

In these pages Lawrie Moloney reviews a major report on the operation of the first three years of the Family Law Reform Act 1995, the summary of which was published in the last edition of *Family Matters*. Then follows a response by the report's authors, Helen Rhoades, Reg Graycar, and Margaret Harrison, to this review and to Patrick Parkinson's comments in our letters pages.

## RESEARCHING THE FAMILY LAW REFORM ACT

### A case of selective attention?

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In November last year, the University of Sydney and the Family Court of Australia jointly published the results of research that aimed to review the first three years of the operation of the Family Law Reform Act 1995 (Rhoades, Graycar and Harrison 2000). The research was an ambitious project, the authors gathering and analysing data from an impressive variety of sources. The ensuing report's executive summary was published in the last edition of *Family Matters* (no. 58, pp. 80-83), following which I was asked by the editor to provide a response.

The purpose of this article, therefore, is to summarise and review (a) the authors' assessment of the social pressures that led to the Reform Act, (b) the research methodology and sampling procedures employed by the authors to determine the extent to which the aims of the Act have been met, and (c) the authors' summary of the results.

#### Background

The objectives of the Reform Act are summarised by the authors in Chapter 2 of their report (p. 14) as being:

- to encourage both parents to remain involved in the care of their children after separation;
- to reduce disputes by removing the "proprietary" notion of children inherent in battles over custody;
- to direct attention to the rights of children and the responsibilities of parents;
- to encourage private agreements regarding post-separation parenting; and
- to ensure that contact orders were not made at the expense of exposing children and/or parents to domestic violence situations.

The chapter reviews the background to the Reform Act. It begins by acknowledging the influence of the 1992 Joint Select Committee on the Operation and Interpretation of the Family Law Act. It notes that in the same year, the Family Law Council produced "Patterns of Parenting after Separation" (POPAS 1992), which drew attention to the potentially detrimental impact of the language of custody and access through its associations with winning and losing and the ownership of children.

Moves away from the commodification of children, and an emphasis on children's rights in normal circumstances to an ongoing knowledge of and relationship with both parents, were also reflective of key sections of the United Nations Convention on the Rights of the Child. Rhoades and her colleagues point out, however, that although it had an impact on the Reform Act, specific reference to the

Convention did not survive the final legislative processes which took place in 1995.

The authors claim, as they did in their interim report (Rhoades, Graycar and Harrison 1999), that there was no research-based evidence supporting a need for legislative reform. They note instead (p. 20) that the majority of calls for reform came from "aggrieved non-custodial parents and in particular fathers' rights groups" – a position which appears to challenge from the outset the legitimacy of concerns expressed by non-resident parents.

It is not suggested by the authors, nor do I believe it to be the case, that the POPAS report or the 1994 Law Reform Commission Report (see below) were unduly influenced by what might be described as "non-custodial" or "non-resident" interests. In addition, the authors' claim regarding "aggrieved parents and fathers' rights groups" sits in some tension with earlier acknowledgments (p. 11) that the large number of submissions by non-custodial parents to the 1992 Joint Select Committee resulted in only minor recommendations regarding children's issues.

In my view, the authors leave unexplored the multiple forces leading to an impetus for reform. For example, the authors make no mention of the impact of research, noted in the POPAS report, that a large number of non-custodial parents in Australia were losing significant contact with their children. Nor do they refer to the Family Court sponsored report, also noted in POPAS, which found that the majority of children surveyed wanted to spend more time with their non-custodial parents. (In fact somewhat surprisingly the report contains no reference to and makes no place in the research methodology for the voices of children.)

In my view, it is important to reflect on the necessary limitations of research which both questions the need for legislative change in the first place and then sets out to assess the impact of that change.<sup>1</sup> In an area as complex and as sensitive as the parenting of children, the uncertainty of the links between legislation and outcome is likely to be especially high. Commenting on an early draft of the POPAS report, for example, Moloney and Harrison (1992) addressed the issue of the need for legislative change in the form of a question rather than a clear statement.

