The Effectiveness of Parenting Plans

A report produced by the Centre for Research into Disability and Society Curtin Health Innovation Research Institute

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For
RELATIONSHIPS AUSTRALIA

February 2012
ACKNOWLEDGEMENTS

The authors wish to acknowledge the assistance and co-operation provided by Mandy Drommer, Senior Manager of Dispute Resolution Services, and the managers and staff of Relationships Australia (WA) who made us welcome at each of the three centres and facilitated our access to the data.
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REPORT INTO THE EFFECTIVENESS OF PARENTING PLANS

1.0 BACKGROUND
Since the establishment of the Family Court, with the introduction of the Family Law Act and the Family Court Act in 1975, there have been many reviews of and amendments to the legislation, as successive governments have tried to keep abreast of the community’s changing attitudes towards differing family contexts, including the raising of children in the context of marital and de-facto relationships, single parenting, same sex parenting, relationship breakdown and parental separation.

In 2006 there were significant changes introduced to the Family Law Act 1975 (Cth) with the introduction of the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth). The stated policy objectives of the amendments were to:

Help to build strong healthy relationships and prevent separation;

Encourage greater involvement by both parents in their children's lives after separation, and also protect children from violence and abuse;

Help separated parents agree on what is best for their children (rather than litigating) through the provision by governments and other organisations of useful information and advice, and effective dispute resolution services;

Establish a highly visible entry point that operates as a doorway to other services and to help families access these services (Kaspiew, Gray, Weston et al. 2009, p.1.)

The family dispute resolution sector offers a number of programs which include a range of dispute resolution models. These models vary from the provision of advice, therapeutic and facilitative approaches (Cooper & Brandon, 2007). As a result of changes to the Act changes to the provision of services were made, which included the establishment of Family Relationship Centres (FRCs) to provide subsidised services to families (Kaspiew, Gray, Qu, & Weston, 2011). It was also intended that these centres would allow cases to be diverted from the Family Court to family dispute resolution, thus reducing the waiting time for cases to be heard in the Court and reducing the need for judicial decision making. It was also perceived by some as a politically driven attempt to pacify the escalating voice of the men’s lobby (Domestic Violence and Incest
Resource Centre, 2005) which was taking issue with women usually assuming custody of children following separation and the financial implications of this on fathers. The changes to the Act put more responsibility on parents for making agreements about children without going to court and explicitly provided for an assumption of equal parenting responsibility (decision making). There was also an obligation on mediators, counsellors and legal practitioners to consider whether equal time may be practicable and in the best interests of children.

The changes related to considerations of what constitutes the best interests of the child and also, “elevated the fundamental importance of family violence in decision making about parenting arrangements” (Family Law Council 2010, p.32). The legislation created “a rebuttable presumption that parents equally share parental responsibility for their children” (FLC 2010, p.33). However, it was clear from the way the Act was framed that decisions of what constituted the best interests of children should be based on two important underlying considerations or “pillars” (FLC 2010, p.32). The first of these is the importance of the child being able to maintain a meaningful relationship with each parent; the second is the need to ensure the child is protected from harm both physical and emotional (FLC 2010, p.32).

Unfortunately, in spite of this, and as reported by the Family Law Council (2010, p.9) there remained confusion in the Australian community about the rights of parents to equal parental responsibility and equal time spent with their children in those cases where hostility and poor communication between the parents prevailed.

1.1 Family Relationship Centres

The 2006 legislative changes allowed for the introduction of Family Relationship Centres (FRCs), which would be established throughout the country and which would offer a range of service pathways to separating couples to help them to reach agreement about parenting arrangements. Some of these pathways would comprise family dispute resolution (FDR) services and some would comprise counselling services. Clients also had the option to use a combination of these services should they chose to do so. Attendance at such a centre is now mandatory prior to filing an application in the court, except in those cases where domestic violence and/or child abuse is a factor. In such cases an exemption may be granted and the parties can then proceed to court without attending FDR. Clients may also be provided with a certificate by an FDR practitioner to advise the Court if they are unable to participate in the
process, due to issues of family and domestic violence, or if they have made a genuine attempt to resolve their dispute but have been unsuccessful.

1.2 Current Study
Community organisations such as Relationships Australia currently provide mediation as well as a range of family relationships services such as counselling and parenting education (McIntosh & Moloney, 2006; Rhoades, 2010). In 2010, Relationships Australia (WA) one of the not for profit organisations funded by the federal government to provide family dispute resolution services at their Family Relationship Centres, commissioned Curtin University’s School of Occupational Therapy and Social Work to evaluate the effectiveness of Parenting Plans produced as a result of parents’ engaging with mediators and or counsellors at three of their FRCs. Relationships Australia had two broad objectives in commissioning the research. The first was to evaluate the effectiveness of Parenting Plans. The second was to inform future clinical practice. These objectives are described in more detail in Section 2 - Method.

An important consideration in pursuing these objectives was the context from which separating parents come to seek help in negotiating parenting agreements. Research has shown consistently that this context is one frequently reported by both men and women to be characterised by physical and emotional violence. Kaspiew, Gray, Weston et al. (2009, p.25-26) found that separated parents reported significant levels of family violence. In their comprehensive and detailed study they found fifty-three per cent of fathers and sixty-five per cent of mothers reported experiencing physical and/or emotional abuse from their ex-partner. More than a third of parents reported that their current relationship with their ex-partner was characterised by distance, high conflict or fear (FLC 2010, p. 30). They were also able to show that parents who sought assistance with making parenting arrangements from the courts, lawyers, counselling, mediation or FRCs were much more likely to report abuse than those who were able to make these arrangements without seeking such assistance (FLC 2010, p.77). These findings are consistent with the findings of others who have considered family and domestic violence and child abuse in the context of marital separation in Australia, (Bagshaw et al. 2010; Brown, Frederico, Hewitt & Sheehan 1998; FLC 2010; Kaspiew, et al. 2011).

1.3 Structure of the Report
The remainder of this report is structured as follows. Section 2 describes the method undertaken to collect the data, how it was coded and analysed and how ethical issues
were addressed. Section 3 presents and examines the overall findings in relation to participants’ demographic, context and experience of making a Parenting Plan. Section 4 presents the experience of respondents in relation to the issue of family and domestic violence and how the service providers responded to this issue. Section 5 presents respondents’ experience of service provision, including counselling and mediation. Section 6 summarises the key findings and lists the authors’ recommendations for future practice and policy. References will be found in section 7 and Section 8 comprises the appendix.
2.0 METHOD

This was an exploratory study into the process of developing Parenting Plans and the experience of parents using Relationships Australia (WA)'s services in three locations, two located in the Perth metropolitan area, and one in a large regional centre.

2.1 Ethics Approval
The research was approved by the Higher Research Ethics Committee within Curtin University prior to the commencement of the research. The ethics application included a commitment by the researchers to advise the participants prior to commencement of the research of their right to withdraw at any stage of the research process without explanation. In recognition of the possible emotion associated with the breakdown of personal relationships, the researchers were aware of suitable agencies to which interviewees could be referred for counselling support in case of need. This practice, when dealing with sensitive issues, is supported by previous research (Liamputtong & Ezzy, 2005). Pseudonyms were used to protect the study participants’ confidentiality and their anonymity.

2.2 Sample
Relationships Australia was interested in the perspectives of parents who had used a Family Relationship Centre (FRC) in the Perth Metropolitan area and a regional area within Western Australia. The organisation also wanted to establish if there were differences in the clients’ experience between the services offered by the two FRCs and a mediation service in Perth. It was initially agreed between the organisation and the researchers that the sample would be thirty-six parents; twelve parents from each location, who had used Relationships Australia's services. It was also agreed prior to the research being undertaken that the parents included in the study would have ceased contact with the agency for a twelve month period prior to the time of the data collection. However, this had to be revised due to the number who agreed to be interviewed not attending the interviews. Previous research comments on the need for flexibility in dealing with vulnerable or hard-to-reach groups (Liamputtong, 2009).

