 1993). Men are more likely to commit violence against intimate partners, in ways that are more serious i.e. they intend to and do produce greater harm, are more likely to repeat the offence, and more likely to have a malevolent motive (Felson & Cares, 2005). However, the true extent of violence against women is unknown, with available data considered to significantly underestimate the magnitude of the victimisation (Mouzos & Makkai, 2004). Graham-Bermann and Levendosky (1998), for example, noted that many women minimize or deny the violence they have experienced, and underestimate the impact on their children from living with the violence.

Definitions of domestic violence vary from the limited criteria of acts of physical violence, to much broader definitions encompassing other tactics used to gain and maintain power and control (Jouriles, McDonald, Norwood, & Ezell, 2001). The American Psychological Association Taskforce of Male Violence against Women (Koss et al., 1994, p. xvi, cited in Jouriles et al., 2001) defines this behaviour as:

physical, visual, verbal or sexual acts that are experienced by a woman or girl as a threat, invasion or assault and that have the effect of hurting her or degrading her and/or taking away her ability to control contact (intimate or otherwise) with another individual.

The Family Law Amendment (Shared Parental Responsibility) Act (Commonwealth of Australia, 2006) applied the following definition:

family violence means conduct, whether actual or threatened, by a person, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety. NOTE: a person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about his or her personal wellbeing or safety (p. 3)

The inclusion of the word 'reasonable' in this definition created some controversy among domestic violence workers who argued that the reactions of a reasonable man and a reasonable woman differ according to circumstances (Braaf & Sneddon, 2007).

The most recent amendment of the Family Law Act was made in 2011 (Commonwealth of Australia, 2011), and came into effect on 7 June 2012. The new definition within this amendment includes a much broader range of behaviours:

For the purpose of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful. Examples of behaviour that may constitute family violence include (but are not limited to): an assault; or a sexual assault or other sexually abusive behaviour; or stalking; or repeated derogatory taunts; or intentionally damaging or destroying property; or intentionally causing death or injury to an animal; or unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependant on the person for financial support; or preventing the family member from making or keeping connections with his or her family, friends or culture; or unlawfully depriving the family

member, or any member of the family member's family, or his or her liberty. (s  
4AB)

In recent surveys, it has been found that, amongst women over the age of 15 with a history of at least one intimate partner, 35-41% report having experienced at least one form of violence. For this population, 61% had had children in their care during the relationship, with up to 53% reporting that the violence occurred during pregnancy. Furthermore, up to 47% of women reported that their children had witnessed the violence (Australian Bureau of Statistics, 2005, 2013; Mouzos & Makkai, 2004).

The nature of abuse that occurs in domestic violence varies, although physical abuse is most commonly reported, as it is the only form which allows for criminal sanctions. Such behaviour is either impulsive or controlled, and includes punching, slapping, kicking, hitting, biting, pushing and shoving. Verbal abuse (where words are used to denigrate, humiliate, and subjugate) and emotional or psychological abuse (manipulative behaviour, unfair blaming for problems, telling the victim they are worthless, inadequate or flawed, along with constant comparisons to other people) all contribute to lower confidence and self-worth (Sanderson, 2008; Stark, 2007). Social abuse (isolating the victim from family and friends, creating an unreasonable dependence on the perpetrator), financial abuse (denial or access to finances or employment, exclusion from financial decision making), spiritual abuse, damage to personal property and violence or threats of violence towards pets are also common features of domestic violence (Sanderson, 2008). Regardless of the nature of the abuse, the goal of the perpetrator is to establish and maintain power and control over the victim (Sanderson, 2008; Stark, 2007).

Stark (2007) referred to the 'officially invisible' strategy of coercive control, which is employed almost exclusively by men against women. This is calculated, malevolent



behaviour that interweaves physical violence with three important strategies: intimidation, isolation and control (Stark, 2007). According to Stark, it is an ongoing crime in which the perpetrators use a variety of means to hurt, humiliate, subjugate, intimidate, exploit, isolate and dominate their victims. It is personalised to the target victim, using intimate knowledge to tailor the abuse, and extends through time and social space. It is 'gendered' in that it relies on its impact on women's vulnerability resulting from their sexual inequality (Stark, 2007). Socialisation theorists (e.g. Walker (1981; 1989)) have suggested that men who perpetrate domestic violence are typically sexist, patriarchal males who deny or minimize the violence. Consistent with this view, perpetrators have been found to exhibit traits such as moodiness, social alienation, low self-esteem, and increased risk of substance abuse (Langhinrichsen-Rohling, Neidig, & Thorn, 1995). Johnson (1995) refers to this form of violence as 'patriarchal terrorism', which captures the traditional patriarchal claim of men's right to control and own 'their' women. Johnson (1995) maintains that the term retains the focus on the perpetrator as the person who is responsible for the violence, rather than on the victim, in a way that the term 'battered wife' does not. The term 'patriarchal terrorism' has since been replaced with the more gender neutral 'intimate terrorism'.

Since the publication of his paper in 1995, Johnson has gone on to describe four typologies of behaviour that occur within intimate relationships: (1) situational couple violence occurs when one or both partners are violent and non-controlling, or where one partner is violent and non-controlling and the other is non-violent and is predominantly gender symmetric; (2) intimate terrorism, which is where one partner is violent and controlling and the other is either non-violent, or violent and non-controlling. This pattern of behaviour is perpetrated almost exclusively by men against women i.e. gender asymmetric; (3) violent resistance occurs where one partner is violent and non-controlling

and the other is violent and controlling. This behaviour is almost exclusively perpetrated by women and is a response to an intimate terrorist i.e. violence used in self-defence, and is again gender asymmetric; (4) mutual violent control occurs when two intimate terrorists (violent and controlling) are in a relationship, and is gender symmetrical in its occurrence (M. P. Johnson, 2006).

### **1.3. The impact of domestic violence on women**

The majority of long term effects on the victim are due to the ongoing cumulative nature of the abuse, whose dynamics are readily lost in the current court system that approaches violence against women in an incident-specific, injury-based manner (Stark, 2007). For the victim, the consequences range from visible symptoms of physical abuse such as bruising, cuts, burns, scalds, and fractures as well as internal injuries, including miscarriage, loss or partial loss of vision and hearing, concussion, unconsciousness and in extreme cases, death (Abbott & Williamson, 1999; Dal Grande et al., 2003), to the less obvious, but equally debilitating mental health issues.

Domestic violence is responsible for more preventable death, disability, and illness in women aged between 15-44 years than other risk factors, including obesity, high blood pressure and smoking (VicHealth, 2004). In the United States, for example, it has been estimated that domestic violence causes more injuries to women than the combined number of injuries from car accidents, rapes and muggings. Moreover, studies of women presenting in the emergency department, revealed that approximately 30% have injuries attributable to battery, but only 5% are formally recognized as this (Abbott & Williamson, 1999). Women living in a household with domestic violence and substance abuse are at a high risk of homicide at the hands of their spouse (Anda et al., 2009). Indeed, women in the US are murdered by either current or former intimate partners approximately nine

times more often than by a stranger, and, approximately 30-45% of murdered American women, compared with 5.5% of men, are killed by an intimate partner (Campbell, Glass, Sharps, Laughon, & Bloom, 2007; Stockl et al., 2013). Similarly in the UK, intimate partners were responsible for 54% of female and 5% of male homicides (Stockl et al., 2013). Australia has an average of 129 family homicides per year, with 60% of those occurring between intimate partners (Mouzos & Rushforth, 2003). Research has shown that most of these intimate partner homicides are preceded by intimate partner violence against the female partner, with as many as 77% of cases where the woman is killed, and 75% where the man is killed (Campbell et al., 2007; Kivisto, 2015).

The NSW Domestic Violence Death Review Team's 2015 report shows that all 127 out of 129 women killed by their male intimate partners had been the victim of domestic violence, and there were no cases where the woman killed had been the domestic violence perpetrator killed by a male victim (NSW Domestic Violence Death Review Team, 2015, p. 5). The report goes on to state that 31 of 36 men killed were killed by a current or former female intimate partner, and 28 of these men had been the domestic violence perpetrator in the relationship. There were no cases where a woman was the perpetrator of domestic violence, killing a male victim (NSW Domestic Violence Death Review Team, 2015, p. 5). Separation is a major risk factor in intimate partner homicide, with around 30% of these murders preceded by separation from the partner, and predominantly perpetrated by men (Kirkwood, 2012; Kivisto, 2015; NSW Domestic Violence Death Review Team, 2015). In Australia, Destroy the Joint has been Counting Dead Women since 2014, with 84 women murdered in 2014, 80 in 2015, 73 in 2016, 49 in 2017 and at the time of writing (4th January), 1 women in 2018 (Destroy the Joint, 2014, 2015, 2016, 2017, 2018).

Although the total cost of domestic violence can be measured quantitatively in terms of medical bills, missed days at work, legal costs or lives lost to homicide, it is impossible to measure the damage that is inflicted on the victim's sense of self-worth and her capacity to cope as she attempts to deal with her life circumstances (Shey-Zapien & Bullock, 2010). In Australia in 2009, the economic cost of domestic violence was an estimated \$13.6 billion, with predictions for the 2021-22 financial year of \$15.6 billion (The National Council to Reduce Violence against Women and their Children, 2009).

Depression, anxiety, post-traumatic stress disorder (PTSD), suicidality and substance abuse are common in women who have been abused (Abbott & Williamson, 1999; Golding, 1999; G. L. Roberts et al., 1998; Tolman & Rosen, 2001). Rates of PTSD vary widely, ranging from 33% (Astin, Lawrence, & Foy, 1993) to 84% (Kemp, Rawlings, & Green, 1991) with a South Australian study reporting that 45% of women leaving a domestic violence refuge meet the criteria for PTSD (Mertin & Mohr, 2000). A meta-analysis (Golding, 1999) found a weighted mean of 63.8% for PTSD in battered women, compared to 6.8% of the general population. Indeed, the severity and duration of PTSD is associated with the severity and prevalence of the violence in the relationship (Herman, 1992). Golding (1999) found a weighted mean of 47.6% for depression in abused women verses 15.7% of the general public, with a prevalence rate of 15-83% across the studies examined. Indeed, Tolmen and Rosen (2001) reported depressive symptoms in 74% of abused women compared with 34% of non-abused women. Golding also reported that suicidality in battered women had a weighted mean of 17.9% compared to 3.55% in the general population. This is a worrying statistic, given that if the women were to succeed in their suicide attempts, the children would most likely be left in the care of the perpetrator of the abuse.

The long term effects of domestic abuse can manifest as impairments to physical health, disruptions in neurobiology, difficulties in intra- and interpersonal relationships, as well as cognitive and behavioural changes (Sanderson, 2008). For example, women with a history of abuse have lower levels of cortisol both at rest and during stress (Girdler et al., 2007). They also have lower levels of norepinephrine and higher than expected heart rates, even after the abuse has stopped (Girdler et al., 2007; Gunnar, Fisher, & The Early Experience, 2006).

In addition to the direct effects of intimate partner abuse on the woman, there are other victims, including her parents, her children, her friends, neighbours and co-workers, all of whom are affected in some way by the violence and abuse (Shey-Zapien & Bullock, 2010).

#### **1.4. The impact of domestic violence on children**

Children who witness, observe or live with domestic violence are changed by it and, through no fault or choice of their own, find themselves caught in situations not beneficial to their mental health and physical wellbeing (Ericksen & Henderson, 1992). Most of the children who live in violent families are aware of the violence that occurs, whether they actually see it first hand or not (Pagelow, 1990). Witnessing domestic violence occurs in three main ways – seeing the violence first hand and/or being subjected to the violence indirectly, such as stepping between fighting parents, or as a baby being held in Mum’s arms whilst the father assaults the mother, or just being in the same room where their parents are fighting. Children may also hear the violence, usually from another room, such as the child’s bedroom, where they may have been woken in the night by the sounds of yelling, and fighting. Seeing the aftermath of the violence is also a form of witnessing domestic violence, and includes such things as seeing smashed windows, cupboard doors

ripped off hinges, holes punched in walls, seeing Mum with bruises and crying. It can also involve moving to a domestic violence shelter, which then includes being removed from home, school and friends (Edleson, 1999a; Fantuzzo & Mohr, 1999).

These children are victimised in several ways, including through exposure to violent or violence-tolerating role models, stress and fear of injury to their mother, and the fear of becoming victims of physical abuse themselves (Rosenbaum & O'Leary, 1981). Shey-Zapien and Bullock (2010) argue that the intergenerational transmission of harm may be via biochemical markers, particularly those related to coping and stress, as well as the child's experience about how their parents and others treat them and how their parents treat each other (Stith et al., 2000). This complements social learning theory which suggests that children learn through direct observation and behavioural conditioning so that they come to imitate behaviour witnessed in or reinforced by others (Cappell & Heiner, 1990; Wofford-Mihalic & Elliott, 1997). The intergenerational transmission of domestic violence theory (Stith et al., 2000) proposes that the transmission of abuse can be explained by the differential effects of witnessing violence versus experiencing aggression during childhood, i.e. it is the parental interaction with the child that determines the child's behaviour in adulthood (Cui, Durtsschi, Lorenz, Donnellan, & Conger, 2010). Cui, et al. (2010) also suggest in the 'spillover hypothesis', that parental aggression spills over into the parent-child relationship such that these parents are more likely to be verbally critical and use punitive punishment.

Estimates of the number of children who witness domestic violence worldwide are between 133 million and 275 million annually (Pinheiro, 2006). In the United States alone, approximately 10 million children a year witness domestic violence, with 15.5 million children living in households where domestic violence has occurred. Of these, 7 million

children are living in homes where the incidents of domestic violence are considered severe (Graham-Bermann & Perkins, 2010; Klostermann & Kelley, 2009). In Australia, the estimate is that 25% of children under the age of 17 years have witnessed at least one incident of violence against a mother or stepmother (Indermaur, 2001), 44% of all domestic violence incidents are witnessed by children, with 47% of those children aged under six years (Australian Institute of Criminology, 2006; Fantuzzo & Fusco, 2007; Shey-Zapien & Bullock, 2010).

Children, like their mothers, exhibit a number of negative effects as a consequence of domestic violence. Psychological problems include post-traumatic stress disorder (Blackburn, 2008; Fantuzzo & Mohr, 1999; Zerk, Mertin, & Proeve, 2009). Externalising behaviours include aggression, conduct disorders, destructive behaviours, running away and risky sexual behaviour (Blackburn, 2008; Ericksen & Henderson, 1992). Children exhibit post-traumatic stress symptoms that generally feature within three domains: re-experiencing (e.g. flashbacks, nightmares), avoidance (e.g. withdrawal, regression in developmental stages) and hyperarousal (e.g. hypervigilance, irritability, anger, difficulties falling and/or staying asleep) (American Psychiatric Association, 2000). Often the hyperarousal and hypervigilance symptoms are misdiagnosed as attention deficit hyperactivity disorder (ADHD), conduct disorder, oppositional defiant disorder, anxiety or a phobia (Weber & Reynolds, 2004) and treated with medication, which can be harmful to children with PTSD, especially stimulant medication given for ADHD (Weber & Reynolds, 2004).

Emotional and cognitive development problems, including intellectual and academic functioning impairment are also common in these children (Blackburn, 2008; Ericksen & Henderson, 1992; Graham-Bermann, Howell, Miller, & Lilly, 2010; Huth-Bocks,

Levendosky, & Semel, 2001; Lehmann, 1997; Osofsky, 1999), and can be considered the consequences of structural changes within the brain as a result of their experiences.

Evidence indicates four periods in which the brain undergoes major structural changes in brain development. These stages correspond with early childhood (15 months to 4 years), late childhood (6 to 10 years), puberty and mid-adolescence, and overlap brain growth and cortical reorganization, corresponding with advances in cognitive and emotional functioning (Pynoos, Steinberg, Ornitz, & Goenjian, 1997; Weber & Reynolds, 2004).

Neglect and abuse experienced early in life by children deprives the brain of experience-expected maturation (Weber & Reynolds, 2004).

Physical health problems (e.g. enuresis, tics, insomnia, somatic complaints, nightmares (Marks, Glaser, Glass, & Horne, 2001)); developmental issues and social competency problems (e.g. few or no friends, and difficulties in school (Fantuzzo & Mohr, 1999)) are also seen.

The outcomes for these children vary considerably: some exhibiting little to no difficulties, others are substantially affected (Goddard & Bedi, 2010). Like their mothers, this variability can be attributed to the frequency and severity of the violence witnessed, and is mediated by child-related factors, such as age at onset; the child's interpretation of the violence; levels of self-blame and perceived threat (Goddard & Bedi, 2010). The children may be intimidated by "having witnessed the beating of their mother [and] need no further reminder of the possible consequences of their resistance to the wishes of their father" (Goddard & Hiller, 1993, p. 27 cited in Goddard & Bedi, 2010). This use of violence as a method of controlling family members, including children, undermines the frequent references in the literature of "unintended victims" (e.g. Rosenbaum & O'Leary, 1981).



Research suggests that witnessing domestic violence may be as traumatic for children as being the actual target of physical abuse, with more severe and enduring consequences (Chan & Yeung, 2009; Polillo, 2003; Schumacher, Fledbau-Kohn, Slep, & Heyman, 2001). Polillo (2003) attributes this to the child's relationship with the victim and the perpetrator, both of whom are relied on for love and protection. Children under five years old tend to witness more incidents of domestic violence than older children (Laing, 2000; Stark, 2009), and are likely to be more vulnerable due to their limited coping skills and cognitive abilities. School age children are more likely to have a greater understanding of the intentionality of the violence but worry about what they could have done to stop it (Huth-Bocks et al., 2001; Osofsky, 1999; Zerk et al., 2009).

Preschool aged children have been shown to be particularly fearful at night time, which they associate with the occurrence of violence. This often results in sleep difficulties such as insomnia, nightmares, sleepwalking and bed wetting, as well as somatic complaints including headaches, stomach-aches (Hilberman & Munsen, 1977-78, cited in Pagelow, 1990) and asthma, all of which are associated with stress. Indeed, chronic stress has been shown to change the operation of physiological systems including the attenuation of stress hormones (e.g. cortisol) that neutralise the inflammatory response that precedes asthma (Breiding & Ziembroski, 2011).

Stress is also associated with the release of other stress-related chemicals (e.g. adrenaline and vasopressin) in a cascade that causes the enhanced turnover of neuropeptides (e.g. serotonin) in key areas of the brain (Bremner & Vermetten, 2001; Teicher, Tomoda, & Andersen, 2006). Thus, stressful situations in childhood can have a negative impact on the neurobiology of the developing brain, such as myelination, synaptic production and pruning, and neurogenesis (Teicher et al., 2003; 2006) as well as how the

genome is transcribed (Bremner & Vermetten, 2001). As a consequence, the developmental trajectory of the child is altered (Perry, Pollard, Blakley, Baker, & Vigilante, 1995; K. R. Wilson, Hansen, & Li, 2011). Moreover, chronic childhood trauma interferes with the ability to integrate emotional, cognitive, and sensory information to form a cohesive whole, meaning that the reactions to subsequent stressors are unfocused and irrelevant (Streeck-Fischer & van der Kolk, 2000).

The impact on brain development also results in deficits in IQ scores of, on average, eight points when compared to non-exposed peers of similar socioeconomic status (Delaney-Black et al., 2002; Graham-Bermann et al., 2010). Reading abilities have also been shown to be affected, with reading age often 1-2 years below chronological age (Delaney-Black et al., 2002; Huth-Bocks et al., 2001). Language skills are affected, with both form and comprehension compromised in exposed children (Law & Conway, 1992) and referrals to speech pathologists seven times more likely (Kernic et al., 2002). Blackburn's (2008) research on phonological awareness reported that 20% of the exposed children met the criteria for a reading difficulty.

Post-parental separation, children may still be exposed to violence and abuse, particularly if they spend time with their father. The children might conceivably become weapons that the father uses in order to control their mother, or cause her grief (Bancroft, 2003; Hayes, 2012). Approximately 10% of homicides in Australia are filicides, the killing of a child by a parent (Kirkwood, 2012), and can occur in the context of separation (T. Brown, Tyson, & Fernandez Arias, 2014). These are described in the literature as 'retaliatory' filicides, which are primarily perpetrated by fathers, with the motivation to harm the mothers (T. Brown et al., 2014; L. Eriksson, Mazerolle, Wortley, & Johnson, 2014; Kirkwood, 2012). In Australia, in the last 10 years, more than 40 children have been

murdered by their fathers, often in the context of a ‘custody battle’, including Jai, Tyler and Bailey Farquharson, and Darcey Freeman.

#### **1.4.1. The Adverse Childhood Events Study**

In the late 1990s, medical investigators began to examine associations between abuse in childhood and health risk behaviours and disease in adults. These health risk behaviours and diseases are leading causes of morbidity and mortality, and have been called the actual causes of death (Felitti et al., 1998). Childhood exposure to harmful experiences can contribute to a greater risk of adult morbidity and mortality (Anda et al., 2009; Felitti et al., 1998). The Adverse Childhood Experiences Study assesses long term impact of abuse and household dysfunction on several aspects of adult outcomes, including: quality of life; health care utilisation; mortality; describes the relationship between deleterious childhood experiences and risk factors; and, examines the diseases underlying many of the leading causes of death in adulthood (Felitti et al., 1998). Questions around psychological and physical abuse, violence against the respondents’ mother, sexual abuse in childhood, alcohol or drug use by a parent during childhood, and parental mental illness were asked, creating seven categories of exposures to childhood abuse and household dysfunction, creating a scale ranging from 0 (unexposed) to 7 (exposed to all categories) (Felitti et al., 1998). The risk factors and diseases assessed included smoking, severe obesity (BMI  $\leq 35$ ), depressed mood, suicide attempts, alcoholism, physical inactivity, drug abuse, and a high lifetime number of sexual partners ( $\leq 50$ ). Other conditions included ischemic heart disease, cancer, stroke, bronchitis or emphysema, and diabetes (Felitti et al., 1998; Lu, Mueser, Rosenberg, & Janowski, 2008). A strong dose response was found between the childhood exposure to abuse or household dysfunction and multiple risk factors for several of the leading causes for adult mortality (Felitti et al., 1998; Lu et al., 2008).

These adverse childhood experiences have been found to be associated with increased substance abuse, impaired functioning and poor physical and mental health (Khoury, Tang, Bradley, Cubells, & Ressler, 2010; Lu et al., 2008). Increased exposure to adverse childhood events is related to diagnosis of a substance use disorder; exposure to trauma as an adult; psychiatric problems, including a number of suicide attempts and diagnosis of post traumatic stress disorder; and homelessness (Khoury et al., 2010; Lu et al., 2008). Research has shown that exposure to adverse childhood experiences is related to increased severity of symptoms, and a worse course of the illness in people with mood disorders (Lu et al., 2008). The ACE Study suggests that experiences which are stressful, or traumatic have negative impacts on neurodevelopment, leading to an increased risk of behavioural, social and health problems (D. W. Brown et al., 2009).

### **1.5. Protection orders**

A popular belief is that leaving an abusive relationship is the ideal solution, with women who stay frequently labelled as helpless, or tolerant of the violence (Fleury, Sullivan, & Bybee, 2000a). However, it is well documented that one of the most dangerous times for a woman is the period of separation, with violence continuing, escalating and, in some cases, occurring for the first time (Fleury et al., 2000a; Kurz, 1996; Sev'er, 1997). As the process of separation occurs, there is a change in the dynamic of the relationship, with the abuser's control of his partner challenged (Hayes, 2012). In the United States, 30-50% of female victims of homicide are killed by an intimate partner (Logan, Shannon, Walker, & Faragher, 2006) and in Australia, 30% of women who are killed by their partners are killed following separation (Kirkwood, 2012; Kivisto, 2015; Laing, 2003; NSW Domestic Violence Death Review Team, 2015). Despite the declining trend in overall homicide rates and husband killings by partners, the rate of women killed by intimate partners has increased, with the number one risk factor found to be separation (Kivisto, 2015; Sev'er, 1997; Stark, 2007). Rates of re-assault after separation are also high, with Fleury et al.

(2000a) reporting that 51% of the women were assaulted within 10 weeks of leaving the relationship and noting that, whilst the risk of assault did decrease over time, it did not go away, with 8% of the women being assaulted between 18 and 24 months after the relationship had ended.

Assaults by intimate partners, as with rape, are under reported (Madigan & Gamble, 1991; Mouzos & Makkai, 2004). Estimates are that only one violent incident in ten are being reported to the police, but shelter workers believe that reporting rates are closer to one in 50 or one in 100 (Easteal, 1994). The reasons for not reporting assaults may include anecdotal evidence, or previous ambivalent responses from police, judges, mental health professionals and other service providers (Easteal, 1994) together with fear of retaliation from the perpetrator (Jordan, 2004). These concerns are reasonable given the high rate of post-separation intimate partner homicide and assaults.

Stark (2007) noted that the total amount of violence against women has not changed significantly in the last 40 years, but with the introduction of mandatory arrest laws in some states of the US, the number of men arrested for partner assault has increased dramatically. With partner assault considered a second class misdemeanour, the likelihood of a perpetrator being arrested still remains low, with arrests occurring in approximately 5-18% of cases even when victims have sustained physical injuries. Prosecution rates are estimated at less than 10% and the likelihood of the perpetrator going to jail for any given incident is negligible, with conviction rates below 12% and sentences notoriously lenient (Jordan, 2004)

With concerns that their safety and that of their children is at risk, many women apply for a protection or restraining order. In most states of Australia, police will initiate

the application, which generally results in a higher rate of court approvals. South Australia has the highest rate of police initiated applications, at 97% with a 75% success rate. Queensland follows with a 40% police initiation rate and a 66% success rate (Bulbeck, Kwitko, Stewart, & Dower, 1997). In 2007-08, Queensland Magistrate Courts made more than 32,000 protection orders (Australian Law Reform Commission, 2010), which still leaves at risk those 16,000 people who unsuccessfully applied for an order. Research shows that women who apply for protection orders have generally experienced severe violence from the perpetrator, with most of the women having histories of severe threats including death threats; severe physical violence; economic abuse and sexual assault (Jordan, 2004; Logan et al., 2006; Shannon, Logan, & Cole, 2007; Towns, 2008).

Given that the basic premise behind protection orders is to reduce the risk of harm and are a way of limiting contact, including violence contact, by the offending partner (Logan et al., 2006), their efficacy is questionable. This is demonstrated by anecdotal evidence provided in sensationalised media reports on the failure of orders to protect the victim, especially in those cases where a protection order was not granted and she was killed, or a protection order was granted, but police failed to act.

For protective orders to come into force, they must be personally served in the defendant, who then has the right to challenge the order at a hearing. If the orders are not challenged, they become valid for the period authorised by the court (Magistrates Court of South Australia).

Breaches or violations of restraining orders are common, with reported occurrences of up to 70%. The severity and persistence of violence inflicted by the offender, and the presence of children are key factors when violations occur (Jordan, 2004; Logan et al.,

2006). Women with children in common with the perpetrator are four times as likely to experience breaches with most of these occurring around visitation or during the handover of children for contact with the father (Logan et al., 2006; Towns, 2008). Police reports of violations are low, with only about half of the violations reported to police. The rate of arrest is also low, with only 20-35% of perpetrators arrested for violating the orders (Logan et al., 2006).

### **1.6. The Family Law system**

Many women who leave abusive relationships are drawn into the Family Court process by virtue of the Family Law Act, 1975 (Commonwealth of Australia, 1975) which emphasises that the children have the right to know and be cared for by both parents. In 2006, Part VII of the act was amended to include the presumption of shared parental responsibility, which ensures that both parents share equally in the decision making about the major long term issues, which include schooling, religion and healthcare. This presumption is rebutted in the context of family violence, and is not to be confused with the provision of ‘equal’ or ‘significant or substantial time’ with each parent.

Part VII of the Family Law Act states that “the best interests of the child is of paramount consideration” (s60CA) and emphasises the need “to protect the child from physical or psychological harm caused, or that may be caused, by (i) being subject or exposed to abuse, ill treatment, violence or other behaviour, or (ii) being directly or indirectly exposed to abuse, ill treatment, violence or other behaviour that is directed towards, or may affect, another person” (Commonwealth of Australia, 1975 s60CC). The act also emphasises the benefit to the child of having a meaningful relationship with both of the child's parents. These two concepts are often referred to as the “twin pillars” of the Family Law Act (Chisholm, 2009), with neither of them given priority in weighting when determining the child’s best interests. Due to several high profile cases where children

were killed by their fathers during unsupervised contact visits (T. Brown et al., 2014; L. Eriksson et al., 2014; Little, 2015), the 2011 amendment sought to add weight to the need to protect the children in preference to promoting contact between a child and their parent.

Family law proceedings are usually negotiated during a period of considerable stress, often frequently following separation from the abuser (Laing, 2003) and may occur concurrently with other court actions such as negotiating protection orders and prosecuting assault charges (Braaf & Meyering, 2009). As previously noted, this is also a time when the mother and her children are at particular risk. Many of the women will find themselves re-victimised by the justice system, including having to withstand efforts intended to demonstrate that they are unfit mothers, and the associated possibility of losing their children to the perpetrator (Chessler, 2011; Jaffe & Sudermann, 1998).

The family law process is an onerous and prolonged sequence of steps. The following steps are taken from the Family Law Court's brochure "Marriage, families and separation" (Family Law Courts, b):

1. **Pre-action procedures.** This involves, for example, family dispute resolution (also known as mediation). This step can be put aside in cases involving allegations of child abuse and allegations of family violence (Family Court of Australia).
2. **File an initiating application.** This form details the parties, circumstances of the marriage or relationship and separation; the children of the relationship and the orders sought. Filed with this is an affidavit presenting the facts from the applicant's perspective. Once the appropriate fee is paid, and the documents are served on the other party, the respondent is required to file a response.
3. **Court appointment or hearing.** This may take several hours, depending on how many other matters are listed for the same time slot. Both the applicant and the respondent



are required to be present in court. The presiding magistrate may order one or both parties to provide further information in the form of affidavits, and may order the appointment of an Independent Children's Lawyer to represent the wishes of the children. A family assessment report may also be ordered at this time.

4. **Child dispute service.** This refers to a family assessment report prepared by a court appointed psychologist or social worker. The process usually involves interviews with the mother, the father, and depending on their age, the children; and includes observation sessions between the mother and the children, and the father and the children. The process is intended to be cognizant of any protection orders that may be in place.
5. **Court based dispute resolution (financial).** This step is dependent on whether a financial agreement has already been reached.
6. **Preparation for final trial or hearing.** This stage may involve additional appointments or hearings, and may go on for many months, and in some cases, many years. Often, multiple affidavits are filed during this time.
7. **Final trial or hearing.** These may last several days and usually involves the expert witnesses such as the author of the family assessment report and any therapist involved with the family.

Within the Australian Family Law System are several groups of people, all of whom have a substantial role in the outcome of the litigation. Judges preside over the hearings and trials, and are located within either the Family Court of Australia (FCoA) or the Federal Circuit Court of Australia (FCC). Judges in the Family Court hear those cases involving severe allegations as well as international relocation or international child abduction cases (Family Court of Australia). Those Judges located within the Federal Circuit Court often hear matters other than family law (Federal Magistrates Court of

Australia). The Federal Magistrates Court was renamed the Federal Circuit Court of Australia in November 2012 (Attorney-General's Office, 2012). The parties involved in the litigation will often consult a lawyer who practises family law but who may not be a specialist family law practitioner. When attending court for a hearing or trial, the parties are usually represented by a barrister, who may also represent parties for matters other than family law. The Independent Children's Lawyer represents the best interests of the children, and in court they will often be represented by a barrister. The court report writers are clinical psychologists, psychiatrists or social workers who are appointed by the court, and prepare a report for the court based on interviews with the parents, the children, other significant members of the child's extended family, and reading of the court documents.

# Chapter Two

*“No amount of legislative change can be fully effective until we find a way to destabilise the entrenched myths and stereotypes that permeate the operation of the law and the practices of the police, media and the community. No change in the law can operate independently of the institutions of the police, the legal profession and the judiciary who maintain and perpetuate those myths and stereotypes about women and rape”*

(Graycar, 2005, p. 58).

## **2. The Australian Court System and Judiciary**

Within Australia, there is both a federal and a state system of judiciary, with national courts as well as State and Territory courts. Within each of the states and the Commonwealth, there is a hierarchy of courts, indicating the level of importance of the courts (Meek, 1988). The Federal, or Commonwealth, Courts can all be traced to the Australian Constitution, with Chapter Three providing for the creation of the federal courts (Meek, 1988), which include the High Court, the Federal Court, The Family Court (FCoA), and the Federal Magistrates Court (FMC) (H. P. Lee & Campbell, 2013). The FMC was renamed the Federal Circuit Court (FCC) in late 2012 (Attorney-General's Office, 2012).

The High Court of Australia, the highest curial body, was created in 1900 but did not come into operation until 1903 (Crock & McCallum, 1994-1995; Gleeson, 2004; H. P. Lee & Campbell, 2013; Meek, 1988). Its jurisdiction includes hearing and determination of judgments, decrees, orders and sentences arising from any justice exercising the original jurisdiction of the High Court, any federal court, any court exercising federal jurisdiction or from the Supreme Court of any State (Meek, 1988). The High Court is the arbiter of the Australian Constitution, as well as being the final court of appeal in all aspects of Australian Law (Crock & McCallum, 1994-1995). The Federal Court was created in 1976 by the Federal Court of Australia Act 1976 (H. P. Lee & Campbell, 2013), and came into

operation in 1977. It has two divisions – the general division which deals mainly with administrative law and the industrial division which deals mainly with trade practices (Gleeson, 2004; Meek, 1988). It is possible for judges of the Federal Court to hold concurrent appointments in other federal or territory courts, and the full court must consist of at least three judges (Crock & McCallum, 1994-1995).

The Family Court was also created in 1976, by the Family Law Act 1975 (H. P. Lee & Campbell, 2013; Meek, 1988), and looks after divorce, as well as issues of property and children; and the Federal Circuit Court handles matters for both these jurisdictions, although at a less complex level. In recent times, the jurisdiction of the formerly Federal Magistrates Court, now Federal Circuit Court, has grown since its inception and now includes family law, child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy and trade practices (Federal Magistrates Court of Australia, 2011). Each State and Territory has a Supreme Court, and a Magistrates Court, and in all states except Tasmania, there is a District Court (H. P. Lee & Campbell, 2013).

The division of labour between the FCoA and the FCC in matters of family law is subject to certain criteria, as set out in the Protocol for the division of work between the Family Court of Australia and the Federal Circuit Court (Family Court of Australia). These criteria include: international child abduction; international relocation; serious allegations of sexual abuse of a child warranting transfer to the Magellan list; or serious allegations of physical abuse of a child or serious controlling family violence warranting the attention of a superior court. Either court can transfer the matter to the other court, either on its own motion, or on the application of a party (Family Court of Australia). The work of the

Federal Circuit Court, formerly the Federal Magistrates court is about 90% family law, with the FCC dealing with the majority of family law matters (Chisholm, 2009).

## **2.1. Family Law**

When most people think of ‘family law’, it is usually in relation to divorce, property settlement and children’s issues i.e. where the children will live, and with who, and contact between the children and the non-resident parent. Graycar (2000) describes ‘family law’ as “a very small part of the legal framework that structures important aspects of our lives: family law might more accurately be described as the law that governs the breakdown of marital and (only in very limited cases) marriage-like relationships” thus ‘family law’ is traditionally seen as the law that applies when the relationships break down i.e. the focus is on separation (Graycar, 2000, 2005), so in speaking about ‘family law’, it is marriage, divorce, and the consequences that are discussed (Graycar, 2000). It is probably one of the few areas of law that affects so many people in their every day lived experiences, but it is also an area that few experience directly (Dewar, 2000).

Eekelaar (1984) suggests that family law has three principal missions: (1) To facilitate adjustment within relationships in the context of family breakdown; (2) To provide protection from family violence; and (3) To support and maintain family relationships. Dickey identified three main features of the Family Law Act. These are “(1) setting out the principle rights, duties, powers and liabilities between spouses, and between parents and their children; (2) providing for the enforcement of those rights, duties, powers and liabilities or the alteration of property rights between spouses; and (3) providing the requirements for dissolution of marriage” (cited in Nicholson & Harrison, 2000, pp. 758-759).

The Family Law Act (the ‘Act’) came into operation on 5 January 1976, repealing the Matrimonial Causes Act 1959, which preceded it (Nicholson & Harrison, 2000). The ‘Act’ has several functions, but one of the better known characteristics is the ‘no fault divorce’. This means that the Court does not consider which partner was at ‘fault’ in the breakdown of the marriage, but rather that ‘irretrievable breakdown’ has occurred, as demonstrated by 12 months of separation (Family Court of Australia, 2015). Prior to the introduction of this ‘no fault’ divorce, there was a double standard in the application for divorce, in which women were required to provide evidence of adultery, *and* an additional matrimonial offence, against the husband, whereas adultery alone was sufficient for men to divorce their wives (Nicholson & Harrison, 2000). During the late 1960s and early 1970s, it became recognised that many women and children were the targets of family violence and due to the expensive, undignified and time consuming procedure for divorce, their escape was complicated (Nicholson & Harrison, 2000). Before the passage of the Matrimonial Causes Act in 1857, divorce was not available in Australia, as the ecclesiastical courts of the UK were never introduced (Crock & McCallum, 1994-1995).

Part VII of the ‘Act’ provides instruction for decision making about the children of the relationship, and how they are to be cared for post parental separation. However, the Family Court does not have jurisdiction to hear matters of child protection, juvenile justice or adoption issues, which are dealt with at State level (Nicholson & Harrison, 2000).

## **2.2. Amendments to the Family Law Act**

The social changes in Australia that have happened since 1975 have been reflected in the Amendments that have occurred since the ‘Act’ was introduced. These reforms have included recognition of family violence and its effects, as well as more general reflections of women’s changing participation in society (Nicholson & Harrison, 2000). Several reforms have occurred including: the Family Law (Amendment) Act 1983

(Commonwealth of Australia, 1983); Law and Justice Legislation (Amendment) Act 1988; the Family Law (Reform) Act 1995 (Commonwealth of Australia, 1995); the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Commonwealth of Australia, 2006); and, the Family Law Legislations Amendment (Family Violence and Other Measures) Act 2011 (Commonwealth of Australia, 2011). The reforms described in the literature are those of 1995, 2006 and 2011, and so it will only be these amendments that are discussed further. At the time of writing (June 2017), there is a further Parliamentary review of the family law system underway.

### **2.2.1. The 1995 Amendment**

The Family Law Reform Act 1995 (Commonwealth of Australia, 1995) came into operation on 11 June 1996, with significant amendments to Part VII of the Act, in particular around the parent/child relationship (Bailey-Harris, 1996; Funder, 1998). Changes in section 60B reflect the UN Convention on the Rights of the Child (UNICEF). Section 60B currently (as at June 2017) states:

- (1) The objects of this Part are to ensure that the best interests of children are met by:
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
  - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- (2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):

- (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
  - (b) children have a right to spend time on a regular basis with, and communicate on a regular basis with, both their parents and other people significant to their care, welfare and development (such as grandparents and other relatives); and
  - (c) parents jointly share duties and responsibilities concerning the care, welfare and development of their children; and
  - (d) parents should agree about the future parenting of their children; and
  - (e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).
- (3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:
- (a) to maintain a connection with that culture; and
  - (b) to have the support, opportunity and encouragement necessary:
    - (i) to explore the full extent of that culture, consistent with the child's age and developmental level and the child's views; and
    - (ii) to develop a positive appreciation of that culture.
- (4) An additional object of this Part is to give effect to the Convention on the Rights of the Child done at New York on 20 November 1989.

which has had some additions since its introduction in the 1995 changes.

The section introduced several themes around parenting : a shift from parental rights to parental responsibilities; recognition that children have their own rights; a model of joint parenting which is unaffected by the context of the parental relationship; and the encouragement of parental agreement for resolving issues around the children's upbringing (Bailey-Harris, 1996). This reform created a number of new legal concepts, including "parental responsibility" replacing "guardianship"; "residence" and "contact" which replace "custody" and "access" (Bailey-Harris, 1996). The notions of "custody" and



“access” was seen as creating a mindset of “winners” and “losers” in parents, which the change in terminology was designed to reduce, creating a shift towards cooperative parenting post-separation (Funder, 1998).

Parental responsibilities, defined in section 61B, “in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children” (Commonwealth of Australia, 1995). It encompasses responsibility for both the day to day care of a child, as well as the long term issues which include the child’s health, and education, and is held by each of the parents of the child (Bailey-Harris, 1996), unless a court order specifies otherwise e.g. there is an order made that one parent has sole parental responsibility for the child. Biological parents already possess parental responsibility under the law, prior to there being an order of the court (Bailey-Harris, 1996). The rise of ‘parenthood’ is a function of three developments – removing the distinction in the legal treatment of children based on whether their parents were married or not; as a legal method of linking men to children in order to impose parental responsibilities, particularly relating to financial support of the children; and finally, as a method of maintaining links between family members in the event of separation, creating an illusion of permanence in the face of instability (Dewar, 2000). The needs of the children are the same regardless of the marital status of their parents, as are the determinations of the distribution of property or income (Dewar, 2000).

Parenting plans were introduced by the 1995 amendment, allowing for parents to reach agreement in writing, dealing with residence, contact, and any other aspects of parental responsibility, and may modify the exercise of that parental responsibility (Bailey-Harris, 1996). Unless registered with the court, these plans are not enforceable; however they can be registered, subject to them deemed to be meeting the best interests of the

child/ren to which they related, which then allows them to operate as court orders.

Parenting orders consist of two types – residence orders, which detail who the children live with; and contact orders, which detail the types (e.g. phone/Skype, letters/emails, the so called “indirect contact”) and amount of time spent with particular people, which may include members of the extended families such as grandparents (Bailey-Harris, 1996).

Graycar (2000) suggests that the 1995 reforms were not based on a particular issue that was identified, but rather from the anecdotes recounted to politicians by aggrieved non-custodial fathers who complain of gender bias in the family court, going on to say:

“[t]he fathers’ groups persistently claim that the Court is ‘biased’ against them. but their claims had (and have) no empirical support: the literature and the available studies show that the Family Court makes orders (in contested cases) in favour of fathers at twice the rate of those made by consent.” (p. 746)

### **2.2.2. The 2006 Amendment**

In 2003, a Parliamentary Committee was established by the then Prime Minister, John Howard, in order to explore the ideal of children spending equal time with each parent, subject to a rebuttable presumption, with the idea of getting away from the ‘standard pattern of contact’, which was usually every second weekend and half the school holidays (Cashmore et al., 2010). This has been dubbed the 80-20 rule, as it gave non-resident parents around 20% of time with their children. The report, from the Standing Committee on Family and Community Affairs, known as *Every Picture Tells a Story* (House of Representatives Standing Committee on Family and Community Affairs, 2003) made several recommendations including that Part VII of the Family Law Act 1975 be amended to create “a clear presumption, that can be rebutted, in favour of equal shared parental responsibility”, and that the “clear presumption against shared parental responsibility with respect to cases where there is entrenched conflict, family violence,

substance abuse or established child abuse, including sexual abuse” (House of Representatives Standing Committee on Family and Community Affairs, 2003, p. xxi). Further recommendations were made about “removing the language of ‘residence’ and ‘contact’” to replace it with more family friendly terms, such as ‘parenting time’; that separating parents were required to “undertake mediation or other forms of dispute resolution before they are able to make an application to a court/tribunal for a parenting order” (Recommendation 9, House of Representatives Standing Committee on Family and Community Affairs, 2003, p. xxiii). The exception to this was where “issues of entrenched conflict, family violence, substance abuse or serious child abuse, including sexual abuse, require direct access to courts/tribunal”, and that “all family law system providers ... should screen for” these issues.

Most of these recommendations were accepted and included in the 2006 Amendment; however, the Committee also made the recommendation that the Commonwealth government should “establish a Families Tribunal with power to decide disputes about shared parenting responsibility ... with respect to future parenting arrangements that are in the best interests of the child/ren, and property matters by agreement of the parents.” (Recommendation 12, House of Representatives Standing Committee on Family and Community Affairs, 2003, p. xxiv) The Committee outlined the “child inclusive, non adversarial” nature of the Tribunal, suggesting “simple procedures that respect the rules of natural justice”, and that there is an investigative arm of the Tribunal “with powers to investigate allegations of violence and child abuse in a timely and credible manner comprised of those with suitable experience.”

Recommendation 19 of the report was “that a longitudinal research project on the long term outcomes of family law judicial decisions should be undertaken and incorporated

into judicial education programs.” (House of Representatives Standing Committee on Family and Community Affairs, 2003, p. xxvi). This was not included in the 2006 Amendment to the Act and, in February 2016, became an issue in the spotlight, raised by Senator John Madigan (Senator Madigan, 2016).

The 2006 amendment passed through the Senate in March 2006, the House of Representatives in May 2006, before coming into effect on 1 July 2006. It enacted the most comprehensive changes to the Family Law Act since its inception in 1975 (Braaf & Sneddon, 2007). The amendment encourages parents to reach agreement, either on their own, or with the help of family dispute resolution (Bagshaw et al., 2010). The requirement is for mediation to be the first port of call to resolve parenting issues, except in situations where there has been domestic violence and/or child abuse (Chisholm, 2009).

The Best Interests of the Child are the paramount consideration when making orders, or mediating parenting plans; however, the issues that are to be considered in making the determination changed (Braaf & Sneddon, 2007; Family Violence Committee, 2009). The two primary considerations, namely the rights of the child to have a meaningful relationship with both parents, and the right to protection from physical and psychological harm, have been described as the ‘twin pillars’ of the amendment (Chisholm, 2009; Family Violence Committee, 2009; Kaspiew et al., 2009). Subsequent research has shown that the right to the meaningful relationship has often been prioritised over the right to safety, creating situations of risk for children, and their mothers (Bagshaw et al., 2010).

The legislation requires that, should the presumption of equal shared parental responsibility be found to apply, the courts must consider whether ‘equal time’ is in the best interests of the child, and is reasonably practical, as determined by such things as the

distance between the parents' homes, and if not, whether 'substantial or significant time' is in the best interests of the child and reasonably practical (de Simone, 2008). A further inclusion in the 2006 Amendment was the so called "friendly parent" provisions, which required the courts to look at the parental behaviour, looking more positively at the parent most likely to facilitate a relationship between the child and the other parent. This aspect of the amendment was criticised as disadvantaging litigants who are victims of domestic violence (de Simone, 2008). Reports had indicated that some lawyers were advising parents against making allegations of family violence, to ensure that they would not be labelled as an 'unfriendly parent' (Chisholm, 2011; D. C. Roberts, 2011).

Parenting orders can be made, detailing parental responsibility, who the child lives with and how much time is spent with another person or persons, and the communication the child is to have with those persons (de Simone, 2008). Parental responsibility is defined as "all the duties, powers, responsibilities and authority which, by law, parents have in relation to children" (section 61B), with section 61C stating that each parent has parental responsibility for children under 18 years of age, unless a court order states otherwise (Daniel, 2009).

This amendment has been criticised many times since it came into law on 1 July 2006. Critiques have included prioritising the child's 'meaningful relationship' with both parents over the right of the child to be protected from physical and psychological harm (Kaspiew et al., 2009), as well as some confusion around the word 'equal', with media and politicians focusing on this word, creating a belief that parents would be entitled to equal time with the child/ren (Chisholm, 2009; Daniel, 2009). The 'friendly parent' provision was also criticised, most frequently in situations that involve domestic violence. Indeed, Dore (2004) notes that the parent least fit for custody may benefit most from this type of

legislation, and gain greater bargaining power i.e. the opposing, residential parent will not risk losing custody via litigation, whereas the non-residential parent has little risk (de Simone, 2008). Another criticism of the amendment was within the definition of family violence in section 4, where the definition referred to ‘reasonable fear’:

Family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.

Note: A person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances would fear for, or be apprehensive about his or her personal wellbeing or safety. (Commonwealth of Australia, 2006)

The reference to ‘reasonable fear’ lead to different interpretations of what ‘reasonable’ meant, and was widely criticized as devaluing the experiences of women, as well as ignoring social science literature around the effects of family violence (Alexander, 2015; Rathus, 2012).

### **2.2.3. The 2011 Amendment**

The Family Law Amendment (Family Violence and other Measures Act) 2011 came into operation on 7 June 2012 (Sifris & Parker, 2014), having been introduced to parliament by the Attorney-General on 24 March 2011 (Chisholm, 2011). Changes included an expanded definition of family violence, and a change in the application of the ‘twin pillars’ to prioritise children’s safety over the meaningful relationship. The ‘friendly parent’ provision was repealed, as were provisions that discouraged disclosure of violence and abuse (Sifris & Parker, 2014).

The 2011 amendment definition of family violence is:

- (1) For the purposes of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful.
- (2) Examples of behaviour that may constitute family violence include (but are not limited to):
- (a) an assault; or
  - (b) a sexual assault or other sexually abusive behaviour; or
  - (c) stalking; or
  - (d) repeated derogatory taunts; or
  - (e) intentionally damaging or destroying property; or
  - (f) intentionally causing death or injury to an animal; or
  - (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or
  - (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or
  - (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or
  - (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty (Commonwealth of Australia, 2011).

With regard to the two primary considerations of the act, the so called 'twin pillars', the legislation was amended, clearly directing that greater weight is placed on the need to protect the child from harm (s 60CC(2)) (Kaspiew et al., 2015). The Best Interests principle set out in section 60B includes the guiding notion that the child's best interests are paramount, followed by the primary considerations, and an additional 13 separate considerations listed in s60CC(3). One of the changes here was that the court is required to consider any family violence order (s60CC(3)(k)) rather than those made on a final or contested basis (Kaspiew et al., 2015).

In the 2011 amendment, the presumption of equal shared parental responsibility is no longer applicable where there are reasonable grounds to believe that a party has perpetrated child abuse or family violence, as well as being rebuttable in situations where it would not be appropriate, or would not be in a child's best interests (Kaspiew et al., 2015; Rhoades, Lewers, Dewar, & Holland, 2014). The legislations also states that in considering the making of a parenting order, the court must ensure that it does not expose the child to an unacceptable risk of family violence, although what an "unacceptable risk" is remains to be seen (Sifris & Parker, 2014).

It is interesting to note that this amendment to the legislation was introduced to counter criticism of the 2006 amendment; however, cases already before the court at the time that the 2011 amendment came into law, in June 2012, were required to be continued under the 2006 legislation, thus failing to address the issues being raised for a significant proportion of cases.

#### **2.2.4. Best interests of the child (BIC)**

The "best interests of the child" is the current standard that is used to make determinations in family law cases, with this term being introduced in the 1995 Amendments, changing the terminology from the "child's welfare" (Bailey-Harris, 1996). It is the paramount consideration when the court is making a particular parenting order, and takes into account such matters as family violence (Bailey-Harris, 1996).

The best interests of the child concept has evolved over time, and is generally reflective of the values and beliefs held within society at a point in history, about what is 'best' for children (Dias, 2014). The most current reference for the best interests concept is the United Nations Convention on the Rights of the Child (UNCROc), which Australia ratified in November 1989 (Australian Human Rights Commission). Consistent with



UNCRoC, Australia incorporated the best interests principle in many Acts at both federal and state levels, including the Family Law Act (Dias, 2014)

Several studies/authors have criticised the statute as being too vague and allowing too much judicial discretion, as well as being the cause of prolonged and excessive use of litigation due to unknown outcomes (Dias, 2014). The Family Law Act specifies multiple criteria to determine the best interests of the child, and this presumes that decision making occurs according to the rational actor model [Harmer & Goodman-Delahunty, 2013].

## **2.3. Family Law Personnel**

### **2.3.1. Judges**

Traditionally, training for judges includes formal legal training, which is followed by a period of approximately 20 years practice in the courts. This is believed to provide experiences in both law and life, as well as the opportunity to observe decision makers at work (Rowlands, 2003).

The appointment process in Australia is based on merit, but it has been argued by several feminist legal scholars that ‘merit’ is a masculinised term that is only invoked when the candidate is in the category of ‘other’ i.e. not a white, heterosexual, able-bodied middle-class man, who espouses mainstream religious and political beliefs. Merit is also a very subjective term, an elusive concept, and the risk is that merit will only be seen in those who exhibit qualities similar to themselves i.e. the social and gender based characteristics (Evans & Williams, 2008; Thornton, 2007).

In the Family Court, judges are “appointed for their suitability to deal with matters of family law ‘by reason of training, experience and personality’” (s22(2)(b) Commonwealth of Australia, 1975). However, it appears that the same criterion is not applied to those

judges who are appointed to the Federal Circuit Court, which deals with 80% of family law litigation (Alexander, 2015).

Whilst the Family Law Act and UNCROc state that the wishes of the children are to be heard and taken into account in proceedings, judges rarely if ever meet with children to ascertain their views, preferring to leave these interviews to family consultants (Fernando, 2012). Indeed, Fernando (2012) found that 75% of judges surveyed had never met with a child, with 81% saying they would not meet with a child in the future. Several judges indicated that they were “completely opposed to judicial meetings with children” with comments including “[j]udges should NOT speak with or to children”, and “meetings with children should not occur” (Fernando, 2012, p. 75).

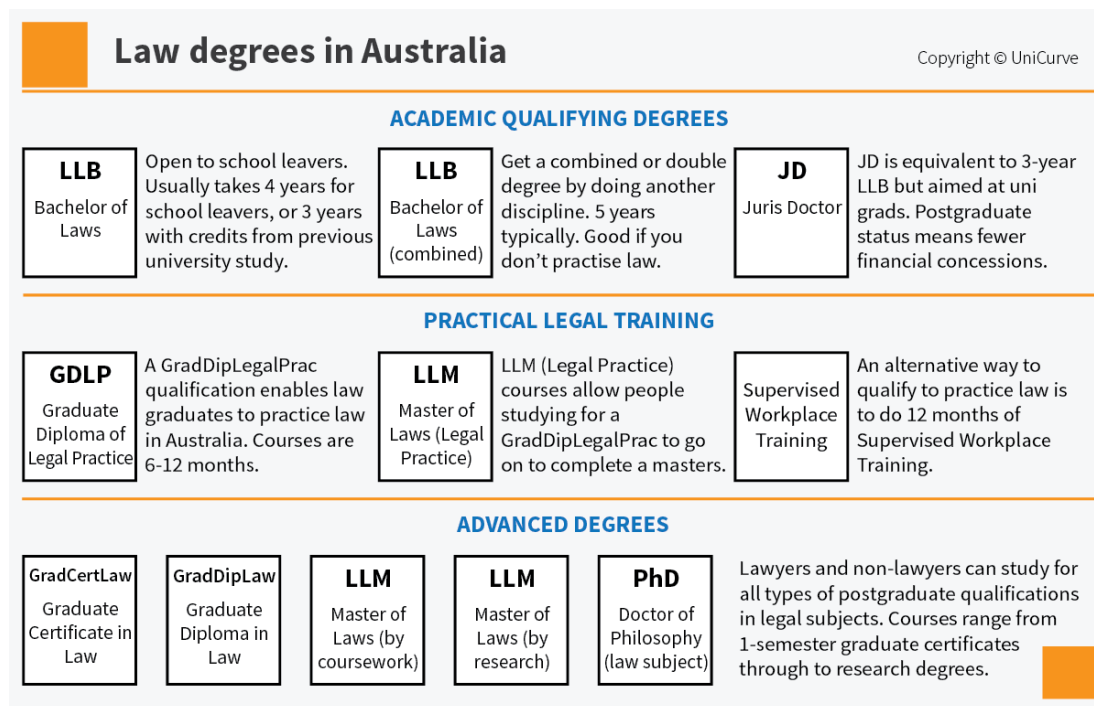
### **2.3.2. Lawyers**

Lawyers are legal practitioners who have successfully completed a law degree, been admitted as a lawyer of the Supreme Court of an Australian state or territory and who hold a practicing certificate which is granted under legal profession legislation of an Australian jurisdiction (Australian Bar Association; The Law Society of New South Wales).

There are currently 26 law schools in Australia, offering several options for studying law, including a Bachelor of Laws (LLB), Bachelor of Laws (combined) and Juris Doctor, which is equivalent to a 3 year LLB for university graduates (Figure 1).

Figure 1

Law degrees in Australia (UniCurve, 2017)



The term ‘lawyer’ is generally used to describe someone who works in law. There are two types of lawyer – solicitors, who do the day to day work with clients, and barristers, who represents clients in court in legal disputes (Owen Hodge Lawyers, 2017). Some solicitors will be specialists, such as in family law, or taxation law. An accredited specialist is a lawyer with recognised expertise in a particular area of law (The Law Society of South Australia, 2017). In South Australia, a lawyer is deemed to be an accredited specialist is they have at least five years of full time experience, of which three years must be in the area of specialisation, they must complete professional development courses in the area of specialisation, and pass comprehensive assessments that test their technical knowledge (The Law Society of South Australia, 2017).

### **2.3.2.1. Barristers**

A barrister is a lawyer who specialises in litigation, and whose main role is to conduct court appearances. They have a more specialised knowledge of case law and precedent than solicitors, thus a solicitor may seek the opinion of counsel when confronted with an unusual point of law (Foolkit, 2017). In most states and territories of Australia, lawyers are qualified both as solicitors and barristers; however, barristers work in Chambers, rather than in law firms, and the public is unable to consult a barrister directly, with any correspondence being between the solicitor and the barrister (Foolkit, 2017).

### **2.3.2.2. Independent Children’s Lawyers**

The Independent Children’s Lawyers (ICLs) specially trained legal practitioners, appointed at the discretion of the Court to represent the best interests of the children, in approximately 30% of cases (Ross, 2012). State based Legal Aid Commissions administer the funding, and oversee the appointment of the ICLs (Kaspiew et al., 2015). The role of the ICL is set out in s68LA of the Family Law Act, and is to investigate matters thought to be relevant to the courts consideration of the best interests of the child, collate expert evidence and present it to the court, as well as ensuring that the views of the children are heard by the court, although the ICL is not bound by the child’s wishes (Family Law Council, 2000; Ross, 2012). The Guidelines for Independent Children’s Lawyers (Family Court of Australia, 2007) state that the “ICL is to act impartially and in a manner which is unfettered by the considerations other than the best interests of the child” as well as being “truly independent of the Court and parties to the proceedings” (para 4). Further, the Guidelines go on to disclose when the ICL should meet the child whose best interests they are representing:

#### **6.2 Meeting the Child**

It is expected that the ICL will meet the child unless:

- the child is under school age;

- there are exceptional circumstances, for example where there is an ongoing investigation of sexual abuse allegations and in the particular circumstances there is a risk of systems abuse for the child;
- there are significant practical limitations, for example geographic remoteness.

The assessment about whether, where and how to meet the child is a matter for the ICL. An assessment may be made in consultation with any Family consultant or other expert involved in the case. (Family Court of Australia, 2007)

The role of the ICL is deemed to be multifaceted, along three dimensions, as mentioned previously. These aspects are gathering evidence, facilitating the participation of the child in the proceedings, and managing litigation (Kaspiew et al., 2014).

Recent research by the Australian Institute of Family Studies (2014) found that parents and children involved in cases in which ICLs were appointed were often negative in their assessments of the ICL. This was partially due to misunderstanding the multifaceted nature of the ICLs' role, although a question that was raised by parents in this study was "if the ICL has not met the parents or the child/young person, how can they know what is in the child's/young person's best interests?" (Kaspiew et al., 2014, p. 125).

### **2.3.3. Family Consultants**

Family consultants are psychologists or social workers who provide expert clinical assessments about the families who are involved in court proceedings. Child Dispute Services employs around 80 family consultants, as well as engaging Regulation 7 consultants as sub-contractors (Kaspiew et al., 2015). Family consultants may be ordered by the court to provide a Family Report pursuant to section 62G of the Family Law Act.

Family consultants claim expertise in social and behavioural sciences, which rely on empirical research (Meagher, 2012), and assist the court by performing evaluations of the parties, fact-finding or gathering knowledge on which to base predictions, and making recommendations around orders that should be made, or arrangements that would be ‘best’ for a child (Meagher, 2012).

#### **2.4. The Juvenile Legal System**

The juvenile legal system is the section of the legal system that deals with children aged 10 to 17 years who have committed a criminal offence. Children have full party status, and are assumed to be able to instruct and direct a lawyer from the age of 10, the age of criminal responsibility (Cronin, 1997).

The difference between the juvenile legal system and the family law system is that children as young as 10 are required to be present in court, the judge talks to the child, and the child is expected to take responsibility for their actions. In the Family Law System, ‘infant’ is defined as a child up to the age of 18 years, and the children are required to be protected from the process and are not permitted in the courtroom, as it is presumed that they will be traumatised by participating (Cronin, 1997).

# Chapter Three

## **3. Influences on decision making/client interaction**

### **3.1 Attitudes towards violence against women**

Attitudes are a construct situated within social psychology (Ajzen & Fishbein, 2005; Flood & Pease, 2006; Schwarz & Bohner, 2001) that are thought to guide, influence, or direct people's behaviour (Ajzen & Fishbein, 2005; Armitage & Christian, 2003; Kraus, 1995). They are held at the levels of the individual, the community, organisations and society (Flood & Pease, 2006, 2009). Whilst these attitudes are not the only factor that contributes to violence against women, they have significant influence on perpetration of violence, as well as the victim's and society's response to the violence (Flood & Pease, 2008, 2009; VicHealth, 2010). Attitudes, values, beliefs, social norms, gender roles, and inequalities in power shape relationships and families, and contribute to violence against women (Easteal, 2001; VicHealth, 2010).

At the level of the individual, several factors are purported to influence men's perpetration of intimate partner abuse and violence. These include demographic variables, socialization experiences, alcohol and drug use or abuse, as well as his attitudes, cognitions and attributions (Feldman & Ridley, 1995). Several studies (e.g. Bersani, Chen, Pendleton, & Denton, 1992; Hamberger & Hastings, 1991; Holtzworth-Munroe, Bates, Smutzler, & Sandin, 1997; Norlander & Eckhardt, 2005; Schumacher et al., 2001; Stith, Smith, Penn, Ward, & Tritt, 2004; Sugarman & Hotaling, 1989) have looked at these variables in violent men and found that approval of violence against women, childhood victimisation and witnessing of interparental aggression, drug and alcohol use and abuse, high levels of state and trait anger, and depression are correlated with men's perpetration of violence against

their intimate partners. Negative cognitions including irrational beliefs, belligerence, and hostile attribution biases along with elevated levels of aggression are higher in violent men, compared to nonviolent men. In particular, men who use violence against an intimate partner have been found to hold violence supportive attitudes, although it is not clear whether these attitudes were present prior to the use of violence, or if they have developed as a result of engaging in the abusive behaviour, and then justifying the behaviour (O'Hearn & Margolin, 2000).

At the community level, the general population has been shown to hold certain pervasive attitudes towards violence against women, some of which may be shared by members of the legal profession. A recent survey (VicHealth, 2010) revealed that substantial proportions of the population hold violence supporting attitudes, which include justification, minimization, and denial of the violence as well as victim blaming tendencies. Younger respondents, who are male and who have low levels of support for gender equality, were more likely to hold violence supporting attitudes (VicHealth, 2010). Strong gender role subscriptions, which encourage men to be aggressive and dominant, and teach that women are inferior to men, are implicated in perpetration of both domestic violence and sexual assault (Flood & Pease, 2006; Murnen, Wright, & Kaluzny, 2002; Sugarman & Frankel, 1996).

The National Survey on Community Attitudes to Violence Against Women 2009 (NCAS Report, VicHealth, 2010) shows that, whilst some attitudes have changed since the last survey in 1995, there is still a long way to go with regard to changing violence supportive attitudes in society. For example, a smaller percentage of the survey participants agreed that behaviours corresponding to verbal, financial and social abuse were forms of domestic violence or abuse. This indicates that the population tends to focus on physical



violence, and underestimate the severity of the non-physical forms of abuse when thinking about domestic violence and abuse. Indeed, the general community were less likely to rate the non-physical forms of abuse, such as emotional, financial and social abuse, as very serious, despite the evidence highlighting the cumulative effects of physical and non-physical abuse (VicHealth, 2010). There has also been a significant shift in the beliefs of the population about who perpetrates domestic violence. In 1995, 86% of those surveyed stated that men or mainly men perpetrated domestic violence, with only 9% saying both men and women equally. In 2009, this had shifted such that 76% said men or mainly men, but 22% stated both men and women equally (VicHealth, 2010). This is likely to have been influenced by Fathers' Rights group's rhetoric in which they claim that women are as violent or abusive as men (Kaye & Tolmie, 1998b, 1998c), but is not supported by the literature, which shows that injury rates for women are six times greater than for men (Straus, 1993). Stark (2007) found that in a hospital population, domestic violence caused twice as many injuries to women as auto accidents. He then goes on to say that more recent research has shown his estimate to be conservative. Recent studies have shown that husband-to-wife violence serves different functions than wife-to-husband violence, and the outcomes of each are significantly different, with husband-to-wife violence evidencing more negative outcomes for the victims, in terms of both physical injury and psychological consequences (Holtzworth-Munroe, Smutzler, & Bates, 1997). Indeed, husband violence has been shown to result in more injury, fear and psychological problems compared to wife violence (Holtzworth-Munroe, Smutzler, et al., 1997).

The use of excuses or justifications for violence is strong amongst those surveyed, with 20% of men and 17% of women believing that violence can be excused if it results from "people getting so angry that they temporarily lose control" (Table 8, p.41, VicHealth, 2010). As pointed out by several authors (Bancroft, 2003; Bancroft, Silverman,

& Ritchie, 2012; Margolin, John, & Foo, 1998; Norlander & Eckhardt, 2005; VicHealth, 2010; Zorza, 1995-1996), the behaviour is a **choice** in which the abuser gives himself permission to behave that way (O'Hearn & Margolin, 2000). Indeed, few abusive men use violence outside of their intimate relationships, negating “loss of control” as an excuse for perpetrating physical abuse (Bancroft, 2003; VicHealth, 2010). “Loss of control” implies that something or someone else was responsible for the behaviour, in which case, the perpetrator is not liable for sanctions (VicHealth, 2010). Furthermore, 27% of men and 18% of women believe that domestic violence can be excused if afterwards, the violence person genuinely regrets what they have done (Table 8, p.41, VicHealth, 2010). Given that a substantial part of the Cycle of Violence (L.E. Walker, 1979) is the expression of remorse or regret, and that the motivations for the men to express such range from genuine contrition to emotional manipulation to win post-abuse favours (Stark, 2007), the belief in this excuse is concerning. A violent man may be able to both express remorse for his behaviour and portray the victim in a bad light in order to convince professionals (e.g. psychologists) or officials (e.g. police, judges) that he has been wrongly accused or that his efforts to change are not being recognised (Bancroft et al., 2012).

A substantial number of papers refer to judicial discretion in custody decision making that is permitted by the “best interests of the child” statute (e.g. Bookspan, 1993-1994; Carpenter, 1996; Chambers, 1984; Charlow, 1986; A. S. Hart, 2010; Jacobs, 1996-1997; Neely, 1984; Polikoff, 1983, 1992; Shea Hart, 2006). These authors state that the lack of guidelines permits judges to call on their own values (Mnookin, 1975), biases (Sack, 1991-1992) including gender biases (Czapanskiy, 1993), prejudices (Trudrung-Taylor, 1986) and personal life experiences (Atkinson, 1984-1985) to guide their decision making. Despite multiple authors discussing the presence of these factors in the judicial decision making, few studies have determined the extent or the content of these biases,

values, prejudices or experiences despite the profound impact they can and do have on the judgements made. As Charlow (1986) points out, “subconscious values affect the process judges use to decide contested custody cases...” These values, prejudices and biases also apply to those who are acting in the role of court expert – the psychiatrist, psychologist, or social worker. Indeed, Gould et al (2008) state “[t]oo often, we have observed evaluators to overreach by offering opinions based upon inadequate or incomplete data, by basing their opinions on outdated research, or by basing their opinions upon personal beliefs and personal biases and presenting these views as expert opinions” (p. 3).

Attitudes towards domestic and sexual violence have been studied in students (Bryant & Spencer, 2003; J. Lee, Kim, & Lim, 2010), police officers (Gover, Paul, & Dodge, 2011; Saunders & Size, 1986 ), people of distinct cultural groups (Bhanot & Senn, 2007; Yick, 2000) and service groups such as therapists or victim advocates (Saunders & Size, 1986 ; Shechory & Idisis, 2006) but thus far no studies have been located that examine these attitudes in the actors of the family court process i.e. the lawyers, magistrates and court experts. Roberts (2011) found that women who had participated in the Family Law system believed that there was little to no understanding of the dynamics of domestic violence, or of the impact on the women and children, held by legal professionals and court experts alike.

### **3.2 Myths about violence against women**

Myths abound in the general population with regard to the Family Law system. One of the most prominent myths, most usually aired by Fathers’ Rights groups, is that of bias against men. In general, this perception of bias might be a result of a misperception of statistics (what is often called ‘base-rate neglect’ in cognitive psychology). Only 10% of separating couples litigate (Dallam & Silberg, 2006; Divorce Peers, 2009; Johnston et al.,

2005; Neely, 1984; Saposnek & Rose, 2004), and of these, 70-80% of cases involve allegations of violence and abuse (Bow & Boxer, 2003; Johnston et al., 2005; Meier, 2003). The fact that 70-80% of these contested arrangements involve abuse allegations usually involving men, gives the impression that the Court is opposed to the interests of men, but such reasoning ignores the situations typically prevailing in the remaining 90% of cases where the Court would not necessarily grant custody in favour of the mother. The literature shows time and again that there is indeed a bias within the family law system, and also within the criminal and civil law systems, but that bias is against women. Most of the courts in the United States have Gender Bias Committees, and their reports show repeatedly that bias occurs at all levels of the system, and predominantly against women, both as litigants and as lawyers (Czapanskiy, 1993; Eastal, 2001).

Studies citing the statistic that women get custody 90% of the time are referring to those situation where the father does not want custody, and has not asked for it (C. Brown, 1981; Polikoff, 1981-1982). Maternal preference in custody, often accepted by the public as both the current and historical practise, is a limited, historically short doctrine known as the 'tender years presumption' which gained popularity in the 1860s but did not become fixed in law until the 1920s (C. Brown, 1981; Kelly, 1994; Lyman & Roberts, 1985). The 'tender years presumption' was repealed in the 1970s, in favour of the current "best interests of the child" statute (Trudrung-Taylor, 1986), thus maternal preference in family law has a lifespan of approximately 50 years. Prior to the early twentieth century, the father was automatically awarded custody of the children of the marriage, in the rare event of the marriage breaking down, due to the children being seen as paternal property or chattel (Bookspan, 1993-1994; C. Brown, 1981; Carpenter, 1996; Jacobs, 1996-1997; Neely, 1984; Pinkerton, 2007), or due to his ability to financially support the children (Lyman & Roberts, 1985). It was not until the adoption of compulsory education in the

latter 19<sup>th</sup> Century, that children were awarded to the mother (C. Brown, 1981; Chessler, 2011; Gardner, 1987a; Polikoff, 1981-1982), given that they now held less economic worth for the father. The mothers were also required to shoulder the financial burden for the children (C. Brown, 1981; Polikoff, 1981-1982). Whilst the adoption of the ‘tender years presumption’ countered the notion that children were property (Polikoff, 1981-1982), it also created a lower socioeconomic state for women and children (Bookspan, 1993-1994; Chessler, 2011).