The final POPAS report came down on the side of recommending a legislative response to the problem of children losing contact with their parents. The authors of the report drew attention to research suggesting that children who fared best after separation were more likely to be those who maintained a meaningful relationship with

both parents. At the same time, the authors were conscious of the risk of simplistic interpretations of such findings which might emanate from false assumptions about the universal applicability of best outcome research. Clearly, research-based knowledge of best outcomes does not relieve decision makers of the obligation to consider each case on its merits and to weigh carefully the sometimes contradictory indicators.

Rhoades and her colleagues record that although the recommendations of POPAS were not initially accepted, its general thrust was found to be compatible with directions being taken by the UK Children Act. This observation prompted a request of the Family Law Council to revisit the issues raised in POPAS by reporting on the English legislation. Council reported favourably and reiterated the suggestion put forward by POPAS that Australia should consider a change in terminology around descriptions of post-separation parenting and place greater emphasis on parenting as a shared activity.

The authors correctly point to significant differences with respect to the aims and the enactment of the English legislation. Somewhat inconsistently in my view, they simultaneously attribute the passing of the Reform Act (p. 19) to Australia's "desire to mirror" the UK Children Act. While the English legislation clearly had some influence, the ground had been prepared for family law reform in Australia via other routes also. It is true that the end result could have been otherwise. Having considered all the evidence, including developments in England, a decision not to change the legislation would have been defensible. However, the authors draw a long bow in asserting that there was never any need to consider reform in the first place.

Rhoades and her colleagues also correctly note that arguments in favour of reform did not adequately address important questions around issues of violence and, in particular, male violence. They recall that research by the Australian Law Reform Commission, published in 1994, led to changes in the draft Family Law Reform Bill whereby the Court was required to ensure that explicit attention was paid to women and children who were subjected to or in danger of violence.

The tension between the desirability to share the parenting in ways which are constructive for both parents and children after separation and divorce<sup>2</sup> and counter indicators of shared parenting (where, for example, inter-parental conflict is high, or especially where violence<sup>3</sup> or abuse are alleged or proven), is a major issue in the remainder of the report.

### *Design, methodology and sampling*

Chapter 3 addresses issues of "predictions and concerns," methodology and sampling. The chapter begins by noting a number of a priori hypotheses which appear to be consistent with the authors' starting position that there was no need for reforms. They are:

- that the reforms would increase complexity but make little difference to parental behaviour;
- that the reforms would promote fathers' rights rather than children's interests; and
- that the reforms would have particularly adverse effects for women in situations of domestic violence.

The chapter reveals a complex set of research methodologies and sampling procedures derived from no less than 18 data sources. I have attempted to summarise these below.

### *Family law professionals*

Initial interviews were conducted with 30 Family Court judges and judicial registrars, 45 family law barristers and solicitors, and 13 Family Court counsellors. Following publication of an interim report in April 1999, second interviews were conducted with 14 of the judges, 26 lawyers, and 10 counsellors, with the intention of measuring possible changes in attitudes and experiences. In addition, from May 1997 to mid-1998, responses to questionnaires were received from 166 solicitors, 55 Family Court counsellors, 113 private and community counsellors, and 46 private and community mediators.

An unspecified number of domestic violence outreach staff were interviewed and given questionnaires, and an unspecified number of Contact Centre Staff and Women's Legal Centre staff covering three States were also interviewed. Interviews with community legal centre and domestic violence workers and those working in the Legal Aid Commission "focused on the extent to which they had concerns about the future safety of their clients when consent agreements were being made despite there being a history of violence" (p. 32).

### *Content analysis of judgements and observation of hearings*

A total of 674 interim and final Family Court judgements, some prior to and some after the Reform Act, were subjected to a content analysis. The vast majority (635) which were unreported were collected in three batches in 1995, 1996-97 and 1998-99. Although some of the data appears to be missing, it would appear that the overwhelming majority of the 252 interim judgements analysed involved allegations of domestic violence. In addition, 52 of the last batch (1998-99) of 78 final judgements (from a total of 229) are reported as also involving violence allegations.

