

***THE MANAGEMENT OF CHILD ABUSE ALLEGATIONS IN CUSTODY AND
ACCESS DISPUTES BEFORE THE FAMILY COURT OF AUSTRALIA***

A REPORT TO THE CRIMINOLOGY RESEARCH COUNCIL

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CHAPTER ONE

FOREWORD AND SUMMARY

This book presents a large study, *The Management of Child Abuse Allegations in Custody and Access Disputes Before the Family Court of Australia*.

The aim of the book is to present the study and to instigate consultation and discussion about the findings. The focus of the research is a serious one. The consequences of any Family Court action are serious, but when violence in families such as child abuse is involved and when the victims are young children, the findings and their implications require careful consideration before the final word is written.

INTRODUCTION TO THE STUDY

The study evolved slowly through a number of discussions between various members of the research team and their individual and joint discussions with staff of the Family Court of Australia. The research team members, Professor Thea Brown, Monash University, Clayton, Associate Professor Margarita Frederico, Australian Catholic University, Canberra, Ms Lesley Hewitt and Dr. Rosemary Sheehan, (formerly Martyn), Monash Clayton, had researched and written in the area of child abuse and had become concerned as to the growing involvement of the Family Court with child protection problems, and had noted also the concern the Court had been expressing over the same issues for a period of time. Subsequently, Mr Neville Turner, from the Faculty of Law, Monash Clayton, offered consultative advice to the project.

Initially, the research proposal was presented on the one hand to the Chief Executive Officer, and Research Officer, Sophie Bordow, in Sydney, and on the other to the Chief Justice, the Honourable Alistair Nicholson, and the Judge Administrator Southern Region, Justice H. Frederico, in Melbourne. The Court was prepared to support the study and subsequently have given extremely generous support throughout. Even at this early stage, the Chief Justice raised the issue of the wider problem of family violence as opposed to the more narrow focus of child abuse that the team had chosen. His concern proved prophetic. During the study the issue of family violence moved from the shadows of the background of the study to the spotlight centre of the foreground.

The research plan won the funding it needed from several sources - from the Criminology Research Council, from the ARC, Australian Catholic University, Canberra, and the Monash Research Fund. The study could not have proceeded, let alone succeeded, without this support.

In 1995 the research team appointed three research assistants without whom the study could not have been successful. The first research assistant to begin, Dr. Morag

McArthur, was appointed to the Canberra site and began collecting data from the case records at the Canberra Registry. The second and third research assistants, Margaret DeJudicibus and Visilia Petinarias, were appointed later in the year to the Melbourne site and started at the Melbourne Registry in July.

STUDY DESIGN

The study was to answer three questions:

- * Who were the Families in Custody and Access Cases where Child Abuse allegations were involved?
- * How Did the Family Court Deal With Such Cases?
- * What was the Impact on the Children Involved?

The information sought was to be gathered from a number of sources so as to gain as full and detailed picture from a number of vantage points. Data was to be collected from the case records of families who at any time from January 1994 to the end of July 1995 had been taking any action over the custody and access of their children where child abuse allegations were involved. Cases were followed through until August 1996. In addition some of the above cases were observed proceeding through the Court. On the Melbourne site a special sub study of decision making was carried out focusing on Pre-Hearing Conferences as part of a joint effort with a Scottish research team studying decision making in Children's Panels that was lead by Professor Christine Hallett from Stirling University. The research team interviewed a selection of staff from the Court, including representatives of the judiciary, counselling staff and judicial registrars.

Before the project really began, the team undertook a feasibility study on 40 cases from an earlier time period at the Melbourne Registry, that then formed the basis of the first paper. Data on a selection of custody and access cases where no child abuse allegations were involved was collected for contrast purposes. Almost 300 cases, 190 from Melbourne and 107 from Canberra were included in the study.

SUMMARY OF FINDINGS

Core Business of the Court

Although there appeared to be an increase in the number of cases coming before the Court, and although the nature and source of these cases is such that the numbers will continue to increase as the state child protection services transfer certain of their client families to the Family Court rather than deal with them at the state level, no vast increase as had been feared by the Court was detected. However, the cases were found to form a major part of the Court's work, half of all children's matters cases at one point, because they were not resolved for such long periods of time, despite much Court activity. Thus, child abuse cases had become part of the core business of the Court and the Court had become part of the nation's child protection services.

Shattering the Myths of Child Abuse in the Family Court

Despite the fact that only one study on child abuse and family courts had been undertaken world wide and that had covered only child sexual abuse, (Thoennes and Pearson), strong beliefs shared so widely as to constitute community myths were found to exist. The research findings contradicted them. Thus:

- * the allegations were no more frequently false than abuse allegations made in other circumstances and so cannot be dismissed as the weapons used in a bitter war of revenge or as a threat in property negotiations,

- * similarly, the abuse was not a mild form of abuse which had been exaggerated because of the Family Court dispute; instead the abuse was of a more serious nature than that dealt with by state child protection services, whose most common category of abuse is neglect rather than the multiple forms of abuse, particularly physical and sexual abuse together, found in the Family Court cases,

- * the families were not the families already known to the state child protection service, who were moving their problems to another arena, but families where violence of a variety of forms and sources had produced partnership breakdown

- * the families were not confined to one socio-economic status, but spread across the spectrum

- * the abuse was not the province of any particular ethnic group nor was any ethnic group a stranger to it.

- * the abuse did not exist separately from other forms of family violence

Coordination Between State and Federal Authorities

The study demonstrated major coordination problems existed between state child protection services and the Family Court despite the formulation and constant upgrading of the protocols designed by the respective authorities. Each of the eight states and territories has their own distinct child welfare legislation and services with their own goals, objectives, procedures, staffing patterns and training, legislative responsibilities, and client groups. Differences in each of these aspects act as barriers to the sharing of tasks and exchange of information; Family Court cases are but a minute fraction of state child protection services work and the priorities, nature of the client profiles and problems are different from one agency to the other. Variations from state to state in the child protection services produce variations in Court practices from location to location.

Such problems lead to the graveyard of optimism regarding the achievement of service coordination. The Thoennes study found exactly the same coordination barriers in the USA and made many recommendations to overcome them. The Australian services have introduced most of these reforms, yet the study results show

that these reforms have been to little avail, hence the spirit of pessimism regarding jurisdictional coordination.

At the same time, it was clear that little research has been invested in the particular problems of coordination of services between state and federal agencies; it is possible that with further research aimed at outlining in detail these problems and ways of overcoming them, that continuing improvements may be achieved.

Family Violence

Family violence in addition to child abuse pervaded almost half of the cases and was present in no smaller proportion of custody and access cases without child abuse allegations. The links between child abuse and other family violence are theoretically obvious, yet it is only now they are receiving attention. Historically, violence within the family in terms of research and service provision has been divided up into discrete sections which approach warring factions at times. Violence between partners, (that is mostly male violence), on the one hand, and violence to children, on the other, dominate. Other forms gain little attention. The barriers between the sections are supported also by the differences of the feminist and masculinist approaches, paralleled by the victim versus the perpetrator divisions.

In the cases in the study violence was widespread and complex, involving three generations, grandparents, parents and children, and multi sourced, for example, father violent to mother, mother violent to children, and male children violent to mother. Sometimes an interactional dynamic to the violence was present and sometimes it was not. Efforts to categorise the violence did not succeed. Models of violence in families are rare; while models for individual violence, couple violence and parent / child violence exist only one model attempts to bring partner to partner violence and violence to children together. The team chose to use this model, the Johnston and Campbell model, (Johnston and Campbell, 1993), but found it was not generally applicable. Of the five types of violence in the family it proposed, only one - the episodic male violence - was applicable. The model lacked a multi generational element, a multi source element, an interactional element, a life span or developmental element, and an element which covered spillage of family violence into the surrounding community.

Signs of violence were present in the corridors of the Court and in the Court rooms themselves and were observed to affect all present. Little recognition was given to the effect of this on staff.

The team was puzzled by the fact that in many cases only one form or strand of violence was made an issue for dispute; other forms were acknowledged but not brought to the fore. In some cases there was an interaction between the various forms but that too was not brought up as an issue of dispute. Violence was simplified, thus losing a certain impact. Questions arise as to why this was so. Was it a practice of legal practitioners, of the Court, a human desire to help solve the problem, or a result of community ignorance about family violence of which insufficient is known?

Problems in the Management of the Cases

Many problems were found in the management of the cases; some arose from sources outside the Court and some from within.

The first problem lay with the use of the state child protection authorities as the investigative arm of the Court. The state child protection authorities actually investigated only half of all referrals from the Court, although the Court is unaware of this. The time taken by the investigation, six weeks on average, delays the Court by a period of 50% longer than the time nominated as the required time. Since the confidentiality conditions set out by the state authorities preclude much information passing to the Court without the Court subpoenaing the state files, the initial reply to the Court is cryptic even where the state authorities are sure of the presence of abuse. Only a small number of families are previously known to the state child protection services; the substantiation rate among the Court cases is the same as the rate of families previously known and the same as the overall rate of substantiations. The substantiation rate among Court families varies from state to state by as much as 100%.

In effect the problems of the use of the state child protection services as the investigative arm mean that, immediately the Court begins its management of the case, it is delayed, as it waits for a report, which mostly is not very useful; then, having delayed, to little effect, it has to set in train compensatory and less direct strategies to attack the issues it had expected the state child protection services to solve.

Considering this problem, it was not surprising that the Court procedures took a long time, on average eighteen months between allegations and resolution, and that the children were involved in many hearings, on average five. This was a serious matter, for at every hearing some 37% of children had a custody change, with 77% having access changes. Furthermore, the drawn out nature of the procedures implied high legal costs.

Successes in Management of the Cases

While problems were identified, practices which brought disputes to a quicker and more long lasting conclusion were discovered too. Generally, the more proactive the Court became the greater its success.

Counselling when undertaken voluntarily or when directed by the Court was effective in a minority of cases. However, it was only in access not custody matters.

Where state child protection services did make a report clearly substantiating abuse, this almost always brought the case to a conclusion.

The presentation of a Family Welfare Report by Court Counselling was extremely effective because it was commonly accepted by the families for whom it was ordered and by the Judge. When such reports were used in conjunction with the appointment

of a separate legal representative for the child or children and were presented in the forum of the Pre Hearing Conference, (itself known from other research to be an effective dispute resolution mechanism), they resolved half of the cases.

Impact on the child

The children in these cases, mostly the only child of the partnership, were very young, commonly four to five. They were children suffering from abuse and they are often caught up in other family violence. Violence was implicated as a major cause of breakdown of the parent's partnership. Thus it was not surprising that these children's problems were taken to the Family Court.

It can be argued that the Family Court did not serve these children well; it was not fully aware of the large part these children play in its workload; the cases took a long time to move to a resolution, sometimes due to no fault of the Court: many delays were involved; the children's situations tend to be changed whenever there was a Court Hearing and the greater the number of Hearings the greater the changes. The children were so young that rational explanations would be ineffective even if rational explanations can be devised to cover these complicated events. The children were placed in a most uncertain position and displayed much emotional distress.

FUTURE SOLUTIONS

Considering the substantial role of the Court in the management of family violence, presented in these cases as child abuse but involving other family violence as well, and considering the nature of the delay and drift problems identified together with the successes of proactive strategies discovered, it is recommended that the Court adopt a new tightly organised case management system incorporating greater Court initiatives for all cases once a child abuse allegation has been made.

The principles underlying this case management system should include the Court taking the responsibility for problem resolution, the Court taking the initiative in processing the cases, the Court taking the role of co-ordinating the management of each case, the Court acting as an adjudicator and the Court being a model of constructive problem solving to the families.

The case management system would include:

Initial Hearing

1. Temporary arrangements regarding the child's residence and contact requirements
2. Appointment of a case manager to implement and monitor the case plan
3. Refer only children already known to state child protection to those services for abuse investigation
4. Refer other children to be referred for investigation to Court Counselling for a Family Welfare Report, possibly supplemented by assessment at a multidisciplinary abuse assessment centre

5. Appointment of a legal representative for the child to identify, present and protect the child's best interests
6. Refer parents to compulsory information and education session tailored for parents where abuse allegations have been made
6. Scheduling of a Pre Hearing Conference for no later than two months

Pre Hearing Conference Planned and Attended by the Case Manager and Led by Registrar and Counsellor

1. To receive reports of
 - 1.1 state child protection services
 - 1.2 Court Counselling Family Welfare Reports
2. To hear Child's Legal Representative's opinion and progress
3. To attempt resolution

A Trial

1. If the Pre Hearing Conference fails to achieve resolution the Pre hearing Conference seeks a trial date without delay.

OTHER ISSUES

A number of issues affecting the management of the cases require further consideration.

The Use of Separate Legal Representatives for Children

Separate legal representatives were appointed for the children in many cases. It was clear that these legal practitioners had a variety of views as to their responsibilities and as to how they should carry them out. Some saw themselves as taking a major responsibility for the case, taking the initiative in making investigations for the children, commissioning and coordinating reports, presenting plans and taking a leading role in taking the case to a resolution on the child's behalf. For some this meant meeting the child and learning of their experiences and views; for others it did not. Some saw meeting the child as being unwise in principle and others were not sure how to communicate with a child or how to conduct the case with the child being actively involved. (The move in the USA and the UK towards the representation of the child's wishes as opposed to their best interests would have floored such practitioners.) Some interpreted their role as temporary de facto parents; sometimes this seemed necessary in view of the Court's orders, such as sending very young children for access to a parent of uncertain stability who lived thousands of kilometres from the children's home. On the other hand some representatives took far less responsibility, had a narrow view of their role, initiating and doing less. There was a consistent non attendance of children's legal representatives at Hearings that in some cases appeared to relate to lack of coordination between themselves, the Court and the Legal Aid Commission.

While some education for this work has been incorporated into post graduation specialist legal education, much more is required judging from these observations. At the same time, the practice of the Legal Aid Commission in Victoria of spreading the work widely around legal practitioners in family law has the effect of diluting the experience and knowledge necessary for the rapid development of this relatively new legal role. The current difficulties in funding faced by all Legal Aid bodies is acknowledged but the view of this team is that children's interests must be taken into account and given priority.

Supporting Services

It was noted that the Court did not use many supporting services, nor appear active in their development. In some overseas family law courts, for example in the US, the courts use supplementary or supporting services established by themselves or by associated agencies to better serve their clients. For example, the Courts did not require parents to attend specialised parental education programs as a solution for new parents with very young children. It rarely required people to attend violence management programs. With the advent of supervised access centres, the Court was beginning to use these, having been influential in their development. The Court did not seem to routinely review cases with the aim of planning associated services development.

Education in Dealing with Family Violence

With the knowledge of the significance of various forms of family violence to the Court's work, it is recommended that all Court staff have education in the current models of dealing with family violence. The Court is clearly intent on reducing any possible violence for the families involved. It needs to know how other institutions are achieving the same desired outcomes.

CONCLUSIONS

The project is not concluded yet. The research team wishes to use this report to stimulate discussion regarding its findings and recommendations. Comments, views, arguments in response to this book will be gratefully received. The team can be contacted through Professor Thea Brown, Department of Social Work and Human Services, Monash University, Clayton, Phone Number 0419 329 216, Fax Number 03 9775 3604, E-mail Brownbob@msn.com

CHAPTER TWO

THE RESEARCH PROBLEM AND THE FEASIBILITY STUDY

INTRODUCTION

Just over a year ago a research group, originally comprising four social work academics, three from Monash University and one from ACU but later extended to include a Monash Law consultant, began a study focusing on child abuse allegations in custody and access, (or visitation), disputes before the Family Court of Australia. The purpose of the study was to discover how the Family Court dealt with such allegations in these cases and what impact this had on the children concerned. It was hoped that the study would develop knowledge to contribute to social institutions involved in family violence, including the Family Court itself.

The groups' interest sprang from their previous individual research in child abuse and their individual realisation that the Family Court of Australia had become, without conscious intent, a most significant part of the child protection services in Australia.

THE FAMILY COURT OF AUSTRALIA

The Family Court was established twenty years previously as a federal, (or national court) for the dissolution of marriages and consequent decisions regarding property, and child custody and access. Now it carries responsibility for custody and access matters for children whose parents had not been legally married, as well as some somewhat related matters. Originally, it was a radical judicial departure, for it implemented new national divorce legislation including no fault divorce, less formal court procedures, and a conciliation service. To-day, it shares common features with some other family courts such as those found in the USA and in New Zealand, but none are identical to it.

This chapter is based on a paper, Child Abuse and The Family Court of Australia, presented by Professor Thea Brown on behalf of the research team to the *V European Congress on The Prevention of Child Abuse and the Neglect of Children*, Oslo, Norway, May 1995.

CHILD PROTECTION SERVICES

While responsibility for children during the dissolution of marriage is a federal one, other child welfare, youth and family matters, including child protection, are the responsibility of each of the eight state and territory governments. Each of the states and territories has its own separate child welfare legislation and its own separate children, youth and family services. Thus the Family Court at its various registries interfaces with eight different child protection services.

THE FAMILY COURT AND CHILD ABUSE

The Family Court is well aware it is involved in child abuse and child protection problems and has become increasingly concerned (Harrison, 1989: 18). Its statistics have revealed that allegations of child abuse in disputes over custody and access brought before the Court are a small proportion of the total, some 3%, (WELSTAT:1993). However, the Court believes they consume a large proportion of its resources because such cases present intrinsically difficult human problems to which there is often no clear cut solution, because responsibility for resolution is split between federal and state authorities and abuse allegations can be used as a weapon in Court proceedings.

Furthermore, little research knowledge has been developed to assist the Court for, on the one hand, research in child abuse has rarely included issues related to family courts and, on the other, research on family courts even when on related factors such as domestic violence has ignored child abuse.

RELEVANT RESEARCH ON CHILD ABUSE

Some child abuse research has implications for the management of child abuse allegations in family courts. Evaluations of child protection services in Australia have shown that services tend to respond slowly, and sometimes not at all, to the children, on some occasions because of the need to coordinate a number of agencies, and, on other occasions, because of the professionals' lack of recognition and minimisation of the abuse, (Goddard and Hiller:1992).

RELEVANT RESEARCH ON CHILD ABUSE AND THE FAMILY COURT

Most of the research on child abuse and family courts comes from the western states of the US, (Parent Child Contact and the Family Court, 1995: 24,). The findings have shown that the incidence has risen over the last decade, possibly as a result of increased recognition of the problem, (Thoennes and Pearson:1988, Myers:1989, Rubin and Flango:1993); since Australian data covers a much shorter time span as yet no trends here have been detected. In the US false allegations have been found by some to be the same in family court cases as in other child abuse cases, that is about 8%, (Bross:1992, Schudson:1993); other studies with even smaller samples suggest higher rates, around 20%, (Jones and Seig:1988,) but no studies suggest the high rates that some critics have proposed, (Schudson:1992, Toth:1993); there is no Australian data of comparable reliability as to false allegations.

The research has investigated the outcomes for the children involved. To this end, the different theoretical and even philosophical approaches to the problem should be noted. Much of the US research is sponsored by national child abuse associations which represent alliances between a number of disciplines, including the legal, social work, psychology and criminology professions. This approach displays the advantages of interdisciplinary research. The research recognises the child's welfare, the child's legal rights, the parents' legal rights, the conflicting interests of the family members, and the conflicting views of the professionals associated with the family courts, the damaging effects of abuse, the criminal nature of abuse, and the complexity of the problem.

The US research, most commonly focused on child sexual abuse, has shown that child abuse allegations in cases of custody and access disputes involve a cross representation of families in the community; it has been unable to distinguish family types or characteristics (Johnston and Campbell:1988). However, in a more recent study, (Johnston and Campbell:1993), the researchers were able to show that the type of family conflict and violence, including child abuse, determined the nature and extent of the disputes over custody and access; in addition they were able to divide the cases into categories and develop different types of intervention appropriate for each category.