With regard to contested custody cases, Chessler (2011) reports that “when fathers fight, they win custody 70% of the time, whether or not they have been absent or violent” (p. x). This statistic is concurred with by other studies (Polikoff, 1981-1982; Woods, Been, & Schulman, 1982-1983; Zorza, 1995-1996). Furthermore, the possibility is suggested that the men who are ‘winning’ custody of their children are men who have not been primary caretakers of the children, if indeed they have been active in childcare at all (Chessler, 2011; Polikoff, 1981-1982, 1983; Zorza, 1995-1996). Several studies have shown that abusive men are more likely to seek custody of their children than are non-abusive fathers (American Psychological Association, 1996; Bancroft et al., 2012; Meier, 2003; Przekop, 2011; Smith & Coukos, 1997), and are three times more likely to be in arrears of child support payments (Przekop, 2011; Zorza, 1995-1996). It would be wise for all family law professionals to consider the underlying motivations of fathers who express sudden interest in their children (Elizabeth, Gavey, & Tolmie, 2012). Bancroft (2012) lists several reasons that abusive men seek custody or increased visitation, including having a distorted perception of themselves and their victims; the desire to impose control, retaliation, or for vindication; to gain economic or legal concessions; and to avoid child support. It would seem that these reasons are somewhat distanced from the idea that if a father is challenging for custody, it is because he “really loves his children”. Chessler (2011) suggests that

economic motivation, including not wanting to share marital assets, or not being willing to compromise their lifestyle, were among the greatest reasons for the fathers in her study to challenge for custody.

Other studies show that violent men will seek custody to remove the child from the mother's care, not for any genuine desire to care for the child (Przekop, 2011). Men often talk about *caring about* their children rather than *caring for* their children, whereas mothers most often talk about *caring for* their children (Elizabeth et al., 2012; Smart, 1991), and yet family law seems willing to reward fathers for their expressions of *caring about* their children, even in light of little or no history of *caring for* the children, and in doing so, penalising mothers with a loss of time with their children (Elizabeth et al., 2012).

Another particularly prominent myth, again aired by Fathers' Rights groups, is that of women making up or exaggerating claims of domestic violence or child abuse to get the upper hand in custody battles. This statement was agreed with by 56% of men and 42% of women in the NCAS report (Table 10, p. 44 VicHealth, 2010). Once again, this is not supported in the literature, with studies showing that false allegations are found in less than 10% of cases, and most usually only in 1-2%. Allegations of domestic violence made by women in the context of family court are substantiated in 50-75% of cases (Jaffe, Johnston, Crooks, & Bala, 2008); with around 15% unsubstantiated i.e. there is insufficient evidence to make a decision for or against the allegations (Bala et al., 2001; T. Brown, 2003).

Johnston et al's (2005) study found that women in custody disputes do not make unsubstantiated allegations against the child's father any more than men do against the child's mother, counteracting the parental alienation perspective which states that women make more unfounded allegations (Gardner, 1987b). In fact, Bala (2001) found that, for allegations of sexual abuse, only 1.3% of allegations against noncustodial fathers were

considered to be intentionally false, compared to 21.3% of allegations made by noncustodial fathers. Trocmé and Bala (2005) go on to say that “anonymous reporters and noncustodial parents (usually fathers) most frequently make intentionally false reports.” (p. 1333).

It is important to emphasise the point that false allegations of domestic violence and child sexual abuse are much less common when compared with victims who fail to report their abuse, and with the wide spread false denials and minimisations of those who have perpetrated violence against their family (Jaffe et al., 2008). To date, only one study has been located that has examined the rates of false denials of abuse and violence in the context of family law (Moloney et al., 2007).

Several myths are centred around the father’s conduct and include: that his behaviour towards the mother does not impact on the children; that ongoing contact with the father is beneficial to the children; and that a violent man can still be a good father. The literature shows the overlap of child abuse and domestic violence is 30-70% (Bancroft et al., 2012; Edleson, 1999b; Jaffe, Crooks, & Wolfe, 2003; Przekop, 2011), therefore certainly has a bearing on any decisions made with regard to contact time with the abusive parent. Bancroft et al. (2012) provides a substantial analysis of how the abuser’s behaviour can affect every member of the family, the relationship between the mother and her children, and the relationship between siblings, as well as the type of role model that an abusive man makes, particularly for his sons. As a father, the abusive man is teaching his children that aggression and violence are acceptable methods of resolving conflict, particularly in intimate relationships; that the victim is to blame for the violence perpetrated against them; as well as that boys/men should be in control and are superior to girls/women (Bancroft et al., 2012). Indeed, it has been shown that boys who witness their father assaulting their

mother are disproportionately likely to go on to perpetrate violence in their own intimate relationships (Bancroft et al., 2012; Pagelow, 1990). Pagelow (1990) goes on to say:

“In particular, boys need to see that their father’s violent behavior is unacceptable and is negatively sanctioned by the legal system. If they see that their abusive fathers are accorded full rights and parenting privileges as though such behavior is normative, their earlier training in violence is reinforced. More than lip service must be given to the goal of protecting the best interests of the child, or the courts’ message shall continue to be “Fathers’ rights will be protected, no matter what the costs to children, their mothers, and society!” (p. 360)

The divorce literature shows that children benefit from continued, ongoing relationships with both parents is in direct contrast to the violence literature which shows that ongoing exposure to the abusive parent is not always beneficial. Literature reviews and meta-analyses done throughout the 1990s, looking at children’s wellbeing in the context of parental divorce or separation has produced mixed findings with regard to the benefits of contact with a non-resident father. Indeed, meta-analyses (Amato, 1993a; Amato & Gilbreth, 1999; Amato & Keith, 1991) found that contact between non-resident fathers and children is not a good predictor of children’s well-being. It is not the quantity of the contact, but rather the quality that is related to children’s well-being, and indeed, regular visitation does not guarantee the presence of a high quality relationship between non-resident fathers and their children. Amato and Gilbreth (1999) suggest that it is less about how often fathers see their children; rather it is what they do when they are with their children that is more important. Research shows that non-resident fathers tend to have a recreational relationship with their children, and whilst the shared activities such as going to the movies, or to restaurants are enjoyable, they contribute little to children’s development. Furstenberg et al. (1987) found that children with high contact fathers were doing more poorly than those children who had not seen their father in five years.



Johnston, Kline, and Tschann (1989) found that children who have more frequent access were more emotionally troubled and behaviourally disturbed, with this linked to ongoing conflict between the parents especially where the children were used in the parental disputes. King and Heard (1999) found that frequent contact was no more beneficial for children, even when mothers were satisfied with the level of father contact, with children doing worst of all in families with frequent father contact and dissatisfied mothers. Interestingly, Jaffee, Moffitt, Caspi, and Taylor (2003) found that children in two parent homes were only better adjusted than children from single parent homes, provided that their father did not engage in high levels of anti-social behaviour. If the father was highly anti-social and resided with the family, the children were at risk of a “double whammy” of behaviour problems, given the high heritability rate (73% in their study) and the learning of anti-social behaviours from their father. Children whose father was low on anti-social behaviour did worst when their father did not reside in the family, although the behaviour problems of children of low anti-social fathers were less than those of highly anti-social fathers, if the father did not reside with the family.

The general consensus of the research on child well-being after divorce is that maintaining the relationship between the primary caregiver/residential parent and the child is the most important aspect. Indeed, Amato (1993a) found that the majority of studies he examined supported the hypothesis that the well-being of children is positively correlated with the post-divorce psychological adjustment of the custodial parent, and the hypothesis that the quality of the custodial parent-child relationship is positively associated with the child's adjustment. In summary, Furstenberg et al. (1987) say “we see no strong evidence that children will benefit from the judicial or legislative interventions that have been designed to promote paternal participation, apart from providing economic support” (p. 700).

A theme that continues from the myth of the benefits of the father-child relationship is that a violent spouse can still be a good father. Meier (2003) states “a father who abuses his children’s mother has indicated that he cannot put the children’s interests first, since their mother’s abuse, by undermining her wellbeing, inherently harmful to the children [sic]” (p. 705). There appears to be a belief within the family law system that a violent spouse can still be a good parent. This belief appears to result from a perception of role separation; namely, that a parent who is violent in adult relationships is not necessarily so with regard to adult-child relationships (M. Eriksson & Hester, 2001). Such logic would appear to be one strong reason why the Court might, on occasions, overlook the fact that any parental dealings involving children (e.g. exchange) may still pose a risk to women who were victims of the perpetrator (Busch, 1994). As discussed previously with regard to breaches of protection orders, changeover is the time that women are most vulnerable to ongoing abuse, with women in one study (Shalansky, Ericksen, & Henderson, 1999) stating that they felt that their ex-partner was using his access visits as a means to continue to threaten, harass, manipulate and control the women. M. Eriksson and Hester (2001) conclude “that in spite of the growing recognition of the gendered features of violence in close adult relationships, which is typically perpetrated by men against women, fatherhood is still to an overwhelming extent constructed as essentially nonviolent” (p. 780). Ironically, the shift in focus moves from the rights of the mother and children to lives free of violence, to parental rights when women leave their abusive spouses (Pagelow, 1990). After separation an abusive man, whose behaviour may be recognised as a child protection issue within a relationship, thus a risk to the children’s health and well-being, becomes constructed in legal talk as a ‘father’, which is essentially nonviolent (M. Eriksson & Hester, 2001). Eriksson & Hester go on to say that “the general problems of men as fathers and as violent men being created as two separate beings still remain” (p. 788).

### **3.3 Gender bias in the courts**

Gender bias is defined as stereotyped thinking about the nature, role or capacity of men and women in society, as well as the social and economic realities of men's and women's lives (Dragiewicz, 2010; Gender Bias Study Committee, 1989). Gender bias can arise in circumstances that fail to acknowledge the differences in men's and women's lived experiences, for example, ignoring the role that women play in raising children, and sacrificing earning potential in the area of child support is gender bias against women, not 'neutrality' (Gender Bias Study Committee, 1989). An area of conflation is the difference between 'sex' and 'gender', where sex refers to the biological category of primarily male and female, and is linked to biological differences (Dragiewicz, 2010) and gender refers to the social constructions of masculinity and femininity, the stereotypical, social characteristics of what it means to be a man or a woman in society. So called 'gender norms' have become more relaxed in recent years, however they still exert powerful pressure in society, with everything from interactions with others to clothing choices being influenced by them (Dragiewicz, 2011b).

Masculinity is favoured in society, with masculine characteristics seen as superior to those of women, with men in this patriarchal society dominating in positions of authority (A. G. Johnson, 2014). Masculinity is also considered 'neutral' and is the standard to which women are compared, with male values and the ways males present themselves in the world seen as 'normal', thus women are seen as deviant from this male standard of 'normal' (Easteal, 2001). An example of this is the "reasonable man" standard that has been applied in the context of rape or sexual assault (Hubin & Haely, 1999).

### **3.4 Summary**

Attitudes are understood to guide, influence or direct people's behaviours, and are held at the level of the individual, the community, organisations and institutions, and society. Attitudes, values, beliefs, social norms, gender roles, and inequalities in power shape relationships and families, and contribute to violence against women, and indeed, violence in society in general. These aspects also contribute to how mothers, fathers, mothering and fathering are seen and valued in society.

# Chapter Four

## 4. Fatherhood

### 4.1. Fathers

Fathers have been portrayed throughout history as both peripheral to family life, and as a dominant parent (Silverstein, 1993). Men, as husbands and fathers, have been socially constructed and institutionalised through marriage as the head of the household, with women and children seen as the property or chattel of the husband and father (Bookspan, 1993-1994; C. Brown, 1981; Carpenter, 1996; Harne, 2011; Jacobs, 1996-1997). Fathers are a necessary contributor to the existence of children, but the absence of a father in the social sense conferred the status of 'illegitimate' on the child, which brought with it social and legal discrimination, both against the child, and the child's mother (Pollock & Sutton, 1985). The notion of illegitimacy as the absence of a father, but not of a mother, is a part of the social construction of what it means to be a father, and what a family is. As discussed in chapter one, a family is typically seen as comprising two parents, a mother and a father, and their children, with any other form of family being described in terms that express a social deviance from this model e.g. broken homes, single parent families (Pollock & Sutton, 1985). It should be noted that illegitimacy was not only about the absent father, but also the stigma attached to mothers who flouted societal conventions, an early method of mother/woman blaming. In recent years, legislation has bestowed equal rights on unmarried men who father children, giving them the same rights as married men, thereby strengthening the legal claim that men have over children, and the children's mother (Pollock & Sutton, 1985).

Historically, fathers were automatically granted custody of the children in the event of a divorce, as English common law considered children to be paternal property and a valuable economic resource (Bookspan, 1993-1994; Carpenter, 1996). A mother, however, had no rights to the care or custody of her children, and it was not until the mid-nineteenth century that this was challenged (Carpenter, 1996). Feminists argued that mothers invested significantly in the day to day care of the children, and as such the courts defined the best interests of the children as being in the custody of their mother, creating the so called Tender Years Doctrine (Carpenter, 1996). This was a socio-legal rule of thumb that stated that children of ‘tender years’, usually under the age of seven, were awarded into the care of their mothers until such time as they were deemed old enough to be returned to their fathers (C. Brown, 1981; Kelly, 1994; Lyman & Roberts, 1985; Roth, 1976-1977). During the 1970s, the feminist movement began challenging the underlying assumptions in areas such as equal pay, and the right to legal and financial independence, as well as the notion that women are not better suited to parenthood than men. This led to the abandonment of maternal presumption in favour of the more gender neutral standard, the best interests of the child, which dominates child welfare and family law statutes to this day, across various jurisdictions (C. Brown, 1981; Harne, 2011; Kelly, 1994).

Both fatherhood and motherhood are defined by their social meanings at a time point in history (D. Flynn, 2012; Harne, 2011), with the dictionary definition of ‘mothering’ given as “the raising and nurturing of a child or children by a mother” (American Heritage® Dictionary of the English Language, 2011b), whereas ‘fathering’ is defined as “to provide the sperm that unites with an egg to produce (an embryo, fetus or child)” (American Heritage® Dictionary of the English Language, 2011a), thus the actions of mothering and fathering are constructed very differently in society. Harne (2011) describes fatherhood as “being constructed in relation and in contrast to motherhood as well as to

children as a specifically privileged masculine social status and social identity” (p. 6). Being a father brings with it social status and respect, both within the family and in broader society (Pollock & Sutton, 1985). Indeed, research has shown the existence of a ‘fatherhood bonus’ as well as a ‘motherhood penalty’ in wages or salary (Killewald & Garcia-Mangano, 2013; Kmec, 2011), which sees mothers penalised by an average of 5% of their income because they are mothers (Correll, Bernard, & Paik, 2007). This may be linked to the historical determination of the minimum wage, which, in Australia, was set by the 1920 Royal Commission into the Basic Wage, estimating the income “sufficient to support a man, wife, and three children under 14” at 115 shillings for Melbourne (Hamilton, 2016, p. 5). Women, however, were deemed to only need a wage to cover the “normal needs of a single woman supporting herself by her own exertions”, as “they were not under a legal obligation to support a family” (Hamilton, 2016, p. 6). This minimum wage for women was set at 54% of the basic male wage, rising to 75% after World War II, and stayed as such until the Fair Work Commission decided men and women should receive the same amount in 1972 (Hamilton, 2016).

The literature suggests that fathers have the ability to be as relevant to children and their well-being as mothers are, as well as being as competent at care giving (Minton & Pasley, 1996). However, in practise, fathers are less likely to be involved in the day to day care of their children than mothers are, regardless of whether the mother works outside of the home (Cabrera, Tamis-LeMonda, Bradley, Hofferth, & Lamb, 2000). Since the mid 20<sup>th</sup> century, there has been a dramatic increase in women’s, and particularly mothers’ participation in the workforce (Cabrera et al., 2000) however fathers still do not do as much of the “second shift” as women do (Latshaw, 2011; Perkins & DeMeis, 1996). According to recently released (June 2017) census data, the average Australian man is 37 years old, and spends less than five hours a week on domestic work, whereas the average

Australian woman is 38 years old, and spends between five and 14 hours a week on domestic work (Australian Bureau of Statistics, 2017).

Involved fathers influence children's development through several pathways, including their accessibility, the presence of the father in the child's life; engagement, such as direct contact and care giving; and responsibility, including financial provisions (Cabrera et al., 2000). Fathers who spend time with their children are likely to develop stronger attachments to them, which also serves to benefit the child (Grossman, Pollack, & Golding, 1988). Two particularly salient dimensions of paternal functioning are quality and quantity i.e. the amount of time a father spends with his child/ren, and the nature of the interactions (Grossman et al., 1988). Research moved from merely comparing the presence or absence of a father on the well-being of children, to discerning various qualities that fathers exhibit when parenting (Jain, Belsky, & Crnic, 1996). Observational studies revealed that fathers were as sensitive and nurturing as mothers; however, there was a difference in the amount of time spent with the child, and the types of interactions they had with the child. Indeed, some home observation studies showed that fathers were less involved with the child than mothers, both in caretaking activities (e.g. changing nappies, dressing the child) and play activities, with the only things fathers doing more of than mothers was reading and watching TV (Jain et al., 1996; Lamb, 2000; Minton & Pasley, 1996). Naturally there are differences between individual fathers as to their involvement in caring for their children – some are not involved at all, whereas others are highly involved (Minton & Pasley, 1996), although research shows that fathers equally share the physical aspects of caring for their children in only 1-2% of families, and in a further 5-10% of families, fathers are highly involved in the day to day care (Flood, 2003).

The absence of a father in families is frequently asserted to cause a range of social problems including crime, drug and mental health problems and delinquency (Flood,



2003). Father absence has shown to impact on the well-being of the children, with children in father absent families scoring lower on measures of cognitive ability than children who resided with their fathers, and adolescents in father absent families were more likely not to complete high school, however once economic factors are controlled for, father absence has few consequences (Jain et al., 1996). However, it has been established that neither the effects of divorce, or the absence of the father by themselves determine the well-being of the children (Flood, 2003). Indeed, the effects that are often attributed to the impacts of divorce are present in children several years prior to the parental separation, particularly where there are high levels of parental discord and conflict (Amato, 1993a; Amato, L.S., & Booth, 1995; Emery, 1982). Indeed, the presence of some fathers who engage in anti-social behaviour may be deleterious for their children, whereas their absence is beneficial, suggesting that there are negative effects for women, children and families when the presence of the father is encouraged without careful consideration (Flood, 2003).

Definitions of fatherhood include 'genetic' or 'biological' fathers; 'social' fathers; 'deadbeat dads' and 'Disney dads'. Biological fathers are those fathers who have been established as the father via genetic testing, or who claims the child as his, establishing legal paternity, which in turn creates economic, social and psychological benefits for the child, and confers a degree of protection for the rights of the father (Doherty, Kouneski, & Erickson, 1998). A social father is a man who is 'like a father' to a child, fulfilling the obligations and role of father, and may be related to the child via marriage or de facto relationship with the child's biological mother; a grandfather or uncle; or a male friend of the child's mother (Tamis-LeMonda & Cabrera, 1999). Deadbeat dads are those fathers who have the financial capacity to pay child support but do not (Doherty et al., 1998; Mincy & Sorensen, 1998), whereas fathers who spend limited time with their children

post-separation, and spend their time and money on leisure oriented parenting are labelled as “Disney(land) Dads” (Ferraro, Davis, Petren, & Pasley, 2016; Trinder, 2009).

#### **4.2. Violent abusive fathers**

It is apparent from the literature that fatherhood is socially constructed as essentially non-violent, and men who exhibit violence and cause problems within families are viewed as being outside the realm of fathering, with those who abuse their wives, and sex offenders, constructed as non-fathers (M. Eriksson & Hester, 2001; Harne, 2011; Scourfield & Drakeford, 2002). Indeed, violent men are frequently labelled as ‘good (enough) fathers’ regardless of their behaviour towards their partner, and deemed to offer some benefit to the children (M. Eriksson & Hester, 2001; D. Flynn, 2012; Harne, 2011). The myth that violent men’s parenting is separate from their abuse of their partner strongly persists (M. Eriksson & Hester, 2001) despite research showing the overlap of domestic violence and child abuse is 30-70% (Bancroft et al., 2012; Edleson, 1999b; Jaffe, Crooks, & Wolfe, 2003; Przekop, 2011; Schwaeber, 2010), thus the presence of one form of family violence significantly increases the likelihood of another form occurring within the same family (Slep & O’Leary, 2001).

Heward-Belle (2016) describes four categories of men who perpetrate domestic violence, based on the inter-relationship between two dimensions: adherence to hegemonic masculinity, and the level of control over their use of violence. The four categories are: high identification/high control (HI/HC), high identification/low control (HI/LC), low identification/high control (LI/HC) and low identification/low control (LI/LC). The men in the HI/HC group had the highest frequency of using violent and other controlling behaviours as well as injuring their female partners and describing their children as having severe behavioural problems. These men described using violence to gain power and control, to assert their authority or to get

their own way. Men in the HI/LC group used more controlling behaviours and their partners or ex-partners suffered the greatest number of injuries. All of these men had been convicted of domestic violence offences; however, they denied culpability and portrayed themselves as victims of uncontrollable tensions. Men in the LI/HC described themselves in terms of martyrs, and saving their partners, as well as feeling unappreciated, misunderstood and maligned - feelings that were then used to justify the violence. These men reported inflicting minimal or no injuries on their partners or ex-partners and using fewer violent behaviours with less frequency than the previous two groups. The final group is the LI/LC, which contained men who externalised the blame for their violence and abuse on childhood experiences. Many of these men denied inflicting injuries on their partners and then disclosed incidents where a partner had suffered quite serious injury.

The parenting style of these men also varied substantially with the HI/HC men described as being absent from their children's lives and subscribing to a more traditional view of family life that portrayed men as providers and women as nurturers. Disciplining the children included physical abuse and rejection. HI/LC men were often absent from their children's lives due to substance abuse and mental health issues. LI/HC men commonly described themselves as good fathers who provided good enough care to their children, even when those children had been placed into out-of-home care. Blame was often attributed to their ex-partners. LI/LC men also described themselves as good fathers, but they also disclosed neglectful parenting practices and referred to what extent the children were meeting their own needs.

Abusive men often have an authoritarian approach to disciplining their children, should they involve themselves, or they swing between authoritarian and permissive, or

may demonstrate the extreme behaviour of exhibiting no interest in the children (Bancroft et al., 2012). Punishment for ‘disobedience’ is often punitive, with studies showing that abusive men were more likely to be angry with their children, and spanked their children more frequently and harder than non-abusive men (Bancroft et al., 2012). Studies have also demonstrated that where fathers have been identified as perpetrating child abuse prior to separation, the abusive behaviours persist during contact visits (Harne, 2011). As many as 76% of children abused prior to separation were found to have been abused during court ordered contact, including sexual abuse (10%), physical abuse (15%), emotional abuse (62%) and neglect (36%), with many children experiencing more than one form of abuse (Harne, 2011).

The abusive parent also affects children by interfering with the child’s relationship with their mother. By its very nature, the abuse of the mother undermines her authority within the family, and has consequences for her ability to parent her children (Bancroft et al., 2012; Lapierre, 2010). Children may learn from watching, and listening to their father and the way he treats their mother, that she is deserving of disrespect and abuse, with pre-teen and teenage children, particularly boys, assaulting their mother if they have witnessed their father do the same, or they are encouraged to participate in the verbal and physical abuse of their mother (Bancroft et al., 2012; Harne, 2011). More overt methods of undermining the mother’s authority with the children may include telling the children she is a bad mother, deliberately overruling and contradicting her decisions, and ridiculing her in front of the children (Bancroft et al., 2012; Harne, 2011).

Bancroft et al. (2012) detail the frequency with which abusive men use the children as weapons to control the mother, with tactics including using the children to monitor the mother’s behaviour and report back to the abuser; threatening to harm the children if she

fails to abide by his dictates; and using the children to maintain contact with her post-separation. Threats to harm or kill the children, or even to take the children away from her via litigation for custody are also prevalent among abusive men (Bancroft et al., 2012; Harne, 2011). Indeed, some abusive men will go to the extreme of murdering their children, with the motivation for the killing being revenge against the mother, or the idea of making her “suffer for the rest of her life” (Kirkwood, 2012, p. 37).

According to D. Flynn (2012), being a mother is often a positive role for women, and so women will try to preserve this. It is for this reason that abusive men will actively attack the woman’s role as a mother as part of their campaign for power and control in the relationship, and in targeting her mothering, abusive men are creating abuse of not only the mother, but the children as well.

Abusive men may fail to pay child support as a way of punishing the mother for leaving him (D. Flynn, 2012). Indeed, abusive men are three times more likely to be in arrears of child support payments than non abusive fathers (Przekop, 2011; Zorza, 1995-1996), with Ermisch (2008) revealing that in the UK, around 35% of non-resident parents were in arrears of their child support payments. Abusive fathers may also pay less than the amount prescribed by the Child Support Agency, make sporadic payments or regularly make late payments (Fehlberg, Millward, & Campo, 2010; Qu, Weston, Moloney, Kaspiew, & Dunstan, 2014). Mothers identify the withholding of child support as financial abuse (McKenzie, 2011), which is considered perpetration of family violence in the 2011 amendment to the Family Law Act: “unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependant on the person for financial

support” (s9A, Commonwealth of Australia, 2011), but this definition implies that withholding financial support post-separation is not considered to be family violence.

Abusive men have also been found to be more likely to seek custody of their children, and are more likely to prevail than non-abusive fathers (American Psychological Association, 1996; Bancroft et al., 2012; Chessler, 2011). Fathers may win physical custody of the children as they generally have greater financial resources with which to continue the court battles and to pay for legal assistance in the matter (American Psychological Association, 1996).

#### **4.3. Summary**

Fathers have been portrayed throughout history as both a dominant parent as well as being peripheral to family life. However, modern constructions of fathers and fatherhood suggest that they are essential to child development, but not if they are abusive. Indeed, a father who perpetrates violence and abuse within the family unit creates significant damage to the other family members.

# **Part Two**

## **Study One**





# Chapter Five

## **5. An analysis of judgments from the Federal Magistrates Court: the application of the rebuttable presumption of Equal Shared Parental Responsibility in Domestic Violence cases under The Shared Parental Responsibility Act 2006**

### **5.1. Introduction**

Family law in Australia is governed by the Family Law Act 1975 (Commonwealth of Australia, 1975). The Family Law Act 1975 and subsequent iterations institutionalise contemporary cultural norms favouring nuclear family preservation even as The Family Law Act manages the dissolution of marriages and allocation of child custody post-separation. Family law is a key site of culture wars about issues central to the organisation of society including gender, families, children, and property. Accordingly, changes to family law have followed shifting national politics including intense lobbying by antifeminist and antiviolence groups around families, divorce, child support, and child care since the 1970s (Dragiewicz, 2015; Rathus, 2014).

In Australia, substantive changes to the sections of the *Family Law Act* relevant to domestic violence and child custody were effected in 1995, 2006, and 2011. These legal changes respectively introduced consideration of domestic violence and a shared parenting regime at custody determination (1995); sought to more vigorously enforce shared parenting when child care patterns were resistant to change (2006); and repealed and revised aspects of the previous changes based on serious concerns about abuse emerging from evaluation of the previous reforms (2011) (Dragiewicz, 2015). Each revision of the

law has been controversial and highly contested (Dragiewicz, 2015). Another major federal review of family law is currently underway (Parliament of Australia, 2017).

One of the key debates in contemporary family law is about the correct prioritisation of parental rights of access to and authority over children vs. children and adults' safety in the context of domestic and family violence (Kaspiew, 2012; Nicholson & Harrison, 2000). The 1995 family law reform institutionalised recognition of domestic violence by including it among factors to consider when determining the Best Interest of the Child (Rhoades, Graycar, & Harrison, 2000). The 1995 reform also deployed new "residence" and "responsibility" terminology in place of the term "custody" in order to emphasise men's symbolic contribution to parenting, regardless of who was actually doing the child care. The 1995 amendments also disconnected primary responsibility for child care (parenting time) from decision-making authority (parental responsibility), effectively disempowering children's primary caregivers (Rathus, 2014). Despite these symbolic manoeuvres intended to promote the social norm of co-parenting post-separation, the 1995 amendments did not result in dramatically changed parenting behaviours (or child support obligations). Mothers continued to perform the majority of child care and associated labour pre- and post-separation (Rhoades, 2000).

Following lobbying by antifeminist groups (Dragiewicz, 2011a; Kaye & Tolmie, 1998b), the Family Law Amendment (Shared Parental Responsibility) Act 2006 introduced further changes. These reforms were designed to encourage parents into more frequent child-related post-separation interaction via the application of a rebuttable presumption of "equal shared parental responsibility" (ESPR). Since the minority of cases that require family court intervention to settle parenting arrangements are disproportionately likely to be domestic violence cases, decisions in family law cases where domestic violence was a

factor were investigated . This study investigates the ways the presumption of equal shared parental responsibility was applied in cases where current or historical apprehended violence orders (AVOs) were present.

First, the pertinent literature on domestic violence and child custody is outlined, and the development of the 2006 Family Law Reform is traced. Then, the methodology is described, and an overview of the sample and disposition of domestic violence cases in the larger study is provided. A discussion of the majority of AVO cases where ESPR was ordered and which minimised domestic violence and an analysis of the remaining cases in which domestic violence was recognised as serious but ESPR was still ordered follow. Finally, the patterns in these cases are reviewed, linked to the extant literature on domestic violence and family court, and recommendations for future research and practice around post-separation parenting orders in domestic violence cases are made.

## **5.2. Literature Review**

A rapidly expanding literature addresses child custody and family law in domestic violence cases. In Australia, legal scholars have been the major contributors and have produced a large and detailed body of research on family law in abuse cases. In Australia, the Australian Institute of Family Studies (AIFS) also provides a relevant body of research on family law and its implications (Dragiewicz, 2015). Scholars have investigated: shifting patterns in child custody arrangements (Rhoades & Boyd, 2004; Rhoades et al., 2000); factors influencing changes to family law (Boyd, 2001; Chunn, Boyd, & Lessard, 2011; Collier & Sheldon, 2006); changing interpretations of the Best Interest of the Child standard (Kurki-Suonio, 2000; Rhoades, 2002); domestic violence and child abuse in the context of post-divorce parenting (Hardesty, 2002), including when visitation is supervised

(Parker, Rogers, Collins, & Edleson, 2008); and gender bias in the family courts (Dragiewicz, 2010)

To date, much of the research on child custody in domestic violence cases has focused on physical custody and visitation, and for good reason. Personal post-separation contact between parents when there is a history of domestic violence is a frequent site for ongoing sublethal abuse (Hardesty, 2002). Research on lethal domestic violence has identified interaction around post-separation parenting as a high-risk context for familicide, suicide, homicide suicide, femicide, filicide, and collateral killings (DeKeseredy, Dragiewicz, & Schwartz, 2017; Hardesty, Campbell, McFarlane, & Lewandowski, 2008 ; C. H. Johnson, 2005). In the current legal and cultural environment, battered mothers who seek to protect children from an abusive partner may be punished with loss of physical custody of their children to their abuser (Arizona Coalition Against Domestic Violence, 2003; Cuthbert et al., 2002; Slote et al., 2005).

However, parental responsibility, the legal rights to control over children, also warrants attention. While parents have the right to make decisions about day to day care of their children while they are in their homes, parental responsibility mandates ongoing discussion and consultation about parenting issues like education and religious instruction. Such issues can have significant life-long consequences for children. Given what is known about abusers' parenting styles (e.g. Bancroft et al., 2012; Harne, 2011), the level of cooperation and negotiation required by orders for ESPR may well exceed the level of co-parenting that took place pre-separation in the families where this is least likely (Bancroft et al., 2012). At a fundamental level, parents that end up with court orders for ESPR are those for whom safely sharing parenting time has already been determined to be impossible or ill advised. There is no reason to believe that legal rights over children in the

form of parental responsibility will result in either a meaningful reduction in abuse or benefit to children.

According to the Section 61B of the Family Law Act 1975, "*parental responsibility*, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children" (Commonwealth of Australia, 1975). This is roughly analogous to what is referred to as legal custody in the United States (Rathus, 2014). Section 61DA of the Family Law Act 1975 explains the Presumption of Equal Shared Parental Responsibility in parenting orders:

(1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

(2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

(a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or

(b) family violence.

(3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.

(4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child. (Commonwealth of Australia, 1975)

Kaspiew et al. (2009) found that most court orders under the 2006 amendments to the FLA were for shared parental responsibility. Under the 2006 amendments, the presumption

in favour of ESPR is rebuttable where there is domestic or family violence. This does not mean there is necessarily a presumption *against ESPR* in domestic violence cases. Judicial officers need to follow a prescribed process of decision-making and consider a number of required factors in order for family court decisions to be recognized as valid.

In order to make a decision against ESPR, the court needs to be satisfied that ESPR would not be in the best interest of the child or not feasible. In other words, domestic violence alone is often insufficient to preclude ESPR. Regardless of the applicability of the presumption, the court needs to conclude that the parents *cannot* communicate or cooperate in parenting or that ESPR is contrary to the Best Interest of the Child for another reason. Kaspiew et al. (2015) wrote:

Case law decided since the 2006 shared parenting amendments to the FLA has set out a decision-making pathway that requires orders for ESPR and equal shared care time to be considered as part of the best interests consideration, regardless of whether the ESPR presumption is applied or not (Goode and Goode [2006] FamCA 1346). (p. 3)

They continue:

The High Court has reinforced the necessity for judges to adhere to the legislative decision-making pathway in s 65DAA in order for court orders to be predicated on a valid exercise of legislative power (MRR v GR [2010] 240 CLR 461). This means that the court must be satisfied that orders for equal or substantial and significant care time are in a child's best interests and reasonably practicable. (p. 3)

In practice, this means that magistrates frequently acknowledge domestic violence but infrequently view it as a barrier to parenting.

### **5.3. Methodology**

This study reviewed published judgments from the Federal Magistrates Court from 2010-2012 in order to investigate how the presumption of equal shared parental responsibility has been applied or rebutted in domestic violence cases with a current or historical AVO. An AustLii search was conducted for the term “domestic violence” for judgments from 2010 to 2012. This time period was selected to reflect cases decided under the 2006 Family Law Reforms after case law had been established. The search yielded 315 judgments that included the term “domestic violence.” Examination of the cases revealed that the term “domestic violence” was frequently included when the judgment indicated that “there are no issues around domestic (or family) violence in this case that need to be taken into account”, for example the case of *Katzer & Katzer* in 2011 ("*Katzer & Katzer*," 2011). The cases with no substantive discussion of domestic violence were therefore excluded from this analysis. Judgments related only to property matters and not child care were also excluded, as were cases where the term “domestic violence” was only found in the title of social science literature being cited.

The remaining 105 cases referred to “domestic violence” in parenting matters. Of these, the father initiated the application in 65 cases (60%), and the mother initiated the application in 46 (40%) of cases. Two cases involved same sex parents (1.8%). Sixty eight (65%) cases mentioned current or expired AVOs. In 78 (70%) cases, at least one family report had been completed, with a further eight cases where a report had been ordered but not yet completed. One case mentioned four separate family reports over the lifetime of the litigation. Independent Children’s Lawyers (ICLs) were employed to represent the best interests of the children in 66 (60%) cases, with a further seven cases having orders for an Independent Children's Lawyer to be appointed.

## 5.4. Results

Table 1 details the parenting orders made in the domestic violence cases. The largest percentage of cases resulted in sole responsibility to the mother. Equal shared parental responsibility was the second most frequent outcome. Sole responsibility to the father was the least common outcome.

*Table 1*

*Disposition of parental responsibility in domestic violence cases in the Federal Magistrate's court 2010-2012*

Parenting order	N	%
Equal shared parental responsibility	34	32
Sole responsibility to mother	43	41
Sole responsibility to father	9	9
Other	4	4
No explicit order	15	14
Total	105	100%

The allocation of parental responsibility where there was a current or past AVO differed from cases where there was no AVO. Table 2 shows the disposition of cases with and without an AVO.

*Table 2*

*Parental responsibility in domestic violence cases by AVO/no AVO*

Parenting order	AVO		no AVO	
	N	%	N	%
Equal shared parental responsibility	15	22.0	19	51.4
Sole responsibility to mother	34	50.0	9	24.3
Sole responsibility to father	6	8.8	3	8.1
Other	2	2.9	2	5.4
No explicit order	11	16.3	4	10.8
Total	68		37	

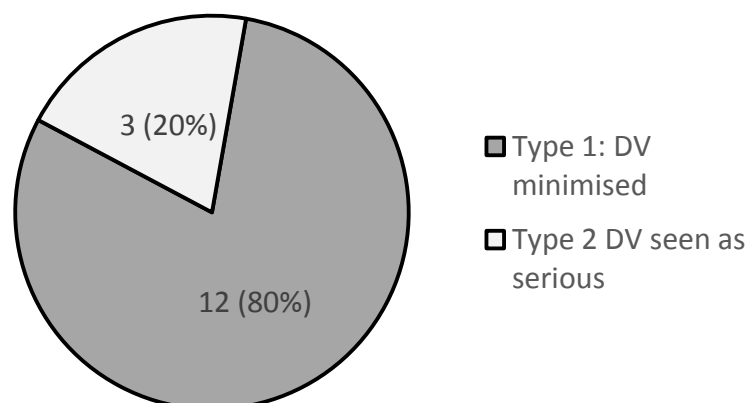


As Table 2 shows, domestic violence cases without an AVO were more than twice as likely to result in orders for equal shared parental responsibility than domestic violence cases with an AVO. Cases with an AVO were more than twice as likely to result in orders for sole parental responsibility to the mother in comparison to domestic violence cases with no AVO. Cases with an AVO were slightly more likely to result in sole parental responsibility to the father. Given these outcomes, it is possible that AVOS were weighted for domestic violence in these cases, resulting in the reduction of orders for equal shared responsibility in AVO cases. However, equal shared parental responsibility was ordered in almost half of the domestic violence cases without an AVO, suggesting that domestic violence in the absence of an AVO is given less consideration by the court. In order to better understand the factors influencing these cases, this article focuses on the minority of cases where ESPR was ordered despite an AVO (N=15). The presence of an AVO in a case, as an official form of documentation of the occurrence of domestic violence, should make these cases amongst the easiest in which the courts are able to recognise domestic violence. Examining these cases may be beneficial in understanding the factors that contribute to determinations behind parenting orders in domestic violence cases.

*Figure 2*

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*AVO cases where equal shared parental responsibility was ordered*



Examining judgments where ESPR was ordered despite a current or past AVO revealed two case types. In type 1, the Magistrates minimised the relevance to parenting of domestic violence that was the catalyst for the AVO. In these cases, the violence was acknowledged yet characterised by what Johnson has called “situational couple violence” rather than coercive controlling or serious domestic violence (M. P. Johnson, 2008). In type 2, the Magistrate ordered equal shared parental responsibility despite recognition of serious domestic violence (Figure 2).

#### **5.4.1. Cases with AVOs where domestic violence is minimised**

Twelve of the fifteen domestic violence cases with current or historical AVOs in our sample presented the domestic violence in a manner that minimised its relevance to parenting. Below, discuss five of these cases as representative examples of where the violence was minimised relative to other considerations, contributing to the order for ESPR are discussed. In the case of Meeker & Loucks (“Meeker & Loucks”, 2010), the children were spending 6 nights a fortnight with the father, who was seeking to increase this to seven. Altobelli FM stated that the incident of violence that resulted in the father being charged with common assault and subject to an AVO, was “an example of situational violence, rather than any more controlling form of violence.” [38]

There is no doubt that an apprehended violence order was made against the father as a result of an incident that took place on Saturday 28 March 2009 ... The evidence ... consists of a copy of the application for an apprehended domestic violence order, together with various paragraphs in the mother’s affidavit of 15 April 2009. As a result of this event an apprehended violence order was, in fact, made against the husband and remains in effect. The father was also charged with assault. He pleaded guilty to two charges, being common assault and malicious damage, all arising out of the incident ... on 28 March 2009. A section 10 good behaviour bond for six months was granted in relation to these two matters which

were otherwise dismissed without a conviction being recorded. The father states in his affidavit that he is very regretful of this incident. [37]

The incident in question was indeed regrettable. ... It is impossible to defend the father's behaviour. However, the manner in which the mother acted is hardly consistent with an appreciation of the potential risk to the children as a result of her behaviour. ... True it is that she suffered violence but, when this violence is viewed in context, it cannot, in the absence of other evidence, be seen as part of a pattern of violence or control. The incident arose in a situation that was almost intended to be stressful and where there was a high risk of something occurring. ... As I have indicated before, the father's actions cannot be justified in any way. ... In any event, I find that the incident that occurred ... is an example of situational violence, rather than any more controlling form of violence. [38]

In the circumstances of this case, whilst I accept that there have been periods of volatility in this relationship, and that there was an incident in March 2009, I am not prepared to find that there is any need to protect the children from physical or psychological harm, from being subjected to, or exposed to any family violence. I note the existence of the current AVO. [43]

Altobelli FM went on to say:

The parties each agree that there should be an order for equal shared parental responsibility and this, of course, leads me to have to consider whether equal time is in the best interests of the children and is reasonably practicable. I am satisfied, on the basis of all the evidence before me ... having regard to where the parents live and their ability to communicate with each other, their demonstrated capacity to implement arrangement for shared care in the past, and the minimal impact that an equal time arrangement will have on the children. [58]

MEEKER & LOUCKS

[2010] FMCAfam 345

Altobelli FM

In this case, despite the father being charged and pleading guilty to malicious damage and assault in the context of a current AVO barring contact between the parents,

the Magistrate considered the violence as situational rather than coercive and controlling. Rather than focusing on the father's violent behaviour and its implications for safe co-parenting, Altobelli appears to attribute blame to the mother for the violence done to her, stating that she failed to appreciate the risk to the children from the mother making the father angry. Altobelli FM argued that the parents had demonstrated the capacity to jointly exercise their parental responsibilities despite being legally barred from contact with one another. In this case, a history of being able to cooperate about some parenting matters appears to outweigh the risk of violence. The risk was further minimised with Altobelli regarding the father's violence expected given the mother's allegedly provocative behaviour. Characterisation of the violence as situational suggests that Altobelli may have believed that the mother could avoid further violence by not provoking him.

In the case of *Marino & Marino (No.2)* ("*Marino & Marino No. 2,*" 2010), Brown FM had previously made final orders for ESPR. The current proceedings were initiated by the mother in response to a new assault by the father.

As previously indicated, the children are currently being exchanged at a police station. It is the father's position that this is inappropriate and the above order [handover occurring at the father's residence at the start of his time, and ending at the mother's house] should be reinstated. The mother has raised concerns about her personal safety and points to the fact that there is currently a domestic violence restraining order, which regulates the parties' interaction with one another. [39]

Despite the mother's concerns about her personal safety, Brown FM was careful to explain that domestic violence was not a significant factor in his decision. Brown FM stated:

I have not reached this conclusion because of issues to do with family violence.

As I have already indicated, I am unable to conclude, according to the

prerequisite standard of proof, whether Mr Marino did or did not assault Ms Marino on 12 May 2009. [167]

However, it is my view that this incident between the parties is emblematic of a significant level of dysfunction in the relationship between them. Regrettably, I have come to the conclusion that it would not be in [X] and [Y]'s best interests for the court to attempt to *paper over* these problems, in the vain hope that they will go away. I do not think they will. [168]

Despite his acknowledgment of the dysfunctional relationship, Brown FM continued:

I do not propose to re-visit the allocation of parental responsibility in this case. Although the parties' parenting relationship is poor, both Mr Marino and Ms Marino remain vitally interested in [X] and [Y]'s lives and both will continue to spend extensive periods of time with the children. [200]

As such, I do not think it would be in the children's best interests if one parent was to be conferred with sole or exclusive parental responsibility for the children. This of itself is likely to lead to even more conflict between the parents. [201]

Pursuant to section 65DAC, where a parenting order is made which result in parents sharing parental responsibility for their child, such an order confers joint parental responsibility, on those parents, in respect of the making of decisions relating to major long term issues pertaining to that child. As such, the legislation requires those parents to consult one another and make a genuine effort to come to a joint decision about any such major long term decision. [202]

Marino & Marino No.2

[2010] FMCAfam 951

Brown FM

In this case, because both parents had expressed an interest in their children's lives, Brown FM did not consider an order for sole parental responsibility to the non-perpetrating parent to be a viable option. Although he acknowledged the parties' poor parenting relationship and the current AVO barring contact between the parents, he nevertheless ordered the parents discuss parenting issues on an ongoing basis. In paragraph 167, Brown FM explains that he does not regard the AVO as evidence of domestic violence and claims

he could not conclude “according to the prerequisite standard of proof”, whether the father had assaulted the mother. It should be noted that the standard of proof in the Family Law Act is “reasonable grounds to believe” that family violence has occurred. At the same time, the decision suggests that ESPR is being awarded in part to appease the violent father, and that not to do so could potentially lead to further conflict. As in the previous case, the conflict is presented as a victimless mutual act whereby the mother's concern for her safety is rendered equivalent to the father's physical violence.

In another case, Harman FM stated that he would not interfere with the consent arrangement between the parties in the case of Vogel & Abell ("Vogel & Abell," 2010), given that they had “resolved substantial issues between them”, indicative of an ability to communicate, regardless of the family violence that had occurred during their relationship:

There are also, though, substantial issues in this case with respect to domestic violence, and whilst I am not in a position to make concluded findings ... it would be fair to say that those issues consume the vast majority of evidence between these parties. Indeed, ... the material filed in the proceedings is voluminous in each party's case and, in Mr Abell's case, includes two annexures to his material which are audio recordings: One, an ERIS interview with respect to the pending charges, to which I have referred. The other - recordings made by Mr Abell which purports to be of comments made by Ms Vogel to him and/or disputes between the parties. That is a matter that Ms Vogel comments upon in her evidence as being a pattern of behaviour by Mr Abell, not only in her relationship with him, but in past relationships and, I am urged to accept in Ms Vogel's case, typical of a course of conduct that I should find falls within a category of family violence and domestic abuse. [41]

Harman FM continues:

I am required to turn to section 61DA and determine whether the presumption of equal shared parental responsibility will apply. In this case, and with some caveat

as regards issues of education and country of residence, the parties agree that there should be an order for equal shared parental responsibility. As the High Court has made clear in *U v U* [2002] HCA 36; (2002) 211 CLR 238, I am not bound by the parties' consent and can reject it. However, in this case, particularly having regard to the fact that the parties have resolved substantial issues between them of a significant nature and that the nature, quality and guidance that they would have received from their expert counsel, I am satisfied I should not interfere with their consent arrangement. [59]

VOGEL & ABELL

[2010] FMCAfam 1189

Harman FM

The preceding cases suggest that parties who request or consent to ESPR are more likely to be accommodated by magistrates, regardless of domestic violence. Evidence of the capacity to cooperate is given greater weight, regardless of violence in post-separation parenting. There does not appear to be any acknowledgement of the power imbalance that characterises relationships shaped by violence and abuse (Alhabib, Nur, & Jones, 2010). Indeed, these cases frame the abuse as mutual behaviour, with suggestions that the mother provoked the violence in one case, and that not getting ESPR could potentially provoke a father's violence in another.

While the presumption in favour of ESPR does not apply in domestic violence cases, there is no presumption against it. Harman FM in *Starkey & Starkey* [2011] FMCAfam 940, noted that a finding of family violence having occurred "simply means that the presumption [in favour of ESPR] does not apply",

there must, by definition, be a finding of family violence engaged in by Mr Starkey post separation. However, that simply means that the presumption does not apply. It does not better this Court's discretion in determining what is in the child's best interests and whether equal shared parental responsibility should be ordered is at an end or otherwise fettered. [107]

Family violence is effectively irrelevant to the best interests of the child in this explanation. Harman FM goes on to cite Murphy J, who stated that the “extreme step of precluding a parent from participating in shared parental responsibility should not be taken, save in the most grave of circumstances”:

In this case both parents and the independent children's lawyer propose that there should be an order for equal shared parental responsibility and I am satisfied, particularly by reference to the comments of Murphy J in *Pitken & Hendry* [2008] FamCA 186, that the extreme step of precluding a parent from participation in shared parental responsibility should not be taken, save in the most of grave of circumstances, and I am satisfied, ... that I should judge present circumstances wherein, whilst I would have some reservations as to the practicality of the discharge of equal shared parental responsibility having regard to the recent past history of poor communication, that there is sufficient optimism that, indeed, an exercise of equal shared parental responsibility as envisaged and as defined by the legislation can occur and should accordingly be ordered. [108]

The magistrates in these cases where the parties consented to ESPR were not prepared to order sole parental responsibility to the non-violent parent, ordering instead shared parental responsibility even in circumstances where AVOs prohibit contact. They articulated personal ideologies indicating that they were unwilling to consider removing a parent from legal decision making about a child regardless of domestic violence. Moreover, it is unclear in the rulings what circumstances might be considered sufficiently grave to award sole responsibility, if any, given that these cases included documented criminal charges. As Chisholm noted, “parents are entitled to be involved in their children’s lives, unless they forfeit their rights by being violent or abusive” (Chisholm, 2009, p. 127). Accordingly, it could be argued that a perpetrator's violent and/or abusive behaviour should be given greater consideration than the right to parental control. Yet the



opposite appears the case, with decisions clearly favouring parental rights over domestic violence.

Despite the documented harm to children from exposure to domestic violence, these decisions may be viewed as reasonable given the parents' consent to ESPR. However, orders for ESPR in domestic violence cases are not limited to those where both parents consent to it. In the case of *Cloake & Cloake* ("*Cloake & Cloake*," 2011), Neville FM decided that “with appropriate restraints in place, an order for ESPR should be made” against the parents’ wishes:

I note the disparity, or otherwise opposed positions, of the parties in their orders sought in relation to equal shared parental responsibility. Again without diminishing the importance for a court to consider matters of family violence appropriately, particularly in parenting cases, in my view, with appropriate restraints in place, an order for equal shared parental responsibility should be made. Apart from the one, specific instance of alleged family violence at the end of the relationship,<sup>[14]</sup> it would seem to be the case that both parents have been very actively involved in the lives of all the children. That said, in her affidavit filed on 12th April 2011, the Mother disputes the degree of the Father’s involvement in the lives of the children for which he contends. [35]

*Cloake & Cloake*

[2011] FMCAfam 784

Neville FM

It is not clear what the “appropriate restraints” are in this case, although the orders state that,

Neither the Mother nor the Father will denigrate the other parent or the other parent’s family in the presence of the children or allow any other person to do so in the presence of the children. (19).

At least until the criminal proceedings are resolved, and except in cases of emergency, the parties should communicate only *via* a communication book. (20)

As in the preceding cases, Neville FM appears to characterise the domestic violence as an isolated incident and therefore irrelevant to parenting orders. He applies greater weight to the violent parent's rights to control over decisions involving the children than the risks of harm to children from exposure to domestic violence.

These examples illustrate the minimisation of domestic violence and associated risks in ESPR cases. The magistrates characterised the violence in these relationships as individual decontextualized incidents rather than part of a pattern of abusive behaviour. They framed domestic violence as mutual conflict rather than abuse, suggesting that mothers initiated the violence by provoking the fathers, and in one case directly blaming the mother. These rulings also discredited and minimised AVOs and criminal charges as sufficient evidence of domestic violence. While few in number, domestic violence was minimized in 80% of the AVO cases where ESPR was ordered. These cases can help us to understand how magistrates are thinking about risks to children from adult domestic violence and the benefits to children of legal rights to parental responsibility for parents subject to AVOs.

#### **5.4.2. Cases with AVOs serious domestic violence was recognised**

In the remaining three AVO cases where ESPR was ordered in our sample of fifteen, the magistrates characterised the domestic violence in the relationship as severe. For example, in Howard & Burnie and Anor ("Howard & Burnie & Anor," 2010), Bender FM discusses AVOs directed against the father by the mother, the father's continued abuse and denigration of the mother, the father's recent assault of the mother, and the ongoing risk of family violence:

There have been several family violence orders that the mother has taken out against the father in these proceedings, and there is a current live family violence order that continues through the State Court system at this time. [128]

The father himself conceded in evidence that he has been following and continues to follow the mother and, of even more concern, seemed to feel justified in this behaviour. He showed absolutely no insight as to the impact that would have on the mother and in particular on [X], who was aware of his father's behaviour. [129]

The court is also satisfied that the father continues to be verbally abusive to the mother and to actively denigrate her in both her and [X]'s hearing. [131]

There is an interim family violence order in place. This matter is being further pursued before the State Courts, and of real concern is that the incident that precipitated these proceedings occurred during the period that these proceedings were live. [132]

There has to be a serious concern that there is a risk of ongoing family violence perpetrated by the father against the mother into the future. [133]

Bender FM acknowledges the domestic violence as ongoing rather than an isolated incident, and the impact of verbal abuse on the mother and child. She recognises the father's lack of remorse and a level of recklessness involved in abuse despite current court proceedings. Nonetheless, the domestic violence is not addressed in the Reasons for Judgment. Bender FM states:

In this matter, the parties and the independent children's lawyer are all proposing that the parents have equal shared parental responsibility for [X]. Whilst there is no doubt that there is a high level of dysfunctionality with these parents, that they cannot communicate and that there is an ever-present possibility of domestic violence, for [X] it will be important that both his parents continue to be involved in his life and that they both continue to contribute to the decisions that will need to be made in relation to him now and into the future. Accordingly, I have

determined that it is in [X]’s best interests that an order be made for equal shared parental responsibility. [75]

HOWARD & BIRNIE and ANOR [2010] FMCAfam 16 Bender FM

As in the above cases, the parents have consented to ESPR in this case. The independent children's lawyer is also advocating ESPR. While Bender is clearly sceptical of the practicality of this arrangement, she frames the fathers' involvement in the child's life as inherently beneficial regardless of the violence. The presumed benefit of ongoing contact with both parents outweighs the risks to the child and mother from ongoing exposure to domestic violence.

In Goldstein & Hopkirk ("Goldstein & Hopkirk," 2010), there was an extensive criminal history on the part of the father, including several breaches of the AVO, illicit drug use and jail time:

The Father has an extended criminal history including findings of guilt for breaches of an apprehended domestic violence order (“ADVO”). He also has a long history of drug use. These respective histories are described in the Father’s affidavit sworn on 30 March 2009 and filed 31 March 2009 (“the Father’s first affidavit”), [11] and are also outlined in the Father’s Chronology. [28]

Yet the Independent Children’s Lawyer and the family report writer both recommended that the parties have ESPR:

As indicated, there is a dispute between the parties that each should have equal shared parental responsibility for the children. The Father and the ICL support an outcome favouring equal shared parental responsibility whereas the Mother is seeking sole parental responsibility for the children. [73]

As already noted, in the second Family Report Ms K also recommended an outcome favouring equal shared parental responsibility.[39] [74]

In his proposed orders, the Father is seeking an order for sole parental responsibility in respect of the choosing of, and enrolment in, [X]’s “*sporting and other extracurricular activities*.” He proposes a similar order that would give the Mother similar sole parental responsibility in respect of [Y]’s sporting and other extracurricular activities. [75]

Monahan FM discusses Section 60CC(2)(b): the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect, or family violence, noting:

No allegations are made by either parent regarding any violence or abuse being directed towards either of the children. Nevertheless, there is a history of family violence orders favouring the Mother and against the Father that are relevant to the relationship between the parties. [101]

The Court is satisfied that an outcome limiting the need for the parties to come into physical contact with one another at changeover would be in the children’s best interests. [102]

Further, Monahan FM describes the family violence perpetrated by the father and his heroin addiction when discussing Section 60CC(3)(j): any family violence involving the child or a member of the child's family,

Unfortunately, the history of the parties’ relationship prior to final separation was marred with family violence perpetrated by the Father. While the Father’s heroin addiction was no doubt a factor that negatively impacted upon his ability to appreciate the full extent of his behaviour, it does not excuse it. Apart from destroying the parties’ personal relationship, it has contributed to the poor parenting relationship between them. Despite the children’s apparent resilience in being able to develop and enjoy a warm and loving relationship with both parties, the Father’s past behaviour certainly robbed them of a peaceful and loving family unit. [123]

That said, it is clear that the Father has taken positive steps to beat his drug addiction and to better understand and appreciate the destructive nature of his selfish and destructive behaviour in the past. [124]

Section 60CC(3)(k): any family violence order that applies to the child or member of the child's family

While there is no issue of abuse directed at the children, the Mother has needed to secure family violence orders in the past to secure her own personal safety from the Father. She has also had to involve the police and the courts in dealing with past breaches by the Father of the apprehended violence and restraining orders she has obtained. It is to her credit that she has continued to foster a relationship between the children and the Father despite this history. [125]

Despite these breaches, the Court is satisfied that the positive steps taken by the Father to overcome his drug addiction and to better understand and appreciate the impact of his past abusive behaviour will ensure no repeat of such behaviours. If the Father were to relapse into drug addiction, and/or re-embark on a path of family violence, then his future parenting of the children, and his relationship with his children, would be in serious jeopardy. [126]

Monahan FM concluded by saying:

The parties should have equal shared parental responsibility for the children. While the Court is satisfied that the presumption favouring equal shared parental responsibility should not apply in this case because of the past history of family violence, that does not mean that the Court cannot make an order allocating parental responsibility equally where it is satisfied that such an outcome is in the best interests of the children. In this respect the Court agrees with the submissions of the ICL.[62] Neither of the parties in this case are, to quote Counsel for the ICL, “*perfect candidates for parents*”, [63] yet as stated, the Court is satisfied that they have the capacity to make the necessary major long-term decisions in relation to the children. [137]

GOLDSTEIN & HOPKIRK [2010] FMCAfam 469 Monahan FM

In this case, Monahan FM, the independent children's lawyer, and the family report writer all support an order for ESPR, with Monahan FM stating that it is in the children's best interests. The independent children's lawyer is the legal representative for the children, whose role is to promote their interests; yet there appears to be a greater emphasis on preserving the father's relationship with the children than protecting the family from further family violence.

Baker FM ordered that the mother and father have ESPR for their four children, aged 3 to 10 years in the case of Houlis & Houlis ("Houlis & Houlis," 2010). The father admitted that incidents of domestic violence occurred during the relationship with his wife (paragraph 13), and that he physically disciplined the children, sometimes hitting them with a paint stick (paragraph 15). The family report writer stated:

the husband does not recognise or accept that his style of parenting and discipline of his children inherently involves family violence. He thinks the Bible supports his actions. He sees physical discipline as an appropriate, effective way of changing behaviour in children. The husband told Dr W that he will not continue to abstain from using physical discipline with the children. It was apparent to Dr W that the husband does not recognise the negative impact this violence has had, and will continue to have, on the children. The impact is not only apparent in their relationship with the husband but in their own psychological well-being.

[38]

Based on these factors, Dr W recommended supervised visitation for the father. When discussing section 60CC(3)(j) and (k), Baker FM acknowledged a history of family violence:

I have already discussed incidents of family violence involving the parents and the children. [182]

A family violence order was made on 9 May 2009 for the protection of the wife against the husband for 12 months. [183]

When discussing parental responsibility, Baker FM noted that the presumption in favour of ESPR was displaced due to the family violence that had occurred between the parties:

The presumption of equal shared parental responsibility is displaced as there are reasonable grounds to believe that family violence has occurred between the parties. [188]

The wife's Counsel submitted that there should be a sole parental responsibility order. He relied on the husband's evidence that communication between the parties is poor and is fraught with conflict and the husband is not confident that an order for equal shared parental responsibility would work. He also relied on the evidence that the husband called the wife a "*contentious slut*", which indicates that he has a low regard for her. ... He has held the view throughout the marriage that the wife is an argumentative, disagreeable person. [191]

...

It is a serious step to make an order for sole parental responsibility. It means that the husband will have no rights, responsibilities and authority in respect of major long-term issues for the children. [193]

In Oscar and Traynor<sup>[15]</sup> Murphy J commented:

*"the exercise of discretion in favour of excluding one parent from consultation and decision making in respect of major long-term issues for their children, particularly when, as here, there are many years until the children turn 18 – is, it seems to me, a very significant step, being a serious interference with the fundamental rights of a person."*

He continued:

*"It seems to me that the greater the degree of mistrust, lack of communication, disrespect and dysfunction in a co-parenting relationship, the greater the indication that an attempt for those parents to equally share the responsibilities*



*(and, importantly, actively carry them out) is unlikely to be in the children's best interests.*" [16] [194]

...

I am concerned that there is a difficulty with the communication between the parties. To date the parties have been able to agree upon church attendance and schooling for the children. The main issue they have not been able to agree about is the physical discipline issue. The parties have made derogatory comments about the other; however, I will be making an injunctive order in respect of this.

[196]

I consider that there is a possibility that an equal shared parental responsibility order may not work. However, I am not convinced that the parties' relationship is "*so dysfunctional with such a degree of mistrust*" that such an order should not be made. I consider that it is important for the husband to be involved in making such decisions and consider that it is in the best interests of the children for both parents to be involved in making these decisions. To assist the communication between the parties I will order that a communication book be used. I will also order that the parties attend a post-separation parenting program. [197]

Houlis & Houlis

[2010] FMCAfam 972

Baker FM

While the presumption in favour of ESPR is rebutted for several reasons, and the father himself states that he is not confident that an order for ESPR would work (paragraph 191, above). Baker FM cites Murphy J as saying that "*the exercise of ... excluding one parent from consultation and decision making in respect of major long-term issues for their children ... is, it seems to me, a very significant step, being a serious interference with the fundamental rights of a person.* Again, it appears that a violent parent's rights to legal authority over children may have been prioritised over the mother and children's right to protection from violence.

## 5.5. Discussion

This article reviewed published family law cases from the Federal Magistrates Court for the years 2010-2012 where ESPR was ordered despite AVOs. Our analysis of seventy-two cases where AVOs were present revealed that ESPR was ordered in fifteen cases. Further examination found two types of cases. In the first group (N=12), violence and abuse were minimised. The violent incident occasioning the AVO was either dismissed as unverifiable or characterised as an isolated incident rather than an ongoing pattern of violence. The second group of cases (N=3) involved the recognition of the domestic violence as severe and contributing to seriously dysfunctional relationship between the parents, but nevertheless resulted in ESPR. These fifteen cases provide an indication of the manner of reasoning in family courts in AVO cases leading to ESPR after the 2006 family law reform. According to section 61DA, family violence is sufficient to rebut the presumption in favour of ESPR. However, while the magistrates in these cases were explicitly not making decisions based on a legal presumption in favour of ESPR, assumptions about co-parenting being in the Best Interest of the Child certainly played a role in the outcome of these cases. The magistrates, informed by case law, appear to have assumed that court ordered control by both parents is almost always in the Best Interest of the Child. In other words, "the benefit to the child of having a meaningful relationship with both of the child's parents" was weighted more heavily in these cases than "the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence" (Section 60CC 2a & b, Commonwealth of Australia, 2006). In these cases, the family violence was either characterised as insufficient to merit concern about the children's exposure or, less frequently, recognised as serious but still insufficient to merit loss of court-ordered legal "responsibility" by the violent parent relative to the presumed benefits.

In Sections 68P & Q, the FLA discusses family law orders that are inconsistent with existing AVOs. Section 68Q states that if the court makes an order that is inconsistent with the family violence order,

- (1) To the extent to which:
  - (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
  - (b) the order or injunction is inconsistent with an existing family violence order; the family violence order is invalid.

Thus, in the event that a magistrate has made an order requiring that the perpetrator of the violence and/or abuse to adhere to certain conditions: for example, not to contact their former partner, and not to be within a certain distance of the protected persons, which may include the children of the relationship, Federal Magistrates override these orders in favour of approving contact if they deem it to be in the children's best interests.

These cases provide an indication of the way magistrates are negotiating the ambiguity around how to weigh the two pillars of protection from abuse and parents' legal rights over the child. ESPR was ordered in 20% of the AVO cases in our sample. In most of these cases, concerns about family violence were sidelined via the characterisation of the violence occasioning the AVO as situational rather than ongoing, mutual, or unverified. In the remaining cases, violence was recognised as a serious, but the father's interest in the children overrode concerns about safety. Underlying each of these cases is an assumption that contact with both parents is inherently beneficial to children despite the risk of harm from exposure to violence. The reluctance of courts to protect children from well-documented harms from exposure to domestic violence is especially unfortunate.

Despite widespread assumptions that contact with both parents is always beneficial to children, the research does not support this idea (Dragiewicz, 2015). To date, no study has documented benefits to children from exposure to an abusive parent relative to sole physical or legal custody by a non-abusive parent. Conversely, many studies have documented the risks to children in the context of post-separation parenting with an abuser (Hardesty et al., 2012); the many ways that children are exposed to violence and its aftermath even if they do not witness it directly (Edleson, 1999a, 1999b; Edleson, Mbilinyi, Beeman, & Hagemester, 2003); the high degree of overlap between domestic violence and child abuse; and the harms to children of exposure to adult domestic violence. These cases indicate that courts may not always be fully informed about the dynamics of the abuse, the consequences to non-perpetrating parents and children, or the inherent power imbalance that characterises these relationships. Too often, the abuse is perceived as mutual conflict, framing domestic violence as a product of mothers' provocation of men's violence. In some cases, the court appears to use shared legal control over children to appease violent fathers. The above cases reveal confusion about the nature of domestic violence and illuminate an apparent emphasis on shared parenting regardless of previous deleterious behaviour.

Section 65DAA of the Family Law Act itself provides guidance when the presumption is found to apply:

Subject to subsection (6), if a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:

(a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and

(b) consider whether the child spending equal time with each of the parents is reasonably practicable; and

(c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

There is no guidance, however, for situations where the presumption in favour of ESPR is found not to apply. Perhaps the Act would be clearer with the addition of further, specific guidance directing judicial officers as to the appropriate course of action should the presumption in favour of ESPR be found not to apply. Greater guidance on weighting the many contradictory factors might contribute to more consistent application of the law in cases where violence and abuse are an issue. But this guidance alone will not address the other problems revealed here. The characterisation of domestic violence as mutual and provoked by women; use of Johnson's problematic typology to minimise documented violence as "situational"; the unsupported assumption that access to both parents is always beneficial; and a failure to appreciate the impact of domestic violence on the family even if physical violence is not directed at children are not legal problems. These issues stem from the reality that regardless of the facts of the case, decision making in family court is profoundly shaped by the ideology and beliefs of the decision makers (Godbout, Parent, & Saint-Jacques, 2015; Saunders, 2017; Saunders, Faller, & Tolman, 2016) .

As Godbout et al. (2015) put it, "In the absence of clear and rigorous standards or scientific certainty, any interpretation of the BIC can only be based on a priori or personal opinions as to what would potentially be the 'best interests' of a child" (p. 273). The Australian emphasis on co-parenting despite abuse is one example. Pressure to share legal responsibility for children regardless of domestic violence inconsistent with what is known about the ways that children are harmed by exposure to domestic violence. It is also illogical given that coercive and controlling abuse is mostly non-physical. Finally, given overwhelming evidence that even exposure to conflict post-separation harms children, it seems clear that the emphasis on "sharing" children may not be not about their interests

after all. Australian scholars have raised concerns about the prioritisation of parents' rights to access to children over the children's right to protection from abuse. Psychology professor Jennifer McIntosh observes that despite the assumption that substantial contact with both parents necessarily benefits the child, the social science research does not support this conclusion, nor can it justify the legal push for co-parenting in the context of ongoing conflict (McIntosh, 2009).

## **5.6. Conclusion**

Orders for equal shared parental responsibility in AVO cases provide empirical evidence about how the two pillars of shared parenting and protection from violence are applied in court. This interpretation is quite different to the way Chisholm envisioned it: “[t]aken together, they can be seen as saying, in effect: ‘children will benefit from parental involvement, but not if it exposes them to violence or abuse’” (Chisholm, 2009, p. 127). The reluctance of judicial officers to remove a violent parent from decision-making responsibility warrants further exploration. Future research on our sample of 72 domestic violence cases will further illuminate judicial reasoning in family court cases with different parenting outcomes.

Multiple perspectives will be needed to understand completely the role of family law in domestic violence cases. Future research could examine the impact of that court ordered parental responsibility and parenting time in domestic violence cases. Such research could provide more detailed insights into the nature and impact of abuse in the context of court ordered co-parenting. In addition, Australia has yet to conduct research on judicial officer and other family court practitioners' education, beliefs, and behaviour in family law cases. Without information about what is actually happening in family court, further family law

reforms may be similarly fruitless. Hopefully, greater integration of independent research can contribute to improved handling of domestic violence in family law cases.

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# **Part Three**

## **Study Two**



# Chapter Six

## 6. Interviews with mothers whose children have contact with their violent/abusive fathers

### 6.1. Introduction

Domestic violence is a pervasive, endemic, and significant social and public health issue (F. Buchanan, 2008; G. L. Roberts et al., 1998; Theran et al., 2006) with a wide range of ramifications, that can be physical, emotional, social, legal, and economic in nature (Dal Grande et al., 2003; Jordan et al., 2010), and cuts across socio-economic groups, as well as ethnic and cultural boundaries (A. Flynn & Graham, 2010). It is recognised by the World Health Organisation as “a fundamental violation of women’s human rights” (Garcia-Moreno et al., 2013), and is a pattern of behaviours that are abusive, controlling and coercive, often interspersed with episodes of physical violence (Dragiewicz, 2010; Stark, 2007), predominantly perpetrated by men against women, and their children (Dragiewicz, 2010).

Definitions of domestic violence vary greatly, from being limited to acts of physical violence, to much broader definitions that include other tactics that are used to gain and maintain power and control in the relationship (Jouriles et al., 2001). In Australia, the Family Law Act (Commonwealth of Australia, 1975) has had multiple definitions of family violence, including those in the 2006 and 2011 amendments. The Family Law Amendment (Shared Parental Responsibility) Act (Commonwealth of Australia, 2006) applied the following definition:

family violence means conduct, whether actual or threatened, by a person, or towards the property of, a member of the person’s family that causes that or any other member of the person’s family reasonably to fear for, or reasonably to be

apprehensive about, his or her personal wellbeing or safety. NOTE: a person reasonably fears for, or reasonably is apprehensive about, his or her personal wellbeing or safety in particular circumstances if a reasonable person in those circumstances would fear for, or be apprehensive about his or her personal wellbeing or safety (p. 3)

which was amended to include a much broader range of behaviours for the Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Commonwealth of Australia, 2011):

For the purpose of this Act, *family violence* means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful. Examples of behaviour that may constitute family violence include (but are not limited to): an assault; or a sexual assault or other sexually abusive behaviour; or stalking; or repeated derogatory taunts; or intentionally damaging or destroying property; or intentionally causing death or injury to an animal; or unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependant on the person for financial support; or preventing the family member from making or keeping connections with his or her family, friends or culture; or unlawfully depriving the family member, or any member of the family member's family, or his or her liberty. (s 4AB)

Recent surveys, both internationally and in Australia, have found that, for women over the age of 15 years, 35-41% of those who have had at least one intimate partner, have experienced at least one form of violence or oppression of this nature. Of these women, 61% had children in their care during that relationship, with around half of women (53%) reporting that the violence had occurred when they were pregnant. Furthermore, almost half (47%) reported that their children had witnessed the violence (Australian Bureau of



Statistics, 2005; Mouzos & Makkai, 2004). The literature also reveals that mothers are often unaware of the victimisation of the children whilst they are still in the relationship with their abuser, and will minimise the occurrence of the violence (Pagelow, 1990). Indeed, children have provided detailed accounts of abuse that parents were unaware had been witnessed (Morrill, Dai, Dunn, Sung, & Smith, 2005).