A purposive sampling strategy was adopted which involves the inclusion of specific individuals who can provide crucial information that is not available through other
channels. The intention is that this approach was to ensure that those interviewed would be representative of the broader group of cases (Carpenter & Suto, 2008; Teddlie & Yu, 2007). It was agreed that Relationships Australia would approach previous clients in writing, inviting them to participate in the study. The letter (Appendix A) outlined the research and advised potential participants that should they agree to participate they would be free to withdraw consent at any time in the process. Relationships Australia assisted by contacting the clients by telephone. Thirty-seven clients initially agreed to be interviewed, but this decreased to twenty-three who finally were able to participate.

2.3 Research Design

This was an exploratory study researching a previously under researched topic, where it was intended to investigate the perspectives of clients who had used Relationships Australia services in the development of Parenting Plans. The researchers discussed the method to be used with Relationships Australia (WA)’s Senior Manager - Family Dispute Resolution Services. It was agreed that in-depth face-to-face interviewing was the most appropriate method to achieve the research objective. The aim of in-depth interviewing is to elicit information from the perspective of a particular individual drawing on his/her lived experience (Kvale, 2007; Liamputtong, 2009). In-depth or unstructured interviews are a means by which researchers can access insider information without the constraints of more structured methods. This method was employed as participants in the research could articulate their own positions and freely tell their stories (Schoenberg, Hopenhayn, Christian, Knight, & Rubio, 2005). In turn this method often incorporates a range of perspectives on the issue being examined. This was important as Relationships Australia were interested in determining clients’ experiences of the services provided in each of the three locations.

The methods literature comments on in-depth interviewing as being suitable for gaining information from groups that are vulnerable or marginalised (Liamputtong, 2009; Taylor, 2005). More broadly the term hard-to-reach or hidden population is also used in the research literature to describe groups who experience reduced autonomy. Factors that contribute to this lack of independence may be physiological, psychological or status inequalities (Moore & Miller, 1999). In some instances there can be a combination of these limiting factors. Liamputtong (2009, pp. 227-228) in her discussion of vulnerable populations includes people who have experienced family violence and explains that such groups are often invisible or
marginal in society. Factors that account for the invisibility include; the fear of not being respected, the stigma associated with their situation and a high level of family responsibilities. Researchers therefore have a responsibility to ensure that the welfare and rights of these participants are protected. Both researchers were experienced in undertaking research on sensitive topics and in research interviewing involving marginalised groups. These included men and women who had experienced various forms of childhood trauma and family violence, and young people from disadvantaged backgrounds. In addition the researchers had been previously involved in working directly with clients as social workers.

2.4 Interview Guide
Prior to undertaking the interviews the researchers developed an Interview Guide as (Appendix B). An interview guide (or theme list) assists the researcher to ensure that the areas he/she wishes to investigate are covered within the interview. It is therefore a means which provides a focus for the interviewer, while allowing for flexibility to follow the participant’s discussion within each interview (Daly, 2007; Liamputtong & Ezzy, 2005; McCracken, 1988). The interview guide used in this study incorporated demographic, factual questions and open ended areas of questioning. Examples of the factual questions were, whether or not a lawyer was involved in the development of the Parenting Plan or whether or not it was lodged with the Family Court. The researchers sought input on the study design and feedback on the Interview Guide from a senior practitioner group within Relationships Australia (WA) prior to completing the interviews. Previous studies have commented on the merits of triangulation, or using a combination of sources of data as a means of developing a more developed picture of the area being examined (Denzin, 1989; Liamputtong & Ezzy, 2005; Patton, 2002). The input from those involved in the provision of services added to the rigour of the study.

2.5 Data Collection
Prior to the interview commencing, each researcher introduced herself to the research participant and made the participant feel comfortable by offering a drink and discussing the journey to the interview site. Daly (2007) comments on the role of “small talk” in assisting research interviewees feel at ease. Then each researcher outlined the study, detailed the approximate length of the interview, assured confidentiality and asked the person to sign the informed consent form (Appendix C) if this had not previously been signed and faxed to the interview site. Each researcher sought permission to record the interview. Recording the interviews is
crucial for further analysis and is valuable in capturing participants’ responses in their own words (Bryman, 2008). All the study participants initially agreed to the recording of the interviews. But during one of the interviews, the participant involved became emotional during the discussion of her relationship breakdown and requested that the tape recorder be turned off. The researcher complied with this request. Following completion of the interview the researcher involved debriefed with the interviewee and she left in good spirits. Previous research states the value of ending an interview on a positive note for the interviewee (Barbour, 2008).

At the end of the first day of interviews it became clear that some parents, despite wanting to participate, found it difficult to attend the interviews due to child care/family responsibilities and work commitments. The researchers made the decision in consultation with Relationships Australia (WA)'s Senior Manager-Family Dispute Resolution Services to interview clients in this position by telephone.

The researchers followed the participants’ discussion and used the Interview Guide as a reminder of the areas to be covered. This process is supported by previous research which confirms that there is variation in the order of the topics covered within the interview (Rapley, 2004). The researchers generally used open questions throughout the interviews except in areas where a specific answer was required, for example information relating to the Parenting Plan. Open questions allowed the participants to focus on their areas of interest (Johnson, 2002). However, within the interviews probing and clarification questions were also used. Probing by the researcher contributes to further participant discussion. Clarification can ensure shared understanding between the participant and the interviewer (Liamputtong, 2009). The researchers ended the interviews by summarising the main points discussed and enquiring whether the participants wished to elaborate or ask questions. This process is supported by previous research (Kvale, 2007). The researchers conducted twenty-three interviews comprising of twelve female and eleven male respondents across the three locations.

2.6 Data Analysis
The interviews were transcribed verbatim by a transcriber, who was recommended on the basis of previous work undertaken and successfully completed within the researchers’ university. Analysing qualitative data is an interpretative process of the researchers who are influenced by social context (Ezzy, 2002). Warr (2004) emphasises the importance of the researcher’s own culture in the interpretations of
the data. The research process was influenced by the previous work and research experience of one of the researchers in the areas of domestic violence, and child protection, and the other’s experience of being both a social work practitioner and a mediator. The researchers discussed the interviews together and found some similar patterns were emerging, with respondents not initially disclosing but later in the interview providing information that made it clear family and domestic violence was a factor in their relationship. The researchers used Nvivo software to assist in the data analysis. Authors report that there are a number of such programs that are available for the analysis of qualitative data (Kelle, 2004; Liamputtong & Ezzy, 2005). Nvivo was used in the coding of the data from which nodes or themes were established. Liamputtong and Ezzy (2005) maintain that the main purpose of such software programs is that the data is attached to the codes and retrieved in sections so that it can be examined together. The researchers used a combination of inductive and deductive approaches, in that they were informed by the literature, but also by the experience of the participants. Some of the literature supports an integration of both approaches (Liamputtong & Ezzy, 2005 p. 259).
3.0 FINDINGS

Findings reflected the demographic and context of respondents, and their considered reflections upon the service they received from Relationships Australia, including their experience of developing a Parenting Plan and whether or not the plan developed was effective and enduring.

3.1 Demographics

A better than expected gender balance was achieved in respondents of the twenty-three participants twelve were female and eleven were male. All participants reported their relationships to be heterosexual. Most respondents (eighteen) were aged between 31 and 50 years, with three in the age range 21-30 years and two were aged between 51-60 years.

3.2 Length of Time Separated

At the time respondents had made their parenting agreements they had been separated for periods that varied from a matter of weeks to eight years, with the majority having been separated for at least twelve months.

