

Compliance with and enforcement  
of family law parenting orders:  
Final report

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ANROWS acknowledges the Traditional Owners of the land across Australia on which we live and work. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging. We value Aboriginal and Torres Strait Islander histories, cultures and knowledge. We are committed to standing and working with First Nations peoples, honouring the truths set out in the Warawarni-gu Guma Statement.

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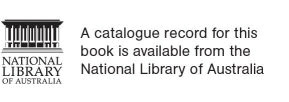
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This report addresses work covered in the ANROWS research project 4AP.2 "Compliance with and enforcement of family law parenting orders". Please consult the ANROWS website for more information on this project.

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Acknowledgement of lived experiences of violence

ANROWS acknowledges the lives and experiences of people affected by domestic, family and sexual violence who are represented in this report. We recognise the individual stories of courage, hope and resilience that form the basis of ANROWS research.

ANROWS acknowledges that children and young people living in homes where domestic and family violence (DFV) is present are not simply “exposed” to DFV – they are experiencing it. There are no circumstances in which children and young people are exposed to DFV and are not also being impacted by this violence. Therefore, ANROWS will always default to using “experienced DFV” instead of “were exposed to DFV” or “witnessed DFV”. This language aligns with the National Plan to End Violence Against Women and Children (due for finalisation in 2022), which recognises that children experience DFV as victims in their own right, and also seeks to honour the voices of victims and survivors who have felt minimised, erased or unacknowledged as childhood survivors.

Please note, in this report the researchers have used the language of "exposure" to reflect the language used in the Family Law Act 1975 (Cth). For more information, see "Family violence" definition in "Concepts and definitions".

Caution: Some people may find parts of this content confronting or distressing. Recommended support services include 1800RESPECT (1800 737 732), Lifeline (13 11 14) and, for Aboriginal and Torres Strait Islander people, 13YARN (13 92 76).

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Acronyms

| Acronym | Definition |
| --- | --- |
| AIFS | Australian Institute of Family Studies |
| ALRC | Australian Law Reform Commission |
| ANROWS | Australia’s National Research Organisation for Women’s Safety Ltd |
| CAFCASS | Children and Family Court Advisory and Support Service (England and Wales) |
| FCFCoA | Federal Circuit and Family Court of Australia |
| FCCoA | Federal Circuit Court of Australia |
| FCFCAA | Federal Circuit and Family Court of Australia Act 2021 (Cth) |
| FCoA | Family Court of Australia |
| FCoWA | Family Court of Western Australia |
| FDR | Family dispute resolution |
| FLA | Family Law Act 1975 (Cth) (as amended) |
| FRCs | Family Relationship Centres |
| ICL | Independent Children’s Lawyer |
| JSC | Joint Select Committee on Australia’s Family Law System |
| JO | Judicial officer |
| PPO | Personal protection order |
| SRL | Self-represented litigant |
| SoP&C | Survey of Parents and Carers |

Concepts and definitions

| Concept | Definition |
| --- | --- |
| Bond | The court may order a person who has contravened a parenting order without reasonable excuse to enter into a bond: FLA s 70NEB(1)(d). Bonds last for a specified period of up to two years and may impose various conditions, such as the requirement to be of good behaviour or to attend family counselling: Family Law Act 1975 (Cth) (FLA) s 70NEC(2), (4). Failure to comply with a bond without reasonable excuse may result in the court imposing a fine or revoking the bond to deal with the initial contravention of the parenting order: FLA s 70NEC(3). |
| Child abuse | Abuse in relation to a child is 1) an assault, including a sexual assault, of a child; or 2) a person involving the child in sexual activity with them or another person in which the child is used, directly or indirectly, as a sexual object by the first person or another person, and where there is unequal power in the relationship between the child and the first person; or 3) causing the child to suffer serious psychological harm, including (but not limited to) when the harm is caused by the child being subjected to, or exposed to, family violence; or 4) serious neglect of the child: FLA s 4. |
| Coercive control | While there is no single agreed definition of coercive control, research indicates that it generally involves conduct that is intended to dominate and control another person, usually an intimate partner, but may also occur in the context of familial or carer relationships (ANROWS, 2021). Coercive control is regarded as being perpetrated predominantly by men against women and may include threats to harm; physical, sexual, verbal and/or emotional abuse; psychologically controlling acts; financial abuse; social isolation; systems abuse (defined below); stalking; deprivation of liberty; intimidation; technology-facilitated abuse; and harassment (ANROWS, 2021). |
| Consent order | Consent orders are court orders that may be made 1) without litigation, following the filing of an Application for Consent Orders (and the proposed consent orders, together with a Notice of Risk in parenting matters); or 2) in matters where litigation is on foot following the filing of the proposed consent orders and an annexure or submission in court outlining how the proposed consent orders address allegations of abuse or family violence and risk to children. Proposed parenting orders by consent will be endorsed where the court is satisfied that those orders are consistent with the best interests of the child/children in the relevant matter: FLA s 60CA. |
| Contravention | Parenting orders are contravened when a person bound by the order has intentionally failed to comply or has made no reasonable attempt to comply with the order: FLA s 70NAC(a). Parenting orders can also be contravened by a person not bound by the order if they have intentionally prevented a person bound by the order from complying with it or have aided or abetted the person bound by the order to contravene it: FLA s 70NAC(b). |
| Family consultant | Family consultants are psychologists or social workers with specialist expertise in child and post-separation family issues who are appointed to conduct child and family assessments for Child Impact Reports (previously known as FLA s 11F reports) or Family Reports (FLA s 62G) ordered by the court in parenting order proceedings: FLA s 11A. Family consultants include Court Child Experts who are employed by the court with duties additional to their family consultant role, and Regulation 7 Family Consultants who are private practitioners who have satisfied the court that they have the qualifications and expertise to undertake the duties of a family consultant and are appointed pursuant to Regulation 7 of the Family Law Regulations.[1](https://doi.org/10.1111/fcre.12008#footnote-022) |
| Family dispute resolution (FDR) | A process that occurs outside the court whereby an independent family dispute resolution practitioner helps people affected (or likely to be affected) by separation or divorce, or persons who may be applying for parenting orders, to resolve disputes relating to each other or the care of children: FLA s 10F. |
| Family dispute resolution practitioner | An independent person who helps people resolve disputes with each other or relating to the care of children through family dispute resolution: FLA s 10F. Practitioners must be either accredited, engaged or authorised to act as family dispute resolution practitioners as per the various means outlined in s 10G of the FLA. |
| Family violence | Under the FLA, family violence refers to violent, threatening or other behaviour that coerces or controls a family member (including relatives, de facto partners and spouses) or causes them to be fearful: FLA s 4AB(1). Behaviours that may constitute family violence include assault, sexual abuse, stalking, repeated derogatory taunts, intentionally damaging property and financial abuse: FLA s 4AB(2). For the purposes of the FLA, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence: s 4AB(3). Examples of situations that may constitute a child being exposed to family violence are included in s 4AB(4). The authors note that the term “exposed to family violence” is used in this report as it is included in the definition of family violence in s 4AB of the FLA. The term “domestic and family violence” is a phrase commonly employed in family violence-related discourse and although it is not the term used in the FLA, it is used at times in this report and is included in the definition noted herein. |
| Make-up time | Where the contravention of a parenting order results in a person not spending time or living with the child under the order, the court may make a further parenting order providing for additional parenting time to compensate that person for the time lost. This order can be made regardless of whether there was a reasonable excuse for contravening the order: FLA s 70NDB(1); or not: FLA s 70NEB(1)(b). |
| Parental responsibility | This term is used in pt VII of the FLA to mean all the duties, powers, responsibilities and authority which, by law, parents have in relation to children. Subject to any court orders in force, each parent of a child below the age of 18 has parental responsibility for the child, which has effect despite any changes in the nature of the relationships of the child’s parents, such as separation or re-partnering: s 61C. A parenting order confers parental responsibility for a child to the extent that it confers duties, powers, responsibilities or authority in relation to the child, but it does not take away or diminish any aspect of parental responsibility except to the extent (if any) expressly provided for in the order or where necessary to give effect to the order: s 61D. The FLA provides that when making parenting orders, the court must apply a presumption that it is in the best interests of the child for the child’s parents to have equal shared parental responsibility: s 61DA(1). The presumption does not apply if there are reasonable grounds to believe that a parent of the child has engaged in abuse of the child or another child in the family or family violence: s 61DA(2). The presumption may be rebutted by evidence that it is not in the best interests of the child for their parents to have equal shared parental responsibility for the child: s 61DA(4). |
| Parenting order | A parenting order is a court order dealing with matters specified in s 64B(2) of the FLA, such as with whom a child is to live, the time a child is to spend with persons, the allocation of parental responsibility for a child and the communication a child is to have with persons: FLA ss 64B(1)–(2). Parenting orders may be made in favour of a parent of the child or another person: FLA s 64C. For simplicity, this term is also used in connection with orders dealing with these issues made in overseas jurisdictions although the terminology in those frameworks may differ. |
| Parenting plan | A parenting plan is an agreement in writing made between parents of a child and may deal with parenting arrangements including the person or persons with whom the child is to live and spend time with and the allocation of parental responsibility: ss 63C(1)–(2). A registered parenting plan is a plan that was registered in a court under s 63E of the FLA as in force any time before the commencement of the Family Law Amendment Act 2003 (Cth) that continued to be registered immediately before the commencement of this Act: s 63C(6). These plans were rarely encountered in this study and are redundant for matters going forward given the ability to register a parenting plan was removed from the FLA by the Family Law Amendment Act 2003 (Cth). |
| Reasonable excuse | The FLA sets out a non-exhaustive list of circumstances in which a person may be taken to have had, for the purposes of the enforcement regime under div 13A of pt VII, a reasonable excuse for contravening an order under the FLA affecting children (s 70NAE). These circumstances include that the person who contravened the order can establish that they did not understand the obligations imposed by the order: s 70NAE(2); or they believed on reasonable grounds that the contravention was necessary to protect the health and safety of a person, including the child who is the subject of the order: s 70NAE(4)–(7). |
| Registrar | In the family law jurisdiction of the Federal Circuit and Family Court of Australia, registrars exercise judicial power delegated to them by judges. Their key functions generally involve presiding over initial court events, managing cases in court and conducting internal dispute resolution events. The use of registrars allows judges to allocate more time to hearing and determining complex matters.[2](https://ses.library.usyd.edu.au/handle/2123/5819#footnote-021) |
| Senior registrar | Although senior registrars can exercise all the powers of a registrar, their work primarily involves determining interlocutory applications and presiding over interim hearings where parties disagree. Senior registrars have additional powers to registrars, such as the power to make orders for child maintenance and summarily dismiss proceedings.[3](https://doi.org/10.1080/10383441.2011.10854704#footnote-020) |
| Systems abuse | Systems abuse involves the use of systems and processes, including the legal system, by perpetrators of domestic and family violence to assert power and control over the other party. Litigation tactics may be used to “gain an advantage over or to harass, intimidate, discredit or otherwise control the other party” (National Domestic and Family Violence Bench Book, 2021).[4](https://www.fcfcoa.gov.au/news-and-media-centre/media-releases/mr300322#footnote-019) |
| Trauma-informed approach | This approach realises the widespread impact of trauma and understands potential paths for recovery; recognises the signs and symptoms of trauma in clients, families, staff and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures and practices, while seeking to actively resist retraumatisation (Substance Abuse and Mental Health Services Administration, 2014, p. 9). |
| Vexatious litigation | Vexatious litigation is defined in FLA s 102QB as including proceedings that are an abuse of the process of a court or tribunal; proceedings instituted to harass, annoy, to cause delay or detriment, or for another wrongful purpose; proceedings instituted or pursued without reasonable ground; and proceedings conducted in a way so as to harass, annoy, cause delay or detriment or achieve another wrongful purpose. |

[1](file:///S:/IAG/5043%20-%20ANROWS%20-%20Document%20accessibility%20services/2_Working%20files/Kaspiew%20RR2/Indd%20to%20HTML/Kaspiew_RR2.html#footnote-022-backlink) See further <https://www.fcfcoa.gov.au/fl/pubs/court-child-experts-faq> and [https://www.fcfcoa.gov.au/fl/pubs/family-consultants](https://doi.org/10.1093/lawfam/16.1.71)

[2](https://dfvbenchbook.aija.org.au#footnote-021-backlink) See further [https://www.fcfcoa.gov.au/fl/registrars](mailto:info@aifs.gov.au)

[3](file:///S:/IAG/5043%20-%20ANROWS%20-%20Document%20accessibility%20services/2_Working%20files/Kaspiew%20RR2/Indd%20to%20HTML/Kaspiew_RR2.html#footnote-020-backlink) See further [https://www.fcfcoa.gov.au/fl/registrars](http://www.fcfcoa.gov.au/fl/registrars)

[4](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child#footnote-019-backlink) See further National Domestic and Family Violence Bench Book, “3.1.11 Systems abuse” (2021): [dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/](https://doi.org/10.1093/lawfam/ebt009)

Executive summary

Background

This report sets out the findings from a four-part research program examining compliance with and enforcement of family law parenting orders under the Family Law Act 1975 (Cth) (FLA). This report presents substantive findings from three parts of the research program:

* a national Survey of Parents and Carers (SoP&C; n=470) who have parenting orders that were made on or after 1 June 2016, which was open between June and October 2021
* an analysis of data from the Federal Circuit Court of Australia (FCCoA) and the Family Court of Australia (FCoA):
  + court files (n=300) where a contravention application had been finalised between 2017 and 2021
  + reasons for decisions in published court judgments (n=147) involving contravention applications between 2016 and 2021
* an examination of approaches to enforcement in three international jurisdictions, namely England and Wales, New Zealand, and Michigan, United States.

A report published in January 2022 set out the substantive findings of another substudy based on the views of professionals (professionals study; obtained through an online survey of 343 professionals who work with separated parents and interviews with 11 judicial officers from the family law courts). In addition to setting out the substantive findings from the three substudies not previously reported, this report synthesises findings from all four parts of the research program, drawing conclusions on the research questions and presenting implications for policy and practice.

This research was commissioned by Australia’s National Research Organisation for Women’s Safety (ANROWS) as part of a research program aligned with the Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children 2010–2022 (Commonwealth of Australia Department of Social Services, 2019). The policy context for this research is a developing family law reform program that is considering recommendations of recent inquiries into the family law system, including the Australian Law Reform Commission’s (ALRC) 2019 inquiry and the Joint Select Committee on Australia’s Family Law System’s (JSC) 2021 inquiry. A range of recommendations were made that are relevant to this research, both in relation to parenting matters generally and contravention matters in particular. During the implementation of the fieldwork for this research, the Family Court of Australia (FCoA) and the Federal Circuit Court of Australia (FCCoA) merged to form the Federal Circuit and Family Court of Australia (FCFCoA). In addition, a range of initiatives were introduced, including the National Contravention List administered by registrars and the provision for the triage, assessment and case management of contravention matters, together with the recent Central Practice Direction (FCFCoA, 2021b). These initiatives followed the introduction of the Lighthouse Project, a pilot involving triaging, risk screening and a specialist list for family violence matters in the family law courts, which is also significant to the issues raised in this research program.

Division 13A of pt VII of the FLA sets out the current regime for responding to non-compliance with family law parenting orders. This contravention regime provides respondents to an Application – Contravention with the option of establishing that they had a “reasonable excuse” for their non-compliance. A reasonable excuse in this context may be that non-compliance was necessary to protect the health and safety of a person, including the child who is the subject of the orders, or that there was a misapprehension of the obligations or arrangements provided in the orders. The provisions of the FLA also outline responses where contraventions are upheld. These range from variations to the parenting orders or orders for compensatory parenting time through to the more punitive responses of bonds, fines and imprisonment.

Contravention applications are not particularly common, comprising approximately 8 per cent of all applications for final orders in parenting matters. However, in the context of a developing family law reform agenda, this research will make a significant contribution in the absence of current empirical evidence on the operation of the contravention regime in Australia.

Aims and objectives

This mixed-method research project has been designed to examine the operation of the parenting order contravention and enforcement regime in Australia and to support greater understanding of the following key issues:

* the factors associated with compliance and non-compliance with parenting orders
* the circumstances in which the contravention regime is applied and the patterns in court outcomes when it is applied
* the extent to which penalties are effective at reducing non-compliance
* whether, where there are ongoing concerns about family violence, the risk of penalties deters contraventions or inhibits parties in seeking court protection.

Should reform of the enforcement regime be implemented, this research will also provide baseline evidence against which the impact of any reforms could be measured.

Findings

Causes of non-compliance

This research demonstrates that non-compliance arises from a complex interplay of difficult interpersonal dynamics, including family violence, and systemic limitations in the response to them. This research has reinforced the findings of earlier research (Kaspiew, Carson, Dunstan et al., 2015a; Kaspiew, Carson, Dunstan et al., 2015b; Kaspiew, Carson, Qu et al., 2015) that parties who engage in litigation over their parenting arrangements following separation are a particularly complex subset of separated parents. Although based on an opt-in sample rather than a representative sample, the SoP&C has shown that parents who subsequently experience problems with compliance with parenting orders are an even more complex subset: their families are often characterised by family violence, challenging interpersonal dynamics, conflict over a protracted period of time, and serious concerns about child wellbeing.

The findings from the SoP&C also demonstrate that negative relationships are substantially more common than positive relationships in this sample, and that gendered differences are evident in the way that relationships and feelings of fear, coercion and control are described. Women are significantly more likely than men to describe relationships as fearful, and men are significantly more likely than women to describe them as conflictual.

Data from the SoP&C highlight significant concerns for the wellbeing of children, with markedly higher proportions of parents in this sample offering negative assessments of their children’s wellbeing compared with a representative sample of court-using separated parents.

Qualitative insights from professionals and judicial officers also attested to the problematic interpersonal dynamics of parties involved in contravention proceedings, including intractable conflict and mistrust that had not been addressed adequately by parenting orders; abusive and controlling behaviour; an unwillingness to support the other party’s relationship with the child; and parents behaving in a non-child-focused way. These findings are not unsurprising given that non-compliance is an issue for the parties in these matters.

In the context of limitations in the family law system’s ability to address problematic interpersonal dynamics, including family violence, these characteristics can be associated with intense and sustained litigation over time. Analysis of the court file sample demonstrates that the mean overall duration of matters in the sample was approximately 54 months, and that litigation in a substantial proportion of cases extended beyond three years, with nearly one third of cases taking between five and nine years and a small but not insignificant proportion taking place over 12 or more years (6%).

Against this background, the various components of this study have shown that the drivers of non-compliance with parenting orders are complex and varied. Some relate to the dynamics of the parties themselves, including difficult or vindictive behaviour, or abusive or controlling behaviour on the part of the non-complying parent/carer. Others concern the children and young people who are the subject of the orders, with children themselves refusing to comply, or orders that are unworkable or insufficiently flexible to accommodate children’s changing needs. Family violence and safety concerns are also a key contributor to non-compliance where such concerns were not brought to the court’s attention or were not given due consideration in the development of parenting orders, resulting in inappropriate or unsafe parenting orders or orders not accepted as safe by the contravening party. To a lesser extent, orders being misunderstood by parties, inadvertent non-compliance, disrespect for the court process and perceived lack of consequences for non-compliance also emerged as drivers.