In addition to the above, 20 interim re-location cases and 23 final re-location judgements were analysed, as were 100 judgements concerned with contact reinforcement applications. Finally, a content analysis of 110 of the contravention applications made in 1999 was conducted and an unspecified number of interim hearings regarding children's matters was observed in nine Family Court registries.

### *Information from separating parents*

A sample of 65 parents interviewed in 1999 by telephone about contact arrangements consisted mainly of resident mothers who had been clients of women's legal services, community legal services and contact services in Queensland, New South Wales, Victoria and South Australia. Most had reported experiences of domestic violence.

Within Chapter 4, further reference to parents' perceptions is made as follows (p. 39): "Parents' perceptions of the reforms were gleaned in a number of ways. Solicitors and counsellors who were interviewed were asked to comment on their clients' understandings of the reforms, questionnaires were issued to clients of family law solicitors early in 1999 (84, of which the authors note 49 were

women and 33 were men) and personal interviews were conducted with a selection of parents who had parenting orders or agreements in late 1999. Parents' perceptions were also gauged by observations of self-represented litigants in interim hearings and as evidenced by litigants in the surveyed Family Court judgements, including descriptions of parents' views on Family Reports."

It is not clear what "a selection" means here. The parenting data reported upon after this paragraph refers only to questionnaire responses. The next reference to parent interviews occurs on p. 41 in which the sentence commences, "Of the 65 parents who were interviewed . . ." It would appear from this sentence that the authors are referring to the sample which included the 50 interviewees referred to above. There is some ambiguity here. What can be said with certainty is that the parent interviews were conducted with at least 50 women and no more than 15 men.

The researchers note that in their interviews with professionals and parents, and in their scrutiny of the judgements, their principal focus was on shared parenting, the (so-called) right of contact, and sensitivity to family violence.

### Design

As noted, any project that seeks a causal connection between an event such as a socio-legal initiative at a particular point in time and a subsequent set of outcomes, is an ambitious undertaking. A time-honoured expectation is that pre-event baseline data will be gathered and that this will be compared with data gathered at one or more points after the event. But even when this is done, there is a further problem of the degree of certainty with which one can assert that any changes noted were caused by the event in question. For example, Suppes (1970), cited in de Vaus (2001: 5) notes that most causal thinking in the social sciences is probabilistic rather than deterministic.

The authors assume causality in many of the statements in their executive summary of their research (see results section below). They appear to have dealt with the problem of causality in three ways. First, they made comparisons between judgements in interim and final hearings made just before the commencement of the Reform Act, and after the commencement of the Act. Second, they interviewed family law professionals and asked them, in effect, to speak to the changes they believe have occurred since the Reform Act. The implicit assumption in the authors' interpretation of these data is that the changes noted have been *caused* by the new legislation. Third, they sought the views of parents and contact centre workers about the impact of the legislation.

The design with respect to the judgement analysis is sound. The design with respect to the family law professionals is useful in the sense that, although they could never purport to be objectively accurate, perceptions of the impact of an event, especially by high status perceivers, generate their own realities. The design with respect to the parents and contact workers is of much more limited value because few if any would have had experience of the pre-reform legislation. Clearly this third group can describe what is happening to them as they engage with the legislation. They are likely to

have valuable opinions on the question of how the legislation might be assisting or hindering them in dealing with their child-related issues. But the thread back to an opinion on how this is different to what would have happened under the pre-reform legislation is a long and thin one indeed.

### Methodology

It is widely recognised by methodologists (Caulley 1994) that in qualitative research, the data and the researchers' engagement with the data must be as transparent as possible, but in this report there is little information about the questionnaire protocols, or of their trialing or construction. Similarly, nothing is said of who put what questions to interviewees, or what the interviewees thought was the purpose of the interviews. Further, there are no statements concerning how and by whom the analyses were conducted, and what if any steps were taken to achieve an acceptable level of reliability with respect to inclusion and interpretation of the data.

The situation is exacerbated by the fact that, although there must have been an almost overwhelming amount of qualitative data to draw upon, a number of the respondents' citations are repeated, used in differing contexts, and interpreted in the direction of a dominant narrative – that of male abuse and control. An example of the tendency to interpret statements in the direction of male abuse can be found in the use of the word "harass", in the following statement (p. 57): "However, like solicitors, many counsellors also reflected that the shared parenting concept had given non-resident parents increased opportunities to harass the resident parent by constantly challenging her care of the children and seeking review of the orders . . ."