The number of children who are estimated to witness domestic violence worldwide is between 133 million and 275 million a year (Pineiro, 2006). In the United States, 15.5 million children live in households where domestic violence has occurred, 10 million children have witnessed domestic violence; and of these, 7 million children are living in homes where the incidents of domestic violence are considered severe (Graham-Bermann & Perkins, 2010; Klostermann & Kelley, 2009; Morrill et al., 2005). In Australia, it is estimated that 25% of children aged under 17 years have witnessed at least one incident of violence (Indermaur, 2001). Forty four percent of all domestic violence incidents are witnessed by children, with 47% of those being children under the age of six years (Australian Institute of Criminology, 2006; Fantuzzo & Fusco, 2007; Laing, 2000; Shey-Zapien & Bullock, 2010; Stark, 2009). In New South Wales, studies indicate that children were present at approximately 90% of incidents of domestic violence, and in 50% of incidents, were directly harmed (D. Flynn, 2012). It should be noted that the majority of these studies only refer to the physical aspects of domestic violence, ignoring the non-physical forms of abuse. The overlap between domestic violence and child abuse, as well as animal abuse, is recognised within the literature, with 30 to 60% of families having both child abuse and adult domestic violence occurring (Edleson, 1999b; Schwaeber, 2010), thus one form of family violence significantly increases the likelihood of another form occurring within the same family (Slep & O'Leary, 2001).

A popular belief is that leaving an abusive relationship is the ideal solution; however, it is well documented that separating from the abuser is one of the most dangerous times for a woman, with violence continuing, escalating and for some, occurring for the first time (Fleury, Sullivan, & Bybee, 2000b; Hardesty, Khaw, Chung, & Martin, 2008; B. J. Hart, 1992; Kurz, 1996; Sev'er, 1997). Indeed, separation may trigger the perpetrator to escalate his<sup>2</sup> behaviour, either as a method of continuing his control of her, or as punishment for leaving him (B. J. Hart, 1992; Jaffe, Crooks, & Poisson, 2003). Female homicide victims are killed by an intimate partner in 30-50% of cases, with separation being the number one risk factor (B. J. Hart, 1992; Kivisto, 2015; Laing, 2003; Logan et al., 2006; Sev'er, 1997; Stark, 2007). Married women living apart from their husbands were almost four times more likely to report being raped, physically assaulted and/or stalked than women who still cohabited with their husbands (20% vs. 5.4%, (Tjaden & Thoennes, 2000)).

With concerns about their safety, and the safety of their children, many women apply for a protection or restraining order. In most states of Australia, police initiate the application, generally resulting in a higher rate of court approvals in comparison to applications directly submitted by victims. South Australia has the highest rate of police initiated applications, at 97%, and this translates into a 75% success rate for final orders being issued by the courts (Bulbeck et al., 1997). Research shows that women who apply for protection orders have generally experienced severe violence from the perpetrator, including death threats, severe physical violence and sexual assault (Jordan, 2004; Logan et al., 2006; Shannon et al., 2007; Towns, 2008). For these orders to come into force, they must be personally served on the defendant, who then has the right to challenge the order at a hearing. However, if the orders are not challenged, they become valid for the period authorised by the court (Magistrates Court of South Australia). Breaches or violations of

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<sup>2</sup> As women are predominantly the victims of family violence, perpetrators will be referred to as he, and victims as she, respectively.

intervention orders are common, with reported occurrences of up to 70% of women experiencing a violation. Women with children in common with the perpetrator are more likely to experience breaches, which most often occur during the handover of children for contact with the father (Hardesty et al., 2008; Logan et al., 2006; Towns, 2008). Indeed, both parental separation and child contact have been recognised as risk factors in the killings of both mothers and/or children by men who have previously been violent (Harne, 2011).

In Australia, the protection order system is a state based system, and thus is subordinate to federal law, which includes the Family Law Act. Indeed, Part VII, Section 68Q (Commonwealth of Australia, 1975) renders the intervention order invalid should the state intervention order be inconsistent with the family law order:

- (1) To the extent to which:
    - (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
    - (b) the order or injunction is inconsistent with an existing family violence order;
- the family violence order is invalid.

In other words, on one hand, the law considers the safety of women and their children such that perpetrators can be subjected to the state based intervention orders. Such orders may include clauses excluding them from particular premises, and/or not permitting them within certain distances of individuals or premises. On the other hand, child contact orders can serve to countermand these provisions and may undermine the safety and welfare of the women and children (M. Eriksson & Hester, 2001; Hardesty et al., 2008). Due to the assumption within the Family Law Act that it is in the children's best interests to have a relationship with both parents, women's attempts to promote their safety and the

safety of the children are often overlooked, or undermined, leaving them feeling unsafe when trying to adapt to parenting post separation (Hardesty et al., 2008; Jaffe, Crooks, & Poisson, 2003; Morrill et al., 2005).

Child protection policies are situated within a framework where parents may be construed as harmful and/or abusive to their children, requiring professionals to intervene on behalf of the state, whereas post separation, parents are constructed as ‘nice, good to and for their children’, and able to communicate with each other appropriately (M. Eriksson & Hester, 2001; Laing, 2003). This is found to occur even if it is the same parents in both situations i.e. whilst the parents were in a relationship, the father was described as harmful to the children, but now that the relationship is over, he is no longer a ‘child abuser’, but rather, he is just a ‘father’ (M. Eriksson & Hester, 2001). Child protective services may see the mother to be assertively and appropriately protecting her children from their father during the relationship, whereas the same behaviour post separation is constructed as being uncooperative or obstructionist, perhaps even ‘implacably hostile’ or worse, she is seen to be ‘alienating’ the children from him (Dragiewicz, 2010; M. Eriksson & Hester, 2001; Laing, 2003; Radford, Hester, Humphries, & Woodfield, 1997). Indeed, mothers who attempt to limit contact with the violent father can lose parental responsibility and residence of the children, with the violent parent rewarded with custody of the children (Chessler, 2011; M. Eriksson & Hester, 2001; Morrill et al., 2005). It should also be noted that mothers are frequently accused of inappropriate parenting, and of failing to protect their children from the father’s violence (M. Eriksson & Hester, 2001). This disconnect between child protection, child contact and abusive men as parents is explained by Hester (2004)’s three ‘planet’ model. In this model, the three ‘planets’ are A: the domestic violence planet; B: the child protection planet; and C: the visitation and contact planet. On Planet A, the father’s behaviour is recognised as abusive, and criminal in nature. He may

be prosecuted and/or have an intervention order taken out against him. Here, he is perceived as a violent partner, from whom the woman needs protection. On Planet B, the focus is on protecting the children, and a predominantly welfare approach is taken. The children may be put on the child protection register, and the mother will be told that she needs to leave the relationship. If she does not, she may be seen as failing to protect the children, and effectively, the violent man has disappeared from the picture. Planet C is the custody and visitation planet, and can be arrived at from either Planet A or Planet B. Here the father applies for contact, parental responsibility and possibly residence of the children. His behaviour on Planet A is seen as being between the adults, and not affecting the children, even if he has been prosecuted and/or has an intervention order in place. Planet B is unlikely to have prosecuted him for the emotional abuse of the children, so his parenting abilities are not questioned. Planet C's emphasis is on the children having two parents, and so an abusive father may be deemed 'good enough' to have contact with the children post-separation. This leaves the mother in a difficult position as she is required to facilitate the contact between the children and their father. In effect, she will be placed in the position of having to curb his violent behaviour on Planet A; protected her children on Planet B; whereas Planet C may leave her scared for the safety of the children, and confused as to how this conceptual gap between these three 'planets' has arisen (Hester, 2004).

Many women who leave abusive men are drawn into the Family Court process because of the principle tenet of family law that the children have the right to know and be cared for by both parents (Commonwealth of Australia, 1975). In 2006, Part VII of the Act was amended to include the 'presumption of equal shared parental responsibility', designed to ensure that both parents share equally in the decision making about the major long term issues concerning the child. Such issues include education, healthcare, religion, the name

the child will be known by, and where the child will live if it will make it difficult for them to spend time with the other parent (Commonwealth of Australia, 2006).

Part VII of the Family Law Act states that “the best interests of the child is of paramount consideration” (s60CA) and emphasises the need

“to protect the child from physical or psychological harm caused, or that may be caused, by (i) being subject or exposed to abuse, ill treatment, violence or other behaviour, or (ii) being directly or indirectly exposed to abuse, ill treatment, violence or other behaviour that is directed towards, or may affect, another person” (Commonwealth of Australia, 1975 s60CC).

The Act also emphasises the benefit to the child of having a meaningful relationship with both parents, which is recognised as a human right by the United Nations (Radford et al., 1997). These two concepts are often referred to as the “twin pillars” of the Family Law Act (Chisholm, 2009), with neither given primacy in weighting when determining the child’s best interests. In response to several high profile cases where children were killed by their fathers during unsupervised contact visits (T. Brown et al., 2014; L. Eriksson et al., 2014; Little, 2015), the 2011 Amendment sought to add weight to the need to protect the children in preference to simply promoting contact between a child and their parent.

For these women, family court action is usually navigated during a period of considerable stress, often frequently following separation from the abuser (Laing, 2003) and may occur concurrently with other court actions such as negotiating protection orders and prosecuting assault charges (Braaf & Meyering, 2009). As previously noted, this is also a time when the mother and her children are at particular risk. Many women will find themselves re-victimised by the justice system, including having to withstand efforts intended to demonstrate that they are unfit mothers, and the associated distress resulting

from the possibility of losing their children to the perpetrator (Chessler, 2011; Jaffe & Sudermann, 1998).

The Family Court process is an onerous and prolonged sequence of steps, and is described by the Family Law Court's brochure "Marriage, families and separation" (Family Law Courts, b):

1. **Pre-action procedures.** This involves, for example, family dispute resolution (also known as mediation). This step can be put aside in cases involving allegations of child abuse and allegations of family violence (Family Court of Australia).
2. **File an initiating application.** This form details the parties, circumstances of the marriage or relationship and separation; the children of the relationship and the orders sought. Filed with this is an affidavit presenting the facts from the applicant's perspective. Once the appropriate fee is paid, and the documents are served on the other party, the respondent is required to file a response.
3. **Court appointment or hearing.** This may take several hours, depending on how many other matters are listed for the same time slot. Both the applicant and the respondent are required to be present in court. The presiding magistrate may order one or both parties to provide further information in the form of affidavits, and may order the appointment of an Independent Children's Lawyer to represent the wishes of the children. A family assessment report may also be ordered at this time.
4. **Child dispute service.** This refers to a family assessment report prepared by a court appointed psychologist or social worker. The process usually involves interviews with the mother, the father, and depending on their age, the children; and includes observation sessions between the mother and the children, and the father and the children. The process is intended to be cognizant of any protection orders that may be in place.

5. **Court based dispute resolution (financial).** This step is dependent on whether a financial agreement has already been reached.
6. **Preparation for final trial or hearing.** This stage may involve additional appointments or hearings, and may go on for many months, and in some cases, many years. Often, multiple affidavits are filed during this time.
7. **Final trial or hearing.** These may last several days and usually involves the expert witnesses such as the author of the family assessment report and any therapist involved with the family.

The literature recognises that the family court process may be utilised by the abusive father to maintain control of the mother and children, or to continue his harassment of her (Araji & Bosek, 2010; Bancroft, 2004; Bancroft et al., 2012; Jaffe, Crooks, & Poisson, 2003; Jaffe, Crooks, & Wolfe, 2003). The current system provides perpetrators with the opportunity to continue with similar strategies to those they employed during the relationship, with the adversarial nature of the process creating a ‘winner’ and a ‘loser’ (Araji & Bosek, 2010). Winning may mean visitation or ‘custody’ requests when they actually have little or no interest in the children beyond hurting their mother, or decreasing child support payments (Araji & Bosek, 2010; Brigner, 2010). Tactics may include filing frivolous or vexatious motions that require the mother to attend court multiple times, which can have negative consequences for the mother in terms of requiring additional days off from work, and/or child care for the children. Since 2010, some Australian workplace agreements include ‘domestic violence leave’ enabling women to attend court in relation to domestic violence without jeopardising their employment or income (Australian Human Rights Commission, 2014; McFerran, 2016).



### **6.1.1. The impact on children**

Domestic violence is likely to have a severe impact on the children who are exposed to it, whether as witnesses, or targets, or both (Edleson, 1999a; Fantuzzo & Mohr, 1999; Hughes, Parkinson, & Vargo, 1989). Research suggests that witnessing domestic violence alone may be as traumatic as being the actual target of physical abuse; however, the consequences may be more severe and enduring (Chan & Yeung, 2009; B. J. Hart, 1992; Polillo, 2003). Children who live in violent families are aware of the violence occurring, either as witnesses of assaults, as unintended victims of assaults, hearing the violence from another room, and/or seeing the aftermath of the violence, in the form of smashed windows, or seeing their injured mothers (Edleson, 1999a; Fantuzzo & Mohr, 1999; Pagelow, 1990). Studies have shown that fathers may deliberately arrange for the children to witness his violence, or that the violence only occurs when the children are present (Harne, 2011; B. J. Hart, 1992). Polillo (2003) attributes the severity of the consequences for the child to the child's relationship with both the victim and the perpetrator, each of whom are depended upon to provide love and protection. Family dynamics are shaped by the relationships between the parents, each parent's relationship to each child, as well as the family relationship with those outside the family, with the domestic violence asserting its negative effect on all these areas (Bancroft et al., 2012).

Children who have been exposed to domestic violence can exhibit a number of negative effects as a consequence, including post-traumatic stress disorder, aggression, conduct disorder, destructive behaviours, running away and risky sexual behaviours (Bancroft et al., 2012; Blackburn, 2008; Ericksen & Henderson, 1992; Fantuzzo & Mohr, 1999; Zerk et al., 2009). Emotional and cognitive development problems including intellectual and academic functioning impairment are also common in these children (Blackburn, 2008; Ericksen & Henderson, 1992; Graham-Bermann et al., 2010; Huth-

Bocks et al., 2001; Lehmann, 1997; Morrill et al., 2005; Osofsky, 1999), as are physical health problems, including enuresis, tics, insomnia, and nightmares; developmental issues and social competency problem, such as few or no friends, and difficulties in school (Fantuzzo & Mohr, 1999). Other effects on the children include internalised negative attitudes about women, victim blaming, utilisation of violence and abuse in order to achieve a desired outcome, and feelings of guilt and self-blame around the cause of the violence and abuse (Dragiewicz, 2010). It is important to acknowledge that the effects on children from witnessing domestic violence between their parents are the same effects described in the literature as the negative outcomes of divorce and ‘fatherlessness’ (Dragiewicz, 2010; McLanahan, Tach, & Schneider, 2013; Sigle-Rushton & McLanahan, 2002).

The children’s relationship with their mother are impacted by an abusive father in myriad ways including preventing her from comforting a crying or frightened child; interference with the mother attending antenatal appointments as well as subjecting her to violence and abuse during the pregnancy; controlling finances by refusing to provide adequate funds for basic purchases for the children (financial abuse); preventing her from attending playgroups with the children or from spending time with family and friends (social isolation) (Bancroft et al., 2012). Mothers who have been subjected to violence and abuse have many physical and mental health issues that may prevent them from being fully engaged and present with their children (D. Flynn, 2012; D. C. Roberts, 2011; D. C. Roberts, Chamberlain, & Delfabbro, 2015). Indeed, the time that children are most likely to require comfort and support from their mothers is after she has been assaulted, the very time in which she may be least able to provide those things due to her own injuries (Bancroft et al., 2012). Children may also exhibit aggressive behaviours that are then

required to be managed by the mother, creating a loop of reactions and counter reactions, leading to the deterioration of the mother-child relationship (Bancroft et al., 2012).

### **6.1.2. Fatherhood in the literature**

Historically, fathers have been portrayed as both a dominant parent, and as one who is peripheral to family life (Silverstein, 1993). Prior to the 19<sup>th</sup> Century, fathers had total control over children, both legally and economically, and were automatically awarded custody of the children in the rare event that the marriage ended. This was due to the wife and children being seen as the property of the father, or as chattel (Bookspan, 1993-1994; C. Brown, 1981; Carpenter, 1996; Jacobs, 1996-1997). Indeed, Blackstone states that “the very being or legal existence of a woman is suspended during marriage, or at least incorporated and consolidated into that of the husband” (cited in Kurth, 2010).

Both fatherhood and motherhood are defined by the social meanings ascribed to them at any point in time (D. Flynn, 2012; Harne, 2011). Indeed, when the ‘mothering’ and ‘fathering’ of children are examined, ‘mothering’ is defined as “the nurturing and raising of a child or children by a mother” (American Heritage® Dictionary of the English Language, 2011b), whereas ‘fathering’ is defined as “to provide the sperm that unites with an egg to produce (an embryo, fetus or child)” (American Heritage® Dictionary of the English Language, 2011a), thus the very actions of mothering and fathering can be seen to be vastly different within society. Men, it would seem, are unable to ‘father’ children in the same way as women ‘mother’ children, and women are unable to ‘mother’ children in the same way that men ‘father’ children, however both are able to parent children. Harne (2011) describes fatherhood as “being constructed in relation and in contrast to motherhood as well as to children as a specifically privileged masculine social status and social identity” (p. 6).

Definitions of fatherhood include ‘genetic’ or ‘biological’ fathers; ‘social’ fathers; ‘deadbeat dads’ and ‘Disney Dads’. Biological (or genetic) fathers are those fathers who have been established as the father via genetic testing, or who claims the child to be his child. This establishes legal paternity which then creates economic, social and psychological benefits for the child, and a degree of protection of the father’s rights (Doherty et al., 1998). A social father is a man who is ‘like a father’ to the child, fulfilling the obligations of the role of father, and may be related to the child e.g. a grandfather or uncle; via marriage to the child’s mother e.g. a stepfather; in a relationship with the child’s mother, which may be a romantic relationship or a friendship (Tamis-LeMonda & Cabrera, 1999). Fathers who have the financial capacity to pay child support and do not are often referred to as “deadbeat dads” (Doherty et al., 1998; Mincy & Sorensen, 1998), whereas those fathers who have their children for limited amounts of time, and spend money on leisure oriented parenting are labelled as “Disney(land) Dads” (Trinder, 2009), who may pretend to be a great dad in front of new girlfriends (Ferraro et al., 2016).

### **6.1.3. Abusive men as parents**

It is apparent from the literature that fatherhood is socially constructed as essentially non-violent and men who exhibit violence and cause of problems within families are viewed as being outside the realm of fathering, associated with those who abuse their wives and sex offenders and constructed as non-fathers (M. Eriksson & Hester, 2001; Harne, 2011; Scourfield & Drakeford, 2002). Indeed, violent men are frequently labelled as ‘good (enough) fathers’ regardless of their behaviour towards their partner, and deemed to offer some benefit to the children (M. Eriksson & Hester, 2001; D. Flynn, 2012; Harne, 2011). The myth that violent men’s parenting is separate from their abuse of their partner strongly persists (M. Eriksson & Hester, 2001).

Abusive men often have an authoritarian approach to disciplining their children, should they involve themselves or swing between authoritarian and permissive, or even demonstrate the extreme behaviour of exhibiting no interest in the children (Bancroft et al., 2012). Punishment for disobedience is often punitive, with studies showing that abusive men were more likely to be angry with their children, spanked their children more frequently and harder, than non-abusive men (Bancroft et al., 2012). Studies have also demonstrated that where fathers have been identified as perpetrating child abuse prior to separation, the abusive behaviours persist during contact visits (Harne, 2011). As many as 76% of children abused prior to separation were found to have been abused during court ordered contact, including sexual abuse (10%), physical abuse (15%), emotional abuse (62%) and neglect (36%), with many children experiencing more than one form of abuse (Harne, 2011).

Children are also affected by the abusers interference with the child's relationship with their mother. By its very nature, the abuse of the mother undermines her authority within the family, and has consequences for her ability to parent her children (Bancroft et al., 2012; Lapierre, 2010). Children may learn from watching and listening to their father and the way he treats their mother that she is deserving of the disrespect and abuse, with pre-teen and teenage children, particularly boys, assaulting their mothers if they have witnessed their father do the same, or being encouraged to participate in verbal and physical abuse (Bancroft et al., 2012; Harne, 2011). More overt methods of undermining the mother's authority with the children may include telling the children she is a bad mother, deliberately overruling and contradicting her decisions, and ridiculing her in front of the children (Bancroft et al., 2012; Harne, 2011).

Bancroft et al. (2012) detail the frequency with which abusive men use the children as weapons to control the mother, including using the children to monitor the mother's behaviour and report back to the abuser; threatening to harm the children if she fails to abide by his dictates; and using the children to maintain contact with her post-separation. Threats to harm or kill the children, or even to take the children away from her via litigating for custody are also prevalent amongst abusive men (Bancroft et al., 2012; Harne, 2011). Indeed, some abusive men will go to the extreme of murdering their children, with the motivation for the killing being revenge against the mother or the idea of making her "suffer for the rest of her life" (Kirkwood, 2012, p. 37).

According to D. Flynn (2012), being a mother is often a positive role for women, and so women will try to preserve this role. It is for this reason that abusive men will actively attack the woman's role as a mother as part of their campaign for power and control in the relationship, and in targeting her mothering, abusive men are creating abuse of not only the mother, but the children as well.

Abusive men may fail to pay child support, as a way of punishing the mother for leaving him (D. Flynn, 2012). Indeed, abusive fathers are three times more likely to be in arrears of child support payments than non-abusive fathers (Przekop, 2011; Zorza, 1995-1996), with Ermisch (2008) revealing that in the UK, around 35% of non-resident parents were in arrears of their child support payments. Abusive fathers may also pay less than the amount prescribed by the Child Support Agency, make sporadic payments or regularly make late payments (Fehlberg et al., 2010; Qu et al., 2014). Mothers identify the withholding of child support as financial abuse (McKenzie, 2011), which, as noted above, is considered perpetration of family violence in the 2011 Amendment to the Family Law Act: "unreasonably withholding financial support needed to meet the reasonable living

expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependant on the person for financial support” (s9A, Commonwealth of Australia, 2011), but this definition implies that withholding financial support post-separation is not considered to be family violence.

Abusive men have been found to be more likely to seek custody of their children and are more likely to prevail than non-abusive fathers (American Psychological Association, 1996; Bancroft et al., 2012; Chessler, 2011).

#### **6.1.4. Child contact with a non-resident parent**

For the children, contact with their non-resident parent, usually the father, is described as the child’s right to contact (M. Eriksson & Hester, 2001). However, in practice, it appears to be more a child’s obligation, as they do not have the right to determine whether or not they want the relationship, and are overruled if they posit against contact (Harne, 2011; Harrison, 2008). It is also the case that there are no legal sanctions for parents who refuse to see their children in the event the children desire a relationship, or the contact is ordered by the courts (M. Eriksson & Hester, 2001). This appears to stand in juxtaposition to a child’s right to know and be cared for by both parents, which is recognised by the United Nations as a basic human right (Radford et al., 1997).

Many children continue to be abused during child contact post-separation, and mothers feel that court professionals, including family report writers, did not believe them when they raised the issue of the father’s abuse of the child/ren, and may be regarded as making false allegations of child abuse (Bancroft et al., 2012; Harne, 2011). This issue is further confounded by Fathers’ Rights groups asserting that women make allegations about domestic violence and/or child abuse “to gain advantage in family law cases and use

protection orders to remove men from their homes or deny contact with the children” (Flood, 2005, p. 44). However, raising the issue of domestic violence and/or child abuse is likely to lead to worse outcomes for the mother (Bancroft et al., 2012).

Children who are ordered to spend time with their violent and/or abusive father are likely to be subjected to ongoing abuse, including neglect, and may show signs of distress. Radford (1996) describes how mothers found it difficult to convince the courts that the abuse or neglect of the children had taken place, and found it more challenging post-separation, with professionals assuming “that children showing physical and emotional signs of distress, such as anxiety, bedwetting and vomiting, were suffering from the consequences of divorce or parental separation, rather than from the effects of abusive contact” (p. 2). Harne (2011) identifies three overlapping areas in which children are affected by living with domestic violence perpetrated by their father. These are the emotional abuse caused by witnessing their father’s behaviour towards their mother; the deliberate use or involvement of children in abusing their mother; and being directly abused by their fathers. Indeed, Geffner and Pagelow (1990) stated:

When risk factors for interspousal violence were studied the best predictor of such violence was being abused as a child, or observing parental violence in the home. Therefore, it is in the best interests of such children that the violence ceases, that they learn that violence is not condoned in our society, and that there are better ways of resolving family conflicts. Boys in particular, need to see that their fathers’ violent behaviour is unacceptable and negatively sanctioned by the legal system. However, when they see their abusive fathers accorded full rights and parenting privileges as though such behaviour is sanctioned, the system reinforces their earlier negative training in violence, power and control. (internal citations omitted p. 153)



## **6.2. Aims of the study**

The aim of the current study was to elicit women's views on the perceived effects of contact on children who are court ordered to spend time with their fathers, where those fathers had been violent and/or abusive to the children's mothers, and in some cases, the children themselves.

## **6.3. Methodology**

### **6.3.1. Participants**

The sample comprised eight women whose children were the subject of court orders to spend time with their fathers, where those fathers had been violent and/or abusive to the women. Only women were selected because of the majority of victims of domestic violence are female, and overwhelmingly the primary carers of the children, particularly in early childhood. Participants were recruited through Victims of Crime Assistance League Inc NSW (VOCAL), Facebook, and contact service centres. All participants were provided with an information pack detailing the study, ethics approval and the enquiry process.

The sample represented Queensland, New South Wales, and South Australia, with phone or Skype interviews being conducted with interstate participants, and face to face interview with local participants. As shown in Table 3, the participants ranged in age from 28 to 50 years old ( $M=45.3$ ,  $SD=7.4$ ) and collectively had 22 children between them, ranging from 6 weeks to 22 years at the time of separation, with children now aged between 7 months and 27 years. Separation periods ranged from 4 years to 11 years ( $M=7.1$ ,  $SD=2.8$ ), with the lengths of the former relationships being between 3 years and 17 years ( $M=8.3$ ,  $SD=4.8$ ). All except one woman was born in Australia, with the other woman being born in New Zealand and coming to Australia as a young child. One woman

identified as Aboriginal or Torres Strait Islander. Four of the ex partners were born in Australia, with the other four being born in New Zealand, Hungary, Nigeria and the UK. The New Zealander was the only ex partner who was not an Australian citizen. Four of the women had been married to their ex partners, and all had divorced them since. Of the children, all mothers except one reported that their children had experienced mental health issues including anxiety, Autism, self harm, bedwetting, PTSD, depression, suicidality and speech and language delays.

Four of the women had intervention orders against their ex partners, and only one of these men had been arrested and charged with assault, although two of the women stated that their ex partner had assaulted either a previous or subsequent partner. None of the women had varied the intervention order.

The length of the court action was between 2 years and 5 years ( $M=3.1$ ,  $SD=1.1$ ) with the number of hearings varying between 5 and 40 ( $M=14.9$ ,  $SD=11.1$ ), between 1 and 3 family reports conducted ( $M=2.1$ ,  $SD=0.6$ ) and trial lengths between 1 and 12 days ( $M=6.4$ ,  $SD=4.9$ ).

Table 3

*Details of participants and related court proceedings*

Participant	Age	Number of children	Length of relationship (years)	Length of separation (years)	AVO	Length of court action (years)	Number of court hearings	ICL	Family reports	Trial	No of days of trial	Consent orders (CO) or judicial determination (JD)
1	50	2	3	11	Yes	3	10	Yes	3	No	-	CO
2	48	3	5	5	No	3	8	yes	2	Yes	3	JD
3	48	4	10	6.5	Yes	2	12	Yes	1	Yes	1	CO
4	42	4	10	7	No	4	20	Yes	2	Yes	11	JD
5	47	1	5	11	No	2	10	No	2	Yes	5	JD
6	49	3	12	8	No	5	40	Yes	3	Yes	12	JD
7	28	3	4	4	Yes	2	5	Yes	2	No	-	CO
8	50	2	17	4	Yes	4	14	Yes	2	no	-	CO
Mean	45.3	2.8	8.3	7.1		3.1	14.9		2.1		6.4	
SD	7.4	1.0	4.8	2.8		1.1	11.1		0.6		4.9	

### 6.3.1. Materials

Prior to the interview, all participants completed a brief questionnaire that included questions about their demographics, dependents, relationship, ex partner and the court process. The interview followed a predetermined guide (Appendix A).

### 6.3.2. Procedure

After reading the information sheet and formally consenting to participate, the women completed the questionnaire before undertaking the semi-structured, audio recorded interview. The protocols for the study were approved by the University of Adelaide Human Research Ethics Committee.

The audio recordings were transcribed verbatim, with minor editing of the transcripts to aid clarity of reading. Square brackets were used to indicate that text has been inserted to clarify meaning e.g. [the ex partner] or to substitute descriptions for names e.g. [son] or [daughter]. Rounded brackets were used to indicate emotions e.g. (laughs) and *italics* were

used where participants emphasised words. The transcripts were then examined for themes following the Braun and Clarke (2006) approach to thematic analysis, which involves reading and rereading the transcripts multiple times, examining the data for similarities that can be grouped together to form themes, which may be further groups to form superordinate themes. In some instances, the superordinate theme may become apparent first, with subordinate themes being teased out. In the current study, the questions used for the semi-structured interviews allowed subordinate themes to be derived first e.g. the behaviour of the ex-partner at handovers was specifically asked about in one question, and the behaviour of the ex-partner as a parent was gleaned from the data from another question, and these two themes were combined under the superordinate theme of ‘the ex-partner’.

Thematic analysis is a widely used qualitative analytic method that searches for themes and patterns within the data. It has great flexibility, and can be applied to different epistemological positions, as well as independently of theory or epistemology.

## **6.4. Results**

### **6.4.1. Introduction**

This section details the analysis of the transcripts of the eight participants who have left abusive relationships, and who have children who are court ordered to spend time with their father, who was the perpetrator of the abuse.

### **6.4.2. Contact with fathers**

The women were asked about the amount of contact their children had with their fathers, which varied from no contact to the children being ordered to live with the fathers, and in some cases, not having contact with their mothers.

Four of the women interviewed had children who did not live with them as the court had ordered the children to live with the father full time. Two of those mothers had no contact with their children at the time of the interviews. One of those mothers was ordered by the court not to have contact at all for 12 months which was then to be followed by 2 hours of supervised contact every second month. The other mother was unable to participate in contact with the children as the orders stated that she was required to travel unaccompanied to another state to see the children. In this case, it should be noted that the father, the children nor the mother live in the state in which the contact is ordered to occur.

The remaining two mothers without 'custody' had traditional non-resident parent contact with the children i.e. every second weekend, usually from Friday after school until either Sunday evening, or Monday morning at school drop off, as well as some time during the school holidays.

The children of the four mothers with 'custody' had varying amounts of contact. One contact regime was six nights per fortnight, being every second Friday after school to Monday morning at school drop off, every Thursday, and every other Wednesday. Another child saw his father from 10am to 6pm on Saturday and on Sunday, every second weekend, which did not involve overnight stays with the father. For one mother, the child was ordered to spend six hours every second Sunday with his father, increasing to Friday afternoon after school to Monday morning drop off to school, and half the school holidays, however at the time of the interview, the father was only seeing the child intermittently for between 30 and 90 minutes at a time. The remaining mother had an order that the father no longer has contact with the children due to his abuse of the children when they were in his care.

### 6.4.3. Themes

Several themes were identified from the data, and are presented in Table 3.1. The overarching theme was the adversarial and seemingly unjust nature of the process connected with custody. Themes included the behaviour of the father at handovers and as a parent; children's behaviour before and after visits; minimising contact between the parents; and how they felt about facilitating their children's contact with the father. Also common in the women's stories was perceptions of bias from the judge and from the family report writer/family consultant.

Table 4

<i>Themes present in the data</i>	
Superordinate theme	Subordinate theme
Ex- partner	Behaviour at handovers
	Behaviour as a parent
Children	Behaviour before visits
	Behaviour after visits
	Wanting or not wanting contact
	Positive experiences of contact
Mothers	Wanting to minimise contact
	Facilitating contact
	Positives of contact for mothers
	Loss of 'custody' and parental responsibility
Legal system	Behaviour of judges
	Behaviour of family report writers
	Minimisation or dismissal of the father's behaviour

### 6.4.4. The ex-partners

#### 6.4.4.1. Behaviour of the ex-partners at handovers

The handovers of the children between parents are a major risk factor for continuing abuse of the mother by the father (e.g. Johnston et al., 1989; Kaye, 1996; Maccoby,

Buchanan, Mnookin, & Dornbusch, 1993; Pearson & Thoennes, 1990), with The Australian Law Reform Commission's (1995) paper recognising that

[V]iolence and intimidation may continue through harassment and physical abuse of the woman particularly at handovers. In these circumstances the children may be reluctant to see the father and the mother may refuse or frustrate contact. These women may be regarded as being difficult and causing the contact problem. The real problem, however, is the continuing violence and intimidation. (p. 29).

Indeed, Quirion (1996-1997) suggests that:

[d]omestic violence is detrimental to children. Thus, courts should consider it as evidence of parental unfitness or misconduct, ... Likewise, given the staggering number of murders resulting from family violence, the courts should fashion orders to ensure that no additional violence or harm is inflicted in an abused parent or the parties' children (p. 501 ).

Despite this, there is a paucity of descriptive research of the behaviour of ex-partners at handovers that captures women's experiences. Kaye, Stubbs, and Tolmie (2003a) detail the intimidation, verbal and physical abuse directed at the women who participated in their study. Laing (2010) also acknowledges the problem with "many examples in the women's accounts of violence perpetrated in the context of changeovers." (p. 33 ). Morrison (2015) reported that several of the women participating in her study were assaulted as well as being subjected to emotional abuse and harassment, with children witnessing their fathers shouting, swearing and for some, threatening their mother during handovers.

In support of this view, the women in this study also described being intimidated, verbally abused, physically detained, and falsely accused of stopping visitation. One

participant described how she took a “bodyguard” with her because of her ex-partner’s behaviour:

“[S]ince the first time we had changeover where he held onto my car and ran after me, I was trying to get out of the driveway and he was hanging onto my door and tried to strangle my girlfriend as we drove off. I’ve never gone without someone else because I am in fear of him and um I often try and laugh and like [muffled]. ... I am forced to go to a place and meet my abuser fortnight, after fortnight, after fortnight, by family court when we could be at [contact centre]. Ever since we weren’t at [contact centre], the next weekend and he hasn’t stopped, he hasn’t stopped, he, when [current husband] was there once, he was an inch away from his skin all over his face and all over his head and he video tapes this all the time and I don’t know what he does with that, I can’t imagine ... and his power and he yells at me, he calls me foul names, and it’s in front of [daughter] and I live in hell every time I have to drop off and pick up my daughter. Even when I bring a hurly burly bloke like [husband] along, he, you know, he just holds himself really well, he doesn’t [muffled] but he doesn’t need to be one of those guys [muffled] and some men [muffled] but I shouldn’t need a bodyguard but the family court are oblivious to the [muffled] occasions women have to follow through their orders.”

Participant 5

Another described how she was accused of stopping visitation, and having to justify her behaviour to her solicitor:

We didn’t even have court orders making me take these kids by the way, um I was doing it just based on just a verbal agreement with the other side. And I still kept doing it um yet I was accused of stopping the visitations even though there weren’t even court orders but um you know you then, they’d be saying that and I’d have to say to my solicitor “here’s the video, check the video, those kids are right beside me”.

Participant 1



Allowing contact to occur in the absence of orders contradicts the descriptor of the role of mothers as “gatekeepers” and of interfering with the father’s contact (e.g. Kaye & Tolmie, 1998a; McInnes, 2006; Morrison, 2015). This is supported by other studies that reveal that mothers are supportive of father-child contact, unless or until they realise that the children are being harmed or distressed, in which case they seek to make contact safer or to have it stopped (Coy, Perks, Scott, & Tweedale, 2012; Laing, 2003; McInnes, 2006; Morrison, 2015).

Intimidation by the ex partner was also reported:

“I actually had on video where because sometimes I would just carry my phone ... so the kids only thought I had my phone ... and I've turned to actually say to [son] “you must come down the driveway, mate, you've got to come out and speak to your dad,” and as I did, the next minute [ex-husband] has bumped into the back of me and I said to him, “get off the premises, you're not even supposed to be on the premises” and he’s laughing at me, you know, like he knew he had intimidated me and really frightened me.”

Participant 1

Women are ordered to be in the vicinity of their ex partner, regardless of their fear of him:

“I am forced to go to a place and meet my abuser, fortnight after fortnight after fortnight, by the family court.”

Participant 5

The presence of a state intervention order (AVO) resulted in an improvement in the children’s father’s behaviour for another participant:

“I would drive the kids to his house. He would bang on my doors, on the car doors; scream at me through the windows as I was driving in or out of the drive. He would, if I took the kids out of the car, he would lean on the door so I couldn’t

get back in; he would reach in and take the keys out of the car, so I couldn't drive away; chase me down the street, that kind of thing. ... And then, even when it moved to McDonald's, he would still come up to my car and open the door, and get, and sort of sit in the car with the children, wouldn't get out; he'd stand and do the same thing against my door so I couldn't get in or out, that sort of thing. ... Once the AVO was in place, he backed off a lot."

Participant 4

Handovers can be distressing for children when they witness abusive behaviour by their father, and thus they may be unwilling to spend time with him as he has frightened them. As alluded to above, this may lead to the women responding in ways that are later described as 'preventing contact', or 'coaching the children' whereas it is actually the behaviour of the father, who then blames the mother when the children choose not to engage in the contact with him (Holt, 2016a). The children's behaviour before and after contact is discussed below.

#### **6.4.4.2. Behaviour of the ex-partners as parents**

Where fathers have directly abused the children prior to the parental separation, studies have revealed that the abuse often continues during contact visits (Harne, 2011; Laing, 2010). Bancroft et al. (2012) discuss their clients' reports of emotional abuse of the children during visitation, as well as physical and sexual abuse. In similar vein, the mothers in the current study described behaviours perpetrated by the fathers that can only be described as abusive. The children are being threatened with not seeing their mothers, verbally abused as well as witnessing domestic violence between the father and his new partner. The behaviour of the father's new partner towards the children was also mentioned.

One participant described several incidents in which the children were subjected to abusive behaviour:

“They were always complaining in particular, it would be really obvious about the verbal abuse. ... swearing at them, threatening them “if you don’t do what I’m saying, I’m going to get the police to lock you up and you’ll never see mum again” ... [daughter 2] in particular, she didn’t start going until she was 2 ... and she used to come back with pinch marks on her inner thighs, bruises down her legs, scrapes, bites, one time she came back and had a bruise on the centre of her forehead and then a bruise in the centre of her chest about the size of a 50 cent piece, she had scratches around her eyes, she had bruising across her eyebrows, on her temple. ... they would always complain that they were sworn at, you know, called “little shits”, bitches. They would be told quite vicious things about me. ... [Son] was kicked in the testicles by my ex-husband and there was an AVO taken out in that instance. ... there was an AVO and then the police tried to lay charges; that was the step mother. ... they had dropped my son off on the side of a freeway; they pulled out in the bush and told [son] to get out of the car and stand out in the bushes in the dark. They would drive like maniacs, um [daughter 2] once fell out of her seat and ended up in the front seat. Yeah, the list goes on.”

Participant 1

This mother was court ordered not to see or speak to her children for 12 months, following awarding the father sole parental responsibility and sole residence.

Other participants described the behaviour of their ex-partner’s new partner towards the children:

“He [ex partner] tells me that his wife is really horrible to my son, that she doesn’t praise him or encourage him she’s just correcting him constantly, and that that’s what they have fights over mostly which, I mean, that leads me to believe that every time my son goes there, they’re going to have a fight because, you know, she doesn’t parent my son the way she, well he’s autistic, I mean, hello!”

Participant 2

“Often there’s no food in the house, so she’ll take her own kids to Subway for lunch, cos there’s, she’ll openly say “there’s no food in the house, we’re going to Subway” and she leaves my children there, like during school holidays. I’ve had text messages, nasty text messages from school mums saying “your kid’s stealing my kid’s lunch at school.”

Participant 6

“Apparently the step mother turned around and said, “your mother’s a cow” and my kids came out, came back and said, “mum, they said you’re a cow,” and they said, “but cows are only on farms.” You know, my kids had never heard that as a derogatory name, they thought it was a farm animal. And that really stood out, you know, they thought this was a really derogatory name, but my kids were trying to work out why I was being called an animal on a farm. Yeah so, it was such a loss of their innocence.”

Participant 1

Participants also described the children’s exposure to domestic violence when they are at their father’s house:

“Currently, there’re lots of arguments between him and his partner that he lives with. They’re always yelling at each other, it’s a, they’re living in a situation of domestic violence now, between him and his, well not so new partner, because he’s been with her for quite a number of years. ... So now they’re living in a situation of domestic violence with all the yelling and that going on in the household between him and his new partner.”

Participant 6

“I have huge concerns; huge concerns that there are domestic issues happening pretty much every time he goes there. He cannot handle any kind of, form of aggression and, and I don’t know whether this is left over from his father and my relationship, or whether this is just part of his autism but he gets very distressed, he retreats, and he just cannot handle any form of aggression, so if there’s any raising of voices or anything like that, it’s going to distress him”

Participant 2

Another participant described her ex partner's behaviour towards their daughter, who was reaching puberty:

"The first six months were ok, they were going, he [the father] started living with his mother, he moved into there initially, and so there wasn't a problem going there, it was more of a problem when he got his own house and he'd moved out of his mother's so they weren't at their grandmother's any more, that was when it was more of a problem, especially for my older daughter, who, that's when the creepy things started to happen for her. She would, she said "dad's creepy" and that sort of thing. ... She told me that he kept coming into the bathroom and looking at her in the shower and looking her up and down and saying "you should have a boyfriend by now" [she was 10 years old] ... I wrote him a letter, I had no idea, I wrote him a letter to say she's prepubescent, she's embarrassed about her body, keep out of the bathroom. I had no idea that he was actually sexually grooming her at that time. ... The older daughter used to say "dad's creepy". That's how she viewed him and she wouldn't tell me how or why so I booked her into [service] and she started seeing a psychologist, because she kept wetting herself, and she probably had maybe 8 visits, 6 or 8 visits, and then when she started disclosing a bit more to the psychologist, the judge ordered me to stop taking her to counselling. Unbelievable!"

Participant 6

One participant described her ex partner's seemingly strange behaviour of describing his children's mother as dead:

"He told, he went and got [son] glasses without consulting me, [son] didn't need them, but he told the optometrist that [son]'s mother was dead, and he told the lady next door to him that [son]'s mother had just been killed tragically in a car accident. And the lady next door knows my best friend, and when it got back to me, we're just going "oh my god, that is nuts!""

Participant 4

A number of the mothers commented on the fathers buying the children McDonald's rather than cooking. For example:

"He gets him Macca's all the time, like "what did you eat for lunch today?", "Macca's" or "Hungry Jacks". ... and I'm like you're trying to tell the courts that you want to be a dad, but like you can't even cook?! Like how hard is it to whip up a sandwich or do something with him?"

Participant 7

"They bought us McDonald's", um although it got to the point where the kids didn't even want to eat McDonald's anymore, because that's all they were eating."

Participant 1

"They came back one time and said that all they eat there is McDonald's and they thought it was good at the time until it became really, like, I think they spent more than two days there and they were really fed up with McDonald's by the end of it."

Participant 3

For another participant, her children described to her some of the things that were happening at their father's house:

"My son, he would say "he's really mean, mum, does really mean stuff" and he started telling me things like, um he wasn't telling me all of it obviously, he started off with little stuff: "he hugs me, he pretends he's being nice, and gives me a hug back and squeezes me so hard it makes me vomit". And I recall a trampoline incident, he was only little at the time and [daughter] actually told me about this one, he [ex partner] put [son] on the trampoline and tipped it right up, shook it, like while it was on its end, and shook it until he fell down. He just kept telling me "he's really mean" and actually towards the end, he was sort of saying "he's really crazy, mum, he's crazy"."

Participant 3

## **6.4.5. Children**

### **6.4.5.1. Behaviour before visits & at handovers**

The children themselves also show particular behaviours leading up to and at the handovers. This included screaming and crying, saying they didn't want to go, and being perceived as emotionally shut down.

One participant described how her daughter would beg not to go, and she would have to physically drag her child to the father's car:

“There were times when [daughter 2] would be screaming and crying beside me, begging not to go, “no go, no go, please no go” and I would have to drag her, literally grab her hand and pull her down the driveway.”

Participant 1

At other times, there were incidents that created a lot of distress for this mother and her children:

“There was a period of time where the kids were refusing to go, and I was still forced to actually try, and actually get them into his car, so we would stand down the driveway having an argument, and I'd be there going, “look you have to go, you have to go” and he [ex husband] would deliberately laugh about it and when the kids would go up to him and go “look, I don't want to go” he would then quietly say to them “well if you don't want to come, don't come” and then I would get a solicitor's letter accusing me of stopping the children from going, so it was part of a ploy. There was a changeover in particular that I taped, and my son got into the car, and the next minute there's all of this screaming in the car, and my daughter is yelling out “stop it dad! Stop it! Stop hurting him!” and the next minute, he goes to the back of the van, rips [son] out of the van, pushes him onto the footpath and leaves. And then I got a solicitor's letter accusing me of not assisting to get [son] to go, but I'd already got him into the van. ... The police were called once and the police came and said to the kids, “look, we want you to

go, we want you to go with your dad” and each of my kids were spoken to by the police and the police in the end turned around and said, “look, youse aren’t going” and they walked down to the father, down the footpath, and said, “listen, these kids aren’t coming with you, they don’t want to go, they’re scared of you, so you need to move along” and I got in trouble for that one as well.”

Participant 1

Another participant, whose handovers occur at the contact service centre, described her four year old son’s behaviour both leading up to the visit, and when they arrive at the contact centre:

“Before hand he doesn’t want to go, and I have to explain to him that he’s seeing his dad and it’s just this never ending yelling fits in the car on the way there and then when we get there he just says goodbye and leaves ... the night before he’s like “can you ring up and say I’m sick?” and I’m like “no, I can’t, you actually have to be sick”. He’s four, he doesn’t get it. ... It’s yelling, punching, he threw a coffee cup at my head the other day, one of the proper ones that you put your own coffee in. ... and then when I get him out of the car, he tries to hold onto the car seat and doesn’t want to get out and then I bribe him with something and it’s like a lolly or something, or whatever he wants to do later that day, and yeah, he goes in.”

Participant 7

One mother described how she had to tell her children that she would get into trouble if they didn’t go to their father’s, and that she felt that she was frightening her children in saying those things:

“Well, when the children didn’t want to get out of the car, he would start tooting his horn ... and the girls frequently, [son] was usually ok to go but he would often get teary though, he’d start crying, you know “I’m going to miss you, mummy” but the girls would just sit there and say “I don’t want to go”. They weren’t so



emotional about it, they'd already shut down, I think, emotionally, they were just quite adamant "I don't want to go" and in the end I was having to tell them, "I'm going to get in trouble with the police, you know, if you don't". ... and it's frightening, so the words coming out of my mouth were then frightening my children, which was never meant to happen, but that was the truth of it ... but it's wrecking the bond between the mother and the child too, you know, and that's what the father wants too, isn't it? And so he's winning there too."

Participant 6

Another participant also told her children that they had to go to their father's or she would get into trouble:

"It was a period of time of about eight months I think it was, where the kids were refusing to go, they might go once or twice in between, and then we had to go and see the court appointed psychiatrist, I was accused of stopping the children from going, so following that report, I said to the kids, "look I'm sorry but you have to go, or mum's going to get into a lot of trouble at court." I had to be very clear about it and not lie to them, and I had to put the pressure back on them unfortunately, because I was getting in trouble for it, so that then made them even angrier."

Participant 1

The threat of "getting into trouble" is often conveyed to mothers when the contact does not occur as ordered, and is consistent with the literature. Characteristically, when mothers oppose their children's contact with the father on the grounds of the children's safety being compromised, mothers are threatened with being sent to prison, or with children being ordered to live with the abusive father (Harne, 2011), this was experienced by four participants in the present study.

Another participant spoke of how her son didn't want to go to school because his father picked him up from there, and how the school contributed to the distress for both the mother and the child:

"I had trouble getting him to school every day. It was actually, it was actually really horrific. I was being told by the school that I had to get him in there and they were being really aggressive with me and treating me like I was the problem and I was trying to tell them that it was because of the visits, the visits were coming up and they just treated me like I was some kind of raving lunatic or something. ... It actually ended up, I was having to drag [son] out of the car, kicking and screaming, which I would never do now, but back then I had no idea how to handle it, and they had no idea which is really appalling now I think about it. And they expected me to do that but then they called me abusive for doing it. ... They would then tell me I had to bring him to the gate, there would be a woman meet me at the gate. She would drag him, kicking and screaming, from me, he would hang on to me. ... He had bruises all over his arms from where she was holding him and I had one teacher scream at me as she grabbed him off me and held him in like a bear hug, and he's screaming his head off, and she said to me, "just get out of here!" ... then later on, they crucified me. They said that I, because I was crying as well, they said my behaviour was bizarre, they called me bizarre!"

Participant 3

Yet another participant spoke of how her children would cry and hang on to her at the handovers:

"They used to cry and hang onto me at the handovers, and when I would not want to hand them over, he [ex partner] would start threatening me. The magistrate was also saying "it's like sending a child to the dentist, kids kick and scream but they have to and you have to make them" although my kids never kick and scream going to the dentist. So I would have to force, I would encourage them nicely to go, and "you have to go" and sometimes he would just grab them when they were screaming and crying and run off with them anyway. Now that they're

older, they're just resigned to that. My eldest, who's nearly [age], knows she can if she wants to, not go but a few times she's texted him to say she doesn't want to turn up, he's very manipulative and messes with her head, says horrible things. She's quite scared of what he will do to her when she sees him next if she doesn't go, so she's sort of accepting now and just goes. She's quiet, subservient to him, hates him."

Participant 4

Other participants described the emergence of problematic behaviour as their children became increasingly distressed in anticipation of a visit with their fathers:

"They would become very distress, very moody. My son, the eldest, he would become very moody, very angry. He would sometimes snap at me and I would have to say to him, "look, I'm very sorry, I know that you don't want to go" because, you know, he'd rant and rave about it. [Daughter 1], the middle one, would become more quite, more reserved, and [daughter 2], the youngest one, would wet her bed, have nightmares, um, [son] would also have diarrhoea, vomiting. [and this was happening every fortnight?] yes, every fortnight, religiously. [Son] was a reflux baby as well, and his reflux seemed to return each fortnight, so he'd suddenly start getting upset stomachs, he'd spend time on the toilet continuously, yeah, it was horrific.

Participant 1

"My 13 year old has been wetting the bed ever since the violence ramped up at the birth of the, her younger brother, so the violence was always there but once he was born it really ramped up and she was not wetting the bed at night, but then started to and has ever since and that's an ongoing thing. Just before and just after visits, the younger one is very anxious so he will start getting very edgy, he used to get angry, now he just gets really edgy and runs around saying "sorry! Sorry! Sorry! I know I'm stupid, sorry! Sorry!" Very on edge, doesn't concentrate at school, um the older one loses focus. They sort of, teachers have said they become disconnected, they appear, they're disconnected and information is not,

they're not hearing information that is being given to them so they flick in and out of that disconnected state. As they're getting older, they're managing the too-ing and fro-ing much better but I would definitely say my youngest son displays outward, a lot of anxiety, he's started developing a twitch."

Participant 4

The level of distress and trauma caused by these children being forced to visit their father should not be discounted, particularly as the contact is occurring against their wishes.

#### **6.4.5.2. Behaviour after visits**

The children would also exhibit behaviours after returning to their mothers from the visitation with their fathers, with participants described their children being angry, swearing, wetting their beds, and having difficulties at school. This is consistent with Bancroft et al. (2012)'s findings in which they state that "[v]arious combinations of factors can lead children to feel unsafe during visitation, and their anxiety sometimes continues after they are returned to their mother's care or reemerges in anticipation of subsequent visits" (p. 137). Radford and Hester (2001) state that post separation parenting may be stressful for mothers, not because the mother is unable to cope, but rather because the children show signs of distress or difficult behaviour as a result of witnessing the abuse they have lived with. This difficult behaviour displayed by the children occurs post-contact with the father as well.

One participant detailed a variety of atypical behaviours that occurred in the days after the contact visits, and how it would take a few days for the children to return to their normal routine at her house:

“They’d thumb their nose at authority; they were angry; they were rude; there was no manners; very, very angry little kids; they were fighting each other ... they would come back hating each other; calling each other names; a couple of times, swearing, you know. ... They would not listen; they wouldn’t eat their dinner properly; they were very unsettled; they didn’t sleep properly the first night because they were allowed to stay up a lot later at his house than what they got to at home. And it would usually take a few days before you got them back into a pattern, they were settled again, but it was usually about by Tuesday or Wednesday of the next week ... it would then, you know, it would go great and then when it got to that week leading up to their visit to their dad, it starts again over the next few days. And when they came back as well, they, [son] in particular, always had stomach ailments, always had diarrhoea, [daughter 2] would wet the bed for a couple of days later, and then she’d stop wetting it again, and she was toilet trained at 2, and she was still wetting the bed up until she got taken to him in [month].”

Participant 1

Another participant concurred with the idea of getting her son ‘back on track’, in time for the next visit to occur:

“It’s almost as if he doesn’t feel worthy of anything just after he gets back, and then just as he comes out of it, he’s got to go again.”

Participant 4

For some participants, their children had difficulties sleeping after spending time with the father:

“Basically any time he goes with his dad, he has trouble sleeping, it’s just a given, and depending on the level of trouble he has sleeping, kind of dictates whether he had a good weekend or not. Sunday nights were really horrific for him, he’d come home just that overstimulated, you know, stressed. Sometimes he’d come home and he’d say he’s had a good weekend, and sometimes he’d hardly say anything.”

Participant 2

“They were very unsettled, didn’t sleep properly the first night because they were allowed to stay up a lot later at his house than what they had at home.”

Participant 1

For others, bedwetting was an issue:

“Bedwetting is still an issue, he’ll [son] wet the bed when he comes to my house, and of course, he does it at his father’s house too, but, he must do, because his father took him to the doctor and he was put on medication for it. ... My older daughter was still bedwetting, and in fact she still does occasionally, the now 17 year old. Pre, you know, years ago, I’d taken her to an urologist and all sorts, but that was before I knew about the sexual abuse and now I can’t take her to a doctor anyway.”

Participant 6

“[daughter 2] would wet the bed for a couple of days later, and then she’d stop wetting it again, and she was toilet trained at 2, and she was still wetting the bed up until she got taken to him in [month].”

Participant 1

Participants described how teachers and day care workers would also notice that the children were unsettled, or that the children had difficulties at school, most usually post-contact with the father. For example:

“For the week after seeing his dad though, the day-care said he’s like a little shit, they’re saying he’s really rude, he punches other kids, but then the following week, because it is fortnightly, he’s a little angel, and then he sees his dad again. With the week after, the day-care will call me at least four times in one day, and they’re like “he’s done this,” and I’m like “oh, ok”. He punched a kid last time, and I’m like ok, and then he goes just fine, and then bad.”

Participant 7

“And it would usually take a few days before you got them back into a pattern, they were settled again, but it was usually about by Tuesday or Wednesday of the next week and it was also noticed by their teachers. They said in particular [son] was, he was an attention seeker, so when he came back, they said, “look, we always knew where he was on the weekend, we didn’t even have to ask you”, and that was a teacher that pointed that out to me. He said, “look, I’ve got to make this clear to you, but I have trouble every, few days afterwards,” and he said, “I could always, I don’t even have to ask [son] what he did on the weekend, I can tell him what he has done on the weekend.”

Participant 1

“[Son] bullies girls at school. He’s been in trouble a number of times for bullying girls, stomping on them while they’re on the ground and all sorts. ... In the school reports, [son]’s behaviour at school is, he’s the class clown, the disruptive one, bullying behaviour and one of, on one incident where it was documented where he was stomping on a girl when she was lying on the ground. Horrifying, absolutely horrifying.”

Participant 6

Another participant described her son’s apologetic behaviour:

“[Son] is really agitated and edgy, and if you tell him to do something he becomes very apologetic, so if I said, “go upstairs and get ready for bed” he’d go, “ok, ok, I’m sorry, I’m sorry, I’m sorry” so really, um and he also self-sabotages, if he’s having fun, he’ll suddenly turn it into something awful so nothing nice can happen, it’s almost as if he doesn’t feel worthy of anything just after he gets back, and then just as he comes out of it, he’s got to go again.”

Participant 4

### **6.4.5.3. Wanting or not wanting contact**

Participants were asked whether their children wanted to have contact with their father. Their responses were mixed, with some saying, quite adamantly that the children

did not want contact, whereas others said that their children loved their fathers and wanted to see them.

Bancroft et al. (2012) argues that overnight visitation with an abusive father “should in no case be imposed over a child’s objections.” (p. 218). Moreover, requiring children to have contact with their abusive father may cause the children to see his power as unchallengeable, resulting in dysfunctional passivity. It may also divide the children and their mothers, as the children may attribute blame to their mothers for forcing them to go; not understanding or fully appreciating the legal ramifications of not complying with the court order (Bancroft et al., 2012). Harne (2011) discusses several studies in which children’s views on contact were elicited. Many children reported resentment towards their fathers, wanting nothing to do with them, with others feeling conflicted about their feelings towards their abusive fathers. Indeed, some children may be conflicted by dissonance arising from feelings of love for their fathers but wanting safety for themselves and their mothers (Harne, 2011; Pryor & Rodgers, 2001).

One participant who said her children didn’t want contact with their father also said that the children had clearly stated to her that they were being abused by their father:

“They stated that to me, they stated that to external friends and family, they stated that to the school, to the police, uh, to the court reporter and to the children’s lawyer, oh and to our psychiatrist, the court appointed psychiatrist, so they were pretty verbal about it.”

Participant 1

Another participant whose children live with their father said that the children had said they wanted to live with her when they were asked by the court report writer, and gave reasons for not wanting to live with their father:



“They’ve said he’s too hard to deal with, they’ve said that I’m, and this is why the court doesn’t like it, that I allow them to do what they want to do. You know, all the stuff mothers should. I’m a person that says, “well, let’s look at this, where what, what does success look like? Where are we going to do? What do you want to be?” like, not like, well I do, you order your kids around to a certain degree, but other things you just, my kids are teen, my daughter is a teenager, you know, you can’t tell her, you know, what to do, it’s about helping her make decisions, and help her to plan her decisions and all that sort of stuff, but anyway, she [muffled] or sho she says, I mean, all I've got is the family report and how fuckin’ reliable are they? So I don’t really know what’s happening.”

Participant 8

Some children seemed to become quite resigned to having the contact with their father, having initially not wanted it:

“No, not initially, they used to cry and hang onto me at the handovers, and when I would not want to hand them over, he would start threatening me. ... Now they’re older, they just know they have to go and they’re resigned to that.”

Participant 4

“Before hand he doesn’t want to go, and I have to explain to him that he’s seeing his dad and it’s just this never ending yelling fits in the car on the way there and then when we get there he just says goodbye and leaves. [Do you think that perhaps he has become resigned to the fact that he has to go?] Yes, yup, because the night before he’s like, “can you ring up and say I'm sick?” and I'm like “no, I can’t, you actually have to be sick.”

Participant 7

Another participant described her son’s ambivalent reactions to having contact with his father:

“Initially, my daughter did because she was curious, um, my son was apprehensive but he went along with it because he saw other kids with fathers,

and thought, you know, it might be good to have a father but he pretty soon decided he didn't think very much of him, he was calling him, very early on he said to me, "why did I get such a dud for a father?" – this was when he was four - "all the other kids have really cool dads."

Participant 3

One participant thought that her son only wanted to see his father when he was "given stuff", otherwise he didn't like going:

"Sometimes around birthdays and Christmas [he does]. It's more if his step, sorry, half sister is there and if [son] knows she's going to be there he doesn't want to go because he doesn't get that contact with his dad because they fight [son and half sister]. I'm not there so I'm guessing that's what happens, but she's ten or eleven, and he's four, so there's an age difference."

Participant 7

One participant described how her much her son loves his father:

"Oh yes [he wants contact] because he loves his dad, he's always, his father has always been the absent parent and it's always been a big deal when dad was home and um when there was any kind of altercation happening, um [son] did what I assume most kids do, and they migrate to the, to try and calm the aggressive person."

Participant 2

#### **6.4.5.4. Positive experiences of contact**

Participants were asked whether their children had ever reported any positives about spending time with their fathers, such as spending time with extended family, or treats they may have been given. The women were able to describe some positives for the children, but found it difficult to identify anything the children had reported enjoying.

Mothers reported that children were often given McDonald's by their fathers, to the point where the children no longer wanted to eat it.

"They said they were, uh, they were, my daughter said she like it, she was allowed to wander the streets, she liked that because she was totally free because there were no restraints on them at all, she liked the freedom – initially! She liked the freedom initially until she found out that with the freedom came a lot of danger. ... Um, no, there was nothing really positive, except they did, they came back one time and said that all they eat there is McDonald's and they thought that was good at the time until it because really like, I think they spent more than two days there, and they were really fed up with McDonald's by the end of it."

Participant 3

"Usually treats, um, you know like, they took them to the park to ride bikes ... they let [son] play on the X-Box. It was usually things that were bought though, you know, "they bought us a colouring book" ... "they bought us McDonald's" although it got to the point where the kids didn't even want to eat McDonald's anymore because that's all they were eating. They uh, I think, you know, my eldest in particular, I think at times he wanted to see his dad, he just couldn't understand why they were doing that to him"

Participant 1

The presence of other family members, such as the father's parents and siblings were mentioned, but they were not always a source of positivity for the children.

"Ah, they said they met his mother and they didn't like her, um, his sister came the same day as the mother came and they didn't really have anything to say about her."

Participant 3

"Yeah, ah, the kids sometimes liked going to the farm with the grandparents but apparently the grandparents were yelling at them and stuff, so um it wasn't as exciting as it could have been."

Participant 1

“His parents have died, he disowned, he has one brother who he disowned years ago and refuses to speak to therefore the cousins associated with that uncle, the children don’t know, and yeah so I’ve met them and they’re lovely, lovely people, I met them years ago but he doesn’t have, he has a couple of friends but when I knew him he didn’t have any male friends.”

Participant 4

One mother mentioned that her son particularly liked the electronics that are at his father’s house:

“[Daughter]’s not terribly thrilled by being there, she just does it, but [son] definitely loves the electronics that are there for him, but he hasn’t really said anything else much that’s so, you know, [son]’s 10 and he still has size 2 and 3 clothes that his dad’s got for him ... they love him, I know they love him, and I’ve said to them “look I know you love your dad, and that’s why it must be hard to understand why someone who loves you does this, it’s not normal love, I don’t know if he loves you, but I know you love him” so yeah, and I respect that, they can see him whenever they want I say, and I don’t know, I would love to protect them from it, I really would, it would be much easier for them if he wasn’t around but, and the court’s ordered so much contact.”

Participant 4

Another said her son gets to play on the iPad, which he doesn’t get to do at her house:

“Obviously [he enjoys it] when he [dad] buys presents. At the moment it’s the iPad [does he get to play on the iPad at his dad’s?] yeah, he doesn’t get to do that at home so.”

Participant 7

## **6.4.6. Mothers**

### **6.4.6.1. Minimising contact between the parents**

In recognition that handovers can be a vulnerable time for the children and their mother, strategies are often established to minimise the opportunity for this to occur. For example, utilising contact service centres; handovers at public places such as McDonald's or police stations; picking up and dropping off at school or the home of a friend or relative rather than the home of the resident parent (Amato, 1993b).

Four of the women described methods of handing the children over to the other parent that were designed to minimise the contact between the parents. One participant clearly stated that this was needed due to her fear of her ex-partner:

“We used to, we had trouble with handovers, so it got to a point where (sigh) originally he would pick up and drop off because I was too scared to go to his place. Then the judge said she wants me to do a drop off every, he wanted me to do the Friday nights because the traffic was busier. So I would have to do the Friday nights dropping to him and then he would drop them back on the, the lazy Sunday afternoon. And then the last order that was made was that he had to pick the kids up from school on the Friday afternoons and drop them back to me on the Sundays. So that was to try and minimise our contact.”

Participant 1

Another participant detailed her physical reaction to being faced with her ex-partner which included gastrointestinal upsets.

“I'm having this trouble now, I want to go back to [contact centre] so I can go in one door, she can, uh I go in the front, she goes through a middle door, he comes from the back and they go and I don't have to be faced with him because I have, regularly had diarrhoea and wanted to vomit when I have to be near him.”

Participant 5

Yet another participant described how handovers were currently done at the school in order to avoid face to face contact with her ex-partner:

“And now, handover is at school, so Friday afternoons after school I pick them up for my weekend and drop them back at school Monday morning. So that works a lot easier because obviously there’s no face to face contact with him.”

Participant 6

Others still described parking in locations away from the other parent, in order that there would be no interaction between them:

“[Handovers] drop him at their home, I basically pulled up at the kerb and he got out, and my son walked up to the house and they did the same on the Sunday afternoon when they brought him back. They pulled up at the kerb, and I came to the front door and yeah, there was no, no contact between us, just this gap.”

Participant 2

“We had to meet then, where he would take the children for a Saturday for a full day, and I had to drop them off at a pick up point and then meet him there in the afternoon. It was always unpleasant, it ended up that I would park at one end of the area, um he would park on one side, and I would drive in after him, and I would part way away from him so I couldn’t have any contact with him as there was always something.”

Participant 3

“He picks the primary school child, who’s my son, up from school and drops him to school, and if there are any non-school handovers, that happens at McDonald’s due to the violence that was occurring when I would turn up at his house early on.”

Participant 4

#### 6.4.6.2. Facilitating contact

The women were asked about how they felt about having to facilitate the children's contact with their father, and whether they felt as though they had any choice or control in the process. Unexpectedly, there is a paucity of research on this aspect of women's experiences of child contact. Analysis of responses indicated that some of the women said they felt like they were letting their children down, and failing as a parent:

"I feel like I'm letting them down. It feels like you're leading the lambs to the slaughter um but what I'm trying to remind myself is that I give them a happy balance at home. They're old enough; they can actually see the difference themselves between the two homes. ... . It is very difficult sending them, but I've told them that if they ever not want to go, I'll totally support that."

Participant 4

"I felt like I was failing as a parent. You feel like you're letting them down, I mean, you're supposed to be protecting them, you're supposed to be listening and nurturing and you're there forcing them to do something that you know is harming them. But um there was nothing I could do. I was frightened I was going to lose them if I didn't facilitate the visits, I'd obviously heard of a lot of mums who weren't facilitating the visits and had lost their children so I was warned, you know, whatever you do, do not stop the visits, always make your children go, it's better to make them go, have them emotionally and physically abused for a weekend and have them back with you, rather than losing them full time. So I chose to keep pushing them into going, um and, you know, my relationship with them paid. You know there were times when they'd be very angry at me for it."

Participant 1

Indeed, in Holt's (2016a) study, "Mothers talked about their children's anger at them 'for leaving them in it'" (p. 9) and of a sense of failing as mothers for not protecting the children more.

Others found it hard handing the children over to the other parent:

“I had to be very cautious not to show my own anxiety towards, knowing that he was sexually grooming my children, the girls, um very, very difficult, yeah, very difficult. Yeah, filled with anxiety; I knew that I still had to do it.”

Participant 6

“I wasn’t happy about it at all. I tried, um, I was told I had to be the ‘friendly parent’ but I made it very clear in my affidavit that he was abusive and violent with me, and that I wasn’t happy about him seeing the kids without being tested. He was supposed to have drug tests and alcohol tests and all that sort of stuff, but it never happened. ... but I had to go, they told me ‘you have to go along, this is the law, you have to go along and be the friendly parent, if you keep being hostile like you are, if you be, if you say that you don’t want your kids to see him, they will give the kids to him’. I didn’t believe him at the time, but he was right.”

Participant 3

“I hate it, I really do. I honestly think he shouldn’t see him at all, but the court’s ruled it as he’s fine, which I think is stupid quite honestly.”

Participant 7

Several of the women explained that they had “no choice” or control when it came to whether or not the children had contact with their fathers. For example:

“No, oh no, not at all. Any choice or control was taken away from me by the family consultant.”

Participant 2

“No, no control whatsoever, no control. I knew that if I didn’t enforce the orders, that the children, um, he would get a recovery order, which he had done at one time, so no. ... [Choice] is taken away from you the minute they serve you with those papers, and all of your choices.”

Participant 6



The issue of no choice is mirrors Laing's (2010) study, where several of her participants reported that they didn't feel like they had a choice in what was ordered by the courts.

The women were also asked whether their children thought that they had choice or control over the contact. Many of them said that the children were aware that there were court orders in place, and that the judge had said that the children had to see their fathers:

“They know that there are court orders, they've seen the court orders, not in detail, but they know there are court orders; they know that the court made them. They also understand that um that court orders aren't an order on them, to make them go, it's an order between parents so that one parent can't stop the children from seeing the other parent.”

Participant 4

“They were aware that there are court orders and that I would get in trouble with the police and that's all that I could tell them, that I would get in trouble with the police if they didn't go. And then once, my youngest daughter actually described and talked to the police and told them how he had molested her then she didn't go back, I withheld contact from him ... so then I broke the court orders, and he tried to get a recovery order and that didn't work, they bumped it into the Magellan list.”

Participant 5

One participant spoke of how she was able to use the orders to have some control where the child's father would tell the child to ask his mother questions:

“[son] thinks the big man has decided everything ... otherwise he'll just ask questions and go “why aren't I sleeping over?” which he doesn't want to, it's his

dad telling him to ask me, and I'm like "the big man said no" and that's the end of the conversation really."

Participant 7

When asked whether they thought it was in the best interests of the children to have contact with their fathers, several of the women responded that they believed the children should have a relationship with him.

"This is a really hard question because I believe that children need two parents and I believe that while my ex doesn't pose a threat to my son then yes he should have contact with his father."

Participant 2

"Absolutely. If they've got a choice, yeah, I do. Yeah, I like choice. And I think that if you don't then they're going to glorify all the, and go the other way, and I don't think that's right either. You've got to think, what's the balanced approach?"

Participant 8

"I always said that I felt he should have supervised visitation. I do believe he should have a relationship with them. I don't think that any child should be put through not having a relationship with a parent. There's a reason there's supervised visitation, and I've always said, you know, I believe the children should be entitled to a relationship with him until they decide not to, until, you know, they're a bit older. I know my kids didn't want to, but I think if it was supervised, that would be safe enough. Um, so I won't say 'no'."