For most parents and carers in the SoP&C, the COVID-19 pandemic did not affect compliance with parenting orders. Where compliance was impacted, health and safety concerns and government-imposed restrictions and lockdowns affecting the workability of orders were identified as reasons for non-compliance. Professionals reported an increase in client enquiries regarding compliance with parenting orders due to the pandemic, with a greater emphasis on seeking legal advice where orders were misunderstood or children were refusing to comply.

Responses to non-compliance

Most parents and carers who indicated that their parenting orders had not been complied with also indicated that they had not taken action in response. Reasons for such inaction included:

* impracticality in light of repeated breaches by the other parent/carer
* the view that legal action would be insufficient to stop the non-compliance
* a lack of financial resources to pursue legal action or obtain legal advice
* a fear that the party breaching the orders would retaliate with violence if action was taken
* a lack of energy to pursue the matter
* not wanting to cause trouble for themselves or their children.

Other reasons, although less frequent, were that the non-compliance was insufficiently serious to warrant action; fear that the parenting arrangements would be changed if court action was taken; acceptance that COVID-19 restrictions constituted a reasonable excuse for non-compliance; and the other parent/carer having insufficient financial resources to pursue legal advice or legal action. While seeking legal advice was the most common response to non-compliance for parents who indicated that they did take action, the majority of this subset also indicated that the issues nevertheless remained unresolved.

Some parents and carers stated in open-text responses that they were discouraged from taking legal action in response to non-compliance due to the significant delays impacting the broader legal system in the context of the COVID-19 pandemic. Such concerns about delay are reinforced by the findings from the court file sample where litigation (both primary parenting and contravention) in a substantial proportion of cases extended beyond three years.

Almost half of the parents and carers surveyed reported that their parenting orders had not been explained to them by a professional. Where an explanation was provided, this was most commonly by a lawyer. Most participants reported that that their orders were easy or very easy to understand.

Nature of alleged contraventions and characteristics of parents who lodge contravention applications

The study has revealed a gendered pattern in the parties who instigate litigation, both in relation to primary parenting proceedings and subsequent contravention proceedings. For both kinds of proceedings, fathers were the applicants in the majority of cases. Self-representation was significantly more common for contravention proceedings than for primary parenting proceedings. This possibly reflects the limited availability of legal aid for contravention matters, and parties’ funds having been exhausted in the primary parenting proceedings. Health issues for parents were rather common in the court files, with mental health issues more common for women than men, and substance misuse more common for men than women.

In relation to the nature of alleged contraventions, the court file component of the study showed that non-compliance with time arrangements was most commonly raised, followed by breaches related to parental responsibility, and non-compliance with requirements for parent–child communication. Breaches of time arrangements were also the most common type of breach reported by parents and carers in the survey, although non-compliance in relation to parental responsibility and communication provisions were reported to a greater extent than in the court file sample.

For a majority of parents and carers surveyed, parenting orders were made by consent on a litigation pathway, while orders were made by judicial determination for approximately one third of participants. Consistent with the court file sample, there was limited self-representation in the primary parenting proceedings, with most participants reporting that they and the other party paid for their own representation. However, men were more likely than women to self-fund their legal representation, and women were more likely than men to receive legal aid funding support. Over half of the parents and carers surveyed reported that Independent Children’s Lawyers (ICLs) were involved in their matters, although less than half reported that these professionals had spoken with their children. Over three quarters of participants reported that Family Reports were prepared, with most indicating that the Family Report writer had spoken with their children. Findings from the SoP&C also reinforce the findings from the professionals study that more effective and widely available avenues for children’s participation are required to support safe and sustainable outcomes.

Experiences, allegations and evidence of family violence and sexual abuse

The court file data show that most contravention matters include evidence or allegations of family violence or child abuse, or child protection or safety concerns. It is most common for such evidence or allegations to have been raised in the primary parenting proceedings, although nearly half of all matters in the court file sample involved allegations or evidence in both the contravention and the primary parenting proceedings. In contravention proceedings, child abuse allegations were evident to a greater extent than family violence allegations, and to a greater extent than in primary parenting proceedings. In both kinds of proceedings, children were identified as the victims in the vast majority of matters. Cross-allegations in relation to family violence were common.

In the court file analysis of contravention proceedings involving allegations or evidence of family violence, child abuse or safety concerns, mothers were more likely than fathers to be assessed by the research team as victims, while fathers were more likely than mothers to be assessed as perpetrators. In a minority of files, both parents were assessed as perpetrators, and as victims to a lesser extent. The extent of family violence allegations in the court file sample is consistent with reports by both men and women in the SoP&C that they experienced behaviour that made them feel fearful, coerced or controlled, both before and after separation.

More than a quarter of matters in the court file sample involved current or past involvement with child protection agencies, more commonly at the time of the primary parenting proceedings than at the contravention proceedings. Half of all matters in the court file sample had current or past personal protection orders (PPOs) in place, with mothers the protected party in the majority of these matters.

While the court file data show that most contravention matters included evidence or allegations of family violence or child abuse, only small proportions of matters involved findings of family violence. This may suggest a reticence on the part of courts to make explicit findings that family violence has occurred, perhaps based on precedent relating to the unacceptable risk test that does not require findings to be made to support a finding of unacceptable risk (M v M (1988) 166 CLR 69; see also FLA s 60CG). Findings that there had been family violence were present in twice as many reasons for decision where the mother was the applicant compared to where the father was the applicant. Allegations of family violence were unable to be determined in twice as many reasons for decision involving applicant mothers than applicant fathers. Findings that children required protection from family violence or child abuse were more likely to be made in favour of applicant mothers than applicant fathers.

Qualitative insights of parents and carers, professionals and judicial officers revealed concerns about safety and family violence not being revealed or adequately considered in negotiations or parenting order proceedings, resulting in inappropriate or unsafe parenting orders. Concerns were also raised about the ability of the family law system to identify and respond in a timely, effective and trauma-informed way to family violence.

Court outcomes in contravention proceedings

Analysis of the court file sample indicates that two thirds of all contravention applications were resolved with the application either being dismissed, withdrawn, discontinued or struck out. The second most common outcome was a variation of existing parenting orders, with this occurring more frequently with father applicants than mother applicants. A bond that imposed a requirement on the contravening party was ordered in only a small proportion of matters in the court file sample. Other outcomes included orders to adjourn the contravention application and orders for compensatory parenting time. The contravention application was upheld in only a small proportion of matters, while fines or sentences of imprisonment were ordered in even smaller proportions of cases in the court file sample.

In the minority of matters where a substantive judicial determination occurred, half of these determinations indicated the contravention application was misconceived. More specifically, three in 10 of these matters involved findings that the contravention did not occur, and in one fifth of these matters a finding was made that the contravention occurred but that there was a reasonable excuse. The judgment sample revealed a pattern of similar outcomes: the most likely outcome was for the contravention application to be dismissed, followed by a variation of existing parenting orders, and orders requiring parties to enter into a bond to, for example, participate in a parenting orders program or counselling.

Mother applicants were more likely than father applicants to have their applications upheld. Conversely, as respondents, fathers were more likely to be found to have intentionally failed to comply with the parenting orders than respondent mothers. While less than half of the court files in the substudy included an affidavit filed in response to the contravention application, the most frequent claim by respondents was that they had a “reasonable excuse” for non-compliance on the basis of safety concerns, not understanding the obligations under the order, or an “other” reasonable excuse. The next most common claim was that compliance was inconsistent with the views of the child – the subject of the orders. Findings that there had been contraventions but with a reasonable excuse were made in one fifth of all matters where reasons for decision were provided. This outcome was more likely where the contravention application was made by the father than the mother.

With the application of punitive responses being very uncommon, professionals raised a range of concerns about the potential for such responses to result in adverse consequences for children, including depriving them of a parent who is important to them, diminishing financial resources available to them and compelling compliance with unsafe parenting orders out of fear. Together, these findings indicate a lack of confidence among professionals in the compatibility between punitive and child-centred approaches.

Effectiveness of tougher penalties or enforcement in reducing non-compliance

The effectiveness of tougher penalties or enforcement in reducing non-compliance with parenting orders raises a longstanding conceptual tension between the punitive aims of the contravention regime on the one hand, and child-focused decision-making on the other. The findings of various components of the study do not indicate that punitive responses or enforcement mechanisms are more effective than non-punitive responses at reducing the incidence of non-compliance with parenting orders. Although tougher penalties were identified by some professionals and parents/carers alike as appropriate in some circumstances, the orders most commonly sought by parents and carers in contravention proceedings in the court file sample were not punitive in nature; rather a variation of orders, compensatory contact or recovery orders were most commonly sought.

Findings from the professionals study indicate that most professionals did not agree that the system was effective in encouraging compliance or deterring non-compliance. Punitive options (such as fines, bonds and imprisonment) received lower levels of endorsement than non-punitive options (such as variation of existing orders, orders for make-up time with the child and orders that parties attend post-order support programs or post-separation parenting programs). Nonetheless, minority proportions of professionals argued punitive responses could improve the system’s deterrent effect.

Qualitative insights from professionals and judicial officers identified a need to consider the underlying causes of contravention (including complex emotional dynamics and systems abuse) and to address those in a child-focused way, as a means of getting parenting orders “back on track” and minimising opportunities for systems abuse. Qualitative responses from parents in the SoP&C reinforced the potential for repeated litigation, including contravention applications, to be used as a form of violence and to maintain control.

Ongoing family violence concerns and the risk of penalties as a deterrent

Findings from the SoP&C suggest that the risk of penalties for non-compliance may deter parties from seeking the protection of the courts through a change of parenting orders where there are ongoing concerns about family violence. Almost half of participating women and almost one third of participating men who did not take action in response to non-compliance indicated that they were afraid that the other parent would be violent towards them or their children if they did so.

Findings from the SoP&C and the professionals study also indicated non-action occurred due to concerns about court outcomes and potential penalties leading to compliance with unsafe parenting arrangements out of fear of the application of punitive responses. Parties’ reluctance to reopen parenting matters and risk not being believed or labelled a “no contact” parent was compounded by a perceived lack of transparency and inconsistency in the decision-making process.

These findings reinforce the views of some professionals that a history of non-compliance and systems abuse constituted a form of family violence that deterred parties from taking action for non-compliance. Some professionals also indicated that the contravention regime provided an avenue for parties to continue to harass, coerce and control former partners. Professionals described having clients who feared reprisals from the non-complying party and the potential for further court proceedings to increase the risk of violence, entrench parental conflict and expose the children to further violence.

Conclusion

Non-compliance arises from a complex range of dynamics, often found against a backdrop of ongoing family violence and current safety concerns, and with children directly affected in almost all cases. Systemic issues influence non-compliance including limitations associated with identifying, assessing and appropriately responding to risks and negative interparental relationships when making parenting orders. The findings indicate a lack of mechanisms to monitor the implementation of parenting orders and adapt to changes and problems, as well as insufficient opportunities for children and young people to participate in and be kept informed about post-separation decision-making relating to their care and living arrangements.

Although breaches of parenting orders are not uncommon, most parents and carers experiencing issues with compliance do not use the contravention regime to address these issues. Parents and carers and family law system professionals identified reasons that included the significant financial cost and emotional stress and trauma of engaging in litigation and the uncertainty and risk associated with returning to court. Other accessibility issues relating to the complexity and delays associated with contravention proceedings were also identified, as well as a lack of faith in the legal system’s ability to ensure compliance and to resolve the issues underpinning non-compliance. Some parents and carers were distrustful and even fearful of the system. It was also evident that for some parents there was a fear that litigation would reignite or escalate violent or abusive behaviour by the other party and the legal process could be misused in this context. Professionals also acknowledged that the regime was not designed to resolve these underlying issues.

The data indicate that, as a consequence, some children are living in parenting arrangements that are inconsistent with safety and wellbeing. Data from parents and carers highlight significant concerns for the wellbeing of children, with markedly higher proportions of parents in this sample offering negative assessments of their children’s wellbeing compared with a court-using representative sample of separated parents. Professionals and parents and carers identified a need for more importance to be placed on case management from the outset of litigation; flexibility in orders to accommodate changes in children’s needs; post-order support; and simpler, more expeditious and less costly options to address non-compliance. Additionally, a majority of survey participants supported the making of orders for no contact more often in cases involving risks to children.

Professionals and parents and carers identified the need for a well-resourced family law system to support compliance. This included educative and therapeutic support services to address the underlying issues and to enhance parents’ capacity to implement parenting arrangements and avoid further litigation. Suggestions included employing a specialist unit within the courts involving a conferencing process with a registrar and a family consultant for a more sophisticated triage system. Professionals also identified a need for improved forensic approaches to ensure risk issues are identified and addressed and for children’s and young people’s safety and wellbeing to be supported, including through improved evidence-gathering practices. Suggestions from parents and carers and professionals also involved access to post-order support services, including mechanisms to monitor compliance with orders such as periodic reviews of parenting arrangements in addition to the therapeutic support for families and mechanisms to address non-compliance outside of the court system.

At a broader level, the empirical evidence from this research program reflects the conceptual tension underpinning the contravention regime between the aims of legal enforcement mechanisms focused on punishment and deterrence and the aims of decision-making in children’s best interests. The data indicate that, in practice, parents and carers are far more likely to seek, and judicial officers are more likely to apply, non-punitive options when the contravention regime is invoked.

At the same time, it is acknowledged that some professionals and parents and carers identified a lack of consequences and immediate enforcement options as deficiencies with the contravention regime. However, findings in several areas suggest that reliance on legal mechanisms, especially those that are punitive in nature, have unintended consequences.

The findings in relation to duration and intensity of litigation in the context of family violence and abuse suggest that the legal framework lends itself to misuse as a mechanism to perpetuate conflict and, in the worst-case scenario, can be used as a form of abuse. Systems abuse and vexatious litigation were issues that emerged more broadly in the data. Concerns raised by parents and carers and professionals were underlined by the findings in the court file data regarding the intensity and duration of proceedings. Some judicial officers also reflected on the limitations and practical difficulties of applying the vexatious litigation provisions of the FLA, suggesting a review of these provisions is warranted to curtail the use of litigation as a means of perpetuating abuse.

Findings from the SoP&C and the professionals study demonstrate that the cost and trauma of legal proceedings place unsustainable and unfair burdens on families and children, meaning that the system is in practical terms ill-equipped to meet their needs. The inclusion of criminal consequences in the framework elevates requirements for legal rigour and specificity to levels that are difficult to meet. The findings also indicate that the punitive elements of the framework have a negligible deterrent effect. Non-compliance with parenting orders occurs often but legal remedies are not commonly sought. Where contravention applications are made, the vast majority are dismissed, withdrawn or struck out; where they proceed to a substantive conclusion, non-punitive responses are the most likely outcomes.

Implications

The empirical evidence in this research program gives rise to implications for policy at several levels. The findings support changes for legislative and process approaches to making parenting orders with four objectives. First, there is a need for a reconsideration of the family law system’s response in favour of one that is genuinely child-centred and trauma-informed and which caters for domestic and family violence-informed and culturally informed responses. This requires the application of trauma-informed approaches that are capable of distinguishing those who are primarily responsible for perpetrating violence from those who are the primary victim of violence. Second, there should be a focus on attempting to ensure appropriate and workable parenting arrangements are made. Third, the issues underlying non-compliance need to be more easily addressed when they arise. Fourth, access to therapeutic approaches is required.

However, the findings presented in this report suggest a need for a broader reconsideration of the legislative framework for making parenting orders. In particular, the findings of this research demonstrate that orders for shared parental responsibility and regular time with each parent are made in circumstances where complex dynamics, including but not limited to family violence and safety concerns, may impede the workability of the orders. Although family violence and child abuse concerns are exceptions to the application of the presumption of equal shared parental responsibility, the existing framework is not consistently operating in a way that produces safe and workable outcomes. In particular, legislative amendment is required to direct attention to the needs of children and the capacity of parents to implement parenting arrangements in a way that maintains children’s safety and wellbeing. In light of findings in relation to children’s experiences of unsafe behaviour, including domestic and family violence, and poor wellbeing outcomes among a significant proportion of children subject to parenting orders, family law system responses need to identify where children have experienced trauma and put in place parenting arrangements that centre the safety of children and support recovery.

In relation to the punitive aspect of the regime, findings indicate that a majority of parents and carers and professionals favour responses that are non-punitive and therapeutic in nature, and that the punitive elements of the framework have negligible deterrent effect and may give rise to unintended consequences. It is particularly evident that policy development should be undertaken with great care. The findings from this project suggest that potential unintended consequences of any move to strengthen punitive options may create additional barriers to ensuring the safety of children. This includes circumstances where parties feel compelled to comply with orders that are not safe or in the best interests of children and are facilitating more coercive and controlling behaviour through systems abuse.

Overall, the data illustrate that specialised screening and assessment approaches are required for matters involving family violence and/or child abuse and where children have health or other needs. Assessment should focus on identifying the predominant aggressor. It should also examine any psychological and emotional needs a child has as a consequence of exposure to family violence and abuse and their other health needs and identify how they may best be addressed through therapeutic interventions and parenting arrangements that protect the child and victimised parties and promote recovery. The data suggest that case management should be offered to ensure that litigation proceeds in a way that is not adverse to child wellbeing, and where difficulties with the implementation of parenting orders are identified, there should be a dispute resolution conference involving a registrar, supported by an assessment from a child expert who is trained in the use of child-centred approaches. These conferences should be ordered where difficulties are identified and a party lodges a contravention application. Participants made suggestions for post-order supervision, however the available data do not allow us to reach conclusions on the preferred mechanisms. Any implementation of a monitoring mechanism should be evidence-based and trauma-informed, and implemented by professionals with the requisite skills and experience in dealing with families characterised by domestic and family violence and other complex risk and harm factors. It should also not be costly for families or open to misuse as an extension of a party’s coercive and controlling behaviour.

The data also suggest that facilitating children’s and young people’s safe and effective participation in decision-making would not only support the development of safe and appropriate parenting arrangements that accommodate children’s needs and best interests but also, in turn, support ongoing compliance with orders. The findings also indicate a need for parenting orders and post-order practice (e.g. consultation, counselling or mediation) to provide sufficient flexibility to accommodate children’s changing needs and circumstances over time and suggest the importance of encouraging the safe exercise of children’s agency in seeking changes to arrangements when needed.

There are two broad issues in the current practice and policy landscape that make formulating specific responses to the findings of this research program difficult. The first relates to recent changes including the introduction of the Lighthouse Project, the National Contravention List, the establishment of the FCFCoA, and the introduction of the Central Practice Direction (FCFCoA, 2021b), which have the potential to address some of the key issues identified in this report. However, given the lack of evidence on the impact of these changes, it is difficult to assess the extent to which they may or may not alleviate the problems identified in this report. The second issue in formulating specific suggestions concerning legislative change is the overall uncertainty regarding the direction of any legislative reform that might occur.

In this context, these findings show a need for:

* careful consideration of whether orders for shared parental responsibility are appropriate in light of any concerns about family violence and child safety
* the identification of whether the child has been exposed to family violence or abuse or has other health or development needs that indicate a need for orders that will best support recovery from trauma and healthy development, and which may therefore exclude a consideration of shared parental responsibility
* the need for time arrangements to be informed by the child’s needs and views, including any particular health needs that may have arisen from exposure to family violence and abuse or other health-related conditions.

