

FAMILY LAW REFORMS AND ATTITUDES TO PARENTAL RESPONSIBILITY



Although parental responsibilities are at the heart of reforms to Part V11 of the Family Law Act, we know very little about what Australians, and particularly divorced parents who are directly affected by the law, think parents should do for their children. Even less is known about public opinion on the responsibilities of parents who are separated or divorced, live in a de facto relationship, or have never lived together.

Kate Funder and Bruce Smyth report on a national survey that sheds light on what Australians think about parental responsibilities.

The commencement in June 1996 of the Australian Family Law Reform Act 1995 has been accompanied by mixed prognostications about the effects of reforms to the children's section (Part V11) of the Family Law Act (see boxed inset). The central changes in the Act emphasise parental responsibility in the service of children's welfare. It is too early to assess behavioural changes in parents, process changes in institutions, or changes in outcomes for children. However, one question that can be addressed is how the tenets of the Act accord with public opinion in Australia about the responsibilities of parents for their children.

As little is known about current expectations of Australians about parental responsibilities after parental separation, or even in other family circumstances, a national survey is a basis for estimating responses by divorcing parents, and the general population, to the recent reforms.



This is an edited version of a paper presented during the Institute's Fifth Australian Family Research Conference in Brisbane, in November 1996.

Expectations of Change

Expectations for change in attitudes and behaviour brought about by the reforms might be thought to vary depending on how closely the Act reflects the attitudes of the Australian population to the responsibilities of parents. If, for example, the Act accurately reflects current opinions about

BACKGROUND TO THE FAMILY LAW REFORM ACT

In Australia, some 59 per cent of marriage dissolutions involve parents with children in their care. The Family Law Reform Act 1995 is designed to redress a number of perceived problems in the terminology of the law, the assumptions underpinning parental responsibility and children's welfare, and the processes involved in making arrangements for children after parents separate.

The Family Law Reform Act (1995) had its origins in widely expressed concerns that custody and access provisions of the Family Law Act 1975 encouraged a mind set among parents which disposed them to see themselves as 'winners' or 'losers'. The more extreme manifestations of the winner/loser mentality were the subject of inquiry in the

Australian Law Reform Commission's report *For the Sake of the Kids: Complex Contact Cases and the Family Court* (ALRC 1995). Notions of parental ownership and exclusive control of children appeared to underpin many intractable disputes over children and the reforms attempt to remove concepts which suggest parental rights and powers (ALRC



Picture: Don Weston

their responsibilities in ways which are more open, or further developed along the lines reflected in the intentions of the Act. In this case, one would predict that the Act might be seen as irrelevant, as a milestone on a road already travelled.

Changes, of course, take place over time and can only be observed within a certain time frame. Since expectations of the impact of the Act are in part based on predictions of the degree of change involved in the new regulations, knowing how people currently view parental responsibilities allows more accurate estimates to be made about the impact of changes.

It is probably unrealistic to expect consistent change in attitudes or behaviours in a complex domain such as parenting until the law has been in operation for a considerable period of time. Such a period might be some years – during which processes become established, a body of precedents is amassed, and a sizeable population of parents and children has experienced the new context.

Such changes are in the future. This paper cannot address the impact of the law on attitudes to parenting, or on parenting behaviours – questions which must await the passage of time.

The issues taken up here are the extent to which the principles and intent of the Family Law Reform Act are in accord with public opinion about parental responsibilities immediately *prior* to the introduction of the Act. On the basis of the match between public opinion and the principles of the Act, some inferences are drawn about the extent of reaction and change which might be expected in the population of divorcing parents.

Possible Public Perceptions

That children have the right to know and be cared for by their parents regardless of actual or historical family structure may seem quite a radical statement to some groups within the community. In families formed by adoption or IVF, as well as families where the parents have or had a *de facto* union, or where parents have never lived together, this statement of principle might be variously understood and interpreted.

1995, p.6). The adversarial system and its language were perceived to result in parenting arrangements which were in their nature restrictive and not cooperative (Family Law Council 1987). In a later report, *Patterns of Parenting After Separation*, the Family Law Council (1992) concluded that cooperative parenting after separation was a desirable goal which could be enhanced by the use of terminology which discouraged ideas of ownership of children, and by

procedures which emphasised flexible planning and minimised dispute.