Participant 1

"Part of me knows that children should know their father and have some kind of relationship and know what he is like, rather than being some kind of fantasy dad but um not to the extent that they see him, definitely so I'm a bit torn on that one."

Participant 3

The primary issue for these mothers was the lack of safety for the children when spending time with the fathers:

“I believe that while my ex doesn’t pose a threat to my son then yes he should have contact with his father however the situation that he is in and the marriage and the home life is a threat to my son so the contact, well the court orders say every second weekend Friday to Monday and half the school holidays. It never happened and I’m really glad that it never happened because I don’t think it’s appropriate given their home situation and I believe the police have attended their home three times in eighteen months, um and so yeah, at this point it poses a threat.”

Participant 2

“He was doing gas lighting shit to me and all this and the kids refused to be around him without me being there because he just used to insult them and make jokes out of them and he used to push my son’s face into a table and think it was funny, you know, that sort of shit. You know, “fight back, fight back” oh my god! So they didn’t want to go to him, so I’d sit there with him, and he’d be saying “no, I don’t want you around” you know? And I’m going “the kids won’t be here without me being here, just at this minute, you need to stave your behaviour”.”

Participant 8

“Ah, in his home, being as unsafe as they were, I didn’t agree with it. But I still maintained that because I didn’t want to risk losing my kids which obviously I did anyway. But I don’t think a child should be asked for, to, like, it’s denying a half of themselves as far as I am concerned, you know, they’re born of two parents, and I think that, I, I wouldn’t want to be the person asking them to deny that part of them that is their father. ... I do think that kids should have a choice. I, I don’t think they should be forced into a situation like that, um, I, I think that that’s very distressing for them and I think psychologically it’s, it can be very damaging. If they feel that they’re not being listened to at all, I mean, they weren’t doing it rudely, they weren’t trying to push a boundary, they weren’t

doing it to thumb their nose at authority; they were doing it because they were genuinely not wanting to go and scared.”

Participant 1

### **6.4.6.3. Positive aspects of contact for mothers**

The women were asked whether there were any positive aspects to the children having contact with their fathers, for example ‘down time’ from being a single parent. Analysis of the responses indicated that some of the women stated that they got a break but they didn’t like the ‘cost’ of that break, knowing how the children would likely behave when they returned. For example:

“The only thing that was good was that I had a bit of time off, as being a single mother. I had been a single mother right from the beginning, more or less, and it was nice to have a break but I didn’t like the cost of that break.”

Participant 3

“Um, well, I, I got a little bit of a break, I got to sleep in once a fortnight [laughs], I got to sleep by myself once a fortnight which was really great! But the stress level and the anticipation and the, I mean, throughout my whole relationship with this man, I suffered from anxiety and that anxiety, you know, he scares me to death. But the fact that I knew that my son was going to be, for the want of a different word, ‘off his head’ when he came home kind of ruined it.”

Participant 2

One participant said that she refuses to think about how the children would be when they return, instead choosing to enjoy her child free time:

“Oh, I love my time to myself! It’s great! Yeah I love it, I’ve managed to do all that, I love having time off, I love spending time with my older two or my partner and yeah, that’s great, I love that [do you find that it becomes a little bit tainted by knowing how the children are going to be when they come back?] Um, I at the

time don't let it, I don't think about it during the time. I make sure I just enjoy myself. I deal with it afterwards."

Participant 4

#### **6.4.6.4. Loss of 'custody' and parental responsibility**

Four of the mothers in this study experienced the court ordering that the father have sole parental responsibility and sole residence, with one mother being ordered not to see or speak to her children for a period of twelve months, in spite of significant evidence of domestic violence towards the children as well as the mother.

"They now live with him ... they lived with me since birth ... [do you see the kids now?] No. [You don't see them at all?] No ... not allowed to see them or speak to them."

Participant 1

"The court gave him full custody ... it was 7 or 8 years [ago]."

Participant 5

"The two younger ones live with him full time and I have alternate weekends and then half of the school holidays during the term and two weeks in the Christmas school holidays so I don't see much of them at all really."

Participant 6

"[So you don't know whether or not they're living with him?] Yes they are but there are some significant issues according to the family report and they would prefer to be with their mother."

Participant 8

Some of the women believed that it was the principle of the father's right to contact being upheld by the Court rather than the system acting in the best interests of the child.

“The rights of, the right of his father to have a relationship supersedes the rights of [son] to have a happy life and that’s where this is all falling down.”

Participant 2

Another mother pointed out that the finding of fact is not done until the case goes to trial, therefore interim orders removing children from the mother where there has been domestic violence should not be permissible.

“They can’t make interim orders, I believe, when there’s a finding of family violence, and there is in my case, I have it in my, my, eventually after they made these orders without any reasons, if they’ve got a finding of fact that there’s domestic violence then they should not be making any type of interim orders removing custody from a mother. It would be different if I was bullshitting, and they said “we have no finding of fact” but they have a finding of fact, it’s just unbelievable, and really they shouldn’t be finding of facts anyway because they haven’t tested any evidence.”

Participant 8

Section 60B of the Family Law Act details the criteria to assess the best interests of the child; however, it seems that this is only applied in cases where the father is the non-resident parent. Removing children from their mothers, who have been the child’s primary carer is creating significant and substantial damage in these children, particularly in cases where they are ordered to live with a perpetrator of family violence, and yet this seems to be deemed ‘appropriate’ to do. There is a lack of consistency used in the reasoning for removing children from a household.

One mother reframed the issue of losing custody to a positive, commenting that was actually a good thing for her, as her ex partner was no longer able to threaten her with taking the children away from her:

“Because I don’t have the kids, you know, I’ve actually, for the first time in my life, haven’t, not good for the kids, but good for me, where I’m not threatened by having the kids removed, I’m not threatened in so many ways. I mean, the whole legal process is obviously, you know, nothing but warfare, but as far as personally being threatened, it’s different, dare I say it. So the less contact I have with him, the better it is for me, and therefore the better for the kids. So he would create situations to cause problems, you know?”

Participant 8

#### **6.4.7. Legal system**

##### **6.4.7.1. Behaviour of judges**

The women in this study described the judges’ behaviour as being dismissive of their experiences; disregarding or minimising the behaviour of the fathers; and being biased against the mothers for trying to protect their children.

For one participant, the judge in the family law system awarded full custody to the father despite an AVO taken out by police on behalf of one of the children who had been assaulted by the father. The ruling resulted in the police dropping the investigation.

“There were about 10 reports, minimum, to FACS [Family and Community Services] ah, the last one was because ah the domestic violence officer of the local [area] police station, she’d had enough! She said “we are adamant this guy is guilty, we’re absolutely adamant, this is the third report ... So, um ... they tried laying charges the first two times, the third times there was an AVO against him and it was under current investigation, and the judge awarded full custody to him while the AVO was in place, which apparently is not even legal. She gave him custody after an AVO and it was for abuse of the children, not of me, so you know, it’s not like this AVO was for my benefit. But the police were investigating that one quite seriously and the police had decided that it was so serious that they held, they wrote in their report “we hold grave concerns should

the children be forced to continue seeing this man.” They then had to drop the AVO because he was given custody and they’ve then put a hold on the investigation.”

Participant 1

She continued by describing how the Department of Community Services (DOCS, now known as Families and Community Services, FACS) reports were ignored by the judge, and she was accused of making them up:

“The DOCS reports were completely ignored by the judge and she said that she put down any reports made by the children as lies and as stories embellished by me and given to the children by me, it was a narrative of mine by the children. So all the DOCS reports were completely ignored. There were no DOCS reports against me, ah no abuse claims against me of the children, except for the father and he only made those up late in the piece, and in the first two years, he was only going for property, and I wouldn’t give in on property so two years down the track he went for custody. So yeah, she ignored them.”

Participant 1

This mother was waiting on the result of an appeal; however she was not hopeful of the children being returned to her care:

“But yeah um we’re waiting on the verdict of the appeal but from what I understand, they don’t usually reverse, once they make a decision to remove children, they don’t remove them again because it’s too traumatic, even though it’s returning them to the only home they’ve known since birth. ... apparently the judge I have is absolutely renowned for what she has done, absolutely renowned for it ... I know of another child that she, she was trying to send back a 12 year old boy who was being molested by the father, he’d been there since he was 6, he’s 12, ran away from home continuously, and she was sending him back to the dad, so the same psychiatrist was sending the 12 year old boy back. They ended up, they had her dismissed, got another judge, and the other judge said this is



ridiculous, he's 12 years old, let him decide, so he went to live with the mother.  
The system and where it breaks down and lets children down.”

Participant 1

Another mother described how her ex-partner was referred to by her lawyer, and the judge:

“My solicitor referred to [ex partner] as being belligerent whereas the judge referred to him as being ‘animated and theatrical’. And you know, on the stand, I was clearly terrified and shaking and the judge paid no attention to that.”

Participant 2

A participant described how information she provided to the court was constantly dismissed as irrelevant, even when sourced from a third party such as the day care centre:

“It's like you can't really tell them this stuff though because they look at you and they're like “that's not relevant” or “that's just you saying that against your ex” and “there's no proof” and whatever and [son], even the day care, they said his behaviour, you know, so and they've written a statement for me for court, saying what he's like each week, “oh that's not accurate because it's biased and they're on your side” and I was like not really because they're there for [son], like honestly, they wouldn't care if he dropped him off, not I dropped him off, it's the fact that it's a child and they're there for him and they're mandate reporters so if I did anything wrong, they would report me anyway so that's what I don't understand.”

Participant 7

For one mother, the lack of due process throughout her experience was a significant frustration, with the mother reaching the conclusion that the family court has ceased to be a competent authority. The final trial is set in a different state than the mother and the father reside in, which the mother believes is due to incompetence:

“They’re fucking stupid, these bastards, because a judicial registrar cannot make excluded child orders and the review of the registrar’s decision, they’ve denied me, they’ve dismissed it. They can’t! ... They can’t make interim orders, I believe, when there’s a finding of family violence, and there is in my case, ... if they’ve got a finding of fact that there’s domestic violence then they should not be making any type of interim orders removing custody from a mother. It would be different if I was bullshitting, and they said “we have no finding of fact” but they have a finding of fact, it’s just unbelievable, and really they shouldn’t be finding of facts anyway because they haven’t tested any evidence ... So how can they remove children? There’s a thing called [muffled (CABER?)] and I don’t know if you know the study, but essentially for a chapter 3 court to be constitutional, they need to follow the rule of law.”

Participant 8

This participant also questioned the role of the Independent Children’s Lawyer, which is to represent the best interests of the child/ren.:

Well they can’t represent someone, because they’re representing a concept, not an individual, they’re not allowed to represent the children so I think that it’s unconstitutional because, I’ve actually put that in my appeal (laughs)

[Because the “best interests of the child” is an abstract concept, it’s not even concrete, because it’s going to vary for each child and even each child within a family.] There’s no test, that’s right, so there’s no test for it so they’re saying in the best interests, and they’re doing it but it’s just nothing but bullshit! We know how much this is bullshit! And it’s just a tool, a manipulating, it’s a concept that’s just so, what’s the word? there’s no consistency.

Participant 8

#### 6.4.7.2. Behaviour of report writers

Mothers noted the biased behaviour of the family consultants and family report writers, specifically around there being a focus on the mothers ‘alienating’ the children from the fathers.

“By the way, there is no complaint system for family consultants, there is no body to complain to, there is no body to make a report to, there’s nothing. They put a little disclaimer on the front of their reports um that that basically says, you know, they cannot be held responsible for anything they’ve said or written, um, which is rubbish. And um she’s been presenting at these family report forums and things about this alienated syndrome crap ... and that’s her focus, and as I’ve met more people, she’s gone into this EVERY [emphasis by mother] time, looking for reasons why the mothers are psycho and they’ve, you know, turned the children against the father, and that’s her focus. It’s what she studies, it’s what she presents, she’s written papers on it, like I’m sorry but that makes her not acceptable in a family law court because she clearly has a bias.”

Participant 2

This mother went on to say that the family report was lacking factual accuracy, as well as containing a bias towards the father’s version of events, which the mother disproved. The mother had been very ill after giving birth, requiring round the clock care from several members of her family, whilst her ex-partner was living elsewhere with another woman. However, the judge was perceived as having “swallowed it hook, line, and sinker”:

“The basis of her argument was: after I had my son, I had a golden staph, I nearly died, I was in a coma for a week, I was very ill for a good 12 months after, I had to have round the clock care for 4 or 5 months when I got home, ... my ex and I were split up at the time, he wasn’t even living here, he was living with some other woman in a flat, and her [family consultant] basis for everything was that my son had attachment disorder because [ex partner] did all the primary caring

because he moved in and he looked after me but we proved, and he admitted on the stand, that he didn't live here, that he didn't have anything really to do with us, he just visited now and then and that was the premise of her entire family report. Yet the judge still swallowed her entire family report hook, line and sinker even though we disproved the [muffled].”

Participant 2

Another participant stated that the ‘report writer’ in her case is a sociologist:

“T here’s a psychiatrist who ... knows about attachment issues with kids because he’s done the, he’s an associate professor at the [university] in psychiatry and here he is saying “if you remove these children, it’s going to lead to significant mental health issues, some of which could be catastrophic” quote, and the court ignored it. They had that report, and they ignored it, they didn’t even, I didn’t even have a chance to table it and argue it, they just ignored it so they took a sociologist’s report which says that because my son looks like his father, that I would hold it against him and that he needs to be removed as a result. ... I’ve asked for the reports to be removed, for anything to do with the psychological assessment to be redacted and they told me to fuck off. ... He also said that I have a psychological issue and a mental illness. He is the same one that is training people in parental alienation in [state], I have his material, I have his next training session in February [year].”

Participant 8

The participant went on to say that she had discovered that the ‘report writer’ had himself had children removed from his care and questioned his bias and impartiality:

“I did find out, I did find out though that this family report writer had lost his two children, he had two boys, and I’m going like well how much does that impact? Where’s your assessment around how all that works, family court? It’s just a shame. ... I’ve said that he’s not impartial, and I’ve said that he’s an advocate for the father and I want the reports struck out but he, especially anything to do with

psychology. ... I pulled the ICL up saying she was sending the expert reports to the children's psychologist, and I said "no, they are not expert reports" and she said "with all due respect, they are" and I said, "actually, with all due respect, they're not. Under section 79 of the Evidence Act, he doesn't even fulfil the basic criteria of an expert, so please do not make that assumption" and then I quoted [name]'s statement that they must be degree trained, have post-graduate qualifications and 5 years clinical experience, and I said that he certainly doesn't have that and he's just got a sociology degree. ... It's all money changing hands, in my opinion, that can go on record, I don't care, but I think there's money changing hands and it's linked to the AFCC, and we need to do some investigation into how that all works."

Participant 8

Another participant disclosed that the court appointed psychiatrist had diagnosed her with a personality disorder, which undermined her case, and contradicted the testimony of her treating psychologist:

"I've since found out that the children's lawyer, who was against me, had phoned FACS and said "look, the mother's a psycho" because the psychiatrist labelled me borderline personality disorder and therefore I might be a danger to my children and so they must be removed from me because the father said I have that, and the psychiatrist who met us for an hour said that I had it. I'd been seeing a psychologist for about four years, my psychologist got on the stand and said "there is nothing wrong with this woman; she does not have borderline personality disorder." She was completely discredited, and they said in the four years I never took my true self to therapy, and in the one hour I met with the court appointed one, apparently he picked that I was borderline."

Participant 1

For one participant, the children's description of the father as 'evil' was attributed to the mother by court personnel, with the mother questioning how they were able to reach that conclusion:

“And one in particular, they are saying he called his father evil, and they believe that's me, I've programmed them to say that. It's an interesting research process to see how they, how they come to that evaluation, what are the steps they take to make that assumption and it's just, it's so um, you know, [muffled] that they could make that without any form of proof.”

Participant 8

### **6.4.7.3. Dismissal of or minimisation of fathers' behaviour**

The mothers had informed the court about the behaviour of the fathers via affidavits, but the judge or family report writer often focused on the mother's behaviour, describing it as alienating the father, rather than as the protective behaviour that it was. The fathers' behaviour was perceived as “less bad” than the mothers' behaviour. For example, one mother had her children admitted to hospital several times for conditions related to infections that occurred during the father's parenting time, which was dismissed by the judge, as was the father's abuse of nursing staff at the hospital:

“[Daughter 2] was in hospital for three days on an IV drip, uh, she almost died of septicaemia from an infection at their house. ... Then she was diagnosed with cellulitis, and the judge went, “oh it's only cellulitis, that doesn't mean anything, that doesn't mean the father did it...” well the fact of the matter is that cellulitis can be from an infection from anything, ... So um the hospital made reports, because when I got there, they said has this ever happened before? I said this is the third time I've had to seek medical help for these infections, so they made a DOCS report. And then the father actually rang the nursing staff and was abusing them ... just full on abusive so a social worker came in and said to me, ‘look I'd just like to let you know we've made a report against your ex-husband, we are concerned about the safety of your children and you’, and I was just like what

happened? I didn't even know and again I was accused of making all the reports up. .... They [the hospital] specifically wrote a one page report about him and about the abuse and ah their concerns for our safety, they were very careful in the way they wrote it to make sure they wrote in there the mother did NOT know about these reports, ... and ah the judge still said that all of the reports were made up by me.”

Participant 1

For one mother, the father's threats to remove the child from Australia to Nigeria were dismissed by the judge, as was credible evidence of the father's abuse due to a procedural failure in the civil court:

“My ex had a lawyer, who was really aggressive, and really, you know, I had a lawyer who was quite quiet and you know, straight down the line. His lawyer stood up and rambled on with all of this rubbish, which he couldn't substantiate in any way, shape or form, and the judge swallowed it hook, line and sinker. And that was before any evidence was in front of him. There were 'he said, she said' affidavits and that was it. I'd done a basic affidavit, he'd done a basic affidavit, that was it, that was all there was. You know, I applied for an AVO um shortly after my ex left because he was ringing up, threatening to kill me, ... he had said to me, during the course of the relationship “I will take my son, and you will never see him again, I will have him on a plane out of this country”. Um, he even went to the extent of explaining to me how easy it was for him to get a Nigerian passport because [son] is a Nigerian citizen, that he didn't even need my signature, and he could have him out of the country on a Nigerian passport before I even knew he was gone, And they just dismissed that ... My solicitor referred to [ex partner] as being belligerent whereas the judge referred to him as being 'animated and theatrical'. And, you know, on the stand, I was clearly terrified, I was shaking and the judge paid no attention to that. But my ex is 'animated and theatrical'.”

Participant 2

For another mother, the fact that the father of her second son had assaulted her oldest son was deemed irrelevant to whether the father should see his son [son 2]:

“But the courts, they just don’t give a shit like, I have all this evidence that happened for [son 1] but because it happened to [son 1] and not [son 2], it doesn’t count and I’m like “but he hurt my oldest son” ... but I don’t get it, if he’s going to hurt a kid that’s not his, surely, if he snaps or something ... Like he’s not going to hurt the kid! ... He’s been reported, you know, there’s evidence he punched [son 1] in the face and molested him and that’s not ok, yet he can still see [son 2] and I’m like, family services were involved but that’s not good enough, oh my god! Just going to access is against my [intervention] orders and it’s against everything and I’m putting my son, my oldest son at risk which is the whole reason why this order is in place, for him, [son 2] and [son 3] because I put [son 3] recently on it because he’s kind of attached to me and yeah, then they’re like “oh, ok that’s fine” and then I thought about it and well, [son 1], poor [son 1] has his own order now because he’s in school, so his covers him, and mine covers [son 2] normally as well because he’s normally with me and I was like “oooh!””

Participant 7

One mother commented on how the father can be a perpetrator of domestic violence, and the courts can ‘turn the tables’ on the mother because she either didn’t report the abuse to police, or allegedly failed to disclose the abuse prior to the father applying for ‘custody’:

“I find it horrific that you can be a victim of domestic violence and you can have the tables turned on you and, and this judge even went so far as to say “I find the mother has no credibility because she didn’t mention the domestic violence until after the father went for custody.” Now that’s a blatant lie! I was the first person who brought up the domestic violence based on my solicitors giving me advice ... they said but you must be the first person who raises it, you’ve got to do it. So I raised it in 2011, he didn’t raise it until September 2012, and this judge said the mother has no credibility because she didn’t raise it until after the father went for custody ... in September 2012. But I had raised it back when the proceedings



started in 2011 but apparently, you know, she's saying "look I didn't read that affidavit so therefore I can't believe that" ... I mentioned it in two affidavits, the second affidavit being just before his affidavit in 2012, as well and I'd said in there things like um, he had to be pulled of me when he was choking me, he pushed [son] to the ground when [son] was trying to get between us, he hit [son] so hard that [son]'s high chair completely tipped over with him in it. And the judge, even though the affidavit was submitted ...because the children's lawyer thought she'd use it against me, the judge said, "nope, there was no proof that the mother had actually mentioned it earlier", well the affidavit was in evidence, she just chose not to read it."

Participant 1

The father failing to meet his child support obligations was also minimised for one mother:

"My greatest challenge when I was, when I had the kids on my own was getting him to pay his child support, and then, I was homeless, nearly homeless at one stage because he failed to do it, and he knew exactly what he was doing. He's on a quarter of a million a year, and you can't tell me that this man who was paying \$175 a week in rent couldn't afford to pay his child support, earning a quarter of a million a year, so you know, and the court doesn't see that as abuse either."

Participant 8

## **6.5. Discussion**

### **6.5.1. Overview**

The current study sought to identify children's behaviours that may be linked to ongoing, court ordered contact with their violent and/or abusive fathers. The mothers detailed their children's extensive dysfunctional behaviours, including anger and aggression, which, for some, manifested as bullying other children at school; bed wetting; stomach upsets; anxiety; and inappropriate, sexualised behaviours. These descriptions are

consistent with several studies that have examined children's responses to contact with an abusive father (e.g. Bancroft et al., 2012; Harne, 2011).

Consistent with the literature acknowledging that handovers are often a source of ongoing abuse perpetrated by the father towards the mother (e.g. Kaye, Stubbs, & Tolmie, 2003b; Laing, 2010; Morrison, 2015), the participants in this study described the father's behaviour, where the mothers were required to meet with the father to exchange the children. These behaviours included intimidating the mother; banging on the car doors; removing the keys from her car so she was unable to leave, or hanging off the car as the mother attempted to drive away, and screaming at the mothers. These behaviours support those described by Kaye et al. (2003a). Significantly, these behaviours were being performed by the fathers in the presence of the children.

For some mothers, the handovers were ordered to occur at a neutral place such as McDonald's, which has the perceived advantage of being child friendly, well lit and having other people around (Kaye et al., 2003a). Again, Kaye et al. (2003a) describe the experiences the women in their study who were verbally abused during the handover at McDonald's, even in the presence of bystanders. Even neutral places such as these are no guarantee of the mother's safety – a woman was murdered in a Queensland McDonald's in September 2015, when her estranged husband shot her inside the store (Bochenski & Silva, 2015). Other mothers had handovers occurring at school, but for one mother this resulted in her son refusing to attend school because he knew his father would be picking him up from there. Within this context, it should be noted that this option is only available to those parents who have school aged children, and assumes that all handovers will be done at the school. For school holiday visitation, there may still need to be handovers at which the parents come into contact with each other.

The behaviour of the fathers as parents often appeared to be abusive in many of the participants' cases, with some of the mothers detailing quite horrific behaviours perpetrated by the fathers. These included children being subjected to witnessing ongoing domestic violence between the father and their new partner; the children being shouted at and sworn at or threatened with not seeing their mothers again; and in some cases, the children were returned to their mothers with bruises, scratches, and other injuries. This is consistent with studies that have examined the behaviour of abusive men as fathers (e.g. Bancroft et al., 2012; Harne, 2011).

Of the four mothers participating in the current study who did not have custody of their children, two had an intervention order (AVO). The presence of the state based order provides evidence of domestic violence to a standard beyond the 'reasonable grounds to believe' required by the Family Law Act (s61DA, Commonwealth of Australia, 1975). The presence of family violence creates a rebuttal of the presumption of equal shared parental responsibility, suggesting that the mother should have sole parental responsibility. The orders for the four fathers to have sole parental responsibility and sole residence must be questioned, particularly in the presence of evidence of their abusive behaviour. The case of the mother whose children required hospital treatment on multiple occasions, subsequent to spending time with the father, and who was then ordered that she was not to see or speak to the children for a period of 12 months, is particularly noteworthy. In this case, it appears that multiple reports to the state based child protective services were ignored and the concerns were not taken seriously by the family court judge presiding over the matter. One grounds on which the mother's concerns may have been dismissed was that it was in the best interests of the child to continue to have contact. However, this provision has been criticised as being too subjective and can rely too heavily on the discretion of the courts, and not establishing the weight to be accorded to any particular factor (Charlow, 1986;

Kelly, 1997). There is no consensus as to what constitutes the best interests of a child, whether in general, or in a particular case, nor among mental health or legal professionals (Kelly, 1997), although most jurisdictions articulate criteria to be considered.

The “right to contact” for children appears to be merely a disguise for upholding the rights of the father as head of the family, despite the family unit having fractured. As Harne (2011) points out:

Overall, both the ideology of all fathers as being essential to children’s wellbeing and discourses of ‘fathers needs’ have overridden children’s and mothers’ rights to protection in the criminal justice system and have compromised their safety as a result. These discourses and practices also convey the message to perpetrator fathers that their violence is not regarded as a serious crime, since they continue to be *rewarded* with contact with their children. (p. 65)

A key finding of this study is the impact of the age of the child on how they respond to contact with the father. For many children, there was a lot of resistance to the contact when they were younger, with mothers describing how the children would cry and hang on to her, not wanting to go or be yelling and screaming on the way to the contact centre. However, as the children got older, they seemed to have become resigned to the fact that they have to go. For some children, this is about managing their father and his behaviour, because they know that there is likely to be consequences if they do not go. Indeed, one mother described her daughter of being scared of what her father would do to her the next time she went, should she miss a visit.

### **6.5.2. Methodological considerations and conclusions**

A strength of this study is that it is one of the few which has examined mothers’ experiences of having to negotiate family contact arrangements within the context of

previous domestic violence. However, it is acknowledged that this study focused on a relatively small sample of women who had been victims of domestic violence and that these views cannot be generalised to the majority of cases where contact with the father may be both safe and beneficial to children. Qualitative research can yield useful findings from even small samples if they are illustrative of exceptions to generally accepted principles and if they capture the principal range of themes that are likely to be relevant to the topic.

Further studies examining mothers' perspectives around their children's contact with their fathers in the context of domestic violence could be conducted, particularly given the dearth of research examining how mothers feel about facilitating the contact. Interviews with fathers who continue to perpetrate violence and/or abuse against ex partners in the context of handovers would be valuable. If their motivations for the behaviour are identified and understood, interventions can be developed in order to decrease the likelihood of perpetrating abuse post-separation.

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# **Part Four**

## **Study three**



# Chapter Seven

## **7. A retrospective Look at Contact: A Survey of 18-25 year olds who have experienced parental separation**

### **7.1. Introduction**

Family, in the traditional understanding usually refers to nuclear families which comprise: a mother, a father, and their children. Thus, when the term marriage is used in the law, the concept of a 'legal family' is usually made with reference to this traditional structure. (Eekelaar, 1984). However, the 'nuclear family' is no longer the typical form of family, with other living arrangements that can be considered 'familial' becoming more prevalent; for example, sole parents, step or blended families, and non-married cohabiting couples or families. Despite these changes, marriages, and particularly stable and satisfying ones, have been shown to contribute to improved physical and mental health for both the adults, and any children, as well as increasing longevity and improving material wealth (Gove, Hughes, & Briggs Style, 1983; Karney & Bradbury, 1995; C. M. Wilson & Oswald, 2005; Wolcott & Hughes, 1999). Research also shows that there is an extra beneficial effect from being married, over and above living together (C. M. Wilson & Oswald, 2005), and these benefits are larger for men than for women. However, a question arises as to whether the protective benefits are also available in marriages that are highly conflictual, or where a spouse has severe mental health issues. In such circumstances, some marriages may, in fact, be damaging to family members (Karney & Bradbury, 1995; Wolcott & Hughes, 1999) and for some, the family environment can prove to be deadly, with almost two out of every five homicides occurring within the family (Mouzos & Rushforth, 2003).

Divorce is a common occurrence in the lives of many parents and their children, with around half of all Australian divorces each year involving an average of 1.9 children under 18 years of age per divorce (Australian Bureau of Statistics, 2011b; Australian Institute of Family Studies, 2015). Children of unmarried couples also experience the separation of their parents, and others still have parents who have never lived together. The figures are similar in the US, where around 40% of children will experience the divorce of their parents prior to reaching adulthood (Tach & Eads, 2015; Tartari, 2015), with approximately 1.5 million children every year thought to be affected (Tartari, 2015). The UK has one of the highest divorce rates in Europe, with more than 30% of children experiencing parental separation prior to the age of 16 years (Culpin et al., 2013; Fortin et al., 2012).

Despite the frequency with which divorce occurs, it is still perceived as the result of when ‘things go wrong’ in a marriage (Eekelaar, 1984), with divorced families viewed as flawed environments that are not positive or nurturing in comparison to functioning families (Kelly, 2000). Several studies have identified multiple factors associated with the perceived causes of dissatisfaction as well as the occurrence of marital breakdown (e.g. Amato & Rogers, 1997; Burns, 1984; Cleek & Pearson, 1985; Kitson et al., 1985) with most of the factors being accounted for as demographic or life course variables, psychological characteristics or interpersonal variables (Wolcott & Hughes, 1999). Three major dimensions were used by Wolcott and Hughes (1999) when analysing the data from the Australian Divorce Transition Project – ‘affective reasons’ which included communication problems, incompatibility and infidelity; ‘abusive behaviours’ such as physical violence, drug or alcohol abuse, and emotional and/or verbal abuse; and ‘external problems’ such as financial pressures, family interference and health issues. The vast majority of respondents (75.6% of men, and 62.7% of women) cited ‘affective reasons’ for



their marriage ending with communication problems the largest difficulty, experienced by 33.3% of men, and 22.6% of women. Abusive behaviours were named by 4% of men and 23.4% of women, with drug/alcohol abuse causing the greatest problems (2.5% of men, 11.3% of women) followed by physical violence (0.4% of men, 9.6% of women) and then verbal/emotional abuse (1.1% for men, 2.5% for women).

### **7.1.1. The impact of divorce on children**

The consequences of parental separation and/or divorce in a family unit have been studied extensively (e.g. Allison & Furstenberg, 1989; Amato & Gilbreth, 1999; Furstenberg et al., 1987), with the literature showing that children who experience the separation or divorce of their parents are generally worse off on a number of measures of well-being, when compared to children in intact families. These indicators have included peer relations; stress; aggression; psychological adjustment; self-esteem, and academic achievement (Amato, 1993a; DeBell, 2008; Hess & Camara, 1979; Hetherington et al., 1998; McIntosh, Burke, Dour, & Gridley, 2009). Amato argues that children's adjustment to divorce revolves around five central concepts: the loss of the non-resident parent, usually the father; the adjustment of the resident parent, usually the mother; inter-parental conflict; economic hardship; and stressful life changes. Marital conflict more strongly predicts child adjustment than the divorce itself or the presence of post-separation conflict (Kelly, 2000; McIntosh et al., 2009), with several studies showing that as many as half of the academic and behavioural issues in children were present 4 to 12 years before their parents separated (Kelly, 2000; Silverstein & Auerbach, 1999). Moreover, it is the intensity and the frequency of parental conflict that is associated with the children's adjustment, with intense conflict leading to more externalizing and internalizing symptoms in the children, compared with children who experienced low intensity conflict (Davies & Cummings, 1994). It is also true that single parent families, 85% of which are headed by

mothers (Australian Bureau of Statistics, 2011a), are more likely to live at or below the poverty line (DeBell, 2008), and it is the negative effects of poverty that contribute more to the developmental outcomes for children than the absence of the father (Silverstein & Auerbach, 1999). Single mother households are known to experience a decrease of around one third of their pre-divorce income (Amato, 1993a; Hetherington et al., 1998; Smyth & Weston, 2000). Socioeconomically, it has been shown that as much as 50% of the outcomes for adolescents and young adults can be accounted for by the lower family income, compared with children raised with two parents (Jaffee et al., 2003). Such precarious financial circumstances can on their own increase the risk of problems for children; can have implications for health and nutrition, and also influence the quality of neighbourhood environments and schools to which a young person is exposed (Amato, 2000; Amato & Gilbreth, 1999; C. M. Buchanan & Jahromi, 2008; King & Heard, 1999; Natalier & Hewitt, 2010; Smyth & Weston, 2000). Evidence also suggests that it is the disruption of the child's entire life, rather than the divorce or the absence of the father, that contributes to the poor psychological adjustment observed in some children (Silverstein & Auerbach, 1999).

Where the parental relationship is characterised by anti-social behaviours such as drug and alcohol abuse, mental health issues, and violent and abusive behaviours, questions are raised about the potential benefits, and the risks of contact under these conditions (Morrison, 2015). Domestic violence is known to have negative impacts on children, with many studies examining the effects of the violence and abuse on children, who can be both witness to the abuse of their mother, or targeted themselves (e.g. Blackburn, 2008; Ericksen & Henderson, 1992; Fantuzzo & Mohr, 1999; Graham-Bermann et al., 2010; Huth-Bocks et al., 2001; Lehmann, 1997; Osofsky, 1999; Zerk et al., 2009). It may be believed that a father's violence and abuse no longer affects children after

their parents separate; however, children may remain fearful of their fathers for some time (Harne, 2011). Child contact, particularly handovers that are not conducted at Child Contact Centres, are often the site of ongoing violence and abuse, and occasionally lethal harm (Aris, Harrison, & Humphreys, 2002; Harne, 2011).

### **7.1.2. Contact with non-resident fathers**

Historically, fathers have been portrayed as both a dominant parent and as peripheral to family life (Silverstein, 1993). Prior to the 19<sup>th</sup> century, the father had total legal and economic control over children and was automatically awarded custody of the children of the marriage in the rare event that the marriage broke down, due to children being seen as paternal property or chattel (Bookspan, 1993-1994; C. Brown, 1981; Carpenter, 1996; Jacobs, 1996-1997). It was not until the adoption of compulsory education in the latter 19<sup>th</sup> Century, that children were awarded to the mother (C. Brown, 1981; Chessler, 2011; Gardner, 1987a; Polikoff, 1981-1982), given that they now held less economic worth for the father. The mothers were also required to shoulder the financial burden for the children (C. Brown, 1981; Polikoff, 1981-1982). Whilst the adoption of the ‘tender years presumption’ countered the notion that children were property (Polikoff, 1981-1982), it also created a lower socioeconomic state for women and children (Bookspan, 1993-1994; Chessler, 2011). In attachment theory (Bowlby, 1988), child development is represented as occurring primarily in the mother-child sphere, with fathers positioned on the periphery (Silverstein, 1993). More recently, fatherhood has been positioned as “important contributors to both normal and abnormal child outcomes” (Silverstein & Auerbach, 1999, p. 397).

From a legal and social perspective, there is ongoing debate about children’s contact with their non-resident parents amongst policymakers (Fortin et al., 2012; Morrison, 2015),

with research showing that child contact may decrease some of the negative consequences of the father being absent from the household (King & Sobolewski, 2006). Contact with the non-resident parent is seen as being of benefit to children whose parents separate during their childhood, and since the 1980s, several studies examining father absence have been carried out (e.g. East, Jackson, & O'Brien, 2006; McLanahan, 1999; McLanahan et al., 2013; Phares, 1993; Sigle-Rushton & McLanahan, 2002; Wolfe Siegman, 1966).

Paternal involvement appears to be a multidimensional issue that is influenced by several factors, including the age of the child/ren, the marital status of the parents, the employment status of the parents and both the mother's and father's support for the father's involvement post separation (Phares, 1993). Father absence was initially found to be associated with increased personality disturbances, delinquency, and impaired academic and intellectual functioning, however, further research suggested that these factors were more likely due to additional stresses in the father-absent home, rather than the absence of the father per se (Phares, 1992). The tendency to blame mothers for their children's psychological problems has been well documented in the clinical literature around children and adolescents, where mother-blaming is described as a sexist bias towards studying maternal contributions to child maladjustment whilst simultaneously ignoring paternal contributions (Phares, 1992).

Studies show that many children have little contact with their non-resident parent and those who do usually experience a decline in contact over time (Amato, 1993a; Arendell, 1994-1995; Hetherington et al., 1998). Geographic distance, the length of time since parental separation, and the re-partnering of one or both parents are all factors which can contribute to this decline in contact (Hetherington et al., 1998; King & Heard, 1999). Such contact is, however, essential for the maintenance of a relationship with the children (King & Heard, 1999). Several studies have shown that it is not the quantity of time that a father

spends with their children, rather it is the quality of that time and the aspects of that fathering, such as his attentiveness and responsiveness to the child, that is important (e.g. Amato & Gilbreth, 1999; Furstenberg et al., 1987; Jaffee et al., 2003; Johnston et al., 1989; King & Heard, 1999; Phares, 1993). The effects of family structure, whether single parent or two parents, on the outcomes for children are mediated via the children's relationships with their parents, as well as the family environment (Jaffee et al., 2003). Jaffee et al. (2003) go on to discuss how it is important to have an understanding of an absent father's personality in order to understand how his presence affects his children's outcomes, as some men are characterised by behaviours that compromise their ability to provide reliable support, both emotionally and financially, with some engaging in antisocial behaviours. These antisocial behaviours may, in turn, compromise the children's outcomes via family problems, abuse of the wife and the children, as well as drug and alcohol issues, and criminal activity. Thus, having two parents, where one exhibits antisocial behaviour, will negatively influence children's outcomes (Jaffee et al., 2003).

Studies have shown that there is a modest correlation between the frequency of father visitation and child well-being (Hetherington et al., 1998), it is the quality of the connection between the children and their father that influences the outcomes (Amato & Gilbreth, 1999; Hetherington et al., 1998; King & Heard, 1999). If children already feel strongly connected to their fathers, increasing the frequency of the visitation does not of itself improve the children's outcomes. In fact, a poor father-child relationship appears to result in worse outcomes for the children if there is frequent contact (Hetherington et al., 1998). This is also the conclusion reached by Amato and Gilbreth (1999, p. 560) who noted that: "contact with non-resident fathers following divorce is associated with positive outcomes among children when parents have a cooperative relationship but is associated with negative outcomes when parents have a conflicted relationship."

In relation to custody, mothers are overwhelmingly the children's primary carer, both during the relationship and after parental separation (Arendell, 1994-1995; Fortin et al., 2012; Hetherington et al., 1998; Smyth & Weston, 2000). This decision is reached by 85-90% of parents with little intervention from the legal system, either in the form of mediation or court proceedings (Johnston et al., 2005). For the remaining 10-15% of separating couples, mediation can be helpful as can the involvement of lawyers and the court system (Dallam & Silberg, 2006; Divorce Peers, 2009; Neely, 1984).

In Australia, the Family Law Act, particularly since the (Shared Parental Responsibility) Amendment (Commonwealth of Australia, 2006) focuses on both parents being involved in the child's life post separation, with one of the primary considerations for determining the best interests of the child being the right of the child to have a meaningful relationship with both parents; and the presumption that it is in the child's best interests for the parents to have equal shared parental responsibility for the child (s61DA, Commonwealth of Australia, 2006). This legislative change introduced the requirement that the court should consider whether spending spend equal time, or significant and substantial time with each parent wherever this is reasonably practical is in the child's best interests. The policy is predicated on the expectation that the involvement of the non-resident parent, usually the father, will be beneficial to the child. Internationally, such policies have been introduced in a number of countries, with many jurisdictions legislating for parents to share the legal and physical aspects of the care of the children, although in reality only around 10% of separating couples appear to take advantage of these equal shared care arrangements (C. M. Buchanan & Jahromi, 2008). The prevalence of equal shared care arrangements vary by country, from around three percent in the United Kingdom to 15% in Canada and 28% in Sweden, although the definitions of 'shared care' may also be subject to variation (C. M. Buchanan & Jahromi, 2008). In 2004, only a small

number of Australian children were in shared care arrangements, whilst around 30% of children rarely or never saw their non-resident parent. Of those who did see their non-resident parent, approximately 34% did not have overnight stays (Smyth, Caruana, & Ferro, 2004). More recent Australian data shows that 28% of children saw their non-resident parent less than once a year or never, with almost 16% of children seeing their non-resident parent once every three to 12 months. For those children who had weekly, fortnightly or monthly contact, more than half did not stay overnight, with 11% staying more than 110 nights per year, and 16% staying 1-35 nights per year (Australian Institute of Family Studies, 2015).

## **7.2. The current study**

In summary, the current research supports the view that contact with the non-resident parent, who is usually the father, can be beneficial for children. Legislative changes that encourage shared care appear to be predicated on this assumption. A question arises, however, as to whether the nature of this association is moderated by the nature of the previous relationship between the child and their parents. In particular, it is unclear whether ongoing contact with the non-resident parent is similarly beneficial when the parental relationship prior to separation was characterised by conflict and violence. Accordingly, given the paucity of evidence into the perceived effects of shared arrangements on children's well-being, the aim of this study was to survey the views of a sample of young people who have had contact with their non-resident parent and to examine the nature of the previous relationship.

### **7.3. Methodology**

#### **7.3.1. Participants**

The sample comprised 210 young adults, aged 18-25 years, whose parents had separated prior to their 16<sup>th</sup> birthday. Participants were recruited from the Undergraduate Psychology research pool at The University of Adelaide, where these participants were provided with course credit for completing the survey. Flyers containing the link to the survey were distributed to mental health service providers in the northern suburbs of Adelaide, and pinned on notice boards around the campus of The University of Adelaide. The link to the survey was also emailed to other university psychology departments around the country with the request for it to be distributed to their students, and shared on Facebook.

Participation in the survey was dependent upon the respondent answering ‘yes’ to three questions: “Are you aged between 18 and 25 years?”; “Did your parents separated before you turned 16 years of age?” and “Are both your parents still alive?” The last question was to screen out participants who may have been bereaved, thus not subjecting them to answering questions about a deceased parent when examining their current relationship with their parents now that they are young adults.

As shown in Table 5, the sample was predominantly female and aged 18-20 years, reflecting the primary source of participants as Undergraduate Psychology students. Their age at parental separation was generally primary school aged (5-12 years) with preschoolers (aged under 5 years) the next group. Parents were overwhelmingly married, or cohabiting/defacto partners.



Table 5

<i>Demographics</i>		N	%
Sex	Male	54	25.7
	Female	156	74.3
Age	18-20 years	150	71.4
	21-23 years	36	17.1
	23-25 years	24	11.4
Age at parental separation	Under 5 years	80	38.1
	5-12 years	92	43.8
	13-16 years	38	18.1
Parental relationship	Married	173	82.4
	Cohabiting or defacto	31	14.8
	Neither or unknown	6	2.8
Closer relationship with	Mum	108	51.4
	Dad	22	10.5
	Equally close with both parents	80	38.1
Parental conflict <b>before</b> separation	Don't know or too young to remember	82	39.0
	None	6	2.9
	Low	16	7.6
	Moderate	46	21.9
	High	60	28.6
Parental conflict <b>after</b> separation	Don't know or too young to remember	21	10.0
	None	10	4.8
	Low	67	31.9
	Moderate	54	25.7
	High	58	27.6

Participants generally had closer relationships with their mothers prior to separation or with both parents than with their fathers. The level of conflict between the parents prior to separation was either high or moderate, or the participants didn't know/were too young to remember. Post separation, parental relationships generally improved, with participants stating parental conflict was low although almost a third of participants stated that the post separation conflict was high. This is consistent with other research that details high levels of both post-separation violence and conflict (Hotton, 2001; Parkinson, Cashmore, & Single, 2011).

### **7.3.2. Materials**

The method used was a survey in SurveyMonkey that utilised question logic to direct the stream of questions, dependant on the responses provided (see Appendix B). Generally, the time to complete the survey was 15-20 minutes per person, dependant on the questions answered.

### **7.3.3. Measures**

Several measures were examined, including whether there was a primary carer, or whether the contact was shared equally between the parents; the living arrangements within the care types; the type of contact experienced by the participant; the closeness of the participants' relationship with their father pre-separation, post-separation and in adulthood; concerns and fears held by the participants' mothers with regard to the fathers, and the fathers' abilities to care for the child; the participants' experience of the contact i.e. how positive the experience was.

The participants were asked who they had lived with after their parents' had separated, with the choices being 'mum' (maternal primary care), 'dad' (paternal primary care), 'with each parent, dividing time approximately equally' (equal shared care) or 'with someone other than a parent'. Any participants who selected the final option were excluded from further participation, but none chose this option.

The types of contact experienced by the participants included 'continuous' contact i.e. contact started immediately after the parental separation and continued without breaks until the child turned 18 years old, or left home. Non-continuous forms of contact included 'sporadic' contact, where there was one, or more, breaks in the contact but the contact continues until the child reaches the age of 18 years, or leaves home; 'ceased' contact,

where the contact starts immediately after the parental separation, however it stops prior to the child's 18<sup>th</sup> birthday and does not resume; 'delayed' contact does not start for six months or more after the parental separation, however once contact starts, it continues until the child reaches 18 years of age, or leaves home; and contact which is both 'delayed and ceased' i.e. the contact does not start for six months or more after the parental separation and stops prior to the child's 18<sup>th</sup> birthday and does not resume.

The closeness of the participants' relationship with their father at three stages – pre-separation, post-separation, and in adulthood – is an important measure. The choices provided were 'very close', 'fairly close', 'a bit close', 'not very close' and 'not close at all'. The rationale for this was to examine the influence of the paternal relationship on the experience of contact and the type of contact experienced.

Participants were asked about how their parents' relationship was after the separation, with a particular focus on whether one parent was fearful of being physically hurt by the other parent. The responses were 'neither parent was afraid of the other', or 'mum was afraid of dad'. Mothers' concerns about the father and his ability to care for the child were also asked about, with concerns such as the fathers' substance abuse issues (alcohol and drug use), his mental health, whether he had been violent and/or abusive; whether the mother trusted the father ('lack of trust'); whether the mother thought the father would neglect the child e.g. not feed them properly examined. These questions were to elicit the effects of the mothers' perceptions of the father on the participants' experiences of contact, and on the type of contact the participant experienced.

The experience of contact from the participants' perspective was also examined. The participants were asked to describe the contact, choosing from the following responses:

‘very positive’, ‘fairly positive’, ‘mixed’, ‘fairly negative’ and ‘very negative’. The reason for asking about the perception of the contact was to understand how this influenced the type of contact the participant experienced, and to comprehend the influence of the paternal relationship on the experience of contact.

The measures were assigned values to allow them to be analysed in a metric form as indicated in Table 6. For example, ‘parental fear’ was assigned values of 0 and 1, where 0 was ‘neither parent was afraid of the other’ and 1 was ‘mum was afraid of dad’.

*Table 6*

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*Scoring method for measures*

(a) Was either parent afraid of being physically hurt by the other parent (parental fear)

Neither parent was afraid of the other	0
Mum was afraid of dad	1

(b) Was your mum seriously worried about how your father looked after you? (care concerns)

No	0
Yes	1

(c) Was one of your mum’s concerns that your father had been violent and/or abusive? (Care concerns – violence and abuse)

No	0
Yes	1

(d) Participants’ relationship with their father prior to parental separation (Paternal relationship pre-separation)

Not close at all	1
Not very close	2
A bit close	3
Fairly close	4
Very close	5

(e) Participants' relationship with their father after parental separation (Paternal relationship post-separation)

Not close at all	1
Not very close	2
A bit close	3
Fairly close	4
Very close	5

(f) Do you have contact with your father now you are an adult? (paternal contact as an adult)

No	0
Yes	1

(g) Participant's relationship with their father in adulthood (Paternal relationship in adulthood)

Not close at all	1
Not very close	2
A bit close	3
Fairly close	4
Very close	5

(h) Participants' experience of contact

Very positive	+2
Fairly positive	+1
Mixed	0
Fairly negative	-1
Very negative	-2

(i) Type of contact experienced by the participant

Continuous	1
All other forms (sporadic, ceased, delayed, delayed & ceased)	0

#### **7.4. Aims of the study**

The study sought to investigate several lines of enquiry. The first was whether the relationship with the father pre-separation is predictive or informative about the nature of the post-separation relationship. The second was to investigate to what extent the nature of the contact with the father and its perceived effects are related to the quality of the paternal relationship pre- and post-separation. The third was to investigate whether the presence of

antisocial behaviours in the father was related to the quality of the pre- and post-separation relationship, and ongoing contact with the father once the children reached adulthood.

Due to the small number of respondents with equal shared care and paternal primary care, the majority of analyses are performed on respondents with maternal primary care.

### **7.5. Hypotheses**

The study investigated a number of hypotheses:

1. That the 'experience of contact' would be related to the participants' relationship with their father before their parents separated, such that the better the relationship with their father, the better the experience of contact, post parental separation;
2. That the 'experience of contact' would be decreased when mothers' were fearful of the fathers or held concerns about his ability to care for the children;
3. That the 'experience of contact' would be more strongly influenced by the participants' post separation relationship with their father than the pre separation relationship;
4. That the relationship with the father post separation would be related to the participants' pre separation relationship with their father i.e. a good relationship with their father prior to the parental separation is more likely to contribute to a good relationship with their father post separation;
5. That the participants' relationship with their father prior to parental separation will have less influence than the post separation relationship on the ongoing contact with the father once the participant reached adulthood;
6. That the 'type of contact' the participants had would be related to 'parental fear' and 'care concerns'. In particular, respondents would be less likely to have continuous

contact if the mother were fearful of the father and/or held concerns about his ability to care for the child;

7. That the 'type of contact' would be related to the strength of both the pre and post separation relationships with their fathers;
8. That where there were concerns about violence and abuse in the parental relationship prior to separation, the participants' pre-separation relationship would not be as close as where there were no such concerns;
9. That where there were concerns about violence and abuse in the parental relationship prior to separation, the participants' post-separation relationship would not be as close as where there were no such concerns;
10. That where there were concerns about violence and abuse in the parental relationship prior to separation, the participants' experience of contact would decrease when compared with the experience of contact for participants whose mothers did not hold such concerns;
11. That where there were concerns about violence and abuse in the parental relationship prior to separation, the participants would be less likely to have continuous contact;
12. That where there were concerns about violence and abuse in the parental relationship prior to separation, the participant would be less likely to have an ongoing relationship with their father once the participants reached adulthood , or if they do have an ongoing relationship with him, it will be less close than for participants whose mothers held no such concerns

## **7.6. Results**

### **7.6.1. Post-separation living arrangements**

Participants were asked who they had primarily lived with after their parents had separated, with the choices being ‘mum’, ‘dad’, ‘with each parent, dividing time approximately equally’ or ‘with someone other than a parent’. Any participants who selected the final option were excluded from further participation, but none chose this option.

Overall, more than three quarters of participants (n=160, 80.0%) reported that their mother was their primary carer, with 11.9% (n=25) indicating that they had lived in an equal shared care arrangement, and 8.1% (n=17) of participants selecting their father as their primary carer. Shared care in this study was defined as “spending time with each parent, dividing time more or less equally”. Respondents whose parents separated in 2006 or later (n=54) still reported a preference for maternal primary care (n=37, 68.5%), with only 18.5% (n=10) of respondents reporting an equal shared care arrangement, despite the changes in the Family Law legislation enacted in 2006.

As shown in Table 7, for those participants who reported maternal primary care, the predominant living arrangement was ‘lived with mum’, regardless of when the parental separation occurred. Other arrangements included ‘lived with their mum, a period of equal shared care, before returning to mum’; ‘lived with mum, swapped to dad for a period of time, before swapping back to mum’. For those who reported their father as their primary carer, the dominant arrangement was ‘lived with dad’. As with maternal primary care, other arrangements included ‘lived with dad before swapping to an equal shared care arrangement then back to dad’ which was the predominant arrangement for those whose parents separated in 2006 or later; ‘living with their father, swapping to their mother for a period of time, before returning to their father’, and ‘living with dad and then living with



mum'. For those respondents who described their living arrangements as equal shared care, more than half had a continuous shared care arrangement throughout their childhood, with one third of those whose parents separated in 2006 or later having this arrangement.

Table 7

*Residence – overall and for those whose parents separated 2006 or later (all respondents, n = 210)*

		Overall		2006+	
		N	%	N	%
Primary carer	Mum	168	80.0	37	68.5
	Dad	17	8.1	7	13.0
	Equal shared care	25	11.9	10	18.5
Living arrangement	Lived with mum	118	70.2	28	75.7
	Lived with mum, then lived with dad, then with mum again	22	13.1	4	10.8
	Lived with mum, then equal shared care, then with mum again	21	12.5	4	10.8
	Lived with mum, then lived with dad	6	3.6	1	2.7
	Lived with mum before a period of equal shared care, then lived with dad	1	0.6	0	0.0
	Lived with dad	11	64.7	2	28.6
	Lived with dad, then lived with mum, then lived with dad again	2	11.8	1	14.3
	Lived with dad, then a period of equal shared care, then lived with dad again	3	17.6	3	42.9
	Lived with dad, then lived with mum	1	5.9	1	0.0
	Continuous equal shared care throughout childhood	14	56.0	3	30.0
	Shared care then primary care where dad was the primary carer	2	8.0	2	20.0
	Shared care then primary care where mum was the primary carer	1	4.0	1	10.0
	Primary care with mum then equal shared care	3	12.0	2	20.0
	Other	5	20.0	2	20.0

The study shows that the majority of respondents remained in the same residence arrangements until they turned 18 years of age. For respondents who lived with their mothers, overall, 70% of them remained in maternal primary care, and almost 76% of those whose parents separated in 2006 or later did the same. As shown in Table 7, 69% of respondents had the same primary carer throughout their childhood, regardless of whether the primary carer was mum or dad. Almost one quarter of respondents had primary care, with either some time in shared residence or primary care with the other parent, before

returning to the initial primary carer again. The remaining almost ten percent had other arrangements, including a swap of primary carers, or changing from shared residence to primary care.

### 7.6.2. Satisfaction with residence arrangements

Overwhelmingly, the respondents were satisfied with the living arrangements they had experienced, with only 18.6% indicating they would have preferred a different arrangement (Table 8).

Table 8

*Satisfaction with living arrangements overall (all respondents, n =210)*

		N	%
Wish for a different living arrangement	No	171	81.4
	Yes	39	18.6
For those who said yes, they would rather have	Lived with mum full time	1	2.6
	Lived with dad full time	6	15.4
	Spent equal time with both parents	29	74.4
	Other	3	7.7

Examining differences by sex of the respondent, it can be seen that males were more dissatisfied with the arrangements than were females (Table 9). Both sexes exhibited a preference for equal shared care as their arrangement of choice, with no significant association between gender and the preference for certain arrangements (22.2% vs. 17.3%),  $\chi^2(1) < 1$ .

Table 9

*Satisfaction with living arrangements by sex of respondent (all respondents, n = 210)*

		Male		Female	
		N	%	N	%
Wish for a different living arrangement	No	41	77.8	130	82.7
	Yes	12	22.2	27	17.3
For those who said yes, they would rather have	Lived with mum full time	0	0.0	1	3.8
	Lived with dad full time	1	16.7	4	15.4
	Spent equal time with both parents	9	75.0	20	76.9
	Other	1	8.3	2	3.8

### 7.6.3. Patterns of contact

Almost all of the respondents indicated that they had had some contact with their non-resident parent, with 91.6% (n = 168) of maternal primary care respondents saying they had face to face contact with their father, and 94.1% (n = 17) of respondents of paternal primary care reporting face to face contact with their mother (Table 10). The predominant type of contact was continuous (n = 61, 35.9%), i.e., there were no breaks in the contact from the time of the parental separation until the participant turned 18 years of age, or left home. Other forms of contact included: sporadic contact (where there were one or more breaks in the contact) (n=48, 28.2%); ceased contact (there was contact for a period of time, starting from the time of separation, but it stopped prior to the participant turning 18 years old, or leaving home) (n = 29, 17.1%); delayed contact (there was no contact between the respondent and the non-resident parent for six months or more and contact continued until the respondent turned 18 years old or left home) (n = 17, 10%); or, both delayed and ceased contact (there was no contact for six months or more, then contact started and then stopped prior to the respondent's 18<sup>th</sup> birthday, or they left home) (n = 15, 8.8%).

Table 10

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*Face to face contact and the type of contact (primary care respondents only, n = 185)*

		N	%
Maternal primary care	Yes	154	91.6
Did the participant have face to face contact with dad	No	14	8.3
Paternal primary care	Yes	16	94.1
Did the participant have face to face contact with mum	No	1	5.8
Type of contact (those who had contact, n = 170)	Continuous	61	35.9
	Sporadic	48	28.2
	Ceased	29	17.1
	Delayed	17	10.0
	Delayed and ceased	15	8.8

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As shown in Table 11, of the participants with maternal primary care, male respondents were no less likely than female respondents to have contact with their fathers post-separation (87.5% vs 93.0%). There was also no significant association between gender and contact with mothers, although the male respondents in paternal primary care reported a slightly higher prevalence of maternal contact (100% vs 90.9%). There was a substantial difference in the pattern of contact between male and female respondents, with male respondents more likely to have continuous contact than female respondents (53.7% vs 30.2%, Table 3.5),  $\chi^2 (df = 1, N = 170) = 7.42, p = .006$ ; female respondents, however, are more likely to have experienced sporadic, ceased or delayed contact than males (65.1% vs 36.5%, Table 3.5),  $\chi^2 (df = 1, N = 170) = 7.65, p = .006$ .

Table 11

*Face to face contact and the type of contact by sex of respondent (respondents with primary care only, n = 185)*

		Male		Female	
		N	%	N	%
Maternal primary care	Yes	35	87.5	119	93.0
Did the participant have face to face contact with dad	No	5	12.5	9	7.0
Paternal primary care	Yes	6	100.0	10	90.9
Did the participant have face to face contact with mum	No	0	0.0	1	9.1
Type of contact	Continuous	22	53.7	39	30.2
(those who had contact, n = 170)	Sporadic	6	14.6	41	31.8
	Ceased	6	12.2	24	19.4
	Delayed	3	7.3	14	10.9
	Delayed and ceased	4	12.2	11	7.8

### 7.6.3.1. Sporadic contact

This is the pattern of contact where there is one, or more, breaks in the contact, but where the contact continues. The breaks may be a few weeks, a few months, and sometimes years. This was experienced by almost one third of participants (27.6%, Table 3.4) who were more likely to be female (31.8% vs. 14.6%, Table 3.5).

### 7.6.3.2. Ceased contact

Ceased contact is the pattern of contact where contact occurred between the child and the non-resident parent soon after parental separation, however, after a period of time, the contact stopped. As shown in Table 3.4, almost 20% of respondents experienced this type of contact (Female = 19.4% vs Male = 12.2%, Table 3.5).

### 7.6.3.3. Delayed contact

Delayed contact is defined as contact that did not start until 6 months or more after parental separation, and then continued throughout the respondents' childhood. Only 10% of respondents experienced this form of contact (Table 3.4), and again it was slightly,

although not significantly, more prevalent for female respondents (10.9% vs 7.3%, Table 3.5).

#### **7.6.3.4. Delayed and ceased contact**

This is the pattern of contact where initially contact did not start until 6 months or more after parental separation, and then after a period of time, the contact ceased. This was a rare pattern of contact for the participants, with less than 9% of respondents selecting this option (Table 3.4) and it was slightly, although not significantly, more prevalent for males than females (12.2% vs 7.8%, Table 3.5).

#### **7.6.3.5. Continuous contact**

This is the pattern of contact where there was no delay in the contact starting and no breaks during the respondents' childhoods, up until they turned 18. This was the most common form of contact for those who had primary care (35.9%, Table 3.4), either with their mothers or their fathers as primary carer. This form of contact was more commonly reported by male participants than female participants (53.7% vs 30.2%, Table 3.5),  $\chi^2 (df = 1, N = 170) = 7.42, p = .006$ .

#### **7.6.3.6. Equal shared care**

This is the pattern of post-separation contact where the participant spent an approximately equal amount of time with each parent, and was experienced by almost 12% of participants (Table 3.1). Continuous equal shared care was the primary pattern for 56% of participants, with a further 12% experiencing equal shared care before changing to primary care (8% dad, 4% mum, Table 3.1). It was slightly more commonly, but not significantly, reported by male than female participants (14.8% male, 10.9% female).

#### **7.6.4. Factors affecting the patterns of contact**

Due to the low number of participants with paternal primary care (n = 17) and equal shared care (n = 25), the following analyses were only conducted on those participants with maternal primary care (n = 168). A further 14 of these participants did not have face to face contact with their father during their childhood and so are also excluded from the analyses.

There are a number of factors that was related to the type of contact and the experience of contact, including the relationship the respondent had with their father both prior to and after the parental separation; whether mothers were fearful of the father, or had concerns about the fathers' abilities to care for the child. It should be noted that these responses are the perceptions of the respondents and there were numerous responses where the participant had selected the choice "neither parent was afraid of the other" and "yes" to the question, "did the arguments ever become violent". It could be suggested that there was fear present for one, or both parents, but this was not the perception of the respondent. Participants were asked about the closeness of the relationship with each parent before and after separation, and whether they have contact with their parents now that they are adults, and the closeness of that relationship, if it exists.

In examining the factors that contribute to the patterns of contact, and the experience of contact, the data reveals that these factors interact according to the type of contact that the participant experienced. For example, where the type of contact was continuous, it was more likely that the participants' relationship with their father was 'very close' or 'fairly close' prior to the parental separation (Table 3.7), few mothers had concerns about the fathers' abilities to care for the child, and most mothers held no fear of the fathers (table 3.6). Where the contact type was 'ceased' i.e. contact started soon after the parental

separation, and stopped after a period of time, the participants' relationship with their fathers was described as 'a bit close' or 'not close at all' and 'fairly close' (table 3.7); a little over half of mothers were afraid of the fathers, and almost two thirds of mothers held concerns about the fathers' abilities to care for the child, including that he had been violent and abusive (table 12).

Table 12

'Parental fear', 'care concerns' and 'care concerns – violence and abuse' by 'contact type'

		Continuous		Sporadic		Ceased		Delayed		Delayed & ceased	
		N	%	N	%	N	%	N	%	n	%
Parental fear	No	50	89.3	32	72.7	12	55.6	9	64.3	9	69.2
	Yes	6	10.7	12	27.3	15	44.4	5	35.7	4	30.8
Care concerns – general	No	47	83.9	26	59.1	10	63.0	8	57.1	7	53.8
	Yes	9	16.1	18	40.9	17	37.0	6	42.8	6	46.2
Care concerns – violence & abuse	No	53	94.6	38	86.4	18	66.7	12	85.7	11	84.6
	yes	3	5.4	6	13.6	9	33.3	2	14.3	2	15.4

Where there was no parental fear, the participants were more likely to experience continuous contact, with only 6 participants who experience continuous contact saying their mothers were fearful, compared with 35 participants who experienced non-continuous contact (14.6%), a result that is statistically significant,  $\chi^2 (df = 1, N = 154) = 11.40, p < .001$ ; however, where the mother was fearful of the father, the contact was more likely to be stopped (ceased contact), with 15 participants experiencing ceased contact compared with 26 participants with other forms of contact (36.6%),  $\chi^2 (df = 1, N = 154) = 14.03, p < .001$ . The pattern was also seen for 'care concerns' and 'care concerns – violence and



abuse'. The presence of 'care concerns' which included substance abuse (drug and/or alcohol); a lack of trust between the parents; concerns around the father neglecting the child e.g. not feeding them properly; as well as the fathers' mental health and the presence of violence and abuse, meant that contact was more likely to be stopped (ceased contact),  $\chi^2 (df = 1, N = 154) = 17.47, p < .001$ , with 18 participants (31.0%) who experienced ceased contact expressing that their mothers held concerns compared with 40 participants for all other forms of contact. When 'care concerns - violence and abuse' is examined, the presence of this concern sees contact more likely to be ceased,  $\chi^2 (df = 1, N = 154) = 9.70, p = .002$ , with 9 participants with ceased contact compared with 13 participants (40.9%) for all other forms of contact. It is clear that there are other contributors to the stopping of contact over and above the father's violent and abusive behaviour. Where there were no concerns about the fathers' ability to care for the child, the contact is more likely to be continuous,  $\chi^2 (df = 1, N = ) = 17.47, p < .001$ , with only 9 participants (15.5%) with continuous contact stating that their mother had held concerns about their fathers' ability to care for them with the same pattern seen for 'care concerns – violence and abuse',  $\chi^2 (df = 1, N = 154) = 5.73, p = .017$ , with 3 participants (13.6%) saying their father had been violent and/or abusive.

Another variable that was related to the type of contact for the participants was their experience of spending time with their non-resident father. For the majority of respondents, their experiences of contact were 'mixed' (35.7%) or 'fairly positive' (25.3%), but the same number of participants selected 'very positive' and 'very negative' as their responses (data not shown).

As shown in Table 13, the respondents' relationship with their father shifted once their parents separated. For those participants with continuous contact, there was a shift in

the relationship such that prior to the separation, 33.9% of respondents described their relationship with their father as 'very close', but this decreased to just 16.1% post-separation, with increases in the categories 'a bit close' (from 28.6% to 33.9%), 'not very close' (from 10.7% to 21.4%) and 'not close at all' (from 0 to 1.8%). Non-continuous forms of contact showed similar decreases in the closeness of the respondents' relationship with their fathers (Table 13).

In order to analyse the inferred relationship with their father and the experience of contact, it was necessary to group the experiences into 'positive' (very positive + fairly positive), 'mixed', and 'negative' (very negative + fairly negative). The closer the relationship between the participant and their father prior to the parental separation, the better the experience of contact,  $\chi^2 (df = 8, N = 154) = 46.10, p < .001$ . The strength of the association between the post-separation relationship and the experience of contact was even stronger than for the pre-separation relationship,  $\chi^2 (df = 8, N = 154) = 63.80, p < .001$ , and in the same direction.

Table 13

*Paternal relationship pre- and post-separation, and experience of contact by contact type*

		Continuous		Sporadic		Ceased		Delayed		Delayed & ceased	
		N	%	N	%	N	%	N	%	N	%
Paternal relationship pre-separation	Very close	19	33.9	10	22.7	3	11.1	1	7.1	2	15.4
	Fairly close	15	26.8	8	18.2	6	22.2	9	64.3	3	23.1
	A bit close	16	28.6	13	29.5	7	25.9	3	21.4	5	38.5
	Not very close	6	10.7	12	27.3	5	18.5	0	0.0	2	15.4
	Not close at all	0	0.0	1	2.3	6	22.2	1	7.1	1	7.7
Paternal relationship post-separation	Very close	9	16.1	1	2.3	0	0.0	1	7.1	0	0.0
	Fairly close	14	25.0	6	13.6	0	0	1	7.1	1	7.7
	A bit close	19	33.9	7	15.9	3	11.1	3	21.4	2	15.4
	Not very close	12	21.4	17	38.6	6	22.2	7	50.0	0	0.0
	Not close at all	2	3.6	13	29.6	18	66.7	2	14.3	10	76.9
Experience of contact	Very positive	12	21.1	3	6.8	1	3.8	3	21.4	1	7.7
	Fairly positive	22	38.6	7	15.9	1	3.8	7	50.0	2	15.4
	Mixed	19	33.3	15	34.1	10	38.5	2	14.3	8	61.5
	Fairly negative	2	3.5	14	31.8	4	15.4	0	0.0	2	15.4
	Very negative	2	3.5	5	11.4	10	38.5	2	14.3	0	0.0

Participants were asked about whether they have an ongoing relationship with their fathers, now that the participants are young adults (aged 18 – 25 years at the time of completing the survey). Most respondents (n=110, 71.4%) have a current relationship with

their fathers; however, 28.6% of participants do not see their fathers at all (n=44), including 10.7% of those who experienced continuous contact (n=6) (Table 14). As would be predicted, of those participants whose contact stopped prior to their 18<sup>th</sup> birthday, 81.5% (ceased contact) and 64.3% (delayed and ceased contact) do not have ongoing relationships with their fathers. In examining the experience of contact on the presence of the participants' relationship with their father in adulthood, it is apparent that a positive experience of contact is related to the likelihood of the participants having an ongoing relationship with their father,  $\chi^2 (df = 2, N = 154) = 23.67, p < .001$ . A positive experience of contact is also associated with a greater likelihood of a close relationship with their father in adulthood,  $\chi^2 (df = 10, N = 154) = 57.56, p < .001$ , or a better relationship leads to more contact. The influence of the pre-separation relationship was also significantly associated with the ongoing contact with the father in adulthood,  $\chi^2 (df = 4, N = 154) = 17.36, p = .002$ . An even stronger association was observed for the self-reported quality of the post-separation relationship on the ongoing adult contact with their father,  $\chi^2 (df = 4, N = 154) = 32.45, p < .001$ .

Table 14

*Paternal relationship and closeness of that relationship by contact type*

		Continuous		Sporadic		Ceased		Delayed		Delayed & ceased	
		N	%	N	%	N	%	N	%	N	%
Contact with father as an adult	Yes	50	89.3	38	86.4	5	18.5	13	92.9	4	30.8
	No	6	10.7	6	13.6	22	81.5	1	7.1	9	64.3
Paternal relationship as an adult	Very close	12	24.0	2	5.1	0	0.0	0	0.0	1	25.0
	Fairly close	15	30.0	6	15.4	0	0.0	6	46.2	0	0.0
	A bit close	14	28.0	9	23.1	2	40.0	3	23.1	0	0.0
	Not very close	7	14.0	10	25.6	1	20.0	1	7.7	2	50.0
	Not close at all	2	4.0	12	30.8	2	40.0	3	23.1	1	25.0

The hypotheses (outlined in section 7.5.) were examined using both Pearson correlations (Table 15) as well as multiple regression analyses (Tables 16 and 17).

As indicated in Table 15, and consistent with Hypothesis 1, the closeness of the participants' relationship prior to the separation was moderately and positively correlated ( $r = .48$ ) with the experience of contact, such that the participants who had 'very close' or 'fairly close' relationships with their fathers prior to the separation reported positive experiences of contact after the separation. It was also found that the post-separation relationship reported by the participants ( $r = .64$ ) was more strongly related to the experience of contact than the pre-separation relationship ( $r = .48$ ), consistent with Hypothesis 3. There was a moderate and positive correlation ( $r = .52$ ) between the pre-separation relationship and the post-separation relationship, consistent with Hypothesis 4. The pre-separation relationship showed a weaker association ( $r = .32$ ) to the ongoing contact of the participants with their father once the participants reached adulthood than did the post-separation relationship ( $r = .43$ ), consistent with Hypothesis 5.