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3.3 Service Used

Relationships Australia (WA) offers two types of service to clients, mediation to help them to draw up a Parenting Plan and counselling. Clients are able to use both of these services if required. Interestingly clients were not always clear about which service they had used or whether the practitioner had been a mediator or counsellor. Notwithstanding this difficulty, seventeen reported having used the mediation service to obtain help with making a Parenting Plan and three reported having used the counselling service. Two reported using both counselling and mediation. In one case, mediation did not occur because one of the parties did not attend.
3.4 Use of Lawyers

Five of the respondents reported using the services of a legal practitioner to assist with making a Parenting Plan. Three of these cases proceeded to court. Respondents who approached the Court had done so out of frustration with being unable to progress matters in relation to contact with children. Either they had found it difficult to get their ex-partner to be consistent and keep to whatever agreement had been made, or they believed their children’s best interests were not being met in spite of having attended mediation and/or counselling. Nick, one of the participants, expressed his impatience at the time it took for him to achieve a regular and predictable schedule for his contact with his children, in spite of attending mediation and having an agreed Parenting Plan, which his ex-wife kept changing or deviating from:

*I didn’t see one probably about (until after) the nine month mark, just because, that was like all that stuff you know with the counsellor (felt unheard by the counsellor) and all that happened, … it felt like I was, and I expressed it to them that I felt like, I was just hitting my head against a brick wall.*

There seemed to be a common perception when respondents first went to Court that it would be effective in enforcing an order, and that there would be an obvious consequence for those who breached. However, it soon became clear that there was very little the Court could do to assist them in managing an ex-partner who wanted to avoid contact, or in other ways make things difficult for them.

Respondents who had not used a lawyer and/or had not gone to Court were often naïve about their legal rights and also hesitant about seeking legal advice. Ebony, who had been emotionally and sexually abused by her ex-partner reported feeling quite uneasy about having her name on the mortgage of a house in which her ex-husband was living. She stated that she had no idea what her legal position was and that in the short term she was hoping that he would either sell it or remove her name from the mortgage. However she was not prepared to seek legal advice and was willing to wait until her ex-partner made the decision.

Simon spoke of having to attended mediation about parenting, whilst being involved in a financial settlement with the use of lawyers, which was a huge unforseen expense. He said:
And there was a real fall down in the system there. That ended up costing a huge amount of money.

He said that although he had initially tried to settle the matter without resorting to the use of lawyers, when his wife engaged one he felt obliged to do the same or risk being disadvantaged in the negotiations:

I had no choice but to get one (a lawyer) otherwise I would have just.... it would have.... and you know these are very sharp lawyers and I got my sharp lawyer. My sharp lawyer just happened to be a bit sharper than, her lawyer, but yeah it never actually went into court. But yeah it was sort of sitting on the outside.....while the cash register was ringing over.

3.5 Family Court

Respondents were asked about their involvement with the Family Court. Many had not used the court at all in relation to coming to a decision about parenting arrangements. Some found the process of being required to prepare affidavits, which explained why the relationship had broken down, were humiliating and disempowering. They also had a negative effect on their relationship with their ex-partner and the potential for the couple to be able to communicate effectively and resolve issues subsequent to Court. Maxine had been in a relationship for seventeen years prior to separation and reported feeling distressed at having aspects of her relationship and communication (because they were recorded in affidavits) made public in the court. She said:

He had his mate reading the personal details on the forms. I found it humiliating. The worst thing for me, was having to explain all of that in a document that then (the other party) sees, and then of course what they do is retaliate. It just becomes a mud slinging thing. The consequence of writing those things is what the parents bear afterwards.

She expressed the view that there is no consequence for a parent not adhering to a Parenting Plan, whether or not it was lodged at the Family Court, and that a parent who did not want to exercise access could get away with it:

So then what you find out is that he’s off at work even though he’s sitting in the room saying yeah, yeah I don’t work Saturdays anymore but you know very well that he is, ‘cause he’s slipping it in text messages, “I was at work today.”
She reported that her children really wanted to see their father but he would refuse, because he thought if he had the children she would be able to spend more time with her new boyfriend:

*They were hanging out to see him you know, it was awful. And then so I said well if you want to see your dad, just give him a ring. You know that’s fine you can ring him, you can ring him whenever you want, if you want to go see him you can go and see him whenever. So I’m sitting there saying that and then he (child) rings up his dad, who says, “Well no I’m not going to, I’m not going to come and see you, so your mum can go and spend time with her boyfriend.”*

Lack of information and awareness of the Court process was an issue for some people who represented themselves and wished the court staff had spent more time explaining the sequence of events that would take place. Maxine felt she was not fully aware of how consent orders were prepared and that had she been better informed she may have behaved differently:

*Because if I knew that up front, then during mediation then that’s something that I would have brought up and said, “look how about we agree some of these things so that we lodge them together because the outcome is, this is what we want you know”. And it would have helped, it would have helped. Then (there was) the fear of retribution from him, the consequence. So things like you know what happens if somebody doesn’t, doesn’t follow an order, what do you do? It would be helpful if that was very clear.*

Another issue Maxine raised was the uncomfortableness of the common waiting area in the Family Court, where ex-partners and current partners are in close proximity to one another in what can sometimes be a very tense and potentially conflictual situation involving new partners:

*You know I found that quite humiliating and that you’re all in that waiting room together, you know they’re over there (ex-partner and his new partner) and you’re over here (self and new partner) sort of. I mean the energy in that place is just hideous so it’s not conducive to actually negotiating positively, it’s all geared up negatively you know. It was terrible. It was, it was, it was farcical. It was humiliating. It was hideous, absolutely hideous.*

Finding her ex-partner in a public arena discussing family matters with people who were strangers to her was very confronting for Maxine. She said:
I’m like, these are my children, this is my life, I’ve spent 17 years with this man I’ve spent, I’ve got two children and these are the little people that we’re, we’re you know trying to sort out you know and this is what it’s come to you know. Got some bloke over there standing next to him, looking, what are they talking about? What has it got to do with you? I felt like going up to him and saying hey these are our children, what are you doing you know? It just, it was hideous.

There was a not uncommon reluctance on her part to accept the new partner having a role in parenting the children:

So I was explaining to her you know the importance of him actually picking them up. You know he’s not there with them all the time, so for me and I know these are my values and my model of the world but for me it’s, it’s, “they’re hanging out to see you they don’t want to be picked up by your girlfriend. Ronan (thirteen year old child) doesn’t even like your girlfriend and the little one is very confused about who is this woman that’s picking me up”.

3.6 Nature of Parenting Plan
In general participants reported being unsure and not able to clearly differentiate whether the Parenting Plan they had developed was in relation to shared care, substantial care or time spent with children. This may have been as a result of naiveté about the family law system, the emotional climate of the mediation or the length of time that had elapsed since making the order.

3.7 Signing of Parenting Plan
Respondents were frequently initially vague about whether or not the plan had been signed. Although twelve respondents reported that they thought their parenting agreement was signed by both parties, eight reported that they did not think this had occurred, with one person saying they had received their agreement in the mail. Another reported having made an agreement three to four weeks previously and that they were still waiting to receive a copy of the agreement. There was one case where no agreement had been made, because one party had refused to attend for mediation and another where the data was missing.

3.8 Who Held the Parenting Plan
In most instances (seventeen) a copy of the agreement, whether or not signed, was thought to be held by both parties, although again some respondents were not sure about this. In one case it was held by the husband only, two people could not
remember who had a copy. In one case (mentioned previously) no agreement had been made, there was one respondent still waiting to receive a copy and one where the data was missing.

3.9 Adherence to the Parenting Plan

Of the twenty-two cases where agreements had been made, most respondents (fifteen) seemed to think their agreement had been adhered to, or “more or less” adhered to, but there were seven who felt the agreement had not been kept. In some cases one or both parties had experienced changes in the circumstances, which may have impacted on the agreement. Re-partnering, additional children being born, children’s needs changing as they grew older, changes in employment and changes in housing or geographical location, were all mentioned as issues for this population in transition. Some of these were in the process of trying to re-negotiate their agreement as a result of changed circumstances, but others had sought the help of a legal practitioner and were endeavouring to seek a more satisfactory outcome through the court process.