The word "harass" is found in a citation from only one solicitor (p. 55) who explicitly links the word with "abusive partners". However, we find on p. 57 that harassment has become a much more general concept linked indiscriminately to non-resident parents.

Words such as "harassment" *may* have been used by many of the respondents or noted in many judgements. Unfortunately, however, it is not possible for the reader to make an independent assessment of the extent to which comments from participants are representative of the comments made. Consider, for example, the following (p. 42): "Some solicitors suggested that the only clients who are familiar with the new terminology are those who have 'had some exposure to the system'. As one practitioner commented, 'Anyone who knows about residence is probably a voracious litigator'."

Such a comment poses an interesting "Catch-22" for parents. If they speak of custody they could be accused of having a possessive orientation to their children. If they speak of residence, they are likely to be "voracious litigators". But the important questions with respect to transparency of method are questions such as: "How many solicitors thought this way? How many did not agree? What was the question to which these solicitors were responding? Was the question closed or open?"

With respect to the judgements, part of the method involved approaching examples in the text from a numerical point of view – for example (p. 31), "looking at the usual amounts of contact time afforded to non-resident

parents compared to those given to access parents under the previous system.” Although tasks such as these are relatively unambiguous, no reliability data are mentioned, and indeed there is no evidence of a reliability procedure being followed.

Other parts of the method employed to analyse the judgements is more obscure. For example, it is noted (p. 31): “We observed interim hearings and recorded the extent to which they made reference to the right of contact.” We are not informed about how these observations took place, how the observers were trained to distinguish the presence or absence of reference to the right of contact, and (again) what if any reliability checks were made, and with what result.

### Sampling

The fact that none of the sampling procedures employed in the study is adequately explained further limits the value of the research. In the case of the interviews and questionnaires with respect to the judges, lawyers, counsellors and mediators, the absence of detail regarding sampling leaves open the possibility of a systematic bias. Admittedly this possibility is lessened in the case of the Family Court counsellors and judges who on my estimation represent a little over half the population in each category. On the other hand, the risk of bias again increases with respect to the re-interviews of only ten Family Court counsellors and 14 judges across seven registries.

The judgements were sampled via a variety of methods and although the process is described as random there appears to have been no systematic approach to the task. Thus the question of the representativeness of all judgements in the final sample must be regarded as an open one. For example, allegations of violence feature in 81 per cent of the pre-Reform Act interim judgements and in all but two of the 84 interim judgements surveyed in 1998-99 (there is no equivalent figure for the interim judgements surveyed in 1996-97). Of the final judgements surveyed in 1998-99, 67 per cent involved allegations of violence (again no figures are supplied in this respect for the pre-Reform Act judgements or for 1996-97). Because of these sampling difficulties it is not possible to know if these rates are representative of all cases brought before the Family Court.

In the case of the parental perceptions, the sampling procedure has clearly impacted very significantly on the results. The authors note (p. 27): “It is obvious that the population [sic] of parents we included in the project could not and would not be representative of the wider group of those who experienced separation. We do not suggest that their experiences are generalisable to a general population. However, their experiences provide powerful accounts by groups of women and men who feel themselves and particularly their children to be in a vulnerable position *because of previous or current family violence.*” (Italics added)

By definition, a sample attempts to describe and understand the characteristics of the population from which it is drawn. As noted earlier, the sample of parents from which these observations are drawn is predominantly women, many of whom have been in violent relationships. Not surprisingly, the dominant voice of the parents reflects a view of men as more interested in control and harassment than

in caring for their children. It is also not surprising that their voices dominate in the research because there are many more of them.

If the purpose of the research was to gain insight into the way the Reform Act was functioning for parents who bring their disputes over children to the Family Court, then it was important to establish a sampling procedure which reflected as closely as possible the sort of parents who litigate. If the purpose of the research was mainly to understand the separation-related experiences of mothers in violent relationships with their partners, then a different sampling procedure – one much closer to the sampling in the present study – was called for.