Hypothesis 2 was supported by the data, in that the participants 'experience of contact' was negatively correlated with 'parental fear' ( $r = -.36$ ) and with 'care concerns' ( $r = -.38$ ), and these maternal concerns appear to be related to the type of contact the participants experienced such that where mothers were fearful of fathers ( $r = -.29$ ) and/or held concerns about the fathers' parenting abilities ( $r = -.32$ ), the participants were less likely to have continuous contact, consistent with hypothesis 6. The type of contact the participants experienced was positively correlated with the pre-separation ( $r = .25$ ) and post-separation relationship ( $r = .52$ ) with their father. More specifically, consistent with Hypothesis 7, where participants had good relationships with their fathers prior to the

separation, they were more likely to have continuous contact with their father post-separation ( $r = .25$ ).

Table 15

*Correlations: Participants' relationships with their fathers, the influence of maternal concerns including violence and abuse, and the type of contact experienced*

	Care concerns	Care concerns – violence and abuse	Participants' relationship with their father pre separation	Participants' relationship with their father post separation	Participants' experience of contact	Participants' contact with their father as adults	Participants' relationship with their father as an adult	Type of contact
Parental fear	.38**	.46**	-.42**	-.30**	-.36**	-.29**	-.36**	-.29**
Care concerns		.54**	-.18*	-.24**	-.38**	-.39**	-.41**	-.32**
Care concerns – violence and abuse			-.22**	-.24**	-.32**	-.28**	-.30**	-.20*
Participants relationship with their father pre separation				.52**	.48**	.32**	.46**	.25**
Participants relationship with their father post separation					.64**	.43**	.73**	.52**
Participants experience of contact						.40**	.60**	.36**
Participants' contact with their father as adults							.78**	.30**
Participants' relationship with their father as an adult								.47**

\* $p < .05$  \*\* $p < .01$

Hypotheses 8, 9 and 10 were all supported by the data, as 'care concerns – violence and abuse' was negatively correlated with the participants' pre-separation relationship ( $r = -.22$ ) and post-separation relationship ( $r = -.24$ ) with their father, and the 'experience of contact' ( $r = -.32$ ). The type of contact the participants experienced is also negatively correlated with 'care concerns – violence and abuse' ( $r = -.20$ ) suggesting that where the

father had perpetrated violence and abuse in the parental relationship, the participants were less likely to have continuous contact, consistent with hypothesis 11. Hypothesis 12 was supported by the data, with ‘care concerns – violence and abuse’ negatively correlated with ‘Participants’ contact with their father as adults’ ( $r = -.28$ ), and with ‘Participants’ relationship with their father as an adult’ ( $r = -.20$ ).

A multiple regression analysis was used to establish the contribution of each of the four variables (participants’ relationship with their father prior to the separation; mothers’ fear of the fathers; mothers’ concerns about the fathers’ ability to care for the children; and the participants’ relationship with their fathers after the separation) to the ‘experience of contact’ to determine which of these variables might be the most important factor for a child to have a positive and beneficial experience of contact with their father post-separation.

Table 16

<i>Multiple Regression: predictors of participants’ ‘experience of contact’</i>						
	B	Beta	t-value	F	R <sup>2</sup>	ΔR <sup>2</sup>
Participants relationship with their father pre separation	.480	.484	6.804***	F (1,151) = 46.297***	.235	-
Participants relationship with their father pre separation	.394	.398	5.377***	F (3,149) = 24.189***	.328	.093
Parental fear	-.235	-.089	-1.135			
Care concerns	-.661	-.272	-3.732***			
Participants relationship with their father pre separation	.168	.170	2.345**	F (4,148) = 35.715***	.491	.164
Parental fear	-.172	-.066	-.935			
Care concerns	-.506	-.208	-3.237**			
Participants relationship with their father post separation	.450	.481	6.899***			

\* $p < .05$  \*\* $p < .01$  \*\*\* $p < .001$

The four variables together significantly predict the ‘experience of contact’ ( $F(4,148) = 35.715, p < .001, R^2 = .164$ ), as presented in Table 16. The pre-separation relationship with the father contributed the greatest amount of variance at 23.5%, closely

followed by the post-separation relationship at 16.4%, with the influence of the mother in terms of her fear of the father and her concerns about his ability to parent, only contributing 9.3% of the variance.

To identify the best predictors of the type of contact experienced by the participants (recoded so that 0 = Non-continuous, 1 = Continuous), a logistic regression was conducted. Predictor variables included: 'parental fear' i.e. whether mum was afraid of dad; 'care concerns' i.e. whether mum had any serious concerns about dad's ability to look after the child; and the participants' pre- and post-separation relationship with the father. The results showed that 82.5% of cases were correctly classified. As shown in Table 17, two variables significantly predicted continuous contact. Unexpectedly, it was found that the probability of continuous contact was 3.69 higher when mothers held concerns about the fathers' ability to care for the children than when there were no care concerns. However, consistent with predictions, it was found that, where the participants' relationship with their father post separation was more positive (a unit higher), the probability of continuous contact was 2.53 times higher. In other words, it appears that care concerns are higher when children are having more consistent contact with their fathers, but that the frequency of contact is related to the quality of the relationship with the father. This may suggest that the 'care concerns' variable is difficult to interpret: while it might be expected to have more contact in the absence of care concerns, it may be that contact frequency predicts care concerns, i.e. mothers worry more when the child is seeing the father more frequently, particularly where there have been substance abuse issues and/or domestic violence in the parental relationship.



Table 17

*Logistic Regression: predictors of the 'type of contact' (continuous vs. Non-continuous) experienced by participants*

Variable	B	SE	Wald	OR	95% confidence Interval
Constant	-4.15				
Parental fear	.54	.76	< 1	1.72	0.56 - 5.30
Care concerns	1.31	.48	7.40**	3.69	1.44 - 9.46
Participants' relationship with their father pre-separation	-.04	.21	< 1	.96	0.64 - 1.45
Participants' relationship with their father post-separation	.93	.20	21.39**	2.53	1.71 - 7.74

\*\*  $p < .01$

Table 18

*Logistic Regression Predictor variables scoring legend*

<b>Was either parent afraid of being physically hurt by the other parent? (parental fear)</b>	
Neither parent was afraid of the other	0
Mum was afraid of dad	1
<b>Was your mum seriously worried about how your father looked after you? (care concerns)</b>	
No	0
Yes	1
<b>Participants' relationship with their father prior to parental separation (Paternal relationship pre-separation)</b>	
Not close at all	1
Not very close	2
A bit close	3
Fairly close	4
Very close	5
<b>Participants' relationship with their father after parental separation (Paternal relationship post-separation)</b>	
Not close at all	1
Not very close	2
A bit close	3
Fairly close	4
Very close	5

### **7.6.5. Respondents' overall evaluation of the quality of contact**

Fortin et al. (2012) asked their participants about the amount of contact that they had had with their non-resident parent. Of those who had ever had contact, 60% said they had had enough contact, and 8% said they would rather not have had any contact. In the current study, of participants with maternal primary care, 41.8% selected 'about right' to describe the amount of contact they had experienced. A further 35.9% said the contact was 'too little'. Of concern are the just over one fifth of participants who said the amount of contact was either 'too much' (4.6%) or selected 'I would have preferred not to have had contact' (17.6%, table 19). The participants were more likely to select 'about right' in response to the question about the amount of contact they had had with their non-resident father if the contact was continuous,  $\chi^2 (df = 3, N=154) = 18.55, p < .001$ , whereas those participants with ceased contact were more likely to select 'I would have preferred not to have had contact' as their response,  $\chi^2 (df = 3, N = 154) = 27.41, p < .001$ .

Forty percent of participants experienced mixed feelings about the contact, 28.7% felt 'fairly positive', and almost one third experienced the contact as fairly (16.9%) or very (12.3%) negative (table 19). Fortin et al. (2012) found that 32% of their participants had mixed feelings about the contact they experiences, whilst 30% felt 'fairly positive'.

Table 19

*Amount of contact and feelings about contact by contact type (N=154)*

		Continuous		Sporadic		Ceased		Delayed		Delayed & ceased		Total	
		N	%	N	%	N	%	N	%	N	%	N	%
Amount of contact	Too little	17	30.4	20	45.5	6	22.2	6	42.9	6	50.0	55	35.9
	About right	34	60.7	14	31.8	7	25.9	6	42.9	3	25.0	64	41.8
	Too much	3	5.4	3	6.8	0	0.0	1	7.1	0	0.0	7	4.6
	Would have preferred no contact	2	3.6	7	15.9	14	51.9	1	7.1	3	25.0	27	17.6
Feelings about contact	Very positive	12	21.4	3	6.8	1	3.7	2	13.3	1	7.7	19	14.0
	Fairly positive	21	37.5	7	15.9	1	3.7	8	53.3	2	15.4	39	28.7
	Mixed	19	33.9	15	34.1	11	40.7	2	13.3	8	61.5	55	40.4
	Fairly negative	2	3.6	14	31.8	4	14.8	1	6.7	2	15.4	23	16.9
	Very negative	2	3.6	5	11.4	10	37.0	2	13.3	0	0.0	19	12.3

As described previously, several factors contribute to the experience of contact for the participants, and these including the age of the children when their parents separated; the continuity of the contact; the relationship the child had with the (now) non-resident parent prior to the parental separation; exposure to conflict in the parental relationship post-separation including arguments, whether the child was caught up in the arguments, and whether the arguments became violent; fear of the other parent, and concern held by the resident parent about the non-resident parents' ability to care for the children; and whether the resident parent encouraged the relationship with the non-resident parent (Fortin et al., 2012; Holt, 2016b).

When the participants' age at separation is examined, the data reveals that for children aged less than five years old at the time of the separation, the experience of

contact was ‘mixed’ (41%). For primary school aged children (5-12 years old), the experience of contact was also ‘mixed’ (34.8%). High school aged children (13-16 years old) selected ‘fairly positive’ (40.0%) to describe their experiences of contact (Table 20).

*Table 20*

*Participants’ ‘experience of contact’ by ‘age at separation’ (N=154)*

	Age at parental separation	Experience of contact N	Very positive %	Fairly positive %	Mixed %	Fairly negative %	Very negative %
All forms of contact	<5 years old	N=61	11.5	21.3	41.0	13.1	13.1
	5-12 years old	N=66	12.1	25.8	34.8	18.2	9.1
	13-16 years old	N=25	16.0	40.0	24.0	8.0	20.0

The pre-separation relationship with non-resident parent is an important factor in the experience of contact, as discussed previously. Having a close relationship with a parent creates the benefit to the child, with the evidence linking the quality of the parent-child relationship to the positive outcomes for the child, particularly in the post-separation context (Holt, 2016b). The mere presence of a father in a child’s life does not promote well-being in the child, and frequency of contact is not sufficient to enhance the child’s life, rather it is the quality of the relationship that matters most (Holt, 2016b).

In the current study, participants who described their pre-separation relationship with their father as ‘very close’ selected ‘fairly positive’ (40.5%) or ‘very positive’ (29.7%) to describe their experiences of contact. Participants who selected ‘fairly close’ to describe the relationship with their father prior to the separation tended to have a ‘mixed’ experience of contact (54.1%), whereas those who described their relationship as ‘not at all close’ selected ‘very negative’ (50%) or ‘fairly negative’ (25%) to describe their experience of contact (Table 21). The closer the pre-separation relationship between the

participant and their (now) non-resident father, the more positive the experience of contact post-separation,  $\chi^2 (df = 8, N = 154) = 46.10, p < .001$ .

Table 21

*Participants' 'experience of contact' by pre-separation relationship with the (now) non-resident father (N=154)*

		Experience of contact	Very positive	Fairly positive	Mixed	Fairly negative	Very negative
			%	%	%	%	%
Pre-separation relationship with NRP							
Continuous N=56	Very close	N=19	36.8	57.9	5.3	0.0	0.0
	Fairly close	N=16	25.0	25.0	43.8	6.3	0.0
	A bit close	N=15	6.7	46.7	40.0	6.7	0.0
	Not very close	N=5	0.0	0.0	0.0	0.0	20.0
	Not at all close	N=0	0.0	0.0	0.0	0.0	0.0
Sporadic N=44	Very close	N=10	20.0	10.0	20.0	30.0	20.0
	Fairly close	N=8	0.0	0.0	50.0	37.5	12.5
	A bit close	N=13	7.7	23.1	30.1	30.1	7.7
	Not very close	N=12	0.0	16.7	41.7	33.3	8.3
	Not at all close	N=1	0.0	100.0	0.0	0.0	0.0
Ceased N=27	Very close	N=3	0.0	0.0	66.7	0.0	33.3
	Fairly close	N=6	0.0	0.0	83.3	16.7	0.0
	A bit close	N=7	14.3	14.3	42.9	14.3	14.3
	Not very close	N=6	0.0	0.0	0.0	16.7	83.3
	Not at all close	N=4	0.0	0.0	20.0	20.0	60.0
Delayed N=13	Very close	N=3	33.3	66.7	0.0	0.0	0.0
	Fairly close	N=6	0.0	83.3	16.7	0.0	0.0
	A bit close	N=4	25.0	50.0	0.0	0.0	25.0
	Not very close	N=0	0.0	0.0	0.0	0.0	0.0
	Not at all close	N=1	0.0	0.0	0.0	0.0	100.0
Delayed & Ceased N=13	Very close	N=2	50.0	50.0	0.0	0.0	0.0
	Fairly close	N=3	0.0	0.0	100.0	0.0	0.0
	A bit close	N=5	0.0	20.0	60.0	20.0	0.0
	Not very close	N=2	0.0	0.0	0.0	100.0	0.0
	Not at all close	N=1	0.0	0.0	0.0	100.0	0.0
All forms of contact N = 154	Very close	N=31	29.7	40.5	13.5	8.1	8.1
	Fairly close	N=39	10.3	3.1	54.1	12.8	2.6
	A bit close	N=44	9.1	1.8	36.4	15.9	2.3
	Not very close	N=25	0.0	8.0	44.0	20.0	28.0
	Not at all close	N=8	0.0	12.5	12.5	25.0	50.0

Spearman's correlations for ordinal data were run to examine the relationship between the experience of contact (positive, mixed, or negative) and the closeness of the participants' relationship (very close, fairly close, a bit close, not very close, or not close at all) with their father prior to the parental separation, for each type of contact. Where the

contact was continuous, there was a significant positive relationship,  $r_s = .535$ ,  $p < .001$ ; when there was sporadic contact, there was no relationship,  $r_s = -.006$ ,  $p = .971$ ; and positive relationships were also observed for those with ceased contact,  $r_s = .500$ ,  $p = .008$ ; delayed contact,  $r_s = .453$ ,  $p = .103$  and delayed & ceased contact,  $r_s = .590$ ,  $p = .034$ .

When the intersection of the pre-separation relationship and the experience of contact is examined by the type of contact experienced, it becomes obvious that where the contact was continuous, the pre-separation relationship was more likely to be described as ‘very close’, and the contact viewed as a ‘very’ or ‘fairly’ positive experience, whereas if the relationship was describe as ‘not very close’, or ‘not close at all’, contact was more likely to be sporadic or ceased, and the experience described as ‘very negative’. Indeed, the pre-separation relationship with the (now) non-resident parent influences not only the type of contact experienced, but also the enjoyment of the experience, thus if a child has a close relationship with their father prior to the parental relationship breaking down, they are more likely to want to spend time with their father post-separation and to enjoy that time. However, if the relationship between the child and their father is strained, they are less likely to want to spend time with him, and often do not enjoy that time.

Exposure to parental conflict comes in several forms, including whether the parents had a good relationship post-separation, whether the parents argued, if the children were caught up in those arguments and if the arguments became violent. Table 22 details the intersection of the post-separation parental relationship and the experience of contact. In examining all forms of contact, where the parents ‘got on really well’ post-separation, the children were most likely to describe their experience of contact as ‘very positive’ (55.6%) whereas when the parental relationship was characterised by ‘a lot of bad feeling’,

participants described their experience of contact as ‘mixed’ (38.1%) or ‘fairly negative’ (23.8%). Where the parents had no contact or communication post-separation, the experience of contact was described as ‘mixed’ (32.3%) or ‘very negative’ (29.0%). The more positive the parental relationship is post-separation, the more likely the participant was to experience contact positively as well,  $\chi^2 (df = 10, N = 154) = 22.49, p = .013$

Of the participants with continuous contact (n=56), 32.1% of parents ‘got on okay’ or ‘there was a lot of bad feeling’ (17.9%). For the non-continuous forms of contact, the most common description of the parental relationship was ‘there was a lot of bad feeling’ – 36.4% of participants with sporadic contact, 33.3% with ceased contact and 27.1% for all contact types. For participants with ceased contact (n=27), the most common form of parental relationship was for their parents to have no contact or communication (44.4%), which is most likely to have occurred after the contact has stopped.

Table 22

*Participants' 'experience of contact' by contact type and parental relationship post-separation (N=154)*

		Experience of contact	Very positive	Fairly positive	Mixed	Fairly negative	Very negative
			%	%	%	%	%
Continuous N=56	Parental relationship post-separation						
	Got on really well	N=7	71.4	14.3	14.3	0.0	0.0
	Got on okay	N=18	27.8	50.0	22.2	0.0	0.0
	A bit of bad feeling	N=8	12.5	37.5	37.5	0.0	12.5
	A lot of bad feeling	N=10	0.0	40.0	50.0	10.0	0.0
	A very up & down relationship	N=8	0.0	37.5	50.0	12.5	0.0
	No contact or communication	N=5	20.0	40.0	20.0	0.0	20.0
Sporadic N=44	Got on really well	N=1	0.0	0.0	0.0	100.0	0.0
	Got on okay	N=9	11.1	0.0	44.4	44.4	0.0
	A bit of bad feeling	N=7	0.0	57.1	28.6	0.0	14.3
	A lot of bad feeling	N=16	6.3	6.3	31.3	50.0	6.3
	A very up & down relationship	N=4	0.0	0.0	75.0	25.0	0.0
	No contact or communication	N=7	14.3	28.6	14.3	0.0	42.9
Ceased N=27	Got on really well	N=0	0.0	0.0	0.0	0.0	0.0
	Got on okay	N=4	25.0	0.0	75.0	0.0	0.0
	A bit of bad feeling	N=1	0.0	0.0	0.0	100.0	0.0
	A lot of bad feeling	N=9	0.0	11.1	33.3	0.0	55.6
	A very up & down relationship	N=1	0.0	0.0	0.0	0.0	100.0
	No contact or communication	N=12	0.0	0.0	41.7	25.0	33.3
Delayed N=13	Got on really well	N=1	0.0	100.0	0.0	0.0	0.0
	Got on okay	N=2	0.0	100.0	0.0	0.0	0.0
	A bit of bad feeling	N=3	0.0	100.0	0.0	0.0	0.0
	A lot of bad feeling	N=2	0.0	50.0	0.0	0.0	50.0
	A very up & down relationship	N=3	33.3	33.3	33.3	0.0	0.0
	No contact or communication	N=3	33.3	0.0	33.3	0.0	33.3
Delayed & Ceased N=13	Got on really well	N=0	0.0	0.0	0.0	0.0	0.0
	Got on okay	N=3	0.0	33.3	33.3	33.3	0.0
	A bit of bad feeling	N=1	0.0	0.0	100.0	0.0	0.0
	A lot of bad feeling	N=4	0.0	0.0	75.0	25.0	0.0
	A very up & down relationship	N=1	0.0	0.0	100.0	0.0	0.0
	No contact or communication	N=4	25.0	25.0	50.0	0.0	0.0
All forms of contact	Got on really well	N=9	55.6	22.2	11.1	11.1	0.0
	Got on okay	N=36	19.4	33.3	33.3	13.9	0.0
	A bit of bad feeling	N=20	5.0	50.0	30.0	5.0	10.0
	A lot of bad feeling	N=42	2.4	19.1	38.1	23.8	16.7
	A very up & down relationship	N=17	5.9	23.5	52.9	11.8	5.9
	No contact or communication	N=31	12.9	16.1	32.3	9.7	29.0

Another measure of the post-separation parental relationship is if, and how much the parents argued. The presence of arguments between the parents, which may occur when the children move from the care of one parent to the care of the other, 'handovers', may influence how the child experiences contact with the non-resident parent. Indeed, handovers are recognised as a source of ongoing conflict and abuse (e.g. Johnston et al.,



1989; Kaye, 1996; Maccoby et al., 1993; Pearson & Thoennes, 1990), with children becoming reluctant to see the father due to his behaviour (Australian Law Reform Commission, 1995).

Table 23

*Participants' 'experience of contact' by contact type and parental arguments post-separation (N=154)*

		Experience of contact	Very positive	Fairly positive	Mixed	Fairly negative	Very negative
			%	%	%	%	%
Continuous N=56	Parental arguments post-separation						
	Argued a lot	N=14	7.1	28.6	50.0	14.3	0.0
	Argued but not much	N=17	29.4	29.4	41.2	0.0	0.0
	Didn't really argue	N=15	20.0	53.3	20.0	0.0	6.7
	Didn't argue that the participant knew about	N=3	66.7	33.3	0.0	0.0	0.0
	No contact or communication	N=5	20.0	40.0	20.0	0.0	20.0
Sporadic N=44	Argued a lot	N=15	6.7	0.0	46.7	33.3	13.3
	Argued but not much	N=12	0.0	33.3	33.3	33.3	0.0
	Didn't really argue	N=3	0.0	0.0	66.7	33.3	0.0
	Didn't argue that the participant knew about	N=7	14.3	14.3	14.3	57.1	0.0
		No contact or communication	N=7	14.3	28.6	14.3	0.0
Ceased N=27	Argued a lot	N=7	0.0	14.3	28.6	14.3	42.9
	Argued but not much	N=4	0.0	0.0	25.0	0.0	75.0
	Didn't really argue	N=1	0.0	0.0	100.0	0.0	0.0
	Didn't argue that the participant knew about	N=3	33.3	0.0	66.7	0.0	0.0
		No contact or communication	N=12	0.0	0.0	41.7	25.0
Delayed N=13	Argued a lot	N=2	0.0	50.0	0.0	0.0	50.0
	Argued but not much	N=5	0.0	80.0	20.0	0.0	0.0
	Didn't really argue	N=4	25.0	75.0	0.0	0.0	0.0
	Didn't argue that the participant knew about	N=0	0.0	0.0	0.0	0.0	0.0
		No contact or communication	N=3	33.3	0.0	33.3	0.0
Delayed & Ceased N=13	Argued a lot	N=3	0.0	0.0	100.0	0.0	0.0
	Argued but not much	N=2	0.0	0.0	50.0	50.0	0.0
	Didn't really argue	N=1	0.0	0.0	0.0	100.0	0.0
	Didn't argue that the participant knew about	N=3	0.0	33.3	66.7	0.0	0.0
		No contact or communication	N=4	25.0	25.0	50.0	0.0
All forms of contact	Argued a lot	N=31	6.5	19.4	61.3	25.8	19.4
	Argued but not much	N=40	12.5	32.5	35.0	12.5	7.5
	Didn't really argue	N=24	16.7	45.8	25.0	8.3	4.2
	Didn't argue that the participant knew about	N=16	25.0	18.8	31.3	25.0	0.0
		No contact or communication	N=31	12.9	16.1	32.3	9.7

Overall, where parents ‘argued a lot’, the experience of contact was perceived by the participants as ‘mixed’ (61.3%); where parents ‘didn’t really argue’, perceptions of the experience of contact were ‘fairly positive’ (45.8%),  $\chi^2 (df = 8, N = 154) = 13.95, p = .083$ . For continuous contact, parental arguments created an experience of contact that was ‘mixed’ for the participants (argued a lot, 50%; argued but not much, 41.2%), whereas when the parents ‘didn’t argue that the participant knew about’, the perception of contact was ‘very positive’ (66.7%). For the non-continuous forms of contact, the perceptions of contact were generally mixed or negative (Table 23).

Spearman’s correlations were run to determine the relationship between the experience of contact (positive, mixed, or negative) and the amount of arguing the participants’ parents did, post-separation (no contact or communication between the parents, argued a lot, argued but not much, didn’t really argue, didn’t argue that the participant was aware of) for each type of contact. Where the contact was continuous, there was a modest positive relationship between the two variables,  $r_s = .310, p = .020$  i.e. the experience of contact was generally positive, and the parents tended not to argue; when contact was sporadic, there was no significant relationship,  $r_s = -.126, p = .413$ ; where contact had ceased, there was a small, but non-significant positive relationship,  $r_s = .266, p = .180$ ; when contact was delayed, the relationship was positive and moderate to large,  $r_s = .564, p = .036$ , but negative when contact was delayed & ceased,  $r_s = -.289, p = .338$ . Overall, the results for these variables were mixed, making interpretation more difficult.

The parents’ relationship post-separation may be characterised by fear of the other parent, particularly in cases where domestic violence has been an issue. One parent’s fear

of the other parent may also have an impact on how the child perceives the contact with the non-resident parent.

For participants who perceived neither parent to be afraid of the other, the experience of contact was either 'mixed' (34.3%) or 'fairly positive' (30.5%) (Table 24). Where participants described their mother as afraid of their father, the experience of contact was described as either 'mixed' (39.0%) or 'very negative' (31.7%),  $\chi^2 (df = 2, N = 154) = 11.43, p = .003$ . This pattern holds true for the individual forms of contact also. Where contact was ceased, it is interesting to note that there were more participants who perceived their mother to be afraid of their father (n=15), than there were participants who selected 'neither parent was afraid of the other' (n=11).

Table 24

Participants' 'experience of contact' by fear of the other parent (N=154)

Experience of contact			Very positive %	Fairly positive %	Mixed %	Fairly negative %	Very negative %
Continuous N=56	Neither were afraid of the other	N=48	20.8	43.8	29.2	4.2	2.1
	Both were afraid of the other	N=2	50.0	0.0	50.0	0.0	0.0
	Dad was afraid of mum	N=0	0.0	0.0	0.0	0.0	0.0
	Mum was afraid of dad	N=6	16.7	16.7	50.0	0.0	16.7
Sporadic N=44	Neither were afraid of the other	N=31	9.7	16.1	35.5	32.3	6.5
	Both were afraid of the other	N=1	0.0	0.0	0.0	100.0	0.0
	Dad was afraid of mum	N=0	0.0	0.0	0.0	0.0	0.0
	Mum was afraid of dad	N=12	0.0	16.7	33.3	25.0	25.0
Ceased N=27	Neither were afraid of the other	N=11	9.1	0.0	54.5	9.1	27.3
	Both were afraid of the other	N=1	0.0	0.0	0.0	100.0	0.0
	Dad was afraid of mum	N=0	0.0	0.0	0.0	0.0	0.0
	Mum was afraid of dad	N=15	0.0	6.7	33.3	13.3	46.7
Delayed N=14	Neither were afraid of the other	N=6	16.7	66.7	16.7	0.0	0.0
	Both were afraid of the other	N=3	33.3	66.7	0.0	0.0	0.0
	Dad was afraid of mum	N=0	0.0	0.0	0.0	0.0	0.0
	Mum was afraid of dad	N=5	0.0	40.0	20.0	0.0	40.0
Delayed & Ceased N=13	Neither were afraid of the other	N=9	11.1	22.2	44.4	22.2	0.0
	Both were afraid of the other	N=0	0.0	0.0	0.0	0.0	0.0
	Dad was afraid of mum	N=1	0.0	0.0	100.0	0.0	0.0
	Mum was afraid of dad	N=3	0.0	0.0	100.0	0.0	0.0
All forms of contact	Neither were afraid of the other	N=105	15.2	30.5	34.3	14.3	5.7
	Both were afraid of the other	N=7	28.5	28.5	14.3	28.5	0.0
	Dad was afraid of mum	N=1	0.0	0.0	100.0	0.0	0.0
	Mum was afraid of dad	N=41	2.4	14.6	39.0	12.2	31.7

The resident mothers may have held concerns about the non-resident fathers' ability to care for the children, especially if there were issues with substance abuse or domestic violence.

As shown in Table 25, where participants described their contact as continuous, their experience of contact was 'fairly positive' (46.8%) if their resident parents had no concerns about their non-resident parents' ability to care for them, however where the mothers held concerns about the fathers, the experience of contact was described as 'mixed' (66.7%),  $\chi^2$

( $df = 2, N = 154$ ) = 20.20,  $p < .001$ ;  $r_s = -.410$ ,  $p = .002$ . For non-continuous forms of contact, the experiences were ‘mixed’ or ‘fairly negative’ for sporadic contact, regardless of concerns held by the resident parent,  $r_s = -.002$ ,  $p = .990$ . Where there were concerns, the percentage of participants selecting ‘very negative’ is higher than when there were no concerns (16.7% vs. 7.7%). Ceased contact participants whose mothers held no concerns about the fathers’ parenting described their contact experience as ‘mixed’ (70%) whereas those participants whose mothers had concerns were more likely to describe the contact as ‘very negative’ (58.8%)  $r_s = -.543$ ,  $p = .003$ .

Table 25

*Participants’ ‘experience of contact’ by resident mothers’ concerns about the non-resident fathers’ parenting (N=154)*

	Concerns about NRP’s parenting	Experience of contact	Very positive	Fairly positive	Mixed	Fairly negative	Very negative
			%	%	%	%	%
Continuous N=56	No	N=47	23.4	46.8	25.5	2.1	2.1
	Yes	N=9	11.1	0.0	66.7	11.1	11.1
Sporadic N=44	No	N=26	7.7	15.4	34.6	34.6	7.7
	Yes	N=18	5.6	16.7	33.3	27.8	16.7
Ceased N=27	No	N=10	10.0	10.0	70.0	0.0	10.0
	Yes	N=17	0.0	0.0	23.5	17.6	58.8
Delayed N=14	No	N=8	25.0	62.5	0.0	0.0	12.5
	Yes	N=6	0.0	50.0	33.3	0.0	16.7
Delayed & Ceased N=13	No	N=7	14.3	28.6	42.9	14.3	0.0
	Yes	N=6	0.0	0.0	83.3	16.7	0.0
All forms of contact	No	N=98	17.4	34.7	31.6	11.2	5.1
	Yes	N=56	3.6	10.7	41.1	17.9	26.8

The final criterion that may influence the experience of contact is the resident parents’ encouragement of the relationship with the non-resident parent. Of the 154 participants with maternal primary care, only five described their mothers as ‘actively opposing the relationship’ with their fathers. Even where participants described their mothers as having concerns about their father’s ability to care for them, or that he had been

violent and/or abusive, most mothers still encouraged the child's relationship with their non-resident father.

For all forms of contact together, the experience of contact was 'mixed' regardless of whether the resident mother encouraged the relationship with the non-resident father (Table 26). For continuous contact, the experience was 'fairly positive' where there was encouragement for the relationship, which occurred for around 90% of participants. Where contact was sporadic, 38.9% of participants selected 'fairly negative' to describe their experience of contact even though they described their mothers as encouraging the relationship 'a lot'. For these participants, around 80% of mothers encouraged the relationship with their fathers. It is notable that 77% of mothers encouraged their child's relationship with their father 'a lot' or 'a bit', in keeping with literature showing that mothers believe that their children should have a relationship with their fathers, as long as the child is safe during the contact (e.g. McInnes, 2006).

Table 26

*Participants' 'experience of contact' by resident mothers' encouragement of the relationship with the non-resident father (N=154)*

		Experience of contact	Very positive	Fairly positive	Mixed	Fairly negative	Very negative
			%	%	%	%	%
Continuous N=56	Encouragement of the relationship with the NRP						
	Encouraged it a lot	N=29	24.1	41.4	31.0	3.5	0.0
	Encouraged it a bit	N=23	21.7	34.8	30.4	4.4	8.7
	Didn't really encourage it	N=3	33.3	33.3	33.3	0.0	0.0
	Actively opposed it	N=2	0.0	50.0	50.0	0.0	0.0
Sporadic N=44	Encouraged it a lot	N=18	11.1	11.1	27.8	38.9	11.1
	Encouraged it a bit	N=17	0.0	17.7	41.8	23.5	17.7
	Didn't really encourage it	N=7	0.0	28.6	42.9	28.6	0.0
	Actively opposed it	N=2	50.0	0.0	0.0	50.0	0.0
Ceased N=27	Encouraged it a lot	N=5	0.0	0.0	40.0	20.0	40.0
	Encouraged it a bit	N=12	8.3	8.3	50.0	0.0	33.3
	Didn't really encourage it	N=9	0.0	0.0	22.2	33.3	44.4
	Actively opposed it	N=1	0.0	0.0	100.0	0.0	0.0
Delayed N=14	Encouraged it a lot	N=3	0.0	33.3	33.3	0.0	33.3
	Encouraged it a bit	N=6	33.3	66.7	0.0	0.0	0.0
	Didn't really encourage it	N=6	0.0	50.0	33.3	0.0	16.7
	Actively opposed it	N=0	0.0	0.0	0.0	0.0	0.0
Delayed & Ceased N=13	Encouraged it a lot	N=1	0.0	0.0	0.0	0.0	100.0
	Encouraged it a bit	N=6	0.0	33.3	67.7	0.0	0.0
	Didn't really encourage it	N=6	16.7	0.0	66.7	16.7	0.0
	Actively opposed it	N=0	0.0	0.0	0.0	0.0	0.0
All forms of contact N = 154	Encouraged it a lot	N=56	16.1	26.8	30.4	16.1	10.7
	Encouraged it a bit	N=64	12.5	28.1	37.5	7.8	14.1
	Didn't really encourage it	N=31	6.5	19.4	38.7	19.4	16.1
	Actively opposed it	N=5	20.0	20.0	40.0	20.0	0.0

Participants were asked several questions that were to be rated as 'very true', 'fairly true', 'not very true', and 'not true at all'. Questions examined both positive aspects of contact such as "I enjoyed being with my dad" and "I felt equally at home in both houses", as well as negative aspects (in italics in Table 27) such as "my mum (dad) used to say bad things to be about my dad (mum)" and "I was afraid of dad".

In considering the first three statements shown in Table 27, which correlate to positive experiences of contact, it can be seen that 63.7% of participants enjoyed spending time with their fathers. In addition, 57.2% of participants said that their father had made time for them, however, 67.9% of participants said that they had not felt equally at home in both houses, which may be related to the type of contact experienced, and whether their father had a new partner. Different ways of doing things in the two houses were an issue for just under half the participants (46.1%) but not for the remaining 53.9%. The majority of participants (55.9%) said they did not miss out on doing things at one house or with friends due to being at the other house, however just under half (44.1%) said they did. Most participants (70.8%) felt that the arrangements were flexible enough for them, however almost one third said that the arrangements were not, which may be related to the presence of court orders, which often specify the pattern of contact visits.

Participants were asked about their parents, which included statements such as “My mum/dad said bad things to me about my dad/mum” and “I had to act as a go-between or keep secrets between my parents”. Generally, most separated parents are not saying bad things to the children about the other parent, and mothers are less likely to be saying bad things than fathers (55.9% vs. 47.4% respectively, N=154). The number of participants who reported both parents saying bad things about the other was 50 (32.5%, N=154), participants reporting only the mother saying bad things about their father was 18 (11.7%, N=154) and only the father saying bad things about their mother was 30 (19.5%, N=154). Interestingly, when the type of contact is considered, participants with sporadic contact (N=44) were more likely to report that both parents (N=17) or just their father (n=15) said bad things about the other parent. These participants also described their mothers as having serious concerns about their fathers looking after them (N=16) of which 8 were described



as perpetrators of violence and abuse towards the mother. Similar patterns were seen for participants who experienced ceased contact (N=27), where both parents (N=8) or fathers (N=5) said bad things about the other parent. Again, mothers were described as having serious concerns about the fathers' parenting by 12 participants, with 9 fathers described as perpetrators of violence and abuse towards the mother.

Just over half of the participants (53.3%) selected 'very true' or 'fairly true' in answer to the statement "I had to act as a go-between or keep secrets between my parents", and a similar number (55.3%) said they didn't like travelling between the two houses. Around one third of participants (34.4%) felt that they could not rely on seeing their father when he said he would see them, and almost one quarter of participants were afraid of their father (24.2%) with 18.8% saying they felt unsafe when they were with him (table 27).

Table 27

*Participants' feelings about contact with their non-resident father (N=154)*

	Very true %	Fairly true %	Not very true %	Not true at all %	Not applicable %
I enjoyed being with dad	29.9	33.8	24.0	12.3	-
Dad made time for me	26.0	31.2	21.4	21.4	-
I felt equally at home in both houses	12.4	19.6	24.8	43.1	-
<i>I found it difficult having two ways of doing things in the two houses</i>	14.9	31.2	27.9	26.0	-
<i>I missed out on doing things at one house or with my friends because I was at the other house</i>	20.1	24.0	24.7	31.2	-
<i>The arrangements weren't flexible enough for me</i>	10.4	18.8	39.0	31.8	-
<i>My mum used to say bad things to me about my dad</i>	24.7	19.5	27.3	28.6	-
<i>My dad used to say bad things to me about my mum</i>	31.8	20.8	23.4	24.0	-
<i>I had to act as a go between or keep secrets between my parents</i>	26.0	27.3	18.8	27.9	-
<i>I didn't like travelling between the two houses</i>	23.7	31.6	22.4	22.4	-
<i>I couldn't rely on dad seeing me when he said he would</i>	16.2	18.2	25.3	40.3	-
<i>I was afraid of dad</i>	8.5	15.7	14.4	61.4	-
<i>I didn't feel safe with dad</i>	7.1	11.7	16.2	64.9	-
I got on well with my dad's new partner	12.7	20.5	16.3	25.3	25.3
I got on well with my mum's new partner	21.4	21.4	13.0	7.8	36.4
I enjoyed seeing the children at dad's house	11.0	15.6	8.4	9.1	55.8

Participants were asked about whether they had a good relationship with their parents' new partners, and if they had enjoyed seeing other children at their fathers' house. These children could be step-siblings if their father partnered with a woman who had children, or it may be that the father and his new partner had children together, or a combination of these. It appears that fathers were more likely to re-partner than mothers, as indicated by the 'not applicable' response to the statements about new partners with 25.3%

of participants selecting this in response to the statement about dad's new partner, and 36.4% saying it was 'not applicable' to their mothers. Generally, participants did not get on well with their fathers' new partners; however they were more likely to get on well with their mothers' new partners (33.2% vs. 42.8%). This could be due to spending more time with their mothers' partners, given that the participants lived with their mothers and had contact with their fathers. Interestingly, just over half of the participants selected 'not applicable' when answering the question about seeing children at their fathers' house, and of those who did see children at their fathers' house, 60% of them enjoyed the interactions.

The participants (N=210) were asked whether their parents had utilised formal interventions, i.e. mediation and the courts to assist with decision making. Almost half of the participants (N=101, 48.1%) stated that their parents had sought these forms of assistance. Of those participants with maternal primary care (N=168), 87 (51.8%) said their parents had used mediation and/or court to reach agreement. A little over half (N=10, 58.8%) of paternal primary care participants (N=17) also said their parents made use of these interventions. Perhaps as expected, due to the nature of cooperation required, only 4 (16%) of participants who said they had experienced equal shared care (N=25) said there had been formal interventions to reach agreement. For participants whose parents separated in 2006 or later, after the introduction of the Shared Parental Responsibility Amendment to the Family Law Act, the preference was still for maternal primary care (N=37) with 14 (37.8%) of these participants saying their parents had reached agreement through formal means. For paternal primary care participants whose parents separated in 2006 or later (N=7), almost three quarters (71.4%, N=5) said their parents had mediated and/or gone to court. Once again, for those participants who experienced equal shared care and whose parents separated in 2006 or later (N=10), only 20% (N=2) said their parents required formal interventions. For maternal primary care participants, the greatest use of mediation

and/or the court occurred when the parents separated 1996-2000 and 2001-2005. It should be noted that, during this period, particularly 2001-2005, the family law review was being undertaken and there would perhaps have been an awareness of the amendment that was introduced in 2006.

#### **7.6.6. Discussion**

The current study sought to examine the experiences of contact of young Australian adults, aged 18-25 years whose parents separated prior to their 16<sup>th</sup> birthday. The sample was predominantly female and aged 18-20 years, reflecting the primary source of participants as Undergraduate Psychology students. The age at parental separation was generally primary school aged (5-12 years), with preschoolers (aged less than 5 years) the next most prevalent group. Parents were overwhelmingly married, or cohabiting/defacto partners, and participants generally had closer relationships with their mothers prior to separation, or with both parents, than with their fathers.

The research to date in various aspects has examined the effects of parental separation and divorce on the children of the relationship (e.g. Amato, 1993a; DeBell, 2008; Hess & Camara, 1979; Hetherington et al., 1998; McIntosh et al., 2009); the impacts of domestic violence on the children exposed to it (e.g. Blackburn, 2008; Ericksen & Henderson, 1992; Fantuzzo & Mohr, 1999; Graham-Bermann et al., 2010; Huth-Bocks et al., 2001; Lehmann, 1997; Osofsky, 1999; Zerk et al., 2009); and the effects of the father being absent from the home post-separation (e.g. East et al., 2006; King & Sobolewski, 2006; McLanahan, 1999; McLanahan et al., 2013; Phares, 1993; Sigle-Rushton & McLanahan, 2002; Wolfe Siegman, 1966). In general, all these factors correlate with poorer outcomes for the children, although this is thought to be reduced by the ongoing

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presence of the father in the children's lives via contact arrangements in which the children and their now non-resident father spend time together (e.g. Amato & Gilbreth, 1999; Jaffee et al., 2003).

The literature also shows that, in the majority of families where the parents separate, the mother is the primary carer which often reflects the status quo of the distribution of carer responsibilities during marriage (e.g. Arendell, 1994-1995; Fortin et al., 2012; Hetherington et al., 1998; Smyth & Weston, 2000). Inequality in care arrangements was the most common situation for 80% of the participants in the current study, with only 11.9% of participants experiencing an equal shared care arrangement, where equal shared care in this study was defined as 'dividing time more or less equally'. In examining the effect of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Commonwealth of Australia, 2006), which promotes parents equally sharing decision making, and where practical and in the best interests of the child, sharing time with the child equally, or close to, the current study found that maternal primary care was still the most usual pattern of care post-separation, as experienced by 68.5% of participants whose parents separated in 2006 or later. There was a shift towards equal shared care, from 11.9% for the overall sample, to 18.5% for those participants whose parents separated post-2005. Interestingly, for those participants whose parents separated in 2006 or later, there was also a shift towards paternal primary care (8.1% in the overall sample, 13.0% in the 2006+ group). This shift from primary care towards equal shared care is similar to that found by Fortin et al. (2012), where maternal primary care was less common for those participants whose parents had separated after the Children Act 1989 was implemented. For participants whose parents utilised formal means of reaching agreement about contact i.e. mediation and/or the family court, almost half of participants (48.1%) said their parents had used these methods. Interestingly, parents separated in 2006 or later (N=54) were less

likely to utilise these formal processes, with only 38.9% (N=21) of participants stating their parents had used mediation and/or court to reach agreement.

The current study investigated several hypotheses, all of which were supported by the data. It was shown that the 'experience of contact' is positively correlated with the participants' relationship with their father prior to the parental separation. In this study, it was also shown that the relationship the children had with their fathers prior to their parents separating was related to the relationship with their fathers after the separation, and that the strength of both the pre- and post-separation relationships contributed to the positive experience of contact for the participant. This confirms previous studies (e.g. Amato & Gilbreth, 1999; Hetherington et al., 1998; King & Heard, 1999; Smyth, 2009) which state that it is the quality of the connection between the children and their father that influences the outcomes, with a poor father-child relationship worsening children's outcomes if there is frequent contact.

It has sometimes been suggested by Father's Rights groups that mothers 'coach' or 'brainwash' children, and that this results in the children being 'alienated' from the father (Bruch, 2001-2002; Johnston, 2004-2005; Kaye & Tolmie, 1998b). However, as the evidence from the current study shows, the mothers' fear of the fathers, and/or her concerns about his ability to care for the children did not seem to affect the children's experience of contact. Instead, it is the closeness of the relationship with the father prior to the parental separation that has the greatest contribution to how the post separation contact is experienced.

Where mothers were fearful of the children's fathers, they were more likely to hold concerns about the fathers' ability to parent the children effectively. These maternal

concerns were shown to affect the 'type of contact' the participants experienced, with those participants whose mothers were fearful and/or concerned about the fathers' parenting ability less likely to have had continuous contact throughout their childhood. However, the data shows that again, it is the quality of the relationship that the participants' had with their fathers that had a stronger correlation to the type of contact arrangement. That is, participants who had good relationships with their fathers were more likely to have continuous contact with their father, independent of the mothers' fears or concerns.

The post-separation and adult relationships the participants had with their fathers appeared to be related to the relationship with their father prior to the parents' separation, with those participants who had very or fairly close relationships with their father experiencing positive ongoing relationships both post separation and into adulthood. The experience of contact was found to be more strongly affected by the relationship the participant had with their father after the separation than before, although the post separation relationship was related to the pre-separation relationship. This suggests that the likelihood of post-separation contact between parents and children is significantly increased if there is a strong bond with the children during the parental marriage.

The findings of this study implicitly support the literature and have implications for policy and legislation around shared care post parental separation. That is, it is important for there to be a 'meaningful relationship' between the father and the child in order for the contact to be beneficial for the child. If the relationship between the father and child is not close, or, for example, is marred by substance abuse issues, or violence and abuse in the parental relationship, making orders for the child to spend time with this parent may not be of benefit to the child and can have deleterious outcomes if the contact is forced.

It should be noted that there are some limitations that need to be taken into account when interpreting these findings. The main consideration is the study is based on a self-report methodology where participants were asked to assess the quality of relationships retrospectively. It is possible that there may be biases or omissions in recall in the way the adult respondents described their previous relationships. The study may also have attracted participants who were able to discuss their experiences of parental separation, so there may be a proportion of young adults who were more profoundly affected and so not willing to participate in the study. However, the sample nonetheless had sufficient diversity to make it possible to examine the relationship between the principle variables of interest. Moreover, by sampling from within a really narrow population, it is less likely that these findings are confounded by other broader underlying factors such as differences in demographic factors such as socio-economic status.

#### **7.6.7. Conclusion**

In order for contact with the non-resident parent to benefit the child, the relationship with that parent must be strong prior to the separation of the parents. Where the non-resident parent is perceived as having a poor relationship with the child, the child is less likely to benefit from, or enjoy spending time with that parent. Further research in this area might benefit from a familial approach to assess relationships, in which parental perceptions are compared with those of the child. It would also be useful to conduct assessments of the closeness of the relationships with each parent during the initial stages of the separation. Such information could prove useful during mediation or court proceedings to determine if a relationship can be construed as ‘meaningful’, as specified in the Family Law Act.



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# Part Five



# Chapter Eight

## 8. Discussion

This thesis examined the nature and consequences of contact between children and their non-resident parent (usually the father) after parental separation by considering three aspects of the family law process: judicial decision-making; the effects of the contact on children; and, the thoughts and feelings of young adults who have experienced parental separation.

From the literature, it is known that parental separation has a significant impact in the lives of all those exposed to it, particularly the children of the relationship that has broken down. The impact is exacerbated if there are antisocial behaviours exhibited by the (now) non-resident parent, usually the father, such as domestic violence and/or drug and/or alcohol substance abuse issues (Jaffee et al., 2003). Indeed, Jaffee et al. (2003) stated that, where fathers engage in high levels of anti-social behaviour, and reside with the children, the children have the worst behaviour problems, with 16% of the children in their sample receiving a diagnosis of conduct disorder by age five. These children are at significant risk of behavioural issues regardless of the fathers' residential status, as anti-social behaviour is highly heritable (Jaffee et al., 2003).

The parenting of men who perpetrate violence and abuse in their intimate relationships has previously been examined and found to be authoritarian at one extreme, swinging to permissive bordering on neglectful at the other extreme, with children either expected to obey unquestioningly, or perceived as a hindrance or an annoyance (Bancroft et al., 2012). These fathers may also fail to meet the needs of the children, emotionally

and/or developmentally, and further, require the children to meet his needs, with their failure to do so leading to a lack of tolerance and neglect of their basic care (Harne, 2011). As intimate partners, these men may rely on the 'officially invisible' strategy of coercive control, a calculated, malevolent behaviour that weaves intimidation, isolation and control with physical violence, or threats of physical violence, to humiliate, subjugate, exploit and dominate their victims (Stark, 2007), with M. P. Johnson (1995) referring to this form of abuse as 'patriarchal terrorism', based on the traditional patriarchal right of men to control and own 'their' women. These behaviours and their effects on the victims create a power imbalance in the relationship such that a situation that requires amicable discussion and mutual agreement, such as when equal shared parental responsibility is ordered, is almost certainly impossible to achieve (Australian Law Reform Commission, 2010; Pearson, 1997).

In the first study, several magistrates, as they were prior to the renaming of the Federal Magistrates Court to the Federal Circuit Court in November 2012 (Attorney-General's Office, 2012), continued to apply the presumption of equal shared parental responsibility, even in the presence of evidence of the fathers' severe and ongoing domestic violence (e.g. "Howard & Burnie & Anor," 2010), suggesting that the judiciary are lacking an understanding of the requirement of sharing parental responsibility with men who perpetrate violence. Indeed, if it were possible to co-parent with them, perhaps they would still be married! This, combined with a perceived misapplication of the law, as seen in the second study, where men who perpetrated violence and abuse, not only in their intimate relationship, but also towards the children, were rewarded for this behaviour with sole parental responsibility and sole residence raises questions around how this could occur. If the presumption of equal shared parental responsibility does not apply if there are reasonable grounds to believe that he has perpetrated family violence, as stated in section

61DA, how is an order for sole parental responsibility and sole residence possible under this legislation? A recent U.S. study (Meier & Dickson, 2017) discusses gender bias within family court decisions, stating that “[e]xpert commentators assert that family courts are awarding unfettered access or custody to abusive fathers, and increasingly cutting children completely off from their protective mothers” (p. 312), suggesting that this is a worldwide phenomenon, rather than just occurring in Australia. Indeed, Meier and Dickson (2017) go on to state that custody courts fail to recognise domestic violence and child abuse, as well as failing to understand the implications of minimizing or dismissing violence and abuse for children and parenting, and turn against the mothers and children who claim abuse by the father. As shown in study one, the judiciary are reluctant to remove decision making responsibility from a violent, abusive father, but they seem far more willing to do just that to a mother who is trying to protect her children, as revealed in study two. Indeed, several studies cite the statistic that 70% of fathers who fight for custody are successful in obtaining sole or joint custody (e.g. Chessler, 2011; Field, 1996-1997).

The children who are the subjects of the court orders that require them to spend time with their violent, abusive father may exhibit some extreme behaviours, including bullying other children at school; inappropriate sexual behaviour, and anxiety including nightmares (e.g. Harne, 2011) . Several studies have suggested a relationship between children’s emotional and behavioural adjustment, and ongoing parental conflict (Harne, 2011; Mertin, 1995). Mertin (1995) cites a New Zealand study that showed that the children who recovered most rapidly, with regard to behavioural issues and fear of their father, were those children who had no contact, whereas the children who were forced into contact with their fathers regardless of their fear of him were least likely to show improvements. This has important implications for policy and legislation in this area, with the need to protect children from physical and psychological harm necessary in order to allow the children to

heal from the harm inflicted by witnessing their fathers' behaviour towards their mothers. One of the strongest predictors of children's improvements is their relationship with their mothers (Kline, Johnston, & Tschann, 1991). Thus, mothers who are also permitted time to heal from the impacts of the violence and abuse they were subjected to are better able to facilitate the children's recovery.

For the children who are the subject of the orders made in Court, and required to spend time with their violent, abusive fathers, reflecting back on the post-separation contact reveals that young adults who did not have a good relationship with their father found the contact to be a negative experience, and are far less likely to have contact in adulthood than those children who had good relationships with their fathers. One participant in study three poignantly commented, "I should never have had to have contact with my father post separation". Her experience included her father perpetrating violence and abuse, and abusing alcohol; violent arguments between her parents post separation, with her mother afraid of her father; and a perceived bias on the part of the court report writer, who the participant stated "clearly took my father's side". She no longer has contact with her father, now that she is an adult, and found the experience of contact to be very negative - she was afraid of her father, and felt unsafe with him.

### **8.1. Strengths and Limitations**

There are several limitations that need to be taken into account, particularly for the second study, the interviews with mothers. The women who came forward to tell their stories were more likely to be more resilient and as such, may not be representative of mothers who are required to facilitate the contact between their children and ex partners who have perpetrated violence. These women also held strong views about their

experiences, and were able to clearly articulate their perceptions of the ongoing contact on the children.

Other limitations include the other case types in Study one that were not analysed and presented in this dissertation. These include cases where the mother was awarded sole parental responsibility when she had an AVO, as well as cases where fathers were awarded sole parental responsibility.

The strengths include the use of a mixed methodology that attempted to obtain evidence that converged on common themes and questions. This methodology ranged from analyses of the judicial application of the presumption of equal shared parental responsibility to the flow on effects of the orders on the children who are the subjects of them. It also included the opinions of young adults who, as children, spent time with their non-resident fathers who had perpetrated violence towards the children's mothers. Taken together, these studies together showed that ill-conceived Court orders can often contribute to children with ongoing behavioural and psychological issues, who grow up to resent being forced into spending time with someone who they perceived as deleterious.

## **8.2. Future directions**

Given that the 2011 Amendment of the Family Law Act promotes the protection of the child from harm over the benefit of the child to a meaningful relationship with both parents (Rhoades et al., 2014), analyses of cases subject to the 2012 amendment would be of interest. Such a study would particularly focus on the presence of AVOs as evidence of domestic violence, and the application of the presumption of equal shared parental responsibility as a contrast to the current study. It would take into account that the 2011 amendment renders the presumption of equal shared parental responsibility not applicable

in cases where there is domestic violence. It is possible to envisage that the flow on effect of this amendment would be for an increase in no contact orders and, therefore, a decrease in the impact of court ordered contact on the children subjected to the orders. Further, an examination of the reluctance of judicial officers to remove a violent parent from a child's life warrants further exploration, particularly where there is significant evidence of his behaviour.

Design and testing of a scale to measure the strength of the children's relationship with the (now) non-resident parent in order to determine whether a relationship is meaningful would be of benefit, as the absence of a good relationship between the (usually) father and his children decreases the benefit of the contact post parental separation, and can, for some children, exacerbate behavioural issues.

### **8.3. Conclusion**

In child contact cases where domestic violence is an issue, the family law system appears to be protecting the rights of the (predominantly) fathers to have contact with their children, post parental separation. This is seen in the making of orders for these men to have equal shared parental responsibility, despite the presumption of such not applying in these cases. The ongoing harm to the children from being ordered to spend time with their fathers, in the face of the children's fear of him, is substantial, and is likely to impact these children for the rest of their lives. It is therefore important that the family law system continue to be cognisant of the fact that domestic violence situations do not necessarily end upon separation. Such problems continue to exert their influence during the court process itself themselves as well as in the situation that will prevail once orders have been granted.



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# Appendix A

## Australian Orders for Equal Shared Parental Responsibility in Domestic

### Violence cases under The Shared Parental Responsibility Act 2006

Donna Roberts<sup>3</sup>, Peter Chamberlain, Molly Dragiewicz, Paul Delfabbro

This article explores how the presumption of equal shared parental responsibility (ESPR) is applied in cases where family violence and apprehended violence orders (AVOs) are present. Published judgments from the Australian Federal Magistrates Court for the years 2010-2012 were examined. Of the 105 cases containing the term ‘domestic violence’, 68 had evidence of AVOs and 15 of these had an order for ESPR. ESPR order cases could be divided into two groups. The cases in the first group were characterised as “one off incidents”, and the second group were recognised as “severe violence” and “poor communication between the parents”. Our results indicate that some judges are unwilling to remove decision making responsibility from parents even when they recognise serious domestic violence. The implications for family safety are discussed.

### Introduction

Family law in Australia is governed by the Family Law Act 1975 (Commonwealth of Australia, 1975). The Family Law Act 1975 and subsequent iterations institutionalise contemporary cultural norms favouring nuclear family preservation even as The Family

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Law Act manages the dissolution of marriages and allocation of child custody post-separation. Family law is a key site of culture wars about issues central to the organisation of society including gender, families, children, and property. Accordingly, changes to family law have followed shifting national politics including intense lobbying by antifeminist and antiviolence groups around families, divorce, child support, and child care since the 1970s (Dragiewicz, 2015; Rathus, 2014).

In Australia, substantive changes to the sections of the *Family Law Act* relevant to domestic violence and child custody were effected in 1995, 2006, and 2011. These legal changes respectively introduced consideration of domestic violence and a shared parenting regime at custody determination (1995); sought to more vigorously enforce shared parenting when child care patterns were resistant to change (2006); and repealed and revised aspects of the previous changes based on serious concerns about abuse emerging from evaluation of the previous reforms (2011) (Dragiewicz, 2015). Each revision of the law has been controversial and highly contested (Dragiewicz, 2015). Another major federal review of family law is currently underway (Parliament of Australia, 2017).

One of the key debates in contemporary family law is about the correct prioritisation of parental rights of access to and authority over children vs. children and adults' safety in the context of domestic and family violence (Kaspiew, 2012; Nicholson & Harrison, 2000). The 1995 family law reform institutionalised recognition of domestic violence by including it among factors to consider when determining the Best Interest of the Child (Rhoades et al., 2000). The 1995 reform also deployed new "residence" and "responsibility" terminology in place of the term "custody" in order to emphasise men's symbolic contribution to parenting, regardless of who was actually doing the child care. The 1995 amendments also disconnected primary responsibility for child care (parenting

time) from decision-making authority (parental responsibility), effectively disempowering children's primary caregivers (Rathus, 2014). Despite these symbolic manoeuvres intended to promote the social norm of co-parenting post-separation, the 1995 amendments did not result in dramatically changed parenting behaviours (or child support obligations). Mothers continued to perform the majority of child care and associated labour pre- and post-separation (Rhoades, 2000).

Following lobbying by antifeminist groups (Dragiewicz, 2011a; Kaye & Tolmie, 1998b), the Family Law Amendment (Shared Parental Responsibility) Act 2006 introduced further changes. These reforms were designed to encourage parents into more frequent child-related post-separation interaction via the application of a rebuttable presumption of "equal shared parental responsibility" (ESPR). Since the minority of cases that require family court intervention to settle parenting arrangements are disproportionately likely to be domestic violence cases, we sought to investigate decisions in family law cases where domestic violence was a factor. This article investigates the ways the presumption of equal shared parental responsibility was applied in cases where current or historical apprehended violence orders (AVOs) were present.

First, we outline the pertinent literature on domestic violence and child custody and trace the development of the 2006 Family Law Reform. Then, we describe our methodology and provide an overview of the sample and disposition of domestic violence cases in the larger study. We then discuss the majority of AVO cases where ESPR was ordered and which minimised domestic violence and we analyse the remaining cases in which domestic violence was recognised as serious but ESPR was still ordered. Finally, we review the patterns in these cases, link them to the extant literature on domestic violence

and family court, and make recommendations for future research and practice around post-separation parenting orders in domestic violence cases.

## **Literature Review**

A rapidly expanding literature addresses child custody and family law in domestic violence cases. In Australia, legal scholars have been the major contributors and have produced a large and detailed body of research on family law in abuse cases. In Australia, the Australian Institute of Family Studies (AIFS) also provides a relevant body of research on family law and its implications (Dragiewicz, 2015). Scholars have investigated: shifting patterns in child custody arrangements (Rhoades & Boyd, 2004; Rhoades et al., 2000); factors influencing changes to family law (Boyd, 2001; Chunn et al., 2011; Collier & Sheldon, 2006); changing interpretations of the Best Interest of the Child standard (Kurki-Suonio, 2000; Rhoades, 2002); domestic violence and child abuse in the context of post-divorce parenting (Hardesty, 2002), including when visitation is supervised (Parker et al., 2008); and gender bias in the family courts (Dragiewicz, 2010)

To date, much of the research on child custody in domestic violence cases has focused on physical custody and visitation, and for good reason. Personal post-separation contact between parents when there is a history of domestic violence is a frequent site for ongoing sublethal abuse (Hardesty, 2002). Research on lethal domestic violence has identified interaction around post-separation parenting as a high-risk context for familicide, suicide, homicide suicide, femicide, filicide, and collateral killings (DeKeseredy et al., 2017; Hardesty et al., 2008 ; C. H. Johnson, 2005). In the current legal and cultural environment, battered mothers who seek to protect children from an abusive partner may be punished with loss of physical custody of their children to their abuser (Arizona Coalition Against Domestic Violence, 2003; Cuthbert et al., 2002; Slote et al., 2005).



However, parental responsibility, the legal rights to control over children, also warrants attention. While parents have the right to make decisions about day to day care of their children while they are in their homes, parental responsibility mandates ongoing discussion and consultation about parenting issues like education and religious instruction. Such issues can have significant life-long consequences for children. Given what we know about abusers' parenting styles (e.g. Bancroft et al., 2012; Harne, 2011), the level of cooperation and negotiation required by orders for ESPR may well exceed the level of co-parenting that took place pre-separation in the families where this is least likely (Bancroft et al., 2012). At a fundamental level, parents that end up with court orders for ESPR are those for whom safely sharing parenting time has already been determined to be impossible or ill advised. There is no reason to believe that legal rights over children in the form of parental responsibility will result in either a meaningful reduction in abuse or benefit to children.

According to the Section 61B of the Family Law Act 1975, "*parental responsibility*, in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children" (Commonwealth of Australia, 1975). This is roughly analogous to what is referred to as legal custody in the United States (Rathus, 2014). Section 61DA of the Family Law Act 1975 explains the Presumption of Equal Shared Parental Responsibility in parenting orders:

(1) When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child.

(2) The presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in:

(a) abuse of the child or another child who, at the time, was a member of the parent's family (or that other person's family); or

(b) family violence.

(3) When the court is making an interim order, the presumption applies unless the court considers that it would not be appropriate in the circumstances for the presumption to be applied when making that order.

(4) The presumption may be rebutted by evidence that satisfies the court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility for the child. (Commonwealth of Australia, 1975)

Kaspiew et al. (2009) found that most court orders under the 2006 amendments to the FLA were for shared parental responsibility. Under the 2006 amendments, the presumption in favour of ESPR is rebuttable where there is domestic or family violence. This does not mean there is necessarily a presumption *against ESPR* in domestic violence cases. Judicial officers need to follow a prescribed process of decision-making and consider a number of required factors in order for family court decisions to be recognized as valid.

In order to make a decision against ESPR, the court needs to be satisfied that ESPR would not be in the best interest of the child or not feasible. In other words, domestic violence alone is often insufficient to preclude ESPR. Regardless of the applicability of the presumption, the court needs to conclude that the parents *cannot* communicate or cooperate in parenting or that ESPR is contrary to the Best Interest of the Child for another reason. Kaspiew et al. (2015) wrote:

Case law decided since the 2006 shared parenting amendments to the FLA has set out a decision-making pathway that requires orders for ESPR and equal shared care time to be considered as part of the best interests consideration, regardless of

whether the ESPR presumption is applied or not (Goode and Goode [2006] FamCA 1346). (p. 3)

They continue:

The High Court has reinforced the necessity for judges to adhere to the legislative decision-making pathway in s 65DAA in order for court orders to be predicated on a valid exercise of legislative power (MRR v GR [2010] 240 CLR 461). This means that the court must be satisfied that orders for equal or substantial and significant care time are in a child's best interests and reasonably practicable. (p. 3)

In practice, this means that magistrates frequently acknowledge domestic violence but infrequently view it as a barrier to parenting.

## **Methodology**

This article reviewed published judgments from the Federal Magistrates Court from 2010-2012 in order to investigate how the presumption of equal shared parental responsibility has been applied or rebutted in domestic violence cases with a current or historical AVO. An AustLii search was conducted for the term "domestic violence" for judgments from 2010 to 2012. This time period was selected to reflect cases decided under the 2006 Family Law Reforms after case law had been established. The search yielded 315 judgments that included the term "domestic violence." Examination of the cases revealed that the term "domestic violence" was frequently included when the judgment indicated that "there are no issues around domestic (or family) violence in this case that need to be taken into account", for example the case of Katzer & Katzer in 2011 ("Katzer & Katzer," 2011). The cases with no substantive discussion of domestic violence were therefore excluded from this analysis. Judgments related only to property matters and not child care

were also excluded, as were cases where the term “domestic violence” was only found in the title of social science literature being cited.

The remaining 105 cases referred to “domestic violence” in parenting matters. Of these, the father initiated the application in 65 cases (60%), and the mother initiated the application in 46 (40%) of cases. Two cases involved same sex parents (1.8%). Seventy-two (69%) cases mentioned current or expired AVOs. In 78 (70%) cases, at least one family report had been completed, with a further eight cases where a report had been ordered but not yet complete. One case mentioned four separate family reports over the lifetime of the litigation. Independent Children’s Lawyers (ICLs) were employed to represent the best interests of the children in 66 (60%) cases, with a further seven cases having orders for an Independent Children's Lawyer to be appointed.

Table 1 details the parenting orders made in the domestic violence cases. The largest percentage of cases resulted in sole responsibility to the mother. Equal shared parental responsibility was the second most frequent outcome. Sole responsibility to the father was the least common outcome.

*Table 1*

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*Disposition of parental responsibility in domestic violence cases in the Federal Magistrate’s court 2010-2012*

	N	%
Parenting order		
Equal shared parental responsibility	34	32
Sole responsibility to mother	43	41
Sole responsibility to father	9	9
Other	4	4
No explicit order	15	14
Total	105	100%

The allocation of parental responsibility where there was a current or past AVO differed from cases where there was no AVO. Table 2 shows the disposition of cases with and without an AVO.

*Table 2*

	AVO		no AVO	
	N	%	N	%
Parenting order				
Equal shared parental responsibility	15	22.0	19	51.4
Sole responsibility to mother	34	50.0	9	24.3
Sole responsibility to father	6	8.8	3	8.1
Other	2	2.9	2	5.4
No explicit order	11	16.3	4	10.8
Total	68		37	

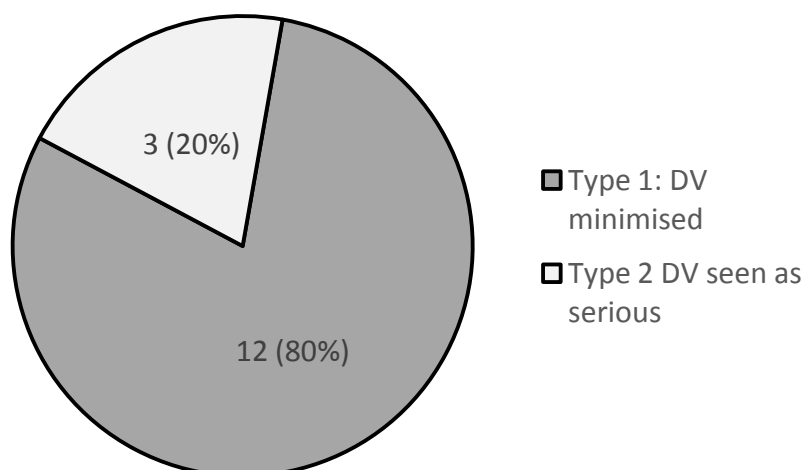
As Table 2 shows, domestic violence cases without an AVO were more than twice as likely to result in orders for equal shared parental responsibility than domestic violence cases with an AVO. Cases with an AVO were more than twice as likely to result in orders for sole parental responsibility to the mother in comparison to domestic violence cases with no AVO. Cases with an AVO were slightly more likely to result in sole parental responsibility to the father. Given these outcomes, it is possible that AVOS were weighted for domestic violence in these cases, resulting in the reduction of orders for equal shared responsibility in AVO cases. However, equal shared parental responsibility was ordered in almost half of the domestic violence cases without an AVO, suggesting that domestic violence in the absence of an AVO is given less consideration by the court. In order to better understand the factors influencing these cases, this article focuses on the minority of cases where ESPR was ordered despite an AVO (N=15). The presence of an AVO in a case, as an official form of documentation of the occurrence of domestic violence, should make these cases amongst the easiest in which the courts are able to recognise domestic

violence. Examining these cases may be beneficial in understanding the factors that contribute to determinations behind parenting orders in domestic violence cases.

Figure 2

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*AVO cases where equal shared parental responsibility was ordered*



Examining judgments where ESPR was ordered despite a current or past AVO revealed two case types. In type 1, the Magistrates minimised the relevance to parenting of domestic violence that was the catalyst for the AVO. In these cases, the violence was acknowledged yet characterised by what Johnson has called “situational couple violence” rather than coercive controlling or serious domestic violence (M. P. Johnson, 2008). In type 2, the Magistrate ordered equal shared parental responsibility despite recognition of serious domestic violence (Figure 2).

### **Cases with AVOs where domestic violence is minimised**

Twelve of the fifteen domestic violence cases with current or historical AVOs in our sample presented the domestic violence in a manner that minimised its relevance to parenting. Below, we discuss five of these cases as representative examples of where the

violence was minimised relative to other considerations, contributing to the order for ESPR. In the case of Meeker & Loucks ("Meeker & Loucks ", 2010), the children were spending 6 nights a fortnight with the father, who was seeking to increase this to seven. Altobelli FM stated that the incident of violence that resulted in the father being charged with common assault and subject to an AVO, was "an example of situational violence, rather than any more controlling form of violence." [38]

There is no doubt that an apprehended violence order was made against the father as a result of an incident that took place on Saturday 28 March 2009 ... The evidence ... consists of a copy of the application for an apprehended domestic violence order, together with various paragraphs in the mother's affidavit of 15 April 2009. As a result of this event an apprehended violence order was, in fact, made against the husband and remains in effect. The father was also charged with assault. He pleaded guilty to two charges, being common assault and malicious damage, all arising out of the incident ... on 28 March 2009. A section 10 good behaviour bond for six months was granted in relation to these two matters which were otherwise dismissed without a conviction being recorded. The father states in his affidavit that he is very regretful of this incident. [37]

The incident in question was indeed regrettable. ... It is impossible to defend the father's behaviour. However, the manner in which the mother acted is hardly consistent with an appreciation of the potential risk to the children as a result of her behaviour. ... True it is that she suffered violence but, when this violence is viewed in context, it cannot, in the absence of other evidence, be seen as part of a pattern of violence or control. The incident arose in a situation that was almost intended to be stressful and where there was a high risk of something occurring. ... As I have indicated before, the father's actions cannot be justified in any way. ... In any event, I find that the incident that occurred ... is an example of situational violence, rather than any more controlling form of violence. [38]

In the circumstances of this case, whilst I accept that there have been periods of volatility in this relationship, and that there was an incident in March 2009, I am not prepared to find that there is any need to protect the children from physical or

psychological harm, from being subjected to, or exposed to any family violence. I note the existence of the current AVO. [43]

Altobelli FM went on to say:

The parties each agree that there should be an order for equal shared parental responsibility and this, of course, leads me to have to consider whether equal time is in the best interests of the children and is reasonably practicable. I am satisfied, on the basis of all the evidence before me ... having regard to where the parents live and their ability to communicate with each other, their demonstrated capacity to implement arrangement for shared care in the past, and the minimal impact that an equal time arrangement will have on the children. [58]

MEEKER & LOUCKS

[2010] FMCAfam 345

Altobelli FM

In this case, despite the father being charged and pleading guilty to malicious damage and assault in the context of a current AVO barring contact between the parents, the Magistrate considered the violence as situational rather than coercive and controlling. Rather than focusing on the father's violent behaviour and its implications for safe co-parenting, Altobelli appears to attribute blame the mother for the violence done to her, stating that she failed to appreciate the risk to the children from the mother making the father angry. Altobelli FM argued that the parents had demonstrated the capacity to jointly exercise their parental responsibilities despite being legally barred from contact with one another. In this case, a history of being able to cooperate about some parenting matters appears to outweigh the risk of violence. The risk was further minimised with Altobelli regarding the father's violence expected given the mother's allegedly provocative behaviour. Characterisation of the violence as situational suggests that Altobelli may have believed that the mother could avoid further violence by not provoking him.