Many difficulties have been found in the courts' handling of such cases and concerns have been raised about the value of outcomes for the child, (Thoennes and Pearson: 1988). Problems identified include the absence of common definitions of abuse among different parts of the court and the wider service system, (Saunders:1988, Edwards:1993), a lack of coordination between the family courts, the child protection services and other courts, (Edwards: 1993 , Rubin and Flango:1993), the inability of family courts to deal with the inter-relationship between spouse abuse, child abuse, sibling abuse and the violence of family members outside the home, (Thoennes and Pearson:1988, Rubin and Flango:1993), case drift (Thoennes and Pearson:1988), the inability of a family court to monitor children's welfare after the court makes a decision, (Thoennes and Pearson:1988,) issues around legal representation for the child (Nicholson and Bulkley:1988, Myers:1989), issues of the acceptability and form of children's evidence, (Myers:1989, Gordon:1992), granting of any access even as an interim measure to alleged perpetrators, and the effect of the courts' decision on the on the child and his/her relationships with the family (Thoennes and Pearson: 1988).

Australian research is very limited, and New Zealand research even more so, (Atkin:1988, Bridge:1989); to date it has tended to reflect the perspective of the single disciplines, primarily the legal and social work disciplines, carrying it out. However, Kiel, representing social work, (Kiel:1984) and Bates, representing the law, (Bates: 1988), in their separate analyses of custody and access disputes where allegations of child sexual abuse were involved, raised concerns as to the court's capacity to deal adequately with these cases, and in particular with the competing interests involved. A conference paper, (Norris:1993), has indicated considerable difficulties in the relationship between the Family Court and the state child protection services, attributing the problems to clashes between the different philosophies and legal

responsibilities of the two systems. Formal protocols for coordination between the Court and the state services have been developed, but have not been evaluated to date. There is also evidence that some other new Court procedures, such as pre-hearing conferences, may be helpful. The Family Court has established a number of protocols for the management of cases involving child abuse, which taken together may be unique, but which have rarely been evaluated singly and never as a whole.

These issues have been of concern to the court itself; in 1989 the Family Law Council issued a major report on Child Sexual Abuse and the Family Court. In a review of the report Harrison, (Harrison:1989), pointed to the more serious problems found, conflicts between state and federal jurisdictions, problems of children's evidence, questions as to interim and supervised access and the desirability of separate legal representation for children. The report released last year by the Australian Law Reform Commission and Family Law Council, Parent Child Contact and the Family Court, focused on the problem of difficult access cases and while the research cited in the report indicated child abuse and other family violence was a major contributor to this problem, (Parent Child Contact and the Family Court, 1994:32-3), this recognition was not clearly incorporated into proposals for future action.

In summary, the research has been scanty and particularly so in Australia; however it does demonstrate that there are many serious issues to be addressed.

RESEARCH QUESTIONS

Bearing in mind the study's aims of inquiring into how allegations of child abuse are dealt with by the Family Court and what the impact of this process is for the child, the previous research indicates questions can be grouped into three main areas.

Broad Question Areas are:

- * what are the decisions about / the families and family problems involved,
- * how are the decisions made / the processes the Court pursues to deal with these matters, and,
- * the consequences of the decisions / the outcome for the child.

Since there is so little prior research no hypothesis is proposed but rather questions are asked in a descriptive study collecting both qualitative and quantitative data.

Precise Questions are:

1. What are the Decisions About: Who are the Families and What are Their Problems?

This includes, what are the characteristics of the families where allegations are raised, how do they compare with the characteristics of those families involved in custody and access disputes before the Court but where no allegations of abuse are raised, what are the characteristics of those cases involving abuse allegations that proceed to the Judges as compared with those that are settled previously?

2. How are the Decisions Made: How does the Family Court Deal With These Disputes?

What is the understanding of and definitions of abuse within the Court, from where does the Court gain this understanding, how does the Family Court inter-relate to the relevant child protection services, when and how do allegations of child abuse in the cases arise, what constitutes evidence to the Court, what constitutes proof to the Court, what is the role of the expert witness, what is the influence of the parents' legal representatives on the decision making of the Court, how does the Court Framework accommodate the Child Protection and Children's Rights Frameworks?

3. What is the Outcome of the Decision: What Happens to the Child?

How do cases involving abuse allegations proceed through the Court, what relationship does this have with the Court's child abuse and family violence protocols, what is the role of the judicial registrar as case manager, how is the child's evidence obtained, how is it used, what access does the child have to the alleged perpetrator during and after the case, do children gain separate legal representation, when and how, what is the outcome of the allegation, in interim and final custody and access terms, as it affects the child's relationship with the members of his/her family?

RESEARCH DESIGN

The study comprises three stages.

Stage One

In Stage One, carried out in 1994, the study team set up the study with the support of the Family Court of Australia and the Victorian state Department of Health and Community Services and established the research design. The team planned a pilot study in two court registries, located in two different states, as a preliminary to a national study. The pilot study was to test the feasibility of a national study, collect enough data to provide worthwhile information for a study in its own right, especially since it included two sites allowing for inter-state comparisons, and identify specific areas for subsequent attention. The design formulated included scrutinising a large sample, (probably about 50% of the total population), of case files from the years 1992-3, using a lengthy data collection instrument covering the areas delineated previously and then interviewing a sample of court staff from all three sections of the court, in each of the registries. In addition, a sample of relevant staff from the state Department of Health and Community Services which handles child protection would be interviewed.

The framework of the design was similar to that used in the US study of child sexual abuse allegations in disputes over custody and access in family courts undertaken by Thoennes and Pearson in 1988.

In the preparation of the pilot study, the team held discussions with judicial, counselling, and registrar staff at the court, observed cases covering a range of

disputes where children were involved proceeding through the court, and scrutinised 30 files cases involving custody and/or access disputes. This paper reports on this preliminary data collection.

2. Stage Two

In Stage Two, in 1995, the study team extended by a member of the Monash Law Faculty, is carrying out the pilot study in two registries. Funding has been obtained from the ARC Small Grants Scheme both from Monash and ACU, from the Monash Research Fund and the Criminology Research Council. This will allow the employment of two Research Assistants to assist the team in carrying out the data collection from the files. Following the data collection from the files and its analysis, the latter being mostly done with the use of SPSSX, interview schedules will be prepared for use of a sample of 50 Court staff from Melbourne, and 25 from Canberra, representing counselors, registrars, and the judiciary, covering the three areas again, but focusing particularly on the Court frameworks for decision making. A Report for the Family Court will be completed and the design for the national study will be done.

3. Stage Three

In Stage Three, in 1996-7, the full national study will be carried out, using the same data collection methods but amended where necessary following the pilot study, in Registries in other states, and in outer suburban and country registries. The necessity for widening the study arises from the variety of practices that exist in the different registries and the variety of child protection policies and practices across the different states. Other specialised studies are expected to be incorporated into this stage covering certain sub populations and issues arising from the pilot study.

REPORT FROM STAGE ONE

Already some findings are available from the first stage of the project in which 30 case files, representing some 3% of the total for 1992-3, involving custody and access disputes, mostly but not solely where child abuse allegations were present, were scrutinised and some eight cases were observed in court, and in which some fifteen staff members from the court in the Melbourne Registry and some four others from Health and Community Services were involved in discussions. Some are findings relevant to design issues and some are beginning answers to the research questions.

DESIGN DATA

It is clear that the court files do have sufficient information of the kind that will provide answers to the research questions. Each file has considerable data about the dispute and the families involved because of the adversarial nature of the legal process. Furthermore, it is common practice for the court to seek a report from Counselling and this report covers much of the children's views as well as the parents. Finally, the Court maintains very clear records of its actions and the outcomes of these actions. Court transcripts covering hearings and trials assist further.

PRELIMINARY FINDINGS DATA

1. Pervasive Nature and Wide Extent of Family Violence

The most significant finding at this stage is the amount and extent of family violence in the disputes as seen in the case files and in observation of the parties as their cases proceed through the court. The violence includes physical, sexual and verbal abuse and includes that being inflicted on one partner by the other, on children by one or other parent and/or step parent or partner of a parent, on a parent by children, by a parent on a grand parent, by parents on professionals and in one case by a professional on a client's partner. In addition, violence was always being inflicted on more than one person at any one time. This surprised the research team but a very recent study in the US has just reported similarly, (Newmark, Harrell, and Salem: 1995)

It could be argued that these cases represent a biased sample of custody and access disputes and this theme may not continue throughout, but it was so common among the cases and in the court that the research team doubts this will be so. For example in one quarter of the cases observed in court federal police were present on account of family violence. (They were there for other purposes in additional cases too.).

This lead to the conclusion that it will be very important to precisely describe the violent behaviour in each family, firstly to gain an accurate picture and, secondly to develop indications for appropriate intervention. Thus definitions of abuse and or violence will have to be clear as will ways of measuring it. In addition it may be useful to follow Johnson and Campbell's typology of family conflict in domestic violence families disputing custody and access. Thus one could categorise each family according to that typology and categorise the intervention too.

2. The Complexity of Violence Within the Family

As a result of the pervasive nature and wide extent of abuse within the families, separating out the various strands of abuse was difficult. Four major findings were noted: firstly, that in all cases involving child abuse allegations of physical violence by the male partner towards the female partner was present, secondly that in a number of cases partner to partner physical abuse masked acknowledged child abuse, thirdly that partner to partner violence was frequently witnessed by the children, and finally that consent agreements between parents did sometimes mask child abuse and domestic violence.

2.1 Domestic Violence Accompanying Child Abuse

In all of the twenty five cases with allegations of either child physical or sexual abuse there was an accompanying physical violence towards the female parent. At the same time, in half of these cases this was not raised as a major issue in itself. In half of the cases, while domestic violence was described and acknowledged, only the child abuse was raised as the issue in the dispute. No pattern could be found as to when abuse of the female parent was raised as an issue or not.

2.2 Domestic Violence Masking Child Abuse.

In the case files involving a custody dispute without any allegation of child abuse, the disputes centred around the female partner's claim that the physical abuse she suffered necessitated either no or very restricted access for the male parent. Yet the case record showed that the child or children involved had been abused physically themselves as well. The abuse was described and acknowledged but at the same time not presented as a major issue in the dispute.

For example, a mother sought sole custody and no access on the grounds that the father constantly physically abused her and that as a result the child now became extremely distressed whenever the father appeared. On reading the file carefully, it was noted that the father had actually included the baby in the attacks on the mother, but the allegation of child abuse was not raised by the mother. In this case as in the others the domestic violence seemed to be masking the violence towards the children.

The question that arises from these two findings, of child abuse masking domestic violence and the reverse, whether there is something in the dispute process that encourages suppressing all but one issue, or alternatively encourages the focussing on the one issue, and if so what is it? A previous study carried out by one of the authors of this paper found that the Children's Court could not deal with numbers of perpetrators of violence and numbers of victims in the one family, (Brown and Blenkinsop: 1994), and possibly the same is the case here.

2.3 Witnessing Domestic Violence.

In three quarters of all the cases the children were present on occasions when the female partner was physically abused; the ages of those children were not noted, unfortunately. The issue of children witnessing violence between their parents has been raised as a form of abuse in itself; in none of the cases was this point made explicitly.

2.4 Consent Orders

In the Family Court it is possible to reach voluntary resolution of a dispute over custody and access by consent agreements at any time. Such consent agreements have the potential to avert the distress caused to all and especially to children of a long drawn out dispute and to be more likely followed. One third of the cases were originally settled by consent agreements which then broke down. Of these most broke down with allegations of child abuse having occurred prior to the agreement, and the others due to abuse alleged to have begun after the agreement was reached. A small proportion of consent orders masked very severe violence.

2.5 False Allegations

Some false allegations of child abuse were noted in the cases; the proportion was similar to the lower estimations made in overseas studies, around 9%. These were allegations that were investigated by child protection services and found to be false as

opposed to allegations that were investigated but not substantiated. The allegations were made by parents and were of physical abuse.

3. The Impact of Violence on the Professional

As mentioned the research team noted the considerable level and amount of violence in the case files and in the cases in the court. The team wondered what the impact of this was on the professionals in the court. This issue has received a little recent acknowledgment in the social work and legal literature, (Goddard and Stanley: 1994, Kaser-Boyd and Mosten: 1993). The literature suggests that the professionals do not acknowledge the problems of their position and react by minimising the violence they are observing or attempting to resolve. Goddard and Stanley attribute this to the professional becoming a hostage to the violent members in the family. This problem was not included in the study, but the team did observe that the professionals, including court staff, staff from outside agencies, and clients' legal advisers were affected. Unlike staff in other courts (Levine and Martyn:1994), staff at the Family Court are supported in their work by an embryonic multi-disciplinary team, which works together in court with the disputing parties; in addition continuing education seminars are provided. While a team work structure may reduce this reaction it may have the opposite effect.

4. Outcomes for the Child

The most problematic outcome for the child observed was a long drawn out dispute. Three quarters of the cases were of that kind, that is custody and/or access had been re-opened again and again over many years. This outcome has been of great concern to the Court and the Australian Law Reform Commission and Family Law Council are just concluding a reference on the matter. Research commissioned by these bodies as presented in the first report indicates that child abuse was a cause of drawn out custody and access battles. The research has suggested the introduction of an early identifying risk schedule to determine the possibility of the development of an intractable access problem so that a different kind of intervention can be introduced as quickly as possible. The team thinks that it should test the risk schedule to determine whether it does accurately identify these cases.

CONCLUSION

The information collected to date is a possible guide only at this stage, but it does raise interesting themes to be further pursued. In particular, it raises the issue of possibly pervasive and widespread violence in families disputing custody and access with and without allegations of child abuse, and the possibility of the various strands of violence masking others so that less is presented to the Family Court as an issue than actually occurs.

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CHAPTER THREE

FIRST RESULTS : THE FAMILIES

INTRODUCTION

This chapter presents the first findings of the study - the findings regarding the families involved in it.

As was described in Chapter Two, the project began in 1994 with a research team, originally comprising the four authors of this paper, three social work academics from Monash University and one from ACU, but later extended to include a Monash Law consultant, Mr Neville Turner, to discover how the Family Court dealt with allegations of child abuse in custody and access disputes and what impact this had on the children concerned. It was hoped that the study would develop knowledge to contribute to social institutions involved in family violence, including the Family Court itself.

THE FAMILY COURT AND CHILD ABUSE

The Family Court is well aware it is involved in child abuse and child protection problems and has become increasingly concerned (Harrison, 1989: 18). Its statistics have revealed that allegations of child abuse in disputes over custody and access brought before the Court are a small proportion of the total applications made to the Court, some 3%, (WELSTAT:1993). However, the Court believes they consume a large proportion of its resources because such cases present intrinsically difficult human problems to which there is often no clear cut solution, because responsibility for resolution is split between federal and state authorities and abuse allegations can be used as a weapon in Court proceedings.

Furthermore, little research knowledge has been developed to assist the Court for, on the one hand, research in child abuse has rarely included issues related to family courts and, on the other, research on family courts even when on related factors such as domestic violence has ignored child abuse.

This Chapter is based on a paper, *Child Abuse Allegations in Custody and Access Disputes in the Family Court of Australia*, presented to the **Fifth Australian Family Research Conference**, Brisbane, November 1996

In addition, as the Chief Justice of the Family Court of Australia, the Hon. Alistair Nicholson has commented,
(Nicholson, 1993:3),

“the law was traditionally wary of intervening into private domestic relationships, even where the safety of family members was involved “.

RELEVANT RESEARCH ON CHILD ABUSE

Research in child abuse has increased considerably in recent years. In general, it has been shown that abuse is spread among all groups in society, that some forms of abuse, physical abuse and neglect, are related to the socioeconomic status, whereas others such as sexual abuse and emotional abuse are less clearly so, victims suffer serious consequences including the risk of further vulnerability to abuse and to being abusers themselves, and that partner to partner violence, once considered a separate phenomenon, (Roy : 1988), has been shown to be associated with violence to the children, through a series of complex family dynamics, the precise nature of which is not really clear (Gayford, 1975, Walker, 1979, Healy : 1984, Stark and Flitcraft : 1985, Queensland Domestic Violence Taskforce : 1988, Blanchard, 1993, Wyndham, 1995).

Some child abuse research has implications for the management of child abuse allegations in family courts. Evaluations of child protection services in Australia have shown that services tend to respond slowly, and sometimes not at all, to the children, on some occasions because of the need to coordinate a number of agencies, and, on other occasions, because of the professionals' lack of recognition and minimisation of the abuse.

RELEVANT RESEARCH ON CHILD ABUSE AND THE FAMILY COURT

Most of the research on child abuse and family courts comes from the western states of the US, (Parent Child Contact and the Family Court, 1995: 24,). The findings have shown that the incidence has risen over the last decade, possibly as a result of increased recognition of the problem, (Theonnes and Pearson:1988, Myers:1989, Rubin and Flango:1993); since Australian data covers a much shorter time span as yet no trends here have been detected. In the US false allegations have been found by some to be the same in family court cases as in other child abuse cases, that is about 8%, (Bross:1992, Schudson:1993); other studies with even smaller samples suggest higher rates, around 20%, (Jones and Seig:1988,) but no studies suggest the high rates that some critics have proposed, (Schudson:1992, Toth:1993); there is no Australian data of comparable reliability as to false allegations.

The research has investigated the outcomes for the children involved. To this end, the different theoretical and even philosophical approaches to the problem should be noted. Much of the US work is interdisciplinary research. The research recognises the child's welfare, the child's legal rights, the parents' legal rights, the conflicting

interests of the family members, and the conflicting views of the professionals associated with the family courts, the damaging effects of abuse, the criminal nature of abuse, and the complexity of the problem.

The US research, most commonly focused on child sexual abuse, has shown that child abuse allegations in cases of custody and access disputes involve a cross representation of families in the community; it has been unable to distinguish family types or characteristics (Johnston and Campbell:1988). However, in a more recent study, (Johnston and Campbell:1993), the researchers were able to show that the incidence and type of family conflict and violence, including child abuse, determined the nature and extent of the disputes over custody and access; in addition they were able to divide the cases into categories and develop different types of intervention appropriate for each category.

Many difficulties have been found in the courts' handling of such cases and concerns have been raised about the value of outcomes for the child, (Thoennes and Pearson: 1988). Problems identified include the absence of common definitions of abuse among different parts of the court and the wider service system, (Saunders:1988, Edwards:1993), a lack of coordination between the family courts, the child protection services and other courts, (Edwards: 1993 , Rubin and Flango:1993), the inability of family courts to deal with the inter-relationship between spouse abuse, child abuse, sibling abuse and the violence of family members outside the home, (Thoennes and Pearson:1988, Rubin and Flango:1993), case drift (Thoennes and Pearson:1988),

the inability of a family court to monitor children's' welfare after the court makes a decision, (Thoennes and Pearson:1988,) issues around legal representation for the child (Nicholson and Bulkley:1988, Myers:1989), issues of the acceptability and form of children's evidence, (Myers:1989, Gordon:1992), granting of any access even as an interim measure to alleged perpetrators, and the effect of the courts' decision on the on the child and his/her relationships with the family (Thoennes and Pearson: 1988).

Australian research is very limited, and New Zealand research even more so, (Atkin:1988, Bridge:1989); to date it has tended to reflect the perspective of the single disciplines, primarily the legal and social work disciplines, carrying it out. However, Kiel, representing social work, (Kiel:1984) and Bates, representing the law, (Bates: 1988), in their separate analyses of custody and access disputes where allegations of child sexual abuse were involved, raised concerns as to the court's capacity to deal adequately with these cases, and in particular with the competing interests involved.

A conference paper, (Norris:1993), has indicated considerable difficulties in the relationship between the Family Court and the state child protection services, attributing the problems to clashes between the different philosophies and legal responsibilities of the two systems. Formal protocols for coordination between the Court and the state services have been developed, but have not been evaluated to date. There is also evidence that some other new Court procedures, such as pre-hearing conferences, may be helpful. The Family Court has established a number of

protocols for the management of cases involving child abuse, which taken together may be unique, but which have rarely been evaluated singly and never as a whole.