Given the sample from which the report has drawn its data, it is hardly surprising that it frequently links men with violence, and is critical of the motivation of fathers in seeking a more active parenting role. It is not surprising that the report provides few examples of fathers wishing to be in a caring and nurturing relationship with their children, or that the motivation of fathers to spend time with their children is frequently thought to be financial.

### Results

The results are broadly divided into findings about shared parenting (Chapter 4), contact (Chapter 5), and developing issues around litigation and private agreements (Chapter 6). They appear in the executive summary in Chapter 1, presented below in abbreviated form in the order in which they are covered in the report. The purpose of this section is briefly to critique the results in the light of the preceding comments.

*There has been no evidence of a shift towards the “lived reality” of shared parenting amongst the target population*

Although this might indeed be the case (see data from ABS 1999, cited by the authors), evidence from the report data is weak. Some of the evidence derives from the views of an unspecified number of the lawyers and counsellors. There is no negative case analysis and no information on what questions were put to the respondents.

The evidence from the parents is difficult to follow and appears to be contradictory. For example, in asserting (p. 1) that parents entering into workable arrangements do so “without legal assistance and without any knowledge of the reform Act”, the authors rely on “interviews with separated parents who are cooperatively sharing their parental responsibilities”. However, as noted above, the parent interviews were conducted with 65 parents of whom at least 50 were women most of whom had experienced domestic violence.

We are told (p. 59) that one respondent had observed that “many fathers still do not make themselves consistently available to their children”. We have no idea how representative this statement is, but in the light of the sampling issues discussed above, a demonstration that it does reflect a dominant view would not be surprising.

*Via the Reform Act, we have moved from an era of relative certainty about who had responsibility for children after separation to an era of uncertainty and confusion*

The dominant assumption here appears to be that the increase in court disputation over children demonstrates confusion over what the law now means. It is clear that the Reform Act was aimed at altering expectations regarding post-separation parenting. It is not clear, and the research design is ultimately not capable of telling us, if increased disputation derives mainly from confusion or mainly from other factors. It is likely that there are multiple overlapping explanations concerning increased disputation. For example, a greater number of fathers may wish to have the opportunity to be more than just visitors to their children, and a greater number of mothers within this group may be struggling to see the value of this.

There are difficult, evolving social and interpersonal issues being played out in such an example which are likely to be very challenging to conventional primary dispute resolution services. Given that the Reform Act invited parents to radically rethink post-separation relationships with children<sup>4</sup>, the hope that all but a few of these changes would be absorbed within the community, and within primary dispute resolution services, may in retrospect have been a little naïve.<sup>5</sup>

*There is evidence of increased post-separation disputation over children in the Family Court*

The evidence on this is quite clear and is summarised in the report on pages 100 and 101.

*The terminology of residence and contact has not replaced the terms custody and access in the minds of litigants and has not reduced the win-lose mentality associated with the previous legislation*

This is a linked statement which the research design is not capable of answering in a convincing way. There appears to be some evidence of a difference in attitude to questions of terminology amongst the lawyers and the counsellors whose views were canvassed – with the counsellors appearing to be more positively disposed than the lawyers. Some evidence of ambivalence amongst judges is also presented.

The link between a change in language and the reduction of a “win-lose” mentality also has to be seen in the context of the sort of cases upon which the research appeared to focus. Most could be classified as “hard” cases with an emphasis in the judgements and in the parenting samples on violence. In a predominantly adversarial setting, once issues such as violence are raised, a “win-lose” mentality becomes difficult to avoid because the responses are largely limited to capitulation or to opposition and possible counter-claim.

*The best interests of children has been compromised at the interim hearing stage due mainly to judicial concerns about parental “equality”*



My reading of the report suggests that this is sometimes but generally not the case. The authors note (p. 45): “In the early interviews most (judges and judicial registrars) said their approach to making residence orders had not changed as a result of the reforms and this remained their view in later interviews. A few however had developed a practice of making equal time orders at interim hearings, or as close as possible to that, whenever the circumstances allowed. Several people gave ‘equality’ reasons for this practice.” (Italics added)

Words like “few” and “several” are difficult to interpret in such passages. In addition, as the authors themselves note, other factors such as a significant increase in delays between interim and final hearings and the availability of contact centres in some cases, make it difficult to estimate to what extent moves towards shared parenting orders can be attributed principally to the Reform Act.