In the case of *Marino & Marino (No.2)* ("*Marino & Marino No. 2,*" 2010), Brown FM had previously made final orders for ESPR. The current proceedings were initiated by the mother in response to a new assault by the father.

As previously indicated, the children are currently being exchanged at a police station. It is the father's position that this is inappropriate and the above order [handover occurring at the father's residence at the start of his time, and ending at the mother's house] should be reinstated. The mother has raised concerns about her personal safety and points to the fact that there is currently a domestic violence restraining order, which regulates the parties' interaction with one another. [39]

Despite the mother's concerns about her personal safety, Brown FM was careful to explain that domestic violence was not a significant factor in his decision. Brown FM stated:

I have not reached this conclusion because of issues to do with family violence. As I have already indicated, I am unable to conclude, according to the prerequisite standard of proof, whether Mr Marino did or did not assault Ms Marino on 12 May 2009. [167]

However, it is my view that this incident between the parties is emblematic of a significant level of dysfunction in the relationship between them. Regrettably, I have come to the conclusion that it would not be in [X] and [Y]'s best interests for the court to attempt to *paper over* these problems, in the vain hope that they will go away. I do not think they will. [168]

Despite his acknowledgment of the dysfunctional relationship, Brown FM continued:

I do not propose to re-visit the allocation of parental responsibility in this case. Although the parties' parenting relationship is poor, both Mr Marino and Ms Marino remain vitally interested in [X] and [Y]'s lives and both will continue to spend extensive periods of time with the children. [200]

As such, I do not think it would be in the children's best interests if one parent was to be conferred with sole or exclusive parental responsibility for the children.

This of itself is likely to lead to even more conflict between the parents. [201]

Pursuant to section 65DAC, where a parenting order is made which result in parents sharing parental responsibility for their child, such an order confers joint parental responsibility, on those parents, in respect of the making of decisions relating to major long term issues pertaining to that child. As such, the legislation requires those parents to consult one another and make a genuine effort to come to a joint decision about any such major long term decision. [202]

Marino & Marino No.2

[2010] FMCAfam 951

Brown FM

In this case, because both parents had expressed an interest in their children's lives, Brown FM did not consider an order for sole parental responsibility to the non-perpetrating parent to be a viable option. Although he acknowledged the parties' poor parenting relationship and the current AVO barring contact between the parents, he nevertheless ordered the parents discuss parenting issues on an ongoing basis. In paragraph 167, Brown FM explains that he does not regard the AVO as evidence of domestic violence and claims he could not conclude "according to the prerequisite standard of proof", whether the father had assaulted the mother. It should be noted that the standard of proof in the Family Law Act is "reasonable grounds to believe" that family violence has occurred. At the same time, the decision suggests that ESPR is being awarded in part to appease the violent father, and that not to do so could potentially lead to further conflict. As in the previous case, the conflict is presented as a victimless mutual act whereby the mother's concern for her safety is rendered equivalent to the father's physical violence.

In another case, Harman FM stated that he would not interfere with the consent arrangement between the parties in the case of Vogel & Abell ("Vogel & Abell," 2010),

given that they had “resolved substantial issues between them”, indicative of an ability to communicate, regardless of the family violence that had occurred during their relationship:

There are also, though, substantial issues in this case with respect to domestic violence, and whilst I am not in a position to make concluded findings ... it would be fair to say that those issues consume the vast majority of evidence between these parties. Indeed, ... the material filed in the proceedings is voluminous in each party’s case and, in Mr Abell’s case, includes two annexures to his material which are audio recordings: One, an ERIS interview with respect to the pending charges, to which I have referred. The other - recordings made by Mr Abell which purports to be of comments made by Ms Vogel to him and/or disputes between the parties. That is a matter that Ms Vogel comments upon in her evidence as being a pattern of behaviour by Mr Abell, not only in her relationship with him, but in past relationships and, I am urged to accept in Ms Vogel’s case, typical of a course of conduct that I should find falls within a category of family violence and domestic abuse. [41]

Harman FM continues:

I am required to turn to section 61DA and determine whether the presumption of equal shared parental responsibility will apply. In this case, and with some caveat as regards issues of education and country of residence, the parties agree that there should be an order for equal shared parental responsibility. As the High Court has made clear in *U v U* [2002] HCA 36; (2002) 211 CLR 238, I am not bound by the parties’ consent and can reject it. However, in this case, particularly having regard to the fact that the parties have resolved substantial issues between them of a significant nature and that the nature, quality and guidance that they would have received from their expert counsel, I am satisfied I should not interfere with their consent arrangement. [59]

VOGEL & ABELL

[2010] FMCAfam 1189

Harman FM

The preceding cases suggest that parties who request or consent to ESPR are more likely to be accommodated by magistrates, regardless of domestic violence. Evidence of the capacity to cooperate is given greater weight, regardless of violence in post-separation parenting. There does not appear to be any acknowledgement of the power imbalance that characterises relationships shaped by violence and abuse (Alhabib et al., 2010). Indeed, these cases frame the abuse as mutual behaviour, with suggestions that the mother provoked the violence in one case, and that not getting ESPR could potentially provoke a father's violence in another.

While the presumption in favour of ESPR does not apply in domestic violence cases, there is no presumption against it. Harman FM in *Starkey & Starkey* [2011] FMCAfam 940, noted that a finding of family violence having occurred “simply means that the presumption [in favour of ESPR] does not apply”,

there must, by definition, be a finding of family violence engaged in by Mr Starkey post separation. However, that simply means that the presumption does not apply. It does not better this Court’s discretion in determining what is in the child’s best interests and whether equal shared parental responsibility should be ordered is at an end or otherwise fettered. [107]

Family violence is effectively irrelevant to the best interests of the child in this explanation. Harman FM goes on to cite Murphy J, who stated that the “extreme step of precluding a parent from participating in shared parental responsibility should not be taken, save in the most grave of circumstances”:

In this case both parents and the independent children's lawyer propose that there should be an order for equal shared parental responsibility and I am satisfied, particularly by reference to the comments of Murphy J in *Pitken & Hendry* [2008] FamCA 186, that the extreme step of precluding a parent from participation in shared parental responsibility should not be taken, save in the

most of grave of circumstances, and I am satisfied, ... that I should judge present circumstances wherein, whilst I would have some reservations as to the practicality of the discharge of equal shared parental responsibility having regard to the recent past history of poor communication, that there is sufficient optimism that, indeed, an exercise of equal shared parental responsibility as envisaged and as defined by the legislation can occur and should accordingly be ordered. [108]

The magistrates in these cases where the parties consented to ESPR were not prepared to order sole parental responsibility to the non-violent parent, ordering instead shared parental responsibility even in circumstances where AVOs prohibit contact. They articulated personal ideologies indicating that they were unwilling to consider removing a parent from legal decision making about a child regardless of domestic violence. Moreover, it is unclear in the rulings what circumstances might be considered sufficiently grave to award sole responsibility, if any, given that these cases included documented criminal charges. As Chisholm noted, “parents are entitled to be involved in their children’s lives, unless they forfeit their rights by being violent or abusive” (Chisholm, 2009, p. 127). Accordingly, it could be argued that a perpetrator's violent and/or abusive behaviour should be given greater consideration than the right to parental control. Yet the opposite appears the case, with decisions clearly favouring parental rights over domestic violence.

Despite the documented harm to children from exposure to domestic violence, these decisions may be viewed as reasonable given the parents' consent to ESPR. However, orders for ESPR in domestic violence cases are not limited to those where both parents consent to it. In the case of *Cloake & Cloake* (“*Cloake & Cloake*,” 2011), Neville FM decided that “with appropriate restraints in place, an order for ESPR should be made” against the parents’ wishes:

I note the disparity, or otherwise opposed positions, of the parties in their orders sought in relation to equal shared parental responsibility. Again without diminishing the importance for a court to consider matters of family violence appropriately, particularly in parenting cases, in my view, with appropriate restraints in place, an order for equal shared parental responsibility should be made. Apart from the one, specific instance of alleged family violence at the end of the relationship,<sup>[14]</sup> it would seem to be the case that both parents have been very actively involved in the lives of all the children. That said, in her affidavit filed on 12th April 2011, the Mother disputes the degree of the Father's involvement in the lives of the children for which he contends. [35]

Cloake & Cloake

[2011] FMCAfam 784

Neville FM

It is not clear what the “appropriate restraints” are in this case, although the orders state that,

Neither the Mother nor the Father will denigrate the other parent or the other parent's family in the presence of the children or allow any other person to do so in the presence of the children. (19).

At least until the criminal proceedings are resolved, and except in cases of emergency, the parties should communicate only *via* a communication book. (20)

As in the preceding cases, Neville FM appears to characterise the domestic violence as an isolated incident and therefore irrelevant to parenting orders. He applies greater weight to the violent parent's rights to control over decisions involving the children than the risks of harm to children from exposure to domestic violence.

These examples illustrate the minimisation of domestic violence and associated risks in ESPR cases. The magistrates characterised the violence in these relationships as individual decontextualized incidents rather than part of a pattern of abusive behaviour. They framed domestic violence as mutual conflict rather than abuse, suggesting that

mothers initiated the violence by provoking the fathers, and in one case directly blaming the mother. These rulings also discredited and minimised AVOs and criminal charges as sufficient evidence of domestic violence. While few in number, domestic violence was minimized in 80% of the AVO cases where ESPR was ordered. These cases can help us to understand how magistrates are thinking about risks to children from adult domestic violence and the benefits to children of legal rights to parental responsibility for parents subject to AVOs.

### **AVO cases where the magistrate recognized serious domestic violence and ordered Equally Shared Parental Responsibility**

In the remaining three AVO cases where ESPR was ordered in our sample of fifteen, the magistrates characterised the domestic violence in the relationship as severe. For example, in Howard & Burnie and Anor ("Howard & Burnie & Anor," 2010), Bender FM discusses AVOs directed against the father by the mother, the father's continued abuse and denigration of the mother, the father's recent assault of the mother, and the ongoing risk of family violence:

There have been several family violence orders that the mother has taken out against the father in these proceedings, and there is a current live family violence order that continues through the State Court system at this time. [128]

The father himself conceded in evidence that he has been following and continues to follow the mother and, of even more concern, seemed to feel justified in this behaviour. He showed absolutely no insight as to the impact that would have on the mother and in particular on [X], who was aware of his father's behaviour. [129]

The court is also satisfied that the father continues to be verbally abusive to the mother and to actively denigrate her in both her and [X]'s hearing. [131]

There is an interim family violence order in place. This matter is being further pursued before the State Courts, and of real concern is that the incident that

precipitated these proceedings occurred during the period that these proceedings were live. [132]

There has to be a serious concern that there is a risk of ongoing family violence perpetrated by the father against the mother into the future. [133]

Bender FM acknowledges the domestic violence as ongoing rather than an isolated incident, and the impact of verbal abuse on the mother and child. She recognises the father's lack of remorse and a level of recklessness involved in abuse despite current court proceedings. Nonetheless, the domestic violence is not addressed in the Reasons for Judgment. Bender FM states:

In this matter, the parties and the independent children's lawyer are all proposing that the parents have equal shared parental responsibility for [X]. Whilst there is no doubt that there is a high level of dysfunctionality with these parents, that they cannot communicate and that there is an ever-present possibility of domestic violence, for [X] it will be important that both his parents continue to be involved in his life and that they both continue to contribute to the decisions that will need to be made in relation to him now and into the future. Accordingly, I have determined that it is in [X]'s best interests that an order be made for equal shared parental responsibility. [75]

HOWARD & BIRNIE and ANOR [2010] FMCAfam 16 Bender FM

As in the above cases, the parents have consented to ESPR in this case. The independent children's lawyer is also advocating ESPR. While Bender is clearly sceptical of the practicality of this arrangement, she frames the fathers' involvement in the child's life as inherently beneficial regardless of the violence. The presumed benefit of ongoing contact with both parents outweighs the risks to the child and mother from ongoing exposure to domestic violence.



In Goldstein & Hopkirk ("Goldstein & Hopkirk," 2010), there was an extensive criminal history on the part of the father, including several breaches of the AVO, illicit drug use and jail time:

The Father has an extended criminal history including findings of guilt for breaches of an apprehended domestic violence order ("ADVO"). He also has a long history of drug use. These respective histories are described in the Father's affidavit sworn on 30 March 2009 and filed 31 March 2009 ("the Father's first affidavit"), [11] and are also outlined in the Father's Chronology. [28]

Yet the Independent Children's Lawyer and the family report writer both recommended that the parties have ESPR:

As indicated, there is a dispute between the parties that each should have equal shared parental responsibility for the children. The Father and the ICL support an outcome favouring equal shared parental responsibility whereas the Mother is seeking sole parental responsibility for the children. [73]

As already noted, in the second Family Report Ms K also recommended an outcome favouring equal shared parental responsibility.[39] [74]

In his proposed orders, the Father is seeking an order for sole parental responsibility in respect of the choosing of, and enrolment in, [X]'s "*sporting and other extracurricular activities*." He proposes a similar order that would give the Mother similar sole parental responsibility in respect of [Y]'s sporting and other extracurricular activities. [75]

Monahan FM discusses Section 60CC(2)(b): the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect, or family violence, noting:

No allegations are made by either parent regarding any violence or abuse being directed towards either of the children. Nevertheless, there is a history of family

violence orders favouring the Mother and against the Father that are relevant to the relationship between the parties. [101]

The Court is satisfied that an outcome limiting the need for the parties to come into physical contact with one another at changeover would be in the children's best interests. [102]

Further, Monahan FM describes the family violence perpetrated by the father and his heroin addiction when discussing Section 60CC(3)(j): any family violence involving the child or a member of the child's family,

Unfortunately, the history of the parties' relationship prior to final separation was marred with family violence perpetrated by the Father. While the Father's heroin addiction was no doubt a factor that negatively impacted upon his ability to appreciate the full extent of his behaviour, it does not excuse it. Apart from destroying the parties' personal relationship, it has contributed to the poor parenting relationship between them. Despite the children's apparent resilience in being able to develop and enjoy a warm and loving relationship with both parties, the Father's past behaviour certainly robbed them of a peaceful and loving family unit. [123]

That said, it is clear that the Father has taken positive steps to beat his drug addiction and to better understand and appreciate the destructive nature of his selfish and destructive behaviour in the past. [124]

Section 60CC(3)(k): any family violence order that applies to the child or member of the child's family

While there is no issue of abuse directed at the children, the Mother has needed to secure family violence orders in the past to secure her own personal safety from the Father. She has also had to involve the police and the courts in dealing with past breaches by the Father of the apprehended violence and restraining orders she has obtained. It is to her credit that she has continued to foster a relationship between the children and the Father despite this history. [125]

Despite these breaches, the Court is satisfied that the positive steps taken by the Father to overcome his drug addiction and to better understand and appreciate the

impact of his past abusive behaviour will ensure no repeat of such behaviours. If the Father were to relapse into drug addiction, and/or re-embark on a path of family violence, then his future parenting of the children, and his relationship with his children, would be in serious jeopardy. [126]

Monahan FM concluded by saying:

The parties should have equal shared parental responsibility for the children. While the Court is satisfied that the presumption favouring equal shared parental responsibility should not apply in this case because of the past history of family violence, that does not mean that the Court cannot make an order allocating parental responsibility equally where it is satisfied that such an outcome is in the best interests of the children. In this respect the Court agrees with the submissions of the ICL.[62] Neither of the parties in this case are, to quote Counsel for the ICL, "*perfect candidates for parents*",[63] yet as stated, the Court is satisfied that they have the capacity to make the necessary major long-term decisions in relation to the children. [137]

GOLDSTEIN & HOPKIRK [2010] FMCAfam 469 Monahan FM

In this case, Monahan FM, the independent children's lawyer, and the family report writer all support an order for ESPR, with Monahan FM stating that it is in the children's best interests. The independent children's lawyer is the legal representative for the children, whose role is to promote their interests; yet there appears to be a greater emphasis on preserving the father's relationship with the children than protecting the family from further family violence.

Baker FM ordered that the mother and father have ESPR for their four children, aged 3 to 10 years in the case of Houlis & Houlis ("Houlis & Houlis," 2010). The father admitted that incidents of domestic violence occurred during the relationship with his wife

(paragraph 13), and that he physically disciplined the children, sometimes hitting them with a paint stick (paragraph 15). The family report writer stated:

the husband does not recognise or accept that his style of parenting and discipline of his children inherently involves family violence. He thinks the Bible supports his actions. He sees physical discipline as an appropriate, effective way of changing behaviour in children. The husband told Dr W that he will not continue to abstain from using physical discipline with the children. It was apparent to Dr W that the husband does not recognise the negative impact this violence has had, and will continue to have, on the children. The impact is not only apparent in their relationship with the husband but in their own psychological well-being.

[38]

Based on these factors, Dr W recommended supervised visitation for the father.

When discussing section 60CC(3)(j) and (k), Baker FM acknowledged a history of family violence:

I have already discussed incidents of family violence involving the parents and the children. [182]

A family violence order was made on 9 May 2009 for the protection of the wife against the husband for 12 months. [183]

When discussing parental responsibility, Baker FM noted that the presumption in favour of ESPR was displaced due to the family violence that had occurred between the parties:

The presumption of equal shared parental responsibility is displaced as there are reasonable grounds to believe that family violence has occurred between the parties. [188]

The wife's Counsel submitted that there should be a sole parental responsibility order. He relied on the husband's evidence that communication between the parties is poor and is fraught with conflict and the husband is not confident that

an order for equal shared parental responsibility would work. He also relied on the evidence that the husband called the wife a “*contentious slut*”, which indicates that he has a low regard for her. ... He has held the view throughout the marriage that the wife is an argumentative, disagreeable person. [191]

...

It is a serious step to make an order for sole parental responsibility. It means that the husband will have no rights, responsibilities and authority in respect of major long-term issues for the children. [193]

In Oscar and Traynor[15] Murphy J commented:

*“the exercise of discretion in favour of excluding one parent from consultation and decision making in respect of major long-term issues for their children, particularly when, as here, there are many years until the children turn 18 – is, it seems to me, a very significant step, being a serious interference with the fundamental rights of a person.”*

He continued:

*“It seems to me that the greater the degree of mistrust, lack of communication, disrespect and dysfunction in a co-parenting relationship, the greater the indication that an attempt for those parents to equally share the responsibilities (and, importantly, actively carry them out) is unlikely to be in the children’s best interests.”* [16] [194]

...

I am concerned that there is a difficulty with the communication between the parties. To date the parties have been able to agree upon church attendance and schooling for the children. The main issue they have not been able to agree about is the physical discipline issue. The parties have made derogatory comments about the other; however, I will be making an injunctive order in respect of this.

[196]

I consider that there is a possibility that an equal shared parental responsibility order may not work. However, I am not convinced that the parties’ relationship is “*so dysfunctional with such a degree of mistrust*” that such an order should not be made. I consider that it is important for the husband to be involved in making

such decisions and consider that it is in the best interests of the children for both parents to be involved in making these decisions. To assist the communication between the parties I will order that a communication book be used. I will also order that the parties attend a post-separation parenting program. [197]

Houlis & Houlis

[2010] FMCAfam 972

Baker FM

While the presumption in favour of ESPR is rebutted for several reasons, and the father himself states that he is not confident that an order for ESPR would work (paragraph 191, above). Baker FM cites Murphy J as saying that “*the exercise of ... excluding one parent from consultation and decision making in respect of major long-term issues for their children ... is, it seems to me, a very significant step, being a serious interference with the fundamental rights of a person.* Again, it appears that a violent parent's rights to legal authority over children may have been prioritised over the mother and children's right to protection from violence.

## **Discussion**

This article reviewed published family law cases from the Federal Magistrates Court for the years 2010-2012 where ESPR was ordered despite AVOs. Our analysis of seventy-two cases where AVOs were present revealed that ESPR was ordered in fifteen cases. Further examination found two types of cases. In the first group (N=12), violence and abuse were minimised. The violent incident occasioning the AVO was either dismissed as unverifiable or characterised as an isolated incident rather than an ongoing pattern of violence. The second group of cases (N=3) involved the recognition of the domestic violence as severe and contributing to seriously dysfunctional relationship between the parents, but nevertheless resulted in ESPR. These fifteen cases provide an indication of the manner of reasoning in family courts in AVO cases leading to ESPR after the 2006 family law reform. According to section 61DA, family violence is sufficient to

rebut the presumption in favour of ESPR. However, while the magistrates in these cases were explicitly not making decisions based on a legal presumption in favour of ESPR, assumptions about co-parenting being in the Best Interest of the Child certainly played a role in the outcome of these cases. The magistrates, informed by case law, appear to have assumed that court ordered control by both parents is almost always in the Best Interest of the Child. In other words, "the benefit to the child of having a meaningful relationship with both of the child's parents" was weighted more heavily in these cases than "the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence" (Section 60CC 2a & b, Commonwealth of Australia, 2006). In these cases, the family violence was either characterised as insufficient to merit concern about the children's exposure or, less frequently, recognised as serious but still insufficient to merit loss of court-ordered legal "responsibility" by the violent parent relative to the presumed benefits.

In Sections 68P & Q, the FLA discusses family law orders that are inconsistent with existing AVOs. Section 68Q states that if the court makes an order that is inconsistent with the family violence order,

- (1) To the extent to which:
  - (a) an order or injunction mentioned in paragraph 68P(1)(a) is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; and
  - (b) the order or injunction is inconsistent with an existing family violence order; the family violence order is invalid.

Thus, in the event that a magistrate has made an order requiring that the perpetrator of the violence and/or abuse to adhere to certain conditions: for example, not to contact their former partner, and not to be within a certain distance of the protected persons, which

may include the children of the relationship, Federal Magistrates override these orders in favour of approving contact if they deem it to be in the children's best interests.

These cases provide an indication of the way magistrates are negotiating the ambiguity around how to weigh the two pillars of protection from abuse and parents' legal rights over the child. ESCR was ordered in 20% of the AVO cases in our sample. In most of these cases, concerns about family violence were sidelined via the characterisation of the violence occasioning the AVO as situational rather than ongoing, mutual, or unverified. In the remaining cases, violence was recognised as a serious, but the father's interest in the children overrode concerns about safety. Underlying each of these cases is an assumption that contact with both parents is inherently beneficial to children despite the risk of harm from exposure to violence. The reluctance of courts to protect children from well-documented harms from exposure to domestic violence is especially unfortunate.

Despite widespread assumptions that contact with both parents is always beneficial to children, the research does not support this idea (Dragiewicz, 2015). To date, no study has documented benefits to children from exposure to an abusive parent relative to sole physical or legal custody by a non-abusive parent. Conversely, many studies have documented the risks to children in the context of post-separation parenting with an abuser (Hardesty et al., 2012); the many ways that children are exposed to violence and its aftermath even if they do not witness it directly (Edleson, 1999a, 1999b; Edleson et al., 2003); the high degree of overlap between domestic violence and child abuse; and the harms to children of exposure to adult domestic violence. These cases indicate that courts may not always be fully informed about the dynamics of the abuse, the consequences to non-perpetrating parents and children, or the inherent power imbalance that characterises these relationships. Too often, the abuse is perceived as mutual conflict, framing domestic violence as a product of mothers' provocation of men's violence. In some cases, the court



appears to use shared legal control over children to appease violent fathers. The above cases reveal confusion about the nature of domestic violence and illuminate an apparent emphasis on shared parenting regardless of previous deleterious behaviour.

Section 65DAA of the Family Law Act itself provides guidance when the presumption is found to apply:

Subject to subsection (6), if a parenting order provides (or is to provide) that a child's parents are to have equal shared parental responsibility for the child, the court must:

(a) consider whether the child spending equal time with each of the parents would be in the best interests of the child; and

(b) consider whether the child spending equal time with each of the parents is reasonably practicable; and

(c) if it is, consider making an order to provide (or including a provision in the order) for the child to spend equal time with each of the parents.

There is no guidance, however, for situations where the presumption in favour of ESPR is found not to apply. Perhaps the Act would be clearer with the addition of further, specific guidance directing judicial officers as to the appropriate course of action should the presumption in favour of ESPR be found not to apply. Greater guidance on weighting the many contradictory factors might contribute to more consistent application of the law in cases where violence and abuse are an issue. But this guidance alone will not address the other problems revealed here. The characterisation of domestic violence as mutual and provoked by women; use of Johnson's problematic typology to minimise documented violence as "situational"; the unsupported assumption that access to both parents is always beneficial; and a failure to appreciate the impact of domestic violence on the family even if physical violence is not directed at children are not legal problems. These issues stem from the reality that regardless of the facts of the case, decision making in family court is

profoundly shaped by the ideology and beliefs of the decision makers (Godbout et al., 2015; Saunders, 2017; Saunders et al., 2016) .

As Godbout et al. (2015) put it, "In the absence of clear and rigorous standards or scientific certainty, any interpretation of the BIC can only be based on a priori or personal opinions as to what would potentially be the 'best interests' of a child" (p. 273). The Australian emphasis on co-parenting despite abuse is one example. Pressure to share legal responsibility for children regardless of domestic violence inconsistent with what we know about the ways that children are harmed by exposure to domestic violence. It is also illogical given that coercive and controlling abuse is mostly non-physical. Finally, given overwhelming evidence that even exposure to conflict post-separation harms children, it seems clear that the emphasis on "sharing" children may not be about their interests after all. Australian scholars have raised concerns about the prioritisation of parents' rights to access to children over the children's right to protection from abuse. Psychology professor Jennifer McIntosh observes that despite the assumption that substantial contact with both parents necessarily benefits the child, the social science research does not support this conclusion, nor can it justify the legal push for co-parenting in the context of ongoing conflict (McIntosh, 2009).

## **Conclusion**

Orders for equal shared parental responsibility in AVO cases provide empirical evidence about how the two pillars of shared parenting and protection from violence are applied in court. This interpretation is quite different to the way Chisholm envisioned it: "[t]aken together, they can be seen as saying, in effect: 'children will benefit from parental involvement, but not if it exposes them to violence or abuse'" (Chisholm, 2009, p. 127). The reluctance of judicial officers to remove a violent parent from decision-making

responsibility warrants further exploration. Future research on our sample of 72 domestic violence cases will further illuminate judicial reasoning in family court cases with different parenting outcomes.

Multiple perspectives will be needed to understand completely the role of family law in domestic violence cases. Future research could examine the impact of that court ordered parental responsibility and parenting time in domestic violence cases. Such research could provide more detailed insights into the nature and impact of abuse in the context of court ordered co-parenting. In addition, Australia has yet to conduct research on judicial officer and other family court practitioners' education, beliefs, and behaviour in family law cases. Without information about what is actually happening in family court, further family law reforms may be similarly fruitless. Hopefully, greater integration of independent research can contribute to improved handling of domestic violence in family law cases.

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# Appendix B

## PARTICIPANT INFORMATION SHEET

**PROJECT TITLE:** Examining the effects on children and their mothers, when children spend time with their fathers who have perpetrated violence and abuse  
**HUMAN RESEARCH ETHICS COMMITTEE APPROVAL NUMBER:** H-2015-076  
**PRINCIPAL INVESTIGATOR:** Professor Paul Delfabbro  
**STUDENT RESEARCHER:** Ms Donna Roberts  
**STUDENT'S DEGREE:** PhD in Psychology

Dear Participant,

You are invited to participate in the research project described below.

### **What is the project about?**

The aim of the study is understand the effects on children, and their mothers, when children spend time with their fathers who have perpetrated violence and abuse towards the child's mother during the course of the parental relationship. There is a large literature detailing the effects on children of witnessing domestic violence, but there is a paucity of research on the effects of contact on children who spend time with violent, abusive fathers.

### **Who is undertaking the project?**

This project is being conducted by Ms Donna Roberts. This research will form the basis for the degree of Doctor of Philosophy (PhD) in Psychology, at the University of Adelaide under the supervision of Professor Paul Delfabbro, and Dr Peter Chamberlain.

### **Why am I being invited to participate?**

Mothers who have left relationships with men who perpetrated violence and abuse are invited to participate in an interview study. Women must have ended the relationship and be safe, as well as having completed any family law proceedings. At no time will the child/ren be involved in the study, as this study is about the mother's perceptions.

### **What will I be asked to do?**

The participants will be asked to complete a brief survey for statistical purposes, followed by a semi-structured interview, which will take around 60 minutes. The interviews will be audio recorded, and transcribed then analysed by the researcher. Interviews can be conducted face to face or by phone, Facetime or Skype.

### **Are there any risks associated with participating in this project?**

There is the risk of distress for the participant, due to the nature of the questions asked about their children's experiences of contact. If a participant should become distressed, details of counselling services such as Beyond Blue and Lifeline will be provided, along with the option of contact with a clinical psychologist for counselling. There is also a risk that the data may be subpoenaed for court proceedings.

### **What are the benefits of the research project?**

The benefits of participating in this study include having a voice and being listened to when describing the effects of contact on the children. It is also suggested that the process may have a cathartic effect for the participant.

The research may influence policy and law relating to child contact when a parent has perpetrated violence and abuse.

### **Can I withdraw from the project?**

Participation in this project is completely voluntary. If you agree to participate, you can withdraw from the study at any time, up until articles are submitted for publication and/or the thesis is submitted for examination.

### **What will happen to my information?**

Any interview data will be transcribed by the researcher, and all identifying information removed. Participants will be described as, for example, "Participant 1, aged 43", with children referred to as [son] or [daughter #1]. At no time will anyone, other than the researcher, have access to participants personal information, which will be stored for a period of 5 years, in a locked filing cabinet, in a locked office at all times, except when data is being worked with.

Data will be presented in the researcher's doctoral thesis, in journal articles and in conference presentations.

### **Who do I contact if I have questions about the project?**

For more information or further clarification, please contact Ms Donna Roberts by emailing [donna.roberts@adelaide.edu.au](mailto:donna.roberts@adelaide.edu.au) or the projects supervisors [Paul.delfabbro@adelaide.edu.au](mailto:Paul.delfabbro@adelaide.edu.au) or [Peter.chamberlain@adelaide.edu.au](mailto:Peter.chamberlain@adelaide.edu.au)

### **What if I have a complaint or any concerns?**

The study has been approved by the Human Research Ethics Committee at the University of Adelaide (approval number H-2015-076). If you have questions or problems associated with the practical aspects of your participation in the project, or wish to raise a concern or complaint about the project, then you should consult the Principal Investigator. Contact the Human Research Ethics Committee's Secretariat on phone +61 8 8313 6028 or by email to [hrec@adelaide.edu.au](mailto:hrec@adelaide.edu.au). If you wish to speak with an independent person regarding concerns or a complaint, the University's policy on research involving human participants, or your rights as a participant. Any complaint or concern will be treated in confidence and fully investigated. You will be informed of the outcome.

### **If I want to participate, what do I do?**

If you wish to participate in the study, please contact Donna Roberts ([donna.roberts@adelaide.edu.au](mailto:donna.roberts@adelaide.edu.au)) to arrange a time to complete the interview. Once a time is booked, the consent forms and brief statistical survey will be emailed to you and will need to be completed and returned prior to the interview taking place.

Yours sincerely,  
Ms Donna Roberts  
Professor Paul Delfabbro  
Dr Peter Chamberlain

## Questionnaire for mothers

Please answer the following questions ... any questions you do not feel comfortable answering, please leave blank.

### **About You ... for statistical purposes**

How old are you? \_\_\_\_\_ years

Where were you born? \_\_\_\_\_

If born overseas, what year did you first come to Australia? \_\_\_\_\_

Are you an Australian citizen? Yes                  No

Where was your ex-partner born? \_\_\_\_\_

If born overseas, what year did he first come to Australia? \_\_\_\_\_

Is he an Australian citizen?    Yes                  No

Do you speak a language other than English at home?    Yes                  No

If yes, which language? \_\_\_\_\_

Do you identify as Aboriginal or Torres Strait Islander?    Yes                  No

### **About your relationship ...**

How long were you in the relationship with your ex-partner? \_\_\_\_\_

How long has it been since you separated? (Date of separation) \_\_\_\_\_

Were you married?                  Yes                  No

If you were married, and have been separated for more than 12 months, are you now divorced?                  Yes                  No

### **About your children ...**

This information will be kept confidential at all times. Children will be identified using pseudonyms or as [son] or [daughter] in any report using this data. The names help me be clear about which of your children you may be talking about during the interview, to save confusion.

How many children do you have? \_\_\_\_\_ Please provide their ages and sexes

Child	Name	Age at separation	Age now	Sex
1				M F
2				M F
3				M F
4				M F
5				M F

Are all the children your ex-partner's biological children? Yes No

Do you have children from a previous/subsequent relationship? Yes No

Does your ex-partner have children from a previous/subsequent relationship? Yes No

Do any of the children have special needs, such as speech delays, behavioural problems or mental health issues? Yes No

If yes, please give details:

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Do the children see a counsellor (e.g. at CAMHS) or a psychologist? Yes No

**About your ex-partner ...**

Was he arrested for assaulting you? Yes No

Was he charged with assaulting you? Yes No

Was he convicted of assaulting you? Yes No

Was he charged with or convicted of assaulting a previous/subsequent partner? Yes No

Do you have a civil intervention order (aka AVO)? Yes No

If yes, have you had to vary that order? Yes No



# **Interview guide for Mothers whose children have contact with their fathers**

- 1. Thank you for talking with me today. As you know, I am interested in hearing about the effects that seeing their father is having on your children. There are no right or wrong answers, as this is all about what you think and feel. Any time you are not comfortable answering a question, please let me know. I will also check with you about how you are finding the interview.**
- 2. Can you please describe to me how much contact your children have with their father?**
  - Whether the visits are for periods of several days, describing the number of nights per week or fortnight; whether the nights are sequential or spread over multiple visits (e.g. 3 nights at dad's, 4 nights at mum's, 4 nights at dad's, 3 nights at mum's).
  - Whether the contact is for short periods during the day only
  - Whether the visits are supervised or unsupervised
- 3. Can you tell me how handovers are managed?**
  - Are handovers done via a contact service centre? What costs are associated with using the service?
  - Are handovers done at a public place e.g. a police station, McDonald's etc?
  - Are handovers done via school pickups/drop offs? i.e. dad picks the kids up from school Friday afternoon and drops them off Monday morning
  - Are handovers done by mum dropping the kids at dad's house and dad dropping the kids at mum's house at the conclusion or vice versa?
  - Any other methods of achieving the exchange of the children?
- 4. Do the children want to have contact with their father?**
  - What reasons, if any, do they give (or show) for wanting (or not wanting) contact?
  - How do they behave leading up to a visit?
  - How do they react if a visit is cancelled?
- 5. How do you feel about having to facilitate your children's contact with their father?**
  - Do you feel you have any choice in or control over this contact?
  - Do the children believe you have any choice in or control?
- 6. Can you describe what happens at a typical handover?**
  - Have there been any particularly difficult handovers?
  - Have there ever been arguments or physical/verbal abuse of you or the children at handovers?
- 7. What happens when the children are in their father's care?**
  - Have they ever reported arguments, or physical/verbal abuse or neglect?
  - Do you think they tell you everything that happens when they are in their father's care?
  - Do the children report any positives about spending time with their father? e.g. time with their father, extended family, treats etc

- 8. What are the children like after a visit?**
- How do they look and behave? What do they say?
  - Is there any sense of divided/conflicted loyalties?
  - Do the children have ongoing problems that you believe are associated with the contact with their father? e.g. problems at school, learning problems, mental health problems, behaviour problems at home, offending, sexualised behaviour?
- 9. Do you believe it is in the children's best interests to have contact with their father?**
- Why or why not?
- 10. If you could choose how much (what type and how frequent) contact the children had with their father, what would you choose and why?**
- If the children could choose, what contact do you think each of them would choose and why?
  - Are there any upsides to the contact visits for you? E.g. downtime for you, more energy/time to spend in other ways
- 11. If you went to court, and you could tell the judge anything about the contact and its effects on the children, what would you say?**
- 12. Thank you for talking with me today about what is a very difficult and emotive topic. In closing, how has it been for you to do this interview today? Is there anything that you need right now?**





# Appendix C

This is the questionnaire for Study 3 showing the use of question logic to direct the stream of questions for respondents.

## A retrospective look at contact

### Introduction

My name is Donna Roberts and I am a PhD candidate in the School of Psychology, University of Adelaide. As part of my doctoral studies, I am conducting a survey on child custody/access and how it is perceived by those who have experienced it.

The purpose of this survey is to elicit an understanding of how contact with the non-resident parent was determined, how much contact was had and whether it was perceived as beneficial.

It is expected that the data gathered will contribute to the understanding of the long term impacts of different forms of contact. I invite you to participate in my research.

The survey will take approximately 30 minutes to complete and must be completed in one session.

**ANONIMITY AND CONSENT:** this survey is anonymous and your participation is voluntary.

**PRIVACY:** All information provided in this survey will be kept strictly confidential and stored in a way that does not identify the name of the respondent. All respondents are encouraged to undertake the survey in a situation that affords them privacy.

This survey has been approved by the Human Research Ethics Committee, approval number xx/xxxx. If you have any questions concerning the ethical conduct of this research, please contact [insert name] on [phone number].

**QUESTIONS:** if you have any questions about the survey, please contact Donna Roberts at [donna.roberts@adelaide.edu.au](mailto:donna.roberts@adelaide.edu.au) or my supervisors: Associate Professor Paul Delfabbro at [paul.delfabro@adelaide.edu.au](mailto:paul.delfabro@adelaide.edu.au) or Dr Peter Chamberlain at [peter.chamberlain@adelaide.edu.au](mailto:peter.chamberlain@adelaide.edu.au)

Thank you for your time,

Donna Roberts  
PhD Candidate

School of Psychology, University of Adelaide, North Terrace, Adelaide, SA 5000

Email: [donna.roberts@adelaide.edu.au](mailto:donna.roberts@adelaide.edu.au)

Phone: 08 8313 0416

If you agree to participate, please click next ...

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## Eligibility for participation

1. Are you aged between 18 and 25 years?
    - a. Yes -> 2
    - b. No -> NOT ELIGIBLE TO PARTICIPATE
  2. Did your parent separate before you turned 16?
    - a. Yes -> 3
    - b. No -> NOT ELIGIBLE TO PARTICIPATE
  3. Are both your parents still alive?
    - a. Yes -> 4
    - b. No -> NOT ELIGIBLE TO PARTICIPATE
- 

## Demographics

4. Are you
  - a. Male -> 5
  - b. Female -> 5
5. How old are you now?
  - a. 18-20 years -> 6
  - b. 21-23 years -> 6
  - c. 24-25 years -> 6
6. How old were you when your parents separated?
  - a. Less than 5 years -> 7
  - b. 5-12 years -> 7
  - c. 13-16 years -> 7
7. Prior to separation, were your parents
  - a. Married -> 8
  - b. Cohabiting or de facto -> 8
  - c. Neither -> 8
  - d. Don't know -> 8
8. What year did your parents separate?
  - a. 1990 or earlier -> 9
  - b. 1991-1995 -> 9
  - c. 1996-2000 -> 9
  - d. 2001-2005 -> 9
  - e. 2006-2010 -> 9
  - f. 2011 or later -> 9
9. Would you say that, before your parents separated, you had a closer relationship with
  - a. Your mum -> 10
  - b. Your dad -> 10
  - c. Equally close with both parents -> 10
  - d. Not close to either parent -> 10
10. What was the level of conflict between your parents BEFORE they separated?
  - a. I don't know/too young to remember -> 11
  - b. No conflict -> 11

- c. Low conflict -> 11
  - d. Moderate conflict -> 11
  - e. High conflict -> 11
11. What was the level of conflict between your parents AFTER they separated?
- a. I don't know/too young to remember -> 12
  - b. No conflict -> 12
  - c. Low conflict -> 12
  - d. Moderate conflict -> 12
  - e. High conflict -> 12
  - f. They had no contact with each other -> 12
- 

### **Contact with non-resident parent**

12. Once your parents separated, until you were 18 or left home, did you mostly live
- a. With your mum -> 13
  - b. With your dad -> 282
  - c. With each parent, dividing your time more or less equally between the two -> 543
  - d. With someone other than a parent -> NOT ELIGIBLE TO PARTICIPATE
- 

### **Mum as primary carer**

13. Would you describe your living arrangements as
- a. Lived with mum -> 14
  - b. Lived with mum but swapped to dad for a period of time before going back to mum -> 14
  - c. Mainly lived with Mum but had a period of shared care (approximately equal time with each parent) before returning to mum -> 14
  - d. First I lived with mum, then I lived with dad -> 14
  - e. First I lived with mum but had a period of shared care (approximately equal time with each parent) before living with dad -> 14
14. Looking back, do you wish you had had a different living arrangement?
- a. Yes -> 15
  - b. No -> 16
- 
15. Would you rather have
- a. Lived with dad full time -> 16
  - b. Spent equal time with both parents -> 16
- 

### **Mum as primary carer - Contact with dad**

16. Have you had face to face contact with your father?
- a. Yes -> 31
  - b. No -> 17
- 
17. Have you ever had contact with your dad in other ways e.g. letters/emails, phone/Skype calls
- a. Yes -> 18
  - b. No -> 210
- 
18. Did you have phone or Skype contact with your dad?

- a. Yes -> 22
  - b. No -> 19
- 
19. Did your dad send you letters or emails?
- a. Yes -> 26
  - b. No -> 20
- 
20. Did your dad send you gifts and/or cards for Christmas and/or your birthday?
- a. Yes -> 30
  - b. No -> 21
- 
21. Did you have contact with your dad in other ways?
- a. Yes – specify ->185
  - b. No – ->210
- 
22. How often was the phone or Skype contact with your dad?
- a. Daily -> 23
  - b. 2-3 times a week -> 23
  - c. Weekly - usually one day after school -> 23
  - d. Weekly - usually one day on the weekend -> 23
  - e. Fortnightly - usually one day after school-> 23
  - f. Fortnightly - usually one day on the weekend -> 23
  - g. Monthly -> 23
  - h. Less often than monthly, but he called regularly -> 23
  - i. Usually I didn't know when he was going to call -> 23
  - j. Other – specify -> 23
23. How long did the calls usually last?
- a. 10 minutes or less -> 24
  - b. 11-30 minutes -> 24
  - c. Longer than 30 minutes -> 24
24. Did you have other contact with your dad such as letters or emails?
- a. yes -> 25
  - b. no -> 241
- 
25. Did you get:
- a. Letters or emails -> 27
  - b. Gifts and/or cards for Christmas and/or birthdays -> 30
  - c. Both letters/emails and cards/gifts -> 28
- 
26. How often did you get letters or emails from your dad? (Referred from q19)
- a. Daily -> 29
  - b. 2-3 times a week -> 29
  - c. weekly -> 29
  - d. fortnightly -> 29
  - e. monthly -> 29
  - f. less often than monthly, but regularly -> 29
  - g. less often than monthly, and irregularly -> 29
- 
27. How often did you get letters or emails from your dad? (referred from q25 a)
- a. Daily ->185
  - b. 2-3 times a week ->185
  - c. weekly ->185
  - d. fortnightly ->185

- e. monthly ->185
- f. less often than monthly, but regularly ->185
- g. less often than monthly, and irregularly ->185

---

28. How often did you get letters or emails from your dad? (referred from q25 c)

- a. Daily -> 30
- b. 2-3 times a week -> 30
- c. weekly -> 30
- d. fortnightly -> 30
- e. monthly -> 30
- f. less often than monthly, but regularly -> 30
- g. less often than monthly, and irregularly -> 30

---

29. Did your dad send you gifts and/or cards for Christmas and/or your birthday?

- a. Yes -> 30
- b. no ->185

---

30. How often did you receive cards and/or gifts from your dad?

- a. Every birthday and Christmas ->185
- b. Most birthdays and Christmases ->185
- c. Some birthdays and Christmases ->185
- d. A few birthdays and Christmases ->185
- e. Mainly birthdays ->185
- f. Mainly Christmases ->185
- g. Random birthdays and Christmases ->185
- h. Other - specify ->185

---

### **Mum as primary carer - Face to face contact with Dad**

31. When you were living with your mum, which of the following best describes the contact you had with your dad?

- a. I had contact the whole time -> 32 (continuous contact)
- b. There were one or more breaks in contact, but it always restarted -> 64 (sporadic contact)
- c. I started having contact but it stopped completely ->155 (ceased contact)
- d. I didn't see my dad for 6 months or more, but then I started seeing him and continued to see him ->113 (delayed contact)
- e. I didn't see my dad for 6 months or more, but then I started seeing him, and then it stopped -> 197 (delayed then ceased contact)

---

### **Mum as primary carer – continuous contact**

32. Who was primarily responsible for the decision making about contact?

- a. Mum -> 33
- b. Dad -> 33
- c. Both parents -> 33
- d. Me -> 33
- e. Me and my parents -> 33

---

33. How did your parents generally get on during your post-separation childhood?

- a. They got on really well -> 34

- b. They got on okay -> 34
  - c. There was some bad feeling -> 34
  - d. There was a lot of bad feeling -> 34
  - e. They had a very up and down relationship -> 34
  - f. There was no communication or contact between them at all -> 37
- 

34. Did your parents argue much after separation?

- a. Yes, a lot -> 35
  - b. Yes, but not much -> 35
  - c. No, not really -> 35
  - d. No, not that I was aware of -> 37
- 

35. How much were you caught up in your parents' arguments?

- a. A lot -> 36
- b. A little -> 36
- c. Not at all -> 36

36. Did the arguments ever become violent?

- a. Yes -> 37
  - b. No -> 37
- 

37. Were either of your parents afraid of being physically harmed by the other parent?

- a. Mum was afraid of dad -> 38
  - b. Dad was afraid of mum -> 38
  - c. Both were afraid of the other -> 38
  - d. Neither were afraid of the other -> 38
- 

38. Was your mum ever seriously worried about how your dad looked after you?

- a. Yes -> 39
  - b. No -> 41
- 

39. What were the concerns your mum had about your dad?

- a. Substance abuse – alcohol -> 40
- b. Substance abuse – drugs -> 40
- c. Mental illness -> 40
- d. That he would neglect me e.g. not feed me properly -> 40
- e. Lack of trust -> 40
- f. He had been violent and/or abusive -> 40
- g. She was worried that he could hurt or kill me -> 40
- h. Other – specify -> 40

40. Do you think your mum's concerns were justified?

- a. Yes, definitely justified -> 41
  - b. Partly justified -> 41
  - c. No, not justified -> 41
- 

41. Did your mum encourage you to maintain a relationship with your dad?

- a. Yes, a lot -> 42
  - b. Yes, a bit -> 42
  - c. No, not really -> 42
  - d. No, she actively opposed it -> 42
- 

42. Which of the following best describes your contact arrangements?

- a. I usually saw my dad on particular days at particular times, but it was fairly flexible -> 43

- b. I usually saw my dad on particular days at particular times, but there was little or no flexibility -> 43
  - c. There were a set of arrangements that got more flexible as I got older -> 43
  - d. There were no set arrangements -> 43
43. Was the contact with your dad ever supervised?
- a. No, never – it was always unsupervised -> 44
  - b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised -> 44
  - c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised -> 44
  - d. Other – specify -> 44
44. During the school term, what was the most you would see your dad in an average month?
- a. Less than once -> 45
  - b. 1-2 times per month i.e. fortnightly -> 45
  - c. 3-4 times per month i.e. weekly -> 45
  - d. More than 5 times per month i.e. more than once per week -> 45
45. Did you have overnight stays with your Dad? Mark all that apply
- a. no - contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school -> 46
  - b. yes - contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday -> 46
  - c. yes - contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday -> 46
  - d. yes - contact was overnight for three nights on a weekend e.g. after school Friday to start of school Monday -> 46
  - e. yes - contact was overnight for one night during the week i.e. Monday to Thursday -> 46
  - f. yes - contact was overnight for two nights during the week i.e. Monday to Thursday -> 46
  - g. yes - contact was overnight for three nights during the week i.e. Monday to Thursday -> 46
46. When you went to your dad's house, how were the handovers managed?
- a. Dad picked me up/dropped me off at Mum's house -> 47
  - b. Mum dropped me off/picked me up at Dad's house -> 47
  - c. Dad picked me up/dropped me off at a friend or relative's house -> 47
  - d. Dad picked me up/dropped me off at school -> 47
  - e. Dad picked me up/dropped me off at a public place e.g. McDonald's -> 47
  - f. Dad picked me up/dropped me off at a police station -> 47
  - g. Dad picked me up/dropped me off at a contact service centre -> 47
- 
47. Do you think the amount of contact you had was
- a. about right -> 48
  - b. too little -> 48
  - c. too much -> 48
  - d. I would have preferred not to have contact -> 48
48. Looking back, which of the following best describes your experience of contact?
- a. Very positive -> 49

- b. Fairly positive -> 49
- c. Mixed -> 49
- d. Fairly negative -> 49
- e. Very negative -> 49

49. What is the most important thing that your parents could have done to improve your experience of contact?

- a. Less conflict and more cooperation -> 50
- b. Dad could have made more effort -> 50
- c. Dad could have been more reliable -> 50
- d. More contact -> 50
- e. Less contact ->50
- f. They could have lived closer together -> 50
- g. They should have taken account of my wishes and feeling -> 50
- h. Mum could have encouraged contact with dad -> 50
- i. The arrangements could have been more flexible -> 50
- j. The arrangements could have been more structured -> 50
- k. Other – specify -> 50

50. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did -> 52
- b. A little differently than your parents did -> 51
- c. Very differently than your parents did -> 51

51. What would you do differently?

- a. Specify -> 52

52. Please indicate your responses to the following

- a. I enjoyed being with my dad – very true    fairly true    not very true    not true  
at all -> b
- b. My dad made time for me – very true    fairly true    not very true    not true  
at all -> c
- c. I felt equally at home in both houses - very true    fairly true    not very true  
not true at all -> d
- d. I found it difficult having two ways of doing things in the two houses - very true  
fairly true    not very true    not true at all -> e
- e. I missed out on doing things at one home or with my friends because I was at the  
other house - very true    fairly true    not very true    not true at all -> f
- f. The arrangements weren't flexible enough for me - very true    fairly true  
not very true    not true at all -> g
- g. My mum used to say bad things about dad to me - very true    fairly true  
not very true    not true at all -> h
- h. My dad used to say bad things about mum to me – very true    fairly true  
not very true    not true at all -> i
- i. I had to act as a go-between or keep secrets between my parents - very true  
fairly true    not very true    not true at all -> j
- j. I didn't like travelling between the two houses - very true    fairly true  
not very true    not true at all -> k



- k. I couldn't rely on my dad seeing me when he said he would - very true fairly true not very true not true at all -> l
- l. I was afraid of my dad - very true fairly true not very true not true at all -> m
- m. I didn't feel safe with my dad - very true fairly true not very true not true at all -> 53
53. Please indicate your responses to the following
- a. I got on well with dad's new partner - very true fairly true not very true not true at all not applicable -> b
- b. I got on well with mum's new partner - very true fairly true not very true not true at all not applicable -> c
- c. I enjoyed seeing the children at dad's house - very true fairly true not very true not true at all not applicable -> 54
- 
54. Did you ever say that you wanted contact to stop?
- a. Yes, repeatedly -> 55
- b. Yes, occasionally -> 55
- c. No, but I should have -> 56
- d. No, never -> 56
- 
55. Did you want contact to stop or did your mum want contact to stop?
- a. I did -> 56
- b. Mum did -> 56
- c. We both did -> 56
- 
56. How would you describe your relationship with your mum before your parents separated?
- a. Very close -> 57
- b. Fairly close -> 57
- c. A bit close -> 57
- d. Not very close ->57
- e. Not close at all -> 57
57. How would you describe your relationship with your Dad before your parents separated?
- a. Very close -> 58
- b. Fairly close -> 58
- c. A bit close ->58
- d. Not very close -> 58
- e. Not close at all -> 58
58. How would you describe your relationship with your mum after your parents separated?
- a. Very close -> 59
- b. Fairly close -> 59
- c. A bit close ->59
- d. Not very close -> 59
- e. Not close at all -> 59
59. How would you describe your relationship with your dad after your parents separated?
- a. Very close -> 60
- b. Fairly close -> 60
- c. A bit close -> 60
- d. Not very close -> 60
- e. Not close at all -> 60

---

60. Do you have contact with your mum now that you are an adult?

- a. Yes -> 61
- b. No -> 62

---

61. How would you describe your relationship with your mum now?

- a. Very close -> 62
- b. Fairly close -> 62
- c. A bit close -> 62
- d. Not very close -> 62
- e. Not close at all -> 62

---

62. Do you have contact with your dad now that you're an adult?

- a. Yes -> 63
- b. No -> 599

---

63. How would you describe your relationship with your dad now?

- a. Very close -> 599
- b. Fairly close -> 599
- c. A bit close -> 599
- d. Not very close -> 599
- e. Not close at all -> 599

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### **Mum as primary carer – sporadic contact**

64. Did you have contact with your dad in the first six months after your parents separated?

- a. Yes -> 65
- b. No ->113

---

65. How often did you see your dad in the beginning?

- a. Daily -> 66
- b. 2-3 times per week -> 66
- c. Weekly -> 66
- d. Fortnightly -> 66
- e. Monthly -> 66
- f. Less than monthly -> 66

66. How long did this contact pattern last?

- a. Less than 3 months ->67
- b. 3-6 months ->67
- c. 6-12 months ->67
- d. Longer than 12 months ->67

---

67. How did your parents generally get on during your post-separation childhood?

- a. They got on really well -> 68
- b. They got on okay ->68
- c. There was some bad feeling ->68
- d. There was a lot of bad feeling ->68
- e. They had a very up and down relationship->68
- f. There was no communication or contact between them at all -> 71

---

68. Did your parents argue much after separation?

- a. Yes, a lot -> 69
- b. Yes, but not much -> 69
- c. No, not really -> 69

- 
- d. No, not that I was aware of -> 71
- 
69. How much were you caught up in your parents' arguments?
- a. A lot -> 70
  - b. A little -> 70
  - c. Not at all -> 70
70. Did the arguments ever become violent?
- a. Yes -> 71
  - b. No -> 71
- 
71. Were either of your parents afraid of being physically harmed by the other parent?
- a. Mum was afraid of dad ->72
  - b. Dad was afraid of mum ->72
  - c. Both were afraid of the other ->72
  - d. Neither were afraid of the other ->72
- 
72. Was your mum ever seriously worried about how your dad looked after you?
- a. Yes -> 73
  - b. No -> 75
- 
73. What were the concerns your mum had about your dad?
- a. Substance abuse – alcohol -> 74
  - b. Substance abuse – drugs -> 74
  - c. Mental illness -> 74
  - d. That he would neglect me e.g. not feed me properly -> 74
  - e. Lack of trust -> 74
  - f. He had been violent and/or abusive -> 74
  - g. She was worried that he could hurt or kill me -> 74
  - h. Other – specify -> 74
74. Do you think your mum's concerns were justified?
- a. Yes, definitely justified ->75
  - b. Partly justified ->75
  - c. No, not justified ->75
- 
75. Did your mum encourage you to maintain a relationship with your dad?
- a. Yes, a lot -> 76
  - b. Yes, a bit -> 76
  - c. No, not really -> 76
  - d. No, she actively opposed it -> 76
- 
76. Which of the following best describes your contact arrangements?
- a. I usually saw my dad on particular days at particular times, but it was fairly flexible -> 77
  - b. I usually saw my dad on particular days at particular times, but there was little or no flexibility -> 77
  - c. There were a set of arrangements that got more flexible as I got older -> 77
  - d. There were no set arrangements -> 77
77. Was the contact with your dad ever supervised?
- a. No, never – it was always unsupervised ->78
  - b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->78

- c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->78
  - d. Other – specify ->78
78. During the school term, what was the most you would see your dad in an average month?
- a. Less than once ->79
  - b. 1-2 times per month i.e. fortnightly ->79
  - c. 3-4 times per month i.e. weekly ->79
  - d. More than 5 times per month i.e. more than once per week ->79
79. Did you have overnight stays with your Dad? Mark all that apply
- a. no - contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->80
  - b. yes - contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday ->80
  - c. yes - contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->80
  - d. yes - contact was overnight for three nights on a weekend e.g. after school Friday to start of school Monday ->80
  - e. yes - contact was overnight for one night during the week i.e. Monday to Thursday ->80
  - f. yes - contact was overnight for two nights during the week i.e. Monday to Thursday ->80
  - g. yes - contact was overnight for three nights during the week i.e. Monday to Thursday ->80
80. When you went to your dad's house, how were the handovers managed?
- a. Dad picked me up/dropped me off at Mum's house ->81
  - b. Mum dropped me off/picked me up at Dad's house ->81
  - c. Dad picked me up/dropped me off at a friend or relative's house ->81
  - d. Dad picked me up/dropped me off at school ->81
  - e. Dad picked me up/dropped me off at a public place e.g. McDonald's ->81
  - f. Dad picked me up/dropped me off at a police station ->81
  - g. Dad picked me up/dropped me off at a contact service centre ->81
- 
81. Who was responsible for the contact stopping the first time?
- a. Mum was -> 82
  - b. Dad was -> 83
  - c. Both parents were -> 84
  - d. I was -> 86
  - e. Mum and I were -> 87
- 
82. What do you think were the reasons for your mum stopping contact? (referred from 81a)
- a. Dad wasn't paying child support and mum was angry about it ->92
  - b. Dad was too irregular with contact e.g. he was always late picking me up or dropping me off ->92
  - c. Mum didn't think dad was looking after me properly ->92
  - d. Mum didn't like that dad was drinking and/or taking drugs when I was with him ->92
  - e. Dad had been violent or threatening to mum ->92
  - f. Mum thought it was what I wanted ->92

- g. Mum thought it was best for me ->92
- h. Other – specify ->92

---

83. What do you think were the reasons for your dad stopping contact? (referred from 81b)

- a. He wasn't sufficiently interested in me ->92
- b. He didn't want to pay to support me ->92
- c. His new partner would have made it difficult->92
- d. It would have been difficult due to the hours he worked->92
- e. It would have been difficult due to where he lived i.e. the distance->92
- f. It would have been difficult due to the type of accommodation he had ->92
- g. He thought it was what I wanted ->92
- h. He thought it was best for me ->92
- i. It would have been too upsetting for him ->92
- j. There were court orders because he had been violent and/or abusive to mum and/or me ->92
- k. It was what I wanted ->92
- l. Other – specify ->92

---

84. What do you think were the reasons for your mum stopping contact? (referred from 81 c)

- a. Dad wasn't paying child support and mum was angry about it ->85
- b. Dad was too irregular with contact e.g. he was always late picking me up or dropping me off ->85
- c. Mum didn't think dad was looking after me properly e.g. not feeding me properly ->85
- d. Mum didn't like that dad was drinking and/or taking drugs when I was with him ->85
- e. Dad had been violent or threatening to mum ->85
- f. Mum was worried that dad might hurt or kill me -> 85
- g. Mum thought it was what I wanted ->85
- h. Mum thought it was best for me ->85
- i. Other – specify ->85

---

85. What do you think were the reasons for your dad stopping contact? (referred from 81c)

- a. He wasn't sufficiently interested in me ->92
- b. He didn't want to pay to support me ->92
- c. His new partner would have made it difficult->92
- d. It would have been difficult due to the hours he worked->92
- e. It would have been difficult due to where he lived i.e. the distance->92
- f. It would have been difficult due to the type of accommodation he had ->92
- g. He thought it was what I wanted ->92
- h. He thought it was best for me ->92
- i. It would have been too upsetting for him ->92
- j. There were court orders because he had been violent and/or abusive to mum and/or me ->92
- k. It was what I wanted ->92
- l. Other – specify ->92

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86. What were your reasons for stopping contact? (referred from 81d)

- a. I didn't like spending time with my dad ->89
- b. I was scared of my dad ->89

- c. I couldn't rely on dad to turn up when he said he would ->89
  - d. I didn't like dad's new partner and/or their children ->89
  - e. I wanted to spend more time with my friends ->89
  - f. I wanted to be able to do sport every weekend, rather than every other one ->89
  - g. Dad was more interested in doing his own thing than in spending time with me ->89
  - h. Dad was always badmouthing mum and I didn't like it ->89
  - i. It was dad's fault that my parents separated ->89
  - j. It caused too many arguments between mum and dad->89
  - k. It upset mum ->89
  - l. I didn't think dad really wanted to see me, he was just doing it because he thought he should ->89
  - m. Other – specify ->89
- 

87. What do you think were the reasons for your mum stopping contact? (referred from 81e)
- a. Dad wasn't paying child support and mum was angry about it ->88
  - b. Dad was too irregular with contact e.g. he was always late picking me up or dropping me off ->88
  - c. Mum didn't think dad was looking after me properly ->88
  - d. Mum didn't like that dad was drinking and/or taking drugs when I was with him ->88
  - e. Dad had been violent or threatening to mum ->88
  - f. Mum was worried that dad might hurt or kill me -> 88
  - g. Mum thought it was what I wanted ->88
  - h. Mum thought it was best for me ->88
  - i. Other – specify ->88
- 

88. What were your reasons for stopping contact? (referred from 81e)
- a. I didn't like spending time with my dad ->89
  - b. I was scared of my dad ->89
  - c. I couldn't rely on dad to turn up when he said he would ->89
  - d. I didn't like dad's new partner and/or their children ->89
  - e. I wanted to spend more time with my friends ->89
  - f. I wanted to be able to do sport every weekend, rather than every other one ->89
  - g. Dad was more interested in doing his own thing than in spending time with me ->89
  - h. Dad was always badmouthing mum and I didn't like it ->89
  - i. It was dad's fault that my parents separated ->89
  - j. It caused too many arguments between mum and dad->89
  - k. It upset mum ->89
  - l. I didn't think dad really wanted to see me, he was just doing it because he thought he should ->89
  - m. Other – specify ->89
- 

89. How old were you when you first made the decision not to see your dad?
- a. Under 5 years old -> 90
  - b. 5-9 years -> 90
  - c. 10-12 years -> 90
  - d. 13 years or older -> 90

- 
90. Did you regret stopping contact with your dad?
- Yes -> 91
  - No -> 91
- 
91. Why?
- Specify ->92
- 
92. Who was responsible for contact restarting?
- I was ->93
  - Dad was ->93
  - Mum was ->93
  - Other – specify ->93
93. How long was the break in contact before it started again?
- Less than 3 months ->94
  - 3-6 months ->94
  - 6-12 months ->94
  - Longer than 12 months ->94
94. How long did the contact continue for before it stopped again?
- Less than 3 months ->95
  - 3-6 months ->95
  - 6-12 months ->95
  - Longer than 12 months ->95
95. How many breaks were there before contact either stopped permanently or you turned 18 years old?
- 1-2 ->96
  - 3-5 ->96
  - More than 5 ->96
96. Who was responsible for stopping the contact each time after the first break?
- I was ->97
  - Mum was ->97
  - Mum and I were ->97
  - Dad was ->97
  - It varied each time ->97
  - Other – specify ->97
97. Who was responsible for restarting contact after each break?
- I was ->98
  - Mum was ->98
  - Mum and I were ->98
  - Dad was ->98
  - It varied each time ->98
  - Other – specify ->98
- 
98. Do you think the amount of contact you had was
- About right ->99
  - Too little ->99
  - Too much ->99
  - I would have preferred no contact at all ->99
99. Looking back, which of the following best describes your experience of contact?
- Very positive ->100

- b. Fairly positive ->100
- c. Mixed ->100
- d. Fairly negative ->100
- e. Very negative ->100

100. What is the most important thing that your parents could have done to improve your experience of contact?

- a. Less conflict and more cooperation ->101
- b. Dad could have made more effort ->101
- c. Dad could have been more reliable ->101
- d. More contact ->101
- e. Less contact ->101
- f. They should have lived closer together ->101
- g. They should have taken account of my wishes and feelings ->101
- h. Mum could have encouraged contact with dad ->101
- i. The arrangements could have been more flexible ->101
- j. The arrangements could have been more structured ->101
- k. Other – specify ->101

101. Knowing what you know now, if you were ever a separated parent, would you handle to arrangements for your children

- a. Pretty much as your parents did -> 103
- b. A little differently -> 102
- c. Very differently -> 102

102. What would you do differently?

- a. Specify -> 103

103. Please indicate your responses to the following

- a. I enjoyed being with my dad – very true    fairly true    not very true    not true  
at all ->b
- b. My dad made time for me – very true    fairly true    not very true    not true  
at all ->c
- c. I felt equally at home in both houses – very true    fairly true    not very  
true    not true at all ->d
- d. I found it difficult having two ways of doing things in the two houses – very true  
fairly true    not very true    not true at all ->e
- e. I missed out on doing things at one home or with my friends because I was at the  
other house – very true    fairly true    not very true    not true at all ->f
- f. The arrangements weren't flexible enough for me – very true    fairly true  
not very true    not true at all ->g
- g. My mum used to say bad things to me about my dad – very true    fairly  
true    not very true    not true at all ->h
- h. My dad used to say bad things to me about my mum – very true    fairly  
true    not very true    not true at all ->i
- i. I had to act as a go-between or keep secrets between my parents – very true  
fairly true    not very true    not true at all ->j
- j. I didn't like travelling between the two houses – very true    fairly true  
not very true    not true at all ->k



- k. I couldn't rely on seeing my dad when he said he would – very true      fairly true      not very true      not true at all ->l
- l. I was afraid of my dad – very true      fairly true      not very true      not true at all ->m
- m. I didn't feel safe with my dad – very true      fairly true      not very true      not true at all ->104
104. Please indicate your responses to the following
- a. I got on well with my dad's new partner – very true      fairly true      not very true      not true at all      not applicable->b
- b. I got on well with my mum's new partner – very true      fairly true      not very true      not true at all      not applicable -> c
- c. I enjoyed seeing the children at dad's house – very true      fairly true      not very true      not true at all      not applicable->105
- 
105. How would you describe your relationship with your mum before your parents separated?
- a. Very close ->106
- b. Fairly close ->106
- c. A bit close ->106
- d. Not very close ->106
- e. Not close at all ->106
106. How would you describe your relationship with your Dad before your parents separated?
- a. Very close ->107
- b. Fairly close ->107
- c. A bit close ->107
- d. Not very close ->107
- e. Not close at all ->107
107. How would you describe your relationship with your mum after your parents separated?
- a. Very close ->108
- b. Fairly close ->108
- c. A bit close ->108
- d. Not very close ->108
- e. Not close at all ->108
108. How would you describe your relationship with your dad after your parents separated?
- a. Very close ->109
- b. Fairly close ->109
- c. A bit close ->109
- d. Not very close ->109
- e. Not close at all ->109
- 
109. Do you have contact with your mum now that you're an adult?
- a. Yes -> 110
- b. No -> 111
- 
110. How would you describe your relationship with your mum now?
- a. Very close ->111
- b. Fairly close ->111
- c. A bit close ->111
- d. Not very close ->111
- e. Not close at all ->111

---

111. Do you have contact with your dad now that you're an adult?

- a. Yes -> 112
- b. No -> 599

---

112. How would you describe your relationship with your dad now?

- a. Very close -> 599
- b. Fairly close -> 599
- c. A bit close -> 599
- d. Not very close -> 599
- e. Not close at all -> 599

---

### **Mum as primary carer – delayed contact**

113. Did you have contact with your dad in the first six months after your parents separated?

- a. Yes -> 31 (retry!)
- b. No ->114

---

114. How long after your parents separated was it until you saw your dad?

- a. 6-9 months ->115
- b. 9-12 months ->115
- c. 1-2 years ->115
- d. 2-5 years ->115
- e. More than 5 years ->115

115. Did you want to see your dad during that time?

- a. Yes ->116
- b. No ->116

---

116. Who do you think was primarily responsible for you not seeing your dad during that time?

- a. Mum -> 117
- b. Dad -> 119
- c. Me -> 121

---

117. What do you think your mum's reasons were for stopping you from seeing your dad for that time?

- a. Mum wouldn't let him because she was angry that he left us ->118
- b. There was a state intervention/restraining/apprehended violence order in place because dad had been threatening and/or violent towards mum and/or me ->118
- c. Mum was frightened of dad ->118
- d. I was frightened of dad and mum knew that ->118
- e. mum was worried that dad wouldn't look after me properly e.g. not feeding me properly ->118
- f. Dad drank and/or took drugs ->118
- g. Mum was worried that dad might hurt or kill me -> 118
- h. mum thought it was best for me ->118
- i. mum thought it was what I wanted ->118
- j. other - specify ->118

118. Do you think your mum's concerns were justified?

- a. Yes, totally justified ->123
- b. Yes, partially justified ->123
- c. No, not at all ->123

---

119. What do you think your dad's reasons were for not seeing you for that time?

- a. He wasn't interested enough to see me ->120
  - b. He didn't want to pay child support ->120
  - c. His new partner made it difficult ->120
  - d. He moved too far away ->120
  - e. Dad thought it was what I wanted ->120
  - f. Other – specify ->120
120. Do you think your dad's reasons were valid?
- a. Yes, totally valid ->123
  - b. Yes, partially valid ->123
  - c. No, not at all ->123
- 
121. What were your reasons for not wanting to see your dad for that time?
- a. I was angry at him for leaving me and mum ->122
  - b. I was scared of him because he had been violent and/or threatening towards mum and/or me ->122
  - c. I wanted to be able to spend time with my friends on weekends ->122
  - d. I wanted to do my sport on weekends and dad wouldn't take me ->122
  - e. I didn't want to meet his new partner because it was their fault that he left me and mum -> 122
  - f. Other – specify ->122
122. Where did you get your ideas from about the reasons that you didn't see your dad?
- a. Mum ->123
  - b. Dad -> 123
  - c. They were my own ideas ->123
  - d. Other people e.g. family and friends ->123
- 
123. How did your parents generally get on during your post-separation childhood?
- a. They got on really well -> 124
  - b. They got on okay ->124
  - c. There was some bad feeling ->124
  - d. There was a lot of bad feeling ->124
  - e. They had a very up and down relationship ->124
  - f. There was no contact between them at all ->127
- 
124. Did your parents argue much after separation?
- a. Yes, a lot ->125
  - b. Yes, but not much ->125
  - c. No, not really ->125
  - d. No, not that I was aware of -> 127
- 
125. How much were you caught up in your parents' arguments?
- a. A lot ->126
  - b. A little ->126
  - c. Not at all ->126
126. Did the arguments ever become violent?
- a. Yes ->127
  - b. No ->127
- 
127. Were either of your parents afraid of being physically harmed by the other parent?
- a. Mum was afraid of dad ->128
  - b. Dad was afraid of mum ->128

- c. Both were afraid of the other ->128
  - d. Neither were afraid of the other ->128
- 

128. Once contact started, was your mum ever seriously worried about how your dad looked after you?

- a. Yes ->129
  - b. No ->131
- 

129. What were the concerns your mum had about your dad?

- a. Substance abuse –alcohol -> 130
- b. Substance abuse – drugs -> 130
- c. Mental illness -> 130
- d. That he would neglect me e.g. not feed me properly -> 130
- e. Lack of trust -> 130
- f. He had been violent and/or abusive -> 130
- g. She was worried that he could hurt or kill me -> 130
- h. Other – specify -> 130

130. Do you think your mum's concerns were justified?

- a. Yes, definitely justified -> 131
  - b. Partly justified -> 131
  - c. No, not justified -> 131
- 

131. Did your mum encourage you to maintain a relationship with your dad once contact started?

- a. Yes, a lot ->132
  - b. Yes, a bit ->132
  - c. No, not really ->132
  - d. No, she actively opposed it ->132
- 

132. Once contact started, which of the following best describes your contact arrangements?

- a. I usually saw my dad on particular days at particular times but it was fairly flexible ->133
- b. I usually saw my dad on particular days at particular times, but there was little or no flexibility ->133
- c. There were a set of arrangements that got more flexible as I got older ->133
- d. There were no set arrangements ->133

133. Was the contact with your dad ever supervised?

- a. No, never – it was always unsupervised ->134
- b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->134
- c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->134
- d. Other – specify ->134

134. During the school term, what was the most you would see your dad in an average month?

- a. Less than once ->135
- b. 1-2 times per month ->135
- c. 3-4 times per month ->135
- d. More than 5 times per month ->135

135. Did you have overnight stays with your dad? Mark all that apply

- a. No – contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->136
  - b. Yes – contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday ->136
  - c. Yes – contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->136
  - d. Yes – contact was overnight for three nights on a weekend i.e. after school Friday to start of school Monday ->136
  - e. Yes – contact was overnight for one night during the week i.e. Monday to Thursday ->136
  - f. Yes – contact was overnight for two nights during the week i.e. Monday to Thursday ->136
  - g. Yes – contact was overnight for three nights during the week i.e. Monday to Thursday ->136
136. When you went to your dad's house, how were the handovers managed?
- a. Dad picked me up/dropped me off at mum's house ->137
  - b. Mum picked me up/dropped me off at dad's house ->137
  - c. Dad picked me up/dropped me off at a friend or relative's house ->137
  - d. Dad picked me up/dropped me off at school ->137
  - e. Dad picked me up/dropped me off at a public place e.g. McDonald's ->137
  - f. Dad picked me up/dropped me off at a police station ->137
  - g. Dad picked me up/dropped me off at a contact service centre ->137
- 
137. Do you think the amount of contact you had was:
- a. About right ->138
  - b. Too little ->138
  - c. Too much ->138
  - d. I would have preferred not to have had contact ->138
138. Looking back, which of the following best describes your experience of shared living arrangements?
- a. Very positive ->139
  - b. Fairly positive ->139
  - c. Mixed ->139
  - d. Fairly negative ->139
  - e. Very negative ->139
139. What is the most important thing that your parents could have done to improve your experience of contact?
- a. Less conflict and more cooperation ->140
  - b. Dad could have made more effort ->140
  - c. Dad could have been more reliable ->140
  - d. More contact ->140
  - e. Less contact ->140
  - f. They could have lived closer together ->140
  - g. They should have taken account of my wishes and feelings ->140
  - h. Mum could have encouraged contact with dad ->140
  - i. The arrangements could have been more flexible ->140
  - j. The arrangements could have been more structured ->140

k. Other – specify ->140

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140. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did -> 142
- b. A little differently -> 141
- c. Very differently -> 141

---

141. What would you do differently?

- a. Specify -> 142

---

142. Please indicate your responses to the following

- a. I enjoyed being with my dad – very true fairly true not very true not true at all -> b
- b. My dad made time for me – very true fairly true not very true not true at all -> c
- c. I felt equally at home in both houses – very true fairly true not very true not true at all -> d
- d. I found it difficult having two ways of doing thing in the two houses – very true fairly true not very true not true at all ->e
- e. I missed out on doing things at one home or with my friends because I was at the other house – very true fairly true not very true not true at all -> f
- f. The arrangements weren't flexible enough for me – very true fairly true not very true not true at all -> g
- g. My mum used to say bad things about my dad to me – very true fairly true not very true not true at all -> h
- h. My dad used to say bad things about my mum to me – very true fairly true not very true not true at all -> i
- i. I had to act as a go-between or keep secrets between my parents – very true fairly true not very true not true at all -> j
- j. I didn't like travelling between the two houses – very true fairly true not very true not true at all -> k
- k. I couldn't rely on seeing my dad when he said he would – very true fairly true not very true not true at all -> l
- l. I was afraid of my dad – very true fairly true not very true not true at all -> m
- m. I didn't feel safe with my dad – very true fairly true not very true not true at all -> 143

143. Please indicate your responses to the following

- a. I got on well with my dad's new partner – very true fairly true not very true not true at all not applicable -> b
- b. I got on well with my mum's new partner – very true fairly true not very true not true at all not applicable -> c
- c. I enjoyed seeing the children at dad's house – very true fairly true not very true not true at all not applicable -> 144

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144. Did you ever say that you wanted contact to stop?