These issues have been of concern to the court itself; in 1989 the Family Law Council issued a major report on Child Sexual Abuse and the Family Court. In a review of the report Harrison, (Harrison:1989), pointed to the more serious problems found, conflicts between state and federal jurisdictions, problems of children's evidence, questions as to interim and supervised access and the desirability of separate legal representation for children. The report released last year by the Australian Law Reform Commission and Family Law Council, Parent Child Contact and the Family Court, focused on the problem of difficult access cases and while the research cited in the report indicated child abuse and other family violence was a major contributor to this problem, (Parent Child Contact and the Family Court, 1994:32-3), this recognition was not clearly incorporated into proposals for future action.

In summary, the research has been scanty and particularly so in Australia; however it does demonstrate that there are many serious issues to be addressed.

RESEARCH QUESTIONS

Bearing in mind the study's aims of inquiring into how allegations of child abuse are dealt with by the Family Court and what the impact of this process is for the child, the previous research indicates questions can be grouped into three main areas.

1. What are the Decisions About: Who are the Families and What are Their Problems?

This includes, what are the characteristics of the families where allegations are raised, how do they compare with the characteristics of those families involved in custody and access disputes before the Court but where no allegations of abuse are raised, what are the characteristics of those cases involving abuse allegations that proceed to the Judges as compared with those that are settled previously?

2. How are the Decisions Made: How does the Family Court Deal With These Disputes?

What is the understanding of and definitions of abuse within the Court, from where does the Court gain this understanding, how does the Family Court inter-relate to the relevant child protection services, when and how do allegations of child abuse in the cases arise, what constitutes evidence to the Court, what constitutes proof to the Court, what is the role of the expert witness, what is the influence of the parents' legal representatives on the decision making of the Court, how does the Court Framework accommodate the Child Protection and Children's Rights Frameworks?

3. What is the Outcome of the Decision: What Happens to the Child?

How do cases involving abuse allegations proceed through the Court, what relationship does this have with the Court's child abuse and family violence protocols, what is the role of the judicial registrar as case manager, how is the child's evidence obtained, how is it used, what access does the child have to the alleged perpetrator during and after the case, do children gain separate legal representation, when and how, what is the outcome of the allegation, in interim and final custody and access terms, as it affects the child's relationship with the members of his/her family?

RESEARCH DESIGN

The study comprises three stages.

Stage One

In Stage One, carried out in 1994, the study team set up the study with the support of the Family Court of Australia and the Victorian Department of Human Services, then the Department of Health and Community Services, and established the research design, tested in the feasibility study outlined in the previous chapter.

Stage Two

Stage Two comprised a two state study located at the Melbourne and Canberra Court Registries. The study would collect enough data from those two registries to provide worthwhile information, especially as it included two sites that then allowed for inter-state comparisons, and that would then also identify further issues and areas for subsequent attention. Depending on the outcome of that study, it was thought that it may be necessary to progress to a full national study, but eventually this proposal was rejected.

The design formulated included scrutinising a large sample, (probably about 50% of the total population), of case files from the years 1994 -5, using a lengthy data collection instrument covering the areas delineated previously and then interviewing a sample of court staff from all three sections of the court, in each of the registries. In addition, a sample of relevant staff from the state child protection services were to be interviewed.

The framework of the design was similar to that used in the US study of child sexual abuse allegations in disputes over custody and access in family courts undertaken by Thoennes and Pearson in 1988, but it differed in that it included all forms of child abuse, not just sexual abuse as the US one, and it investigated the links between child abuse and other family violence. In addition, it involved direct reviews of case files and direct observation of cases as they proceeded through the Court.

2. Stage Three

In Stage Three, beginning in July 1995, the study team extended by a member of the Monash Law Faculty, carried out the study in the two registries with funding from the ARC Small Grants Scheme both from Monash and ACU, from the Monash Research Fund and the Criminology Research Council.

Four data sources were used:

**** case files from the Family Court, Melbourne and Canberra Registries, which had become active as either new or re-activated applications between January 1994 and June 1995,**

**** interviews with staff from the Court, from Counselling, the Judiciary, and the Registrar's staff, Melbourne and Canberra,**

**** observation of Pre-Hearing Conferences in Melbourne, in a sub study on decision making as related to the Scottish study on Children's Panels directed by Professor Christine Hallett, Stirling University, Scotland, and**

**** interviews with state Child Protection staff.**

Progress

Currently all data has been collected from the case files in both Registries and has undergone a preliminary analysis. Almost all the interviews have been completed with Court staff and Child Protection staff and a number of interviews have been undertaken with staff from related agencies, including the Victorian Legal Aid Commission, refuges, parent groups, children and youth legal centres, and counselling and mediation agencies, as well as members of the legal profession. The Pre-Hearing Conferences observations have been completed.

Data collection issues have centred around the use of Court files. In Melbourne, the Court files are kept in such a way as to simplify the extraction of files where child abuse allegations have been made, but that has not been the case in Canberra. Case files in both Registries were found to be very comprehensive and meticulously kept. This meant that there were no problems with missing data. However, the complexity of the cases was not fully anticipated by the research team. Many files were extremely long and proceeded over some years, thus making data collection very time consuming.

RESULTS

The results we wish to present to-day are the answers to the study's first question, **who are the families involved in custody and access disputes where child abuse allegations occur, and what are the problems or what is the nature of the abuse allegations they bring to the Court.** The data we will be presenting will be

primarily that of the case file analysis, although reference will be made to other data sources.

The data will include the cases from both Registries and it will be clear that in some respects the findings were the same in both places, but in other respects they were not. The reasons for differences were not always clear.

Numbers of Cases

Before identifying the numbers of cases involving child abuse allegations firstly at Melbourne and then in Canberra, it is important to explain how these cases come to be identified in the Court at each Registry and then notified to the state Child Protection services.

Melbourne

In recent years, as child abuse has emerged as an issue in the Family Court, procedures have been put in place in most Registries to identify or tag cases where child abuse is alleged to have occurred. In the Melbourne Registry this can happen in one or both of two ways. Firstly, if a parent or family member brings to the Court's attention that a child or children in a custody and or access dispute has been or is being abused, the Court tags the case and refers it to the state Child Protection authorities to investigate. (This procedure is governed by protocols agreed to between the Court and the Victorian Child Protection authorities which vary to an extent according to each state's Child Protection service.) Secondly, if Court staff detect that a child or children in a custody and access dispute has been or is being abused again a notification to the state authorities is made. Sometimes a case is notified in both ways either at the one time or at different times.

In the Melbourne Registry, where the identification system proceeds as described above, in the time period covered in the file selection, a total of 373 tagged child abuse cases were identified. Some 50 were notified by the Court, 20 were notified by the Court and family members and 303 by family members or other sources outside the Court. These cases represented some 3% of all applications made to the Court in the same time period, (which is the figure WELSTAT has published) or some 5% of total Children's Matters. This information has been collected for only the past several years

so the fact that this figure has not changed much over time in Melbourne, may not indicate that the incidence of child abuse allegations is stable.

Many factors other than real changes in incidence have been noted internationally to increase reported incidence. A common factor has been public recognition of the problem; the more the problem is canvassed publicly, the more reported incidence rises. Since mandatory reporting was introduced together with an accompanying publicity campaign to Victoria, reported incidence has risen by 38% and is anticipated to continue to rise as a result for some more years as mandating of additional professional groups occurs, (H&CS Protective Services Report, 1993-4).

A common comment made at both Registries of the Court that the incidence of child abuse allegations was increasing was not born out by the number of cases identified in the Melbourne Registry. At the same time, the state Child Protection reported that the proportion of notifications coming from Court staff was rising in relation to that coming from members of a child's family. This may have given rise to the Court's perception that the incidence was increasing.

These numbers of tagged cases did not represent a large proportion of the cases coming to the Registry. If one places the number of cases in the context of cases involving only children's matters coming to the Court the proportion is still only 5%. However, if one follows these cases through the Court system their place in the Court changes. As time goes on these cases become a large and undue proportion of the cases involving children's matters that proceed forward. At the Pre-Hearings Conference stage, which one could liken to the mid point, the tagged child abuse cases were found to constitute half of the total cases involving children. At the final point, at trial, they had subsided to one third of trials involving children's matters.

Thus, the view underlying the research study that the Family Court has unwittingly become part of the child welfare and the child protection service system was confirmed by these findings..

At the Melbourne Registry it was decided to include in the study all cases identified by Court staff, all cases identified by both Court staff and those outside the Court, and one third of those identified only by those outside the Court. In addition a small group of 20 cases of defended hearings in custody and access disputes which did not involve child abuse allegations, of which there were 143 in the same time period, were included to see if there were any differences between the two groups.

Thus 149 cases were analysed, 25 cases in which abuse was identified by the Court, 7 identified by the Court and others, 85 identified by sources outside the Court, 20 defended hearings, 10 threatened violence, and 3 others.

Canberra

The Canberra Registry, which lies within the Southern Region of the Family Court as the Melbourne Registry does, is at the centre of the area covered by the ACT government child protection services. Thus the protocols for notification are different from that at the Melbourne Registry. The difference is accentuated by the fact that the ACT child protection services do not have mandatory reporting. Thus while the Court's own procedures require the notification of child abuse to the state child protection services, other bodies and professionals are not so mandated. In principle, this may mean that of the Court cases identified as child abuse, more of them would have been identified as such to the state authorities by the Court and fewer by others.

At the Canberra Registry it was not possible to immediately identify all cases of child abuse. Thus all cases where there were disputes over custody and access were identified and reviewed. A total of 102 such cases were located in the time period of the file selection of which 38 involved child abuse allegations.

Thus it can be seen that not only was the number of disputed custody and access cases involving child abuse allegations greater at the Melbourne Registry, some 373 cases as compared with 38 cases at the Canberra Registry, but so too was the proportion of disputed custody and access cases involving child abuse allegations greater at the Melbourne Registry, with 373 out of 516 cases at Melbourne and 38 out of 102 at Canberra.

The Families

Family Types

Five family types were identified among the families; these were legal marriages with children, partnerships with children, non - cohabiting couples with children, grandparents with children, and foster parents with children. At the Melbourne Registry all types were identified, but at the Canberra Registry only four of the five types were identified since no foster parents with children were among the Canberra study population. Legal marriages were the most frequent type, partnerships the second, non - cohabiting couples the third, grand parents the fourth, and foster parents the fifth.

As the following table, Table 1, shows there was a similar pattern of marriage types in both registries, but the incidence of legal marriages was less and partnerships more in Melbourne as opposed to Canberra.

Table 1. Percentage Frequency of Family Type at Each Registry

Family Type	Melbourne	Canberra
Legal Marriages	59%	70%
Partnerships	34%	25.5%
Non Cohabiting Couple	4%	4%
Grand Parents	2%	.5%
Foster Parents	1%	0%
Total	100%	100%

Marriages and Partnerships

It was expected that marriages and partnerships would be the predominant family types, with legal marriages being more common than partnerships, and indeed this was the case. Only the Melbourne data included information on prior and subsequent marriages. By and large these marriages and partnerships among the Melbourne cases were first marriages and partnerships, with 66% of child abuse cases being so, as opposed to 70% of all cases being so.

Table 2 Percentage Frequency of First, Second, and Other Prior Marriages and Partnerships for all Cases at Melbourne Registry.

Frequency of Marriages and Partnerships	Child Abuse Cases	All Cases
First Marriage/Partnership	66.4%	70%
Second Marriage/Partnership	27.4%	25%
Third and Other Marriage/Partnership	6.2%	5%
Total	100%	100%

As Table 2 shows, in most cases it was the first marriage or partnership, but for a substantial minority, it was a second marriage or partnership, and for a very small number, it was the third or subsequent marriage or partnership. As can be seen, there was little difference between the child abuse and other cases in terms of this pattern. Subsequently, as Table Three shows, some parents entered into another marriage or partnership.

Table 3 Percentage Frequency of Subsequent Marriages in Child Abuse and all Cases at the Melbourne Registry

Frequency of Subsequent Marriages/Partnerships	Child Abuse Cases	All Cases
None	63.7%	65.6%
One Subsequent Marriage/Partnership	31%	30%
Two Subsequent Marriage/Partnership	3.5%	3.5%
Three Subsequent Marriage/Partnership	1.8%	.9%
Total	100%	100%

Thus the vast majority of parents did not enter into a subsequent marriage or partnership, but some 31% of parents in child abuse cases and 30% of all cases entered into one other marriage or relationship, with 3.5% of parents in child abuse cases and 4% of all cases entering into more than one. (It must be remembered that the length of time that these proceedings took to be resolved was great, allowing substantial time for new relationships.)

While there was little difference between the child abuse and other cases in prior and subsequent marriages and partnerships, there were slight differences between males and females. In terms of previous partnerships, 4% fewer men had been married or in a partnership, and 3% fewer men did not enter into a subsequent relationship.

However, the most common family type was the first married or first partner couple most of whom remained single during the time of the custody and access dispute rather than the much married or partnered.

The Other Family Types

While the first two family types are well known and so were anticipated, the remaining three were not as clearly envisaged. Certainly a family of grand parent (s) caring for a child or children after the death or illness of a mother was considered possible. Furthermore, a recent study (Martyn:1996) of magistrates' decision making in the Melbourne Children's Court showed the existence of a group of grand parents caring for their grand children because of actual or potential harm to the grand children from parental care. However, the non cohabiting and the foster family type were not anticipated at all.

The most surprising group was the one termed non - cohabiting. Non cohabiting families have not been identified in any previous studies; indeed the only reference found about them was a very recent article in a popular women's' magazine,(Marie Claire, Australia, November 1996). This relationship was one which lead to the birth of a child or children but one where the partners did not ever live together. Nevertheless both remained involved with and shared the care of the child. When the relationship ended, parenting became a source of conflict.

Nor did the team expect a family type termed foster parents, which covered a family with whom a child was placed long term away from the child's natural parents. Unlike non cohabiting couples foster parenting has been extensively documented; yet the issues as raised in this study regarding foster parenting have not been identified in this way before.

In the cases of these latter three family types concerns about abuse had not been taken first to the Family Court, but to the state child protection services. After investigation the services had chosen to refer the families to the Family Court for the Court to determine intervention over the abuse through custody and access proceedings.

Since these types of families were novel, in a sense, possibly thereby increasing the difficulty in understanding the relationship between the state services and the Family Court, a manufactured case example is provided for illustration.

Case Example

Jane, aged 29, lived in an inner city Melbourne suburb working in her own small specialised office supplies business. For one year she had a relationship with Fred, aged 28, who worked part time in a local supermarket while he attended university part time. After a twelve months relationship, Jane became pregnant. Neither Jane nor Fred wished to either marry or share a home. (Jane thought Fred was unreliable and Fred thought he was insufficiently established.) A baby boy was born. When the baby was six months old, Jane resumed work, using a creche for two days a week. Fred took care of the baby for two days and one night per week. Twelve months later

Fred notified the state child protection services of Jane's physical abuse of the child; the allegation was investigated and found to be unsubstantiated. Fred did this twice more in the following six months. Two more investigations with the same results. On the last investigation, the state services advised Jane that there was some evidence that Fred was abusing the child and that she should seek sole custody and either no or supervised access through the Family Court.

This case illustrates the point that the state services can and do ask the Family Court to use its facilities in certain cases presented first to them, thereby transferring the case from one child protection decision arena to another.

Circumstances of Separation in Marriages, Partnerships and Non Cohabiting Relationships

The marriages and partnerships in the child abuse cases lasted on average 7.2 years in Melbourne, and 6 years in Canberra.

Table 4 Average Length in Years of Marriage and Partnership in Child Abuse Cases in both Registries

Melbourne	Canberra
7.2 years	6 years

Only the Melbourne data included information duration of marriages and partnerships for all family types and that data showed legal marriages lasted longer, averaging 8.5 years, partnerships 5.6 years and non - cohabiting relationships just 2.2 years.

Table 5 Average Length in Years of Marriage or Partnership in Child Abuse Cases in Melbourne

Family Type	Length of Marriage/Partnership
Legal Marriage	8.5
Partnership	5.6
Non Cohabiting Couple	2.5

At both the Canberra and Melbourne Registries, marriages and partnerships involving custody and access disputes without child abuse allegations lasted on average for longer periods.

Table 6 Average Length in Years of Marriage and Partnership in both Registries in all Cases

Length of Marriage etc Melbourne	Length of Marriage etc Canberra
7.4 years	7 years

In a very recent Australian study reviewing Custody and Access difficulties in the Parramatta Registry, commonly referred to as the Intractable Access Study, (

Cashmore:1995), undertaken with two matched groups of custody and access dispute cases, one group classed as being intractable access case and the other more easily resolved custody and access disputes, the intractable access cases derived from shorter marriages and partnerships.

Reviewing the causes of breakdown of the relationships in the child abuse cases at both registries, as determined by the researchers from the material presented by the couple as to causes of breakdown, breakdowns arose from arguments, financial problems, spouse violence, other intimate relationships and child abuse and combinations of these.

Table 7 Percentage Frequency of Single Causes of Breakdown of Marriage and Partnership in Child Abuse Cases in both Registries

Single Cause of Breakdown	Melbourne	Canberra
Arguments	13.4%	42%
Spouse Violence	12.5%	21%
Child Abuse	8%	4%
Other Relationships	2.7%	13%
Desertion	3.6%	0%
Substance Abuse	.9%	0%
Other (Multiple Causes)	37.5%	10%
Other	21.3%	10%
Total	100%	100%

Thus in both registries, the most common single reason given was arguments, the second most common was spouse violence, the third most common was not the same in each city, with child abuse being the third one for Melbourne and other relationships for Canberra. The fourth most common single reason in Canberra was child abuse, and desertion 3.6% in Melbourne. Other relationships were infrequent causes in Melbourne. Substance abuse was cited occasionally in Melbourne and not identified in Canberra.

In both registries the most frequent reason was a combination of arguments and spouse violence. In other words the relationships were, at least at the end, highly conflictual with strong features of spouse violence, child abuse and arguments.

Some interesting features were present in relation to family violence. For example although all the cases mentioned above involved child abuse allegations, child abuse did not emerge as the most common single reason for separation, being the reason in only 8% of cases in Melbourne and 4% of cases in Canberra. At the same time arguments, the most common single reason in both Registries, and spouse violence, the second most common single reason in both registries, were much more common in Canberra than in Melbourne but child abuse was more common in Melbourne than in Canberra.

Since the findings of Stage One had revealed that one form of family violence seemed to mask others and even when others were acknowledged to exist only one form of violence was raised as an issues of dispute, it is possible that the lower incidence of spouse abuse and higher incidence of child abuse in Melbourne and the contrary picture in Canberra - high spouse abuse and low child abuse - is an example of this. Because of the possibility of this, the researchers in Melbourne scrutinised each case to ascertain whether they thought child abuse was a factor in the separation. In 41% of cases the researchers thought it was.

Family violence has emerged as a recognised issue only recently and past research regarding causes of separation has rarely included a focus on family violence as a potential cause. In a number of studies, (Pettit and Bloom:1984, Burns:1984, Presland and Gluckstein: 1992), the most common reasons for separation have been vague - lack of communication, incompatibility, and lifestyle differences. Spouse violence has been cited infrequently and child abuse rarely. The reasons for separation in the best known of such studies in no way capture the conflicts expressed in the case files in the study.

To pursue this issue further, cause of breakdown in all cases in Melbourne was reviewed; the results showed an interesting features.

Table 8 Frequency of Single Cause of Breakdown of Marriages and Partnerships in All Cases in Melbourne

Single Cause of Breakdown	Frequency
Arguments	12.8%
Spouse Violence	18.8%
Child Abuse	6%
Other Relationships	2%
Desertion	3%
Substance Abuse	.7%
Other (Multiple Causes)	31.4%
Other	25.2%
Total	100%

From the above table it can be seen that as could be anticipated child abuse was a slightly less frequently cited cause of separation, and spouse abuse was a more frequently cited cause. Once again, it was possible that one source of violence masked the raising as an issue of others.