Another premise for advocating change (Family Law Council 1992) was that most children want and need contact with both parents, and that the wellbeing of children is advanced by their maintaining links with both parents over time (p.1). The Council considered that the law must change to achieve these goals. These conclusions formed the bases of recommendations to the Attorney-General that,

FAMILY LAW REFORM ACT 1995

Objectives and Principles of Part VII - Children

The purpose of Part VII of the Act is 'to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children' S60B(1). With the proviso of S60B(2) that 'except when it is or would be contrary to a child's best interests', the principles underlying the objectives are set out as an umbrella statement on what responsibilities parents have for their children and how they will give effect to those responsibilities.

The relevant statements of these objectives, and the underlying principles, are stated in S60B2:

- (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- (b) children have the right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and
- (c) parents share duties and responsibilities concerning the care, welfare and development of their children; and
- (d) parents should agree about the future parenting of their children.

In S60B1(b), with the overriding proviso that 'except when it is or would be contrary to a child's best interests', children have the right to regular contact with both parents. The balancing principle, that parents must continue to share the full responsibilities for the welfare of their children, underscores that separation does not interrupt the full responsibility of each parent, and that the responsibility for children must necessarily be shared.

In S60B1(d), the principle that parents must agree about future parenting follows, presumably, from the impossibility of full shared parental responsibility being exercised for the good of the children without

inter alia, new, non-proprietary terminology be introduced. All separating parents were to be encouraged to make parenting plans which would allow them to decide the level of responsibility they intended to adopt for their children after separation. Another of the Family Law Council recommendations was that there be an effective education program designed to focus on the task of parenting after separation.

Much of the intention and spirit of the ►

agreement on how that goal is to be achieved.

However, when the latter two principles are applied to children (and the parents) in different family structures, the possibilities for variation in public opinion increases. For example, it may be nothing more than a 'motherhood' statement that children living with married, biological parents should be cared for by both parents, should have contact on a regular basis with those parents and that those parents agree on and share the full responsibility for the welfare and development of the children. It may be more controversial that the same parental responsibilities apply to a parent who has never lived with a child. Public opinion may accord with the principles of reform when applied to one family structure referred to in the Act, but not necessarily with all.

More pertinent, perhaps, to the acceptance of the principles by parents to whom the Act applies is the extent to which these parents share the opinions of the general public. If the principles of the law accord with public opinion but not with the attitudes of the parents to whom it applies, then the possibility exists that the latter parents would feel themselves victimised by a law which failed to recognise their particular condition and needs. In addition, the greater the gap between the attitudes of the parents who are affected by the principles of reform, the greater the likelihood that the law will not be well implemented.

Separated parents are not, however, a homogeneous group and their attitudes will vary on a sensitive matter such as parental responsibility. One of the important variants in the experience of separated parents, and one which historically colours their attitudes, is whether or not they are resident or non-resident parents. The more disparate the expectations of parents, the greater the likelihood of dispute. Even if those disputes do not travel to court, the greater the gap in parents' expectations about responsibilities, the greater the opportunity for disruption to their continuing care in the service of the children, and dysfunction in the parenting of the child.

Since these differences between parents are at the heart of many family law disputes, and reduction in dispute is one of the engines driving reform, it is clearly important to understand the extent of acceptance of the principles of parenting

set out in the Act by resident parents and non-resident separated parents.

As parenting is gendered, it is also important to look at differences in attitude between mothers and fathers whose parenting is affected by the reforms. The term gendered does not refer to the biological facts of procreation and birth, but rather to the values, expectations, and rules men and women learn about how they can or should parent. It also refers to the social structures – educational opportunity, work and family policies – which reflect different expectations and make different opportunities for male and female parents. It would thus be important to consider the diversity of opinion relating to the principles of parenting in the Act between men and women who are separated, and who are resident and non-resident parents.

In summary, we can explore a matrix constructed from the attitudes expressed about parental responsibilities in different family structures (married, de facto, separated or divorced, never lived together) as seen by Australians whose experience varies according to their own family structure (never-divorced and divorced), as a way of examining the extent of public acceptance of the principles contained in the Reform Act.