- a. Yes, repeatedly -> 145
- b. Yes, occasionally -> 145
- c. No, but I should have -> 146

- 
- d. No, never -> 146
- 
145. Did you want contact to stop or did your mum want contact to stop?
- a. I did -> 146
  - b. Mum did -> 146
  - c. We both did -> 146
- 
146. How would you describe your relationship with your mum before your parents separated?
- a. Very close ->147
  - b. Fairly close ->147
  - c. A bit close ->147
  - d. Not very close ->147
  - e. Not close at all ->147
147. How would you describe your relationship with your dad before your parents separated?
- a. Very close ->148
  - b. Fairly close ->148
  - c. A bit close ->148
  - d. Not very close ->148
  - e. Not close at all ->148
148. How would you describe your relationship with your mum after your parents separated
- a. Very close ->149
  - b. Fairly close ->149
  - c. A bit close ->149
  - d. Not very close ->149
  - e. Not close at all ->149
149. How would you describe your relationship with your dad after your parents separated
- a. Very close ->150
  - b. Fairly close ->150
  - c. A bit close ->150
  - d. Not very close ->150
  - e. Not close at all ->150
- 
150. Do you have contact with your mum now that you're an adult?
- a. Yes -> 151
  - b. No ->152
- 
151. How would you describe your relationship with your mum now?
- a. Very close ->152
  - b. Fairly close ->152
  - c. A bit close ->152
  - d. Not very close ->152
  - e. Not close at all ->152
- 
152. Do you have contact with your dad now that you're an adult?
- a. Yes -> 153
  - b. No -> 154
- 
153. How would you describe your relationship with your dad now?
- a. Very close ->154
  - b. Fairly close ->154
  - c. A bit close ->154
  - d. Not very close ->154

e. Not close at all ->154

- 
154. Who made the decision regarding contact starting?
- a. There was a court order saying that dad was to have contact ->605
  - b. Mum and dad managed to reach agreement through mediation -> 603
  - c. Other – specify -> Thank you!
- 

### **Mum as primary carer – ceased contact**

155. How often did you see your dad after your parents separated?
- a. Daily ->156
  - b. 2-3 times per week->156
  - c. Weekly ->156
  - d. Fortnightly ->156
  - e. Monthly ->156
  - f. Less than monthly ->156
156. How long did this contact pattern last
- a. Less than 3 months ->157
  - b. 3-6 months ->157
  - c. 6-12 months ->157
  - d. Longer than 12 months -> 157
157. What changes occurred after this time?
- a. The amount of contact decreased -> 158
  - b. The amount of contact increased -> 158
  - c. Contact stopped totally -> 159
158. How long did you see your dad for in total before contact stopped completely?
- a. Less than 3 months ->159
  - b. 3-6 months ->159
  - c. 6-12 months ->159
  - d. 1-2 years ->159
  - e. 3-5 years ->159
  - f. More than 5 years ->159
- 
159. Which of the following best describes your contact arrangements?
- a. I usually saw my dad on particular days at particular times, but it was fairly flexible -> 160
  - b. I usually saw my dad on particular days at particular times, but there was little or no flexibility -> 160
  - c. There were a set of arrangements that got more flexible as I got older -> 160
  - d. There were no set arrangements -> 160
160. Was the contact with your dad ever supervised?
- a. No, never – it was always unsupervised -> 161
  - b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised -> 161
  - c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised -> 161
  - d. Other – specify -> 161
161. During the school term, what was the most you would see your dad in an average month?
- a. Less than once -> 162



- b. 1-2 times per month -> 162
  - c. 3-4 times per month -> 162
  - d. More than 5 times per month -> 162
162. Did you have overnight stays with your dad? Mark all that apply
- a. No – contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school -> 163
  - b. Yes – contact was overnight for one night on the weekend e.g. 9am Saturday to 5pm Sunday -> 163
  - c. Yes – contact was overnight for two nights on the weekend e.g. after school Friday to 5pm Sunday -> 163
  - d. Yes – contact was overnight for three nights on the weekend e.g. after school Friday to start of school on Monday -> 163
  - e. Yes – contact was overnight for one night during the week i.e. Monday to Thursday -> 163
  - f. Yes – contact was overnight for two nights during the week i.e. Monday to Thursday -> 163
  - g. Yes – contact was overnight for three nights during the week i.e. Monday to Thursday -> 163
163. When you went to your dad’s house, how were the handovers managed?
- a. Dad picked me up and dropped me off at Mum’s house -> 164
  - b. Mum picked me up/dropped me off at dad’s house -> 164
  - c. Dad picked me up/dropped me off at a friend or relative’s house -> 164
  - d. Dad picked me up/dropped me off at a public place e.g. McDonald’s -> 164
  - e. Dad picked me up/dropped me off at a police station -> 164
  - f. Dad picked me up/dropped me off at a contact service centre -> 164
- 
164. How did your parents generally get on during your post-separation childhood?
- a. They got on really well ->165
  - b. They got on ok ->165
  - c. There was some bad feeling ->165
  - d. There was a lot of bad feeling ->165
  - e. They had a very up and down relationship ->165
  - f. There was no communication or contact between them at all -> 168
- 
165. Did your parents argue much after separation?
- a. Yes, a lot ->166
  - b. Yes, but not much ->166
  - c. No, not really ->166
  - d. No, not that I was aware of ->168
- 
166. How much were you caught up in your parents’ arguments?
- a. A lot ->167
  - b. A little ->167
  - c. Not at all ->167
167. Did the arguments ever become violent?
- a. Yes ->168
  - b. No ->168
- 
168. Were either of your parents afraid of being physically harmed by the other parent?
- a. Mum was afraid of dad ->169

- b. Dad was afraid of mum ->169
  - c. Both were afraid of the other ->169
  - d. Neither were afraid of the other ->169
- 

169. Was your mum ever seriously worried about how your dad looked after you?

- a. Yes -> 170
  - b. No -> 172
- 

170. What were the concerns your mum had about your dad?

- a. Substance abuse –alcohol -> 171
- b. Substance abuse – drugs -> 171
- c. Mental illness -> 171
- d. That he would neglect me e.g. not feed me properly -> 171
- e. Lack of trust -> 171
- f. He had been violent and/or abusive -> 171
- g. She was worried that he could hurt or kill me -> 171
- h. Other – specify -> 171

171. Do you think your mum's concerns were justified?

- a. Yes, definitely justified -> 172
  - b. Yes, partly justified -> 172
  - c. No, not justified -> 172
- 

172. Did your mum encourage you to maintain a relationship with your dad?

- a. Yes, a lot ->173
  - b. Yes, a little ->173
  - c. No, not really ->173
  - d. No, she actively opposed it ->173
- 

173. Do you think the amount of contact you had was

- a. About right ->174
- b. Too little ->174
- c. Too much ->174
- d. I would have preferred not to have had contact ->174

174. Looking back, which of the following best describes your experience of contact?

- a. Very positive ->175
- b. Fairly positive ->175
- c. Mixed ->175
- d. Fairly negative ->175
- e. Very negative ->175

175. What is the most important thing that your parents could have done to improve your experience of contact?

- a. Less conflict and more cooperation ->176
- b. Dad could have made more effort ->176
- c. Dad could have been more reliable ->176
- d. More contact ->176
- e. Less contact ->176
- f. They could have lived closer together ->176
- g. They should have taken account of my wishes and feelings ->176
- h. Mum could have encouraged contact with dad ->176
- i. The arrangements could have been more flexible ->176

j. The arrangements could have been more structured ->176

k. Other – specify ->176

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176. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

a. Pretty much as your parents did -> 178

b. A little differently -> 177

c. Very differently -> 177

---

177. What would you do differently?

a. Specify -> 178

---

178. Please indicate your responses to the following

a. I enjoyed being with my dad – very true fairly true not very true not true at all ->b

b. My dad made time for me – very true fairly true not very true not true at all ->c

c. I felt equally at home in both houses – very true fairly true not very true not true at all ->d

d. I found it difficult having two ways of doing things in the two houses – very true fairly true not very true not true at all ->e

e. I missed out on doing things at one house or with my friends because I was at the other house – very true fairly true not very true not true at all ->f

f. The arrangements weren't flexible enough for me – very true fairly true not very true not true at all ->g

g. My mum used to say bad things about dad to me – very true fairly true not very true not true at all ->h

h. My dad used to say bad things about mum to me – very true fairly true not very true not true at all ->i

i. I had to act as a go-between or keep secrets between my parents – very true fairly true not very true not true at all ->j

j. I didn't like travelling between the two houses – very true fairly true not very true not true at all ->k

k. I couldn't rely on dad seeing me when he said he would – very true fairly true not very true not true at all ->l

l. I was afraid of my dad – very true fairly true not very true not true at all ->m

m. I didn't feel safe with my dad – very true fairly true not very true not true at all ->179

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179. Please indicate your responses to the following

a. I got on well with my dad's new partner – very true fairly true not very true not true at all not applicable -> b

b. I got on well with my mum's new partner – very true fairly true not very true not true at all not applicable ->c

c. I enjoyed seeing the children at dad's house – very true fairly true not very true not true at all not applicable ->180

---

180. How would you describe your relationship with your mum before your parents separated?

a. Very close ->181

b. Fairly close ->181

- c. A bit close ->181
- d. Not very close ->181
- e. Not close at all ->181

181. How would you describe your relationship with your dad before your parents separated?

- a. Very close ->182
- b. Fairly close ->182
- c. A bit close ->182
- d. Not very close ->182
- e. Not close at all ->182

182. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->183
- b. Fairly close ->183
- c. A bit close ->183
- d. Not very close ->183
- e. Not close at all ->183

183. How would you describe your relationship with your dad after your parents separated?

- a. Very close ->184
- b. Fairly close ->14
- c. A bit close ->184
- d. Not very close ->184
- e. Not close at all ->184

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184. Do you have contact with your mum now that you're an adult?

- a. Yes -> 185
- b. No ->186

---

185. How would you describe your relationship with your mum now?

- a. Very close ->186
- b. Fairly close ->186
- c. A bit close -> 186
- d. Not very close ->186
- e. Not close at all ->186

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186. Do you have contact with your dad now that you're an adult?

- a. Yes -> 187
- b. No -> 188

---

187. How would you describe your relationship with your dad now?

- a. Very close ->188
- b. Fairly close ->188
- c. A bit close ->188
- d. Not very close ->188
- e. Not close at all ->188

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188. How old were you when contact with your dad stopped?

- a. Under 5 years ->189
- b. 5-9 years ->189
- c. 9-12 years -> 189
- d. 13 years or older ->189

189. Do you have any regrets about stopping contact with your dad?

- a. Yes -> 190

- 
- b. No -> 191
- 
190. What are your regrets?
- a. Specify -> 191
- 
191. Who was responsible for contact stopping?
- a. Mum was -> 192
- b. Dad was -> 194
- c. I was -> 196
- d. There was a court order ->591
- 
192. What do you think your mum's reasons were for stopping contact?
- a. There was a state restraining/intervention/apprehended violence order in place and dad wasn't sticking to the agreements they had made ->193
- b. Dad wasn't paying child support and mum was angry about it
- c. Dad was too irregular with contact e.g. he was always late picking me up or dropping me off ->193
- d. mum was worried that dad wouldn't look after me properly e.g. not feeding me properly ->193
- e. Mum didn't like that dad was drinking and/or taking drugs when I was with him -> 193
- f. Dad had been violent and/or threatening to mum ->193
- g. I was frightened of dad, and mum knew that ->193
- h. Mum was worried that dad might hurt or kill me -> 193
- i. Mum thought it was best for me ->193
- j. Mum thought it was what I wanted ->193
- k. Other – specify ->193
193. Do you think your mum's reasons were valid?
- a. Yes, totally valid -> 599
- b. Yes, partially valid -> 599
- c. No, not at all ->599
- 
194. What do you think your dad's reasons were for stopping contact?
- a. He wasn't interested enough to continue to see me ->195
- b. He didn't want to pay child support ->195
- c. His new partner made it difficult ->195
- d. I didn't like his new partner or the children ->195
- e. He moved too far away ->195
- f. Dad thought it was what I wanted ->195
- g. I told dad I didn't want to see him any more ->195
- h. Other – specify ->195
195. Do you think your dad's reasons were valid?
- a. Yes, totally valid -> 599
- b. Yes, partially valid -> 599
- c. No, not valid at all -> 599
- 
196. What were your reasons for stopping contact?
- a. I was angry at him for leaving me and mum -> 599
- b. I was scared of him because he had been violent and/or threatening to me and/or mum -> 599
- c. I wanted to be able to spend time with my friends on weekends -> 599

- d. I wanted to do my sport on weekends and dad wouldn't take me -> 599
  - e. I didn't like his new partner because it was their fault he left me and mum -> 599
  - f. I was bored when I was at his house -> 599
  - g. Dad never spent any time with me when I was at his house -> 599
  - h. I didn't think he really wanted to see me and was only doing it because he felt he should -> 599
  - i. Other – specify -> 599
- 

### **Mum as primary carer – delayed then ceased contact**

197. Did you have contact with your dad in the first six months after your parents separated?

- a. Yes -> 31 (retry!)
  - b. No -> 198
- 

198. How long after your parents separated was it until you saw your dad?

- a. 6-9 months ->199
- b. 9-12 months ->199
- c. 1-2 years ->199
- d. 2-5 years ->199
- e. More than 5 years ->199

199. Did you want to see your dad during that time?

- a. Yes ->200
  - b. No ->200
- 

200. Who do you think was primarily responsible for you not seeing your dad during that time?

- a. Mum -> 201
  - b. Dad -> 203
  - c. Me -> 205
- 

201. What do you think your mum's reasons were for stopping you from seeing your dad for that time?

- a. Mum wouldn't let him because she was angry that he left us -> 202
- b. There was a state intervention/restraining/apprehended violence order in place because dad had been threatening and/or violent towards mum and/or me ->202
- c. Mum was frightened of dad ->202
- d. I was frightened of dad and mum knew that ->202
- e. mum was worried that dad wouldn't look after me properly e.g. not feeding me properly ->202
- f. dad drank and/or took drugs ->202
- g. Mum was worried that dad might hurt or kill me -> 202
- h. mum thought it was best for me ->202
- i. mum thought it was what I wanted ->202
- j. other - specify ->202

202. Do you think your mum's reasons were valid?

- a. Yes, totally valid ->207
  - b. Yes, partially valid ->207
  - c. No, not at all ->207
- 

203. What do you think your dad's reasons were for not seeing you for that time?

- a. He wasn't interested enough to see me ->204
- b. He didn't want to pay child support ->204

- c. His new partner made it difficult ->204
  - d. He moved too far away ->204
  - e. Dad thought it was what I wanted ->204
  - f. Other – specify ->204
204. Do you think your dad's reasons were valid?
- a. Yes, totally valid ->207
  - b. Yes, partially valid ->207
  - c. No, not at all ->207
- 
205. What were your reasons for not wanting to see your dad for that time?
- a. I was angry at him for leaving me and mum ->206
  - b. I was scared of him because he had been violent and/or threatening towards mum and/or me ->206
  - c. I wanted to be able to spend time with my friends on weekends ->206
  - d. I wanted to do my sport on weekends and dad wouldn't take me ->206
  - e. I didn't want to meet his new partner because it was their fault that he left mum and me -> 206
  - f. Other – specify ->206
206. Where did you get your ideas from about the reasons that you didn't see your dad?
- a. Mum ->207
  - b. Dad ->207
  - c. They were my own ideas ->207
  - d. Other people e.g. family and friends ->207
- 
207. How did your parents generally get on during your post-separation childhood?
- a. They got really well ->208
  - b. They got on okay ->208
  - c. There was some bad feeling ->208
  - d. There was a lot of bad feeling ->208
  - e. They had a very up and down relationship ->208
  - f. There was no contact between them at all ->211
- 
208. Did your parents argue much after separation?
- a. Yes, a lot ->209
  - b. Yes, but not much ->209
  - c. No, not really ->209
  - d. No, not that I was aware of ->211
- 
209. How much were you caught up in your parents' arguments?
- a. A lot ->210
  - b. A little ->210
  - c. Not at all -> 210
210. Did the arguments ever become violent?
- a. Yes ->211
  - b. No ->211
- 
211. Were either of your parents afraid of being physically harmed by the other parent?
- a. Mum was afraid of dad ->212
  - b. Dad was afraid of mum ->212
  - c. Both were afraid of the other ->212
  - d. Neither were afraid of the other ->212
-

212. Once contact started, was your mum ever seriously worried about how your dad looked after you?
- Yes -> 213
  - No -> 215
- 
213. What were the concerns your mum had about your dad?
- Substance abuse – alcohol -> 214
  - Substance abuse – drugs -> 214
  - Mental illness -> 214
  - That he would neglect me e.g. not feed me properly -> 214
  - Lack of trust -> 214
  - He had been violent and/or abusive -> 214
  - She was worried that he could hurt or kill me -> 214
  - Other – specify -> 214
214. Do you think your mum’s concerns were justified?
- Yes, definitely justified -> 215
  - Partly justified -> 215
  - No, not justified -> 215
- 
215. Did your mum encourage you to maintain a relationship with your dad once contact started?
- Yes, a lot ->216
  - Yes, a bit ->216
  - No, not really ->216
  - No, she actively opposed it ->216
- 
216. Once contact started, which of the following best describes your contact arrangements?
- I usually saw my dad on particular days at particular times but it was fairly flexible ->217
  - I usually saw my dad on particular days at particular times, but there was little or no flexibility ->217
  - There were a set of arrangements that got more flexible as I got older ->217
  - There were no set arrangements ->217
217. Was the contact with your dad ever supervised?
- No, never – it was always unsupervised ->218
  - Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->218
  - Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->218
  - Other – specify ->218
218. During the school term, what was the most you would see your dad in an average month?
- Less than once ->219
  - 1-2 times per month i.e. fortnightly->219
  - 3-4 times per month i.e. weekly ->219
  - More than 5 times per month i.e. more than once per week ->219
219. Did you have overnight stays with your dad? Mark all that apply
- No – contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->220



- b. Yes – contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday ->220
  - c. Yes – contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->220
  - d. Yes – contact was overnight for three nights on a weekend i.e. after school Friday to start of school Monday ->220
  - e. Yes – contact was overnight for one night during the week i.e. Monday to Thursday ->220
  - f. Yes – contact was overnight for two nights during the week i.e. Monday to Thursday ->220
  - g. Yes – contact was overnight for three nights during the week i.e. Monday to Thursday ->220
220. When you went to your dad’s house, how were the handovers managed?
- a. Dad picked me up/dropped me off at mum’s house ->221
  - b. Mum picked me up/dropped me off at dad’s house ->221
  - c. Dad picked me up/dropped me off at a friend or relative’s house ->221
  - d. Dad picked me up/dropped me off at school ->221
  - e. Dad picked me up/dropped me off at a public place e.g. McDonald’s ->221
  - f. Dad picked me up/dropped me off at a police station ->221
  - g. Dad picked me up/dropped me off at a contact service centre ->221
- 
221. Do you think the amount of contact you had was:
- a. About right ->222
  - b. Too little ->222
  - c. Too much ->222
  - d. I would have preferred not to have had contact ->222
222. Looking back, which of the following best describes your experience of shared living arrangements?
- a. Very positive ->223
  - b. Fairly positive ->223
  - c. Mixed ->223
  - d. Fairly negative ->223
  - e. Very negative ->223
223. What is the most important thing that your parents could have done to improve your experience of contact?
- a. Less conflict and more cooperation ->224
  - b. Dad could have made more effort ->224
  - c. Dad could have been more reliable ->224
  - d. More contact ->224
  - e. Less contact ->224
  - f. They could have lived closer together ->224
  - g. They should have taken account of my wishes and feelings ->224
  - h. Mum could have encouraged contact with dad ->224
  - i. The arrangements could have been more flexible ->224
  - j. The arrangements could have been more structured ->224
  - k. Other – specify ->224

---

224. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did ->226
- b. A little differently ->225
- c. Very differently ->225

---

225. What would you do differently?

- a. Specify ->226

---

226. Please indicate your responses to the following

- a. I enjoyed being with my dad – very true    fairly true    not very true    not true  
at all -> b
- b. My dad made time for me – very true    fairly true    not very true    not true  
at all -> c
- c. I felt equally at home in both houses – very true    fairly true    not very true  
not true at all -> d
- d. I found it difficult having two ways of doing thing in the two houses – very true  
fairly true    not very true    not true at all ->e
- e. I missed out on doing things at one home or with my friends because I was at the  
other house – very true    fairly true    not very true    not true at all -> f
- f. The arrangements weren't flexible enough for me – very true    fairly true  
not very true    not true at all -> g
- g. My mum used to say bad things about my dad to me – very true    fairly true  
not very true    not true at all -> h
- h. My dad used to say bad things about my mum to me – very true    fairly true  
not very true    not true at all -> i
- i. I had to act as a go-between or keep secrets between my parents – very true  
fairly true    not very true    not true at all -> j
- j. I didn't like travelling between the two houses – very true    fairly true  
not very true    not true at all -> k
- k. I couldn't rely on seeing my dad when he said he would – very true    fairly  
true    not very true    not true at all -> l
- l. I was afraid of my dad – very true    fairly true    not very true    not true  
at all -> m
- m. I didn't feel safe with my dad – very true    fairly true    not very true  
not true at all -> 227

227. Please indicate your responses to the following

- a. I got on well with my dad's new partner – very true    fairly true    not very  
true    not true at all    not applicable-> b
- b. I got on well with my mum's new partner – very true    fairly true    not very  
true    not true at all    not applicable -> c
- c. I enjoyed seeing the children at dad's house – very true    fairly true    not very  
true    not true at all    not applicable -> 228

---

228. Once contact started, how long did you see your dad for in total before contact stopped?

- a. Less than 3 months ->229
- b. 3-6 months ->229
- c. 6-12 months ->229
- d. 1-2 years ->229

- e. 3-5 years ->229
  - f. More than 5 years ->229
229. Who was responsible for contact stopping?
- a. Mum was -> 230
  - b. Dad was -> 232
  - c. I was -> 234
  - d. There was a court order -> 235
- 
230. What do you think your mum's reasons were for stopping contact?
- a. There was a state restraining/intervention/apprehended violence order in place and dad wasn't sticking to the agreements they had made ->231
  - b. Dad wasn't paying child support and mum was angry about it ->231
  - c. Dad was too irregular with contact e.g. he was always late picking me up or dropping me off -> 231
  - d. mum was worried that dad wouldn't look after me properly e.g. not feeding me properly ->231
  - e. mum didn't like that dad was drinking and/or taking drugs when I was with him -> 231
  - f. Dad had been violent and/or threatening to mum ->231
  - g. I was frightened of dad, and mum knew that ->231
  - h. Mum was worried that dad might hurt or kill me -> 231
  - i. Mum thought it was best for me ->231
  - j. Mum thought it was what I wanted ->231
  - k. Other – specify ->231
231. Do you think your mum's reasons were valid?
- a. Yes, totally valid ->235
  - b. Yes, partially valid ->235
  - c. No, not at all ->235
- 
232. What do you think your dad's reasons were for stopping contact?
- a. He wasn't interested enough to see me ->233
  - b. He didn't want to pay child support ->233
  - c. His new partner made it difficult ->233
  - d. I didn't like his new partner or the children ->233
  - e. He moved too far away ->233
  - f. Dad thought it was what I wanted ->233
  - g. I told dad I didn't want to see him any more ->233
  - h. Other – specify ->233
233. Do you think your dad's reasons were valid?
- a. Yes, totally valid ->235
  - b. Yes, partially valid ->235
  - c. No, not valid at all ->235
- 
234. What were your reasons for stopping contact?
- a. I was angry at him for leaving me and mum -> 235
  - b. I was scared of him because he had been violent and/or threatening to me and/or mum ->235
  - c. I wanted to be able to spend time with my friends on weekends ->235
  - d. I wanted to do my sport on weekends and dad wouldn't take me ->235

- e. I didn't like his new partner because it was their fault that he left me and mum -> 235
  - f. I was bored when I was at his house ->235
  - g. Dad never spent any time with me when I was at his house ->235
  - h. I didn't think he really wanted to see me and was only doing it because he felt he should ->235
  - i. Other – specify ->235
- 

235. How would you describe your relationship with your mum before your parents separated?

- a. Very close ->236
- b. Fairly close ->236
- c. A bit close ->236
- d. Not very close ->236
- e. Not close at all ->236

236. How would you describe your relationship with your dad before your parents separated?

- a. Very close ->237
- b. Fairly close ->237
- c. A bit close ->237
- d. Not very close ->237
- e. Not close at all ->237

237. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->238
- b. Fairly close ->238
- c. A bit close ->238
- d. Not very close ->238
- e. Not close at all ->238

238. How would you describe your relationship with your dad after your parents separated?

- a. Very close ->239
  - b. Fairly close ->239
  - c. A bit close ->239
  - d. Not very close ->239
  - e. Not close at all ->239
- 

239. Do you have contact with your mum now that you're an adult?

- a. Yes ->240
  - b. No ->241
- 

240. How would you describe your relationship with your mum now?

- a. Very close ->241
  - b. Fairly close ->241
  - c. A bit close ->241
  - d. Not very close ->241
  - e. Not close at all ->241
- 

241. Do you have contact with your dad now that you're an adult?

- a. Yes ->242
  - b. No ->243
- 

242. How would you describe your relationship with your dad now?

- a. Very close ->243
- b. Fairly close ->243

- c. A bit close ->243
- d. Not very close ->243
- e. Not close at all ->243

---

243. How old were you when contact with your dad stopped?

- a. Under 5 years ->244
- b. 5-9 years ->244
- c. 9-12 years -> 244
- d. 13 years or older ->244

244. Do you have any regrets about stopping contact with your dad?

- a. Yes ->245
- b. No -> 246

---

245. What are your regrets?

- a. Specify -> 246

---

246. Who made the decision regarding contact starting?

- a. There was a court order saying that dad was to have contact ->603
- b. Mum and dad managed to reach agreement through mediation -> 601
- c. Other – specify -> END OF SURVEY

---

### **Mum as primary carer - For those who had no face to face contact but had contact in other ways**

247. Would you have liked to have had face to face contact with your dad during your childhood?

- a. Yes -> 248
- b. No -> 249

---

248. Why do you think there was no face to face contact with your dad during your childhood?

Select all that apply

- a. He wasn't sufficiently interested in me ->249
- b. He didn't want to pay to support me ->249
- c. He wasn't paying child support and mum was angry about that -> 249
- d. His new partner would have made it difficult->249
- e. It would have been difficult due to the hours he worked->249
- f. It would have been difficult due to where he lived i.e. the distance->249
- g. It would have been difficult due to the type of accommodation he had ->249
- h. Mum would have made it too difficult ->249
- i. It was too upsetting for him -> 249
- j. He thought it was best for me ->249
- k. He thought it was what I wanted ->249
- l. It would have been too upsetting for him ->249
- m. There were court orders because he had been violent and/or abusive to mum and/or me ->249
- n. It was what I wanted ->249
- o. Other – specify ->249

249. Looking back on your childhood, do you regret not having face to face contact with your dad?

- a. Yes ->250
- b. No ->250

---

250. Why?

a. Specify ->251

---

251. Do you have contact with your dad now that you're an adult?

- a. Yes, I have face to face [contact](#) -> 252
  - b. Yes, but not face to face contact, only [via other methods](#) -> 253
  - c. No, no contact at all -> 254
- 

252. Who initiated the contact?

- a. I did -> 255
  - b. Dad did -> 256
- 

253. Has the contact maintained the same form and frequency as during your childhood?

- a. Yes, it's the same -> 258
  - b. No, it's different now -> 258
- 

254. Who stopped the contact?

- a. I did -> 261
  - b. Dad did -> 261
- 

255. What made you decide to initiate face to face contact with your dad?

- a. I wanted to know who he is -> 257
  - b. I wanted to know if what mum had told me was true -> 257
  - c. I wanted him to tell me why he didn't contact me after my parents separated -> 257
  - d. I wanted to get to know him -> 257
  - e. Other – Specify -> 257
- 

256. Why do you think your dad made contact with you?

- a. Once I turned 18, he didn't have to pay child support any more -> 257
  - b. Once I turned 18, Mum had no say in whether or not he could contact me -> 257
  - c. Once I turned 18, the court order expired -> 257
  - d. He moved back closer to where we lived -> 257
  - e. I don't know -> 257
  - f. Other – Specify -> 257
- 

257. How often do you see your dad now?

- a. At least once a week ->258
  - b. Every couple of weeks ->258
  - c. Monthly ->258
  - d. On special occasions such as birthdays and Christmas ->258
  - e. Other – specify ->258
- 

258. Do you have non-face to face contact with your dad e.g. via email or Facebook?

- a. Yes ->259
  - b. No ->263
- 

259. How often would you interact with your dad this way?

- a. Daily ->260
  - b. 2-3 times per week ->260
  - c. Weekly ->260
  - d. Fortnightly ->260
  - e. Monthly ->260
  - f. Other – specify ->260
- 

260. How does your mum feel about you having a relationship with your dad now?

- a. She seems to be pretty happy about it ->263

- b. She seems to be ok about it ->263
  - c. I don't think she is happy or unhappy about it ->263
  - d. She is a little distressed by it ->263
  - e. She is very distressed by it ->263
  - f. Other – specify ->263
- 
261. Have you ever had face to face contact with your dad as an adult?
- a. Yes ->262
  - b. No ->263
- 
262. Who instigated the contact?
- a. I did ->263
  - b. Dad did ->263
- 
263. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children
- a. Pretty much as your parents did -> 265
  - b. A little differently -> 264
  - c. Very differently -> 264
- 
264. What would you do differently?
- a. Specify -> 265
- 
265. How would you describe your relationship with your mum before your parents separated?
- a. Very close ->266
  - b. Fairly close ->266
  - c. A bit close ->266
  - d. Not very close ->266
  - e. Not close at all ->266
266. How would you describe your relationship with your dad before your parents separated?
- a. Very close ->267
  - b. Fairly close ->267
  - c. A bit close ->267
  - d. Not very close ->267
  - e. Not close at all ->267
267. How would you describe your relationship with your mum after your parents separated?
- a. Very close ->268
  - b. Fairly close ->268
  - c. A bit close ->268
  - d. Not very close ->268
  - e. Not close at all ->268
268. How would you describe your relationship with your dad after your parents separated?
- a. Very close ->269
  - b. Fairly close ->269
  - c. A bit close ->269
  - d. Not very close ->269
  - e. Not close at all ->269
- 
269. Do you have contact with your mum now that you're an adult?
- a. Yes -> 270
  - b. No -> 271
- 
270. How would you describe your relationship with your mum now?

- a. Very close -> 271
  - b. Fairly close -> 271
  - c. A bit close -> 271
  - d. Not very close -> 271
  - e. Not close at all -> 271
- 

271. Do you have contact with your dad now that you are an adult?

- a. Yes -> 272
  - b. No -> 599
- 

272. How would you describe your relationship with your dad now?

- a. Very close -> 599
  - b. Fairly close -> 599
  - c. A bit close -> 599
  - d. Not very close -> 599
  - e. Not close at all -> 599
- 

### **Mum as primary carer - For those who had no contact with their dad during their childhood**

273. Would you have liked to have had contact with your dad during your childhood?

- a. Yes -> 274
  - b. No -> 274
- 

274. Who was mainly or solely responsible for there being no contact with your dad during your childhood?

- a. Dad ->275
  - b. Mum ->275
  - c. Both parents ->275
  - d. Me ->275
  - e. Me and Mum ->275
- 

275. When you were a child, what reasons did you have about why there was no contact with your dad during your childhood? Select all that apply

- a. He wasn't sufficiently interested in me ->276
  - b. He didn't want to pay to support me ->276
  - c. His new partner would have made it difficult->276
  - d. It would have been difficult due to the hours he worked->276
  - e. It would have been difficult due to where he lived i.e. the distance->276
  - f. It would have been difficult due to the type of accommodation he had ->276
  - g. He thought it was what I wanted ->276
  - h. He thought it was best for me ->276
  - i. It would have been too upsetting for him ->276
  - j. Mum would have made it too difficult ->276
  - k. There were court orders because he had been violent and/or abusive to mum and/or me ->276
  - l. It was what I wanted ->276
  - m. Other – specify ->276
- 

276. Where did your ideas in childhood about your dad's reasons for no contact come from?

- a. Mum ->277
- b. Dad ->277
- c. Own ideas ->277



- d. Other people ->277
- 
277. Now that you are an adult, what do you think were the reasons for there being no contact with your dad?
- a. He wasn't sufficiently interested in me ->278
  - b. He didn't want to pay to support me ->278
  - c. His new partner would have made it difficult->278
  - d. It would have been difficult due to the hours he worked->278
  - e. It would have been difficult due to where he lived i.e. the distance->278
  - f. It would have been difficult due to the type of accommodation he had ->278
  - g. He thought it was what I wanted ->278
  - h. He thought it was best for me ->278
  - i. It would have been too upsetting for him ->278
  - j. Mum would have made it too difficult ->278
  - k. There were court orders because he had been violent and/or abusive to mum and/or me ->278
  - l. It was what I wanted ->278
  - m. Other – specify ->278
- 
278. Do you regret not having contact with your dad during your childhood?
- a. Yes -> 279
  - b. No -> 279
- 
279. Why?
- a. Specify -> 280
- 
280. Knowing what you know now, if you were ever a separated parent, would you handle arrangements for your children
- a. Pretty much as your parents did ->282
  - b. A little differently -> 281
  - c. Very differently -> 281
- 
281. What would you do differently?
- a. Specify -> 282
- 
282. How would you describe your relationship with your mum before your parents separated?
- a. Very close ->283
  - b. Fairly close ->283
  - c. A bit close ->283
  - d. Not very close ->283
  - e. Not close at all ->283
283. How would you describe your relationship with your dad before your parents separated?
- a. Very close ->284
  - b. Fairly close ->284
  - c. A bit close ->284
  - d. Not very close ->284
  - e. Not close at all ->284
284. How would you describe your relationship with your mum after your parents separated?
- a. Very close ->285
  - b. Fairly close ->285
  - c. A bit close ->285
  - d. Not very close ->285

e. Not close at all ->285

285. How would you describe your relationship with your dad after your parents separated?

a. Very close ->286

b. Fairly close ->286

c. A bit close ->286

d. Not very close ->286

e. Not close at all ->286

---

286. Do you have contact with your mum now that you are an adult?

a. Yes ->287

b. No ->288

---

287. How would you describe your relationship with your mum now?

a. Very close ->288

b. Fairly close ->288

c. A bit close ->288

d. Not very close ->288

e. Not close at all ->288

---

288. Do you have contact with your dad now that you're an adult?

a. Yes -> 289

b. No -> 599

---

289. How would you describe your relationship with your dad now?

a. Very close -> 599

b. Fairly close -> 599

c. A bit close -> 599

d. Not very close -> 599

e. Not close at all -> 599

---

## **Dad as primary carer**

290. Would you describe your living arrangements as

a. Lived with dad ->291

b. Lived with dad but swapped to mum for a period of time before going back to dad ->291

c. Mainly lived with dad but had a period of shared care (approximately equal time with each parent) before returning to dad ->291

d. First I lived with dad, then I lived with mum ->291

e. First I lived with dad but had a period of shared care (approximately equal time with each parent) before living with mum ->291

291. Looking back, do you wish you had had a different living arrangement?

a. Yes -> 292

b. No -> 293

---

292. Would you rather have

a. Lived with mum full time -> 293

b. Spent equal time with both parents -> 293

---

## **Dad as primary carer - Contact with mum**

293. Have you had face to face contact with your mum?

- a. Yes -> 308
  - b. No ->294
- 
294. Have you ever had contact with your mum in other ways e.g. letters/emails, phone/Skype calls
- a. Yes -> 295
  - b. No -> 550
- 
295. Did you have phone or Skype contact with your mum?
- a. Yes -> 299
  - b. No -> 296
- 
296. Did your mum send you letters or emails?
- a. Yes -> 303
  - b. No -> 298
- 
297. Did your mum send you gifts and/or cards for Christmas and/or your birthday?
- a. Yes -> 307
  - b. No -> 298
- 
298. Did you have contact with your mum in other ways?
- a. Yes – specify ->524
  - b. No ->551
- 
299. How often was the phone or Skype contact with your mum?
- a. Daily ->300
  - b. 2-3 times a week ->300
  - c. Weekly - usually one day after school ->300
  - d. Weekly - usually one day on the weekend ->300
  - e. Fortnightly - usually one day after school->300
  - f. Fortnightly - usually one day on the weekend ->300
  - g. Monthly ->300
  - h. Less often than monthly, but she called regularly ->300
  - i. Usually I didn't know when she was going to call ->300
  - j. Other – specify ->300
300. How long did the calls usually last?
- a. 10 minutes or less ->301
  - b. 11-30 minutes ->301
  - c. Longer than 30 minutes ->301
301. Did you have other contact with your mum such as letters or emails?
- a. yes -> 302
  - b. no -> 550
- 
302. Did you get:
- a. Letters or emails -> 304
  - b. Gifts and/or cards for Christmas and/or birthdays -> 307
  - c. Both letters/emails and cards/gifts -> 305
- 
303. How often did you get letters or emails from your mum? (Referred from 296)
- a. Daily ->306
  - b. 2-3 times a week ->306
  - c. weekly ->306
  - d. fortnightly ->306
  - e. monthly ->306

- f. less often than monthly, but regularly ->306
- g. less often than monthly, and irregularly ->306

---

304. How often did you get letters or emails from your mum? (referred from 303a)

- a. Daily ->524
- b. 2-3 times a week ->524
- c. weekly ->524
- d. fortnightly ->524
- e. monthly ->524
- f. less often than monthly, but regularly ->524
- g. less often than monthly, and irregularly ->524

---

305. How often did you get letters or emails from your mum? (referred from 303c)

- a. Daily ->307
- b. 2-3 times a week ->307
- c. weekly ->307
- d. fortnightly ->307
- e. monthly ->307
- f. less often than monthly, but regularly ->307
- g. less often than monthly, and irregularly ->307

---

306. Did your mum send you gifts and/or cards for Christmas and/or your birthday?

- a. Yes ->307
- b. no ->524

---

307. How often did you receive cards and/or gifts from your mum?

- a. Every birthday and Christmas ->524
- b. Most birthdays and Christmases ->524
- c. Some birthdays and Christmases ->524
- d. A few birthdays and Christmases ->524
- e. Mainly birthdays ->524
- f. Mainly Christmases ->524
- g. Random birthdays and Christmases ->524
- h. Other - specify ->524

---

## **Dad as primary carer - Face to face contact with Mum**

308. When you were living with your dad, which of the following best describes the contact you had with your mum?

- a. I had contact the whole time -> 309
- b. There were one or more breaks in contact, but it always restarted -> 341
- c. I started having contact but it stopped completely ->432
- d. I didn't see my mum for 6 months or more, but then I started seeing her and continued to see her ->390
- e. I didn't see my mum for 6 months or more, but then I started seeing her, and then it stopped -> 474

---

## **Dad as primary carer – continuous contact**

309. Who was primarily responsible for the decision making about contact?

- a. Mum ->310
  - b. Dad ->310
  - c. Both parents ->310
  - d. Me ->310
  - e. Me and my parents ->310
- 
310. How did your parents generally get on during your post-separation childhood?
- a. They got on really well ->311
  - b. They got on okay ->311
  - c. There was some bad feeling ->311
  - d. There was a lot of bad feeling ->311
  - e. They had a very up and down relationship ->311
  - f. There was no communication or contact between them at all -> 314
- 
311. Did your parents argue much after separation?
- a. Yes, a lot ->312
  - b. Yes, but not much ->312
  - c. No, not really ->312
  - d. No, not that I was aware of -> 314
- 
312. How much were you caught up in your parents' arguments?
- a. A lot ->313
  - b. A little ->313
  - c. Not at all ->313
313. Did the arguments ever become violent?
- a. Yes -> 314
  - b. No -> 314
- 
314. Were either of your parents afraid of being physically harmed by the other parent?
- a. Mum was afraid of dad ->315
  - b. Dad was afraid of mum ->315
  - c. Both were afraid of the other ->315
  - d. Neither were afraid of the other ->315
- 
315. Was your dad ever seriously worried about how your mum looked after you?
- a. Yes ->316
  - b. No ->318
- 
316. What were the concerns your dad had about your mum?
- a. Substance abuse – alcohol ->317
  - b. Substance abuse – drugs ->317
  - c. Mental illness ->317
  - d. That she would neglect me e.g. not feed me properly ->317
  - e. Lack of trust ->317
  - f. Mum's new partner was violent and/or abusive ->317
  - g. Other – specify ->317
317. Do you think your dad's concerns were justified?
- a. Yes, definitely justified ->318
  - b. Partly justified ->318
  - c. No, not justified ->318
- 
318. Did your dad encourage you to maintain a relationship with your mum?
- a. Yes, a lot ->319

- b. Yes, a bit ->319
  - c. No, not really ->319
  - d. No, he actively opposed it ->319
- 

319. Which of the following best describes your contact arrangements?

- a. I usually saw my mum on particular days at particular times, but it was fairly flexible ->320
- b. I usually saw my mum on particular days at particular times, but there was little or no flexibility ->320
- c. There were a set of arrangements that got more flexible as I got older ->320
- d. There were no set arrangements ->320

320. Was the contact with your mum ever supervised?

- a. No, never – it was always unsupervised ->321
- b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->321
- c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->321
- d. Other – specify ->321

321. During the school term, what was the most you would see your mum in an average month?

- a. Less than once ->322
- b. 1-2 times per month ->322
- c. 3-4 times per month ->322
- d. More than 5 times per month ->322

322. Did you have overnight stays with your mum? Mark all that apply

- a. no - contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->323
- b. yes - contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday ->323
- c. yes - contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->323
- d. yes - contact was overnight for three nights on a weekend e.g. after school Friday to start of school Monday ->323
- e. yes - contact was overnight for one night during the week i.e. Monday to Thursday ->323
- f. yes - contact was overnight for two nights during the week i.e. Monday to Thursday ->323
- g. yes - contact was overnight for three nights during the week i.e. Monday to Thursday ->323

323. When you went to your mum's house, how were the handovers managed?

- a. Dad picked me up/dropped me off at Mum's house ->324
  - b. Mum dropped me off/picked me up at Dad's house ->324
  - c. Mum picked me up/dropped me off at a friend or relative's house ->324
  - d. Mum picked me up/dropped me off at school ->324
  - e. Mum picked me up/dropped me off at a public place e.g. McDonald's ->324
  - f. Mum picked me up/dropped me off at a police station ->324
  - g. Mum picked me up/dropped me off at a contact service centre ->324
- 

324. Do you think the amount of contact you had was

- a. about right ->325
  - b. too little ->325
  - c. too much ->325
  - d. I would have preferred not to have contact ->325
325. Looking back, which of the following best describes your experience of contact?
- a. Very positive ->326
  - b. Fairly positive ->326
  - c. Mixed ->326
  - d. Fairly negative ->326
  - e. Very negative ->326
326. What is the most important thing that your parents could have done to improve your experience of contact?
- a. Less conflict and more cooperation ->327
  - b. Mum could have made more effort ->327
  - c. Mum could have been more reliable ->327
  - d. More contact ->327
  - e. Less contact ->327
  - f. They could have lived closer together ->327
  - g. They should have taken account of my wishes and feeling ->327
  - h. Dad could have encouraged contact with mum ->327
  - i. The arrangements could have been more flexible ->327
  - j. The arrangements could have been more structured ->327
  - k. Other – specify ->327
- 
327. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children
- a. Pretty much as your parents did -> 329
  - b. A little differently ->328
  - c. Very differently ->328
- 
328. What would you do differently?
- a. Specify -> 329
- 
329. Please indicate your responses to the following
- a. I enjoyed being with my mum – very true      fairly true      not very true  
not true at all -> b
  - b. My mum made time for me – very true    fairly true      not very true    not true  
at all -> c
  - c. I felt equally at home in both houses - very true    fairly true      not very true  
not true at all -> d
  - d. I found it difficult having two ways of doing things in the two houses - very true  
fairly true      not very true    not true at all -> e
  - e. I missed out on doing things at one home or with my friends because I was at the  
other house - very true    fairly true      not very true    not true at all -> f
  - f. The arrangements weren't flexible enough for me - very true    fairly true  
not very true    not true at all -> g
  - g. My mum used to say bad things about dad to me - very true    fairly true  
not very true    not true at all -> h

- h. My dad used to say bad things about mum to me – very true      fairly true  
not very true      not true at all -> i
- i. I had to act as a go-between or keep secrets between my parents - very true  
fairly true      not very true      not true at all -> j
- j. I didn't like travelling between the two houses - very true      fairly true  
not very true      not true at all -> k
- k. I couldn't rely on my mum seeing me when she said she would - very true  
fairly true      not very true      not true at all -> l
- l. I was afraid of my mum - very true      fairly true      not very true      not true  
at all -> m
- m. I didn't feel safe with my mum - very true      fairly true      not very true  
not true at all -> 330

330. Please indicate your responses to the following

- a. I got on well with my mum's new partner - very true      fairly true      not very  
true      not true at all      not applicable -> b
- b. I got on well with my dad's new partner – very true      fairly true      not very  
true      not true at all      not applicable -> c
- c. I enjoyed seeing the children at mum's house - very true fairly true      not very  
true      not true at all      not applicable -> 331

331. Did you ever say that you wanted contact to stop?

- a. Yes, repeatedly -> 332
- b. Yes, occasionally -> 332
- c. No, but I should have -> 333
- d. No, never -> 333

332. Did you want contact to stop or did your dad want contact to stop?

- a. I did ->333
- b. Dad did ->333
- c. We both did ->333

333. How would you describe your relationship with your mum before your parents separated?

- a. Very close ->334
- b. Fairly close ->334
- c. A bit close ->334
- d. Not very close ->334
- e. Not close at all ->334

334. How would you describe your relationship with your Dad before your parents separated?

- a. Very close ->335
- b. Fairly close ->335
- c. A bit close ->335
- d. Not very close ->335
- e. Not close at all ->336

335. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->336
- b. Fairly close ->336
- c. A bit close ->336
- d. Not very close ->336
- e. Not close at all ->336



336. How would you describe your relationship with your dad after your parents separated?
- Very close ->337
  - Fairly close ->337
  - A bit close ->337
  - Not very close ->337
  - Not close at all ->337
- 
337. Do you have contact with your mum now that you're an adult?
- Yes -> 338
  - No ->339
- 
338. How would you describe your relationship with your mum now?
- Very close ->339
  - Fairly close ->339
  - A bit close ->339
  - Not very close ->339
  - Not close at all ->339
- 
339. Do you have contact with your dad now that you're an adult?
- Yes -> 340
  - No -> 599
- 
340. How would you describe your relationship with your dad now?
- Very close -> 599
  - Fairly close -> 599
  - A bit close -> 599
  - Not very close -> 599
  - Not close at all -> 599
- 

### **Dad as primary carer – sporadic contact**

341. Did you have contact with your mum in the first six months after your parents separated?
- Yes -> 342
  - No -> 390
- 
342. How often did you see your mum in the beginning?
- Daily ->343
  - 2-3 times per week ->343
  - Weekly ->343
  - Fortnightly ->343
  - Monthly ->343
  - Less than monthly ->343
343. How long did this contact pattern last?
- Less than 3 months ->343
  - 3-6 months ->343
  - 6-12 months ->343
  - Longer than 12 months ->343
- 
344. How did your parents generally get on during your post-separation childhood?
- They got on really well ->345
  - They got on okay ->345
  - There was some bad feeling ->345
  - There was a lot of bad feeling ->345

- e. They had a very up and down relationship->345
  - f. There was no communication or contact between them at all -> 348
- 

345. Did your parents argue much after separation?

- a. Yes, a lot -> 3486
  - b. Yes, but not much -> 346
  - c. No, not really -> 346
  - d. No, not that I was aware of -> 348
- 

346. How much were you caught up in your parents' arguments?

- a. A lot ->347
- b. A little ->347
- c. Not at all ->347

347. Did the arguments ever become violent?

- a. Yes ->348
  - b. No ->348
- 

348. Were either of your parents afraid of being physically harmed by the other parent?

- a. Mum was afraid of dad ->349
  - b. Dad was afraid of mum ->349
  - c. Both were afraid of the other ->349
  - d. Neither were afraid of the other ->349
- 

349. Was your dad ever seriously worried about how your mum looked after you?

- a. Yes ->350
  - b. No ->352
- 

350. What were the concerns your dad had about your mum?

- a. Substance abuse –alcohol ->351
- b. Substance abuse – drugs ->351
- c. Mental illness ->351
- d. That she would neglect me e.g. not feed me properly ->351
- e. Lack of trust ->351
- f. Mum's new partner was violent and/or abusive ->351
- g. Other – specify ->351

351. Do you think your dad's concerns were justified?

- a. Yes, definitely justified ->352
  - b. Partly justified ->352
  - c. No, not justified ->352
- 

352. Did your dad encourage you to maintain a relationship with your mum?

- a. Yes, a lot ->353
  - b. Yes, a bit ->353
  - c. No, not really ->353
  - d. No, he actively opposed it ->353
- 

353. Which of the following best describes your contact arrangements?

- a. I usually saw my mum on particular days at particular times, but it was fairly flexible ->354
- b. I usually saw my mum on particular days at particular times, but there was little or no flexibility ->354
- c. There were a set of arrangements that got more flexible as I got older ->354
- d. There were no set arrangements ->354

354. Was the contact with your mum ever supervised?
- No, never – it was always unsupervised ->355
  - Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->355
  - Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->355
  - Other – specify ->355
355. During the school term, what was the most you would see your mum in an average month?
- Less than once ->356
  - 1-2 times per month ->356
  - 3-4 times per month ->356
  - More than 5 times per month ->356
356. Did you have overnight stays with your mum? Mark all that apply
- no - contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->357
  - yes - contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday ->357
  - yes - contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->357
  - yes - contact was overnight for three nights on a weekend e.g. after school Friday to start of school Monday ->357
  - yes - contact was overnight for one night during the week i.e. Monday to Thursday ->357
  - yes - contact was overnight for two nights during the week i.e. Monday to Thursday ->357
  - yes - contact was overnight for three nights during the week i.e. Monday to Thursday ->357
357. When you went to your mum's house, how were the handovers managed?
- Dad picked me up/dropped me off at Mum's house ->358
  - Mum dropped me off/picked me up at Dad's house ->358
  - Mum picked me up/dropped me off at a friend or relative's house ->358
  - Mum picked me up/dropped me off at school ->358
  - Mum picked me up/dropped me off at a public place e.g. McDonald's ->358
  - Mum picked me up/dropped me off at a police station ->358
  - Mum picked me up/dropped me off at a contact service centre ->358
- 
358. Who was responsible for the contact stopping the first time?
- Dad was ->359
  - Mum was -> 360
  - Both parents were -> 361
  - I was -> 363
  - Dad and I were -> 364
- 
359. What do you think were the reasons for your dad stopping contact? (referred from 358a)
- Mum wasn't paying child support and dad was angry about it ->369
  - Mum was too irregular with contact e.g. she was always late picking me up or dropping me off ->369
  - Dad didn't think mum was looking after me properly ->369

- d. Dad didn't like that mum was drinking and/or taking drugs when I was with her ->369
  - e. Mum's new partner was violent and/or abusive to mum ->369
  - f. Mum's new partner was violent and/or threatening to dad ->369
  - g. Dad thought it was what I wanted ->369
  - h. Dad thought it was best for me ->369
  - i. Other – specify ->369
- 

360. What do you think were the reasons for your mum stopping contact? (referred from 358b)

- a. She wasn't sufficiently interested in me ->369
  - b. She didn't want to pay to support me ->369
  - c. Her new partner made it difficult->369
  - d. It would have been difficult due to the hours she worked->369
  - e. It would have been difficult due to where she lived i.e. the distance->369
  - f. It would have been difficult due to the type of accommodation she had ->369
  - g. She thought it was what I wanted ->369
  - h. She thought it was best for me ->369
  - i. It would have been too upsetting for her ->369
  - j. There were court orders because she had been violent and/or abusive to dad and/or me ->369
  - k. There were court orders because her new partner had been violent and/or abusive to mum and/or dad and/or me ->369
  - l. It was what I wanted ->369
  - m. Other – specify ->369
- 

361. What do you think were the reasons for your dad stopping contact? (referred from 358c)

- a. Mum wasn't paying child support and dad was angry about it ->362
  - b. Mum was too irregular with contact e.g. she was always late picking me up or dropping me off ->362
  - c. Dad didn't think mum was looking after me properly ->362
  - d. Dad didn't like that mum was drinking and/or taking drugs when I was with her ->362
  - e. Mum's new partner had been violent and/or abusive to mum ->362
  - f. Mum's new partner had been violent and/or threatening to dad ->362
  - g. Dad thought it was what I wanted ->362
  - h. Dad thought it was best for me ->362
  - i. Other – specify ->362
- 

362. What do you think were the reasons for your mum stopping contact? (referred from 358c)

- a. She wasn't sufficiently interested in me ->369
- b. She didn't want to pay to support me ->369
- c. Her new partner made it difficult->369
- d. It would have been difficult due to the hours she worked->369
- e. It would have been difficult due to where she lived i.e. the distance->369
- f. It would have been difficult due to the type of accommodation she had ->369
- g. She thought it was what I wanted ->369
- h. She thought it was best for me ->369
- i. It would have been too upsetting for her ->369

- j. There were court orders because she had been violent and/or abusive to dad and/or me ->369
  - k. There were court orders because her new partner had been violent and/or abusive to mum and/or dad and/or me ->369
  - l. It was what I wanted ->369
  - m. Other – specify ->369
- 

363. What were your reasons for stopping contact? (referred from 358d)

- a. I didn't like spending time with my mum ->366
  - b. I was scared of my mum ->366
  - c. I couldn't rely on mum to turn up when she said she would ->366
  - d. I didn't like mum's new partner and/or their children ->366
  - e. I wanted to spend more time with my friends ->366
  - f. I wanted to be able to do sport every weekend ->366
  - g. Mum was more interested in doing her own thing than in spending time with me ->366
  - h. Mum was always badmouthing dad and I didn't like it ->366
  - i. It was mum's fault that my parents separated ->366
  - j. It caused too many arguments between mum and dad->366
  - k. It upset dad ->366
  - l. I didn't think mum really wanted to see me, she was just doing it because she thought she should ->366
  - m. Other – specify ->366
- 

364. What do you think were the reasons for your dad stopping contact? (referred from 358e)

- a. Mum wasn't paying child support and mum was angry about it ->365
  - b. Mum was too irregular with contact e.g. he was always late picking me up or dropping me off ->365
  - c. Dad didn't think mum was looking after me properly ->365
  - d. Dad didn't like that mum was drinking and/or taking drugs when I was with her ->365
  - e. Mum's new partner had been violent and/or abusive to mum ->365
  - f. Mum's new partner had been violent and/or threatening to dad ->365
  - g. Dad thought it was what I wanted ->365
  - h. Dad thought it was best for me ->365
  - i. Other – specify ->365
- 

365. What were your reasons for stopping contact? (referred from 358e)

- a. I didn't like spending time with my mum ->366
- b. I was scared of my mum ->366
- c. I couldn't rely on mum to turn up when she said she would ->366
- d. I didn't like mum's new partner and/or their children ->366
- e. I wanted to spend more time with my friends ->366
- f. I wanted to be able to do sport every weekend ->366
- g. Mum was more interested in doing her own thing than in spending time with me ->366
- h. Mum was always badmouthing dad and I didn't like it ->366
- i. It was mum's fault that my parents separated ->366
- j. It caused too many arguments between mum and dad->366

- k. It upset dad ->366
  - l. I didn't think mum really wanted to see me, she was just doing it because she thought she should ->366
  - m. Other – specify ->366
- 

366. How old were you when you first made the decision not to see your mum?

- a. Under 5 years old ->367
  - b. 5-9 years ->367
  - c. 10-12 years ->367
  - d. 13 years or older ->367
- 

367. Did you regret stopping contact with your mum?

- a. Yes -> 368
  - b. No -> 368
- 

368. Why?

- a. Specify ->369
- 

369. Who was responsible for contact restarting?

- a. I was ->370
- b. Dad was ->370
- c. Mum was ->370
- d. Other – specify ->370

370. How long was the break in contact before it started again?

- a. Less than 3 months ->371
- b. 3-6 months ->371
- c. 6-12 months ->371
- d. Longer than 12 months ->371

371. How long did the contact continue for before it stopped again?

- a. Less than 3 months ->372
- b. 3-6 months ->372
- c. 6-12 months ->372
- d. Longer than 12 months ->372

372. How many breaks were there before contact either stopped permanently or you turned 18 years old?

- a. 1-2 ->373
- b. 3-5 ->373
- c. More than 5 ->373

373. Who was responsible for stopping the contact each time after the first break?

- a. I was ->374
- b. Dad was ->374
- c. Dad and I were ->374
- d. Mum was ->374
- e. It varied each time ->374
- f. Other – specify ->374

374. Who was responsible for restarting contact after each break?

- a. I was ->375
- b. Dad was ->375
- c. Dad and I were ->375
- d. Mum was ->375

- e. It varied each time ->375
- f. Other – specify ->375

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375. Do you think the amount of contact you had was

- a. About right ->376
- b. Too little ->376
- c. Too much ->376
- d. I would have preferred no contact at all ->377

376. Looking back, which of the following best describes your experience of contact?

- a. Very positive ->377
- b. Fairly positive ->377
- c. Mixed ->377
- d. Fairly negative ->377
- e. Very negative ->377

377. What is the most important thing that your parents could have done to improve your experience of contact?

- a. Less conflict and more cooperation ->378
- b. Mum could have made more effort ->378
- c. Mum could have been more reliable ->378
- d. More contact ->378
- e. Less contact ->378
- f. They should have lived closer together ->378
- g. They should have taken account of my wishes and feelings ->378
- h. Dad could have encouraged contact with mum ->378
- i. The arrangements could have been more flexible ->378
- j. The arrangements could have been more structured ->378
- k. Other – specify ->378

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378. Knowing what you know now, if you were ever a separated parent, would you handle to arrangements for your children

- a. Pretty much as your parents did -> 380
- b. A little differently -> 379
- c. Very differently -> 379

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379. What would you do differently?

- a. Specify -> 380

---

380. Please indicate your responses to the following

- a. I enjoyed being with my mum – very true      fairly true      not very true  
not true at all ->b
- b. My mum made time for me – very true    fairly true      not very true    not true  
at all ->c
- c. I felt equally at home in both houses – very true      fairly true      not very  
true    not true at all ->d
- d. I found it difficult having two ways of doing things in the two houses – very true  
fairly true      not very true    not true at all ->e
- e. I missed out on doing things at one home or with my friends because I was at the  
other house – very true    fairly true      not very true    not true at all ->f
- f. The arrangements weren't flexible enough for me – very true    fairly true  
not very true    not true at all ->g

- g. My mum used to say bad things to me about my dad – very true      fairly true      not very true      not true at all ->h
- h. My dad used to say bad things to me about my mum – very true      fairly true      not very true      not true at all ->i
- i. I had to act as a go-between or keep secrets between my parents – very true      fairly true      not very true      not true at all ->j
- j. I didn't like travelling between the two houses – very true      fairly true      not very true      not true at all ->k
- k. I couldn't rely on seeing my mum when she said she would – very true      fairly true      not very true      not true at all ->l
- l. I was afraid of my mum – very true      fairly true      not very true      not true at all ->m
- m. I didn't feel safe with my mum – very true      fairly true      not very true      not true at all ->381

381. Please indicate your responses to the following

- a. I got on well with my mum's new partner – very true      fairly true      not very true      not true at all      not applicable ->b
- b. I got on well with my dad's new partner – very true      fairly true      not very true      not true at all      not applicable -> c
- c. I enjoyed seeing the children at mum's house – very true      fairly true      not very true      not true at all      not applicable ->382

382. How would you describe your relationship with your mum before your parents separated?

- a. Very close ->383
- b. Fairly close ->383
- c. A bit close ->383
- d. Not very close ->383
- e. Not close at all ->383

383. How would you describe your relationship with your Dad before your parents separated?

- a. Very close ->384
- b. Fairly close ->384
- c. A bit close ->384
- d. Not very close ->384
- e. Not close at all ->384

384. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->385
- b. Fairly close ->385
- c. A bit close ->385
- d. Not very close ->385
- e. Not close at all ->385

385. How would you describe your relationship with your dad after your parents separated?

- a. Very close ->386
- b. Fairly close ->386
- c. A bit close ->386
- d. Not very close ->386
- e. Not close at all ->386

386. Do you have contact with your mum now that you're an adult?



- a. Yes -> 387
  - b. No -> 388
- 
387. How would you describe your relationship with your mum now?
- a. Very close ->388
  - b. Fairly close ->388
  - c. A bit close ->388
  - d. Not very close ->388
  - e. Not close at all ->388

- 
388. Do you have contact with your dad now that you're an adult?
- a. Yes -> 389
  - b. No -> 599

- 
389. How would you describe your relationship with your dad now?
- a. Very close -> 599
  - b. Fairly close -> 599
  - c. A bit close -> 599
  - d. Not very close -> 599
  - e. Not close at all -> 599

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### **Dad as primary carer – delayed contact**

390. Did you have contact with your mum in the first six months after your parents separated?
- a. Yes -> 308 (retry!)
  - b. No -> 391

- 
391. How long after your parents separated was it until you saw your mum?
- a. 6-9 months ->392
  - b. 9-12 months ->392
  - c. 1-2 years ->392
  - d. 2-5 years ->392
  - e. More than 5 years ->392

392. Did you want to see your mum during that time?
- a. Yes ->393
  - b. No ->393

- 
393. Who do you think was primarily responsible for you not seeing your mum during that time?
- a. Dad -> 394
  - b. Mum -> 396
  - c. Me -> 398

- 
394. What do you think your dad's reasons were for stopping you from seeing your mum for that time?
- a. Dad wouldn't let her because he was angry that she left us ->395
  - b. There was a state intervention/restraining/apprehended violence order in place because mum and/or her new partner had been threatening and/or violent towards mum and/or dad and/or me ->395
  - c. Mum's new partner was violent and/or abusive ->395
  - d. I didn't like mum's new partner and dad knew that ->395
  - e. Dad was worried that mum wouldn't look after me properly e.g. not feeding me ->395
  - f. Mum drank and/or took drugs ->395

- g. Dad thought it was best for me ->395
- h. Dad thought it was what I wanted ->395
- i. other - specify ->395

395. Do you think your dad's concerns were justified?

- a. Yes, totally justified ->400
  - b. Yes, partially justified ->400
  - c. No, not at all ->400
- 

396. What do you think your mum's reasons were for not seeing you for that time?

- a. She wasn't interested enough to see me ->397
- b. She didn't want to pay child support ->397
- c. Her new partner made it difficult ->397
- d. She moved too far away ->397
- e. There was a state restraining/intervention/apprehended violence order in place because her new partner had been violent and/or threatening to mum and/or me -> 397
- f. Mum thought it was what I wanted ->397
- g. Mum thought it was best for me -> 397
- h. Other – specify ->397

397. Do you think your mum's reasons were valid?

- a. Yes, totally valid ->400
  - b. Yes, partially valid ->400
  - c. No, not at all ->400
- 

398. What were your reasons for not wanting to see your mum for that time?

- a. I was angry at her for leaving me and dad ->399
- b. I was scared of her new partner because he had been violent and/or threatening towards mum and/or me ->399
- c. I wanted to be able to spend time with my friends on weekends ->399
- d. I wanted to do my sport on weekends and mum wouldn't take me ->399
- e. Other – specify ->399

399. Where did you get your ideas from about the reasons that you didn't see your mum?

- a. Mum ->400
  - b. Dad ->400
  - c. They were my own ideas ->400
  - d. Other people e.g. family and friends ->400
- 

400. How did your parents get on during your post-separation childhood?

- a. They got on really well ->401
  - b. They got on okay ->401
  - c. There was some bad feeling ->401
  - d. There was a lot of bad feeling ->401
  - e. They had a very up and down relationship ->401
  - f. There was no contact between them at all ->404
- 

401. Did your parents argue much after separation?

- a. Yes, a lot ->402
- b. Yes, but not much ->402
- c. No, not really ->402
- d. No, not that I was aware of ->404

- 
402. How much were you caught up in your parents' arguments?
- A lot ->403
  - A little ->403
  - Not at all ->403
403. Did the arguments ever become violent?
- Yes ->404
  - No ->404
- 
404. Were either of your parents afraid of being physically harmed by the other parent?
- Mum was afraid of dad ->405
  - Dad was afraid of mum ->405
  - Both were afraid of the other ->405
  - Neither were afraid of the other ->405
- 
405. Once contact started, was your dad ever seriously worried about how your mum looked after you?
- Yes -> 406
  - No -> 408
- 
406. What were the concerns your dad had about your mum?
- Substance abuse – alcohol ->407
  - Substance abuse – drugs ->407
  - Mental illness ->407
  - That she would neglect me e.g. not feed me properly ->407
  - Lack of trust ->407
  - Mum's new partner was violent and/or abusive ->407
  - Other – specify -> 407
407. Do you think your dad's concerns were justified?
- Yes, definitely justified -> 408
  - Partly justified -> 408
  - No, not justified -> 408
- 
408. Did your dad encourage you to maintain a relationship with your mum once contact started?
- Yes, a lot ->409
  - Yes, a bit ->409
  - No, not really ->409
  - No, he actively opposed it ->409
- 
409. Once contact started, which of the following best describes your contact arrangements?
- I usually saw my mum on particular days at particular times but it was fairly flexible ->410
  - I usually saw my mum on particular days at particular times, but there was little or no flexibility ->410
  - There were a set of arrangements that got more flexible as I got older ->410
  - There were no set arrangements ->410
410. Was the contact with your mum ever supervised?
- No, never – it was always unsupervised ->411
  - Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->411

- c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->411
  - d. Other – specify ->411
411. During the school term, what was the most you would see your mum in an average month?
- a. Less than once ->412
  - b. 1-2 times per month ->412
  - c. 3-4 times per month ->412
  - d. More than 5 times per month ->412
412. Did you have overnight stays with your mum? Mark all that apply
- a. No – contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->413
  - b. Yes – contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday >413
  - c. Yes – contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->413
  - d. Yes – contact was overnight for three nights on a weekend i.e. after school Friday to start of school Monday ->413
  - e. Yes – contact was overnight for one night during the week i.e. Monday to Thursday ->413
  - f. Yes – contact was overnight for two nights during the week i.e. Monday to Thursday ->413
  - g. Yes – contact was overnight for three nights during the week i.e. Monday to Thursday ->413
413. When you went to your mum’s house, how were the handovers managed?
- a. Dad picked me up/dropped me off at mum’s house ->414
  - b. Mum picked me up/dropped me off at dad’s house ->414
  - c. Mum picked me up/dropped me off at a friend or relative’s house ->414
  - d. Mum picked me up/dropped me off at school ->414
  - e. Mum picked me up/dropped me off at a public place e.g. McDonald’s ->414
  - f. Mum picked me up/dropped me off at a police station ->414
  - g. Mum picked me up/dropped me off at a contact service centre ->414
- 
414. Do you think the amount of contact you had was:
- a. About right ->415
  - b. Too little ->415
  - c. Too much ->415
  - d. I would have preferred not to have had contact ->415
415. Looking back, which of the following best describes your experience of contact?
- a. Very positive ->416
  - b. Fairly positive ->416
  - c. Mixed ->416
  - d. Fairly negative ->416
  - e. Very negative ->416
416. What is the most important thing that your parents could have done to improve your experience of contact?
- a. Less conflict and more cooperation ->417
  - b. Mum could have made more effort ->417

- c. Mum could have been more reliable ->417
- d. More contact ->417
- e. Less contact ->417
- f. They could have lived closer together ->417
- g. They should have taken account of my wishes and feelings ->417
- h. Dad could have encouraged contact with mum ->417
- i. The arrangements could have been more flexible ->417
- j. The arrangements could have been more structured ->417
- k. Other – specify ->417

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417. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did ->419
- b. A little differently ->418
- c. Very differently ->418

---

418. What would you do differently?

- a. Specify ->419

---

419. Please indicate your responses to the following

- a. I enjoyed being with my mum – very true      fairly true      not very true  
not true at all -> b
- b. My mum made time for me – very true    fairly true      not very true    not true  
at all -> c
- c. I felt equally at home in both houses – very true    fairly true      not very true  
not true at all -> d
- d. I found it difficult having two ways of doing thing in the two houses – very true  
fairly true      not very true    not true at all ->e
- e. I missed out on doing things at one home or with my friends because I was at the  
other house – very true    fairly true      not very true    not true at all -> f
- f. The arrangements weren't flexible enough for me – very true    fairly true  
not very true    not true at all -> g
- g. My mum used to say bad things about my dad to me – very true    fairly true  
not very true    not true at all -> h
- h. My dad used to say bad things about my mum to me – very true    fairly true  
not very true    not true at all -> i
- i. I had to act as a go-between or keep secrets between my parents – very true  
fairly true      not very true    not true at all -> j
- j. I didn't like travelling between the two houses – very true      fairly true  
not very true    not true at all -> k
- k. I couldn't rely on seeing my mum when she said she would – very true    fairly  
true    not very true    not true at all -> l
- l. I was afraid of my mum – very true      fairly true      not very true    not true  
at all -> m
- m. I didn't feel safe with my mum – very true      fairly true      not very true  
not true at all -> 420

420. Please indicate your responses to the following

- a. I got on well with my mum's new partner – very true    fairly true      not very  
true    not true at all    not applicable -> b

- b. I got on well with my dad's new partner – very true      fairly true      not very true      not true at all      not applicable -> c
  - c. I enjoyed seeing the children at mum's house – very true      fairly true  
not very true      not true at all      not applicable -> 421
- 

421. Did you ever say that you wanted contact to stop?

- a. Yes, repeatedly ->422
  - b. Yes, occasionally ->422
  - c. No, but I should have ->423
  - d. No, never ->423
- 

422. Did you want contact to stop or did your dad want contact to stop?

- a. I did ->423
  - b. Dad did ->423
  - c. We both did ->423
- 

423. How would you describe your relationship with your mum before your parents separated?

- a. Very close ->424
- b. Fairly close ->424
- c. A bit close ->424
- d. Not very close ->424
- e. Not close at all ->424

424. How would you describe your relationship with your dad before your parents separated?

- a. Very close ->425
- b. Fairly close ->425
- c. A bit close ->425
- d. Not very close ->425
- e. Not close at all ->425

425. How would you describe your relationship with your mum after your parents separated

- a. Very close ->426
- b. Fairly close ->426
- c. A bit close ->426
- d. Not very close ->426
- e. Not close at all ->426

426. How would you describe your relationship with your dad after your parents separated

- a. Very close ->427
  - b. Fairly close ->427
  - c. A bit close ->427
  - d. Not very close ->427
  - e. Not close at all ->427
- 

427. Do you have contact with your mum now that you're an adult?

- a. Yes ->428
  - b. No ->430
- 

428. How would you describe your relationship with your mum now?

- a. Very close ->429
- b. Fairly close ->429
- c. A bit close ->429
- d. Not very close ->429
- e. Not close at all ->429

- 
429. Do you have contact with your dad now that you're an adult?
- a. Yes ->430
  - b. No ->431
- 
430. How would you describe your relationship with your dad now?
- a. Very close ->431
  - b. Fairly close ->431
  - c. A bit close ->431
  - d. Not very close ->431
  - e. Not close at all ->431
- 
431. Who made the decision regarding contact starting?
- a. There was a court order saying that dad was to have contact ->603
  - b. Mum and dad managed to reach agreement through mediation -> 601
  - c. Other – specify -> THANK YOU page
- 

### **Dad as primary carer – ceased contact**

432. How often did you see your mum after your parents separated?
- a. Daily ->433
  - b. 2-3 times per week->433
  - c. Weekly ->433
  - d. Fortnightly ->433
  - e. Monthly ->433
  - f. Less than monthly ->433
433. How long did this contact pattern last
- a. Less than 3 months ->434
  - b. 3-6 months ->434
  - c. 6-12 months ->434
  - d. Longer than 12 months ->434
434. What changes occurred after this time?
- a. The amount of contact decreased ->435
  - b. The amount of contact increased ->435
  - c. Contact stopped totally ->436
435. How long did you see your mum for in total before contact stopped?
- a. Less than 3 months ->436
  - b. 3-6 months ->436
  - c. 6-12 months ->436
  - d. 1-2 years ->436
  - e. 3-5 years ->436
  - f. More than 5 years ->436
- 
436. Which of the following best describes your contact arrangements?
- a. I usually saw my mum, on particular days at particular times, but it was fairly flexible ->437
  - b. I usually saw my mum on particular days at particular times, but there was little or no flexibility ->437
  - c. There were a set of arrangements that got more flexible as I got older ->437
  - d. There were no set arrangements ->437
437. Was the contact with your mum ever supervised?