The Parents

Ages

At the time that the allegations of child abuse were made most parents were aged in their early thirties.

Table 9 Average Age of Male and Female Parents in Child Abuse Cases in each Registry

Females - Melbourne	Males - Melbourne	Females - Canberra	Males - Canberra
31	34	31	36

Only the data from the Melbourne Registry showed the average age of parents according to family type.

Table 10 Average Age in Years in Child Abuse Cases of Male and Female Parents at the Melbourne Registry

Family Type	Females	Males
Legal Marriage	33	37
Partnership	27	31
Non Cohabit	31	31

Thus the Melbourne data showed that parents in legal marriages being older, parents in partnerships being younger, and parents in non cohabiting relationships being in the middle.

Ethnicity

Parents' ethnic backgrounds, as indicated by place of birth, were in the main similar to that of the Melbourne and Canberra general population. The following table, Table 11, shows in detail male and female parents' place of birth at both sites.

Table 11, Place of Birth of Both Parents in Melbourne and Canberra in Child Abuse Cases

Place of Birth	Females Melbourne	Males Melbourne	Females Canberra	Males Canberra
Born Australia	78.4%	67%	77%	75%
Born other Engl. Speaking Country	12.6%	7.1%	4%	10%
Born NES Country	5.4%	22%	16%	15%
Not Known	3.6%	3.9%	3%	0%
Total	100%	100%	100%	100%

It is interesting to note that the place of birth of Melbourne women did not resemble the general population, the place of birth of males in Melbourne and both parents in Canberra did. The difference lay in the fact that the born overseas males in

Melbourne often married Australian born women whose parents had been born in the same overseas country as the women's husbands, especially in Greece and Italy. Thus there were more partly inter-cultural marriages and partnerships among Melbourne parents than was the case in Canberra. Those parents born overseas came from a wide variety of countries including South Africa, UK., Italy, Greece, India, the Philippines, Burma, Vietnam, Hong Kong, Malta, Macedonia, Germany, USA, New Zealand, East Timor, Indonesia, Poland, Romania, Uruguay, Holland, China, Jordan, Malaysia, Egypt, and the Lebanon. Note the absence of some but not all Arab countries, such as Turkey, Iran, Iraq, and Saudi Arabia.

The study had hoped to be able to identify also aboriginal parents as a separate group, but such information was rarely provided; thus this aim could not be achieved.

The country of birth information indicated no particular ethnic bias at either registry, with Australian born and non Australian born being represented in numbers typical of the surrounding community, with the exception of Melbourne women being more commonly Australian born, than might have been expected. These findings are similar to those regarding ethnicity in the Parramatta study, where all cases, both the least and most difficult to resolve, were similar in ethnicity to the surrounding catchment region.

The number of cases involved in this study while large was not sufficient to identify trends relating to any particular ethnic group. Consequently, this issue needs further exploration.

The subject of ethnicity and family violence is a contentious one in that there is much conventional wisdom that typifies some cultures as being without family violence and others where it is much more frequent. Gelles, (Gelles, 1996) argues that this is racial and ethnic stereotyping. Within this framework people place some races and ethnicities outside the family violence debate and by way of contrast some others in the centre of it regardless of the reality. He contends that family violence exists in all cultures but that it is not the norm in any of them. Sufficient international and inter-cultural comparisons do not exist to provide evidence yet one way or the other.

Socioeconomic Status

The parents' socio-economic status was not entirely clear because many common indicators of socioeconomic status were not found to be reliable indicators in these people's situation. Among the families at the Melbourne Registry, some 67% of parents moved once as the case was proceeding through the Court, some moved twice, (22%), and the remainder moved from three to ten times. Educational achievements were known for only 28%. Similarly income levels were available for only 50%. Fortunately, occupation and employment information was available and it raised a number of serious issues about the socio-economic vulnerability of these families.

Occupation and Employment

Parents were drawn from all socio-economic classes, although disproportionately fewer came from the upper and middle classes. The data collected regarding occupation was not categorised in precisely the same way in each registry; consequently two tables are presented, one for each registry.

Table 12, Occupational Status of Male and Female Parents of Child Abuse Cases at Melbourne

Occupation	Females	Males
Professional	5.3%	4.6%
Administrative	4.4%	8.3%
Trades	5.3%	22.9%
Unskilled	6.2%	20.2%
Home Duties/S.P. Benefit	61.9%	1.8%
Unemployed	8.8%	34.9%
Other	2.7%	7.3%
Not Known	5.3%	0%
Total	100%	100%

Table 13 Occupational Status of Female and Male Parents of Child Abuse Cases at Canberra

Occupation	Females	Males
Professional	16%	16%
Administrative	28%	nk
Trades		
Unskilled	nk	14%
Home Duties/S.P. Benefit	51%	nk
Unemployed	included in above h/d figure	20%
Other	nk	nk
Not Known	nk	nk
Total	95%	50%

As can be seen from the two tables above, while parents came from all socio-economic levels of occupation, there were disproportionately fewer from the more prestigious occupations. At the same time such under representation was much less in Canberra. Conversely, Canberra females were drawn more frequently from the administrative occupation than females in Canberra are, or any other females in Australia. This is a puzzling feature of the occupation pattern. For while it might be expected that more people were drawn from the administrative group in Canberra given the concentration of the federal public service there, why should women rather than men be over represented in that group?

The most distinctive characteristic of the parent's employment in both cities was the high level of unemployment among men and the high level of women undertaking no paid employment.

In Melbourne, some 32.9% of men were unemployed and 7.5% were pensioners without employment; some 3% were pensioners and in part time employment. In Canberra, which has a lower average rate of unemployment for males and females than has Melbourne, 20% of males were unemployed. The Canberra employment data did not calculate pensioners with or without employment separately and they would be covered in the unemployed group. Similar findings have been noted in two other studies on custody and access issues. In the Intractable Access study 25% of male parents of the children whose custody and access problems were difficult to resolve were unemployed.

Two even more recent studies provide further information on the matter of unemployment and both give rise to concern for the future of both of these parents and of their children.

The first study, an Australian study which followed men for a decade after their separation and divorce, as reported in *The Bulletin* November 12, 1996: 16-19, showed high levels of unemployment among men with some 22% of men having been unemployed for at least one year during the ten years after separation. The researcher, Peter Jordan, argues that this finding indicates that men after separation and divorce are seriously dysfunctional and presents other evidence including a continuing and unreasonable hostility to their former partner to support this view. A flaw in Jordan's conclusions lies in the fact that he did not study the men's pattern of employment prior to the separation or divorce, or related the men's employment to employment patterns in the last several decades and so these events cannot be said to be the cause of the employment pattern he observed.

The second study, another Australian one, in which employment patterns among males and females in the last twenty five years were investigated, shows a pattern of diminishing employment for the particular males identified in this and the Jordan study. The employment study, (Gregory, 1996) shows that married men with dependants have been disproportionately and progressively losing their share of labour force participation over the last twenty five years. He terms the men's employment experience as standing still, that is as making no gains when employment rises and then falling off a cliff, that is permanently losing employment when employment collapses. Moreover, these men tended to be partnered or married to women who did not work, themselves. This is the pattern observed in this study - married/partnered men with dependants whose partners did not work either. Gregory's concern was that this pattern indicated a growing group of children with neither parent working. His study indicated also that such unemployment was not scattered evenly throughout the various suburbs of any city as has been the case previously, but concentrated in the lower socio-economic areas.

The pattern identified by Gregory can be seen to exist in the employment patterns of this group, and that the pattern is more pronounced in Melbourne with both

higher levels of male unemployment and higher levels of female non employment than is the case in Canberra.

The Melbourne study sought to determine whether the unemployment began as a result of the separation, as the Jordan study infers, or whether it happened prior to separation and became, therefore, one of the tensions of the marriage or partnership and this data is being collated now.

Criminal History

Another distinctive feature of the parents in both Melbourne and Canberra was the high incidence of criminal offences among the parents of all child abuse cases and an even higher incidence among parents of all cases.

Table 14 Incidence of Criminal Convictions Among Parents of Child Abuse Cases in both Registries

Convictions	Females - Melbourne	Males - Melbourne	Females - Canberra	Males - Canberra
Criminal Convictions	9.7%	23.5%	12.5%	48%
No Criminal Convictions	90.3%	76.5%	87.5%	52%
Total	100%	100%	100%	100%

As Table 14 displays both female and male parents at both had a high incidence of criminal convictions in comparison to what might be thought of as being the rate for the general population. (Note that there is no Australian rate of criminal convictions within the general population). The female rate was very similar in both locations. Moreover, the female rate at both registries was lower than the male rate, which is common, although less so more recently. And while the rate of convictions was high taken as a whole, the male rate of criminal convictions in Canberra was extremely high.

An interesting sidelight was that when all cases in Melbourne, not just child abuse cases, were analysed in terms of criminal convictions, the incidence rose even higher particularly among males. This is thought to be as a result of the cases where there was identified family violence and other violence which was regarded as threatening to the Court. Table 15 covers the incidence of criminal convictions in all cases in Melbourne.

Table 15 Incidence of Criminal Convictions Among Parents of All Cases in Study from Melbourne Registry

Convictions	Females - Melbourne	Males - Melbourne
Criminal Convictions	10.7%	28.5%
No Criminal Convictions	89.3%	71.5%
Total	100%	100%

The offences for females and males at both registries have been broken down and presented according to gender in the two following tables, Tables 16 and 17.

Table 16 Criminal History of Female Parents in Child Abuse Cases at both Registries

Offence	Females - Melbourne	Females - Canberra
More than one type of offence	33.3%	0%
Drug offences	7%	80%
Child Abuse	7%	0%
Drink Driving	7%	0%
Other (mostly Social Security)	27%	0%
Contempt of Court	0%	20%
Not Known	18.3%	0%
Total	100%	100%

Although the overall incidence of offences was the same for females at both registries, the breakdown of the type of offences indicated differences between the two registries. The Melbourne female parents had most commonly a number of different convictions had been convicted of a range of offences, including drug offences, child abuse offences, drink driving, and Social Security offences. Whereas the females from the Canberra Registry had been consisted of either drug offences, the most common conviction or contempt of court, for which there were no convictions among females from the Melbourne Registry.

Table 17 Criminal History Of Male Parents of Child Abuse Cases in Melbourne and Canberra

Offence	Males - Melbourne	Males - Canberra
More than one type of offence, mostly assault + another offence	15.4%	22%
Drugs	11.5%	11.4%
Child Abuse	15.4%	4%
Drink Driving	5%	0%
Assault	7.7%	30%
Property	3.8%	0%
Other offences	41.2%	22%
Not Known	0%	10.6%
Total	100%	100%

While the overall incidence of criminal convictions for male parents in child abuse cases was different from one registry to another, in that many more male parents in at the Canberra Registry had a past history of criminal convictions than did Melbourne Registry males, the pattern revealed in the breakdown of types offences was more similar from one registry to another than it was for female parents. There was a range of offences committed. There was a pattern of multiple convictions, as for Melbourne females, although in the cases of the males it involved assault plus other convictions. The most common single offence for males in Melbourne was child abuse, followed by drug offences and assault. The most common single offence for males in Canberra was assault, drugs and child abuse. Overall, violence against persons was high, whereas property offences were low.

Reviewing the pattern of criminal offences according to gender, the pattern for males was similar from one Registry to another, with assault either alone or in conjunction with other offences being the most common offence. However, the pattern among females differed considerably from one registry to another, with drug offences dominating the picture of females from the Canberra Registry, and no single offence dominating among the females from the Melbourne Registry.

Finally, it was noted that a group of parents had previous convictions for child abuse offences before there were proceedings involving them in the Family Court.

Health

Information about parents health was available only from Melbourne. In terms of their health profiles the parents appeared no different from all parents. The following table, Table 18, presents health information about parents from the Melbourne Registry.

Table 18 Health of Female and Male Parents of Child Abuse Cases in the Melbourne Registry

Illness/Disability	Females - Melbourne	Males - Melbourne
Physical Illness/Disability	5.9%	6.4%
Intellectual Disability	1.8%	.9%
Psychiatric Illness/Disability	12.0%	4.5%
Substance Abuse - Alcohol	9.1%	15.2%
Substance Abuse - Drugs	7.3%	7.5%
Substance Abuse - Multiple	10%	17.9%
No Disability	53.9%	47.6%
Total	100%	100%

Such illnesses and disabilities were determined if they were confirmed by an independent authority; for example a medical practitioner's report. Thus it is possible that the incidence of such illnesses and disabilities could be higher, especially if the illness or disability was not the basis for some part of the dispute.

Physical illnesses and disabilities included back injuries as the most common, cancer, heart disease, and the consequences of physical attacks, such as acid burns and brain injury. Psychiatric illness and disability included depression, suicidal behaviour, schizophrenia and personality disorder as the most common illnesses.

The incidence of physical, intellectual and psychiatric illness or disability was not high in comparison to the general population, but the incidence of substance abuse seemed to be high. When one considers the high incidence of conviction for drug offences, the high incidence of substance abuse is not surprising. Men more clearly abused alcohol or alcohol in conjunction with drugs, whereas females abused alcohol, and drugs and both equally.

The Children

The children in these cases, the prime focus of the study, totalled 282 in Melbourne and 75 in Canberra.

The following table shows the numbers of children in each family.

Table 19 Number of Children in Each Family at Both Registries

Families	Melbourne	Canberra
One Child Families	33.9%	47%
Two Child Families	30.4%	31%
Three Child Families	22.3%	11%
More Than Three Child Family	13.4%	11%
Total	100%	100%

Most of the children in both registries were the only child of the family, with a smaller proportion of only children in Melbourne than in Canberra. While the number of children in each family was greater in Melbourne than in Canberra, the families from both registries were not large and did not resemble the stereotypical families of abused children.

The ages of the children at both registries covered a wide range - from only several months old to seventeen years. However, the average age of the children was such that most children involved were quite young and this fact has implications for the Court's intervention. The next table shows the average ages of children at the two registries.

Table 20, Average Age of Children in Child Abuse Cases at Melbourne and Canberra Registries

Position in Family	Average Age - Melbourne	Average Age - Canberra
First Child	5 years	9 years
Other Children	6 years	8.5 years

It can be seen that the children from the Melbourne Registry were young on average than the children from Canberra. Only child children from Melbourne averaged five years of age and children in larger families averaged six years of age. However only children in Canberra averaged nine years and other children averaged eight and a half years.

Prior Marriages and Partnerships

Although for most parents and partners this was the first marriage or partnership, some children had lived in previous family arrangements, either in marriages, partnerships, or alone with their mother; some 8.1% of children from the Melbourne Registry had experienced a prior family arrangement. A large proportion of these children, almost one third, (2.7% of total children), were alleged to have been abused in the prior family arrangement

Health of the Children

Information as to the children's health was available only for the children from the Melbourne Registry. The information comprised only confirmed accounts of the children's health, confirmed by medical practitioners, other professionals, and or conceded by both parents. The following table, Table 21, provides more detailed information on the children's health.

Table 21, Health of Children from Melbourne Registry

Disability	Incidence
Physical Disability	13.5%
Intellectual Disability	1.8%
Psychiatric Disability	.9%
Emotional Problems	27.5%
Learning Disability	8.1%
Substance Abuse	.9%

In general the children's health was not different from that of other children as suggested by estimated incidence of illness and disability of young Australian children by the TVW Telethon Institute for Child Health Research. However, no actual data is yet available in Australia regarding incidence of illnesses and disability for children either taken as a group or in terms of age groups or age groups in designated localities. Once such data is compiled the picture gained above can be assessed more accurately.

No national estimations of incidence of emotional problems among the children, as distinct from psychiatric illness or disability, exist. Indeed, it might be suggested that these two categories are not really distinct and that what adults describe as emotional problems in children tend to be described as psychiatric illness in adults, because many psychiatric illnesses such as depression and suicidal feelings have not been thought to occur among children until very recently. The level of emotional problems among these children seemed high to the research team. If children's emotional problems were recategorised to psychiatric illnesses, then their incidence would be above the normal levels for children in the Australian population.

Even if the categorised emotional problems were left as such, their high incidence is not surprising for a number of studies have shown a high incidence of emotional difficulties among children during and immediately after their parents' separation and divorce, (Hoyt, Cowen, Pedro-Carroll and Alpert-Gillis, 1990).

Depression was the most common problem, followed by suicidal feelings, extreme fear and anxiety and what was consistently described by professionals as very angry behaviour. The implications of the latter so called illness emerged in the complexity of the picture of family violence in relation to these families. This picture is somewhat different from that identified among post separation children where no child abuse allegations are involved. In these children depression and anxiety are common, but

not suicidal feelings, fear, and its sequel, violence, (Hoyt, Cowen, Perdro-Carroll and Alpert-Gillis, 1990).

The Families Come to the Court

The families had come to the Court with problems of custody and access. The applications were made to the Court in both registries equally by female and male parents, when the cases involved parents. Those applications involving parents were wide ranging involving both custody and access. The next table, Table 22 outlines the details of the applications.

Table 22, Nature of Applications in Child Abuse Cases in the Melbourne and Canberra Registries.

Dispute	Children - Melbourne	Children - Canberra
Custody and Access	54.5%	55%
Custody Only	10%	22%
Access Only	36.5%	25%

Some differences exist between the two registries, but the reasons as to why there were more custody only disputes and fewer access only disputes in Canberra as opposed to Melbourne are not clear.

As pointed out previously, the disputes were between parents, partners, non cohabiting partners, grand parents and parents, foster parents and natural parents. In addition one dispute in Melbourne was between parents and the mother's father over access to grandchildren and one other between a mother and the step father over custody and access to the mother's child. It was noted by the research team that a number of fathers who were taking action over their children indicated a desire to take action over older stepchildren for whom they had cared. In these cases the children's father was not in the picture. However, continuing action was rare; stepfathers usually gave their ineligibility for Legal Aid as the reason for withdrawal. Sometimes, this left stepchildren in a vulnerable position, without full protection.

Family Violence

The problems that these families took to the Court that concerned the research team, was, of course, was allegations of family violence. Most cases contained allegations of child abuse, and many of these proved to contain other forms of family violence. A small number of cases were included for analysis because the violence of family members was such that it might spill over into the Court or other areas in the community. All such cases over the last eight years since this case protocol had begun were included in the study sample. In addition some twenty four cases of custody and access disputes without child abuse allegations were included for comparison purposes.

The pilot study, (Brown, Frederico, Hewitt, Martyn, 1995), had shown that in custody and access disputes with and without child abuse allegations most cases involved family violence and that frequently the violence was inflicted on more than one person and that there were multiple people involved in some families. The picture was of widespread and pervasive family violence. Moreover, one form of family violence masked others present in the sense that while a number of types of violence would be recorded, only one form would become the basis of the allegation. For example, if a father was violent to his spouse and to his children and the teenage son was violent to his mother and siblings, all these events and behaviours would be noted but only one form, say the father's violence to his children, would form the basis of a formal allegation. Thus it was important to gain a very clear picture of possible violence in each family.

Abuse of Children

Abuse allegations had been made in almost all of the categorised child abuse cases, some 98.3%, at the Melbourne Registry. The Canberra Registry did not have a formal categorisation of child abuse cases so the accuracy of the categorisation was not relevant to them. Thus the categorisation process was very accurate.

The children who were the subject of abuse allegations totalled 282 at the Melbourne Registry and 75 at the Canberra Registry. While some one third of children were only children, where the child was not an only child allegations involved all children in the family, except in the small number of cases, 2.7%, where the children had been abused prior to this family experience. In these cases, although the child became one in a larger number of children, they alone suffered the abuse.

How did the allegations come to the Court? Reports of the abuse came from a number of different sources. The details of the sources were available only for the cases from the Melbourne Registry and they are given in the following table, Table 23.

