

### The Legislation and Courts Project: A project examining the implementation of the *Family Law Amendment (Shared Parental Responsibility) Act 2006*



Rae Kaspiew

The Legislation and Courts Project (LCP) is a series of studies examining the implementation of the 2006 changes to the law governing post-separation parenting disputes. It is one of three components in the Institute's evaluation of the family law reforms.

Key aims of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (SPR Act 2006) were to strengthen legislative support for children to maintain meaningful involvement with both parents after separation

and to ensure they are protected from harm from abuse, family violence and neglect. The legislation was part of a package of changes introduced by the former government from 2006. The Institute was commissioned to evaluate the changes and conduct associated longitudinal research (see *Family Matters* 77). This multidimensional evaluation has three arms: the Families Project (see *Family Matters* 81), the Service Provision Project and the Legislation and Courts Project.

The LCP is examining the implementation of the SPR Act 2006. This legislation made significant amendments to Part VII of the *Family Law Act 1975* (Cth), which governs the resolution of disputes between parents (and potentially other parties, such as grandparents) over arrangements for their children after separation. Key aspects of the changes include: a requirement for families to attend family dispute resolution before filing a parenting application in court (with some exceptions, such as where a matter is urgent or there are concerns about family violence and/or child abuse); a presumption in favour of equal shared parental responsibility; an increased emphasis on the need to protect children from harm from exposure to family violence and abuse; and a series of provisions designed to support the use of processes in the family law courts that are less adversarial and more child-focused.

These changes inform the key themes being examined in the Legislation and Courts Project. These themes are: (a) family dispute resolution and the legal sector; (b) shared parenting; (c) protection from family violence, child abuse and neglect; and (d) child-focused dispute resolution in the family law courts. The Legislation and Courts Project is based on the collection of data from multiple sources through five different studies. Three of the larger studies are:

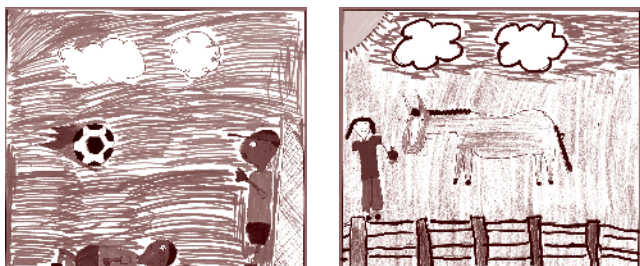
- **Component 1—Interviews and focus groups with family law system professionals.** This qualitative study examines the experiences of family law system professionals with the implementation of changes. In 2008, a series of interviews and focus groups with judges, barristers, solicitors, registrars and family consultants was conducted in Melbourne, Sydney, Brisbane and Perth. Cooperation with the data collection process was secured from the Family Court of Australia, the Family Court of Western Australia and the Federal Magistrates Court, various legal professional bodies, Legal Aid Commissions and community legal centres.
- **Component 2—File analysis.** This study is based on the collection of quantitative data from court files. Among other things, these data shed light on orders that are made (by consent and judicial determination) concerning parental responsibility and the time that children spend with each parent. The Institute has had the cooperation of the Family Court of Australia, the Federal Magistrates Court and the Family Court of Western Australia for this study.
- **Component 3—Family Lawyers Survey 2008.** This study is based on quantitative data from an online survey of family lawyers conducted between November 2008 and February 2009. Issues canvassed in the study include lawyers' experiences with key aspects of the legislation, such as the presumption in favour of equal shared parental responsibility and the provisions designed to place greater emphasis on the need to protect children from harm from exposure to abuse, neglect and family violence. The Family Law Section of the Law Council of Australia assisted the Institute in contacting participants for this study.

Together, the studies in the LCP provide insight into how the legislation has affected advice-giving and decision-making practices in the family law sector and what impact it has had on patterns in post-separation parenting arrangements for children that are made by consent and judicial determination. Along with the other arms of the evaluation—the Families Project and Service Provision Project—the LCP will contribute to an assessment of the impact of the 2006 changes and will assist in informing future policy development.

#### Acknowledgements

The evaluation of the family law reforms has been commissioned and funded by the Attorney General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs.

### Update: *Growing Up in Australia*



The third wave of data collection for *Growing Up in Australia: The Longitudinal Study of Australian Children (LSAC)* has recently been completed, with around 86% of the study families originally recruited during 2004 taking part. This is a good result by international standards.

Preparations are well underway for the fourth round of the study, with the first visits commencing later this year. In addition, study families will be contacted by mail in June this year with a “between-waves” questionnaire, focusing on children’s family and school experiences, as well as their use of media and technology.

The fourth wave brings a number of changes to the study. For the first time, parents and children will use a computer to answer the questions and the children will use headphones to listen to an audio recording of the questions. Also for the first time, interviewers will work with the 10–11 year old children to learn about the children’s activities throughout the day prior to interview.

Agreement has been reached with state and territory jurisdictions to access children’s data from the National Assessment Program Literacy and Numeracy Assessments, where parents have given permission for this. These data will provide a valuable new source of information on the children’s progress when they are in Years 3, 5, 7 and 9.

The use of the study data continues to grow, with over 260 approved data users from both within Australia and

internationally. Details of some of the published research can be found on the study website (details below). The second LSAC conference will be held in Melbourne in December 2009. Keep your eye on the AIFS and LSAC websites for further details!

Institute researchers have presented findings from the study data at several conferences and other forums. Diana Smart presented an overview of the *Home-to-School Transitions for Financially Disadvantaged Children* report at the Annual General Meeting of the Smith Family in November 2008. Jennifer Baxter presented a paper on “Parental Time With Children: Do Job Characteristics Make a Difference?” at the International Association for Time Use Research conference in Sydney in December 2008. Carol Soloff also attended the conference and met with international delegates to discuss the development of a new time use diary for children. Following the conference, the LSAC Data Manager, Sebastian Misson, co-hosted a workshop with Jude Brown, from the University of New England, on how to make best use of LSAC time use data.

The most recent LSAC *Annual Report 2007–08* was published in December 2008. The report provides an overview of the study, information on the between-waves mailout questionnaire that took place in 2007 when children were 3–4 and 7–8 years of age, and articles on children’s use of technology, child care trends over time, working patterns and attitudes, shared parental responsibility, parents’ involvement in children’s education, child care quality, and long work hours and fathering. Copies are available online or from the Institute.

Negotiations are currently underway regarding conducting Waves 5–8 of the study. This will provide a unique opportunity to follow the paths taken by today’s Australian children as they grow up.

For more information on the study, see <[www.aifs.gov.au/growingup](http://www.aifs.gov.au/growingup)>.

### International Women’s Day

The Australian Institute of Family Studies and the Australian Bureau of Statistics (ABS) celebrated International Women’s Day by holding a joint morning tea for all their staff. Institute Director Professor Alan Hayes introduced the guest speakers—Roberta Cavanagh, ABS, and Marlene Burchill, University of Melbourne—who spoke about issues affecting them as Indigenous women, with Ms Burchill doing a short Q&A with the Institute’s Dr Daryl Higgins, General Manager (Research). Also in attendance from the ABS was Regional Director Carl Obst and Assistant Director, Statistical Coordination, Fiona Shalley.



Institute and ABS staff at their joint IWD event. l. to r.: Dr Daryl Higgins, Marlene Burchill, Roberta Cavanagh, Fiona Shalley, Professor Alan Hayes and Carl Obst.