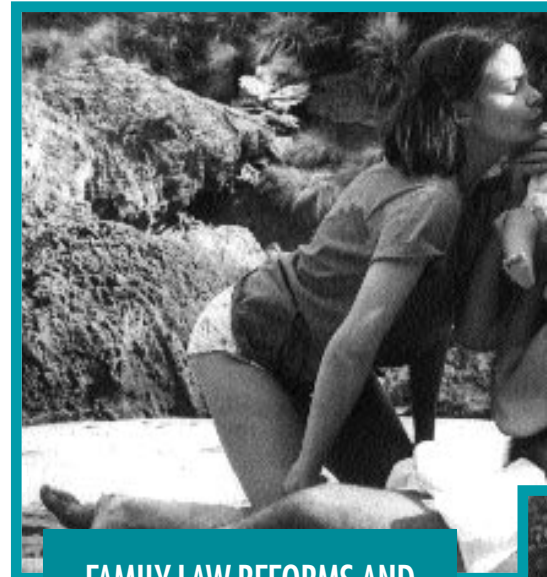
A second matrix, again examining the responsibilities of parents (married, de facto, separated or divorced, never lived together) but based on the attitudes of the population of divorced parents, would provide a basis to explore the acceptance of the principles among the group of parents immediately affected by the reforms. This second matrix of the attitudes of resident and non-resident men and women would be revealing of the degree of acceptance in the society of the principles of the Family Law Reform Act 1995, and indicate areas requiring sensitivity in implementing those principles.

National Survey on Parental Responsibility

In December 1994 the Family Law Council recommended that the impact of the (then) Family Law Reform Bill 1994 be evaluated and that the intended and unintended effects of the legislation on parents and children in the short- and longer-term be monitored. The monitoring was seen as a way of providing feedback to the

used in that legislation. The emphasis on parental responsibility as a basic plank in achieving child welfare, and a corresponding emphasis on children's rights, is thus seen in the Australian law. In S61B, parental responsibility is defined: '... "parental responsibility", in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.'

Thus, the Australian legislation appears to be in the mainstream of think-



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Family Court of Australia and family law professionals on the acceptance of the reforms so that information and other services might be adopted to enhance community understanding.

As part of an evaluation strategy, the Commonwealth Attorney-General's Department assumed responsibility for an initial benchmark study of community attitudes to parental responsibilities before the introduction of the Act. In fact, two benchmarks were sought as points of comparison against which to assess the impact of the Act. The first was the standard on parental responsibility held in the general Australian community; the second was the standard for parental responsibility held by parents who were themselves divorced under the regulations of the Family Law Act 1975 immediately before the reforms.

The study comprising the two surveys of attitudes, designed and carried out for the Attorney-General's Department by the Australian Institute of Family Studies, is reported fully in Funder and Smyth (1996).

Samples

To obtain nationally representative data, two populations were sampled. The first comprised all Australian households with telephones, stratified by state and territory

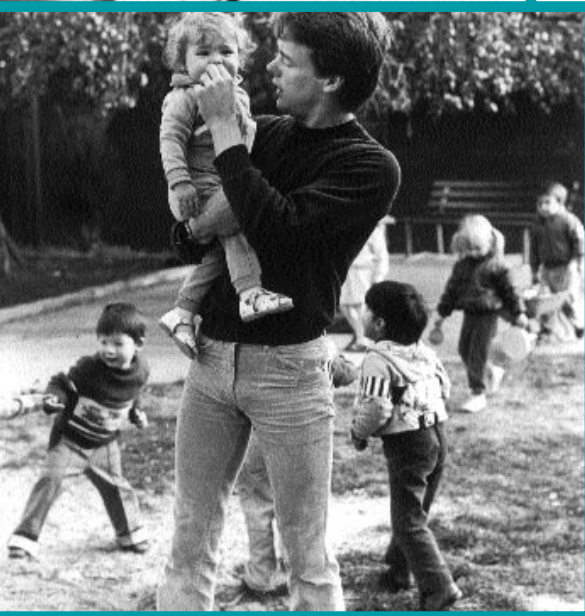
ing about children's rights and parental responsibility as expressed in the Convention and in the United Kingdom. It does not necessarily follow, however, that the Australian population generally accepts such precepts for parental responsibility; nor in particular, that separated parents accept these notions for themselves, or for parents in other circumstances.