Table 23, Frequency of Sources of Abuse Reports from Melbourne Registry

Source	Frequency
Mother	37.8%
Father	18%
Other Relative (eg Grandparent)	1.8%
Family Court	10.8%
Multiple Sources	27%
Other Sources (eg School)	.9%
Not Relevant	2.7%
Total All Sources	100%

Reports came primarily from the children's parents, with mothers being the parents who most frequently raised the allegation. Parents were an even more frequent source of reports than appears here because, together with the Court, they comprised most of

the sources in the multiple source category. After parents, the Court was the most frequent source of reports - an anticipated finding considering the role of the Court in the resolution of the custody and access dispute. The state Court Liaison Unit of the Victorian Department of Human Services reported that the numbers of allegations coming to them from the Family Court had been stable since the Unit had been established several years ago, but that the proportion of cases referred by the Court, as opposed to other sources, primarily parents, had increased.

Type of Abuse

While the research team wished to let the Court and the participant's definitions of abuse emerge, rather than impose their own, it was decided to take the common broad definitions used by the state child protection services in their reports to state and federal authorities as a starting point. Thus abuse was categorised for analysis firstly into the four common types, neglect, physical, sexual, and emotional abuse.

This proved inadequate in covering the reality of the allegations within the Melbourne cases and so more categories were added. The first was witnessing violence, which has the research team noted was being recognised as a category of abuse by the Court in its decisions over the last four years. Witnessing violence is just emerging internationally as a category of abuse encouraged by the findings of inquiries like the recent UK inquiry which documented the abusive impact of witnessing violence through the telling testimony of affected children. It is still not recognised by the Australian state services and so the Family Court is taking the lead in this particular area.

The second was a category of multiple forms of abuse, which proved to be the most common category. The case files indicated a high incidence of multiple forms of abuse. This too has not been a category commonly recognised internationally, but there is some recognition emerging now, (Higgins and McCabe, 1996). Once again, this type of category is not recognised by the state services.

The third and fourth categories added were failure to protect and risk of harm, which are terms used in state child welfare legislation and which are often translated into the category of neglect, but which were not thought to actually fit that category in these cases, because the parties did not see the abuse in these terms.

The team considered abduction as another category, which described events when a child is removed for at least two days without the custodial parent(s) consent or knowledge as to the child's whereabouts. Abduction is not recognised internationally or by any Family Court as abuse, but as a criminal act. Because of this the team categorised abduction in terms of any consequential abuse. Since it did occur among the Melbourne Families in a number of families, it may need to be considered as a form of abuse as well as a criminal offence. (It should be noted that abduction was not an act that took place only after separation; in some cases it took place previously.)

The data collected regarding types of abuse differed from one registry to the other. The Melbourne Registry collected more detailed data than the Canberra one. Thus the Melbourne data has been categorised in more detail than the Canberra data could be. The following table, Table 24, records the frequency of the different types of abuse alleged among families from both registries

Table 24, Frequency of Types of Abuse Alleged Among Families From the Melbourne and Canberra Registry

Type of Abuse	Melbourne	Canberra
Physical abuse	18.2%	36.1%
Sexual Abuse	12.1%	48.6%
Emotional Abuse	0%	
Witnessing Violence	6.1%	
Neglect	3.0%	5.3%
Failure to Protect	3.0%	
Risk of Harm	3.0%	
Physical + Sexual	8.1%	
Physical + Witnessing Violence	13.1%	
Physical + Neglect	2.0%	
Neglect + Risk of Harm	5.1%	
Sexual + Witnessing Violence	4.0%	
Sexual + Neglect	2.0%	
Physical + Sexual + Other	6.0%	
Multiple Forms, (3 and More) .	4.3%	
Other	0%	10%
Total	100%	100%

Pattern of Abuse Allegations

The pattern of the abuse allegations raised a number of issues. The first issue was its dissimilarity to the pattern of abuse allegations reported as notified to the state child protection authorities. The most common category of abuse reported by the state child protection authorities as single states or as aggregated nationally is neglect. Furthermore this is also the major reason for the taking out of Protection Applications, a stage which follows after substantiation. However, the most common form of alleged abuse in the Family Court, using the more detailed data from the Melbourne Registry was multiple forms of abuse, referring to two or more types of abuse. At the same time the incidence of neglect was very low, being 3.0% among Melbourne children and 5.4% among Canberra children. Even if the two categories, failure to protect, and at risk of harm are added to neglect, the total neglect incidence in Melbourne is still only 9%, some 24% less than that reported by the Victorian child protection service.

At the same time, the incidence of physical abuse is very high among the children in the Family Court cases at both Registries, almost 48% in Melbourne when all types of abuse in which physical abuse is a component is added together, and 35.1% in Canberra, as compared with 25% reported by the Victorian child protection service. Sexual Abuse is higher among the Family Court children than among the children reported to the state authorities, being 24.1% in Melbourne when all abuse in which sexual abuse was a component, (excluding the combination physical and sexual which was counted in the physical category), and 48.6% in Canberra as compared with 15% reported by the Victorian services.

Emotional abuse as a single type of abuse was not found to occur in the Family Court cases, whereas it was the second most common type of abuse reported by the Victorian services. In this respect, the Victorian services differ in their pattern of reported abuse from the other states; for the Victorian reported incidence of emotional abuse is much higher than the other states and the reported incidence of sexual abuse is lower. Possibly, the Victorian authorities may be incorrectly categorising sexual abuse as emotional abuse.

Clearly, the pattern of abuse is different as between the state services and the Family Court, and the difference lies in the relative absence of neglect in the Family Court cases, the strong presence of multiple forms of abuse and of what might be called the more harsh forms of abuse, physical and sexual abuse as single or aspects of multiple forms of abuse.

The question then arose from the dissimilarity between the profiles of the nature of abuse of the Family Court and of the state services as whether the children involved with the Family Court were a different group of children. In fact, the findings from the Melbourne Registry showed that mostly they were. Only 20.7% had been previously known to the state child protection services. Of concern was the fact that three quarters of those children had been in the care of the state protection services prior to their family presenting to the Family Court. This finding tends to support the conclusion that both these children and the others were not experiencing mild abuse, if this is a reasonable term, but rather harsh abuse.

Inter Agency Co-operation

Some issues arise from the differences between the profiles of abuse of the cases in the Family Court and the cases notified to state child protection services. The major issue is the impact of these differences on the inter agency co-operation required between the Family court and the state Child Protection services. It should be remembered that such inter-agency co-operation has been identified by researchers like Hallett and Birchall, (Hallett,1995, Birchall and Hallett, 1995), as the essence of child protection services everywhere but as a series of difficult negotiations. In the case of the Family Court, all allegations of child abuse are referred to the state services for investigation and determination as to the existence of abuse or otherwise. Yet the difference in the two profiles of abuse suggest real difficulties in the state services acting as investigator for the Family Court, considering that the nature of the

abuse is not really the same at both agencies. What the state services know best, neglect, is what the Family Court encounters least, and what the Family Court encounters most, multiple abuse of a fairly harsh kind, the state services see least.

At the same time, further problems regarding differences in types of abuse exist. There is the fact that the Court now recognises the witnessing of violence as a type of abuse, and will make decisions accordingly, but the state Child Protection services do not. In this case, the Family Court has taken a lead in forging a new definition. The Family Court also encounters abduction and the state Child Protection Services have not implied in public reports that they do. While abduction is regarded as a criminal offence by the Court rather than abuse, it may come to be defined as abuse eventually.

Other issues regarding the differences in the legislative goals of both services, in the relative importance of each service to the other, in the twenty four hour availability of both services, in the regional structures of both services, in the decision making mechanisms of both services, in the supporting agencies to both services, and in the staffing patterns of both services, arise and will be discussed later in this report. However, it is clear that from the perspective of the Family Court, that the state Child Protection services play a major role in the Court's management of child abuse allegations in custody and access disputes, and that the interface between the two services is extremely complicated, and probably more so than is generally acknowledged.

Time of Occurrence of the Abuse

Some of the abuse took place before the separation and thus it was from that group of families that abuse was involved as a reason for separation. The following table, Table 25, provides the details.

Table 25, Incidence of Abuse Allegations Prior to Separation from Child Abuse Cases at Melbourne and Canberra Registries.

Time of Abuse	Incidence - Melbourne	Incidence - Canberra
Abuse Before Separation	41.4%	11%
No Abuse Before Separation	53.2%	89%
Not Known	5.4%	0%
Total	100%	100%

There is a disparity regarding the time of the occurrence of the alleged abuse between the cases in the two Registries, with abuse occurring more commonly before separation among the cases from the Melbourne Registry than from the Canberra Registry.

Abuse was alleged to occur after separation as well, with more abuse being alleged after separation at both Registries than was alleged prior to it. The next table, Table 26, gives details of abuse alleged after separation at both Registries

Table 26, Incidence of Abuse Allegations After Separation Among Child Abuse Cases at the Melbourne and Canberra Registries

Time of Abuse	Incidence - Melbourne	Incidence - Canberra
Abuse Alleged After Separation	81.1%	89%
No Abuse Alleged After Separation	13.5%	11%
Not Known	5.5%	0%
Total	100%	100%

Thus the incidence of abuse alleged after separation was very high in both registries, suggesting that separation did not of its own accord end the abuse. Access as an opportunity for the abuse of both children has been of considerable concern for some time and the evidence here suggests why this is so.

Perpetrators of Abuse

The pattern of alleged perpetrators in this study is more biased by the nature of the arena in which they have come to be aired than is the case in other studies. Obviously, family perpetrators are likely to be the most common ones in these cases. The information about perpetrators can be understood only in terms of the perpetrators involved in Family Court matters. The following table, Table 27, gives more information as to alleged perpetrators.

Table 27, Incidence of Alleged Perpetrators in Child Abuse Cases in Melbourne and Canberra Registries.

Perpetrator	Melbourne	Canberra
Mother	21.6%	16.2%
Father	39.6%	54%
Stepmother	0%	2.7%
Stepfather	6.8%	10.8%
Siblings	0%	0%
Stepsiblings/Half siblings	4.6%	0%
Other Relative	.9%	2.7%
More than one person	.9%	0%
Other	7%	8.1%
Allegations made by both parents against the other	18%	0%
Total	100%	76.3%

Thus the pattern at each registry was similar. More allegations were made against fathers than mothers, and against more fathers and mothers than against step parents at each registry. The incidence of step and half siblings as perpetrators in the Melbourne data should be noted and also the incidence of one parent making an allegation and the other a counter allegation in the Melbourne data. It is likely that the absence of step/half siblings and counter allegations in the Canberra cases might be artificial in that the numbers of cases was smaller in Canberra than in Melbourne. Some of these might have been categorised as “other”, too.

Restraining Orders Against Perpetrators

A number of restraining orders had been taken out to protect the children. In 25% of cases such orders had been taken out against fathers and a further 2.7% had been taken out against mothers.

Other Abuse of the Children

Findings in other studies have indicated that once abused children run a greater risk of further abuse by other people. Consequently, the study sought to discover to what extent this happened to these children. In one third of the cases, the children were alleged to be abused by another person. The following table, Table 28, shows who the perpetrators were alleged to be.

Table 28, Incidence of Perpetrators of Additional Alleged Abuse Among Child Abuse Cases at the Melbourne Registry

Persons	Incidence
Step Parents	51.4%
Other Relatives	21.6%
Others	27%
Total	100%

The other people involved were mostly family members, with step parents being the most commonly alleged additional perpetrators. Step parents had not been commonly identified as the sole perpetrator and this had been thought to relate to the fact that many parents had not re-entered partnerships or marriage. This conclusion is less convincing in view of these findings; the explanation seem to lie in the fact that step parents were involved but not as perpetrators acting alone.

Other Family Violence

A wide variety of other family violence was found to occur at the same time as child abuse. As commented on earlier, the links between all forms of family violence have been recognised only very recently. Violence perpetrated by male partners against female partners has been conceived of as one family problem, violence against a male partner by a female partner as another, child abuse as yet another, and elder abuse as another again. Violence by children against parents or against siblings is not really

recognised and the links between them all, or between family violence and violence to people outside the family is rarely dealt with. These families evidence the complexity of violence and demonstrate the links between all family forms of violence and between family violence and violence to people outside the family.

Violence Between Partners

Violence between the partners was noted to be extremely common in the pilot study, whether the custody and access disputes involved child abuse allegations or not, (Brown, Frederico, Hewitt, Martyn, 1995). Therefore, it was of special concern in the next stage of the study. Both allegations of and confirmation of partner to partner violence was sought from the Melbourne cases but only allegations from the Canberra ones. At this point no conclusion was reached as to the severity, the frequency and the dynamics of the violence; however, using a typology of family violence conclusion were made in this regard in a later section. It must be noted that violence was defined as any sustained physical attack including punching and hitting with the hands and with weapons. Incidents like a push in passing was not included although there are those who would argue that they should be.

The following table, Table 29, shows the incidence of allegations and confirmations of partner to partner violence

Table 29, Incidence of Allegations and Confirmation of Partner to Partner Violence Among Child abuse Cases at the Melbourne and Canberra Registries

Persons Involved	Allegations Without Confirmation - Melbourne	Confirmations - Melbourne	Allegations and Confirmations - Canberra
Father to Mother	47%	17%	40% in toto with no further details
Mother to Father	9.3%	2.8%	

Thus father to mother violence was confirmed in 17% of families in Melbourne but alleged without confirmation in another 47% However, only mother to father violence was confirmed in 2.8% of families and allegations made in a further 9.3% Some 40% of the families in Canberra were characterised by partner to partner allegations of violence. Most partner to partner violence involved males being violent to females. Questions have been raised as to whether female violence to males is underestimated. The adversarial nature of the Family Court would suggest it is one arena where such allegations are more likely to surface; however this may not be so.

The total incidence of partner to partner violence in the child abuse cases in Melbourne was found to be similar to that among the difficult cases in the Intractable Access Study where the incidence was very high, some 66%. At the same time, far more domestic violence orders had been taken out among the Melbourne and Canberra parents against their partner than was the case in the Parramatta study.

Table 30, Incidence of Domestic Violence Orders Taken Out in Melbourne, Canberra Among Child abuse Cases and Parramatta Intractable Access Cases

Persons Involved	Incidence - Melbourne	Incidence - Canberra	Incidence - Parramatta
Against Father	40%	33%	12%
Against Mother	7.3%	7%	4%

As a result of the pilot study findings, some 24 Melbourne cases of custody and access disputes without child abuse allegations were reviewed for an incidence of partner to partner violence. The following table, Table 31, gives the results.

Table 31, Incidence of Partner to Partner Violence and DVOs Taken Out Among Melbourne Custody and Access Cases Without Child Abuse Allegations

Persons Involved	Incidence
Unconfirmed Allegation of Violence Against Mother	20.8%
Confirmed Violence Against Mother	41%
Unconfirmed Allegation of Violence Against Father	12.5%
Confirmed Violence Against Father	20.8%
DVO Against Father	62.5%
DVO Against Mother	16.7%

Ironically, these figures seem to give the same overall picture of incidence of partner to partner violence except that there is more unconfirmed violence among the child abuse cases and less confirmed violence, there is more confirmed violence and less unconfirmed violence among the custody and access disputes without child abuse allegations.

Following the findings of the pilot study as to the existence of child abuse allegations among custody and access dispute cases which were not formally registered as cases involving child abuse allegations, the 24 cases in this stage of the study were reviewed to determine the incidence of abuse allegations among these cases. The following table, Table 31, gives these details and shows that a high incidence of abuse allegations, (and also subsequent investigations and substantiation's), were present.

Table 32, Incidence of Child Abuse Allegations Among Melbourne Custody and Access Dispute Cases Not Formally Registered as Child Abuse Cases.

Abuse Details	Incidence
No Abuse Alleged	30.4%
Abuse by Father Alleged	30.4%
Abuse by Mother Alleged	26.1%
Abuse Alleged by Both Parents Against Each Other	12.5%
Not Known	4.2%
Total	100%

Thus the findings of the pilot study were confirmed in that abuse allegations were present in a large proportion of the cases, some 69%, although the cases were not formally registered as child abuse ones. Furthermore the pattern of abuse was similar to that of the other cases with multiple forms of alleged abuse being the most common category and with neglect being uncommon. However, while about the same proportion of families reported the abuse as occurring before separation, some 50.1%, far fewer reported it occurring after separation, only 59.1%. Possibly, the fact that there was less reported as occurring after separation might in part explain why the abuse had not lead to the cases being formally noted, that is because the abuse was not continuing.

The fact that there were cases with reported and recognised child abuse does lead to some questions. What types of cases were these? Why was the abuse not leading to the case being regarded as one of alleged child abuse? Further investigation is needed to answer these questions. However, in the mean time a case example might provide further explanation.

Case Example of Custody and Access Dispute with Abuse Allegations Not Formally Categorised as Such.

Jennifer, a fashion buyer, and Mario, a window dresser, married in Melbourne after a one year de facto relationship. Within several months he had beaten Jennifer to the extent of her requiring medical attention several times. She left him although she was pregnant. After the birth of their child she allowed him to visit her and the baby on occasions, believing the child should have contact with its father. After the separation Mario resumed heavy drinking heavily and this began to interfere with his visits to the baby. Eventually, while drunk Mario attacked Jennifer and his mother and endangered the baby's life. He was charged with this and gaoled for two years. After release Jennifer refused access and a custody and access dispute ensued. This case was not classed as a child abuse one, despite Mario's abuse of the child, nor had the state child protection services ever been involved, presumably because the police had managed the case. Over the next months Jennifer did change her mind and allow access but then refused again because of alleged abuse occurring on access visits.

Many months of Court Counselling ensued to see if there was any way that Mario could achieve access, including the design, implementation and tight monitoring of an access plan. Once again the case was not formally designated a child abuse one. Eventually supervised access succeeded and unsupervised access is now being attempted. This family has now been involved with the Court for some years.

In this case example, it can be seen that the child abuse was never really in question, because the father had served a sentence for it. Thus referral for investigation to the state services was not relevant, either at the beginning or at any other time. Probably because of this the case was not categorised as child abuse, although it was the central issue in the case. It is possible that the incorrect categorisation did not affect the management of the case, although this is not clear, but it is clear that the incorrect categorisation does lead to an underestimation of child abuse in custody and access disputes.

Child Initiated Violence

Considering the young average age of the children, the fact that it was found that some 4% of children among the child abuse cases at the Melbourne Registry were violent to their parents was surprising. Some of the reported emotional problems among the children included the children's violence. One overseas study has reported that one of a family's responses to physical violence from the father is physical violence inflicted on the mother by teen age sons. Some of the children in this study were teenagers and could have been the source of this violence.

Summary of Family Violence

An attempt was made to characterise the type of violence that was occurring in all its aspects within each family. This was not easy because of the absence of clear links between all the different forms of family violence. Most models do not link the various forms of family violence including that between the generations. The model which has approached this most closely is the Johnston Campbell one which was developed to characterise the various types of family violence among families in family law disputes. It had the advantages of some linking being made between partner to partner violence and child abuse and between family violence and violence to non family members, although it did focus more on partner to partner violence than on the other forms and it ignored sibling to sibling and children to children violence. On the other hand, it distinguished best among the literature between types of partner to partner violence, creating five such types, rather than the conventional two. The five types are - ongoing or episodic male battering, female initiated, male controlling, reaction to separation, and psychotic paranoid.

The model was applied to the Melbourne cases and the following table, Table 33, conveys the breakdown of family violence types.

Table 33, Incidence of types of Family Violence Among Child Abuse Case at the Melbourne Registry

Type	Incidence
Ongoing/Episodic Male Batterer	30.9%
Female Initiated	2.7%
Male Controlling	10.0%
Reaction to Separation	9.1%
Psychotic/Paranoid	.9%
Could not Categorise	18.2%
No Family Violence	28.2%
Total	100%

As can be seen the most common type of family violence was ongoing or episodic male battering, which often involves the children, at the very least as witnesses. Such violence is long term and is less likely to abate in certain circumstances, as a reaction to the separation and a psychotic illness may. It contrasts with the idea that Court staff tend to have of family violence as being violence caused by the distress of separation, which occurred in only 9.1% of cases. The incidence of the male battering type of violence was much higher in this study as compared with the US study, which found separation violence the most common in the first study and almost the most common in the second study.