In relation to the legislative provisions concerning contravention specifically, the findings in this report:

* do not support changes that would strengthen the punitive aspects of the regime
* show that the punitive aspects of the existing regime reduce accessibility due to the quasi-criminal nature of the jurisdiction they establish and the level of technical and evidentiary rigour that is required to meet the potential criminal burden of proof (beyond reasonable doubt)
* show that the punitive aspects of the regime are likely to operate as a disincentive for parties who need to seek safer and more appropriate parenting arrangements
* support changes that enable flexibility to adjust arrangements if changes in the needs and circumstances of the parties and specifically the children occur.

Further research

Given the significant changes that have occurred in the FCFCoA in the past 12 months, including the merger of the Federal Circuit Court and the Family Court of Australia,[[1]](#footnote-1) research and evaluation of the impact of these changes on the experiences of court-using separated families is critical. In the absence of such research, any positive or negative effects of these changes will not be evident.

Additionally, the findings in this report suggest that further research will be required to enhance the evidence base in three key areas including:

* the implementation of more effective options for children and young people to participate in family law decision-making and to operationalise safe and effective professional practice in this context
* the operation of the legislative provisions relating to vexatious litigants and how family law system professionals, including judges, could be supported to better identify and respond to the misuse of litigation
* the operation of shared parental responsibility orders, including whether they:
  + support shared decision-making as a matter of practicality or operate symbolically
  + increase or reduce conflict in situations where there has been family violence or high conflict
  + are associated with reduced or improved child wellbeing and in what circumstances either of these outcomes is more or less likely.

In the absence of research investigating the compliance with parenting orders specifically with Aboriginal and Torres Strait Islander peoples, particular consideration is also required in relation to the challenges and experiences faced by Aboriginal and Torres Strait Islander peoples in this context to ensure that legislative and policy developments accommodate their needs. This includes examining and tailoring recommendations for these families in relation to trauma-informed responses, therapeutic support and interventions, and particular barriers in circumstances involving non-compliance with parenting orders. Any legislative reform of pt VII FLA provisions, including in relation to shared parental responsibility, should involve consideration of kinships and practice responses relating to training and professional development and the need to support cultural competence for professionals engaging with Aboriginal and Torres Strait Islander families.

1 Introduction

This report sets out the findings of a four-part research program examining compliance with and enforcement of parenting orders made under the Family Law Act 1975 (Cth) (FLA). This report presents substantive findings from three parts of the research program: the Survey of Parents and Carers (SoP&C; n=470) who have parenting orders by the family law courts made on or after 1 June 2016; an analysis of data from court files (n=300) and judgments (n=147) involving contravention applications; and an examination of approaches to enforcement in three international jurisdictions, namely England and Wales, New Zealand, and Michigan, United States. A report published in January 2022 set out the substantive findings of the fourth substudy based on the views of professionals (obtained through an online survey of 343 professionals who work with separated parents and interviews with 11 judicial officers from the family law courts; Kaspiew et al., 2022). In addition to setting out the substantive findings from the three substudies not already reported on, this report synthesises findings from all four parts of the research program to draw conclusions on the research questions. The implications of these findings for policy are also considered (see Chapter 7).

1.1 Policy context

Under the Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010–2022 (the National Plan; Council of Australian Governments [COAG], 2019), improving support and service system responses for women and children who experience family and domestic violence is identified as one of five national priorities. The current research was commissioned by ANROWS as part of its Fourth Action Plan research program. From the outset of the National Plan, the family law system has been identified as a critical element in the service system response to family and domestic violence (e.g. Strategy 5.1; COAG, 2010, p. 26), in the context of a series of intersecting systems that are intended to meet the needs of women and children affected by family violence. In the past 15 years, it has become increasingly clear that the family law system represents a frontline response in this context, as evidence (e.g. Kaspiew, Carson, Dunstan et al., 2015a; Kaspiew, Carson, Dunstan et al., 2015b; Kaspiew, Carson, Qu et al., 2015) has demonstrated that families affected by family violence and safety concerns are concentrated in the caseloads of services across the family law system, but especially the family law courts (see further below). In 2019, the Australian Law Reform Commission (ALRC) acknowledged the challenges this poses, in light of

little progress towards the creation of a nationally streamlined, coherent, and integrated approach to meeting the needs of children and families across the family, law, child protection, and family violence jurisdictions. (ALRC, 2019, p. 37)

With an active program of reform underway across the family law system (Australian Government Attorney-General’s Department, 2021a), changes intended to improve responses to matters involving family violence and safety concerns are part of a developing reform agenda. At the same time, the reports of two recent inquiries have suggested a need for amendments to the parenting order enforcement regime in Australia, which is contained in div 13A of pt VII of the FLA. The Australian Government has accepted the ALRC’s recommendations that the existing legislative provisions be simplified and clarified and that a presumption be introduced that a costs order against the contravening party should follow a contravention application being upheld (see Recommendation 42, ALRC, 2019, p. 21; see also Australian Government Attorney-General’s Department, 2021a). Further ALRC recommendations involved legislative amendments that would require parents to meet with a family consultant to have their obligations explained to them after court orders are made (Recommendation 38) and legislative amendments to allow judges to make orders for family consultants to provide post-order case management, with family consultants having power to refer matters to a contravention order list (Recommendation 39; ALRC, 2019, p. 343). The Australian Government response noted both these recommendations (pp. 34–35) and stated that “substantial further work is necessary [to assess] options to address non-compliance with, and enforcement of, court orders” (Australian Government Attorney-General’s Department, 2021a, p. 34).

The report of the Joint Select Committee on Australia’s Family Law System (JSC) made recommendations for procedural and substantive changes to the enforcement regime (Recommendation 19; JSC, 2021, p. xii). It recommended the establishment of a national, registrar-led contravention list for handling contravention matters. It further recommended that stronger penalties for non-compliance be considered. The Australian Government has not yet responded to the JSC report. Expedited pathways for enforcement were also considered by the House of Representatives Standing Committee on Social Policy and Legal Affairs in their inquiry into a better family law system to support and protect those affected by family violence (2017).

Enforcement of family law parenting orders has been the subject of longstanding concern (e.g. Family Law Council, 1998). From the perspective of systemic responses to family violence and child safety concerns, two main sets of issues are raised in relation to the regime. The first concerns the potential for the punitive actions available to courts as a response to contravention (see further below) to operate as a disincentive for parents who have parenting orders and are concerned for their child’s safety to seek safer parenting orders. In this context, the contravention regime may give rise to unsafe compliance. The second concerns the potential for the contravention regime (as well as other aspects of the FLA and other systems and processes, including child support and child protection) to become part of an ongoing family violence dynamic, identified with a pattern of coercive control (e.g. Fitch & Easteal, 2017; Kaye et al., 2021). From this perspective, non-compliance or legal action in relation to contravention may be part of a dynamic of ongoing abuse.

1.2 Research aim

This mixed-method research project has been designed to examine the operation of the parenting order contravention and enforcement regime in Australia and to support greater understanding of the following key issues:

* the factors associated with compliance and non-compliance with parenting orders
* the circumstances in which the contravention regime is applied and the patterns in court outcomes when it is applied
* the extent to which penalties are effective at reducing non-compliance
* whether, where there are ongoing concerns about family violence, the risk of penalties deter contraventions or inhibit parties in seeking court protection.

Should reform of the enforcement regime be implemented, this research will also provide baseline evidence against which the impact of any reforms could be measured.

1.3 Research questions

This research is intended to address the following research questions, which were originally formulated by the Australian Government Attorney-General’s Department and have subsequently been refined by the Australian Institute of Family Studies (AIFS) research team in consultation with the commissioning agency, ANROWS, and the Australian Government Department of Social Services.

Ten research questions are addressed by this mixed-method project. Aspects of research questions 1, 2, 9 and 10 were addressed in the first project report (Kaspiew et al., 2022). The discussion in Chapter 6 in this report will address the research questions on the basis of data from all four elements of the research program:

1. What are the leading causes of non-compliance with family law parenting orders? How frequently are allegations of family violence and sexual abuse raised as justifying breaches of parenting orders? Had these concerns also been raised during the application and trial for parenting orders?
2. How do parents respond to non-compliance with parenting orders? What are the characteristics of parents who lodge contravention applications?
3. What is the proportion of contravention matters where there is alleged violence that are sought to be enforced by mothers as compared to by fathers?
4. What are the characteristics (personal and socio-demographic) of parties (applicants and respondents) who report family violence and/or child safety concerns and are involved in contravention proceedings?
5. How many parties (applicants and respondents) involved in contravention proceedings are self-represented? What are the personal and socio-demographic characteristics of those who self-represent? How common are allegations and/or findings in relation to family violence and/or child abuse in relation to parties who self-represent (applicants and respondents)?
6. In the court’s consideration of the contravention/enforcement application, how much consideration or exploration is there of allegations and evidence of violence?
7. Where contravention proceedings are brought, what decisions are judges making (e.g. changing the orders, enforcing the orders, punishing the non-compliant party)?
8. Is there a particular trend in terms of a court response when family violence is used as a reasonable excuse to defend a breach? For example, are there penalties for the breach, or is it more likely that orders are changed in favour of those alleging family violence?
9. Is there any evidence that tougher penalties or enforcement are effective at reducing the incidence of non-compliance?
10. For those matters where there are ongoing concerns of family violence, does the risk of penalties deter parties from contravening orders or seeking the protection of the courts through a change of orders?

1.4 Structure of this report

This report has six further chapters. The next chapter outlines the statutory framework, followed by a discussion of the existing research evidence. Chapter 3 outlines the methodology and presents the findings of the SoP&C. Chapter 4 outlines the methodology and presents the findings for the court file and judgment review. Chapter 5 examines approaches to enforcement in selected international jurisdictions. Chapter 6 presents a summary and discussion of the findings and Chapter 7 presents the conclusion and a discussion of the implications of the findings for policy and practice.

2 The statutory framework

This chapter provides an overview of the statutory framework for making parenting orders and dealing with enforcement of parenting orders. As noted above, a program of reform is under development, following the 2019 ALRC inquiry and three parliamentary inquiries between 2017 and 2021 (conducted by the House of Representatives Standing Committee on Social Policy and Legal Affairs in 2017 and 2021, and by the Joint Select Committee in 2021). The description in this report is accurate as at June 2022.

2.1 Parenting orders

Legislative framework

The substantive framework for making parenting orders was shaped by the 2006 family law reforms, which were intended to encourage shared parenting after separation and to steer parents away from litigation as a means of resolving parenting disputes (Kaspiew et al., 2009). Limited reforms introduced in 2012 were intended to strengthen focus on protecting children from harm from exposure to family violence and child abuse (Kaspiew, Carson, Dunstan et al., 2015a).

Part VII of the FLA sets out the legislative framework for making parenting orders, with enforcement provisions contained in div 13A. Some provisions in relation to enforcement, including court powers to issue warrants, are set out in sub-divs C and D of div 6 in pt VII. It should be noted that the framework has been subject to much critique (e.g. Fitch & Easteal, 2017; Kaye et al., 2021; Rathus, 2007. See also JSC, 2021, rec 19, p. xii; ALRC, 2019, rec 42, p. 21). As noted, the ALRC has made recommendations to simplify the framework considerably (Recommendation 7; ALRC, 2019), which the government has accepted (Australian Government, Attorney-General’s Department, 2021a).

For parenting orders, the child’s best interests are the paramount consideration (s 60CA), with factors relevant to the best interests analysis outlined in two further sets of provisions. Two primary considerations – the child’s right to a meaningful relationship with both parents after separation and their right to be protected from harm from exposure to family violence and child abuse – are set out in section 60CC(2). In the 2012 amendments, a further provision was introduced specifying that in the event of a conflict between these two primary considerations, protection from harm was to be given greater weight: s 60CC(2A). A further set of considerations, described as “additional” considerations and added in the 2006 family law reforms, is contained in section 60CC(3). These include any views expressed by a child: s 60CC(3)(a); the nature of the child’s relationship with each parent and other significant people such as grandparents: s 60CC(3)(b); the capacity of parents and other people to provide for the child’s needs: s 60CC(3)(f); and any family violence involving the child or a member of the child’s family: s 60CC(3)(j).

A key aspect of the 2006 reforms was the introduction of a presumption of equal shared parental responsibility (s 61DA). This presumption is rebuttable on the basis of evidence that satisfies a court that its application may not be in a child’s best interests: s 61DA(4). It is not applicable where there are reasonable grounds to believe that a parent (or someone that they live with) has engaged in child abuse or family violence: ss 61DA(2)(a)–(b). Where orders for shared parental responsibility are made pursuant to the presumption, courts must also consider whether it is in the child’s best interests to make orders for substantial and significant time or equal time (s 65DAA). Grounds for not making such orders are that they are not in a child’s best interests and that they are not reasonably practicable: s 65DAA(5).

Although pt VII includes provisions requiring various kinds of information to be provided to litigants in parenting matters (e.g. s 62B creating obligations on courts to inform people about family counselling and family dispute resolution), it does not create any explicit obligations on courts, advisors or legal representatives to explain obligations created by court orders and the consequences if these obligations are not fulfilled. Nonetheless, the Federal Circuit and Family Court of Australia (FCFCoA) – and previously the Federal Circuit Court of Australia (FCCoA) and the Family Court of Australia (FCoA) – informed prospective parties that if the contravention application was not seeking that the other party be “punished” (e.g. fined or imprisoned) for the breach, but rather wanted to ensure the resumption of the arrangements set out in an earlier order, then an [Application – Enforcement](https://www.anrows.org.au/publication/no-straight-lines-self-represented-litigants-in-family-law-proceedings-involving-allegations-about-family-violence/) rather than an Application – Contravention should be filed (with an Application in a Case previously recommended as the preferred alternative form).[[2]](#footnote-2)

Patterns in parenting orders

Court orders generally deal with time arrangements and the allocation of parental responsibility. Family violence and other risk issues are relevant to a majority of families who resolve their disputes through lawyers and courts (see Kaspiew, Carson, Dunstan et al., 2015a, Table 2.2), and allegations concerning family violence and child abuse are raised in a majority of litigated matters (see Table 3.13, Kaspiew, Carson, Qu et al., 2015). In matters that judges decide, orders for sole parental responsibility to one parent (usually the mother) are more common than orders for shared parental responsibility (45% cf. 40%: see Table 3.25, Kaspiew, Carson, Qu et al., 2015). In matters where consent orders are made reflecting negotiated or agreed outcomes, the vast majority involve shared parental responsibility (92% to 94% of consent without litigation and consent after proceedings matters respectively; see Kaspiew, Carson, Dunstan et al., 2015b, Table 3.25 and Table 3.33). In relation to time, most judge-made and agreed or negotiated outcomes involve children living and spending most of their nights with one parent (usually the mother) and staying with their other parent (usually the father) regularly for up to 34 per cent of nights (see Kaspiew, Carson, Qu et al., 2015, Table 3.30, Table 3.31 and Table 3.32). Orders for shared time (defined as a division of between 34% and 65% of nights between parents) are made in just under one fifth of judge-made orders (17%) and are most common in orders made entirely by consent with no litigation (33%). Orders made after litigation has started but without a judicial decision involve shared time in 15 per cent of cases (Kaspiew, Carson, Qu et al., 2015). Empirical research prior to this current study has also indicated deficiencies in the consideration of family violence when making parenting orders (e.g. Carson, 2012; Douglas, 2021; Kaspiew, 2005; Kaspiew et al., 2009; Kaspiew, Carson, Dunstan et al., 2015a; Kaspiew et al., 2017; Kaye et al., 2003).

The enforcement regime in div 13A of pt VII

As outlined in the earlier report for this project (Kaspiew et al., 2022), the court’s powers in relation to non-compliance with parenting orders are set out in FLA pt VII, div 13A. The court’s powers in relation to contravention operate where a parenting order is not complied with in circumstances where a party subject to the order has intentionally failed to comply with it or has made no reasonable attempt to comply with it (FLA s 70NAC). Parties against whom a claim of contravention is made may argue that they had a reasonable excuse to contravene the parenting orders (s 70NAE). Circumstances in which a reasonable excuse may be established include those where the party alleged to have committed the contravention can show they did not understand the obligations established (s 70NAE (2)) or they believed on reasonable grounds that the contravention was necessary to protect the health and safety of a person, including the child who is the subject of the order: ss 70NAE(4)–(7). The civil standard of proof, the balance of probabilities, applies to these determinations: ss 70NAF(1)–(2).

As outlined in the earlier report, under sub-divs E and F of div 13A of pt VII, different responses are set out for “less serious” (sub-div E) and “more serious” contraventions without reasonable excuse (sub-div F). Of note, s 70NFB of the FLA provides that the powers of the court in relation to contraventions range from the enforcement of the provisions of a parenting order to the punishment of a person for failure to obey an order. Orders that may be made in these proceedings include orders providing for:

* the resumption of the arrangements set out in an earlier order
* a further order to compensate a person for lost time with the child/children
* the variation of an existing order
* placing a person on notice that if the person does not comply with an order, the person will be punished
* punishing a person by way of a fine, community service order (see FLA s 70NFD), bond (e.g. to attend counselling or family dispute resolution [FDR]; see FLA s 70NFE) or imprisonment (see FLA s 70NFG).

Particular criticism has been directed at div 13A, pt VII for being complex, lengthy and difficult to understand and apply (Chisholm, 2018). By reference to the work of Rhoades (2004), Chisholm (2018) criticises the complexity of the three-tier approach that constructs the tiers as successive stages of a single regime, rather than as different approaches that may be applicable in particular situations. Furthermore, Chisholm (2018) comments at length on the problematic drafting of the current legislation, evidenced by various problems readers of the legislation face:

* unnecessarily long sections containing subsections dealing with different topics
* to understand one provision often requires readers to refer to or remember other provisions
* repetitious statements of the law
* the sequence of topics in certain sections is not intuitive
* the statute’s complicated wording.

Additionally, Chisholm (2018) suggests the unnecessary overlap of div 13A matters with other parts of the FLA adds to this complexity.

Process for contravention applications

An Application – Contravention form is used in the FCFCoA when a party is alleging a breach of a parenting order under div 13A and seeking an order from the court imposing a punishment or other consequence on a person for the breach. As outlined in the earlier report for this project (Kaspiew et al., 2022), in Western Australia, parties in parenting matters where there has been non-compliance can lodge a Contravention Application (Form 18) setting out the precise details of the alleged contravention/s or an enforcement application in the form of an Application in a Case (Form 2) as a means of enforcing the parenting orders made. When requisitions are made (where the applicant has not met the formal requirements of the application) or in the course of hearing the application, the court may inform the parties of the alternative means of addressing non-compliance via the Application in a Case process. In these circumstances, the intention is to enforce the orders as opposed to having the contravening party sanctioned in accordance with the contravention regime. The Western Australian process also involves the facilitation of a without-prejudice conference with a registrar to support the parties to resolve the issues that are the subject of the contravention application. This process supports the parties to understand the content of the parenting orders and their obligations pursuant to the orders or to support the resolution of issues emerging in the implementation of the orders at this early stage in the contravention application process.