**– Kate Funder
AIFS Principal Fellow**

► Family Law Council conclusions and recommendations have informed the Family Law Reform Act 1995. These lines of thought about child welfare and parental responsibility reflect articles in the United Nations Convention on the Rights of the Child. In fact, an earlier draft of the legislation explicitly referred to that Convention in framing the objectives of Part VII of the Act. In addition, the reforms have been influenced by the philosophy behind the UK Children Act 1989 and the terminology



Pictures: Howard Birnseith



- teaching the children what is right and wrong;
- looking after children's education;
- providing love and emotional support;
- protecting children from exposure to violence between parents;
- providing contact with relatives;
- providing access to sports, clubs, and hobbies.

Responses were rated on a five-point scale from (5) very important to (1) not at all important.

Family conditions and parental responsibilities

The second part of the survey contained three questions which addressed the respondents' understanding of parental responsibilities under four family conditions – when parents are married, when parents are separated or divorced, when parents have never been married but live together (de facto), when parents have never lived together. These four family conditions of the parents represent the ambit of the law described in Section 60B (2)(a).

The three questions on parental responsibilities were derived from content related to children's rights described in Section 64B(2) and Section 60B(2) of the Family Law Reform Bill (1995), with responses rated on a 5-point scale from (5) always to (1) never.

Each item began: Do you think that when parents are married [or: are separated or divorced; have never been married; have never lived together]:

- Children should be cared for by both parents sharing duties and responsibility for their care, welfare and development?
- Children should be in contact with both their parents on a regular basis?
- Both parents should share the financial support of their children?

A matrix of attitudes

A matrix of attitudes was derived from the responses of divorced respondents to the responsibilities of parents under the four family conditions (married, de facto, separated or divorced, never lived together). From the demographic information it was possible to divide the divorced sample into male and female, resident and non-resident, and to compare the attitudes of these groups. Their attitudes to the three parental responsibilities under four family conditions were compared. The resultant matrix was further refined by comparing the divorced sample and the general population sample of Australians. More detailed comparisons were then made within the divorced group (resident and non-resident parents, and men and women).

From these matrices of attitudes inferences can be drawn about the extent to which the principles in the Reform Act are accepted by various groups. It is then possible to explore the implications of differences in attitudes for family law and practice.

Core Responsibilities

Based on the surveys, the following picture emerged. Australians – both the general population and the special divorced population – have solid, homogeneous views on a set of 'core' parental responsibilities. Three aspects of parental responsibility are endorsed overwhelmingly: providing love and emotional support was viewed as very important by 98 per cent of the general population; teaching children right and wrong was seen as very important by 97 per cent of Australians; and looking after children's education was seen as very important by 95 per cent of Australians at large.

With such wholehearted endorsement, there was no significant variation in opinions among women and men, the young and old, the rich and the poor, the well-educated and those with less education, or between those living in different states of Australia. Finally, there was no divergence among Australians who had never been divorced and those who had divorced at some time. The generally accepted core responsibilities are shown in Figure 1.

capital cities. The resulting sample of one person per household comprised 1,246 respondents aged 18 years and over. A random stratified sample produced approximately equal numbers of women and men from all Australian states and territories including city and rural areas.