3.10 Duration of the Parenting Plan

In most cases (nineteen) the agreement seemed to be enduring. However this did not mean that there had not been difficulties experienced by the parties, or that there had not been changes to the original agreement. As previously mentioned this population is one in transition, transitioning relationships, accommodation, family structure and employment. In addition to this, their children are growing and developing so their needs and circumstances are also changing. A child who might be quite happy at six years of age to stay with the non-residential parent for a whole weekend, may at eight years of age have a commitment to a sporting activity that takes all of Saturday morning, some distance away from that parent’s home. At thirteen years of age that same child may wish to attend a sleepover at a school friend’s home or go to a weekend camp in the time designated for the non-residential parent to have contact. All of these very normal activities, which may be a challenge to accommodate when parents are still living together, can understandably become a source of contention between separated parents because they require a level of co-operation and flexibility which may not exist in that relationship.

3.11 Satisfaction with the Parenting Plan

Eight respondents felt that the Parenting Plan they were able to negotiate with their ex-partner had achieved what they hoped it to achieve, but thirteen felt it had not.
Reasons for this varied, in some cases there had clearly been changes either in the respondent's life or in their partner's life (transitions), which had implications for contact with children. In some cases it appeared that the relationship between the parents had remained conflicted and that this was an ongoing impediment to the plan working effectively for children and their parents.
4.0 FAMILY AND DOMESTIC VIOLENCE

As previous authors have noted family and domestic violence was found to feature strongly in this cohort of separated parents (Bagshaw et al. 2010; FLC 2010; Kaspiew, Gray, Weston et al. 2009). It seems that family and domestic violence in its many forms remains an issue not fully understood in the wider community or in those service areas specifically known to be dealing with it. It was clear throughout the data collection process that family and domestic violence in all its forms was an issue, both prior to the separation and afterwards. It was also found that the full extent of behaviours that constitute family and domestic violence remains poorly understood by clients of the family law system. Whilst serious physical assault was generally recognised as family and domestic violence, other forms of physical violence such as pushing and shoving, throwing household items, and sexual abuse, were not seen as abuse. It is also clear that children are part of the context of violence, and that they experience abuse as witnesses to violence between their parents, and as victims in their own right. Although in some cases service providers identified the issue and responded appropriately, it was also clear that other service providers including lawyers, counsellors and mediators did not necessarily identify the issue or in some cases where the problem was identified and did not respond appropriately. In referring to his experience Trevor said:

No I didn’t mention it, (to mediator) in hindsight I didn’t take it seriously. I just thought domestic violence was violence....... not throwing objects, plates, etc.

Trevor sought assistance from a lawyer because he wanted more contact with his son. However, even when he raised the abuse, he reported there was no response:

I raised (domestic violence) in the affidavit but the lawyers didn’t bring it up (in court).

At the beginning of the interview each respondent was asked whether or not there had been family and domestic violence in their relationship (see Interview Guide Appendix B). At this stage seven acknowledged experiencing some form of violence either prior to separation, and/or during separation, and/or post separation. The remaining sixteen denied the presence of any kind of violence. However, as the
interview progressed and respondents told the story of their relationship breakdown and resultant separation, it became clear that an additional nine respondents had suffered a range of experiences which meet the criteria for family and domestic violence, which they had not initially disclosed, and which eventually provided a total of sixteen who had experienced abuse.

Types of abuse respondents reported experiencing included, physical abuse (three cases), sexual abuse (four cases) and emotional abuse, but emotional abuse featured most strongly and was evident in sixteen of the twenty-three cases. Respondents reported that this form abuse damaged their self-esteem and compromised their decision making ability, including decision making in relation to making Parenting Plans and for those in litigation their ability to cope with the legal system was negatively impacted. In most cases the abuse had pre-existed separation and had been a significant factor in the relationship breakdown, in others it emerged as a dynamic in response to the separation process and was experienced as a factor throughout the counselling and/or mediation process. It was also reported to be an ongoing issue in the court process, for those few participants who went to court, as some felt their ex-partner was able to manipulate the court process to cause stress or to disadvantage them.

4.1 Women as Victims

Maggie denied there was violence in her relationship when asked, but then when describing the breakup disclosed there had been bullying, harassment, and threats to take her to court. She had finally she felt forced to sign a financial agreement in order to save her child from having contact with a father who was not interested in a relationship with the child.

Jenny reported that her divorce had been due to physical and sexual violence from her husband. She was unable to attend the Family Relationships Centre because of her work commitments, and therefore was participating by telephone. The history of violence did not appear to have been disclosed in mediation and Jenny felt disadvantaged because her ex-husband was sitting in the same room as the mediator. She felt this had led to them being treated unequally. She reported being able to hear the mediator and her ex-husband chatting and laughing in the background but could not hear exactly what was being said.
Sharon had been married twice and she reported that her second ex-husband changed after they were married and became controlling of both her and the children:

*He would like me to be chained to the kitchen sink and say, “Yes sir, no sir.” There was no domestic violence discussed at the mediation sessions. There had been pushing and shoving of me by him but I did not consider it to be domestic violence. This was when he had had a lot to drink. I’m not sure if it is domestic violence.*

It was also clear that there was little understanding of the issue of emotional abuse by clients of the service. Barbara was asked if there had been family and domestic violence in her relationship which she denied. However, when informed that family and domestic violence included emotional abuse she responded:

*Well if we’re talking about emotional abuse, I’ll say, “Yes”.*

There also seemed to be a lack of clarity about other non-physical forms of abuse not just by clients but perhaps also by officers of the court. Nick reported having frequent, very distressing telephone arguments with his ex-partner following separation and was surprised when she took action in the court to try to stop him contacting her:

*She attempted to take out a restraining order against me because she said that I wasn’t, I wasn’t violent or anything, it was just really strange, she said that I was harassing her. I don’t even know how it got served and, like pretty much the law clerk was going, “We don’t know how this has actually gone through,” because there is a question that the magistrates ask, “Is he a violent person, do you fear for your safety or anything like that,” and she goes, “No, no he’s not a violent person at all, I don’t fear for the safety of my children or myself,” and it’s just like they’re going, “We don’t know why they’ve issued it.”*

Some women reported living with violence and abuse for years preceding the separation. Georgina felt her ex-husband had been able to use the court process as a way of continuing to exert control over her after she left him. She recalled how he had been able to force her to attend counselling in the city even though she and the children resided in the country:

*He knew by making me come to counselling he made it hard for me. He made me come to Perth instead of (the town where I lived). It was difficult to get appointments. He wanted to pull the strings but I didn’t want to be
controlled anymore.

He attacked me constantly. He threatened me he would take my kids he undermined me and my parenting. I became very anxious. It was a big thing. I never let anyone know. He doesn’t want me to have a life. He had all these books, he had written things about me. He would keep phone messages of us fighting.

Georgina felt her ability to participate in mediation was affected by the abuse and the mediator’s failure to actively consider its effects on the mediation process.

Pretty much it (the emotional abuse) affected how I could negotiate. I was going through so much I could not remember things. I didn’t achieve school uniforms, Xmas or long weekends. Once he started to pay (child support) he didn’t want to do it (mediation) any more.

Georgina went on to explain that the emotional abuse caused her such distress she had needed to seek medical advice:

The doctor put me on anti-depressants, anti-anxiety medication. It calmed me down and then I started to think.

Suzi answered in the affirmative when asked if there was violence in her relationship. She reported that although she had experienced physicality, intimidation, pushing, and fighting, when asked in mediation about domestic violence she had denied it and had told the mediator that she did not feel threatened.

Ebony described being subject to a range of abuses including sexual abuse. She described having endured years of being put down and humiliated, by her husband, but she had failed to see this as domestic violence. However, she reported suffering from anxiety and depression whilst in the relationship which affected her ability to function:

It was more emotional or verbal abuse and sexual abuse. I didn’t see domestic violence as that….Ok if the house was a mess, toys whatever and it wasn’t just that like, say breakfast dishes weren’t done, or you know things like that, he would come in and he’d start telling the kids off and I would say, “No it’s not their fault it’s my fault”. And so he would start telling me how I could never keep a house clean and that I just, you know, anyone else could do it, why couldn’t I do it? Yeah and the more he did that the worse it got, the more I would leave it, and it got to the point where I lived in a horrible mess, but I was a mess too. It’s almost like someone cuts your legs off. You sit there and you can’t bring yourself to get up and do
anything. I was definitely depressed. Anxiety, a lot of anxiety, and depression.