Two recent developments in the system are also relevant in considering the discussion presented in this section. One is the implementation of a new National Contravention List. The other concerns legislative amendments to vexatious litigant provisions.

The FCFCoA introduced the National Contravention List on 1 September 2021. This list is administered by registrars who triage and assess contravention matters and allocate them to senior judicial registrars or judges where necessary. The key objectives of the National Contravention List were identified as follows (FCFCoA, 2021a):

* to efficiently deal with applications on a national basis in a timely, cost-effective and safe way for all litigants with applications to be given a first return date within 14 days of filing to ensure compliance with court orders by all parties
* to impose appropriate penalties or sanctions where a contravention has been proved and where a party has failed to demonstrate they had a reasonable excuse for non-compliance with court orders
* to proactively facilitate the resolution of underlying issues in disputes that lead to the filing of such applications
* to triage appropriate matters to dispute resolution
* to be responsive to a party’s wishes to resolve matters without recourse to additional litigation.

Vexatious proceedings

In relation to vexatious proceedings, amendments to the FLA introduced by the Federal Circuit and Family Court of Australia Act 2021 (Cth) (FCFCAA), that came into force on 1 September 2021, include provisions for the FCFCoA (div 2) to make an order that prevents an applicant who is subject to a vexatious proceedings order from instituting a proceeding that is subject to the order without a grant of leave (FCFCAA s 242). The provisions are identified as reasonable and necessary to protect the integrity of the court system; to protect applicants who may be adversely affected by vexatious litigants; and accordingly to improve access to justice for non-vexatious litigants and ensure that court resources are allocated usefully and efficiently (Explanatory Memorandum, Federal Circuit and Family Court of Australia Bill 2019 (Cth), p. 11).

2.2 Existing research evidence

This section summarises insights from existing empirical research in three main areas: the contravention regime in Australia; the needs of children in separated families who have used the family law system; and the use of the legal system in the context of family violence.

The contravention regime in Australia

Prior to this research project, there was no recent empirical research on the current contravention and enforcement regime in Australia. One study, which examined the operation of the amendments introduced by the Family Law Amendment Act 2000 (Cth) in the first 18 months after adoption, surveyed parties to contravention matters (n=195) and service providers who operate parenting programs (n=11), as well as judges (n=10; Rhoades, 2004). Rhoades concluded that the empirical data demonstrated the compliance regime “was a landscape in tension” that “angered some consumers by failing to punish parents who breach court orders, and disappointed others with its ‘one size fits all’ approach” (2004, p. 16). The study also highlighted dissatisfaction with the regime among both resident and non-resident parents. The former group (resident parents) considered the system failed to “understand harassment and violence and to protect children from abusive parents” (Rhoades, 2004, p. 14). The latter group (non-resident parents) considered that resident parents who breached parenting orders were treated too leniently and called for the application of more punitive responses.

As noted in the earlier report for this project (Kaspiew et al., 2022), an earlier study by Rhoades examined the contravention regime prior to the amendments in 2000. It was based on 100 court files that were listed for hearing for enforcement in 1999 and found that the most common underlying issues were the resident parent’s concern about the “child’s safety” or about the “contact parent’s parenting capacity”, with outcomes generally not resulting in findings of breach but rather resulting in a variation in parenting arrangements (Rhoades, 2002, p. 3).

As outlined above, since 2000, two significant sets of reforms have changed the legislative framework for parenting matters and made adjustments to the contravention regime: the 2006 shared parenting reforms and the 2012 family violence amendments to the FLA.

Limited research evidence on contravention following these amendments includes a recent evaluation (Clancy et al., 2017) of two pilot programs intended to encourage compliance with court orders and divert families from contravention proceedings. This study highlighted the following dynamics among a “significant proportion” of the 160 adult clients who used the program: “power imbalance, controlling and abusive behaviour including emotional and physical family violence, significant loss and trauma, financial hardship and mental illness and substance use” (p. 48).

Children and young people in separated families

Recent qualitative research on the needs of children and young people in separated families (the CYPSF study; Carson et al., 2018) provides general insight into compliance with parenting orders. Half of the parents of children and young people participating in the CYPSF study reported safety concerns for themselves and/or their children as a result of ongoing contact with the other parent (Carson, Dunstan et al., 2018). The results suggest that if the process for developing parenting orders is not attentive to a child’s needs, then compliance with the orders may be susceptible to difficulties. Children and young people who participated in the CYPSF study identified a need for parenting arrangements to reflect safety concerns (Carson, Dunstan et al., 2018).

Another recent study that included interviews with 68 children and young people in separated families also highlighted the implications of family violence for their ongoing care needs, with more than half of the children and young people experiencing past or ongoing family violence (Campo et al., 2020). The authors concluded that the findings show a need for a consideration of safety issues that is wider than a focus on risk.

Safety – emotional and physical, as protection and the basis for autonomy and growth – is a core component of many children and young people’s lived experience post-separation and needs to be valued and recognised as such. (Campo et al., 2020, p. 317)

Family violence and the use of the legal system

In the context of the characteristics of families who use courts to resolve their matters, findings from recent research focused on various implications of engagement with legal systems and services where there has been a history of family violence are informative (Kaspiew et al., 2017). This section highlights findings of relevance to those set out in this report in three areas: the way that legal processes can be used to maintain abuse; the experiences of SRLs; and the impact of engagement with legal processes on people who have experienced trauma as a result of abuse.

Legal processes and family violence

As noted, a significant amount of research has drawn attention to the difficulties that women who have experienced family violence face in engaging with legal processes in a range of contexts (e.g. Easteal et al., 2018; Fitch & Easteal, 2017; Kaye et al., 2021). A recent longitudinal study by Douglas (2021) detailed the experiences of 65 women who used a range of legal processes including personal protection orders and family law jurisdictions. For the purposes of this discussion, there are three particularly pertinent themes in her work: the financial implications of needing to use justice services; limited understanding of family violence among decision-makers; and the capacity for legal processes to be used as an extension of the abuse.

Women with private legal assistance faced “mounting debts” which they attempted to meet by undertaking strategies that further entrenched their financial insecurity (such as taking out loans and accessing superannuation; Douglas, 2021, p. 158). The women interviewed also reported significant secondary financial costs associated with legal proceedings including the cost of obtaining evidence, taking time off work and filing material with the courts (Douglas, 2021). For many women, the cost of legal representation, coupled with the threat of cost orders, operated as a powerful incentive to withdraw from litigation or settle for inappropriate or unsafe outcomes (Douglas, 2021). This concern was particularly prevalent in family court litigation, with some women deciding not to enforce court orders regarding child contact due to the expense of doing so (Douglas, 2021).

The research highlighted a lack of understanding among judges of the dynamics of intimate partner violence and how the legal system could serve as an extension of this abuse, as evidenced by their minimisation of non-physical violence and assumptions intimate partner violence was a “relationship issue” that would not continue post-separation (Douglas, 2021, pp. 189–190). Specifically, in the family court, judges often prioritised fathers’ rights to contact with children over safety concerns, with mothers being perceived as “doing the wrong thing” by challenging this contact (Douglas, 2021, pp. 187, 198). This has consequences for compliance with family court orders: four women in the study reported breaching family court orders to keep children safe from abuse in circumstances where the court had recognised the existence of intimate partner violence yet still ordered unsupervised contact to the father (Douglas, 2021).

Many women in the study reported their ex-partners’ misuse of the legal system as a “weapon” or “playground” to control the women’s lives post-separation (Douglas, 2021, pp. 166–167; see also Kaspiew et al., 2017; Salter et al., 2020; Wangmann et al., 2020). Characteristic of legal systems abuse, ex-partners would employ “delay tactics” (such as requesting numerous adjournments, serving documents late, initiating multiple applications and delaying instructions to lawyers) as an “ongoing strategy of coercive control and financial abuse”, which significantly augmented women’s stress and financial insecurity (Douglas, 2021, pp. 153, 161, 166, 181). Further, some women reported their ex-partners’ legal representatives would actively facilitate this abuse by behaving unethically or inappropriately towards them (e.g. by contacting the women directly rather than through their lawyers; Douglas, 2021).

For most women, this systems abuse was compounded by the judicial officers involved and the “legal system’s failure to acknowledge this behaviour” (Douglas, 2021, p. 167). Furthermore, judges did not control misuse of the legal system by failing to manage court proceedings efficiently and recognise acts of systems abuse (e.g. judges may give abusers more time to speak than necessary or allow them to subpoena the victim’s friends and family; Douglas, 2021). Many women also reported judges’ lack of preparation for family court matters as problematic – not only did this limit judges’ understanding of the abuse history and therefore their capacity to recognise and prevent systems abuse, but it also placed additional stress on the victims by requiring them to retell their experiences, resulting in secondary abuse (Douglas, 2021).

Self-representation

Wangmann and colleagues’ (2020) report analyses the intersection of family violence and self-representation in proceedings in the FCoA and the FCCoA. This qualitative study used a multimethod approach comprised of semi-structured interviews with self-represented litigants (SRLs) and professionals in family law proceedings, and intensive case studies examining individual cases where at least one party was self-represented (Wangmann et al., 2020).

An overwhelming majority of participants in this study felt SRLs were “disadvantaged in a system premised on a model of legal representation” (Wangmann et al., 2020, p. 14). Most SRLs lacked the requisite knowledge and skills to handle their cases, were inadequately prepared for court and had misaligned expectations of how their case would progress (Wangmann et al., 2020). Among the consequences of these were difficulties in managing negotiation. Many SRLs characterised their outcomes as “the product of institutional pressure” (Wangmann et al., 2020, p. 146). This was particularly prevalent in cases of family violence where victims agreed to unsafe orders to placate perpetrators (Wangmann et al., 2020). Furthermore, SRLs reported agreeing to outcomes they did not necessarily understand due to bullying by the other party’s lawyer and the prospect of increased costs if litigation continued (Wangmann et al., 2020). Almost all SRLs interviewed alleged being subjected to family violence (Wangmann et al., 2020). Notably, these reports of family violence went beyond intimate partner violence, with both women (16/24) and men (7/11) reporting violent behaviours towards children by former partners in the post-separation period (Wangmann et al., 2020). Both male and female SRLs also alleged former partners would withhold or prevent children’s contact as a form of abuse post-separation (Wangmann et al., 2020).

Seventeen of the 243 matters in the intensive case study sample involved contravention proceedings, of which the majority had a background of family violence (14/17; Wangmann et al., 2020, p. 15). In five cases, the alleged contravention was the mother’s failure to facilitate the father’s time with the children (Wangmann et al., 2020). In some of these cases, the SRL mothers explained the contravention was due to concerns about the fathers’ ability to adequately care for the children, including concerns regarding child safety (Wangmann et al., 2020). Three women who allegedly contravened parenting orders identified the contravention proceedings as legal systems abuse (Wangmann et al., 2020).

Overall, SRLs found contravention proceedings difficult without legal assistance, with several SRLs making errors in the process (Wangmann et al., 2020).[[3]](#footnote-3) Analogous to other family law matters analysed in this study, SRLs required guidance to adequately manage their contravention proceedings; however, judicial officers could only offer limited assistance, resulting in hardship for SRLs (Wangmann et al., 2020).

The research by Wangmann and colleagues highlighted some specific implications of self-representation in the context of family violence. Firstly, as reported by professionals and female SRLs, some perpetrators deliberately chose to self-represent as this enabled them to use the court system as a tool to continue abuse (Wangmann et al., 2020). This is consistent with the finding that several self-represented victims of family violence experienced a continuance of violence in the court precinct in the form of legal systems abuse post-separation (Wangmann et al., 2020). Without the buffer of a lawyer, this violence is experienced directly and is often not recognised or acted upon by the court (Wangmann et al., 2020). As a result, the ability of self-represented victims to effectively present their case is limited. Secondly, without a lawyer, many self-represented victims of violence were unaware of, and thus unable to utilise, the safety measures available at family law courts (Wangmann et al., 2020). Thirdly, without legal assistance, self-represented victims faced difficulties documenting their experiences of violence in a form recognised by the court, ultimately jeopardising the quality of their evidence and the outcome of the case (Wangmann et al., 2020). Difficulties included filing affidavit material that did not comply with court rules and failing to issue subpoenas for relevant evidence.

Douglas’s (2021) research has also shed some light on self-representation and family violence. Although self-represented women in her study experienced difficulties, some women reported advantages in being self-represented, namely the opportunity to manage their cases in ways advised against by lawyers due to ethical reasons. However, for some women in the study, being self-represented was a disadvantage in the family court as the other party’s legal representative would use their knowledge to “forum shop” and get the “right judge” for the matter (i.e. a judge whose understanding of and response to IPV would suit the abuser’s case; Douglas, 2021, p. 186).

Trauma

Given most family court cases involve allegations of child abuse and/or domestic violence (Kaspiew, Carson, Qu et al., 2015), trauma is a “core component” of the family law system (Salter et al., 2020, p. 113). However, research has highlighted that the family law system fails to adequately recognise and respond to trauma and safety concerns (Salter et al., 2020). Women reported not being believed or supported when reporting trauma and abuse in the family law system (Salter et al., 2020). Study participants reported being labelled as “crazy,” with this failure to recognize trauma resulting in dismissive, punitive, and ineffectual responses (Salter et al., 2020, p. 113). Salter et al. (2020) argue these perfunctory responses to trauma are problematic for several reasons: survivors are disempowered as their trust and self-confidence is weakened, their experiences of trauma are magnified and the likelihood of them seeking help in the future is reduced. As a result, many women are “worse off financially and psychologically for their contact with the legal process” (Salter et al., 2020, pp. 9, 107). For example, many survivors are forced into a “catch-22 situation” where they are penalised for attempting to protect their children from an abusive parent (Salter et al., 2020, p. 98). In these cases, it appears the family law system “effectively undermine[s] [its] own intended functions” (Salter et al., 2020, p. 113).

Key insights on compliance and enforcement from family law system professionals

Findings based on the professionals study set out in the earlier report for this project (Kaspiew et al., 2022) indicate that non-compliance arises from a complex range of issues, with the following five overlapping themes identified as particularly significant:

1. The dynamics arising from family violence and safety concerns are highly relevant to non-compliance with parenting orders. Nearly half of the survey participants reported that three quarters or more of their clients seeking advice about contraventions were affected by family violence and almost one quarter said safety concerns were relevant for three quarters or more (see Kaspiew et al., 2022, Figure 5).
2. Children and young people have limited opportunities to participate when decisions are made about parenting orders, and there is a lack of flexibility in orders to accommodate their changing needs over time. The lack of flexibility was identified by around three quarters of survey participants, and more than three quarters identified children’s refusal to comply as a reason for non-compliance (Kaspiew et al., 2022, p. 80).
3. A substantial proportion of participating professionals identified that difficult relationship dynamics involving intractable or inflexible behaviour by the parties characterised the cases involving non-compliance. In some cases, these behaviours were a manifestation of, or a response to, violence or safety concerns (Kaspiew et al., 2022, p. 80).
4. Professionals identified that poorly formulated orders in a technical or a substantive sense were related to non-compliance. Nearly three quarters of participants identified “misunderstanding about the meaning of orders” as an issue for clients seeking advice with compliance and nine out of 10 professionals identified that simple and clearly worded orders would support better compliance (Kaspiew et al., 2022, p. 81).
5. A majority of professionals identified the contravention regime as ineffective in deterring non-compliance, with the financial and personal costs and complexity of engaging with court processes indicative of a contravention regime that does not meet the needs of families (Kaspiew et al., 2022, p. 82).

3 Survey of parents and carers

This chapter focuses on the experiences of parents and carers in relation to compliance with family law parenting orders. The discussion is based on the responses of 470 parents and carers who completed an online survey. The survey collected data on the causes of non-compliance, how parents respond to non-compliance, participants’ views of the effectiveness of the contravention regime and their knowledge of remedies under the regime.

Key findings from the SoP&C include:

* Relationships between former partners characterised by fear, coercion and control or described as highly conflictual were common among this sample. Women were more likely than men to describe their relationship as “fearful” (37% cf. 20%) and men were likely to describe their relationships as involving “lots of conflict” (55% cf. 42%).
* Most participants had made parenting orders using a litigation pathway, with the orders made either by consent after litigation had commenced (57%) or by a judge after a trial (33%).
* Most parents reported having orders for shared parental responsibility (64% of men and 61% of women) and arrangements where children spent most of the time with the mother and regular overnight time with the father (13%: 19% women and 2% men).
* Just over half of participants indicated that children were spending less time with one parent than allowed for in the orders on a regular basis, meaning child support assessments were no longer appropriate for half of this group. Nonetheless, almost half of this group indicated they had not sought a new assessment.
* Almost nine in 10 parents indicated non-compliance with parenting orders had occurred, with 80 per cent indicating these breaches were serious.
* Participants most commonly attributed breaches by the other parent to difficult or vindictive (80%) or abusive or controlling (80%) behaviour. The next most commonly cited reason (16%) was a refusal on the part of the child to follow the orders.
* Two thirds indicated they had not taken action in relation to breaches, with this response more common for women (71%) than men (54%).
* Reasons why no action was taken indicate many participants felt taking action would be futile or too costly, or would invoke a violent response from the other parent.
* Most parents reported their parenting orders were easy to understand (76%). Awareness of non-punitive options for addressing non-compliance was higher than for punitive options.

The discussion below commences with an explanation of the methodology applied in this element of the research, followed by the findings.

3.1 Fieldwork

The SoP&C involved a national online survey of parents and carers who had obtained parenting orders by consent or by judicial determination on or after 1 June 2016. Participants were not required to have been involved in contravention proceedings to participate in the survey. With the approval of the FCFCoA, the Family Court of Western Australia (FCoWA) and the required research and ethical clearance bodies,[[4]](#footnote-4) survey participants were asked to provide the court file case number that corresponded with their parenting order to ensure that the sample only included parents and carers who had court orders (whether these orders were made by consent or judicial determination). These court file case numbers were cross-checked with court records to verify the sample. No information other than the validity of the case number was sought from the courts and potential participants were informed of this process. Potential participants were also informed of the data storage and destruction arrangements applicable to the court file case numbers. Additionally, survey participants were offered the opportunity to go into the draw to receive one of 10 $100 supermarket vouchers as a thank you for participating in the survey.[[5]](#footnote-5)

The voluntary, opt-in survey of 20 to 30 minutes’ duration was available for completion between June and October 2021 by accessing the survey link in our web-based project information sheet that was circulated by family law system service stakeholders. The survey examined the views and experiences of parents and carers with parenting orders regarding:

* the process for making their parenting orders
* their understanding of the orders made
* their level of satisfaction with this process and with the arrangements made
* any concerns about compliance with parenting orders
* their understanding of consequences of not complying
* their responses to non-compliance.

Survey questions also captured data about the wellbeing of children subject to the parenting orders and the nature of the relationship between the parties, including in relationships characterised by family violence.

3.2 Sample

The online survey was fully completed by 436 participants and an additional 171 participants provided partially completed survey responses. Of the partially completed surveys, 34 were completed to a sufficient extent to be included in the final sample of 470. In this sample, the court file case numbers of 379 were able to be verified, with an additional 91 included in the sample where there were sufficient details provided for the research team to assess the validity of the survey response.