- a. No, never – it was always unsupervised ->438
  - b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->438
  - c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->438
  - d. Other – specify ->438
438. During the school term, what was the most you would see your mum in an average month?
- a. Less than once ->439
  - b. 1-2 times per month ->439
  - c. 3-4 times per month ->439
  - d. More than 5 times per month ->439
439. Did you have overnight stays with your mum? Mark all that apply
- a. No – contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->440
  - b. Yes – contact was overnight for one night on the weekend e.g. 9am Saturday to 5pm Sunday ->440
  - c. Yes – contact was overnight for two nights on the weekend e.g. after school Friday to 5pm Sunday ->440
  - d. Yes – contact was overnight for three nights on the weekend e.g. after school Friday to start of school on Monday ->440
  - e. Yes – contact was overnight for one night during the week i.e. Monday to Thursday ->440
  - f. Yes – contact was overnight for two nights during the week i.e. Monday to Thursday ->440
  - g. Yes – contact was overnight for three nights during the week i.e. Monday to Thursday ->440
440. When you went to your mum’s house, how were the handovers managed?
- a. Dad picked me up and dropped me off at Mum’s house ->441
  - b. Mum picked me up/dropped me off at dad’s house ->441
  - c. Mum picked me up/dropped me off at a friend or relative’s house ->441
  - d. Mum picked me up/dropped me off at a public place e.g. McDonald’s ->441
  - e. Mum picked me up/dropped me off at a police station ->441
  - f. Mum picked me up/dropped me off at a contact service centre ->441
- 
441. How did your parents generally get on during your post-separation childhood?
- a. They got on really well ->442
  - b. They got on ok ->442
  - c. There was some bad feeling ->442
  - d. There was a lot of bad feeling ->442
  - e. They had a very up and down relationship ->442
  - f. There was no communication or contact between them at all ->445
- 
442. Did your parents argue much after separation?
- a. Yes, a lot ->443
  - b. Yes, but not much ->443
  - c. No, not really ->443
  - d. No, not that I was aware of ->445
- 
443. How much were you caught up in your parents’ arguments?



- a. A lot ->444
  - b. A little ->444
  - c. Not at all ->444
444. Did the arguments ever become violent?
- a. Yes ->445
  - b. No ->445
- 
445. Were either of your parents afraid of being physically harmed by the other parent?
- a. Mum was afraid of dad ->446
  - b. Dad was afraid of mum ->446
  - c. Both were afraid of the other ->446
  - d. Neither were afraid of the other ->446
- 
446. Was your dad ever seriously worried about how your mum looked after you?
- a. Yes ->447
  - b. No ->449
- 
447. What were the concerns your dad had about your mum?
- a. Substance abuse – alcohol ->448
  - b. Substance abuse – drugs ->448
  - c. Mental illness ->448
  - d. That she would neglect me e.g. not feed me properly ->448
  - e. Lack of trust ->448
  - f. Mum’s new partner was violent and/or abusive ->448
  - g. Other – specify ->448
448. Do you think your dad’s concerns were justified?
- a. Yes, definitely justified ->449
  - b. Yes, partly justified ->449
  - c. No, not justified ->449
- 
449. Did your dad encourage you to maintain a relationship with your mum?
- a. Yes, a lot ->450
  - b. Yes, a little ->450
  - c. No, not really ->450
  - d. No, he actively opposed it ->450
- 
450. Do you think the amount of contact you had was
- a. About right ->451
  - b. Too little ->451
  - c. Too much ->451
  - d. I would have preferred not to have had contact ->451
451. Looking back, which of the following best describes your experience of contact?
- a. Very positive ->452
  - b. Fairly positive ->452
  - c. Mixed ->452
  - d. Fairly negative ->452
  - e. Very negative ->452
452. What is the most important thing that your parents could have done to improve your experience of contact?
- a. Less conflict and more cooperation ->453
  - b. Mum could have made more effort ->453

- c. Mum could have been more reliable ->453
- d. More contact ->453
- e. Less contact ->453
- f. They could have lived closer together ->453
- g. They should have taken account of my wishes and feelings ->453
- h. Dad could have encouraged contact with mum ->453
- i. The arrangements could have been more flexible ->453
- j. The arrangements could have been more structured ->453
- k. Other – specify ->453

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453. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did -> 455
- b. A little differently -> 454
- c. Very differently -> 454

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454. What would you do differently?

- a. Specify -> 455

---

455. Please indicate your responses to the following

- a. I enjoyed being with my mum – very true          fairly true          not very true  
not true at all ->b
- b. My mum made time for me – very true    fairly true          not very true    not true  
at all ->c
- c. I felt equally at home in both houses – very true    fairly true          not very true  
not true at all ->d
- d. I found it difficult having two ways of doing things in the two houses – very true  
fairly true          not very true    not true at all ->e
- e. I missed out on doing things at one house or with my friends because I was at the  
other house – very true    fairly true          not very true    not true at all ->f
- f. The arrangements weren't flexible enough for me – very true    fairly true  
not very true    not true at all ->g
- g. My mum used to say bad things about dad to me – very true    fairly true  
not very true    not true at all ->h
- h. My dad used to say bad things about mum to me – very true    fairly true  
not very true    not true at all ->i
- i. I had to act as a go-between or keep secrets between my parents – very true  
fairly true          not very true    not true at all ->j
- j. I didn't like travelling between the two houses – very true          fairly true  
not very true    not true at all ->k
- k. I couldn't rely on mum seeing me when she said she would – very true    fairly  
true    not very true    not true at all ->l
- l. I was afraid of my mum – very true          fairly true          not very true    not true  
at all ->m
- m. I didn't feel safe with my mum – very true          fairly true          not very true  
not true at all ->456

456. Please indicate your responses to the following

- a. I got on well with my mum's new partner – very true    fairly true          not very  
true    not true at all    not applicable ->b

- b. I got on well with my dad's new partner – very true      fairly true      not very true      not true at all      not applicable -< c
- c. I enjoyed seeing the children at mum's house – very true      fairly true      not very true      not true at all      not applicable ->457
- 

457. How would you describe your relationship with your mum before your parents separated?

- a. Very close ->458  
b. Fairly close ->458  
c. A bit close ->458  
d. Not very close ->458  
e. Not close at all ->458

458. How would you describe your relationship with your dad before your parents separated?

- a. Very close ->459  
b. Fairly close ->459  
c. A bit close ->459  
d. Not very close ->459  
e. Not close at all ->459

459. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->460  
b. Fairly close ->460  
c. A bit close ->460  
d. Not very close ->460  
e. Not close at all ->460

460. How would you describe your relationship with your dad after your parents separated?

- a. Very close ->461  
b. Fairly close ->461  
c. A bit close ->461  
d. Not very close ->461  
e. Not close at all ->461
- 

461. Do you have contact with your mum now that you're an adult?

- a. Yes -> 462  
b. No ->463
- 

462. How would you describe your relationship with your mum now?

- a. Very close ->463  
b. Fairly close ->463  
c. A bit close ->463  
d. Not very close ->463  
e. Not close at all ->463
- 

463. Do you have contact with your dad now that you're an adult?

- a. Yes ->464  
b. No ->465
- 

464. How would you describe your relationship with your dad now?

- a. Very close ->465  
b. Fairly close ->465  
c. A bit close ->465  
d. Not very close ->465  
e. Not close at all ->465
-

465. How old were you when contact with your mum stopped?
- Under 5 years ->466
  - 5-12 years ->466
  - 13-18 years ->466
466. Do you have any regrets about stopping contact with your mum?
- Yes -> 467
  - No -> 468
- 
467. What are your regrets?
- Specify -> 468
- 
468. Who was responsible for contact stopping?
- Dad was -> 469
  - Mum was -> 471
  - I was -> 473
  - There was a court order ->603
- 
469. What do you think your dad's reasons were for stopping contact?
- Mum wasn't paying child support and dad was angry about it ->470
  - Mum was too irregular with contact e.g. she was always late picking me up or dropping me off ->470
  - Dad was worried that mum wasn't looking after me properly ->470
  - Dad didn't like mum drinking and/or taking drugs when I was with her ->470
  - Mum's new partner was violent and/or threatening to mum and/or dad ->470
  - Dad thought it was best for me ->470
  - Dad thought it was what I wanted ->470
  - I told dad I didn't want to see her any more -> 470
  - Other – specify ->470
470. Do you think your dad's concerns were justified?
- Yes, totally justified -> 599
  - Yes, partially justified -> 599
  - No, not at all ->599
- 
471. What do you think your mum's reasons were for stopping contact?
- She wasn't interested enough to see me ->472
  - She didn't want to pay child support ->472
  - Her new partner made it difficult ->472
  - I didn't like her new partner or the children ->472
  - She moved too far away ->472
  - Mum thought it was what I wanted ->472
  - Other – specify ->472
472. Do you think your mum's reasons were valid?
- Yes, totally valid -> 599
  - Yes, partially valid -> 599
  - No, not valid at all -> 599
- 
473. What were your reasons for stopping contact?
- I was angry at her for leaving me and dad -> 599
  - I wanted to be able to spend time with my friends on weekends -> 599
  - I wanted to do my sport on weekends and mum wouldn't take me -> 599
  - I was bored when I was at her house -> 599

- e. Mum never spent any time with me when I was at her house -> 599
  - f. I didn't think she really wanted to see me and was only doing it because she felt she should -> 599
  - g. I was scared of mum's new partner because he had been violent and/or threatening to me and/or mum -> 599
  - h. I didn't like her new partner because it was their fault that mum left me and dad -> 473
  - i. Other – specify -> 599
- 

### **Dad as primary carer – delayed then ceased contact**

474. Did you have contact with your mum in the first six months after your parents separated?
- a. Yes -> 308 (retry!)
  - b. No -> 478
- 

475. How long after your parents separated was it until you saw your mum?
- a. 6-9 months ->476
  - b. 9-12 months ->476
  - c. 1-2 years ->476
  - d. 2-5 years ->476
  - e. More than 5 years ->476

476. Did you want to see your mum during that time?
- a. Yes ->477
  - b. No ->477
- 

477. Who do you think was primarily responsible for you not seeing your mum during that time?
- a. Dad -> 478
  - b. Mum -> 480
  - c. I was -> 481
- 

478. What do you think your dad's reasons were for stopping you from seeing your mum for that time?
- a. Dad wouldn't let her because he was angry that she left us -> 479
  - b. There was a state restraining/intervention/apprehended violence order in place because mum and/or her new partner had been violent and/or threatening towards mum and/or dad and/or me -> 479
  - c. Mum's new partner was violent and/or abusive ->479
  - d. I didn't like mum's new partner, and dad knew that ->479
  - e. Dad was worried that mum wouldn't look after me properly e.g. not feeding me properly ->479
  - f. Mum drank and/or took drugs ->479
  - g. Dad thought it was best for me ->479
  - h. Dad thought it was what I wanted ->479
  - i. other - specify ->479
479. Do you think your dad's concerns were justified?
- a. Yes, totally justified ->484
  - b. Yes, partially justified ->484
  - c. No, not at all ->484
- 

480. What do you think your mum's reasons were for not seeing you for that time?
- a. She wasn't interested enough to see me ->481

- b. She didn't want to pay child support ->481
- c. Her new partner made it difficult ->481
- d. She moved too far away ->481
- e. There was a state intervention/restraining/apprehended violence order in place because her new partner had been threatening and/or violent to mum and/or me ->481
- f. Mum thought it was what I wanted ->481
- g. Mum thought it was best for me -> 481
- h. Other – specify ->481

481. Do you think your mum's reasons were valid?

- a. Yes, totally valid ->484
  - b. Yes, partially valid ->484
  - c. No, not at all ->484
- 

482. What were your reasons for not wanting to see your mum for that time?

- a. I was angry at her for leaving me and dad ->483
- b. I was scared of her new partner because he had been violent and/or threatening towards mum and/or me ->483
- c. I wanted to be able to spend time with my friends on weekends ->483
- d. I wanted to do my sport on weekends and mum wouldn't take me ->483
- e. Other – specify ->483

483. Where did you get your ideas from about the reasons that you didn't see your mum?

- a. Mum ->484
  - b. Dad ->484
  - c. They were my own ideas ->484
  - d. Other people e.g. family and friends ->484
- 

484. How did your parents generally get on during your post-separation childhood?

- a. They got on really well ->485
  - b. They got on okay ->485
  - c. There was some bad feeling ->485
  - d. There was a lot of bad feeling ->485
  - e. They had a very up and down relationship ->485
  - f. There was no contact between them at all ->488
- 

485. Did your parents argue much after separation?

- a. Yes, a lot ->486
  - b. Yes, but not much ->486
  - c. No, not really ->486
  - d. No, not that I was aware of ->488
- 

486. How much were you caught up in your parents' arguments?

- a. A lot ->485
- b. A little ->485
- c. Not at all ->485

487. Did the arguments ever become violent?

- a. Yes - 488
  - b. No ->488
- 

488. Were either of your parents afraid of being physically harmed by the other parent?

- a. Mum was afraid of dad ->489

- b. Dad was afraid of mum ->489
  - c. Both were afraid of the other ->489
  - d. Neither were afraid of the other ->489
- 
489. Once contact started, was your dad ever seriously worried about how your mum looked after you?
- a. Yes -> 490
  - b. No -> 491
- 
490. What were the concerns your dad had about your mum?
- a. Substance abuse –alcohol ->491
  - b. Substance abuse – drugs ->491
  - c. Mental illness ->491
  - d. That she would neglect me e.g. not feed me properly ->491
  - e. Lack of trust ->491
  - f. Mum’s new partner was violent and/or abusive ->491
  - g. Other – specify -> 491
491. Do you think your dad’s concerns were justified?
- a. Yes, definitely justified -> 492
  - b. Partly justified -> 492
  - c. No, not justified -> 492
- 
492. Did your dad encourage you to maintain a relationship with your mum once contact started?
- a. Yes, a lot ->493
  - b. Yes, a bit ->493
  - c. No, not really ->493
  - d. No, he actively opposed it ->493
- 
493. Once contact started, which of the following best describes your contact arrangements?
- a. I usually saw my mum on particular days at particular times but it was fairly flexible ->494
  - b. I usually saw my mum on particular days at particular times, but there was little or no flexibility ->494
  - c. There were a set of arrangements that got more flexible as I got older ->494
  - d. There were no set arrangements ->494
494. Was the contact with your mum ever supervised?
- a. No, never – it was always unsupervised ->495
  - b. Yes, it was supervised by a friend or relative for a period of time before changing to unsupervised ->495
  - c. Yes, it was supervised at a contact service centre for period of time, then supervised by a friend or relative, then unsupervised ->495
  - d. Other – specify ->495
495. During the school term, what was the most you would see your mum in an average month?
- a. Less than once ->496
  - b. 1-2 times per month ->496
  - c. 3-4 times per month ->496
  - d. More than 5 times per month ->496
496. Did you have overnight stays with your mum? Mark all that apply

- a. No – contact was during the day only e.g. 9am to 5pm on Saturday/Sunday or for a few hours after school ->497
- b. Yes – contact was overnight for one night on a weekend e.g. 9am Saturday to 5pm Sunday ->497
- c. Yes – contact was overnight for two nights on a weekend e.g. after school Friday to 5pm Sunday ->497
- d. Yes – contact was overnight for three nights on a weekend i.e. after school Friday to start of school Monday ->497
- e. Yes – contact was overnight for one night during the week i.e. Monday to Thursday ->497
- f. Yes – contact was overnight for two nights during the week i.e. Monday to Thursday ->497
- g. Yes – contact was overnight for three nights during the week i.e. Monday to Thursday ->497

497. When you went to your mum's house, how were the handovers managed?

- a. Dad picked me up/dropped me off at mum's house ->498
- b. Mum picked me up/dropped me off at dad's house ->498
- c. Mum picked me up/dropped me off at a friend or relative's house ->498
- d. Mum ad picked me up/dropped me off at school ->498
- e. Mum picked me up/dropped me off at a public place e.g. McDonald's ->498
- f. Mum picked me up/dropped me off at a police station ->498
- g. Mum picked me up/dropped me off at a contact service centre ->498

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498. Do you think the amount of contact you had was:

- a. About right ->499
- b. Too little ->499
- c. Too much ->499
- d. I would have preferred not to have had contact ->499

499. Looking back, which of the following best describes your experience of shared living arrangements?

- a. Very positive ->500
- b. Fairly positive ->500
- c. Mixed ->500
- d. Fairly negative ->500
- e. Very negative ->500

500. What is the most important thing that your parents could have done to improve your experience of contact?

- a. Less conflict and more cooperation ->501
- b. Mum could have made more effort ->501
- c. Mum could have been more reliable ->501
- d. More contact ->501
- e. Less contact ->501
- f. They could have lived closer together ->501
- g. They should have taken account of my wishes and feelings ->501
- h. Dad could have encouraged contact with mum ->501
- i. The arrangements could have been more flexible ->501
- j. The arrangements could have been more structured ->501



k. Other – specify ->501

---

501. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did ->503
- b. A little differently ->502
- c. Very differently ->502

---

502. What would you do differently?

- a. Specify ->503

---

503. Please indicate your responses to the following

- a. I enjoyed being with my mum – very true      fairly true      not very true  
not true at all -> b
- b. My mum made time for me – very true    fairly true      not very true    not true  
at all -> c
- c. I felt equally at home in both houses – very true    fairly true      not very true  
not true at all -> d
- d. I found it difficult having two ways of doing thing in the two houses – very true  
fairly true      not very true    not true at all -> e
- e. I missed out on doing things at one home or with my friends because I was at the  
other house – very true    fairly true      not very true    not true at all -> f
- f. The arrangements weren't flexible enough for me – very true    fairly true  
not very true    not true at all -> g
- g. My mum used to say bad things about my dad to me – very true    fairly true  
not very true    not true at all -> h
- h. My dad used to say bad things about my mum to me – very true    fairly true  
not very true    not true at all -> i
- i. I had to act as a go-between or keep secrets between my parents – very true  
fairly true      not very true    not true at all -> j
- j. I didn't like travelling between the two houses – very true      fairly true  
not very true    not true at all -> k
- k. I couldn't rely on seeing my mum when she said she would – very true    fairly  
true    not very true    not true at all -> l
- l. I was afraid of my mum – very true      fairly true      not very true    not true  
at all -> m
- m. I didn't feel safe with my mum – very true      fairly true      not very true  
not true at all -> 504

504. Please indicate your responses to the following

- a. I got on well with my mum's new partner – very true    fairly true      not very  
true    not true at all    not applicable -> b
- b. I got on well with my dad's new partner – very true    fairly true      not true  
at all    not very true    not applicable -> c
- c. I enjoyed seeing the children at mum's house – very true      fairly true  
not very true    not true at all    not applicable -> 505

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505. Once contact started, how long did you see your mum for in total before contact stopped?

- a. Less than 3 months ->506
- b. 3-6 months ->506
- c. 6-12 months ->506

- d. 1-2 years ->506
- e. 3-5 years ->506
- f. More than 5 years ->506

506. Who was responsible for contact stopping?

- a. Dad was -> 507
  - b. Mum was -> 508
  - c. I was -> 511
  - d. There was a court order ->603
- 

507. What do you think your dad's reasons were for stopping contact?

- a. Mum wasn't paying child support and dad was angry about it ->508
- b. Mum was too irregular with contact e.g. she was always late picking me up or dropping me off ->508
- c. Dad was worried that mum wasn't looking after me properly ->508
- d. Dad didn't like mum drinking and/or taking drugs when I was with her ->508
- e. Mum's new partner was violent and/or threatening to mum and/or dad ->508
- f. Dad thought it was best for me ->508
- g. Dad thought it was what I wanted ->508
- h. Other – specify ->508

508. Do you think your dad's concerns were justified?

- a. Yes, totally justified ->512
  - b. Yes, partially justified ->512
  - c. No, not at all ->512
- 

509. What do you think your mum's reasons were for stopping contact?

- a. She wasn't interested enough to see me ->510
- b. She didn't want to pay child support ->510
- c. Her new partner made it difficult ->510
- d. I didn't like her new partner or the children ->510
- e. She moved too far away ->510
- f. Mum thought it was what I wanted ->510
- g. I told dad I didn't want to see her any more ->510
- h. Other – specify ->510

510. Do you think your mum's reasons were valid?

- a. Yes, totally valid ->512
  - b. Yes, partially valid ->512
  - c. No, not valid at all ->512
- 

511. What were your reasons for stopping contact?

- a. I was angry at her for leaving me and dad ->512
- b. I wanted to be able to spend time with my friends on weekends ->512
- c. I wanted to do my sport on weekends and mum wouldn't take me ->512
- d. I was bored when I was at her house ->512
- e. Mum never spent any time with me when I was at her house ->512
- f. I didn't think she really wanted to see me and was only doing it because she felt she should ->512
- g. I was scared of mum's new partner because he had been violent and/or threatening to me and/or mum ->512
- h. I didn't like her new partner because it was their fault she left me and dad -> 512

- i. Other – specify ->512
- 
512. How would you describe your relationship with your mum before your parents separated?
- a. Very close -> 513
  - b. Fairly close ->513
  - c. A bit close ->513
  - d. Not very close ->513
  - e. Not close at all -> 513
513. How would you describe your relationship with your dad before your parents separated?
- a. Very close -> 514
  - b. Fairly close -> 514
  - c. A bit close -> 514
  - d. Not very close ->514
  - e. Not close at all -> 514
514. How would you describe your relationship with your mum after your parents separated?
- a. Very close -> 515
  - b. Fairly close -> 515
  - c. A bit close -> 515
  - d. Not very close -> 515
  - e. Not close at all -> 515
515. How would you describe your relationship with your dad after your parents separated?
- a. Very close -> 516
  - b. Fairly close -> 516
  - c. A bit close -> 516
  - d. Not very close -> 516
  - e. Not close at all -> 516
- 
516. Do you have contact with your mum now that you're an adult?
- a. Yes -> 517
  - b. No -> 518
- 
517. How would you describe your relationship with your mum now?
- a. Very close -> 518
  - b. Fairly close -> 518
  - c. A bit close -> 518
  - d. Not very close -> 518
  - e. Not close at all -> 518
- 
518. Do you have contact with your dad now that you're an adult?
- a. Yes -> 519
  - b. No -> 520
- 
519. How would you describe your relationship with your dad now?
- a. Very close -> 520
  - b. Fairly close -> 520
  - c. A bit close -> 520
  - d. Not very close -> 520
  - e. Not close at all -> 520
- 
520. How old were you when contact with your mum stopped?
- a. Under 5 years ->521
  - b. 5-9 years ->521

- c. 9-12 years -> 521
- d. 13-18 years ->521

521. Do you have any regrets about stopping contact with your mum?

- a. Yes -> 522
  - b. No -> 523
- 

522. What are your regrets?

- a. Specify -> 523
- 

523. Who made the decision regarding contact starting?

- a. There was a court order saying that mum was to have contact ->603
  - b. Mum and dad managed to reach agreement through mediation -> 601
  - c. Other – specify -> END OF SURVEY
- 

### **Dad as primary carer – for those who had no face to face contact but had contact in other ways**

524. Would you have liked to have had face to face contact with your mum during your childhood?

- a. Yes ->525
  - b. No ->525
- 

525. Why do you think there was no face to face contact with your mum during your childhood?

Select all that apply

- a. She wasn't sufficiently interested in me ->526
- b. She didn't want to pay to support me ->526
- c. Her new partner made it difficult->526
- d. It would have been difficult due to the hours she worked->526
- e. It would have been difficult due to where she lived i.e. the distance->526
- f. It would have been difficult due to the type of accommodation she had ->526
- g. She thought it was what I wanted ->526
- h. She thought it was best for me ->526
- i. It would have been too upsetting for her ->526
- j. There were court orders because she had been violent and/or abusive to dad and/or me ->526
- k. There were court orders because her new partner had been violent and/or abusive to mum and/or dad and/or me ->526
- l. It was what I wanted ->526
- m. Other – specify ->526

526. Looking back on your childhood, do you regret not having face to face contact with your mum?

- a. Yes ->527
  - b. No ->527
- 

527. Why?

- a. Specify ->528
- 

528. Do you have contact with your mum now that you are an adult?

- a. Yes, I have face to face [contact](#) -> 529
- b. Yes, but not face to face contact, only [via other methods](#) -> 530
- c. No, no contact at all -> 531

- 
529. Who initiated the contact?
- I did -> 532
  - Mum did -> 533
- 
530. Has the contact maintained the same form and frequency as during your childhood?
- Yes, it's the same -> 535
  - No, it's different now -> 535
- 
531. Who stopped the contact?
- I did -> 539
  - Mum did -> 539
- 
532. What made you decide to initiate face to face contact with your mum?
- I wanted to know who she is -> 534
  - I wanted to know if what dad had told me was true -> 534
  - I wanted her to tell me why she didn't contact me after my parents separated -> 534
  - I wanted to know why she left me with my dad instead of looking after me -> 534
  - I wanted to get to know her -> 534
  - Specify -> 534
- 
533. Why do you think your mum made contact with you?
- Once I turned 18, she didn't have to pay child support any more -> 534
  - Once I turned 18, dad had no say in whether or not mum could contact me -> 534
  - Once I turned 18, the court order expired -> 534
  - She moved closer to where we lived -> 534
  - I don't know -> 534
  - Specify -> 534
- 
534. How often do you see your mum now?
- At least once a week ->535
  - Every couple of weeks ->535
  - Monthly ->535
  - On special occasions such as birthdays and Christmas ->535
  - Other – specify ->535
- 
535. Do you have non-face to face contact with your mum e.g. via email or Facebook?
- Yes -> 536
  - No -> 539
- 
536. How often would you interact with your mum this way?
- Daily ->537
  - 2-3 times per week ->537
  - Weekly ->537
  - Fortnightly ->537
  - Monthly ->537
  - Other – specify ->537
- 
537. How does your dad feel about you having a relationship with your mum now?
- He seems to be pretty happy about it ->540
  - He seems to be ok about it ->540
  - I don't think he is happy or unhappy about it ->540
  - He is a little distressed by it ->540
  - He is very distressed by it ->540

f. Other – specify ->540

---

538. Have you ever had face to face contact with your mum as an adult?

- a. Yes -> 539
  - b. No ->540
- 

539. Who instigated the contact?

- a. I did ->540
  - b. Mum did ->540
- 

540. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children

- a. Pretty much as your parents did -> 542
  - b. A little differently -> 541
  - c. Very differently -> 541
- 

541. What would you do differently?

- a. Specify -> 542
- 

542. How would you describe your relationship with your mum before your parents separated?

- a. Very close -543
- b. Fairly close ->543
- c. A bit close ->543
- d. Not very close ->543
- e. Not close at all ->543

543. How would you describe your relationship with your dad before your parents separated?

- a. Very close ->544
- b. Fairly close ->544
- c. A bit close ->544
- d. Not very close ->544
- e. Not close at all ->544

544. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->545
- b. Fairly close ->545
- c. A bit close ->545
- d. Not very close ->545
- e. Not close at all ->545

545. How would you describe your relationship with your dad after your parents separated?

- a. Very close ->546
  - b. Fairly close ->546
  - c. A bit close ->546
  - d. Not very close ->546
  - e. Not close at all ->546
- 

546. Do you have contact with your mum now that you are an adult?

- a. Yes -> 547
  - b. No -> 548
- 

547. How would you describe your relationship with your mum now?

- a. Very close -> 549
- b. Fairly close -> 549
- c. A bit close -> 549
- d. Not very close -> 549

- e. Not close at all -> 549
- 
548. Do you have contact with your dad now that you are an adult?
- a. Yes -> 550
  - b. No -> 599

- 
549. How would you describe your relationship with your dad now?
- a. Very close -> 599
  - b. Fairly close -> 599
  - c. A bit close -> 599
  - d. Not very close -> 599
  - e. Not close at all -> 599

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### **Dad as primary carer – for those who had no contact with their mum during their childhood**

550. Would you have liked to have had contact with your mum during your childhood?
- a. Yes -> 551
  - b. No -> 551

- 
551. Who was mainly or solely responsible for there being no contact with your mum during your childhood?
- a. Dad ->552
  - b. Mum ->552
  - c. Both parents ->552
  - d. Me ->552
  - e. Me and Dad ->552

- 
552. When you were a child, what reasons did you have about why there was no contact with your mum during your childhood? Select all that apply
- a. She wasn't sufficiently interested in me ->553
  - b. She didn't want to pay to support me ->553
  - c. Her new partner would have made it difficult->553
  - d. It would have been difficult due to the hours she worked->553
  - e. It would have been difficult due to where she lived i.e. the distance->553
  - f. It would have been difficult due to the type of accommodation she had ->553
  - g. She thought it was what I wanted ->553
  - h. She thought it was best for me ->553
  - i. It would have been too upsetting for her ->553
  - j. There were court orders because she had been violent and/or abusive to dad and/or me ->553
  - k. There were court orders because her new partner had been violent and/or abusive to mum and/or dad and/or me ->553
  - l. It was what I wanted ->553
  - m. Other – specify ->553

- 
553. Where did your ideas in childhood about your mum's reasons for no contact come from?
- a. Mum ->554
  - b. Dad ->554
  - c. Own ideas ->554
  - d. Other people e.g. friends and family->554

- 
554. Now that you are an adult, what do you think were the reasons for there being no contact with your mum?

- a. She wasn't sufficiently interested in me ->555
  - b. She didn't want to pay to support me ->555
  - c. Her new partner would have made it difficult->555
  - d. It would have been difficult due to the hours she worked->555
  - e. It would have been difficult due to where she lived i.e. the distance->555
  - f. It would have been difficult due to the type of accommodation she had ->555
  - g. She thought it was what I wanted ->555
  - h. She thought it was best for me ->555
  - i. It would have been too upsetting for her ->555
  - j. There were court orders because she had been violent and/or abusive to dad and/or me ->555
  - k. There were court orders because her new partner had been violent and/or abusive to mum and/or dad and/or me ->555
  - l. It was what I wanted ->555
  - m. Other – specify ->555
- 

555. Do you regret not having contact with your mum during your childhood?

- a. Yes -> 556
  - b. No -> 558
- 

556. Why?

- a. Specify -> 557
- 

557. Knowing what you know now, if you were ever a separated parent, would you handle arrangements for your children

- a. Pretty much as your parents did ->559
  - b. A little differently ->558
  - c. Very differently ->558
- 

558. What would you do differently?

- a. Specify ->559
- 

559. How would you describe your relationship with your mum before your parents separated?

- a. Very close ->560
- b. Fairly close ->560
- c. A bit close ->560
- d. Not very close ->560
- e. Not close at all ->560

560. How would you describe your relationship with your dad before your parents separated?

- a. Very close ->561
- b. Fairly close ->561
- c. A bit close ->561
- d. Not very close ->561
- e. Not close at all ->561

561. How would you describe your relationship with your mum after your parents separated?

- a. Very close ->562
- b. Fairly close ->562
- c. A bit close ->562
- d. Not very close ->562
- e. Not close at all ->562

562. How would you describe your relationship with your dad after your parents separated?



- a. Very close ->563
  - b. Fairly close ->563
  - c. A bit close ->563
  - d. Not very close ->563
  - e. Not close at all ->563
- 

563. Do you have contact with your mum now that you are an adult?

- a. Yes -> 564
  - b. No -> 565
- 

564. How would you describe your relationship with your mum now?

- a. Very close ->565
  - b. Fairly close ->565
  - c. A bit close ->565
  - d. Not very close ->565
  - e. Not close at all ->565
- 

565. Do you have contact with your dad now that you're an adult?

- a. Yes -> 566
  - b. No -> 599
- 

566. How would you describe your relationship with your dad now?

- a. Very close -> 599
  - b. Fairly close -> 599
  - c. A bit close -> 599
  - d. Not very close -> 599
  - e. Not close at all -> 599
- 

## Shared care

Shared care is defined as spending equal (50/50) time with each parent, with handovers of care being carried out usually on a week about basis.

567. Would you describe your living arrangements as

- a. Continuous shared care throughout your childhood -> 568
- b. Shared care for a period of time before moving to primary care, where mum was the primary carer -> 568
- c. Shared care for a period of time before moving to primary care, where dad was the primary carer -> 568
- d. Primary care for a period of time, where mum was the primary carer before moving to shared care -> 568
- e. Primary care for a period of time, where dad was the primary carer, before moving to shared care -> 568
- f. Primary care for a period of time, where mum was the primary carer, before moving to shared care for a period of time, then back to primary care with mum as the primary carer -> 568
- g. Primary care for a period of time, where mum was the primary carer, before moving to shared care for a period of time, then back to primary care with dad as the primary carer -> 568

- h. Primary care for a period of time, where dad was the primary carer, before moving to shared care for a period of time, then back to primary care with dad as the primary carer -> 568
- i. Primary care for a period of time, where dad was the primary carer, before moving to shared care for a period of time, then back to primary care with mum as the primary carer -> 568
- j. Other – specify -> 568

568. Looking back, do you wish you had had a different living arrangement?

- a. Yes -> 569
  - b. No -> 570
- 

569. Would you rather have

- a. Lived with dad full time ->570
  - b. Lived with mum full time ->570
  - c. Other – specify ->570
- 

570. How long did the shared care arrangement last?

- a. Less than 3 months ->571
  - b. 3-6 months ->571
  - c. 6-12 months ->571
  - d. 1-2 years ->571
  - e. 3-5 years ->571
  - f. Longer than 5 years ->571
- 

571. How did you feel about the shared care arrangement?

- a. I really enjoyed getting to spend time with both my parents even though they had separated      very true      fairly true      not very true      not true at all -> b
- b. I felt equally at home in both houses      very true      fairly true      not very true      not true at all -> c
- c. I found it difficult having two ways of doing things in two houses      very true      fairly true      not very true      not true at all -> d
- d. I often missed out on doing things at one house or with my friends because I was at the other house      very true      fairly true      not very true      not true at all -> e
- e. I felt like I didn't really have a place to call 'home' as I was always moving between the two houses      very true      fairly true      not very true      not true at all -> f
- f. My mum used to say bad things about my dad to me      very true      fairly true      not very true      not true at all -> g
- g. My dad used to say bad things about my mum to me      very true      fairly true      not very true      not true at all -> h
- h. I had to act as a go-between or keep secrets between my parents      very true      fairly true      not very true      not true at all -> i
- i. I didn't like travelling between the two houses      very true      fairly true      not very true      not true at all -> j
- j. I got on well with my dad's new partner      very true      fairly true      not very true      not true at all -> k



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578. Was your mum ever seriously worried about how your dad looked after you?

- a. Yes -> 579
- b. No -> 581

---

579. What were the concerns your mum had about your dad?

- a. Substance abuse – alcohol -> 580
- b. Substance abuse – drugs -> 580
- c. Mental illness -> 580
- d. That he would neglect me e.g. not feed me properly -> 580
- e. Lack of trust -> 580
- f. He had been violent and/or abusive -> 580
- g. She was worried that he could hurt or kill me -> 580
- h. Other – specify -> 580

580. Do you think your mum’s concerns were justified?

- a. Yes, definitely justified -> 584
- b. Partly justified -> 584
- c. No, not justified -> 584

---

581. Was your dad ever seriously worried about how your mum looked after you?

- a. Yes ->582
- b. No ->584

---

582. What were the concerns your dad had about your mum?

- a. Substance abuse – alcohol ->583
- b. Substance abuse – drugs ->583
- c. Mental illness ->583
- d. That she would neglect me e.g. not feed me properly ->583
- e. Mum’s new partner was violent and/or abusive ->583
- f. Lack of trust ->583
- g. Other – specify ->583

583. Do you think your dad’s concerns were justified?

- a. Yes, definitely justified ->584
- b. Partly justified ->584
- c. No, not justified ->584

---

584. Did your mum encourage you to maintain a relationship with your dad?

- a. Yes, a lot ->585
- b. Yes, a bit ->585
- c. No, not really ->585
- d. No, she actively opposed it ->585

---

585. Did your dad encourage you to maintain a relationship with your mum?

- a. Yes, a lot ->586
- b. Yes, a bit ->586
- c. No, not really ->586
- d. No, he actively opposed it -> 586

---

586. Looking back, which of the following best describes your experience of shared care?

- a. Very positive -> 587
- b. Fairly positive -> 587
- c. Mixed -> 587
- d. Fairly negative -> 587

- e. Very negative -> 587
587. What is the most important thing that your parents could have done to improve your experience of contact?
- a. Less conflict and more cooperation ->588
  - b. Mum could have made more effort ->588
  - c. Dad could have made more effort ->588
  - d. They could have lived closer together ->588
  - e. They should have taken account of my wishes and feelings ->588
  - f. Other – specify ->588
- 
588. Knowing what you know now, if you were ever a separated parent, would you handle the arrangements for your children
- a. Pretty much as your parents did ->590
  - b. A little differently ->589
  - c. Very differently ->589
- 
589. What would you do differently?
- a. Specify ->590
- 
590. How would you describe your relationship with your mum before your parents separated?
- a. Very close ->591
  - b. Fairly close ->591
  - c. A bit close ->591
  - d. Not very close ->591
  - e. Not close at all ->591
591. How would you describe your relationship with your dad before your parents separated?
- a. Very close ->592
  - b. Fairly close ->592
  - c. A bit close ->592
  - d. Not very close ->592
  - e. Not close at all ->592
592. How would you describe your relationship with your mum after your parents separated?
- a. Very close ->593
  - b. Fairly close ->593
  - c. A bit close ->593
  - d. Not very close ->593
  - e. Not close at all ->593
593. How would you describe your relationship with your dad after your parents separated?
- a. Very close ->594
  - b. Fairly close ->594
  - c. A bit close ->594
  - d. Not very close ->594
  - e. Not close at all ->594
- 
594. Do you have contact with your mum now that you're an adult?
- a. Yes ->595
  - b. No ->596
- 
595. How would you describe your relationship with your mum now?
- a. Very close ->596
  - b. Fairly close ->596

- c. A bit close ->596
- d. Not very close ->596
- e. Not close at all ->596

---

596. Do you have contact with your dad now that you're an adult?

- a. Yes ->597
- b. No ->599

---

597. How would you describe your relationship with your dad now?

- a. Very close ->598
- b. Fairly close ->598
- c. A bit close ->598
- d. Not very close ->598
- e. Not close at all ->598

---

598. Who made the decision about contact being 50/50 shared care?

- a. Both parents did -> END OF SURVEY
- b. My parents and I did -> END OF SURVEY
- c. Mum and dad managed to reach agreement through mediation -> 601
- d. There was a court order specifying the arrangement ->603

---

### **For those whose parents went to mediation**

599. Did your parents ever attend mediation?

- a. Yes, repeatedly -> 600
- b. Yes, once or twice -> 600
- c. No, because there was violence and/or abuse ->602

---

600. Did your parents manage to reach agreement about contact via mediation?

- a. Yes -> 601
- b. No ->602

---

601. Were your wishes taken into account during the mediation process?

- a. Yes, very much so -> END OF SURVEY
- b. Yes, a little -> END OF SURVEY
- c. Not really -> END OF SURVEY
- d. Absolutely not -> END OF SURVEY
- e. No one bothered to ask me about my wishes -> END OF SURVEY
- f. I don't know -> END OF SURVEY

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### **For those whose parents went to court**

602. Did your parents ever go to court?

- a. Yes, repeatedly ->603
- b. Yes, once or twice ->603
- c. No -> END OF SURVEY

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603. How many times did the matter go to court for hearings?

- a. I don't know ->604
- b. More than 5 ->604
- c. More than 10 ->604

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604. Was an independent children's lawyer (known previously as 'child representative') appointed to the case?

- a. Yes ->605
  - b. No ->605
  - c. I don't know ->605
- 

605. Were there any family reports done?

- a. Yes, more than one ->606
  - b. Yes, only one ->606
  - c. No ->606
  - d. I don't know ->606
- 

606. Did your parents get consent orders, go to trial, or receive a judicial determination?

- a. Consent orders ->607
  - b. Trial and consent orders ->607
  - c. Trial and judicial determination ->607
  - d. I don't know ->607
- 

607. Did your dad ever get a court order allowing face to face contact?

- a. Yes ->608
  - b. No ->608
  - c. I Don't know ->608
- 

608. Who did you speak to about what you wanted during the court process? Mark all that apply

- a. The Independent Children's Lawyer ->609
  - b. The Family Report Writer ->609
  - c. I didn't get to speak to anyone but I really wanted to ->609
  - d. I didn't get to speak to anyone and didn't want to ->609
  - e. Other – specify ->609
- 

609. Were your wishes taken into account during the court process?

- a. Yes, very much so ->END OF SURVEY
  - b. Yes, a little -> END OF SURVEY
  - c. Not really -> END OF SURVEY
  - d. Absolutely not -> END OF SURVEY
  - e. No one bothered to ask me about my wishes -> END OF SURVEY
  - f. I don't know -> END OF SURVEY
- 

## **Not eligible to participate**

Thank you for your time.

You are not eligible to participate further in this survey.

---

## **Thank you!**

Thank you for taking the time to complete this survey.

---





# Appendix D

A survey of young Australian adults who have experienced parental separation: the effect of the paternal relationship on the experience of contact

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# A survey of young Australian adults who have experienced parental separation: the effect of the paternal relationship on the experience of contact

## **Abstract**

Divorce is a common occurrence in the lives of many children, with around half of divorces in Australia each year involving children under 18 years. Research has demonstrated that these children do worse on a number of measures of well-being than children from intact families. Although there is evidence to show children can benefit from contact with the non-resident parent (NRP, usually the father), this may not be so if the parental relationship was conflicted. This hypothesis was examined in a survey of 210 young adults who were asked to describe their perceptions of contact. As predicted, where the pre-separation relationship with the NRP was perceived to be good, the ongoing relationship benefited the participants. On the other hand, if the NRP had been violent, abusive or had substance abuse issues, the contact was found to be deleterious. The implications for legislation and policies related to shared-care arrangements are discussed.

Keywords: father, non-resident parent, parental separation, contact

Word count: 5390

# A survey of young Australian adults who have experienced parental separation: the effect of the paternal relationship on the experience of contact<sup>4</sup>

## **Introduction**

Divorce is a common occurrence in the lives of many children with around half of all Australian divorces each year involving an average of 1.9 children under 18 years of age per divorce (Australian Bureau of Statistics, 2011c; Australian Institute of Family Studies, 2015). Children of unmarried couples also experience the separation of their parents, and others still have parents who have never lived together. The figures are similar in the US, where around 40% of children will experience the divorce of their parents prior to reaching adulthood (Tach & Eads, 2015; Tartari, 2015) which amounts to around 1.5 million children every year (Tartari, 2015). The UK has one of the highest rates of divorce in Europe, with more than 30% of children experiencing parental separation prior to the age of 16 years (Culpin et al., 2013; Fortin et al., 2012).

## **The impact of divorce on children**

The consequences of parental separation and/or divorce in a family unit have been studied extensively (e.g. Allison & Furstenberg, 1989; Amato, 1993a; Amato & Gilbreth, 1999; Furstenberg et al., 1987), with the literature showing that children who experience the separation or divorce of their parents are generally worse off on a number of measures of well-being, when compared to children in intact families. These indicators have included peer relations; stress; aggression; psychological adjustment; self-esteem; and, academic achievement, (Amato, 1993a; DeBell, 2008; Hess & Camara, 1979; Hetherington et al., 1998; McIntosh et al., 2009). Amato argues that children's adjustment to divorce revolve around five central concepts: the loss of the non-resident parent, who is usually the

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<sup>4</sup> It should be noted that Australian family law no longer uses the term 'contact', instead replacing it with 'spends time with', however, 'contact' is still used in common vernacular at this time

father; the adjustment of the resident parent, usually the mother; inter-parental conflict; economic hardship; and, stressful life changes. Parental conflict is a major risk factor for children adjusting to divorce, and there is an association between marital conflict and poorer adjustment in children, which often takes the form of higher levels of depression, anxiety, and disruptive behaviour (McIntosh et al., 2009)

In drawing these conclusions, it is acknowledged that some of the outcomes associated with living in a single parent family can be explained by income differences. Single mother households are known to experience a decline of around one third of their pre-divorce income (Amato, 1993a; Hetherington et al., 1998; Smyth & Weston, 2000), and are more likely to be living at or below the poverty line (DeBell, 2008). Such precarious financial circumstances on their own can increase the risk of problems for children; can have implications for health and nutrition and also influence the quality of neighbourhood environments and schools to which a young person is exposed (Amato, 1993a; Gray & Chapman, 2007). Although financial pressures can sometimes be mitigated by the non-resident parent's payment of child support (Amato, 2000; Amato & Gilbreth, 1999; C. M. Buchanan & Jahromi, 2008; King & Heard, 1999; Natalier & Hewitt, 2010; Smyth & Weston, 2000), the child can be affected in other ways. In particular, children can often experience a decrease in the amount of time, and the quality of the time spent with the non-resident parent following divorce (Amato, 1993a; Arendell, 1994-1995; Hetherington et al., 1998).

Studies show that many children have little contact with their non-resident parent, and that those who do usually experience a decline in contact over time (Amato, 1993a; Arendell, 1994-1995; Hetherington et al., 1998). Geographic distance, the length of time since parental separation, and the re-partnering of one or both parents are all factors which can contribute to this decline in contact (Hetherington et al., 1998; King & Heard, 1999). Such contact is, however, essential for the maintenance of a relationship with children

(King & Heard, 1999). Studies have shown that although there is only a modest correlation between the frequency of father visitation and children's well-being (Hetherington et al., 1998), it is the quality of the connection between children and their father that influences the outcomes (Amato & Gilbreth, 1999; Hetherington et al., 1998; King & Heard, 1999). If children already feel strongly connected to their fathers, increasing the frequency of visitation does not of itself improve the children's outcomes. In fact, a poor father-child relationship appears to result in worse outcomes for the children if there is also frequent contact (Hetherington et al., 1998). This is generally the conclusion reached by Amato and Gilbreth (1999, p. 560) who noted that: "contact with non-resident fathers following divorce is associated with positive outcomes among children when parents have a cooperative relationship but is associated with negative outcomes when parents have a conflicted relationship."

In relation to custody, mothers are overwhelmingly the child's primary care giver, both during the relationship and after parental separation (Arendell, 1994-1995; Fortin et al., 2012; Hetherington et al., 1998; Smyth & Weston, 2000). This decision has been reached by 85-90% of parents with little intervention from the legal system, either in the form of mediation or court proceedings (Johnston et al., 2005). For the remaining 10-15% of couples, mediation can be helpful, as can the involvement of lawyers and the court system (Dallam & Silberg, 2006; Divorce Peers, 2009; Neely, 1984).

### **The Australian context**

Part VII of the Family Law Act 1975, particularly since the 2006 (Shared Parental Responsibility) Amendment (Commonwealth of Australia, 2006) focuses on both parents being involved in the child's life post separation, with one of the primary considerations for determining the best interests of the child being the right of the child to have a meaningful relationship with both parents; and the presumption that it is in the child's best interests for the parents to have equal shared parental responsibility for the child (s61DA,

Commonwealth of Australia, 2006). This legislative change introduced the requirement that the court should consider whether spending equal or significant and substantial time with each parent wherever this is reasonably practical is in the child's best interests. The policy is predicated on the expectation that the involvement of the non-resident parent, usually the father, will be beneficial to the child. Internationally, such policies have been introduced in a number of countries, with many jurisdictions legislating for parents to share the legal and physical aspects of the care of the children, although in reality only around 10% of separating couples appear to take advantage of these equal shared care arrangements (C. M. Buchanan & Jahromi, 2008). The prevalence of equal shared care arrangements vary by country, from around three percent in the United Kingdom to 15% in Canada and 28% in Sweden, although the definitions of 'shared care' may also be subject to variation (C. M. Buchanan & Jahromi, 2008). In 2004, only a small number of Australian children were in shared care arrangements, whilst around 30% of children rarely or never saw their non-resident parent. Of those who did see their non-resident parent, approximately 34% did not have overnight stays (Smyth et al., 2004). More recent Australian data shows that 28% of children saw their non-resident parent less than once a year or never, with almost 16% of children seeing their non-resident parent once every three to 12 months. For those children who had weekly, fortnightly or monthly contact, more than half did not stay overnight, with 11% staying more than 110 nights per year, and 16% staying 1-35 nights per year (Australian Institute of Family Studies, 2015).

### **The Current Study**

In summary, the current research evidence supports the view that contact with the non-resident parent (usually the father) can be beneficial for children. Legislative changes that encourage shared care appear to be predicated on this assumption. A question arises, however, as to whether the nature of this association is moderated by the nature of the previous relationship between the child and their parents. In particular, it is unclear

whether ongoing contact with the non-resident parent is similarly beneficial when the parental relationship prior to separation was characterised by conflict and violence. Accordingly, given the paucity of evidence into the perceived effects of shared arrangements on children's well-being, the aim of this study was to survey the views of a sample of young people who have had contact with their non-resident parent and to examine the nature of the previous relationship. The study sought to investigate two main lines of enquiry. The first was whether the relationship with the father pre-separation is predictive or informative about the nature of the post-separation relationship. The second was to investigate to what extent the nature of contact with the father and its perceived effects are related to the quality of the paternal relationship pre- and post-separation.

The study investigated a number of hypotheses:

1. That the 'experience of contact' would be related to the participants' relationship with their father before their parents separated, such that the better the relationship with their father, the better the experience of contact, post parental separation;
2. That the 'experience of contact' would be decreased when mothers' were fearful of the fathers or held concerns about his ability to care for the children;
3. That the 'experience of contact' would be more strongly influenced by the participants' post separation relationship with their father than the pre separation relationship;
4. That the relationship with the father post separation would be related to the participants' pre separation relationship with their father i.e. a good relationship with their father prior to the parental separation is more likely to contribute to a good relationship with their father post separation;
5. That the participants' relationship with their father prior to parental separation will have less influence than the post separation relationship on the ongoing contact with the father once the participant reached adulthood;

6. That the ‘type of contact’ the participants had would be related to ‘parental fear’ and ‘care concerns’. In particular, respondents would be less likely to have continuous contact if the mother were fearful of the father and/or held concerns about his ability to care for the child.

7. That the ‘type of contact’ would be related to the strength of both the pre and post separation relationships with their fathers

## **Participants**

As shown in Table 1, the sample was predominantly female and aged 18-20 years reflecting the primary source of participants as Undergraduate Psychology students. Age at parental separation was generally primary school aged, with preschoolers (aged under 5 years) the next group. Parents were overwhelmingly married or cohabiting/defacto partners. Participants generally had closer relationships with their mothers prior to separation or with both parents than with their fathers. The level of conflict between the parents prior to separation was high or moderate, or the participants didn’t know/were too young to remember. Post separation, parental relationships generally improved, with participants stating parental conflict was low, although almost one third stated that the post separation conflict was high.

These young adults were recruited to participate in an online survey asking about their experiences of contact. Sources of participants included Undergraduate Psychology students from various universities around Australia, young adults attending premises such as ‘headspace’ or ‘Second Story’ in the northern suburbs of Adelaide where distributed flyers provided the link to the SurveyMonkey survey; or “friends of friends” on Facebook, where the link to the survey was shared. Inclusion criteria were that they must be 18-25 years of age; their parents must have separated before they were 16 years of age, or have never lived together; and, both parents must still be alive. The survey was conducted in SurveyMonkey, and utilised question logic such that the answer to one question



determined the next question asked. Generally, the time to complete the survey was 15-20 minutes per person, dependent on the questions answered.

## **Measures**

### **(a) Demographics**

Respondents were asked to indicate their sex; age; the age at parental separation; parental relationship prior to separation; the level of conflict before and after separation; the year of parental separation; and, the parent with whom the participants had a closer relationship (Table 1).

[INSERT TABLE 1 ABOUT HERE]

### **(b) Parental contact**

Participants were asked who they had primarily lived with after their parents had separated, with the choices being 'mum', 'dad', 'with each parent, dividing time more or less equally' or 'with someone other than a parent'. Selecting the fourth option would have resulted in the participant being excluded from the rest of the survey; however no participants selected this option. Participants were also questioned about the continuity of contact with the non-resident parent, with the choices leading into further questions categorised based on the type of contact: continuous contact; sporadic contact (one or more breaks in contact); delayed contact (where they didn't see the non-resident parent for six months or more following the separation); ceased contact (where the contact started and then stopped) and contact that was both delayed and ceased. They were also asked about their perceptions of the contact.

### **(c) Closeness of the relationship with each parent, pre and post separation and in adulthood**

The closeness of the relationship with each parent before and after separation was enquired about, as was whether they have contact with their parents now that they are adults, and the closeness of that relationship, if it exists.

The measures were assigned values to allow them to be analysed in a metric form as indicated in Table 2. For example, 'parental fear' was assigned values of 0 and 1, where 0 was 'neither parent was afraid of the other', and 1 was 'mum was afraid of dad'. The types of contact experienced by the participants were: continuous (no breaks in contact until the age of 18), sporadic (one or more breaks in contact until the age of 18), delayed (participant did not see their non resident parent for 6 months or more after the separation), ceased (contact started but stopped prior to the participant reaching the age of 18) and delayed and ceased (participant did not see their non resident parent for 6 months or more after the separation, and the contact stopped prior to the participant reaching the age of 18). Contact was divided into continuous (1) and non-continuous i.e. all other forms of contact (0).

Due to the low number of participants with paternal primary care and equal shared care, the analyses were only conducted on those participants with maternal primary care.

[INSERT TABLE 2 ABOUT HERE]

## **Results**

The hypotheses were examined using both Pearson correlations (Table 3) as well as multiple regressions analyses (Tables 4 and 5). As indicated in Table 3, and consistent with hypothesis 1, the closeness of the participants' relationship with their father prior to the separation was moderately positively correlated with the experience of contact, such that those participants who had 'very' or 'fairly' close relationships with their father prior to the separation reported positive experiences of contact after the separation. It was also found

that the post separation relationship reported by the participants ( $r=.64$ ) was more strongly related to experience of contact than the pre separation relationship ( $r=.48$ ), consistent with hypothesis 3. There was a moderate and positive correlation between the pre separation relationship and the post separation relationship, consistent with hypothesis 4. The pre separation relationship showed a weaker association ( $r=.32$ ) to the ongoing contact of the participants with their father once the participants reached adulthood than did the post separation relationship ( $r=.43$ ), consistent with hypothesis 5.

[INSERT TABLE 3 ABOUT HERE]

Hypothesis 2 was supported by the data, as the participants' 'experience of contact' was negatively correlated with 'parental fear' and with 'care concerns', and these maternal concerns appear to be related to the type of contact the participants experienced such that where the mothers were fearful of the fathers and/or held concerns about the fathers' parenting abilities, the participants were less likely to have continuous contact, consistent with hypothesis 6. The type of contact the participants had was also positively correlated with the pre and post separation relationships with their father. More specifically, consistent with hypothesis 7, where participants had good relationships with their father prior to the separation, they were more likely to have continuous contact with their father post separation.

The multiple regression analysis was used to establish the contribution of each of the four variables (participants' relationship with their father prior to the separation; mothers fear of the fathers; mothers concerns about the fathers' ability to care for the children; and the participants relationship with their fathers after the separation) to the 'experience of contact' to determine which of these variables might be the most important factor for a child to have a positive and beneficial experience of contact with their father, post

separation. It was shown that the four variables together significantly predicted the 'experience of contact' ( $F(4,148) = 35.715, p < .001, R^2 = .164$ ), as presented in Table 4. The pre separation relationship with the father contributed the greatest amount of variance at 23.5%, closely followed by the post separation relationship at 16.4% with the influence of the mother, in terms of her fear of the father and her concerns about his ability to parent, only contributing 9.3% of variance.

[INSERT TABLE 4 ABOUT HERE]

For the type of contact experienced by the participants, the multiple regression showed that the variables, 'parental fear' and 'care concerns'; and 'paternal relationship pre separation' and 'paternal relationship post separation' significantly predicted the 'type of contact' ( $F(4,148) = 17.518, p < .001, R^2 = .321$ ), as shown in Table 5. The pre separation and post separation relationships with the father contributed the greatest amount of variance at 18.6%, with the influence of the mother in terms of her fear of the father and her concerns about his ability to parent only contributing 13.5% of variance.

[INSERT TABLE 5 ABOUT HERE]

## **Discussion**

The current study sought to examine the experiences of contact of young Australian adults, aged 18-25 years, whose parents separated prior to their 16<sup>th</sup> birthday. The sample was predominantly female and aged 18-20 years reflecting the primary source of participants as Undergraduate Psychology students. Age at parental separation was generally primary school aged, with preschoolers (aged under 5 years) the next most prevalent group. Parents were overwhelmingly married or cohabiting/defacto partners, and

participants generally had closer relationships with their mothers prior to separation or with both parents than with their fathers.

The study investigated several hypotheses, all of which were supported by the data. It was shown that the 'experience of contact' is positively correlated with the participants' relationship with their father prior to the parental separation. In this study, it was also shown that the relationship the children had with their fathers prior to their parents separating was related to the relationship with their fathers after the separation, and that the strength of both the pre- and post-separation relationships contributed to the positive experience of contact for the participant. This confirms previous studies (e.g. Amato & Gilbreth, 1999; Hetherington et al., 1998; King & Heard, 1999; Smyth, 2009) which state that it is the quality of the connection between the children and their father that influences the outcomes, with a poor father-child relationship worsening children's outcomes if there is frequent contact.

It has sometimes been suggested by Father's Rights groups that mothers 'coach' or 'brainwash' children, and that this results in the children being 'alienated' from the father (Bruch, 2001-2002; Johnston, 2004-2005; Kaye & Tolmie, 1998b). However, as the evidence from the current study shows, the mothers' fear of the fathers, and/or her concerns about his ability to care for the children did not seem to affect the children's experience of contact, rather it is the closeness of the relationship with the father prior to the parental separation that has the greatest contribution to how the post separation contact is experienced.

Where mothers were fearful of the children's fathers, they were more likely to hold concerns about the fathers' ability to parent the children effectively. These maternal concerns were shown to affect the 'type of contact' the participants experienced, with those participants whose mothers were fearful and/or concerned about the fathers' parenting ability less likely to have had continuous contact throughout their childhood. However, the

data shows that again, it is the quality of the relationship that the participants' had with their fathers that had a stronger correlation to the type of contact arrangement. That is, participants who had good relationships with their fathers were more likely to have continuous contact with their father, independent of the mothers' fears or concerns.

The post-separation and adult relationships the participants had with their fathers appeared to be related to the relationship with their father prior to the parents' separation, with those participants who had very or fairly close relationships with their father experiencing positive ongoing relationships both post separation and into adulthood. The experience of contact was found to be more strongly affected by the relationship the participant had with their father after the separation than before, although the post separation relationship was related to the pre-separation relationship. This suggests that the likelihood of post-separation contact between parents and children is significantly increased if there is a strong bond with the children during the parental marriage.

The findings of this study implicitly support the literature and have implications for policy and legislation around shared care post parental separation. That is, it is important for there to be a 'meaningful relationship' between the father and the child in order for the contact to be beneficial for the child. If the relationship between the father and child is not close, or, for example, is marred by substance abuse issues, or violence and abuse in the parental relationship, making orders for the child to spend time with this parent may not be of benefit to the child and can have deleterious outcomes if the contact is forced.

It should be noted that there are some limitations that need to be taken into account when interpreting these findings. The main consideration is the study is based on a self-report methodology where participants were asked to assess the quality of relationships retrospectively. It is possible that there may be biases or omissions in recall in the way the adult respondents described their previous relationships. The study may also have attracted participants who were able to discuss their experiences of parental separation, so there may

be a proportion of young adults who were more profoundly affected and so not willing to participate in the study. However, the sample nonetheless had sufficient diversity to make it possible to examine the relationship between the principle variables of interest.

Moreover, by sampling from within a really narrow population, it is less likely that these findings are confounded by other broader underlying factors such as differences in demographic factors such as socio-economic status.

### **Conclusion**

In order for contact with the non-resident parent to benefit the child, the relationship with that parent must be strong prior to the separation of the parents. Where the non-resident parent is perceived as having a poor relationship with the child, the child is less likely to benefit from, or enjoy spending time with that parent. Further research in this area might benefit from a familial approach to assess relationships, in which parental perceptions are compared with those of the child. It would also be useful to conduct assessments of the closeness of the relationships with each parent during the initial stages of the separation. Such information could prove useful during mediation or court proceedings to determine if a relationship can be construed as ‘meaningful’, as specified in the Family Law Act.

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*Table 1: Demographic characteristics of the sample (n=210)*

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	N (%)
<u>Gender</u>	
Male	54 (25.7)
Female	156 (74.3)
<u>Age</u>	
18-20 years	150 (71.4)
21-23 years	36 (17.1)
23-25 years	24 (11.4)
<u>Age at parental separation</u>	
Under 5 years	80 (38.1)
5-12 years	92 (43.8)
13-16 years	24 (18.1)
<u>Parental relationship</u>	
Married	173 (82.4)
Cohabiting/defacto	31 (14.8)
Neither/unknown	6 (2.8)
<u>Closer relationship with</u>	
Mum	108 (51.4)
Dad	22 (10.5)
Equally close with both parents	80 (38.1)
<u>Parental conflict <b>before</b> separation</u>	
Don't know or too young to remember	82 (39.0)
None	6 (2.9)
Low	16 (7.6)
Moderate	46 (21.9)
High	60 (28.6)
<u>Parental conflict <b>after</b> separation</u>	
Don't know or too young to remember	21 (10.0)
None	10 (4.8)
Low	67 (31.9)
Moderate	54 (25.7)
High	58 (27.6)

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Table 2: Scoring method for measures

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(a) Was either parent afraid of being physically hurt by the other parent? (Parental fear)				
Neither parent was afraid of the other		Mum was afraid of dad		
0		1		
(b) Was your mum seriously worried about how your father looked after you? (Care concerns)				
No	Yes			
0		1		
(c) Participants' relationship with their fathers before separation (paternal relationship pre separation)				
Not close at all	Not very close	A bit close	Fairly close	Very close
1	2	3	4	5
(d) Participants' relationship with their fathers after separation (paternal relationship post separation)				
Not close at all	Not very close	A bit close	Fairly close	Very close
1	2	3	4	5
(e) Do you have contact with your father now you are an adult? (Paternal contact as adult)				
No	Yes			
0		1		
(f) Participants' experience of contact				
Very positive	Fairly positive	Mixed	Fairly negative	Very negative
2	1	0	-1	-2
(g) Type of contact had by the participant				
Continuous	All other forms			
1		0		

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Table 3: Correlations: Participants' relationships with their fathers, the influence of maternal concerns, and the type of contact experienced

	Care concerns	Participants' relationship with their father pre separation	Participants' relationship with their father post separation	Participants' experience of contact	Participants' contact with their father as adults	Type of contact
Parental fear	.40**	-.42**	-.30**	-.36**	-.29**	-.29**
Care concerns		-.21**	-.23**	-.38**	-.37**	-.34**
Participants relationship with their father pre separation			.52**	.48**	.32**	.25**
Participants relationship with their father post separation				.64**	.43**	.52**
Participants experience of contact					.40**	.36**
Participants' contact with their father as adults						.30**

\*\* Correlation is significant at the 0.01 level (2-tailed)

Table 4: Multiple Regression: predictors of Participants' 'experience of contact'

	B	Beta	t-value	F	R <sup>2</sup>	Δ R <sup>2</sup>
Participants relationship with their father pre separation	.480	.484	6.804***	F (1,151) = 46.297**	.235	-
Participants relationship with their father pre separation	.394	.398	5.377***	F (3,149) =24.189**	.328	.093
Parental fear	-.235	-.089	-1.135			
Care concerns	-.661	-.272	-3.732***			
Participants relationship with their father pre separation	.168	.170	2.345**	F (4,148) =35.715**	.491	.164
Parental fear	-.172	-.066	-.953			
Care concerns	-.506	-.208	-3.237**			
Participants relationship with their father post separation	.450	.481	6.899**			

\*p<.05 \*\* p <.01 \*\*\*p<.001

Table 5: Multiple Regression: Predictors of the 'type of contact' experienced by participants

	B	Beta	t-value	F	R <sup>2</sup>	Δ R <sup>2</sup>
Parental fear	-.203	-.188	-2.291*	F (2,150) = 11.718***	.135	-
Care concerns	-.251	-.251	-3.058**			
Parental fear	-.109	-.101	-1.266	F (4,148) = 17.518***	.321	.186
Care concerns	-.183	-.183	-2.470*			
Participants relationship with their father pre separation	-.030	-.073	-.867			
Participants relationship with their father post separation	.186	.484	6.015***			

\* p <.05 \*\*p<.01 \*\*\*p<.001





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