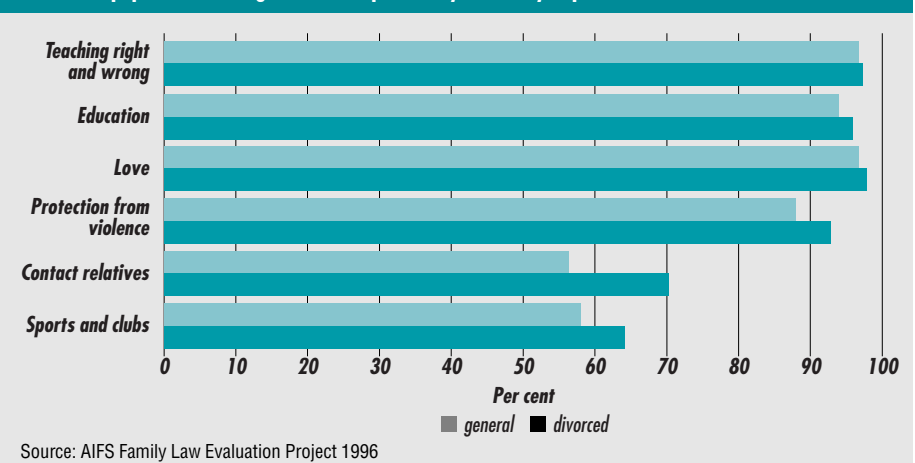
The second population was that of parents who had divorced under the regulations of the Family Law Act 1975 in recent years, almost all of whom experienced either Part One or Part Two of the Child Support Scheme, which marked a substantial change in the definition of parental responsibility for the financial support of children. In practice this sample of 494 people – 46 per cent men and 54 per cent women, with an average age of 43 years – was defined as persons divorced with a dependent child at the time of separation, who had separated after January 1988.

The surveys covered demographic information on the respondents, attitudes to core parental responsibilities, and attitudes to parental responsibilities under different conditions of the parent's marital or relationship status.

Attitudes to core responsibilities

Respondents were asked how important they thought it was for parents to take responsibility for their children in a range of ways, chosen to represent core parental responsibilities:

Figure 1 Core parental responsibilities: percentage of the general population and the divorced population stating that the responsibility was very important



Source: AIFS Family Law Evaluation Project 1996

There is some variation among demographic groups in their views of the importance of parents' maintaining contact with relatives and providing children with access to sports, clubs and hobbies. Lower socioeconomic status is associated with attributing higher importance to these parental responsibilities. Women place somewhat more emphasis than men on the responsibility for ties with relatives, and younger respondents see this as less important than older members of the sample.

Parental responsibility for protecting children from exposure to violence between parents was seen as very important by a resounding majority of parents (89 per cent) and as important by another 10 per cent. Both women and men endorse this view very strongly although women, and particularly divorced women, held stronger views than their male counterparts. Virtually no-one perceives any of the listed responsibilities as not very important, or not at all important.

As men and women who have ever experienced divorce and their never-divorced counterparts have very similar assent to core parental responsibilities, it seems that divorce does not alter acceptance of core parental responsibilities of parents. By implication, however, parents who are unable to, prevented from, or unwilling to fulfil the responsibilities listed above may feel that their identity as parent is in jeopardy.

In summary, the Family Law Reform Act 1995, *Part VII – Children*, makes

assumptions that parental responsibilities continue uninterrupted by divorce. The present findings show a solid assent in the community – including divorced parents – for a generic set of core parental responsibilities.

Caring, Contact and Financial Support

Attitudes in the general population and among divorced respondents indicate strong general support for parental involvement in the care, contact and financial support of children under the various family conditions – married, de facto, separated or divorced, and never lived together. A gradient of assent exists, however, in both populations.

Strongest support for sharing responsibilities is ascribed to parents who are married, followed by parents who live in de facto unions. Hence, it seems that both divorced and non-divorced groups see residence with children as weighting the degree of responsibility assigned to parents. Slightly less support is assigned to sharing responsibilities when parents are separated or divorced, and less still to responsibilities when parents have never lived together.

Although people who have themselves been divorced largely share the views of their non-divorced counterparts, minor deviations from this general picture were noted for men: men who have been divorced give somewhat stronger assent to

sharing responsibilities than do women or never-divorced men.

It seems that Australians generally see parental responsibilities as generic (a parent is a parent); they do, however, modify assent. The generality of the principles in S 60(2) of the Family Law Reform Act 1995 in their application across the board to parents who are married, de facto, separated or divorced, and never lived together are perhaps in advance of acceptance among divorced parents. However, the survey did not inquire into the reasons people had for qualifying parental responsibilities. It is possible that the overriding proviso that 'the exercise of responsibility be in the best interests of the child' was in fact being applied. If so, the respondents' estimates were that shared responsibility was less likely to be in the child's best interests under certain family structure conditions.