The model is far from perfect as the 18.2% of cases which could not be categorised indicate. It's main failing was its vagueness as to violence towards children and its absence of details as to nature and consequences of the children's involvement.

Summary Answer to Question One: Who are the Families and What are Their Problems?

The study provided considerable information in answer to the question : who are the families involved in custody and access disputes in the Family Court of Australia where child abuse allegations have been made; and what problems do they present to the Court.

The families included the conventional legal marriages, the less conventional but well known partnerships or cohabiting couples, the less well known non cohabiting couples, and grandparents and foster parents. The parents are in their early thirties, most were born in Australia, with those born overseas coming from a wide diversity of other countries but with certain Arab states not being represented; parents came from the full range of socio-economic groups but with a concentration around the middle to lower but not the least advantaged groups. The most distinctive characteristics of the parents were the high rates of unemployment among men and non employment among women and the high rates of criminal convictions among the men, especially for crimes of violence, and less high, but still high, rates of criminal convictions among the women.

Violence was fundamentally the problem that the families presented to the Court. Not only were they families in which child abuse allegations had emerged, they were families in which partner to partner violence and child abuse had played a large part in precipitating the family relationship break down. Many of the men had had orders taken out against them to protect their wives and children. However, the violence was not expressed only within the family; many males had convictions for violent crimes, and some had become violent to people outside the family, including towards professionals, as part of their overall pattern of violence.

The abuse alleged towards the children was different from anticipated. The Court has developed another clear category of child abuse, witnessing violence, which covers being both a passive observer of the parental violence and being more actively swept up in it. This category is not used by the state authorities and does not appear in state legislation. However, it is a formal category of abuse in family court legislation in Australia and New Zealand legislation.

The abuse was not able to be categorised in the four simple and single categories used by the state authorities. It is not clear whether the different pattern of abuse identified in these Court cases, such that the most common state category of abuse, neglect, reported by all state authorities, is almost non-existent among the Family Court cases, that physical, sexual and physical and sexual combined are more common in the Family Court cases, and that the most common type in the Family Court, multiple forms of abuse is not even a category in the state reports, is a real difference or a reporting difference.

The implications of the differences in the abuse discerned in the Family Court cases and in the state child protection services cases centre around the possibilities for the inter-agency cooperation that is currently required. At present the state services act as the investigative arm for the Federal Court; yet the pattern of cases in each jurisdiction seems remarkably different. In these circumstances can the split in functions succeed? At the same time each is initiating new programs which involve the other and full recognition of this is not obvious; the state is sending the Court new types of clients that will increase its role in overcoming family violence and the Court is establishing new definitions of child abuse that will affect the states.

Finally, it is clear that child abuse in custody and access disputes is underestimated in that while almost every case of formally identified child abuse was found to be present in those cases, it was also found to have been reported in over half of the custody and access cases which were categorised by the Court as not involving child abuse. From these findings it can be seen that the Family Court is, as previously suspected, being required to take a major role in the management of family violence, a role for which it was not originally designed. Not only is it being called upon to resolve child abuse issues in the separation and divorce of legally married couples, but in the separation of cohabiting couples and the separation of non cohabiting couples, and in disputes between grandparents and their children over their grand children and in disputes between parents and foster parents. Consequently, it is not surprising that the Court is spending much of the time it gives to children's matters in dealing with abuse allegations and related family violence.

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CHAPTER FOUR

THE COURT AND THE STATE CHILD PROTECTION SERVICES

INTRODUCTION

This chapter presents the results of the study that concern the inter-agency relationship between the Family Court and the Victorian, and ACT child protection services. Subsequently, it explores the particular issues arising from the inter-relationship between the Melbourne Registry of the Family Court and the Victorian state child protection services.

INTERAGENCY COORDINATION AS THE ESSENCE OF CHILD PROTECTION

When child abuse allegations arise within the context of a custody and access, or as is more recently termed a residence and contact dispute, following the separation of married couple or a couple in a de facto relationship, the Family Court of Australia is mandated to notify the various state child protection services of the allegations. Subsequently, the relevant state child protection service is required to carry out an investigation and to report the results to the Court. The Court does not carry out the investigation itself. The interrelationship and its co-ordination are managed by lengthy protocols agreed to between the state and federal agencies.

Thus the two agencies, one a state and the other a federal agency, are related through a strategy of mandated co-ordination, a term used to describe the type of co-ordination introduced by a higher power to achieve co-operation between two or more organisations. The two agencies are also in a position of resource dependency in that the Family Court is dependent on the Victorian child protection service, to carry out its legislative goals, and, as we will see, so too is the Victorian child protection service dependant on the Family Court to achieve some of its objectives.

This chapter is based on a paper from the research project, *Mandated Coordination : Aspects of the Interface Between the Family Court of Australia and the State Child Protection Services*, presented at the Seminar, **Children at Risk**, Association of Family Lawyers and Conciliators, Melbourne University Business School, April, 1997, Melbourne.

Such inter-agency co-ordination has emerged in the social services as a key element in the management of many social problems. In her research on the management of child abuse in the UK, Hallett, (Hallett:1995), describes how this strategy has emerged internationally over the last three decades and how it has become enshrined eventually in the UK in national government legislation. At the same time most policy analysts agree that co-ordination, whatever its type, is extremely difficult to achieve. An irony may be that it is easiest to achieve where it is least needed.

The obstacles to its achievement are many; Hallett has listed them as:

different professional perspectives about the nature of child abuse and intervention
different agency mandates and operational priorities
individual organisation's desire to achieve autonomy
resource costs of collaborative work
interpersonal difficulties of trust and openness
gender and status differentials.

All of these can be identified as obstacles which exist in the relationship between the any state child protection services and the Family Court of Australia.

This chapter examines the relationship between the Family Court and the state child protection services mostly, but not exclusively, in one registry, the Melbourne Registry, and considers the way the two types of agencies manage the relationship and the resulting problems, noting the mutual resource dependency which exists, without much acknowledgment, between the two agencies. Although only one Registry is examined in detail, it seems likely that the same issues and problems will arise between all Registries and all state child protection services because of the difficulties of the interdependent relationship required by the current policies and their procedures.

THE STUDY

In order to understand the context of the inter-agency collaboration , a summary of the study as a whole must be presented first.

The study began in 1995, undertaken by three academics from Social Work at Monash, with a Monash Law Faculty member as a consultant, and by one academic from Social Work ACU in Canberra. (We also linked one part of the study to a Scottish study on Children's Panels; these panels deal with child abuse there.) The study was aimed at discovering how the Family Court managed allegations of child abuse in custody and access disputes, knowing from the Australian and overseas literature that this problem was a very difficult, time consuming and somewhat irresolvable one for the Court. It was suspected that the Family Court's involvement in child abuse had brought it into the child protection and family welfare service system, without a full realisation on the part of the Court, thereby preventing the Court from a comprehensive attack on the problem.

Study Question

The study had three questions:

who were the families involved, what were their characteristics and what were the problem they brought to the Court?

how did the Court manage them?

what were the outcomes for the children?

Preliminary Project

Firstly the feasibility of the study was tested with a small project within the Melbourne Registry. This was done in 1995; 30 custody and access dispute case files with and without child abuse allegations from 1991-2 were analysed and 10 current cases observed in the Court. It was clear from this that the study could proceed. In addition, the analysis indicated a high incidence of child abuse and other family violence in the custody and access disputes. The cases showed the complexity of the child abuse reported, with it being commonly entangled with other pervasive family violence, and with only one strand being presented to the Court in any one case, (Brown, Thea, Frederico, Margarita, Hewitt, Lesley, Martyn, Rosemary: 1995).

Study Data Sources

The study proper commenced data collection in July 1995. There were two data collection sites, the Canberra Registry and the Melbourne Registry, chosen together to illustrate similarities and differences between two Registries in two different states and territories, each with its own child protection service. Data was collected from Court case files which had become active in the period January 1994 to June 1995, (but which could progress to August 1996), observations of Court hearings including a special study of Melbourne Pre-Hearing Conferences Regarding Children's' Matters in January - February 1996, and interviews of Court staff, that is with the judiciary, the counsellors, and the registrars staff in March - November 1996.

FINDINGS

To understand better the results of the inter-relationship between the Family Court and the Victorian child protection service, some of the more general findings need to be presented.

NUMBERS OF CASES INVOLVING CHILD ABUSE AND THEIR SIGNIFICANCE

At the Melbourne Registry, some 373 cases were identified within the Court as involving child abuse allegations during the study period. This number represented the same proportion the Court reported to WELSTAT for the same period, that is 3% of total applications or 5% of applications involving children's matters. The study selected one third of these cases at the Melbourne registry; in addition other types of cases were studied for comparison purposes. At the Canberra Registry, which does not clearly identify all child abuse cases as does the Melbourne Registry, all cases

involving child abuse allegations were included as well as other custody and access dispute cases.

Although the proportion of child abuse cases seems low when measured against total applications, the study found that as cases progressed through the Court, the proportion of child abuse cases, within the total of children's matters cases, increased. That is these cases involving child abuse allegations remained progressing through the Court, whereas other cases dropped out following resolution. Thus, in Melbourne at what could be described as the mid point of the Court proceedings, the Pre-Hearing Conference, child abuse cases were one half of the total children's matters cases, and at the end point of trial they had subsided to one third. Consequently, the suspicion of the research team, that the Family Court had become part of the child protection service system, was confirmed.

Information released from the Victorian state child protection services for 1995-6, (Armytage, 1997 : 1997) shows that the number of notifications from the Family Court in its various Victorian Registries has not increased over the last seven years since such data has been collected. Thus while the cases comprise a major part of the Court's load in custody and access matters, the number is not increasing.

A PICTURE OF THE FAMILIES

The first research aim was to learn something of these families and the problems they brought to the Court. Although prior research, (Johnston, J., and Campbell, L., 1993), had suggested there is little that is distinctive about these families, the amount of research was small, with the major contribution coming from a study on sexual abuse, (Thoennes, Nancy, and Pearson, Jessica: 1988). It was possible that a study such as this one, with a large number of cases and with a coverage of all kinds of abuse might produce different results.

Firstly, it was found that there were five family types bringing these issues to the Court, as the following table shows.

Table 1, Frequency of Family Type at Each Registry

Family Type	Melbourne	Canberra
Legal Marriage	59%	70%
De Facto Marriage	34%	24.5%
Non Cohabiting Couple	4%	4%
Grandparents	2%	.5%
Foster Parents	1%	0%
Total	100%	100%

The family types identified from both Registries were legal marriages, de facto partnerships or marriages, non cohabiting couples, grandparents, and foster parents; it should be noted that the Canberra families did not include foster parents, which may have been related to the absence of foster care agencies in Canberra or not.

Legal marriages were the most common, and the more so in Canberra, but de facto marriages were also common, as ABS statistics regarding births would indicate. Grandparents as parties in such disputes were not unexpected, as indicated from a very recent study on decision making in the Melbourne Children's Court, (Sheehan:1997). However, non cohabiting couples as a family type have not been identified previously, except for one recent article in the popular press, (Marie Claire, Australia, November 1996). Nor were foster parents anticipated, because while foster parenting and its problems are well documented, issues around foster parents and natural parents and custody and access disputes have not surfaced previously.

An interesting point about the three less common family types is that concerns about abuse in these cases had been brought to the Family Court via the state children's protection service. Complaints about abuse in these cases had been presented first to the state child protection service, which had advised these people, after an investigation, to take the problem to the Family Court.

Most of the marriages and partnerships were the first one, 66.4%, and most parents, 63.7% had not re-partnered at the time of the study. The marriages and partnerships lasted on average 7 years in both Registries, with legal marriages lasting longer, 8.5 years than de facto marriages or partnerships, which lasted on average 5.6 years. Parents were on average in their early thirties, with those who were legally married being on average a little older than those who were not married or cohabiting.

The overseas born were represented among parents to an appropriate extent in Canberra, but not in the Melbourne with respect to Melbourne females, as the following table shows.

Table 2, Place of Birth of Parents

Place of Birth	Females - Melbourne	Males - Melbourne	Females - Canberra	Males - Canberra
Born Australia	78.4%	67%	77%	75%
Born Other Engl. Speaking Country	12.6%	7.1%	4%	10%
Born Non Engl. Speaking Country	5.4%	22%	16%	15%
Not Known	3.6%	3.9%	1%	0%
Total	100%	100%	100%	100%

The low proportion of Melbourne women born overseas was due to overseas born males marrying Australian born females of the same ethnic background. Parents born overseas came from a wide variety of countries, including South Africa, UK, New Zealand, Italy, Greece, Malta, Macedonia, Germany, Holland, Poland, Romania, USA, India, the Philippines, Burma, Vietnam, Hong Kong, Malaysia, East Timor,

Indonesia, Jordan, China, Egypt, the Lebanon, and Uruguay. Not all countries were represented, namely Turkey, Israel, Iran, Iraq, and Saudi Arabia.

The country of birth showed no particular bias, but the numbers of overseas born per country were too small to allow for trends with respect to any particular group. The subject of culture race and ethnicity and family violence is a contentious one, in that conventional wisdom tends to portray some cultures as rife with family violence and others as having none. Gelles, (1996), argues against such stereotyping maintaining that family violence exists in all cultures but is not the norm in any.

Causes of Separation

The reasons why the parents separated were distinctive in relation to the reasons given in other studies of separation and divorce. Unfortunately, there is no research data as to the causes of the breakdown of de facto relationships, with or without children.

Family violence played a larger than usual role in the reasons for the separation of these parents. The following table shows the causes of separation.

Table 3, Frequency of Causes of Breakdown of the Marriage/Partnership

Cause	Melbourne	Canberra
Arguments	13.4%	42%
Spouse Violence	12.5%	21%
Child Abuse	8%	4%
Other Relationships	2.7%	13%
Desertion	3.6%	0%
Substance Abuse	.9%	0%
Other, (Multiple)	37.5%	10%
Other	21.3%	0%
Total	100%	100%

The most common causes for separation found in previous studies, (Pettit and Bloom:1984, Burns:1984, Presland and Gluckstein: 1992), have been vague - such as lack of communication, incompatibility, and lifestyle differences. Spouse violence has been cited infrequently and child abuse rarely.

However, in these cases arguments was the most common single reason, spouse violence the next most common and child abuse the third most common in Melbourne with other relationships the third in Canberra. All in all, these partnerships were violent and conflictual. Considering that in every case there were allegations of child abuse, it is surprising that child abuse did not emerge as a more common reason for separation than it did, especially that it did not emerge as frequently as spouse abuse. However, in view of the findings of the preliminary study where the one form of family violence raised as an issue in the case appeared to mask others, this may not have been surprising. (In the Melbourne cases the researchers were asked to

determine if they thought child abuse was a factor in separation and in 41% of cases, the researchers thought it was.)

Parents

The parent's backgrounds and functioning was in most respects similar to the general population. While socio-economic status is hard to pin down, an occupational analysis showed parents were spread across all occupations ranked in terms of socio-economic status. Parents physical, and mental health was not different from the general population. Religious practices were not commonly revealed.

However, the parents did differ in four characteristics, in terms of a high incidence of unemployment or non employment, of criminal convictions, of substance abuse and of partner to partner violence, as the four following tables show.

Table 4, Occupational and Employment Status of Parents.

Occupation/ Employment	Females - Melbourne	Males - Melbourne	Females - Canberra	Males - Canberra
Professional	5.3%	4.6%	16%	16%
Administrative	4.4%	8.3%	28%	nk
Trade	5.3%	22.9%	nk	nk
Unskilled	6.2%	20.2%	nk	14%
Home Duties/SP Benefit	61.9%	1.8%	51%	nk
Unemployed	8.8%	34.9%	included in above figure	20%
Other	2.7%	7.3%	nk	nk
Not Known	5.3%	0%	5%	50%
Total	100%	100%	95%	100%

As can be seen above the proportion of unemployed males in Melbourne and in Canberra, but to a lesser degree, was high. When the proportion of pensioners without any employment was further added in where it was known - in Melbourne - the proportion rose to 41.2% At the same time the proportion of females at home and without paid employment was high too in Melbourne and in Canberra, again to a slightly lesser extent.

An Australian study of divorced males, (Jordan:1996), has concluded that post divorce males suffer high unemployment rates. Because the Jordan study did not identify males pre divorce employment, it is possible that male unemployment may have pre-existed the family breakdown, even being responsible for it. Another study, (Gregory:1996), explains the findings better. Gregory has shown that over the last two decades married men with dependants have failed to make employment advances

when employment rises and have suffered employment loss, that is lost jobs permanently, when employment falls. In addition such men are partnered with women who do not work. And since current unemployment is being focused in certain suburbs, the children are living in families without working adults and living in suburbs with others in similar positions.

Table 5, Incidence of Criminal Convictions Among Parents

Criminal Convictions	Females - Melbourne	Males - Melbourne	Females - Canberra	Males - Canberra
Criminal Convictions	9.7%	23.5%	12.5%	48%
No Criminal Convictions	90.3%	76.5%	87.5%	52%
Total	100%	100%	100%	100%

As can be seen from above, the incidence of criminal convictions was higher than in the general population. The rate was higher for males than females in both sites, and the rate for males in Canberra was extremely high. The most common offence for males was assault, either alone or in conjunction with another offence, and for women drug and social security offences. A proportion of females, 7%, and males, 9.7%, had convictions for child abuse offences.

Substance abuse, as indicated by the information regarding the nature of criminal offences, was more common than in the general population. Information regarding the parents' state of health supported the same conclusion, as can be seen by the following table. Considering the increase in range and amount of recreational alcohol and drug taking among young adults, (Parker: 1993), the link between substance abuse and child abuse is likely to lead to an increase in the incidence of these types of cases.

Table 6, Incidence of Disability Among Parents, Melbourne Registry

Disability	Females - Melbourne	Males - Melbourne
Physical Illness/Disability	5.9%	6.4%
Intellectual Illness/Disability	1.8%	.9%
Psychiatric Illness/Disability	12%	4.5%
Substance Abuse - Alcohol	9.1%	15.2%
Substance Abuse - Drugs	7.3%	7.5%
Substance Abuse - Multiple	10%	17.9%
No Illness/Disability	53.9%	47.6%
Total	100%	100%

The extent of partner to partner violence was high as can be seen by both the alleged and confirmed violence among the parents, and the incidence of domestic violence orders taken out, as shown in the two tables below.

Table 7, Incidence of Partner to Partner Violence

Persons Involved	Allegations - Melb.	Confirmations - Melb.	Allegations - Can.
Father violent to Mother	47%	17%	40%
Mother Violent to Father	9.3%	2.8%	Nil
No Known Violence	43.7%	81.1%	60%
Total	100%	100%	100%

Table 8, Incidence of Domestic Violence Orders Taken Out

Persons Involved	Incidence - Melbourne	Incidence - Canberra
Against Father	40%	33%
Against Mother	7.3%	4%
No order taken out	52.7%	63%
Total	100%	100%

Comparison with Victorian State Child Protection Client Families

A comparison with the profile of the Victorian state child protection client families, based on a study of the last 10,000 closed child protection cases, showed that the Family Court families were more violent, by 12%, were more involved with substance abuse problems, by 10%, and had a slightly higher incidence of psychiatric disability, by 3%. Other possible differences could not be established due to the absence of state child protection client families data. However, these differences provide evidence to suggest these families have even more problems than those involved with the state services.

PROBLEMS BROUGHT TO THE COURT

In all the cases brought to the Court presented in this paper the problem was a custody and access dispute with the complication of child abuse allegations. The allegation of abuse was made about events beginning before separation and events beginning afterwards, with the majority of those alleging abuse prior to separation alleging it was continuing afterwards, as can be seen in the two tables below. Allegations did not emerge immediately in all cases, with only 26% having emerged by the first hearing.