The sample was comprised of 98 per cent parents and 2 per cent carers. Approximately one third of participants were male, with two thirds indicating that they were female. Almost half of the participants were aged between 35 and 44 years (49%), with over one quarter of participants (28%) aged 45 to 54 years, and a small number (3%) reporting that they were aged 55 or older. A substantial proportion (19%) were aged 25 to 34 years. The vast majority of participants reported having post-secondary school qualifications, with 43 per cent reporting that they held a degree or higher qualification and 38 per cent reporting that they held a certificate, diploma or advanced diploma. Almost one half of participants reported being in the lowest third income category (44%), with one quarter in the middle income category and just under one third in the highest third income category (31%). Of note, female participants were younger and more highly educated but in receipt of lower income compared to male participants, to a statistically significant extent (see Table A1).

Most participants (87%) reported that they were born in Australia and 6 per cent identified as Aboriginal or Torres Strait Islander. Participants across all states and territories took part in the survey. Almost one third of participants were from Queensland (29%), just over a quarter (26%) were from New South Wales, and 24 per cent were from Victoria. There were smaller proportions from the other states and territories with 7 per cent from Western Australia, 5 per cent each from South Australia and Tasmania, and 3 per cent and 2 per cent from the Australian Capital Territory and the Northern Territory, respectively.

3.3 Data analysis

The quantitative data in this report have been analysed using descriptive analysis techniques including the presentation of one-way frequencies and cross-tabulations. Bivariate analysis compared outcomes between different characteristics or time periods (e.g. pre-COVID-19 and COVID-19) and whether differences between groups were statistically significant (assessed using McNemar’s chi square test). Unless otherwise indicated, survey items from the SoP&C were asked of all participants.[[6]](#footnote-6) Where participants did not answer a survey question, these missing values have not been included in the reported findings.

In relation to the qualitative data analysis for the open-text survey responses, a process of initial open coding was undertaken to identify the key themes and patterns in the data. This was followed by further theoretical and selective coding to examine similarities and variances between the emerging themes and patterns, which led to the development of the core themes – those with the highest frequency and most relevance to the examination of the research questions (Charmaz, 2000; Dey, 1999; Janesick, 2000; Kelle et al., 1998; Punch, 1998; Ryan & Bernard, 2000). The NVivo qualitative software program was used to undertake the coding of qualitative survey data for these analyses.

3.4 Limitations

As this component of the study is based on an opt-in sample for the online survey, it is unclear how representative the experiences are of parents with parenting orders in the reference period.[[7]](#footnote-7) The summary at the end of this chapter draws on research based on representative samples (Kaspiew, Carson, Dunstan et. al., 2015b) to contextualise the findings in key areas. Even though this is not a representative sample, it provides insight into the dynamics of non-compliance with parenting orders and parents’ views of the system.

3.5 Survey of parents and carers: Findings

This discussion of the substantive findings from the SoP&C starts with family and relationship characteristics, including participants’ reports on fear, coercion and control. The sections that follow deal respectively with:

* the process aspects of how their parenting orders were made, including satisfaction with different pathways
* the substantive parenting arrangements reflected in the orders, including whether non-compliance occurs, participants’ knowledge of the law in relation to non-compliance, how they respond to non-compliance, and views on how responses to non-compliance could be improved
* child wellbeing and participants’ satisfaction with their relationships with their children.

A summary and discussion of the findings in the context of other research concludes the chapter.

3.6 Family and relationship characteristics

Relationship type and duration

As noted above, most of the sample (98%) identified themselves as parents rather than non-parent carers of the children subject to the parenting orders. The majority of the sample (88%) indicated they had lived with the other parent, with a minority saying they had never lived with the child’s other parent (12%; data not shown, noting that there were negligible gender differences).

There was considerable variation in the length of relationships reported by participants (data not shown). The three most common duration ranges were between three and seven years (28%), more than seven and less than 12 years (25%), and 12 or more years (27%). Men were more likely than women to indicate a relationship duration in the shortest bracket (less than three years, 25% cf. 17% of women) but this was not statistically significant. Otherwise, gender differences were negligible.

Children subject to parenting orders

It was more common for participants to have more than one child who was subject to the parenting orders than it was to have only one child subject to the parenting orders (data not shown). Thirty-seven per cent of participants had two children and 22 per cent had three or more. The proportion that had only one child was 43 per cent. Gender differences were not statistically significant.

Relationship quality

To gain insight into the personal dynamics associated with problems with compliance with parenting orders, parents were asked about the extent to which they would associate the characteristics of fear, coercion and control with the relationship prior to and after separation. They were also asked about the quality of their relationship with the other parent at present.

To assess current relationship quality, participants were asked to choose one of five descriptors for the nature of the relationship with their former partner, based on an approach used previously in AIFS studies (Kaspiew et al., 2009; Kaspiew, Carson, Dunstan et al., 2015b; Qu et al., 2014; see also further below). The descriptors were “friendly”, “cooperative”, “distant”, “lots of conflict” and “fearful”. The majority of participants chose negative descriptors, with statistically significant differences between men and women. Men were more likely than women to choose the “lots of conflict” descriptor (55% cf. 42%) and women were more likely to choose the “fearful” descriptor (37% cf. 20%).

Fear, coercion and control pre-separation

It was not uncommon for parents to indicate that in their relationship with the other parent they felt fearful prior to separation (Table 1). There were gender differences in the frequency with which they indicated feeling fearful. Women were much more likely than men to indicate feeling fearful “always” (39% cf. 17%) and this difference was statistically significant. Overall, fear was commonly associated with pre-separation relationships, with only 7 per cent of the sample indicating they “never” felt fear and 8 per cent of the sample indicating feeling it “rarely”.

Participants were asked to indicate how fearful the pre-separation behaviour made them feel on a scale of 0 (not at all) to 10 (extremely). The mean response was 8, with no statistically significant gender differences.

In relation to coercion and control pre-separation, there were statistically significant differences between men and women in the extent to which they indicated their partner’s behaviour “always” made them feel coerced or controlled (Table 1). Almost two thirds of women (64%) nominated this frequency, compared with 45 per cent of men. As with fear, feelings of being coerced and controlled were common in this sample, with only 2 per cent, respectively, either “never” or “rarely” reporting feeling this way.

Asked to indicate the intensity with which they experienced feelings of being coerced or controlled (0 being not at all and 10 being extremely), the mean score was 8.

**Table 1:** SoP&C: Fearful, coercive and controlling behaviour before separation, by gender

Fearful (before separation)

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Response | Male  No. | ****Male****  ****%**** | Female  No. | ****Female****  ****%**** | Total  No. | ****Total****  ****%**** |
| Always | 25 | **16.9** | 110 | **38.5** | 135 | **31.1** |
| Often | 46 | **31.1** | 106 | **37.1** | 152 | **35** |
| Sometimes | 38 | **25.7** | 41 | **14.3** | 79 | **18.2** |
| Rarely | 19 | **12.8** | 17 | **5.9** | 36 | **8.3** |
| Never | 17 | **11.5** | 11 | **3.8** | 28 | **6.5** |
| Do not know/cannot say | 3 | **2.0** | 1 | **0.3** | 4 | **0.9** |
| **Total** | 148 | **100** | 286 | **100** | 434 | **100** |

****Controlled or coerced (before separation)****

| Response | Male  No. | ****Male****  ****%**** | Female  No. | ****Female****  ****%**** | Total  No. | ****Total****  ****%**** |
| --- | --- | --- | --- | --- | --- | --- |
| Always | 67 | **44.7** | 183 | **63.5** | 250 | **57.1** |
| Often | 49 | **32.7** | 64 | **22.2** | 113 | **25.8** |
| Sometimes | 25 | **16.7** | 28 | **9.7** | 53 | **12.1** |
| Rarely | 2 | **1.3** | 7 | **2.4** | 9 | **2.1** |
| Never | 5 | **3.3** | 5 | **1.7** | 10 | **2.3** |
| Do not know/cannot say | 2 | **1.3** | 1 | **0.3** | 3 | **0.7** |
| **Total** | 150 | **100** | 288 | **100** | 438 | **100** |

Fear, coercion and control post-separation

Focusing on post-separation relationships, some differences in patterns are evident in relation to fear and coercion and control (Table 2). In relation to fear, a statistically significant difference in the proportions of men and women indicating their former partner “always” made them feel this way was evident (30% men cf. 41% women). Mean scores for intensity were similar at 8.1.

In relation to behaviour invoking feelings of being coerced and controlled, statistically significant gender differences were not apparent in relation to responses for the post-separation time frame (Table 2). The proportion of men indicating their former partner’s behaviour “always” made them feel this way was 55 per cent compared with 51 per cent of women. The mean response for intensity was 9. More detailed analysis of these data indicate that of participants who reported that they were “always” controlled or coerced before separation, 68 per cent reported that they were “always” controlled or coerced after separation, with nearly a quarter indicating that this was “often” the case (data not shown). Interestingly, of those that said they were “sometimes” controlled or coerced, approximately 70 per cent (“always”: 21%; “often”: 51%) reported feeling more controlled or coerced since separation (data not shown).

**Table 2:**SoP&C: Fearful, coercive and controlling behaviour since separation, by gender

Fearful (before separation)

| Response | Male  No. | ****Male****  ****%**** | Female  No. | ****Female****  ****%**** | Total  No. | ****Total****  ****%**** |
| --- | --- | --- | --- | --- | --- | --- |
| Always | 44 | **29.7** | 118 | **41.3** | 162 | **37.3** |
| Often | 51 | **34.5** | 103 | **36.0** | 154 | **35.5** |
| Sometimes | 28 | **18.9** | 45 | **15.7** | 73 | **16.8** |
| Rarely | 11 | **7.4** | 11 | **3.8** | 22 | **5.1** |
| Never | 13 | **8.8** | 7 | **2.4** | 20 | **4.6** |
| Do not know/cannot say | 1 | **0.7** | 2 | **0.7** | 3 | **0.7** |
| **Total** | 148 | **100** | 286 | **100** | 434 | **100** |

Controlled or coerced (before separation)

| Response | Male  No. | ****Male****  ****%**** | Female  No. | ****Female****  ****%**** | Total  No. | ****Total****  ****%**** |
| --- | --- | --- | --- | --- | --- | --- |
| Always | 82 | **54.7** | 148 | **51.4** | 230 | **52.5** |
| Often | 45 | **30.0** | 91 | **31.6** | 136 | **31.1** |
| Sometimes | 14 | **9.3** | 32 | **11.1** | 46 | **10.5** |
| Rarely | 3 | **2** | 11 | **3.8** | 14 | **3.2** |
| Never | 5 | **3.3** | 5 | **1.7** | 10 | **2.3** |
| Do not know/cannot say | 1 | **0.7** | 1 | **0.3** | 2 | **0.5** |
| **Total** | 150 | **100** | 288 | **100** | 438 | **100** |

Children’s exposure to behaviour resulting in fear or coercion and control, post-separation

Participants were asked whether their children were exposed to behaviour that made the participant feel fearful or coerced and controlled. In relation to behaviour inspiring fear, men and women indicated children’s exposure was common (Table 3). There were statistically significant differences between men and women in proportions nominating “often”, with 45 per cent of women choosing this response compared to 33 per cent of men. Otherwise, differences were negligible and only 4 per cent of the sample indicated children were never exposed, with 7 per cent indicating exposure was rare. The mean score for the intensity of the fear-inspiring behaviour that children were exposed to was 8.

In relation to children’s exposure to behaviour causing feelings of being coerced or controlled, participants reported children’s exposure was common and there were no statistically significant gender differences. The “always” response was nominated by 51 per cent of men and 44 per cent of women. Only 3 per cent of the sample nominated “never” and 2 per cent “rarely”. The mean intensity score was 9.

**Table 3:** SoP&C: Frequency of exposure of child/children to behaviour making them fearful, by gender

Child/children exposed to behaviour making them fearful

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Response | Male  No. | ****Male****  ****%**** | Female  No. | ****Female****  ****%**** | Total  No. | ****Total****  ****%**** |
| Always | 51 | **34.7** | 89 | **31.2** | 140 | **32.4** |
| Often | 48 | **32.7** | 128 | **44.9** | 176 | **40.7** |
| Sometimes | 22 | **15** | 41 | **14.4** | 63 | **14.6** |
| Rarely | 15 | **10.2** | 16 | **5.6** | 31 | **7.2** |
| Never | 7 | **4.8** | 10 | **3.5** | 17 | **3.9** |
| Do not know/cannot say | 4 | **2.7** | 1 | **0.4** | 5 | **1.2** |
| **Total** | 147 | **100** | 285 | **100** | 432 | **100** |

3.7 Making parenting orders

This section sets out findings on participants’ experiences with legal processes in relation to making parenting orders. First, the extent to which participants in the sample reported making parenting orders by consent with the other parent or carer or through a partially or fully litigated pathway is set out. It examines whether the participant and the other party were legally represented, whether Independent Children’s Lawyers (ICLs) and family consultants were involved in the process and whether obligations arising from parenting orders were explained. It also sets outs findings on whether parents reported their parenting orders were easy to understand and their views on the processes they used to make parenting orders.

How orders were made

The analysis of the data identified four pathways through which parenting orders were made (Table A2, Appendix A). The most common pathway (applying to 57% of the sample) involved the commencement of a litigation process but the matter ultimately being finalised by consent (referred to as consent with litigation). The next most common pathway (applying to 33% of the sample) involved a fully litigated pathway where orders were made by a judge after a court hearing (referred to as judicial determination). Two pathways involving orders made fully by consent, either after a dispute resolution process (4%) or after other negotiations with the other parent (5%), were not common in the sample. There were no statistically significant gender differences in the proportion of men and women reporting making orders through these pathways.

3.8 Legal representation

To address research question 5, participants who made parenting orders through the consent with litigation pathway or the judicial determination pathway were asked whether they and the other parent had legal representation for all or some of the process. Participants were also asked whether this representation was publicly or privately funded (Table A3, Appendix A). The majority of participants (58%) reported having legal representation all of the time. A substantial minority (35%) reported having legal representation some of the time. Self-representation was uncommon in this sample (8%) and there were no significant gender differences in the pattern of responses.

There were gender differences, however, in responses to questions about whether legal representation was self-funded or legal aid-funded. Men were more likely than women to report self-funded legal assistance to a statistically significant extent (82% cf. 62%). Legal aid funding was reported by 27 per cent of women and 12 per cent of men.

In relation to the other party’s legal representation, the majority of the sample reported full legal representation (72%), with 20 per cent reporting partial legal representation. Statistically significant gender differences were not evident. Where the other party had legal representation, women were more likely than men to report this was self-funded to a statistically significant extent (66% cf. 44%).

3.9 Independent Children’s Lawyers

Participants who resolved their matter by judicial determination or consent following litigation were also asked if an ICL was appointed, or a family report prepared (see next section). The majority of this group (57%) reported that an ICL had been involved in their matter. A majority (56%) who reported the appointment of an ICL also reported that the ICL did not speak with the children, although close to half reported that this did happen. There were no statistically significant gender differences in these response patterns (Table A4, Appendix A). Qualitative data from previous studies have also indicated that most children and young people were dissatisfied with either their level of input or awareness of the decision-making process or the final parenting arrangements, with most reporting that they had limited or no direct engagement with their ICL (Carson, Dunstan et al., 2018; Kaspiew et al., 2014).

3.10 Family consultant reports

A majority of the group who resolved by judicial determination or consent following litigation (77%) also reported that family consultant reports were prepared in their matter. Participants reported that family report writers spoke to at least one of their children (82%) more commonly than ICLs. There were no statistically significant gender differences in these response patterns (Table A5, Appendix A).

3.11 Explaining and understanding parenting orders

In order to further explore any link between non-compliance and misunderstanding of parenting orders as indicated in the data from professionals, all participants in the survey were asked whether they had received an explanation of the parenting orders made (Table A6, Appendix A). Participants in the survey were almost as likely to indicate that no-one explained their parenting orders to them as they were to indicate that someone did explain their parenting orders to them (52% yes and 48% no). Where someone had explained the orders to them, this was most likely to have been a lawyer (90%), with only 6 per cent indicating explanations had been provided by a judicial officer and negligible proportions nominating family dispute resolution practitioners (2%) or family consultants (1%). There were no statistically significant gender differences in these response patterns.

Participants were much more likely to indicate their parenting orders were very easy or easy (76%) to understand than they were to indicate they were not easy to understand (25%). There were no statistically significant gender differences in these response patterns. There was also no statistically significant difference in how easily parenting orders were understood by whether any of the provisions in the parenting order had been breached (22% of those who reported a breach indicated their orders were very easy to understand compared with 20% of those who did not report a breach; Table A7, Appendix A).

3.12 Views on processes

This section sets out findings on participants’ views on the pathways used to make parenting orders. Parties’ overall satisfaction, and their satisfaction with the process and outcomes more specifically, are considerations relevant to the causes of non-compliance in research question 1. The analysis is based on responses to a question assessing their overall level of satisfaction with the arrangements made, as well as a series of questions assessing views from different perspectives (their own interests, the other party’s interests and the children’s interests) including safety and wellbeing. While male participants were more likely than female participants to report that they were only partly satisfied or not satisfied with the arrangements made in the parenting orders (83% cf. 67%) and were more likely to disagree or strongly disagree that the process worked for them (79% cf. 63%) or for their children (81% cf. 71%), these differences were not statistically significant. However, there was a statistically significant difference with respect to whether the children’s needs were adequately considered in the process, with 86 per cent of male participants either disagreeing or strongly disagreeing compared to 66 per cent of female participants.

Overall satisfaction

In relation to the question assessing overall satisfaction (Table 4), it is notable that almost half of the responses indicated a lack of satisfaction for each pathway. Otherwise, there was variation in the distribution of satisfied and partly satisfied responses among the pathways. Participants who reported that their orders were made by judicial determination were as likely to indicate they were satisfied as they were to indicate they were partly satisfied (25% cf. 26%). In contrast, the consent after litigation group was more likely to indicate partial satisfaction (37%) than full satisfaction (16%).

Assessments from different perspectives

Table 4 sets out a summary of assessments of the four pathways based on questions asking participants to apply different perspectives. Notably, consistent with the response patterns in relation to overall satisfaction with the outcome, response patterns to almost all of the questions are largely negative. The exception is response patterns to a question asking participants to indicate their level of agreement with the statement that “the process worked for the other parent”. Response patterns for these questions among each group according to the different pathways are concentrated in the positive categories (“agree” or “strongly agree”). Differences in response patterns across each pathway were not statistically significant.

The following findings from these data are particularly noteworthy:

* In relation to the statement “the process worked for me”, responses are concentrated in the “strongly disagree” category for judicial determination and consent after litigation participants.
* Disagreement is similarly strong among participants in these pathways in relation to the statement that “the process worked for the child”.
* Disagreement was slightly less vehement but nonetheless a majority response among participants in these pathways in relation to the statement that “the needs of the child were adequately considered”.
* The statement that “the safety of the children” was adequately considered drew similar responses to the statement in relation to the “needs of the children” being adequately considered.