Attitudes of Resident and Non-resident Divorced Parents

With regards to core parental responsibilities, the divorced and non-divorced populations appear to hold similar views. It is of particular interest, however, to examine variations in attitudes to parental responsibility within the divorced population. Misunderstandings about roles and expectations would appear to underpin many disputes and the reforms are thus focused on clarifying parental responsibilities.

As indicated earlier, the two major variants in the population of divorced parents are their gender and status as resident and non-resident parent. The attitudes of these sub-groups within the divorced population in fact showed only minor differences from the general population. In addition, there were relatively minor differences in the attitudes of the various sub-groups compared across gender and resident/non-resident status.

The following comparisons were made to test for any possible differences: all resident parents v. all non-resident parents; resident females v. resident males; non-resident females v. non-resident males; resident v. non-resident females; resident v. non-resident males.

Perhaps unsurprisingly, divorced parents – resident and non-resident, female and male – do not differ significantly in their views of the 'core' parental responsibilities. There seems to be an area of 'motherhood' and 'fatherhood' statements which are universally accepted.

In the light of experience in Court disputes, one would expect quite marked divisions between resident and non-resident mothers and fathers in their attitudes to parental responsibilities. This does not appear to be the case, as is seen in Figure 5. All groups give strong assent to shared responsibility for the care, contact and financial responsibility for children. Shared responsibility for financial support for children and caring receive slightly higher endorsement than is given for shared

Figure 2 Do you think children should be cared for by both parents when parents are (married, de facto, separated/divorced, have never lived together)? (N= 1741)

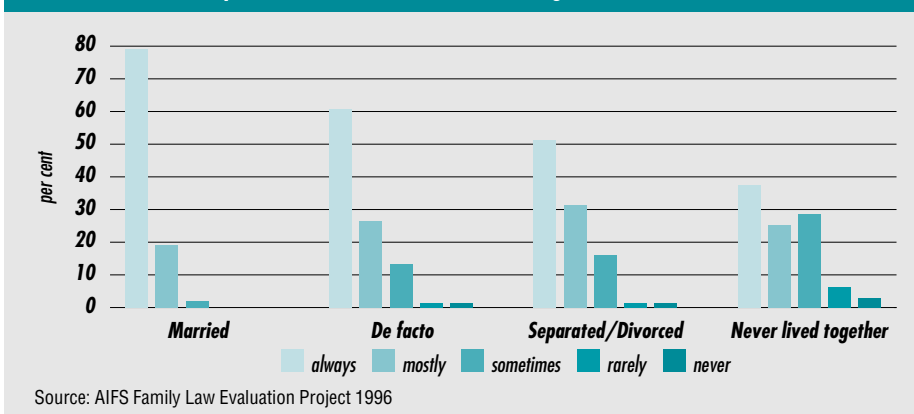
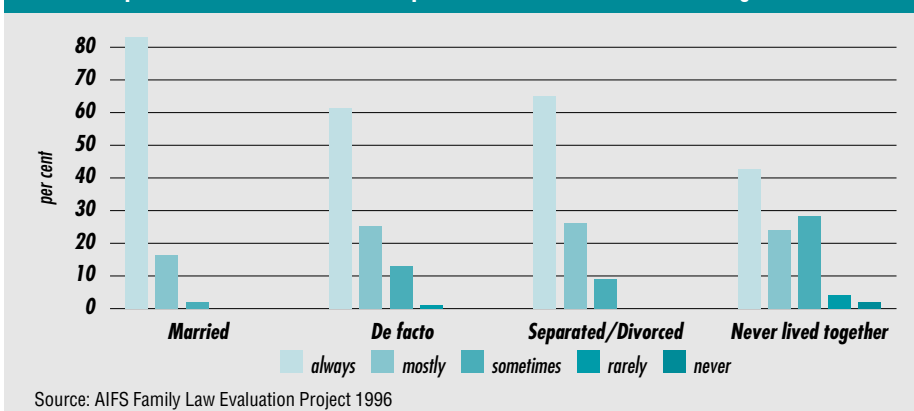


Figure 3 Do you think children should be in contact with both their parents on a regular basis when parents are (married, de facto, separated/divorced, have never lived together)? (N= 1741)



caring, and non-resident parents (particularly fathers) show a non-significant tendency to value shared care more highly than resident mothers and fathers.