Table 9, Alleged Abuse Before Separation

Time of Abuse	Melbourne	Canberra
Abuse Before Separation	41.4%	11%
No Abuse Before Separation	53.2%	89%
Not Known	5.4%	0%
Total	100%	100%

Table 10, Alleged Abuse After Separation

Time of Abuse	Melbourne	Canberra
Abuse After Separation	81.1%	89%
No Abuse After Separation	13.5%	11%
Not Known	5.4%	0%
Total	100%	100%

The Court was informed of these problems through a variety of sources including identifying the abuse themselves. By and large the Court was informed by the children's parents. The following table shows these sources.

Table 11, Sources of Identification of Abuse, Melbourne Registry

Source	Incidence
Mother to Court	23.6%
Father to Court	5.5%
Mother to Child Protection	6.4%
Father to Child Protection	8.2%
Court Identified	14.5%
Multiple Sources	41.8%
Total	100%

THE NATURE OF THE ABUSE

In categorising the nature of the alleged abuse identified, the study sought to be guided by the description of the abuse in the files, in order to gain as detailed, faithful and comprehensive picture as possible. Generally, in the international literature, abuse is categorised as either one of four types, emotional, physical, sexual, and neglect. This pattern is followed in Australia in that abuse is reported from the state services to the national data base in those four categories, although many state services, Victoria included, use a data base which is more elaborate.

One new category is currently emerging. Witnessing abuse is being recognised as another category, most prominently in the UK with its recent national inquiry into the witnessing of family violence. It soon became clear to the study team that the Family

Court explicitly recognised witnessing family violence as abuse and took it into account in making decisions in particular cases classing it as abuse.

The table following shows the nature of abuse categorised according to the descriptions in the files.

Table 12, Categories of Alleged Abuse at the Melbourne Registry

Type of Alleged Abuse	Incidence - Melbourne
Physical Abuse	18.2%
Sexual Abuse	12.1%
Emotional Abuse	0%
Neglect	3%
Witnessing Violence	6.1%
Failure to Protect	3.0%
Risk of Harm	3.0%
Physical + Sexual Abuse	8.1%
Physical + Neglect	2.0%
Physical + Witnessing Violence	13.1%
Neglect + Risk of Harm	5.1%
Sexual + Neglect	2.0%
Sexual + Witnessing Violence	4.0%
Physical + Sexual + Other	6.0%
Other Multiples of 3, and 3+	4.3%
Other	0%
Total	100%

The categories used in describing the abuse involved with cases in the Family Court are different from the categories used by the state services. The Court files record a wide variety of types of abuse and these detailed descriptions are featured in the records of hearings. As previously mentioned the state service's use of only four categories in their public reporting simplifies the description of the abuse, thereby underestimating the amount of multiple abuse children suffer.

Clearly, the pattern of abuse above differs from that recorded by the state child protection service, in terms of the notifications they record, and in terms of the protection applications they seek in the Melbourne Children's Court.

In the cases in the Family Court, the most common type of abuse is multiple forms of abuse; multiple forms of abuse occurred in almost half of the cases, in some 48%. Whereas the most common form of abuse reported by the state services was neglect, 35%, in respect of notifications and emotional abuse, 33%, in terms of protection applications. At the same time, the two most common forms recorded by the state service, neglect and emotional abuse, were the two least commonly reported in the Family Court. Furthermore what might be termed the harsher forms of abuse, such as

physical and sexual abuse alone or as part of multiple forms of abuse, were more commonly reported within the Family Court cases than by the state service. Finally, sexual abuse either alone or as part of multiple forms of abuse was reported more commonly among the cases in the Family Court than in the state services.

The table below of the state services abuse data provide further evidence of the differences.

Table 13, Abuse Notifications and Protection Applications Victoria, 1993-4.

Abuse Type	Notifications	Protection Applications
Physical	25%	27%
Sexual	15%	11%
Emotional	22%	33%
Neglect and Other	35%	29%

The question then arose as to whether the cases in the Family Court were another group of children or not? They were, in fact, another group of children in that most, 74.6%, were not known previously to the state service.

If they were on the whole a different group of children, did they resemble the children who were clients of the state child protection services? They were on average younger, being on average below five, whereas the other group were above five, their families were characterised by more family violence, psychiatric disability, and substance abuse problems, and they had two parents, albeit separated and in dispute, as opposed to only one or none, for the children involved with the state child protection service.

A final difference may lie in differences with regard to the perpetrators in the two groups. Very few perpetrators were from outside the family as the following table showed.

Table 14, Alleged Perpetrators, Melbourne

Perpetrator	Frequency
Father	40.7%
Mother	22.7%
Stepfather	0%
Stepmother	5.6%
Sibling	0%
Step/half sibling	4.8%
Other Relative	.9%
More Than One person	.9%
Other	5.4%
Allegations Made By Each Parent Against the Other	18%
Total	100%

In one third of the cases other perpetrators were alleged to be abusing the child. The most commonly cited other perpetrator was step parents, 51.4%, other relatives, 21.6%, and others, 27%.

AFTER THE ABUSE IS RECOGNISED

Once the abuse is recognised by the Court a notification is sent to the state child protection services. Obviously most of the cases would be sent to the child protection service for a report, but not all were, some 4.4% were not. This discrepancy appeared to occur when the abuse was already conceded, such as when a person had already been convicted of an offence relating to the abuse but was nevertheless seeking custody or access. The state service accepted almost all the cases, rejecting 6%, seeing these as not worthy of even a screening investigation.

The state service then investigated the notification and reported back to the Court. The time the investigation and reporting back took was very varied as the following table shows.

Table 15, Time of Investigation and Reporting Back, Melbourne

Shortest Time	1 day
Average Time	42 days
Longest Time	180 days

There is an obvious problem with the length of the investigation in that the Court stops to wait until the report is concluded and returned to it. Waiting one day is not an issue but waiting one hundred and eighty days is. At the same time, forty two days on average represents a very lengthy period for the very young children involved. It is double the time suggested in the protocols.

Yet, when one considers that the vast majority of these families are not previously known to the state services most of these investigations start from scratch. Questions, as to whether these investigations are different in any way from the other notifications, and what any differences imply for the investigations, arise.

The Court files showed that the state services did more than just investigate and report as the following table shows.

Table 16, What the Victorian State Service Did With the Notification

Outcome	Incidence
Reported Only	8.3%
Provided Counselling	30.3%
Referred Elsewhere	2.8%
Removed Children	3.5%
No Report Received	15.6%
Other (Mostly prevented access to access parent)	24.8%
Not Known	14.7%
Total	100%

As can be seen in the cases where the outcome was known, the state child protection services did not just provide a report; they provided counselling frequently and, in addition, took more radical action including the occasional removing of the children, or the more common preventing of access to the access parent.

SUBSTANTIATION

The issue which is of great concern in allegations of child abuse is whether the abuse can be substantiated or not. While mischievous allegations are always a matter of concern whatever the context of the allegations, when allegations are made within Family Court disputes, a common view is that the allegations are merely part of a parental war. “Mud slinging” is the term used widely to describe allegations within Family Court disputes and the term implies that one or other parent invents the allegation in order to gain custody or to prevent access as a weapon in the separation and divorce war.

The nature of the protocols in terms of the response of the state child protection service to the Court do not include a category of false allegations. Consequently, in the pilot study, the team did a separate investigation as to whether they could detect evidence of false allegations. In some 9% of cases this was assessed to be so,(Brown, Thea, Frederico, Margarita, Hewitt, Lesley, Martyn, Rosemary: 1995). This seemed a low figure; it was the same as for all child abuse notifications. Since then another study, (Hume:1997), has been undertaken in the Adelaide Registry reviewing this issue with respect to allegations of sexual abuse in a much larger number of cases and with a more intense focus on this issue. The results are the same, indicating the

mudslinging is no more common in Family Court abuse allegations than in abuse allegations in other circumstances.

The nature of the protocols which are in place between the Family Court and the Victorian services are such that the outcomes of the investigations are presented only within the protocol format, therefore seriously limiting the answers to the questions around the actual incidence and nature of the abuse. Clear answers to questions are not always provided. The protocols allow for only a series of pre-determined responses to the Court, which are

1. That Human Services will institute protection application proceedings in the Children's Court to protect the child.
2. That Human Services will intervene as a party to the proceedings.
3. That Human Services does not intend to intervene, but has information in which the Court may be interested, (and the relevant office and officer are identified for the Court).
4. That Human Service does not intend to take further action.

The report does not contain information other than the above, because of the state services view that to exchange more information could jeopardise the relationship between the child and the family, (Mapstone : 1997). If the Court wishes to know more it must subpoena the file from the state service.

Despite the format of the child protection reports, it was possible to determine from the file if the abuse had been substantiated or not. The abuse was substantiated in 22.4% of cases. In the cases which were already known to the state services substantiation rates rose to 50% both, where the case had been known previously, and where it had become known through this present situation. In the cases where the families were not previously known, the substantiation rate fell to 20%. Did prior knowledge make the investigation easier so that families not previously known were more difficult to assess? Another curious point was that the families who were previously known and where abuse was substantiated in relation to the current allegation made to the Family Court were families where the abuser was the mother of the children.

The following table shows the responses from the state child protection service

Table 17, Response from State Child Protection Service, Melbourne

Response	Frequency
Abuse Substantiated	22.5%
No Abuse Substantiated	46.7%
Not Known	28.0%
Not Investigated	2.8%
Total	100%

Substantiation was found to vary according to the type of abuse with multiple forms of abuse being more frequently substantiated than single forms, and sexual abuse

alone the most infrequently substantiated. The fact that sexual abuse is the least commonly substantiated form of abuse in other circumstances has been reported widely; it is particularly difficult when one considers the youth of the child population in this study, where the modal age was four and five. However, sexual abuse is not impossible to substantiate as has been shown, (Hume, 1997). In general, the more specific the allegation is with regard to type of abuse, time of abuse and perpetrator the more likely it is to be substantiated. This implies the sooner the allegation is made following the abuse, the more likely it is to be substantiated.

Substantiation rates as reported by each state's child protection service vary from state to state; while Victoria's investigation rate is apparently very low, with only half the notifications made actually proceeding to a full investigation, its substantiation rate should be regarded within the context of its wider policies and practices, according to the responsible Minister, (Age 12 April 1997). However, the Victorian substantiation rate is half the national average substantiation rate.

The substantiation rate achieved by the Victorian state child protection services for the Family Court cases in this study is the same as for all its cases. A very recent investigation of fifty sexual abuse cases referred from the Family Court in SA to that state's child protection service, (Hume, 1997:125), showed much the same results. It showed that the SA child protection service achieved the same substantiation rate for the Family Court sexual abuse cases as for its other sexual abuse cases. However, the rate achieved in SA in the sexual abuse cases was almost double the overall rate in

Victoria. In other words, the substantiation rates in the Family Court depend on the substantiation rates of state child protection service and they vary according to which state child protection service investigates the abuse. This seems most unsatisfactory for a national court if it is seeking national consistency.

It is often contended that investigating child abuse within the constraints of a separation or divorce is more difficult than at other times because of the context of two disputing parents. The study does not provide a direct answer to this question but it should be noted that the study did discover there were differences between the profiles of the families, the children and the abuse in the Family Court cases and the state child protection cases. Thus it can be argued that the Family Court cases are a distinct group of families and they may be best dealt with by investigation teams knowledgeable in their special problems.

For example, it emerged in the seminar, **Children at Risk**, that the Victorian state child protection services gave Family Court notifications the same initial screening as they gave all other notifications, (Armytage, 1997). This screening lead them to discard 50% of cases. The Hume study showed that the South Australian services did the same. The Family Court is unaware that this is the case; the responses from the state services do not state that a detailed direct assessment was not carried out. Considering the particular issues the Family Court is anticipating the state child protection services will address on its behalf discarding the case after a superficial screening appears inappropriate to the Family Court's purposes, although it may not

be to the state child protection services. Thus further reasons for the specialised assessments exist.

What Happened After The Report

Despite the beliefs expressed on occasions by state child protection service workers that their reports do not affect the outcome for the child, the Court was influenced by the report to a great extent, as the following table shows.

Table 18, Impact of Victorian Child Protection Report

Impact	Frequency
Decisive	18.9%
Influential	38.9%
No Impact	2.0%
Not Relevant (eg no outcome)	40.2%
Total	100%

Family Reports, sometimes called Family Welfare Reports, compiled mostly by Counselling, were also influential, but to an even greater extent. In the case of these reports, they were accepted by all parties thereby bringing the case to a close or followed in the judicial decision in 76% of cases, ignored in only 2.3% of cases and inconclusive as to impact in a further 15.9% of cases.

OTHER ASPECTS OF THE INTERRELATIONSHIP

One aspect of the interrelationship has not yet been examined but it is known that there are difficulties there. This is the issue of the state child protection service, as well as the police, regarding going on and returning from access visits. Anecdotal evidence indicates that both agencies are contacted by parents, and others, as access is about to occur and/or when access is over with allegations of abuse. And this is said to typically happen on weekends when Court staff are not easily available. This problem is undoubtedly a pressing one, and it is hoped to follow this up within the present study. Furthermore, it is anticipated that there might be other issues for the state child protection service, such as presenting reports in the Family Court, a difference in attitudes to access parents, and more.

CONCLUSIONS

While the co-ordination between the state child protection services and the Family Court in Melbourne is reputed to have improved considerably in recent years, the study shows evidence of obstacles which have not been overcome. Problems remain around the time that the state service takes to respond to the Court notification and the veiled nature of the reports which, when taken together, constitute a substantial difficulty for the Family Court. Another serious issue is fact that the Family Court's dependence on state child protection services renders it vulnerable to inter state

differences; cases have more likelihood of being substantiated in some states rather than in others.

No doubt these problems relate to the obstacles to co-ordination identified by Hallett, with the major obstacles identified in this research being the different goals and priorities of each organisation and the desire for organisational autonomy sought by each of the cooperating agencies.

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CHAPTER FIVE

PROBLEMS AND SOLUTIONS

INTRODUCTION

This chapter presents the problems identified in the study in the management of child abuse allegations in custody and access disputes in the Family Court and considers ways of overcoming them. Judging from the international literature, the problems identified are not unique to Australia, but greater progress does not seem to have been achieved with them overseas.

IDENTIFIED PROBLEMS

First Problem - Core Business of the Court

The first problem identified was that although the number of cases involving child abuse allegations had remained fairly stable over the last five years that such figures had been kept, (WELSTAT, 1993), despite Court staff's strong views that the incidence was increasing, and although the proportion of cases was only a small proportion, 5%, of total children's cases per year, child abuse cases had become what the management experts term " the core business " of the Court.

In other words, the child abuse cases stayed in the Court; they did not drop out or become resolved as frequently as other custody and access cases. Thus, at what might be called the mid point of the Court proceedings, the Pre-Hearing Conference, they had moved from being one twentieth to one half of the custody and access cases, and by the end, at Trial, they had reduced, due to resolution through the Pre-Hearing Conference, to one quarter. Consequently, the Family Court had become part of the child protection service system as suspected.

This chapter was based on a paper, *Problems and Solutions in the Management of Child Abuse Allegations in Custody and Access Disputes in Family Courts*, presented by invitation to the **Second World Congress on Family Law and the Rights of the Children and Youth**, San Francisco, June 1997.

Second Problem - Families being sent to Court by Child Protection Services

An analysis of family types lead to an identification of the second problem. As expected, the families comprised mostly legally married couples, 59% from Melbourne, 70% from Canberra, and de facto couples, 34% Melbourne and 24.5% Canberra. However, there were three more family types, non cohabiting couples, 4% in both cities, grandparents, 2% in Melbourne and .5% in Canberra, and foster parents, 1%, in Melbourne.

It was found that the latter three categories had been referred to the Court by the state child protection services, who chose to do so rather than handle the matter themselves, thereby underlining the movement of the Court into the child protection services system.

Third Problem - Families in Serious Difficulties

Although the families were similar to the populations of their respective regions in some characteristics, having the same physical and mental health characteristics, the same ethnicity and race profiles, and although they came from all classes across the socio-economic spectrum, they displayed some notable differences that indicated many of these families were in serious difficulties.

Firstly , unemployment and non employment levels were higher than usual. The male unemployment rate was 34.9% in Melbourne, with a further 7.3% on Social Security pensions, and 20% in Canberra. While not all females in the general population with children as young as in this study are employed, some 50% are. In Melbourne some 61.9% of females were not employed and 8.8% were unemployed. In Canberra 51% were either not employed or unemployed.

A recent study by an Australian economist, (Gregory, 1996), has identified married men with dependant children as an unexpectedly vulnerable group of people in terms of being the group to suffer more employment losses over the last two decades. Furthermore, these men tend to have non employed partners, thereby increasing the family's vulnerability, and the children are living in families with no employed parents.

Secondly, the families had high rates of criminal convictions. Males had a 23.5% conviction rate in Melbourne and an even higher one in Canberra, 48%, and females had a 9.7% rate in Melbourne and a 12.5% rate in Canberra. Both in Melbourne and Canberra, half of those men with convictions had more than one convictions, and in Melbourne, most of the women had more than one conviction, whereas in Canberra all females had only one conviction.

Males had received a wide range of convictions; property, drug, child abuse, assault, drink driving, and other offences. Many offences were accompanied by simultaneous assault offences. The most common offence was assault either in conjunction with another offence or alone. Assault offences were more common in Canberra males. Females had a narrower range of offences, being primarily drugs, child abuse and

social security offences. The females in Canberra had a much higher rate of conviction for drug offences and for contempt of Court.

Thirdly, considering the incidence of criminal convictions, it was not surprising to discover that the rates of substance abuse were high too. Some 41.6% of males were confirmed as abusing alcohol or drugs, with half abusing both together, and 26.4% of females likewise, but with alcohol and drug abuse together being only one third.

Finally, partner to partner violence was high, most especially male to female partner violence. Father to mother violence was alleged in 47% of the cases and confirmed from independent reports in 17%, whereas mother to father violence was alleged in 9.3% and confirmed in 2.8% of cases. Domestic violence orders were taken out against fathers in 40% of the cases in Melbourne and 33% in Canberra, whereas domestic violence orders were taken out against 7.3% of mothers in Melbourne and 7% of mothers in Canberra.

It was therefore not unexpected to find that, whereas in most studies of divorce and separation violence is not a major cause of family breakdown, in these cases partner to partner violence was the second most common reason for the separation as identified by the parties. Using the Johnston and Campbell typology of family violence, (Johnston, Janet, and Campbell, Linda, 1993,) the most common form of the reported family violence - occurring in 30.9% of cases of alleged partner to partner violence - was found to be of the ongoing or episodic male battering type of family violence, which the researchers had rated as the most severe of all types of family violence and the most likely type to be associated with child abuse.

Thus the link more recently conceded, (Hewitt, Lesley, Brown, Thea, Frederico, Margarita, Martyn, Rosemary, 1996), between child abuse and other family violence was clear in many of these families in the Court.

Fourth Problem - False Allegations

For many years, there has been a well documented widespread perception, (Schudson, Charles, 1992), noted at the outset of this study, that allegations of child abuse in Family Court proceedings are more likely to be part of the family fight about the divorce or separation than to be a real event. Weapons in the war, mudslinging in the fight! So, in a sub study of 30 cases this issue was pursued separately. The rate of false allegations was found to be the same as the rate found to exist in all types of cases notified to the state child protection service, namely 9%. Another larger study of 50 custody and access cases with sexual abuse allegations concluded just this year, (Hume, 1997), has shown the same results. However, this perception is prevalent, in the Court, the state child protection services, and among legal practitioners despite its inaccuracy.

Fifth Problem - State Child Protection Services Investigations and Interagency Coordination

Many problems were found with the state child protection services investigations and the relationship between the state child protection services and the Family

Court. These problems stemmed from the inherent difficulties of inter agency co-ordination, described in many other studies, notably in Hallett's study of interagency coordination in the UK child protection services, (Hallett, Christine, 1995). Interagency co-ordination tends to be most successful where it is least needed, not, as was the case here, where it was most needed.