**Table 4:**SoP&C: Satisfaction with arrangements and process, by pathway

How satisfied were you with the arrangements made?

| Response | Final orders made by judge No. | Final orders made by judge % | After litigation but before a judge made final orders No. | After litigation but before a judge made final orders % |
| --- | --- | --- | --- | --- |
| Satisfied | 38 | **24.8** | 41 | **15.6** |
| Partly satisfied | 39 | **25.5** | 97 | **37.0** |
| Not satisfied | 76 | **49.7** | 124 | **47.3** |
| **Total** | **153** | **100.0** | **262** | **100.0** |

| Response | After family dispute resolution and no litigation started No. | After family dispute resolution and no litigation started % | After negotiations with other parent/carer and no litigation started No. | After negotiations with other parent/carer and no litigation started % |
| --- | --- | --- | --- | --- |
| Satisfied | 2 | **10.5** | 7 | **26.9** |
| Partly satisfied | 8 | **42.1** | 7 | **26.9** |
| Not satisfied | 9 | **47.4** | 12 | **46.2** |
| **Total** | **19** | **100.0** | **26** | **100.0** |

To what extent do you agree that the process worked for me

| Response | Final orders made by judge No. | Final orders made by judge % | After litigation but before a judge made final orders No. | After litigation but before a judge made final orders % |
| --- | --- | --- | --- | --- |
| Strongly agree | 9 | **5.9** | 4 | **1.5** |
| Agree | 21 | **13.7** | 31 | **11.8** |
| Neither agree nor disagree | 17 | **11.1** | 27 | **10.3** |
| Disagree | 18 | **11.8** | 54 | **20.5** |
| Strongly disagree | 88 | **57.5** | 143 | **54.4** |
| Do not know/cannot say |  |  | 4 | **1.5** |
| **Total** | **153** | **100.0** | **263** | **100.0** |

| Response | After family dispute resolution and no litigation started No. | After family dispute resolution and no litigation started % | After negotiations with other parent/carer and no litigation started No. | After negotiations with other parent/carer and no litigation started % |
| --- | --- | --- | --- | --- |
| Strongly agree |  |  | 2 | **7.7** |
| Agree | 5 | **26.3** | 3 | **11.5** |
| Neither agree nor disagree | 4 | **21.1** | 5 | **19.2** |
| Disagree |  |  | 6 | **23.1** |
| Strongly disagree | 10 | **52.6** | 9 | **34.6** |
| Do not know/cannot say |  |  | 1 | **3.8** |
| **Total** | **19** | **100.0** | **26** | **100.0** |

To what extent do you agree that the process worked for the other parent/carer

| Response | Final orders made by judge No. | Final orders made by judge % | After litigation but before a judge made final orders No. | After litigation but before a judge made final orders % |
| --- | --- | --- | --- | --- |
| Strongly agree | 64 | **41.8** | 102 | **38.8** |
| Agree | 35 | **22.9** | 77 | **29.3** |
| Neither agree nor disagree | 18 | **11.8** | 35 | **13.3** |
| Disagree | 8 | **5.2** | 15 | **5.7** |
| Strongly disagree | 12 | **7.8** | 10 | **3.8** |
| Do not know/cannot say | 16 | **10.5** | 24 | **9.1** |
| **Total** | **153** | **100.0** | **263** | **100.0** |

| Response | After family dispute resolution and no litigation started No. | After family dispute resolution and no litigation started % | After negotiations with other parent/carer and no litigation started No. | After negotiations with other parent/carer and no litigation started % |
| --- | --- | --- | --- | --- |
| Strongly agree | 10 | **52.6** | 12 | **46.2** |
| Agree | 3 | **15.8** | 5 | **19.2** |
| Neither agree nor disagree | 5 | **26.3** | 4 | **15.4** |
| Disagree | 1 | **5.3** | 1 | **3.8** |
| Strongly disagree |  |  | 1 | **3.8** |
| Do not know/cannot say |  |  | 3 | **11.5** |
| **Total** | **19** | **100.0** | **26** | **100.0** |

To what extent do you agree that the process worked for the child/children

| Response | Final orders made by judge No. | Final orders made by judge % | After litigation but before a judge made final orders No. | After litigation but before a judge made final orders % |
| --- | --- | --- | --- | --- |
| Strongly agree | 14 | **9.2** | 9 | **3.4** |
| Agree | 12 | **7.8** | 22 | **8.4** |
| Neither agree nor disagree | 12 | **7.8** | 23 | **8.7** |
| Disagree | 20 | **13.1** | 57 | **21.7** |
| Strongly disagree | 94 | **61.4** | 148 | **56.3** |
| Do not know/cannot say | 1 | **0.7** | 4 | **1.5** |
| **Total** | **153** | **100.0** | **263** | **100.0** |

| Response | After family dispute resolution and no litigation started No. | After family dispute resolution and no litigation started % | After negotiations with other parent/carer and no litigation started No. | After negotiations with other parent/carer and no litigation started % |
| --- | --- | --- | --- | --- |
| Strongly agree | 1 | **5.3** | 2 | **7.7** |
| Agree | 3 | **15.8** | 3 | **11.5** |
| Neither agree nor disagree | 2 | **10.5** | 7 | **26.9** |
| Disagree | 6 | **31.6** | 1 | **3.8** |
| Strongly disagree | 6 | **31.6** | 11 | **42.3** |
| Do not know/cannot say | 1 | **5.3** | 2 | **7.7** |
| **Total** | **19** | **100.0** | **26** | **100.0** |

To what extent do you believe that the needs of the child/children were adequately considered

| Response | Final orders made by judge No. | Final orders made by judge % | After litigation but before a judge made final orders No. | After litigation but before a judge made final orders % |
| --- | --- | --- | --- | --- |
| Strongly agree | 14 | **9.2** | 14 | **5.3** |
| Agree | 13 | **8.5** | 31 | **11.8** |
| Neither agree nor disagree | 13 | **8.5** | 22 | **8.4** |
| Disagree | 39 | **25.5** | 59 | **22.4** |
| Strongly disagree | 74 | **48.4** | 137 | **52.1** |
| Do not know/cannot say |  |  |  |  |
| **Total** | **153** | **100.0** | **263** | **100.0** |

| Response | After family dispute resolution and no litigation started No. | After family dispute resolution and no litigation started % | After negotiations with other parent/carer and no litigation started No. | After negotiations with other parent/carer and no litigation started % |
| --- | --- | --- | --- | --- |
| Strongly agree | 2 | **10.5** | 3 | **11.5** |
| Agree | 3 | **15.8** | 5 | **19.2** |
| Neither agree nor disagree |  |  | 3 | **11.5** |
| Disagree | 6 | **31.6** | 2 | **7.7** |
| Strongly disagree | 7 | **36.8** | 12 | **46.2** |
| Do not know/cannot say | 1 | **5.3** | 1 | **3.8** |
| **Total** | **19** | **100.0** | **26** | **100.0** |

To what extent do you agree that the safety of the child/children was adequately considered

| Response | Final orders made by judge No. | Final orders made by judge % | After litigation but before a judge made final orders No. | After litigation but before a judge made final orders % |
| --- | --- | --- | --- | --- |
| Strongly agree | 16 | **10.5** | 15 | **5.7** |
| Agree | 17 | **11.1** | 31 | **11.8** |
| Neither agree nor disagree | 16 | **10.5** | 24 | **9.1** |
| Disagree | 24 | **15.7** | 60 | **22.8** |
| Strongly disagree | 79 | **51.6** | 131 | **49.8** |
| Do not know/cannot say | 1 | **0.7** | 2 | **0.8** |
| **Total** | **153** | **100.0** | **263** | **100.0** |

| Response | After family dispute resolution and no litigation started No. | After family dispute resolution and no litigation started % | After negotiations with other parent/carer and no litigation started No. | After negotiations with other parent/carer and no litigation started % |
| --- | --- | --- | --- | --- |
| Strongly agree | 1 | **5.3** | 4 | **15.4** |
| Agree | 5 | **26.3** | 3 | **11.5** |
| Neither agree nor disagree | 3 | **15.8** | 5 | **19.2** |
| Disagree | 4 | **21.1** | 4 | **15.4** |
| Strongly disagree | 5 | **26.3** | 9 | **34.6** |
| Do not know/cannot say | 1 | **5.3** | 1 | **3.8** |
| **Total** | **19** | **100.0** | **26** | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

In comparison with findings based on a representative sample of separated parents, the findings from this study show that the cohort in the SoP&C has higher levels of dissatisfaction with the process for making parenting arrangements. The Experiences of Separated Parents Study component of the evaluation of the 2012 family violence amendments indicate that participants were more likely to report that mediation/FDR, negotiations through lawyers, litigation and discussion processes worked for the other parent than for their children or for themselves. Resolution processes involving lawyers and courts were also less likely to be nominated as working for children or for participants than other resolution pathways (see Kaspiew, Carson, Dunstan et al., 2015b, Table 6.1). Of note, substantially higher proportions of participants in the Experiences of Separated Parents Study reported that FDR (74%), lawyers (60%) and courts (50%) worked for them in the post-2012 reform context and that the process worked for their child (FDR: 82%; lawyers: 66%; courts: 61%) when compared to the responses of parents and carers in the current study.

3.13 Compliance and non-compliance

This section considers the topic of compliance and non-compliance with parenting orders on the basis of several questions asked of participants in the survey. The discussion first considers the parenting arrangements reflected in the parenting orders and the parenting arrangements that participants reported occurring in practice. It then sets out findings in relation to the frequency and nature of non-compliance with parenting orders and considers the extent to which participants reported threatening or manipulative behaviour on the part of the other parent in relation to non-compliance. Finally, it sets out patterns in relation to help-seeking behaviour for non-compliance.

Parenting arrangements in orders and in practice

This section outlines participants’ orders in relation to parental responsibility, parenting time and special conditions reported by the sample. It also examines whether the time arrangements in orders are complied with in practice and whether there are implications for child support assessments when they are not. These data are important to examine to address the research questions and in relation to research question 1 in particular. This is because the nature of the orders made, particularly having regard to the question of whether they are consistent with children’s safety and best interests and regarding the impact of time arrangements on child support assessments, are considerations that have been identified in the data from professionals as relevant to the question of non-compliance. The data are set out in Table 5 below.

**Table 5:**SoP&C: Parenting time in the order, by gender

| In relation to parenting time, do the orders provide for the child/children to: | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Have all their nights with you and daytime contact with the other parent/carer | 2 | **1.3** | 36 | **12.2** | 38 | **8.4** |
| Have all their nights with the other parent/carer and daytime contact with you | 12 | **7.8** | 18 | **6.1** | 30 | **6.7** |
| Have most time with you and spend less than three nights a fortnight with the other parent/carer | 6 | **3.9** | 74 | **25** | 80 | **17.8** |
| Have most time with you and spend between four and five nights a fortnight with the other parent/carer | 3 | **1.9** | 56 | **18.9** | 59 | **13.1** |
| Share their time between you and the other parent/carer nearly equally | 24 | **15.6** | 38 | **12.8** | 62 | **13.8** |
| Have most time with the other parent/carer and spend less than three nights a fortnight with you | 46 | **29.9** | 19 | **6.4** | 65 | **14.4** |
| Have most time with the other parent/carer and spend between four or five nights a fortnight with you | 28 | **18.2** | 13 | **4.4** | 41 | **9.1** |
| Have no contact with you or no order requiring the child to have contact with you | 6 | **3.9** | 4 | **1.4** | 10 | **2.2** |
| Have no contact with the other parent/carer or no order requiring the child to have contact with the other parent/carer | 2 | **1.3** | 10 | **3.4** | 12 | **2.7** |
| Other | 25 | **16.2** | 28 | **9.5** | 53 | **11.8** |
| **Total** | 154 | **100.0** | 296 | **100.0** | 450 | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

Parental responsibility

In relation to parental responsibility, the majority of participants (64% of men and 61% of women) indicated that their parenting orders provided for shared parental responsibility. There were some statistically significant differences between the proportion of men and women reporting less common arrangements in relation to parenting responsibility. Women were more likely to report orders for sole parental responsibility in their favour (17% cf. 4%). Correspondingly, men were more likely to report sole parental responsibility orders in the other parent’s favour (19% cf. 6%). These findings in relation to the majority of orders providing for shared parental responsibility are of significance given that both professionals and parents and carers indicated such arrangements could give rise to difficulties in the context of families that are characterised by family violence and other significant risk issues. The complex and intractable relationship dynamics between the parties are inconsistent with shared and cooperative decision-making.

Time arrangements

In relation to time, analysis of the combined responses of men and women indicated the most common arrangements involved regular overnight time with the other parent or “equal” or “substantial and significant” time arrangements (FLA s 65DAA). Across the sample, the most common time arrangement involved the child or children having most time with the participant (usually the mother) and less than three nights a fortnight with the other parent (18%: 25% women and 4% men). Otherwise, there were three other arrangements reported by similar proportions of the sample:

* most time with the participant (usually the mother) and between four and five nights a fortnight with the other parent (13%: 19% women and 2% men)
* near equal time between both parents (14%: 13% women and 16% men)
* most time with the other parent and less than three nights a fortnight with the participant (14%: 30% men and 6% women).

This last type of arrangement was one of two where there were statistically significant differences in response patterns between men and women. The other was in relation to arrangements where the child spent most time with the other parent (usually the mother) and four or five nights a week with the participant (9%: 18% men and 4% women).

Despite the high reports of family violence and other risk factors, arrangements involving limited or no time with one parent were reported by minorities of participants in the survey. An arrangement involving daytime-only contact with the participant and all nights with the other parent was reported by 8 per cent (12% women and 1% men). The converse arrangement involving all nights with the participant and daytime-only contact with the other parent was reported by 7 per cent (8% men and 6% women). Orders providing for no contact explicitly or not explicitly providing for contact were uncommon. Only 2 per cent of the sample reported such orders in relation to themselves (1% women and 4% men). Only 3 per cent reported such orders in relation to the other parent (3% women and 1% men).

Three quarters of the sample reported that the orders did not require any special arrangements in relation to handover (i.e. a supervised handover or handover at a neutral place such as a fast-food outlet). Of the quarter of the sample that did report special arrangements, 29 per cent were women and 16 per cent were men, and this difference was statistically significant.

An even larger proportion of the sample (87%) reported that their parenting arrangements did not involve contact being supervised. Gender differences were negligible among the proportion that did report requirements for supervision.

The survey examined the frequency of other special requirements that are not uncommon, with analysis revealing the following findings with negligible differences between men and women:

* The majority of the sample (61%) reported provisions requiring parties to refrain from denigrating one another.
* Almost one in five (19%) reported compliance with another regime. A higher proportion of women reported this condition (23%) compared with men (11%).
* A minority (15%) reported provisions requiring compliance with a child’s healthcare regime.
* An even smaller minority (11%) reported provisions restraining a parent from bringing the child into contact with certain people.

Parenting arrangements in practice and child support assessments

To assess the extent to which time arrangements in orders were being complied with in practice, participants were asked whether one parent was spending less time with the child than provided for in the orders on a regular basis. Just over half the sample (54%) indicated this was the case. This group was then asked whether this meant the child support assessment was no longer appropriate. Close to half of this group (48%) answered yes to this question. This group was then asked whether they had sought a new child support assessment: 47 per cent answered no to this question and it is noted that there were no statistically significant differences by gender in these findings.

To gain an insight into the dynamics between the parties relevant to non-compliance with parenting orders, parents and carers were invited to provide an open-text response about why they had not sought a new child support assessment when their current child support arrangements were no longer appropriate, where one parent was regularly spending less time with the child than allowed for in the parenting orders. Almost half of the parents and carers providing a response suggested that it was futile to seek a new child support assessment (n=26/53). For some parents and carers, this was because it was considered unlikely that the other parent would comply with the new assessment. As one parent stated: “He doesn’t pay anyway. Never has.” (Female, Vic, 35 to 44 years)

For other parents and carers, this feeling of futility was associated with a general distrust or lack of faith in the child support regime to support parents and children, especially in cases involving family violence. For example: “There is no support for children when one parent is being abusive.” (Female, Qld, 25 to 34 years)

For some parents and carers, this general distrust had been compounded by previous experiences of systems abuse in the child support regime, and in the legal system more broadly. For these parents and carers, their previous (and sometimes ongoing) experiences of systems abuse deterred them from seeking a new child support assessment, out of fear that it would engage them in further “unnecessary litigation” at their financial and emotional expense:

The father is self-representing and causes huge numbers of letters and responses to be written and does things like not attend court hearings, which means that I have to spend more money on barristers. (Female, Vic, 45 to 54 years)

Not only do I not see the children because he breaches the orders, he tries to hurt me financially and engages me in unnecessary litigation … His constant bullying and abuse has rendered me a shell of the woman I was, and my children mean everything to me so he uses them to get at me. (Female, Qld, 45 to 54 years)

Some parents and carers suggested the child support regime allows systems abuse by failing to follow the arrangements specified in the parenting orders when allocating child support and not chasing up unpaid child support, thereby “rewarding” parents and carers who breach parenting orders. For example:

There is no incentive to comply with orders when Child Support Agency actively rewards parents for non-compliance by changing assessments, giving the breaching party more incentive and money to continue to breach the orders. (Male, Qld, 35 to 44 years)

For some parents and carers, the child support regime’s lack of enforcement of parenting orders led to non-compliant parents/carers intentionally withholding children for financial gain as a form of systems abuse. By withholding children, the non-compliant parent/carer could claim their care arrangements had increased, resulting in increased child support payments:

Child supports procedures are completely unhelpful and provide a financial incentive for breaching the order. For example, one party can withhold the children WITHOUT reasonable excuse to increase their care percentage, which in turn increases their payments. (Male, Vic, 25 to 34 years)

… the money goes to where the children are. The system allows parents to withhold children from the other parent to maximise child support. (Male, Tas, 35 to 44 years)

Withholding the child further incentivises him to receive more than he was making through his employment. (Female, Vic, 45 to 54 years)

Some parents and carers therefore called for the child support assessment to reflect the parenting orders more strictly to reduce this form of systems abuse. For example:

Child support must acknowledge orders and only assess payments on the orders to stop this continuous withholding of children for financial gain. (Male, WA, 35 to 44 years)

Many parents and carers reported feeling fearful to seek a new child support assessment. For some parents and carers, this fear was attributed to concerns that their child support payments would increase if a new assessment was sought as the other parent/carer was intentionally withholding the child to increase their care arrangements, as previously discussed:

… because the other party is refusing to comply with the orders and, as such, I have had no time with my son. Thereby increasing my child support payments should I pursue a new assessment. (Male, NSW, 45 to 54 years)

It will raise my child support to unacceptable levels that I can’t afford. (Male, Qld, 35 to 44 years)

However, most parents and carers who reported feelings of fear were concerned that seeking a new child support assessment would result in violence and abuse from the other parent/carer, endangering the safety of both the applicant parent/carer and child. For example:

I asked once and he told me I’d never see my son again because one of us – or both – would be dead. (Female, Vic, 35 to 44 years)

Due to the violent nature of the other parent it isn’t worth the risk to my own safety. (Female, Qld, 35 to 44 years)

For these parents and carers, the risk of family violence was a significant deterrent in seeking a new child support assessment, especially in cases where a successful assessment would likely result in minimal financial gain: “The small amount of money that [it] would equate to would not be worth dealing with his behaviour towards myself and the kids as a result.” (Female, WA, 35 to 44 years)

Other parents and carers were discouraged from seeking a new child support assessment due to a lack of resources, and most parents/carers who reported this concern felt they did not have enough evidence regarding the other parent’s/carer’s financial status or the current care arrangements to successfully apply for a new assessment. For example: “The proof isn’t enough.” (Female, Vic, 35 to 44 years)

Such evidentiary concerns were sometimes compounded by the other parent’s/carer’s perpetration of systems abuse. For example: “I tried in the past, but the other parent always gave false information.” (Female, Vic, 25 to 34 years)

Parents and carers also reported concerns regarding the costs associated with seeking a new child support assessment. For one parent/carer, this concern was exacerbated by legal advice suggesting the process of seeking a new child support assessment was futile having regard to the associated financial expense: “My lawyer advised that I was throwing money away for no outcome.” (Male, Qld, 45 to 54 years)

It is unclear whether these reports are based on misconceptions by parents and carers that there are costs associated with appealing child support assessments with Child Support or whether parents/carers are reporting these concerns in the context of attending court to seek departure orders. It is possible parents/carers may be reporting financial concerns in the context of seeking a second review of a child support assessment through the Administrative Appeals Tribunal (AAT); however, there are no costs to seeking a first review of a child support decision in the AAT. This may suggest some parents and carers have limited knowledge of the process to appeal a child support decision, as shown by one respondent: “I didn’t know that was the next step …” (Female, SA, 25 to 34 years)

Alternatively, these responses may indicate general feelings by some parents and carers that financial cost is inevitably associated with appealing decisions related to parenting and the family law system more broadly. For example, some parents and carers reported that feelings of financial and emotional exhaustion from previous engagement with the child support regime and family law system were a further deterrent to seeking a new child support assessment: “Timing, energy level, mental health & money involved in trial is tremendously draining.” (Female, Qld, 45 to 54 years)

Knowledge of law in relation to compliance with and enforcement of orders

Given that one of the research questions concerns the issue of whether tougher penalties are effective at encouraging compliance with parenting orders, the survey examined participants’ knowledge of the enforcement regime. Participants were asked a series of questions to indicate whether or not they considered that the remedies available to courts under div 13A of pt VII of the FLA were among the possible consequences for not complying with parenting orders. The analysis demonstrates greater awareness of some of these remedies, with least awareness of the punitive remedies.