*This compromise is of particular concern with respect to interim hearings in which issues of violence are raised*

This issue was identified by Brown, Frederico, Hewitt and Sheehan (1998) who recommended that all interim hearings involving allegations of violence be fast tracked. Although the pre- and post-reform figures point to relatively small changes, there is a suggestion from the qualitative descriptions that at least some judges are privileging the

parent–child relationship over the risk of violence towards a mother or towards the children.

The question of how to respond to the competing demands for the preservation of a parent–child relationship, and the risk of continued intimidation or violence, is a very important one – and one which I suspect has (understandably) greatly preoccupied the authors. It is worth recalling that this issue was also important prior to the Reform Act. It has become more important now that expectations about meaningful engagements by both parents after separation are higher. The authors suggest that a majority of violence allegations made at the interim stage are found at final hearing to be vindicated. If this is the case, it would certainly be prudent of judges, especially if return dates can be brought back to weeks rather than many months, to err on the side of caution. In this regard, it remains to be seen whether or not the introduction of the Federal Magistrates Service will lead to a long-term reduction in delays.

*There is evidence of the ordering of shared parenting arrangements at the final hearing in cases of high conflict and in cases in which one parent was strongly opposed to such an order*

The data show such evidence. The question that requires further careful study is what it means. By definition, litigated cases in which a non-resident parent is seeking ►

the opportunity for more meaningful contact are cases in which the resident parent does not want that level of contact to occur. We need to know more about the thinking of the judges in these cases. Again, the research design and methodology are such that it is not possible to determine to what extent judges are applying shared-parenting principles in a non-discriminatory way, and to what extent they are carefully considering the options and (notwithstanding strong opposition and conflict) coming down on the side of greater parenting involvement on the part of the “other” parent.

*Shared parenting applications have been frequently motivated by a desire to reduce child support liabilities*

It is most unlikely that this would never be the case. The key word, however, is “frequently”. Put bluntly, the authors provide no evidence for this assertion.

*There has been an increase in the number of disputes about contact and “many such applications are without merit”*

The first part of this statement is correct (see p. 100). The issue of non-meritorious applications derives mainly from an analysis of contravention applications and not from an analysis of contact disputes generally. This analysis includes parents’ perceptions, in which the only perceptions cited

are those of women in violent relationships, and judges and registrars’ perceptions. Interestingly, one of the judicial registrars observed (p. 85): “Many [applications] are in the wrong form. They’re not really contravention applications, or at least the problem of contact is not going to be resolved by a penalty . . . Sometimes they just want the mother to be punished and they’re not interested, but often they will withdraw their application and make an oral application for variation.”

There is little doubt that vexatious litigants will exploit whatever avenues the law allows and that the Reform Act created opportunities for individuals in this category. But the authors’ implication that the increase in contact disputes is largely explained by men who are largely motivated by issues of control is not supported by the evidence in the report.

*There has been an increased pressure on women who are fearful of violence to nonetheless agree to contact arrangements*

This is a serious issue. Whether the problem has become more serious post-Reform Act cannot be deduced from the data as there is no pre-reform evidence. It does nonetheless signal the possibility of an unintended consequence of the legislation. It deserves the serious attention of legal practitioners, counsellors and those involved in primary dispute resolution practices. ►

## Concluding comments

The scope of the research in *The Family Law Reform Act 1995: The First Three Years* is impressive. Rhoades and her colleagues challenge us to reflect upon simplistic interpretations of the notion of shared parenting and the potentially serious consequences such interpretations have for cases that feature violence or abuse.

At the same time, it is likely that the genuine concern about violence may have spilled over into other aspects of the research via biased sampling which may, in turn, have resulted in selective attention to the comments of the participants. Thus a dominant narrative in the report has become that of men as violent and of fathers as more concerned about power, control and financial gain than about fostering an ongoing relationship with their children.