This common view of parental responsibility extends across the marital conditions examined – married, de facto, separated or divorced, and never lived together (not shown). None of the comparisons showed any significant deviation in the understanding that resident and non-resident females and males have of the central responsibilities set out in *Part VII - Children* of the Family Law Reform Act 1995.

It appears that, among parents with relatively recent experience of divorce, attitudes are by and large in keeping with the spirit of the reforms. This is true for men and women, resident and non-resident parents. The very slight trend for non-resident fathers to see shared caring as more important than resident mothers possibly indicates that shared caring, more than shared contact or shared financial support, is an area where disputes may flare. As caring possibly masks issues of control, continued attention to this area of potential dispute seems warranted.

Conclusion

Australians hold to a set of core parental responsibilities, regardless of their own family and marital histories or conditions. This fairly robust homogeneity is a comfortable starting point for family law, since it indicates that the divorced population is not a group apart and that continuing parental responsibility is an expectation they and others hold.

Second, a matrix of opinions held by divorced and non-divorced people about the responsibilities of parents in different family structures shows wide acceptance that care, contact and financial responsibility for children should be shared. However, both divorced and non-divorced people indicate a gradient of assent to continuing parental responsibilities. Residence seems a more important criterion than marital status in allocating responsibility. It appears that the assumption that all parents have continuing responsibility for children is qualified in the minds of Australians. In this respect, the reforms are more sweeping and inclusive than public opinion.

Third, shared responsibility for the functions in S60B(2) are highly endorsed by recently divorced parents regardless of gender or residence status with the child. Hence, when they consider their own circumstances, these parents generally assent to the same propositions on parental responsibility as underpin the reforms.

With minor deviations, Australians appear to be attuned to the principles underlying the reforms to *Part VII - Children*. A reasonable expectation would be that the next cohort of parents who come under the jurisdiction of the Act will not find the principles foreign to their own expectations of parenting. Conversely, parents who are impeded from carrying

out the parent roles described in the Act, or perceive themselves to be so, are likely to feel that their identity as parent in our society has been quite fundamentally changed. It may, however, be comforting for all parents to know that their peers see parenting in common ways, regardless of family structure. This may be a particular solace at times when the demands of parenting under changed circumstances challenge their sense of competence and their identity as parents.

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The full report is available for consultation in the Institute's Family Information Centre. *Evaluation of the impact of Part VII of the Family Law Reform Act 1995: Public Attitudes to Parental Responsibilities and Children's Rights After Parental Separation*, by Kathleen Funder and Bruce Smyth, Australian Institute of Family Studies, AGPS, Canberra.

Figure 4 Do you think parents should have the financial support of their children when the parents are (married, de facto, separated/divorced, have never lived together)? (N= 1741)

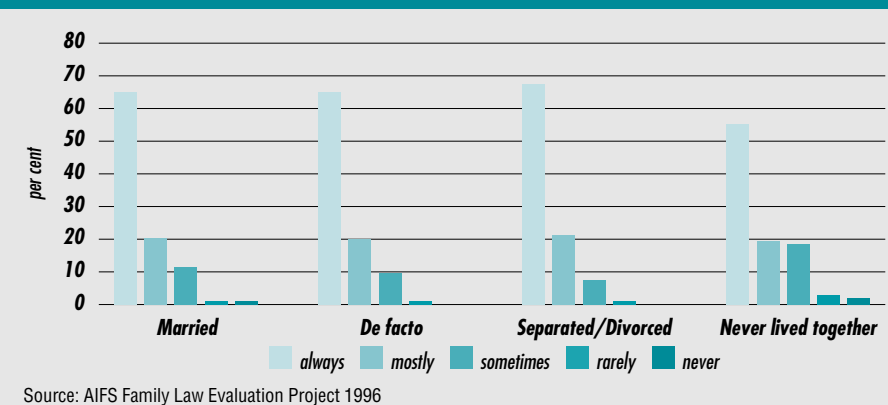


Figure 5 Parental responsibility of separated/divorced parents for sharing care, contact and financial support: reports of divorced parents (average)