Ebony reported being subject to a range of threats which left her feeling powerless:

Yes (there were) threats not to bring kids back, threats to take money off me, he would pull out of having the kids just to spite me. I was also abused by his family.

Reflecting on the sexual abuse she said:

It happens slowly. I just thought that was the way it always happened but now looking at it I don’t think I would let that happen again. But the hardest bit was that he couldn’t actually do it. Like he was failing as a man (could not achieve an erection). He said it was because my body was sort of worn out and that you know that’s why he couldn’t do it.

I felt that he deserved it, as a husband, he deserved it and that I should just let it happen because he deserved it and he needed it and looking back I think that’s not right either and then as it went on and he started having trouble having an erection, then you know I felt bad about that but then he started to blame me. Once he started to blame me that was sort of I guess the second kind of stage of it. I don’t feel like it was abuse to expect, or for him to expect to have sex. I didn’t feel that was abuse but once he started blaming me. Then that’s when I really feel that it was abuse. As it went on it got worse again when he started to blame me more and more until it, it got to the point where he said, “You just, your body doesn’t work anymore you’re past your use by date,” and that hurt.

Ebony explained that the sexual abuse intensified and emotional abuse was a component of this. She appeared to have begun to internalise his criticism of her:

When he got to the point where he told me I had to do it, that makes you feel really bad ‘cause you don’t feel like it (having sex) and you’re a bad person because you didn’t feel like it and you’re not meeting his needs. There was one time and that’s when I realised there was something going on where he just demanded it and told me that I had to do it right now. I didn’t recognise it all (as abuse) not until probably the separation and I started looking back and being honest about it, because I felt that you have to trust the person, if you’re married to them you have to trust them.

Ebony went on to say that she felt she was still under his control because he was still residing in the family home which had a joint mortgage and which he refused to sell
They were also jointly responsible for a car loan whilst he had sole possession of the vehicle:

*I feel that he, I could end up having to pay half on the house if I wanted to have half of the value at the end when it’s sold, or because he’s been paying it, I could get nothing. The car loan..... I could be suddenly told that, “Hey it’s in your name too you have to pay half of it.*

She stated that she had no idea of what her legal rights were and that she had no intention of pushing her ex-husband to make a decision, in spite of her anxiety about her financial situation.

Another respondent, Maxine chose not to acknowledge a history of abuse when in mediation, even though many years previously she had been assaulted by her husband, resulting in a criminal charge being laid. She said:

*That was 24-25 years ago and there hadn’t been any recurring problems with that since and it didn’t pertain to the incident, to the reason that we came to mediation.*

Jane related a story that demonstrated that the needs of children did not always seem to be the first consideration where there was conflict following separation and where there was lack of information about children’s developmental needs and/or sound legal advice:

*There was no domestic violence or anything but there was definitely a lot of bullying going on, which is why I brought it here (mediation). His father is very much anti mothers’ groups and very much anti females from his own divorce and how that happened and he knows the system inside out and from when I split up with him (my daughter) was 5½ months. You know this was a 5½ month old baby and he would you know come and literally almost take her and say I’m entitled to this ra-ra-ra and I never stood my ground.*

Jane’s situation was difficult because she was a full time student with limited financial resources. She had no legal advice and reported pressure from her ex-husband so that their baby only 5 months old was spending six days per fortnight with her father and eight days with her mother. However, as Jane was a full time student and he worked full time, the child spent significant periods of time in child care.

*When we first broke up he was paying, he was contributing maybe a hundred dollars a week and that was important ‘cause I was still studying full time and you know he was going to stop all that (paying for the child)*
and well he did in the end because he didn’t last long in paying and he didn’t pay child support. I still felt it was important for him to see her but the amount of time was I think definitely unreasonable.

She found the constant threats made it difficult to maintain her position even though she was concerned about the effects of frequent handovers on her baby. Her ignorance about the law exacerbated her fears:

It was just him constantly telling me he’s entitled to it and he’ll take me to court over it and you know the constant threats like that and right there and then, where I was I couldn’t one afford it, I didn’t know what to think. I just believed what he told me and he was just very, if you know him he’s just got a very strong personality, very dominating personality. He was telling me if he went to court and requested shared care they would give her to him you know one week on, one week off or you know something like that and I couldn’t bear to think... no I’m not going to have it.

There were times when she believed the child’s father unable to care for her due to intoxication but felt powerless to prevent him taking her:

So I just went along with the plan and how it worked out. Yeah it was detrimental because it was all at his convenience, it would be whenever he finished work or after his drinks on a Friday afternoon or, so. Like I said Friday after work at the pub he would be really intoxicated and still demand to have her and I’d said, “No,” and then he would be in my face and take her anyway. Well she would be screaming and he’d still put her in the car and take her.

Jane felt insecure and didn’t feel like there was anything she could do because she didn’t have the information she needed to stand up for her rights or her child’s best interests. She said that as there was no court order for a Parenting Plan she worried what might happen if the police were called. She believed her husband was entitled to have the child fifty per cent of the time as there was nothing in writing that this was not the case. This is an example of the general misunderstanding that exists in the community regarding the concept of shared responsibility as opposed to shared care (FLC 2010, p. 9).

Georgina felt disempowered and unsupported in her marriage. She said:

His family said I need to go to the psychologist. They said I was a bad mother and wife. They attacked me constantly. He threatened he would take my kids, he undermined me and my parenting. They fully attacked me as a person. They said if I set foot in their house they wouldn’t be responsible for what they did to me. I became very anxious. It was a big
thing. I never let anyone know what was happening. He doesn’t want me to have a life.

There were reports of the eroding, depressing and demoralising effects of emotional abuse. Ebony reported:

Well he’d just tell me you know, “Why can’t you do it? Why can’t you control the kids? You know these are terribly behaved kids and why can’t you control them?” Well they were, behaved probably about the same out as they were at home and people would comment on how well behaved they were. So I felt that what he was saying was wrong.

She went to explain that she only began to realise the full effects of the abuse after she left the relationship:

So yeah, it just, when people said that to me later, that I couldn’t be myself or reach my potential that really reflected on things like that. Just plain living, getting on and cooking a nice meal, or keeping the house tidy, or doing the washing, it would build up.

It seemed in Barbara’s case that having a professional position outside the home helped her to retain a sense of her own worth. She reported loving her job and having great and supportive colleagues. Although her husband was abusive she resisted his attempts to define her as incompetent and eventually left him taking both their children with her:

It was just the situation was untenable and I would say that I still love him but I could not live with him the way things were going. I couldn’t be treated like such a piece of dirt. He said I should spend more time at home washing, ironing, cooking, and cleaning. Like that was all I was worth and you know my job wasn’t important, and I’m not as important as him, and then you know I’d got to the children’s sport, the training and I’d get home at 7 o’clock and he’d say, “Well where’s my dinner? … I didn’t mind sort of being the silent slave and fitting all this stuff in and being busy but he sort of tipped the scales when you know what I was doing was not good enough when I thought I was doing quite a good job of managing all these things.

However in spite of the abuse and her ability to withstand it, Barbara had not found it easy to leave the relationship:

Well it’s so funny when I moved there was this desk in the study I found this
plastic sleeve and in it you know once before about six years ago when I thought I might make the move. I had cut out all these rental properties and written little comments. Yeah and I found it when I was cleaning. I’d forgotten that I had put it there and I thought, “My goodness it has taken me this long”.

Looking back she felt she had made the right decision not just for her but for her husband and the children:

I’m pleased ‘cause I’ve stood up for myself and the kids are heaps better. I mean I’m better off too ‘cause he’s a lot more attentive to me now than he ever was when I lived with him but most importantly the children have a better relationship (with him). I just couldn’t believe it you know when he said he wanted shared care ... you know he was able to take them to school, pick them up and really give them his full attention. It has been really positive outcome.