With no statistically significant differences between men and women, the following levels of affirmation of the availability of particular aspects of the regime were evident (see also Table 6):

* There are no consequences if a person can show they have a reasonable excuse for not complying (64%).
* A court can order make-up time if a person has missed out on spending time with a child (51%).
* A court can order a person to attend a post-separation parenting course (51%).
* A court can fine a person (50%).
* A court can vary the order to make it easier for the person to comply (45%).
* A court can send a person to jail (43%).
* A court can order that a person enter into a bond to make them comply with parenting orders (42%).
* A court can make an order taking a child away from the parent/carer who does not comply (40%).

Table 6 shows that half of the participants were unaware of the consequences of not complying with parenting orders, save for the outcome where a reasonable excuse for non-compliance can be demonstrated.

**Table 6:**SoP&C: Knowledge of the enforcement regime, proportion answering yes to each statement, by gender

| Which of the following statements applies to the possible consequences of not complying with the parenting orders? | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| There are no consequences if a person can show they have a reasonable excuse for not complying | 99 | **65.6** | 181 | **62.4** | 280 | **63.5** |
| A court can order make-up time if a person has missed out on spending time with a child | 82 | **54.3** | 142 | **49** | 224 | **50.8** |
| A court can order a person to attend a post-separation parenting course | 75 | **49.7** | 149 | **51.4** | 224 | **50.8** |
| A court can fine a person | 79 | **52.3** | 140 | **48.3** | 219 | **49.7** |
| A court can vary the order to make it easier for the person to comply | 67 | **44.4** | 130 | **44.8** | 197 | **44.7** |
| A court can send a person to jail | 69 | **45.7** | 119 | **41.0** | 188 | **42.6** |
| A court can order that a person enters into a bond to make them comply with the parenting orders | 70 | **46.4** | 117 | **40.3** | 187 | **42.4** |
| A court can make an order taking a child away from the parent/carer who does not comply | 60 | **39.7** | 116 | **40.0** | 176 | **39.9** |

Note: Percentages do not sum to 100 as multiple responses could be selected.

Breaches of provisions of orders

The survey also examined whether the provisions in the parenting orders had been breached. The specific question asked, “Have any of the provisions in the parenting orders been breached (i.e. not followed) since they came into operation?” A majority of the sample (88%) answered yes to this question. This group was then asked whether they viewed the breaches as serious, with 80 per cent answering yes to this question.

A further series of questions examined which provisions the breaches of parenting orders related to, with analysis demonstrating the following findings:

* Two thirds of the sample indicated the breaches related to time arrangements, with men indicating this to a statistically significant greater extent than women (74% cf. 63%).
* Fifty-six per cent of the sample indicated the breaches related to parental responsibility provisions, with no statistically significant differences between genders.
* Almost 60 per cent indicated the breaches related to arrangements for communication with the child, with men indicating this to a statistically significant greater extent than women (70% cf. 54%).
* Forty per cent indicated these breaches related to the return of the child after spending time with the other parent, with no statistically significant gender differences.

Reasons for breaches

To gain insight into the underlying dynamics in circumstances where orders were not followed, participants who had reported that the other party had breached the orders were asked for yes/no responses in relation to nine possible reasons for the breaches. The reasons ranged from circumstances that were benign (a misunderstanding of the orders, for example) to those that were malignant (vindictive behaviour on the part of the other parent, for example). They also tested the relevance of concerns about safety and child-led non-compliance. An open-text response option enabling participants to nominate other reasons was also included in the survey. The reasons were largely the same as those examined in the professionals study.

The pattern of responses indicates that, for this sample, breaches are driven by complex behaviours and circumstances. In order, from most common to least common, the reasons attributed by the sample (noting that where gender differences were statistically significant they are mentioned) were:

* The party who was not complying was trying to be difficult or vindictive (80%: 88% of men and 75% of women, with this difference statistically significant).
* The non-complying parent/carer was trying to be abusive or controlling (80%).
* The children refused to follow the orders (16%: 20% women, 8% men, with a statistically significant difference between the number of women and men who reported that their children refused to follow the orders).
* It was never safe to comply with the orders (7%: 11% of women, 1% of men, with this difference statistically significant).
* It was no longer safe to comply with the orders (7%: 10% of women and 2% of men, with this difference being statistically significant).
* The orders were not flexible enough to accommodate changes in the children’s activities (8%).
* There was a misunderstanding of the orders (8%).
* The non-compliance was accidental (5%).
* The parties agreed not to follow the orders (5%).

**Table 7:**SoP&C: Reasons for non-compliance, proportion reporting yes to each statement, by gender

| In your view, what were the main reasons for the orders not being followed? | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| The parent/carer not complying was trying to be difficult or vindictive\* | 122 | **87.8** | 193 | **75.1** | 315 | **79.5** |
| The parent/carer not complying was being abusive or controlling | 112 | **80.6** | 203 | **79.0** | 315 | **79.5** |
| The child/children refused to follow the orders\* | 11 | **8.0** | 52 | **20.2** | 63 | **15.9** |
| There was a misunderstanding about the meaning of the orders | 12 | **8.7** | 20 | **7.8** | 32 | **8.1** |
| The orders were not flexible enough to accommodate the changes in the child’s/children’s activities | 9 | **6.5** | 23 | **8.9** | 32 | **8.1** |
| It was never safe to comply with the orders\* | 2 | **1.4** | 27 | **10.5** | 29 | **7.3** |
| It was no longer safe to comply with the orders\* | 3 | **2.2** | 25 | **9.7** | 28 | **7.1** |
| The orders were breached/not followed by accident | 3 | **2.2** | 16 | **6.2** | 19 | **4.8** |
| We (me and the other parent/carer) agreed not to follow the orders | 6 | **4.3** | 12 | **4.7** | 18 | **4.6** |

Note: \* Statistically significant difference at p<0.05. Percentages do not sum to 100 as multiple responses could be selected.

Help-seeking in relation to breaches

This section sets out findings on help-seeking behaviours in relation to breaches. It examines whether help was sought, reasons for not seeking help and the kinds of help sought.

Was action taken?

Where participants indicated that there had been breaches, they were asked whether they had taken any action in relation to the breaches. Response options allowed for them to indicate that no action had been taken, action had been taken in response to each breach, and action had been taken in relation to some but not all breaches. Two thirds of participants indicated they had not taken action, with women more likely than men to nominate this response to a statistically significant extent (71% cf. 54%).

Why was no action taken?

Where participants indicated that action was not taken, they were asked to indicate the reasons for this, with 12 possible response options allowing for multiple responses to be chosen (see Table 8). An open-text response option enabling participants to nominate other reasons was also included in the survey. The most to least common responses, with statistically significant gender differences referred to when present, were:

* The other parent/carer repeatedly breaches the orders and it would be impractical to keep going back to my lawyer or the court each time (63% overall: 72% of men and 59% of women).
* I did not think legal action would be enough to stop the other parent breaching the orders (49%).
* I did not have enough money to pursue legal action (43%).
* I did not have enough money to pursue legal advice (39%).
* I was afraid the other parent would be violent towards me or my children if I took action (39%: 43% women and 31% men).
* I did not have the energy to pursue the matter (37%).
* I did not want to cause any trouble for me and my children (35%).
* The breach was not serious enough to warrant any action (18%).
* The arrangements in the orders are best for me and my children and I was afraid they would be changed if I returned to court (8%).
* I accepted that COVID-19 restrictions were a reasonable excuse for their non-compliance (3%).
* The other parent/carer did not have enough money to pursue legal advice (0.9%).
* The other parent/carer did not have enough money to pursue legal action (0.6%).

**Table 8:**SoP&C: If no action taken or action taken in relation to some but not all breaches, reasons for non-action in response to breach, proportion reporting yes to each statement, by gender

| Why no action was taken in response to breach | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| The other parent/carer repeatedly breaches the orders so it would be impractical to keep going back to my lawyer or the court each time\* | 77 | **72.0** | 136 | **59.4** | 213 | **63.4** |
| I did not think legal action would be enough to stop the other parent/carer breaching the orders | 54 | **50.9** | 110 | **48.0** | 164 | **49.0** |
| I did not have enough money to pursue legal action | 47 | **44.3** | 98 | **42.8** | 145 | **43.3** |
| I was afraid that the other parent would be violent towards me or my child/children if I took action\* | 33 | **31.1** | 98 | **42.8** | 131 | **39.1** |
| I did not have enough money to pursue legal advice | 42 | **39.6** | 87 | **38.0** | 129 | **38.5** |
| I did not have the energy to pursue the matter | 40 | **37.7** | 83 | **36.2** | 123 | **36.7** |
| I did not want to cause any trouble for me and my child/children | 32 | **30.2** | 84 | **36.7** | 116 | **34.6** |
| The breach was not serious enough to warrant any action | 18 | **17.0** | 41 | **17.9** | 59 | **17.6** |
| The arrangements in the parenting orders are best for my children and I was afraid that they would be changed if I returned to court | 7 | **6.6** | 20 | **8.7** | 27 | **8.1** |
| I accepted that COVID-19/coronavirus restrictions were a reasonable excuse for their non-compliance | 1 | **0.9** | 8 | **3.5** | 9 | **2.7** |
| The other parent/carer did not have enough money to pursue legal advice | 1 | **0.9** | 2 | **0.9** | 3 | **0.9** |
| The other parent/carer did not have enough money to pursue legal action | 0 | **0.0** | 2 | **0.9** | 2 | **0.6** |

Note: \* Statistically significant difference at p<0.05. Percentages do not sum to 100 as multiple responses could be selected.

What action was taken?

Where participants indicated that they did take action in relation to some or all of the breaches, they were asked to indicate which of 11 possible actions they had taken (multiple actions could be chosen). An open-text response option enabling participants to nominate other actions was also included in the survey. With no statistically significant gender differences, and from most to least common, the findings were:

* I sought legal advice (58%).
* My lawyer spoke/wrote to the other parent (42%).
* I issued a contravention application with the court (38%).
* I had a conversation with the other parent (36%).
* I issued an application in a case with the court (32%).
* We went back to FDR (7%).
* The other parent’s lawyer spoke/wrote to me (14%).
* The other parent issued a contravention application with the court (12%).
* The other parent issued an Application in a Case with the court (8%).
* The family consultant spoke with me and/or the other parent (6%).

Did the action resolve the issues?

Where participants indicated they had taken action in relation to breaches of parenting orders, they were also asked whether the action taken had resolved the issues about parenting orders not being followed. The majority of the sample (82%) indicated that the issues remained unresolved despite the action.

Further analysis was also undertaken to investigate, for each action taken, the proportion who reported that the action/s taken resolved the issue. Table 9 presents the action taken by participating parents and carers and whether parties taking the nominated actions had resolved their issue/s. It is noted that the selection of multiple response options was permitted and, as such, individual actions cannot be specifically linked to the resolution of issues for the parties. However, the associations provide helpful insight. The data show that issuing an application to seek an adjustment to the initial parenting orders and returning to FDR were identified by close to two in 10 parents and carers as successfully resolving the issues relating to non-compliance (18% and 17% respectively). Obtaining legal advice (16%) and having the lawyer liaise with the other party (14%) were also nominated as responses that successfully resolved issues for slightly smaller proportions of parents and carers. Of note, similarly small proportions of parents and carers identified their decision, or the other parent’s/carer’s decision, to issue contravention proceedings as successfully resolving the issues relating to non-compliance (15% and 13% respectively). However, Table 9 shows that talking to the other party proved to be almost as likely to resolve the issues for the parents and carers participating in the survey (12%).

**Table 9:**SoP&C: Actions taken in response to breaches of orders, by whether action resolved issue

| Action taken in response to breach | Total number reporting each action No. | Total reporting action/s resolved the issue % |
| --- | --- | --- |
| I issued an Application in a Case with the court | 45 | **17.8** |
| We went back to family dispute resolution | 24 | **16.7** |
| I sought legal advice | 80 | **16.3** |
| I issued a contravention application with the court | 52 | **15.4** |
| My lawyer spoke/wrote to the other parent/carer | 59 | **13.6** |
| The other parent/carer issued a contravention application with the court | 16 | **12.5** |
| I had a conversation with the other parent/carer | 49 | **12.2** |
| The other parent/carer issued an Application in a Case with the court | 11 | **9.1** |
| The other parent’s/carer’s lawyer spoke/wrote to me | 19 | **5.3** |

Note: Percentages do not sum to 100 as multiple responses could be selected. Action: “The family consultant spoke with me and/or the other parent/carer” not reported due to small sample size (n<10).

3.14 Non-compliance and the COVID-19 pandemic

While more than three quarters of the sample (80%) indicated that some of the breaches occurred during the COVID-19 pandemic, just over two thirds (67%) also indicated that the reasons for the breaches during the COVID-19 pandemic were not affected or exacerbated by restrictions or related circumstances. Participants were also asked whether the actions taken or not taken in relation to breaches of parenting orders were affected by COVID-19 restrictions causing delays. The majority of the sample answered no to this question, with only 19 per cent answering yes (data not shown).

Qualitative insights from parents and carers attest to the COVID-19 pandemic having generated a range of complexities for separated families, including in relation to compliance with parenting orders, the workability of orders and responses to non-compliance. These insights are consistent with the findings of recent research, both in Australia and internationally, into the impacts of the pandemic on separated families and the family justice system (Dimopoulos, 2022; Fraser, 2020; Hitchings & Maclean, 2020; Masson, 2020; Smyth et al., 2020). The views of parents and carers also revealed health-related concerns, logistical obstacles, concerns for children’s mental health and wellbeing, and financial difficulties as contributing to the difficult dynamics of compliance with parenting orders during the pandemic.

In response to a significant increase in family law disputes in the early months of the COVID-19 pandemic, the family court established a dedicated court list, the National COVID-19 List. This list commenced on 29 April 2020. It was expanded on 20 January 2021 and again on 12 March 2021. The National COVID-19 List accepts applications filed “as a direct result of” or, if indirect, applications that have “a significant connection to” the COVID-19 pandemic, and concern matters that are “urgent or of a priority nature” (FCFCoA, 2021c, [1], [2.1(b)]). Examples of matters that may be suitable for inclusion in the COVID-19 List are where there has been an escalation of, or increase in risk due to, family violence associated with the pandemic; failure to resume time in accordance with parenting orders following the easing of COVID-19 restrictions; difficulties with a child travelling between parents’ residences; disputes about a child being vaccinated against COVID-19; and parents’ inability to fulfil their parenting obligations due to the parent and/or child contracting COVID-19, or because of concerns about infection or quarantine requirements (FCFCoA, 2021c, [5.2]).

As outlined in the earlier report for this project, the FLA sets out a non-exhaustive list of circumstances in which a person may be taken to have had, for the purposes of div 13A of pt VII, a “reasonable excuse” for contravening a parenting order (s 70NAE). These include:

* that the order was contravened because, or substantially because, the respondent did not understand the obligations imposed by the order at the time of contravention: s 70NAE(2)(a)
* a belief on “reasonable grounds” that the conduct constituting the contravention “was necessary to protect the health or safety of a person (including the respondent or the child)”, and the conduct was “not longer than was necessary to protect the health or safety of the person": ss 70NAE(4)–(7).

Health and safety concerns

Health and safety concerns, and the misunderstanding of obligations under parenting orders, emerged from the responses of parents and carers as causes of non-compliance during the COVID-19 pandemic. In response to the question seeking their views regarding how COVID-19 restrictions had affected the reasons for parenting orders not being followed, almost three quarters of parents and carers (73%, n=69/95) who provided an open-text response indicated that COVID-19 had provided the other parent or carer with an “excuse” – or an additional excuse – for non-compliance, or that it had made it easier to breach orders. For many parents and carers, this had resulted in less time with their child/ren, or the child/ren being withheld from them:

While the orders have always been broken by the other parent, the COVID crisis just gave her more reasons to breach the orders, despite the court order remaining current. (Male, NSW, 55 years or over)

My ex-wife just used the COVID lockdown to cement her non-compliance with the court orders. (Male, ACT, 45 to 54 years)

Consistent with recent research (Dimopoulos, 2022) and commentary (Catrina, 2020; Chester, 2020), a justification for non-compliance in this context cited by some parents and carers was concern for the health and safety of the child/ren, the parent or carer themselves, or vulnerable family members, and of being exposed to or contracting COVID-19:

[The COVID-19 pandemic] gave an excuse for the other parent not to follow orders, claiming “it was not safe”, despite having written advice from the Child’s oncologist that orders should be followed. (Male, NSW, 45 to 54 years)

Time spent parent would not consider concerns of other parent and the children to not go between houses while living with fragile grandparents, time spent parent used this to contravene the main carer. (Female, Vic, 35 to 44 years)

I breached conditions of order because I refused to transport my children from a safe area, through areas which had cases reported, for my ex to pick them up from McDonald’s, because contact centre was closed due to COVID. The trip is 1,200 km round trip for them and they had definite risk of exposure in their travels. (Female, Qld, 45 to 54 years)

The COVID-19 pandemic was also identified by a small number of parents and carers as enabling different forms of family violence to arise, or as facilitating an escalation of family violence:

[The COVID-19 pandemic] allowed controlling ex-partners to isolate the child and use COVID as the perfect excuse … using the legal system to psychologically abuse both parent and child. (Female, NSW, 45 to 54 years)

Covid has provided an avenue for the other parent to inflict a different version of family violence on my child and I. It has provided an opportunity for the other parent to control where I am, when I am there and for how long. The level of coercive control has been extremely exacerbated as a result of the COVID restrictions and pick up/drop off not being at school. (Female, Vic, 35 to 44 years)

[The] other parent threatened to keep my child so as to avoid COVID transmissions (felt as threat, and this was before law became clear that orders and shared care could continue as per orders) – so it’s a great opportunity for FV and control/threat to flourish. (Female, Vic, 45 to 54 years)

These views of parents and carers reinforce recent research by the Women’s Safety and Justice Taskforce (2021), which found an increase in the complexity of family violence matters for which women sought support during the pandemic, the changing nature of client issues, and concerns regarding delays in the family court system and in accessing legal and FDR services. These views are also consistent with research by Boxall and Morgan (2021) into women’s experiences of intimate partner violence during the COVID-19 pandemic, which found an escalation of such violence, changes in the dynamics of intimate partner violence, and significant barriers to seeking support and advice. They also support the findings of Pfitzner et al. (2022) that COVID-19 lockdowns created additional barriers to seeking help for women experiencing violence, with remote service delivery increasing the “invisibility” of children living with family violence.