Firstly, after receiving the notification from the Court, it was found the Victorian state services dismissed half of the notifications as not worthy of investigation, (Armytage, 1997). The Hume study showed the same response to Family Court cases from the South Australian state child protection services. While this is the same as the proportion of notifications made direct to the state services that are not investigated, the effect of no investigation is different for cases from the Court. Because there is an ongoing custody and access dispute, the absence of investigation does not end the matter, as it does with other notifications; instead the case continues and one chance for resolution is lost.

This problem is further accentuated by a second problem, the shortcomings of the format for the state services report back to the Court, which is set out in such a way as to permit only a cryptic response to the Court. The protocols, (Protocol between Department of Human Services and the Family Court of Australia, 1996), allow four responses:

1. State services to take action themselves in the Children's Court.
2. State services to be a party to Family Court action.
3. State service to take no action but possess information for Court, only available following subpoena.
4. State services to take no action.

Since most responses, 77.6%, fall into the two last categories, which provide no information to the Court, the Court is left in ignorance and with a need to continue the investigation. Moreover, the Court may not even realise that the child protection services did not even investigate the allegations.

Thirdly, investigation times were lengthy and variable. The shortest time taken was one day; the longest time taken was one hundred and eighty days and the average was forty two days. Seeing the Court/state services protocols means the case has to be delayed while the investigation takes place, the average case is delayed for six weeks, almost 50% longer than is recommended in the protocols. Furthermore, it is delayed for no purpose in that the report back to the Court will provide usually no information to it. Considering that the average age of the children is four to five years, delays are undesirable.

Fourthly, substantiation rates were low; among the Melbourne families they were 22.5%. Substantiation rates of the Victorian state child protection services have been criticised for being lower than most other states, (The Age 4 April 1997).

Substantiation rates in the Court families were the same as for all other cases investigated by the Victorian service, thus discounting possibly a suspicion that the low rates of substantiation for Court families were due to the differences identified between Court and state child protection services family type and nature of abuse characteristics.

By way of comparison, substantiation rates among South Australian Family Court child abuse cases were almost twice the rate, 41%, again the same rate as for the cases notified direct to the state services. Thus, fifthly, substantiation rates are variable from state to state because they are linked to the rates of the various state services.

Finally, different definitions of abuse were used by the Court, on the one hand, and the state services, on the other. The Court categorises witnessing violence as a form of abuse whereas the state services do not. Also, the Court defines the abuse in the terms that the parties describe it, whereas the state services have a rigid set of four exclusive categories - emotional, sexual, physical abuse and neglect. These categories do not reflect the reality of the abuse in the Court cases - mostly multiple forms of abuse with physical and sexual abuse together being the most common type.

Sixth Problem - Court Procedures

Problems were detected in the way the Court processed the cases; some of these problems flowed on from the interagency coordination issues.

The Court procedures took a long time. They took on average seventeen and a half months from the time an abuse allegation was made to a resolution, but the average length increased as the child's age decreased. A number of cases stayed in the Court until the child took control themselves, for example one case, which was not the longest case, was in the Court for eight years and concluded when the child became old enough to determine the matter themselves. The adversarial nature of the Court and the position of the parents vis a vis that of the children allows parents to bring the case back to Court repeatedly, without there necessarily being a problem for the child, just one for the parents.

During the period in the Court each case went before many hearings, an average number of five. New procedures were introduced into the Court in the middle of the study period to reduce the number of hearings, but the study was not able to include an investigation of any outcomes as to reductions in time and number of hearings.

Since the study showed that there were changes in custody and access for the child when a hearing occurred, in regard to custody, 37.2% of the children had at least one custody change, but more changes took place in access arrangements, 77% had at least one access change, following a hearing, fewer hearings would contribute to greater stability for the child.

At the same time, the children suffered a high incidence of confirmed emotional problems, with 29% being so affected. If the proceeding of the case through the Court is linked with this, for while long term effects of divorce on children,(Brown, 1994), do not seem to produce as much distress as noted in this study the precise cause of the distress is unknown, then the fewer hearings, and the sooner the matter is resolved, the better it is for the children.

The conduct of lengthy cases such as these is expensive, reported recently as being on average a \$16,000 cost to the parents with other costs, such as the cost to the Court and to Legal Aid. While it was not possible to calculate the number of parents receiving Legal Aid funded by the government, it was observed that many were. And some 47% of the children were separately represented, most of which would come from government funds.

Finally, counselling, either entered into voluntarily or at the direction of the Court, was not very fruitful in obtaining agreement over custody. Agreement was obtained virtually only in access matters, some 11.8% of parents were assisted to agree over access following voluntary counselling and some 12.5% following counselling at the Court's direction.

SOLUTIONS FOUND IN CURRENT PRACTICES

A number of current practices were found to be effective in resolving the dispute. They could best be described as pro active practices or ones where the Court took the initiative.

Where the state child protection services made a report which clearly substantiated the abuse, this brought the case to a resolution in 86% of the substantiated cases, that is in 18% of the total cases, because all parties agreed to accept the report.

Similarly, the presentation of a Family Welfare Report by Court Counselling brought cases to a resolution. In these cases the Family Welfare Report was almost always completed by Court Counselling and comprised several interviews with parents alone, together if possible, with and without their children, and possibly other relatives and outside agencies. (Their purpose, format and processes have been presented by the National Director of Counselling Dr. Carol Brown in an article in 1995.) The Court ordered reports for some 34.2% of families and these were accepted by 39% of the families involved, thereby bringing the case to an end then. In a further 25% of cases the reports were explicitly accepted by the Judge.

A sub study was conducted regarding Pre-Hearing Conferences, because they had been found in a small study within the Melbourne Registry to bring some 30% of cases involving children's matters to a resolution at this stage. In fact, the sub study of 30 cases in January- February 1996 showed that **this mechanism when associated with the use of a Family Report and a separate legal representative brought some 50% of child abuse cases presented to this forum to a resolution.**

FUTURE SOLUTIONS AND RECOMMENDATIONS

What does this study tell us about future solutions and recommendations? It shows us the problems to be overcome in the management of custody and access disputes involving child abuse allegations in the Family Court and it shows us some directions for solutions.

In summary, the problems were:

that child abuse was now core business for the Family Court
that many of the families involved had serious difficulties, especially difficulties associated with violence
that the use of the state services as an investigatory arm of the Court, added to the Court's difficulties with the cases
that the cases took too long to progress through the Court, causing undue distress and cost.

In summary, the current solutions were:

that Family Welfare Reports helped resolve cases
that clear and detailed State Child Protection Service Reports helped resolve cases
that separate legal representatives helped resolve cases
that the multi disciplinary co-ordinating mechanism of the Pre-Hearing Conference helped resolve cases.

A Model

It is recommended that firstly the Family Court recognises

1. that managing the family violence contained in custody and access disputes involving child abuse allegations has become a core business of the Court.
2. that its normal case management procedures do not assist in the resolution of these cases.
3. that it needs to set up a special case management system just for these cases.

A Case Management System For Child Abuse Cases

The study shows that when the Court is proactive, when it takes the responsibility for problem solution, and when it takes the initiative itself as a planner, a coordinator and as an adjudicator it is at its most successful in resolving the problems.

It is suggested the following case management plan embodies these principles. Thus it is recommended that once a case is identified as involving child abuse allegations, which the study showed can emerge at any time in the case, the plan is put into action. The plan would include:

An Initial Hearing For

1. temporary arrangements regarding the child's residence and contact requirements,
2. an appointment of a case manager to implement and monitor the plan
3. a referral to the state child protection services only if the family were already known to them, for reports on families already known to state child protection were found to arrive more quickly and contain more useful information
4. an order for a Court Counselling Family Welfare Report if the family is not known because the chances of useful information from the state child protection services that

leads to resolution is slight and the Court needs a reliable investigative report as soon as possible

5. the appointment of a representative for the child, whether it be through a separate legal representative or some other equivalent measure, to identify, present and protect the child's best interests which are not apparently able to be so safeguarded in any other way,
6. a time to be set of no longer than two months for a multi disciplinary Pre-Hearing Conference.

A Pre Hearing Conference

1. to receive the reports and attempt resolution, and failing success here,

A Trial With No Delay

1. an immediate trial to prevent delay and case drift.

CONCLUSION

In conclusion, the plan aims at dealing with family violence using a tightly managed series of proactive steps which are carried out in a way so as to model to the family that the Court will support constructive and law abiding behaviour.

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APPENDIX ONE

FAMILY COURT DATA COLLECTION SCHEDULE FOR CASE FILES

FAMILY DATA

Most of this data is quantitative. Some of it is descriptive and some of it will relate to anticipated causal factors associated with family factors .

Each question should be answered; if the answer cannot be found then not known should be entered as the answer. Each answer should have at the end of it the source of the data, in code, as follows: A (affidavit), H (hearing), C (counselors report), and Date of the Event, (DE), and Date of the Court's learning, (DL), of this.

MARRIAGE/PARTNERSHIP/SEPARATION.....MOTHER

Is this marriage/partnership the first for Mother? Yes No

If yes, please specify

Has Mo been abused by a male partner in a previous marriage/partnership? Yes No

If yes, please specify

Has Mo abused male partner in a previous marriage? Yes No

If Yes, please specify.

Has Mo abused other children in a previous marriage? Yes No

If Yes please specify

Has Mo been absent from the marriage for more than one month for any reason? Yes No

If Yes please specify.

MARRIAGE/PARTNERSHIP/SEPARATIONFATHER

Is this marriage/partnership the first for the father? Yes No

If No please Specify

Has Fa been abused by female partner in a previous marriage? Yes No

If yes, please specify

Has Fa abused female partner in a previous marriage/partnership? Yes No

If Yes, please specify.

Has Fa abused children in a previous marriage/partnership? Yes No
If yes please specify

Has Fa been absent from the marriage for more than one month for any reason? Yes
No
If yes, please specify

MARRIAGE/PARTNERSHIP/SEPARATION.....CHILDREN

Has the child experienced previous marriages? Yes No
If yes, please specify

With whom did the child live in previous marriages?
Was the child abused in a previous marriage? Yes No
If yes please specify

CIRCUMSTANCES OF SEPARATION

How long did this marriage last?
What are the causes given for the separation?
Did abuse of children play any part in the separation? Yes, No,
If Yes, specify

Did other family violence play any part in separation? Yes No.
If Yes, please specify

What now are the areas of agreement between the parties?

What now are the areas of disagreement between the parties?

Are there any other features of this marriage that should be noted? Yes No
If yes, please specify

PERSONAL AND SOCIAL CHARACTERISTICS.....MOTHER

Age

Born Australia (Yes No)

Born Other Country, (Name Country)

Year of Arrival

Aboriginal/Non Aboriginal

Religion/Religious Affiliation

Suburb

Occupation

Work History

Source and level of income

Level of education

Does the Mo have a criminal history? Yes No

If Yes, please specify.

Who is living with Mother as family now, including all adults and children.

Is Mother the primary carer of the children? Yes No

What support networks does the Mo have?

PERSONAL AND SOCIAL CHARACTERISTICS.....FATHER

Age

Born Australia (Yes No)

Born Other Country, (Name Country)

Year of Arrival

Aboriginal/Non Aboriginal

Religion/ Religious Affiliation

Suburb

Occupation

Work History

Level of Education

Source and level of income

Does the Fa have a criminal history? Yes No.

If yes, please specify.

Who is living with father as family now, including all adults and children

Is the Fa the primary carer? Yes No

What support networks does the Fa have?

**PERSONAL AND SOCIAL CHARACTERISTICSCHILDREN
COMPLETE THIS FOR EACH CHILD**

Number of children in family

Age

With whom is the child living primarily now. Mo Fa

Do they visit the other parent? Yes No

If yes, please specify.

What are the court custody and access orders now?

What have been the court custody and access orders in the past?

Do any others have formal access, Yes No,

If yes please specify.

Which adults are their biological parents?

Has the Child been in care, Yes No

If yes, please specify

Are other relatives involved with children's care in any way. Yes No
If yes please specify

Is there any dispute over the custody or access arrangements for any of the children.
Yes No
If Yes please specify

HEALTH CHARACTERISTICS..... MOTHER

Psychiatric Illnesses and/or Disability, Yes No ,
If yes, is it alleged, or alleged and verified, or the professionals' view.
Please give name of illness if possible, hospitalisations and current situation

Intellectual Disability, Yes No,
If yes, is it alleged, or alleged and verified, or the professionals' view?
If Yes, was the person ever institutionalised?.

Physical Illnesses and/or Disability, Yes No,
If yes, is it alleged, or alleged and verified or the professionals' view?
If yes, please give name of illness/disability if possible, hospitalisations and current situation.

Substance Abuse, Yes No
If yes, is it alleged, or alleged and verified, or the professionals' view?
If yes, please specify alcohol, drugs, or both, and give details as for above.

Other Health Problems Yes No

HEALTH CHARACTERISTICSFATHER

Psychiatric Illness and Disability, Yes, No,
If yes, is it alleged, or alleged and verified, or the professionals' view?
If yes, give the name of illness if possible, hospitalisations and current situation.

Intellectual Disability, Yes, No,
If yes, is it alleged, or alleged and verified, or the professionals' view?
If yes, was the person ever institutionalised?

Physical Illness or Disability, Yes, No,
If yes, is it alleged, alleged and verified, or the professionals' view?
If Yes, name of illness/disability and current situation.

Substance Abuse, Yes No
If yes, is it alleged, or alleged and verified, or the professionals' view?
If yes, please specify alcohol, drugs or both, and hospitalisations and current situation.

Other health problems, Yes No

HEALTH CHARACTERISTICS..... CHILDREN

Does the Child have a psychiatric illness or disability Yes No

If yes, alleged, or alleged and verified, or the professionals' view?

If yes, please give name of illness and other details.

Does the Child have any emotional problems? Yes No

If yes, is it alleged, alleged and verified, or the professionals' view.

If yes, please specify.

Does the Child have an intellectual disability, Yes No,

If yes, is it alleged, alleged and verified, or the professionals' view?

If yes, please specify.

Does the Child have a learning problem? Yes No

If yes, is it alleged, alleged and verified, or the professional's' view?

If yes, please specify.

Does the Child have a physical illness or disability Yes No

If yes, is it alleged, alleged and verified, or the professionals' view?

If yes, please specify.

Does the child have any substance abuse problems, Yes No.

If yes is it alleged, alleged and verified, or the professionals' view?

If yes, please specify

LEGAL REPRESENTATION.....MOTHER

Does Mo have legal representation? Yes No

Has Mo Changed or abandoned legal representation? Yes No

If Yes please specify

LEGAL REPRESENTATION.....FATHER

Does Fa have legal representation? Yes No

Has Fa changed or abandoned legal representation? Yes No

If yes please specify?

LEGAL REPRESENTATION.....CHILDREN

Has providing any of the children with separate legal representation been considered,
Yes No

If yes please specify

Have any of the children been provided with separate legal representation. Yes No

If yes, please specify

If no, does the reviewer think the child/ren should have been provided with such
representation Yes No

If yes, why?

ALLEGATIONS OF CHILD ABUSE

Are there any allegations of abuse with regard to one or more children in this marriage? Yes No

If yes, please specify who is alleged to have abused whom.

Who has made the allegation and or report

When was the allegation or report made

Did the abuse occur before the separation

Did the abuse occur after the separation

Has the abuse been substantiated, Yes No.

If no abuse has been alleged or reported does the reviewer consider it has taken place, Yes No

If yes, please specify.

Did the abuse represent any risk to the child at any time Yes No

If yes please specify

Does the abuse represent any risk to the child now, Yes No

If yes please specify

Have the children been witnesses of abuse to family members, Yes No

If yes please specify which family members have abused and in what circumstances

If a child or children has been abused,

what was the nature of the abuse,

how old was the child or children when the abuse was reported to have occurred

for how long did the abuse take place

Have the children been given direct counselling

Have the children been able to put a view about custody and access.

If abuse has been alleged or reported what is the attitude of the interested family parties

ALLEGATIONS OF OTHER FAMILY VIOLENCE

Is there any abuse alleged to be suffered directly by child from another adult in family Yes No,

If Yes, please specify, including whether the abuse is alleged or confirmed and if confirmed by who and when?

Is there any abuse alleged to be suffered by Mother from Father Yes No

If yes please specify, including whether the abuse is alleged or confirmed and if confirmed by whom and when?

Is there any abuse alleged to be suffered by Father from Mother Yes No

If yes please specify, including whether the abuse is alleged or confirmed, and if confirmed by whom and when?

Any abuse alleged to be suffered by Mother or Father from any of the children Yes No

If yes please specify, including whether the abuse is alleged or confirmed and if confirmed by whom and when?

Any abuse alleged to be suffered by Mother or Father from any other person Yes No

If yes please specify, including whether the abuse is alleged or confirmed and if confirmed by whom and when?

Is there a dispute over the abuse?

Does the reviewer think that the case file indicates there has been abuse in the family which has not been recognised Yes No

If yes please specify

Have the children been witnesses to abuse of other family members, Yes No

If yes, please specify

Are there any other abusive or violent acts alleged to have been undertaken by members of the family towards anyone else, such as worker, other professionals Yes No

If yes please specify.

INTERFACE WITH CHILD PROTECTION SERVICES

Have any child protection services been involved with the family? Yes No

If yes, who made the notification

When was the notification made

If the notification was not made by the Court, how did the notification come to the attention of the Court?

Which children were notified. Please specify

What alleged abuse was notified. Please specify

Did Protective services accept the notification. Yes No.

Was the allegation/report substantiated by Protective Services

What Action did Protective Services take. Please Specify.

Were police notified. Yes No

If yes, what action did police take. Please Specify.

If no, why not.

If the notification was made by the Family Court, how long was it between notification, investigation and return to the Family Court?

What was the outcome of Protective Services investigation.

Was the notification known at the time of the first access orders?

What effect do you think this knowledge have on the first access order?

SUMMARY ASSESSMENT OF VIOLENCE IN THIS FAMILY

OTHER LEGAL PROCEEDINGS

Are there property issues in dispute as well? Yes No

If yes, please specify

Has any abuse identified above resulted in legal proceedings, other than that currently taking place in the Family Court. Yes No

(This could involve child protection applications in the Magistrates Court, criminal proceedings in the Magistrates or higher courts.)

If yes, please specify in terms of what people involved, what offences, what court, when and what outcome.

Who first raised other legal proceedings in the Family Court?

When were other legal proceedings raised?

CASE MANAGEMENT IN THE FAMILY COURT

Which party took the first step in the Family Court

What did they do

What date

What allegations were made

Was counselling requested by either party Yes No

By whom

For what purpose

When

What was the outcome

Did the Court refer to Counselling Yes No

For whom

For what purpose

When

What was the outcome

Did the Court order Counselling Yes No

For whom

For what purpose

When

What was the outcome

Did the Court order a family report

For what purpose

When

What was the outcome

Were any actions initiated by the counsellor Yes no

If yes please specify

Did the Counsellor identify any new information Yes No
If yes please specify

Was the counselling report/opinion referred to in the judgment Yes No
If yes please specify

Was the Case classed as a long one Yes No

Was the case classed as a complex one Yes No

What were the number of hearings

What was the length of time between hearings

What was the length of time between allegations and final orders

Did anything the Court staff say indicate the influence the allegations had on the final decision Yes No

If yes please specify

Does the reviewer think the allegations had any influence on the final decision Yes no
If yes please specify

Were the final orders consistent with the information given to Court

Were there aspects of the case not effectively met by case management and protocol guidelines

??Did all parties attend the information sessions, Yes No
If no please specify

Were all parties represented at the first hearing Yes No
If no please specify

How many orders were made by the Court

Did the judicial officers indicate a definition of child abuse Yes No

If yes please specify

Did the judicial officers indicate a view of the counselors Yes No
If yes please specify

Did the judicial officers indicate a view of other social workers Yes No
If yes please specify

Did the judicial officers indicate a view of witnesses Yes No
If yes please specify

Did the Judicial officers indicate a view of legislation Yes No
If yes please specify

ACCESS ORDERS

List custody and access orders made at each stage

Have there been any difficulties with custody and/or access since first orders made?

Yes/No

If yes, please specify