Beth recalled that the abuse began as small comments but her husband tried to increase his control of her over time even demanding their children be aborted:

It was just, it was little digs. Things like, “Oh you haven’t done this today”, or “You’re not doing this right”, or “You’re getting fat.” Then, when I found out I was pregnant with our daughter, we were at my mum’s house, and my mum was in the dining room I think, and he actually pulled me aside and he said like, “You’re getting rid of this baby, that’s it. No if, buts or whats, ... I want it gone.” and he did it with both the kids, told me to get rid of them, and my family was stunned.

4.2 Men as Victims

Although it is generally acknowledged that men may be victims of domestic violence, the extent of this is difficult to determine. Ferrante, Morgan et al. (1996, p.2) conducted a research project in Perth, Western Australia where male and female respondents were asked about their personal experience of a range of crimes including assault. Just three of more than 1500 men they contacted reported single incidents of domestic violence against them. However, the researchers had reason to doubt the veracity of the reports and due to their low incidence were not able to further analyse the data (Mulroney and Chan 2005). It is generally acknowledged that the absence of reports of men’s victimisation does not necessarily mean that men are not victims of domestic violence. Mulroney and Chan (2005, p.3,13) refer to the pressure men may experience as a result of societal values and norms to appear outwardly strong and inviolate. Men tend to be encouraged to solve their own problems, and are less likely than women to seek help when faced with difficulties in an intimate relationship. Gadd, Farrell,
Dallimore and Lombard (2002) referred to the difficulty encountered in determining whether violence experienced by men is retaliation by the partner for an assault they themselves initiated.

Trevor described how he felt harassed by his ex-partner’s behaviour and unable to avoid contact with her even when he had contact with their son:

She suggests an arrangement, then follows me and wants to talk more about it. She comes to my house and stays over. I get confused. I asked her to move out. I said “you bring me down”. She is domineering. She would corner me in the bedroom. She tells people she loves me.

The most common form of abuse reported by men was emotional. For the purpose of this research we used the following definition of emotional abuse, used by Bernstein and Finke to define emotional abuse of a child: “verbal assaults on a person’s sense of worth or well-being, or any humiliating, demeaning, or threatening behaviour directed towards a person by another person.” (adapted from Bernstein and Fink, 1998, p.2).

Here are some examples of emotional abuse provided by Trevor’s experience:

She dismissed my feelings. It wasn’t a relationship. I just got abuse ... She yells at me in public. Once we were flying back from Sydney. We got there one hour before the flight. We had to change the child and settle him down. I wanted to go to the toilet and she wanted me to watch the child. She shouted at me. It’s vulgar to do that in public. I walked away and she followed me.

Some individuals, both men and women, reported experiencing emotional abuse (not always recognised as such) not just from their ex-partner but from their ex-partner’s family or from their ex-partner’s new partner. Nick was concerned that his children were witness to verbal abuse that occurred at handover:

And you know I was getting abused by her, I was getting abused by you know her current partner at the time, her family, and stuff like that, and the children were hearing it.

James was typically unsure of whether or not his experience had been abusive. He claimed his wife’s family interfered in his business and expected him to contribute his earnings to a common fund administered by the extended family:

Yes well I’m not sure whether it is emotional abuse but at the time when the separation occurred the, well the facts were that the relationship I was
in had a number of elements. One was the parents of my former wife were very controlling and had considerable amount of wealth behind them. That control transcended into our relationship and as a result of that, especially when children were born there was pressure, there was expectations and then the language used between us, or I might say from my ex-wife to me developed to a point where it affected my personal self-esteem.

It started affecting my ability to run my business and then consequently the relationship between me and my wife ... So (with) all of that (the family’s wealth and power) you start losing yourself. You start losing, you know, your purpose and what you have envisaged. You have an idea when you move into a marriage that it’s you and your partner forging a new life together and while I knew that there was going to be some element of the family behind it. But needless to say at the beginning I wasn’t aware of the extent of their wealth I guess, and their future intention of control.

Simon acknowledged that although he saw himself as a victim of emotional abuse, there had been times that he also had engaged in this behaviour, which with hindsight he regretted:

I’ve also been emotionally abusive you know. I can’t deny that because, but it’s a, it’s a whole dynamic and it’s a, it’s a, you know, “You say that to me, I’ll say that to you,” type thing and it goes on like this and it’s horrible.

In most cases respondents reported that they did not report emotional abuse either to their counsellor/mediator or to lawyers. When asked about abuse few respondents initially thought that emotional abuse was domestic violence. When asked if they had reported it to practitioners they usually said “No,” but even if they did raise it as an issue it did not appear to have been acted upon. When Trevor was asked whether he had raised the issue of abuse at counselling and/or mediation or with his legal practitioner he said:

We went to (the Relationship Centre) for counselling eight times. I didn’t raise the abuse. I didn’t think of it. She is a compulsive liar and it would have been more useful had Relationships Australia known or realised about the abuse.

Without criticising the practitioners involved, he went on to express the view that it would have been helpful had he been assisted to disclose the extent of the abuse he experienced:

I was not willing to articulate it. The abusive term did not come up. They
should be asking (counsellors) they should be proactive. They should prompt about the abuse. It would be better if they asked. They need to ask if there was yelling, screaming, equal power. People like me didn’t see it because we have never experienced it before.

Simon’s comments supported this,

They are really, they, I think, I positively believe, that they (the counsellors) had no ability to deal with the emotional abuse because it’s so, is it esoteric, it’s so difficult to, it’s intangible, and you can’t give an example of something like that. But it’s something I’m dealing with. It’s very difficult for men as well and I honestly do strongly believe there is a huge amount of emotional abuse going on in this world. I’ve been subjected to a huge amount of it and it’s not just from my ex-wife it’s from my siblings as well and it basically comes down to bullying. And, and I fear for my son that he’s also going to be subjected to that.

He thoughtfully reflected on the presence of emotional abuse in relationships generally and the lack of acknowledgement in the community of the negative effect this may have on victims particularly children:

And the way the mediation went through, the two mediators that were involved, did a great job but there’s still big taboos in society, and it revolves around a lot of emotional abuse and, and it goes right down to, that a lot of it is done in the most innocent way, and it’s done by our parents, who love us.

4.3 Children as Victims

Respondents were also asked about the presence of child abuse and again at first did not disclose, but once more as they related their experience it became clear that children too had experienced violence, not just as victims themselves, but as witnesses to abuse of their parents. There were no cases of intra familial child sexual abuse reported and physical abuse of children was rare (one reported case). However, emotional abuse was commonplace and occurred prior to separation, during the separation process and was a feature of handover and contact. This is an issue which should be of concern to those providing services to separating parents. In total sixteen (70%) of the twenty-three respondents reported abuse which directly affected the children of the relationship, but which was also witnessed by an unknown number of step children and half siblings, whose experience may be almost invisible in these conflicted contexts.
It was found in this cohort that parents’ concerns about children’s safety were primarily related to emotional abuse with one concern about physical abuse and several of neglect, some of which seemed to indicate a lack of parenting skills rather than an intention to harm. There were no concerns raised about sexual abuse although Tom disclosed he had been accused of sexually abusing a child outside the family and this had been a major factor in the breakdown of his relationship:

_We were good friends and had three kids in five years. We had been growing apart. After ten years there was no love, no sex life and arguments. I was accused of child abuse which resulted in the loss of my job and the house. There was so much external pressure. We would have broken up anyway._

Maggie explained her ex-partner treated their child in ways which caused the child distress but she felt anything she said to the child’s father about this would be dismissed because of their conflict. She said:

_He has lack of parenting skills and is physically abusive. My son is aged five years and his father left him unsupervised. He ran onto the street and was upset. A neighbour found and talked to the child to calm him. He kicks the child in the bum, and the child does not like it, but I know he (ex-partner) will not listen (to me) so it’s very difficult. I have had to make child manage relationship. I say, “Tell Dad you don’t like it.”_

Nick was worried about his ex-partner’s failure to provide a secure environment for their children:

_It’s just, there was just some neglect happening. I don’t want my girls going to the park by themselves, I don’t see it that a safe environment when they were that young that there was people drinking and she, you know there was one time that she had one of her friends that had like a mental disorder and apparently she had gone off and was screaming and carrying on and the girls had to witness this._

Ebony reported having ongoing problems with her children after separation as a result of the emotional abuse they had experienced from their father:

_He expected a lot of them and I would be the softie trying to balance it out but really I didn’t want to be soft I wanted them to learn and grow and not just get away with everything but when they would leave a toy out or something like that he would be so angry at them and they became scared._
Two of them in particular more than the others have, are very scared of telling the truth. They fear telling the truth and it’s such a, it’s an ongoing problem.