But we cannot assume that *most* men who litigate over their children do so as a means of continuing to exert control over their former partners. Some no doubt do; I have seen examples of this in my practice as a psychologist and counsellor. But I have also seen examples of men who litigate because they genuinely wish to spend more meaningful time with their children and find that their former partners are in strong opposition to that wish. Indeed, studies conducted in Australia and overseas that draw on data from divorced men and women from a broad range of

circumstances (Smyth et al. elsewhere in this issue; Smyth et al. 2001; Funder 1993; Bradshaw et al. 1999) suggest that many men *wish* to be more involved as parents. The question of what *motivates* this desire is less easily answered.

Indeed, the question of how to manage the changing roles of parents both pre- and post- divorce is likely to become an increasingly complex one. For example, aware of the limitations of the traditional breadwinner/nurturer dichotomy, many men and women nonetheless struggle to articulate the parenting roles they expect of themselves and each other even during the course of their partnerships (Moloney 2000). This lack of clarity, in turn, can easily find a focus in disputes after separation, posing questions of how, and to what extent, legislative change is able to facilitate or frustrate aspirations around these issues.

It is unlikely that the answers to these questions are uni-dimensional. It is unlikely that legislation such as the Reform Act could ever be declared a total success or a total failure. In the end, in my view, the collection and the analysis of the data in this report do not do justice to the complexity of the problem being investigated.

Had greater attention been paid to the fundamental issues of design, sampling and methodology, it is likely that a richer tapestry of results would have emerged. This tapestry may not have answered so clearly the fundamental ►

questions regarding the “success” or otherwise of the Reform Act. Nor might it have translated itself quite so easily into a neat set of policy recommendations. But such a result would more likely have reflected the real nature of family law, and better assisted in the dialogue that has to continue around balancing male and female roles with children’s best interests.

Finally, it is perhaps worth commenting briefly on the applications of qualitative data in socio-legal research. As a relatively new phenomenon (see for example, a thoughtful review by Lincoln and Guba 2000), systematic approaches to the analysis of qualitative data opens up significant possibilities for investigating the effectiveness of legislative change. In the application of these approaches, those trained in the law will no doubt differ from and overlap with the perspectives of social scientists. Perhaps the time has arrived for a more explicit dialogue between the two groups, which would include, amongst other things, discussions around the nature and purpose of qualitative research as it applies to legal process and legal issues.

### Endnotes

1 For example, it can probably be said with some confidence that the Reform Act has had an impact on the number of applications for contact, which have risen from 12,464 in 1995-1996 to 24,681 in 1999-2000. At the same time, however, this increase is likely to have also been influenced by other social changes,

including the introduction of simplified court procedures, the funding of contact centres and the dramatic increase in recent years in research into the role of fathers in both “intact” and separating families (Lamb 1999; Cabrera et al. 2000). In the end, it is impossible to judge with certainty the extent to which the Reform Act was catching up with, reflecting or leading public opinion on developing views concerning post-separation parenting. (See in this regard David de Vaus’ (2001: 11) *Fallacy of Affirming the Consequent*, the logic of which is: If A is true then B should follow; We observe B; Therefore A is true.

- 2 See, for example, Amato and Gilbreth’s (1999) research-based evidence on the critical distinction between authoritative parenting and parents as visitors to their children.
- 3 Although male violence features strongly in the report, the term is never defined. While at one level, it is legitimate to accept allegations at face value, or to note the number of occasions on which the Court accepted those allegations, the absence of a definition limits the value of the study. Sheehan and Smyth (2000: 109), for example, have summarised data that demonstrate that the broader the definition of violence, the less exclusively gendered is its occurrence. See also Johnson (1995) whose work these authors cite.
- 4 The legislation was described by Nygh (1996) as “the most significant development in Australian Family Law since 1975”.
- 5 There is a worrying assumption in the report (see, for example, p. 49) that litigants are likely to be in some way dysfunctional in their relationships. Clearly, dysfunctionality is only *one* of the reasons that couples might litigate over their children.

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