She would often take the blame to spare the children from these verbal attacks, but then the children would be witness to their mother being denigrated and abused. At this time the children were aged between three and nine years. Ebony showed an awareness of the potential long term effects of the emotional abuse her children had suffered:

Yeah, my daughter Abbie always got the blame, probably ‘til she was about four or five years old. She was picked on by him like really, really badly. She got blamed for everything. She had to go in and clean a whole room and I’d look at her and think, “Well how can you do that to her?” and so I would step in and I’d clean the room with her and try and do it as quick as I could so she didn’t have to do too much. And she, she’s one of the ones that has trouble with lying, really, really bad. She’s eleven now. And I’m worried that Abbie will end up pregnant or something like, while she’s still a teenager or something, and it was only last week that I found a piece of paper and she had written on it how she was going to have sex and she’s 11 so........

Barbara related that her children could never please their father with their academic achievements:

They were not abused as much as me it was more like if you got five A’s why didn’t you get six. You know if you got seventy per cent why didn’t you get ninety per cent and you know, my sort of thing was, “I don’t care what the mark is as long as the teacher says you’re doing your work and you’re not misbehaving or being disrespectful.” Feeling, yeah never good enough, you know and Travis who was 13 at the time said, “It doesn’t matter what I do, it’s never good enough for Dad.”

As respondents told their stories of separation, counselling, mediation and in some cases litigation, it became apparent that children remain the silent witnesses and victims of domestic and family violence whilst their parents are together and following separation. It is difficult for practitioners to discern the level of risk that exists for children when one parent will often dismiss concerns raised by the other whilst countering with similar allegations. Whilst research has consistently shown that conflicted couples particularly those that use the Family Court process have high levels of both domestic and family violence and child abuse (Bagshaw et al. 2010; FLC 2010; Kaspiew, Gray, Weston et al. 2009) it remains incumbent on practitioners to resist any tendency to minimise or dismiss claims of abuse and to employ adequate risk assessment and to make referrals as
appropriate to ensure children’s safety, whilst ensuring parents are aware of the risks to children caused by high conflict between their parents particularly when children perceive themselves to be the source of that conflict.
5.0 CLIENTS’ EXPERIENCE OF SERVICE

Within the interviews a number of the participants identified that they were unsure of the service that they used. Factors that may have contributed to this situation include that the parents may have found the process of developing Parenting Plans challenging or that the process could have been more adequately explained. The research does demonstrate that whilst a number could not name the service the process was meaningful for many involved in the study. Participants provided a positive evaluation of the mediators’ skills of neutrality, understanding the differing clients’ perspectives and facilitating respectful communication within the parties. Participants also discussed the engagement and participation of fathers in mediation, the increased staffing levels and client facilities as areas that could be improved.

5.1 Neutrality of Service Providers

Three participants commented on the neutrality of the workers. One of the male participants who commented positively on the service yet admitted that he “didn’t know what was going to be involved.” He highlighted the significance of worker neutrality and listening skills. He stated that the workers involved:

*Didn’t take sides and (they) listened to everything.* (Tony)

The participants varied in their interpretation of the workers’ neutrality. Georgina, a participant who had experienced abuse commented favourably on the neutrality of the mediator. She commented on her feelings of being “scared” and “intimidated” by the mediation process:

*The lady wouldn’t have known how I was feeling but she knew what we wanted. She did a good job. She was neutral.*

Georgina went on to further elaborate on her situation within the mediation session:

*(The mediator)...saw me arc up but did not know the extent of the control in the relationship which led me to arc up. The doctor put me on anti-depressants ... it calmed me and then I started to think. It’s a good service.*
Barbara, one of the female participants who had experienced emotional abuse which was discussed in the initial assessment interview but “didn’t come up” in the mediation session confirmed the mediators’ neutrality:

_ I mean they’re professionals and it’s their job to be impartial but it was good. ... It was very equal, very fair; they did not side with either one of us._

Barbara was clear on her objective for the mediation which she further explained:

_ I wanted a Parenting Plan so that everyone knew where they stood. I didn’t really come here for emotional support._

Previous research indicates that Family Dispute Resolution (FDR) practitioners’ qualifications, often in social science disciplines, are subject to the legal obligations and accreditation standards set out in the Family Law (Family Dispute Resolution Practitioners) Regulations 2008. These include a duty of impartiality from all parties involved in the dispute, and a duty to conduct an initial assessment, to ensure that both parties can effectively negotiate on their own behalf (Caruna, 2010; Rhoades, 2010).

5.2 Provision of Relevant Information and Incorporation of the Clients’ Perspectives

Graeme commented on the ability of the mediator to be an “information resource” in addition to being:

_ Good at understanding the two perspectives._

Bowling and Hoffman (2000, p. 11) confirm that mediation is broader than the individual parties interests and considered from a systemic perspective also incorporates the interactions and relationships between the parties and the mediator. The mediator has a professional responsibility to the clients while being aware of the evolution of the relationships and the impact of the mediation process.

5.3 Emphasis on the Interests of Children

Three male participants commented on the active use by the mediators of children’s interests as contributing to favourable mediation outcomes and future decision having been achieved. Graeme said:

_ The counsellor provided information that the children’s interests were more important rather than the other aspects. ... the outcome of seeing more of the children was good._
The second participant also spoke of the mediator’s emphasis on the outcomes for children:

(She said) ... to the both of us that the children is what’s important. (She) talked about the long term effects ... which improved our chances of being able to have a successful outcome with the kids. (Tony)

John similarly attributed the emphasis on the needs of children by the mediator as being instrumental in an agreement being reached. He detailed the process:

We had two meetings ... we just sort of got eighty per cent of it right and then we come back a second time and they managed to get it all through.

Previous studies confirm the commitment of FDR practitioners to the best interests of children (Caruna, 2010; Lundberg & Moloney, 2010; Rhoades, 2010). This principle was the major driver for the 2006 Amendments at a Federal political level (Daniel, 2009).

5.4 Mediators’ Skills
Participants also highlighted the skills of the mediators in facilitating effective client communication. Sharon explained that the sessions were undertaken by telephone as the second ex-husband “was in the country”. She indicated that the Relationships Australia (WA) service:

... (was) very useful. We don’t communicate very well. It is a neutral place emotionally. We also do not have to be in the same room. I also interrupt (ed) so the mediator ask(ed) that I allow the second ex (husband) to finish his sentence.

Sharon added:

The mediator is like a referee; helps with communication. The service is useful.

This was an example of the mediator facilitating improved communication between the parties. Bowling and Hoffman (2000, p. 21) advocate for an integrated model of mediation in which the mediator has significant opportunities to shape the interactions and discussions of the parties involved. The authors argue that the relationships of the parties to each other and to the mediator are fluid and the parties’ expectations that the
mediator may be able to assist them in reaching a resolution contribute to the mediator's influence.

5.5 Engagement and Participation of Men in Mediation

Nick raised the issue of the ways in which the mediators related to him as a male in the process of developing a Parenting Plan. He outlined the situation:

_We were hostile to each other in the beginning and there was a lot of tension. The two women mediators were empathetic with my ex-wife. Men can show their emotions in an aggressive way. I think I was misconstrued because I felt I needed to stand my ground. I think a male and female mediator would have helped._

The engagement of men in the mediation process has been a relatively new development in the family dispute resolution literature. The psychological and sociological literature focuses on men’s socialisation and their over representation as perpetrators of domestic violence which can reduce the level of empathy expressed by the predominantly female therapeutic workers including mediators. The American psychological models have theorised that men have been socialised towards rationality, independence and interpersonal dominance. Some of these models also emphasise the role of physical aggression, toughness and status seeking for men (Good, Thomson, & Brathwaite, 2005; Mahalik et al., 2003; Smiler, 2004). Men are also more likely to have reduced capacity and fewer skills in expressing vulnerable emotions (Good, 1998). Studies have also found that men are over represented as the perpetrators of family violence which tends to reduce the level of empathy demonstrated by women (Good et al., 2005; Walker, 2001).

Nick commented that while the mediators were “friendly and helpful” he experienced the process as follows:

_I felt a bit cornered because I needed to address some issues. ... I got angry. If you're a Dad you don't see your kids. The mediators need to be conscious of the mental state of the Dads. I went to anger management classes so that I could put my case without being angry. Anger is a normal emotion. But you need to channel the energy._

The mediation literature confirms that countertransference which represents the feelings evoked in the therapist by the client also applies to mediation and negotiation processes (Bowling & Hoffman, 2000p. 11; Fukushima, 1999). The psychological literature highlights
the importance of therapists being aware of the ways their own countertransference issues with men can influence their behaviour in the session (Good et al., 2005; Hayes & Gelso, 2001). The reactions may be based on negative stereotypes resulting from past experiences with men. However, it is advisable that women who work with men in helping relationships should examine their assumptions and create an environment where men can make their desired changes (Good et al., 2005). The sociological literature highlights that men are not homogenous and class position and geographical location influence their identities (Connell, 1995; Smiler, 2004).

Collier (2009) referring to the British situation, comments that the emotive aspects of separation have not been adequately explored in the analysis of fathers’ rights literature. Studies examining grief highlight complicating factors and multiple losses for men associated with the breakdown of a relationship. The loss through divorce or separation adds to the level of difficulty associated with the grieving process as the former partner is alive (Baum, 2006; Emery, 1994). Some studies confirm that divorced men mourn the loss of their children more their ex-wives (Baum, 2006). In addition, empirical studies demonstrate that the paternal role is less clear compared with the maternal one (McKenry, Price, Fine, & Serovich, 1992). Studies have pointed to the significant role of mothers in demarcating the father’s role both within a marriage or stable relationship and when they have separated (Baum, 2006; De Luccie, 1995).

A recent study which involved practitioners who were counsellors and dispute resolution counsellors found that respecting a father’s role and reframing fathers as incompetent or inadequate to being competent as nurturers and providers were the main findings (Fletcher & St George, 2010). Liu (2005) advocates a multicultural framework in the psychological literature meeting the needs of men in three areas of competency which include the clinician’s assumptions and values, understanding the worldview of the client and developing appropriate strategies. He argues that similar to women and people from culturally and linguistically diverse backgrounds men are often socialised into strict roles which have consequences. The engagement and participation of men in mediation also has ramifications for children.

5.6 Resources
The study participants discussed the staffing levels of the Family Relationship Centres and the provision of client parking facilities. Tom commented on the absence of telephone staff available to deal directly with enquiries from potential clients when they
initially contacted the agency and in subsequent contacts. He explained that he expected to be able to talk directly to a member of staff:

>You ring up the mediation here and you get a message bank and they get back to you a day or two later and by that time ... you’re doing something or you’re busy or you’re out on the road. ... I think there’s just no resources. I think when someone rings in they just want to talk.

Tom elaborated further:

>... it’s like when you phone up the banks or something you know it goes to a message bank ... It’s not really much customer focus.

Two participants commented that client parking could be improved:

>Better parking at Relationships Australia would help. Last time I got a fine because the mediator was late. (Sharon)

One referred to parking being significant for some of the clients. He stated:

>... for a start when you come here you’ve got to pay for parking, ... but it can be costly for a single parent. (Ivan)

Previous studies confirm that there was a political motivation of reduction in costs in setting up the Family Relationships Centres (Parkinson, 2006; Rhoades, 2010). Daniel (2009) also refers to the broader influence of neo-liberalism within the 2006 Family Law Amendment through the inclusion of politically popular language of self-help and individualism. Individualism is demonstrated in considering families as individuals of children and parents rather than a family as a collective.

In summary the study participants identified positive aspects of the mediators’ skills and knowledge. They also discussed the creation of a more conducive environment which fostered greater participation in mediation for men in some instances and an increase of human resources and client parking facilities.
6.0 SUMMARY OF FINDINGS AND RECOMMENDATIONS

Couples who present for counselling and mediation in the arena of Family Law are likely to have complex issues to resolve which may include but not be limited to family and domestic violence, child abuse, substance abuse and mental health (FLC 2010, p.29-30). This means that services provided to this cohort need to take account of the complexity of cases and be resourced sufficiently to ensure that staff have sufficient training and ongoing supervision to ensure best practice, especially where client safety including the safety of children is a factor. In particular it has been acknowledged that Family Relationship Centres are a front line service for the issues of family and domestic violence and that these are core issues for this area of practice (Maloney, Smyth, Weston, Richardson, Qu and Gray 2007, pp. 47-48; Brown, Frederico, Hewitt and Sheehan 1998).

Although seven respondents initially did disclose FDV in the interview, a further nine did not disclose until the interview was well progressed, indicating it had not been disclosed in counselling or mediation either. Some of these respondents stated they were not sure if what they had experienced was domestic violence and some reported that they had disclosed it but the counsellor or mediator had not addressed it. The research indicated that at times men did not feel that their situation was understood by the mediator. This is also an emerging issue in the literature. A recent study indicated that respecting a father’s role and competency as a parent enables men to participate more meaningfully in counselling and/or mediation. (Fletcher and St.George, 2010). Agencies providing counselling and/or mediation services to separating couples need to develop reflexive and systemic ways of dealing with family and domestic violence and child abuse from intake through to termination and/or referral to better respond to client need.

6.1 Revision of Intake Function

Once FDV and/or child abuse is identified as a factor then subsequent processes need to ensure that these issues are taken into account in all client contact because of the impact they have on the client’s capacity to participate and negotiate, whether male or female. When clients initially contact the service they should always be seen individually and a proactive approach taken to determine whether FDV or child abuse is an issue. This requires that clients whether male or female be informed as to what constitutes FDV and child abuse and that it is not assumed that clients already have this understanding.

6.2 Placement and Supervision of Practitioners
The most skilled practitioners should be located at the intake end of the process. Less skilled mediators should have regular supervision from more experienced staff, who take a proactive stance in relation to ensuring family and domestic violence and child abuse are addressed at every level of the process. Supervisors need to regularly review cases ensuring that awareness of family and domestic violence and child abuse is maintained by all agency staff and that their practice is predicated on this awareness.

6.3 Staff Training

Cases presenting at FRCs are often highly complex and counsellors and mediators require a high level of training to deal with them. This will ensure that clients feel safe and empowered, whether they are waiting to be seen, engaged in counselling or mediation (in person or by telephone) or when leaving the premises. Training should be consistent with the Western Australian Family and Domestic Violence Risk Assessment and Management Framework.

6.4 Ensuring Practitioner Neutrality

Staff need to be provided with training and resources to ensure neutrality in their professional practice. The perception of neutrality was identified by respondents as very important in terms of them being satisfied with the service provided. However, it was clear from the interviews that their understanding of the concept of neutrality was in some ways limited to how they perceived the practitioner being able to hold two conflicting accounts of the same situation without “taking sides”. In contrast, the concept of professional neutrality in terms of couple counselling and/or mediation is much more sophisticated. It requires that in counselling the practitioner is in effect multi-positional (able to empathise with each party) and is able to provide opinion, information and education to clients, whereas in mediation, the mediator operates as neutral to each party in every respect of his or her contact with clients. For example, telephone mediation should not occur with one party in the same room as the mediator, whilst the other participates at a distance by telephone because this is likely to elicit a perception of bias and/or lack of equality.


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