Conversely, a small number of parents and carers reported that COVID-19 had resulted in the other parent or carer declining to spend time with the child/ren as provided by the parenting orders, in some circumstances citing financial difficulties or health concerns for themselves or vulnerable family members:

In 2020 my ex used increased costs of airline tickets initially as reason. In 2021 she claimed it was too difficult and expensive to arrange because of COVID. (Male, Qld, 55 years or over)

Ex-partner chose not to have youngest child for some of the lockdown period because he was afraid of becoming sick himself as I was a frontline health worker at the time. (Female, Vic, 45 to 54 years)

A small number of parents and carers identified the COVID-19 pandemic as having caused their child’s/children’s mental health to deteriorate, and referred to the child’s own fears regarding COVID-19 as a reason for non-compliance with parenting orders:

My daughter’s mental health dramatically worsened and she became increasingly hostile about court proceedings. (Female, Vic, 45 to 54 years)

[The COVID-19 pandemic gave rise to] increased stress and the children not wanting to travel anymore. They had previously stated that they did not want to attend but were fearful that if they didn’t attend their dad would become angry. With COVID the contact centre ceased face-to-face operation allowing the children opportunity to not go, after not attending the centre for a period of time they requested not to return. (Female, NSW, 35 to 44 years)

Some parents and carers considered that COVID-19 had facilitated the misinterpretation or manipulation of obligations under parenting orders, often without consequence, and sometimes with adverse impacts for the relationship with their child/ren and/or financial implications:

In our case, the COVID restrictions were only a small part of contraventions that have occurred; however, they appear to have given the other parent a weak excuse to withhold or at least to say that they “didn’t know what to do” in that situation … which would cloud any possibility to contravene them in court. (Female, Vic, 45 to 54 years)

COVID-19 and border closures are what has helped him keep my children as it is easier in the judge’s eye because they have been there for some time, only due to him not giving them back after a verbal agreement was had between both parties. (Female, Qld, 35 to 44 years)

Other parent chose to neglect order details such as regular contact or calls and modified to suit their own needs to work from home, stay safe with new young child. Other parent also failed to communicate (as required by order) about changes and responses to order during COVID – only making arrangements with child rather than me. This has impacted on the amount of child maintenance received, and the Child Support Agency has not modified its regulations to accommodate (they currently expect three consecutive episodes to be missed before addressing the change in care and adjusting payments) but as restrictions are sporadic this is not addressed. Teenagers are expensive! (Female, Vic, 45 to 54 years)

One particular “grey area” for a number of parents and carers was in relation to school closures. This was identified as a factor contributing to non-compliance, either because the orders provided for changeover to occur at school or because the orders did not provide for circumstances in which the child was to be home-schooled:

The closures of schools allowed the other parent to misconstrue the orders because the orders state the father is to return child to school after his time. The father told me since there was no school due to COVID he could retain the child. (Female, Qld, 35 to 44 years)

Schools were a drop-off and collection location. Once schools were closed it became a grey area that was open to interpretation and manipulation. (Male, NSW, 35 to 44 years)

Home-schooling handover time was in debate as it was not explicitly in the orders. He claimed it was not a school day. He basically forced a time upon me and I had no recourse. My needs and that of our child were not heard. (Female, NSW, 35 to 44 years)

Workability of orders

Over two fifths (43%, n=41/95) of parents and carers who provided an open-text response to the question about how COVID-19 restrictions had affected the reasons for non-compliance with parenting orders indicated that their orders had become unworkable during the pandemic. Of these parents and carers, over half (59%, n=24/41) identified COVID-19 restrictions, such as border closures, travel restrictions and quarantine requirements, as impairing the practical implementation of orders and/or parents’ and carers’ willingness to comply:

Border restrictions prevented the orders being followed and the extended period between visits made the alienation easier. (Male, WA, 35 to 44 years)

The other parent lives interstate and has not been prepared to undertake quarantine requirements in order to see the children. (Female, SA, 35 to 44 years)

He moved three hours away with the children and is currently in a hotspot area so I cannot see them as it would result in me having to isolate for 14 days, which is impractical given I have four other children solely in my care. (Female, NSW, 25 to 34 years)

As foreshadowed in an earlier quote, a small number of parents and carers indicated that parenting orders had become unworkable where supervised time was no longer possible due to an inability to access supervised contact services, or the unavailability of the nominated supervisor:

I was not allowed to see my kids anymore. The persons holding our supervised visits was [sic] elderly and couldn’t afford to risk their health. (Female, Qld, 35 to 44 years)

Lockdowns and restrictions meant supervised visitations with child protection were cancelled pending update from the COVID headquarters stating contacts could resume. Still waiting. (Female, Vic, 18 to 24 years)

Arrangements were in place to start supervised visitation with the father after he provided evidence of attending a psychologist, post-separation parenting course and men’s behaviour course. He did not comply and said it was due to lack of services due to COVID-19. (Female, Vic, 45 to 54 years)

A very small number of parents and carers indicated that parenting orders that had become unworkable for COVID-19-related reasons were able to be varied to accommodate changing circumstances. This included providing for children’s time with one parent or carer to be via electronic communication, rather than in person:

It’s not exactly a breach, as the orders stated for the first year that I could have up to three hours of supervised contact; however, in COVID when I could not visit in person, I was restricted to one supervised zoom call a month. This is happening again now as I cannot travel from the ACT to Qld during COVID. (Female, ACT, 45 to 54 years)

However, some parents and carers reported that the other parent or carer had refused to accommodate changes to parenting arrangements (such as make-up time or electronic communication) necessitated by the COVID-19 pandemic, or had reneged on those arrangements:

Children were unable to visit due to coronavirus restrictions, orders provide for make-up time; however, other parent refuses to acknowledge this and schedule make-up time. (Male, NSW, 35 to 44 years)

One lives in [city] and primary home is in regional [state]. Children would have to self-isolate upon return home after weekend access and couldn’t attend therapy appointments. So other parent agreed for children to remain home during health orders of [city] lockdown but could still come to visit as per court orders instead of picking up and taking back would come to spend time with children but other parent never came for three months. It was the other parent who took me to court … (Female, NSW, 35 to 44 years)

Responding to non-compliance during the COVID-19 pandemic

Delays were the most significant issue identified in the responses to the question seeking parents’ and carers’ views regarding how COVID-19 restrictions had affected action taken or not taken in response to non-compliance. Reflecting recent research into the impacts of COVID-19 on the family justice system (Freckelton, 2020; Gough & Kofoed, 2021; Sutherland, 2020), participants identified that delays manifested in various ways, including adjournment of court hearings, cancellation of appointments for an ICL to interview the child/ren, the inability to have affidavits witnessed and orders signed, and delays in the preparation of a family report:

Substantial delays in listing urgent matters before family court saw the four-year-old child withheld from her primary carer for over six weeks. (Female, NSW, 35 to 44 years)

I did not see my daughter for Christmas in December 2018 or school holidays 2019. I lodged an application in a case. The application first return was April 2019, then Sept 2019 and trial dates set for March 2020. That was vacated due to COVID-19. The day the hearing was vacated, I was told I would not be seeing my daughter again. Lodged contravention 2020, case was heard 2021, contravention proven but orders were not amended, my application in a case dismissed without being heard, and I have not seen my daughter again. (Female, NSW, 45 to 54 years)

Cancelled visitation to interview of children with ICL. (Female, NSW, 35 to 44 years)

I have not been able to get my affidavits witnessed and/or orders signed by a JP to get them enforced. (Female, Vic, 45 to 54 years)

Family report happened more than a year later then [sic] it was supposed to. (Male, Qld, 25 to 34 years)

For some parents and carers, such delays acted as a deterrent to taking legal action for non-compliance:

The system was shambles and overloaded before COVID and I can’t imagine it is less of a disaster now especially with all the families in crisis. We wouldn’t make the triage prioritisation. (Female, Vic, 35 to 44 years)

For others, COVID-19 affected their financial ability to pursue contravention proceedings:

I thought it would be best to wait until trial to address the significant number of breaches. Sadly, our case was adjourned twice in 2020 and I no longer had the funds to continue to trial. (Male, Vic, 35 to 44 years)

We had several court appearances during COVID. Our last was in September 2020 – we were told to go to mediation. I just gave up in the end. I was representing myself because I couldn’t afford a lawyer – I’d already spent $140,000. My husband had many finances behind him and paid for a barrister and a solicitor. (Female, NSW, 45 to 54 years)

In some circumstances, delays caused by COVID-19 in relation to action for non-compliance were said to have adversely affected the child/ren, including by creating unsafe situations for them:

Action was slowed to the point that my child could no longer cope with the uncertainty in her life and became increasingly violent towards me, engaged in self-harming activities, major issues with education and eventually left my care to live with the abuser. (Female, Vic, 45 to 54 years)

Delays in court. I am waiting nearly two years for a contravention application filed by my ex. The contravention covers things such as me turning up 5 min early for visits to drop the children, not answering his calls on the first few rings, kids hanging up video calls with my ex. Our interim parenting orders are now completely out of date and do not reflect my current situation nor the children and their development. We have had to undergo another family report and [had] an ICL appointed. I have increased the time my ex has with the kids to avoid conflict even though I feel he should have no contact due to my safety and the kids’ safety while in contact with him. (Female, Qld, 35 to 44 years)

A small number of parents and carers also indicated that COVID-19 had impaired their ability to access services for themselves and/or their children in response to non-compliance with parenting orders, including mental health support and legal advice:

COVID has caused lengthy court delays, made it impossible for me to get mental health care for my daughter and resulted in her taking matters into her own hands with disastrous results. (Female, Vic, 45 to 54 years)

Seeking general legal advice and assistance is limited during lockdowns. The legal system was already overloaded prior to COVID, now it is more so due to limited resources, availability of legal advice, court proceedings and more urgent hearings occurring. (Female, Vic, 45 to 54 years)

Reflecting the findings of recent research (Bell, 2021; Doughty, 2020), a very small number of parents and carers perceived that the need for remote hearings had negatively impacted the outcome of their contravention proceedings:

The courts not holding in-person sessions impacted the outcome and exacerbated the situation. (Male, NSW, 45 to 54 years)

The contravention hearing was done via telephone in 2020. The judge dismissed the contravention, despite the fact the orders she made herself were not being followed in any way … It is possible that, had she seen us in person, she may have taken some action about the terrible situation my children were in. (Female, NSW, 45 to 54 years)

By contrast, a very small number of parents and carers suggested that the COVID-19 pandemic had been favourable for their situation by enabling them to bring an application in the National COVID-19 List, and delaying the child’s transition to weekend time with the other parent or carer:

It allowed an application using COVID-19 List. (Male, NSW, 45 to 54 years)

Just delayed weekend transitions. Unfortunate but that part was acceptable … (Male, Qld, 45 to 54 years)

3.15 Solutions: Insights from parents and carers

The analyses so far in this chapter have outlined the extent to which parents or carers took action or refrained from taking action in response to breaches of parenting orders. It has also presented data relating to the reasons indicated by parents and carers for the action taken or for their decision not to take action following non-compliance and the effect of COVID-19 in this context. Additional insight into the identified deficiencies of the current contravention regime more generally and improvements that could be made to support compliance also emerged from the qualitative responses of parents and carers. Parents and carers participating in the survey were invited to indicate their views as to how compliance with parenting orders could be improved. The vast majority (n=308) of the 382 participants who answered this question provided suggestions for improvement.

Key suggestions for improvement raised by parents and carers highlighted broader concerns around safety within the contravention regime, particularly for their children. Parents and carers voiced the need for an effective legal process that was appropriately equipped to manage and consider complex family needs, and the underlying causes of non-compliance. Some parents and carers also suggested that family law professionals must be extensively trained to understand how family violence in the context of family law and the contravention regime presents and impacts both parents and children, leading some of these parents to also suggest that parenting orders needed to be safer for parents and children. Another concern that parents and carers drew attention to was the perceived absence of authority of parenting orders and there being minimal consequences for non-compliance within the regime, with some linking these factors to ongoing non-compliance. While some parents and carers considered that compliance with family law parenting orders could be improved by introducing more punitive responses to breaches, others believed that meaningful measures in response to breaches would be more effective in encouraging compliance. Some parents and carers indicated that compliance with parenting orders could be supported more effectively by introducing an intermittent monitoring, case-management approach to assist parties to address any underlying causes of non-compliance outside of legal proceedings. At the same time, parents and carers also highlighted the need for greater affordability and accessibility to the contravention regime to ensure that non-compliance could be managed appropriately. However, issues relating to children and young people within the contravention regime were underscored by parents and carers in their responses which illustrated their concerns around the broader harms of the contravention regime for children and young people, the unworkability of orders due to safety concerns, the need for children to have a greater voice in decision-making, and the lack of flexibility of parenting orders to account for children’s evolving needs.

Need for an effective legal process

Almost half of the parents and carers who provided an open-text response to the question seeking views on how compliance with parenting orders could be improved (n=179/382) referenced the ineffective nature of the current contravention regime. Notably, this view overlapped with a broader distrust or lack of faith in the legal process. For example, some parents indicated that the legal system, and the contravention regime more specifically, was not equipped to manage complex family dynamics, diverse family circumstances or the range of issues that may lead to non-compliance:

Parents who don’t believe orders do or should apply to them will work out ways to manipulate the orders in their interest, not the children’s. (Male, Vic, 35 to 44 years)

Unfortunately, you can’t make people decent parents. (Male, Qld, 35 to 44 years)

There is very little that the law can do to ensure compliance. (Male, Qld, 45 to 54 years)

These parents and carers suggested that the contravention regime could not be improved given its limited ability to manage and oversee the actions of non-compliant or uncooperative individuals. Some expressed a sense of hopelessness when contemplating the potential for improvement. For example: “Sorry, I feel lost and used with and by the court system.” (Male, Qld, 45 to 54 years)

Echoing this sentiment were responses from parents and carers who described a lack of agency and sense of powerlessness when seeking to invoke the contravention regime. For example:

The court gave all power and control to [other parent], so if [they] decide to cut my visit an hour short, [they] can and there is no recourse. In my opinion the family court system is completely broken and the whole system needs to be overhauled. (Female, ACT, 45 to 54 years)

These parents and carers suggested that the contravention regime’s lack of understanding of, and response to, power dynamics and imbalances was problematic, including, for example, in cases characterised by family and domestic violence. For these parents and carers, these issues need to be addressed and need to inform the decision-making process before the regime can be improved. In particular, some parents and carers reflected on their experiences of systems abuse whereby the legal process, including the contravention regime, could be strategically used by parties to control them and their children post-separation:

The legal process is currently being abused to a large extent by controlling personalities whereby children are directly placed in the middle of conflict whilst one parent (predominantly) wants to continue the fight with another parent. (Female, Qld, 35 to 44 years)

[Other parent] does not follow the orders and when I question [other parent’s] behaviour [other parent] threatens me with legal action. [Other parent] has tormented me for nearly six years. (Female, Qld, 45 to 54 years)

The family law system needs better understanding of family violence to enable effective responses to family violence and to ensure safe parenting orders are made in the first place

As noted in the discussion above, a substantial proportion of parents and carers who provided an open-text response about improvements to compliance with parenting orders suggested a need for increased acknowledgement of family violence by professionals in the family law system (n=59/382). These parents and carers described the need for early and timely identification of family violence in the context of family law proceedings, including in the context of contravention proceedings:

Actually make the process easy to raise concerns and a place for these to be able to be addressed in a timely manner. (Female, Tas, 35 to 44 years)

Coercive control and abusive litigation needs to be recognised by the courts a lot faster and non-compl[ia]nt parents without good reason need to be punished. (Female, Qld, 35 to 44 years)

Some parents and carers reflected on their experiences when engaging with the court process in the context of family violence and described the inability of the family law system to identify and respond in a timely, effective and trauma-informed way. They observed that this deficiency led to a system that did not encourage compliance with parenting orders. These parents recounted their experience seeking legal advice and engaging with FDR and the court process with devastating effect. They illustrated the ongoing perpetration of family violence in this context:

Currently, there is no incentive to obey the orders because the other party knows I have to have money and confidence to report a breach, and he involves the children in it all. Resolution takes months and he knows the system … I called a legal aid organisation about a breach and they told me that the courts are overflowing and breaches such as cutting time short, even if he’s done it many times – the court won’t give him a slap on the wrist and tell him not to do it again, and [they] suggested mediation. I told them I had applied to have FDR twice since the orders were drawn up and I still have a current certificate that he refused to participate. I have been completely emotionally and financially destroyed by the father of my children. The abuse hasn’t stopped, it just changed the way he goes about it. There must be an easier way than to have to go back to court to report a breach and request make-up time with the kids. Every second of time with my children is like gold to me. I no longer have faith in the legal system. No parent should have to spend their life savings to the point of almost bankruptcy because the other parent decides to apply for full custody. I was a confident [occupation] and then [occupation] both for a decade each. I will never escape his abuse. I am completely and utterly broken. (Female, Qld, 45 to 54 years)

Repeated non-compliance with parenting orders must be actioned as they occur and perpetrators penalised. Repeat returns to court to write new orders does not change the outcome if a parent is not complying because of a domestic violence mindset. Parenting orders made within the context of family violence must be created and enforced differently to those made without a family violence element. Family violence perpetrators do not respect the law and will not comply. It is a waste of time to continue with the same processes and expect a different outcome. The psychological trauma to victims of family violence and consequences of non-compliance with court orders must be recognised and taken into consideration. Costs for having to constantly return to court for non-compliance should be awarded throughout the process rather than at the end of a trial … All court action must occur quickly because children grow quickly and all of a sudden most of their lives have been spent living under the shadow of court proceedings. I never had the opportunity to have fun with my beautiful daughter and now she is a sad and angry teenager who hates herself and me. She never got to be a kid. (Female, Vic, 45 to 54 years)

For these parents and carers, compliance was not a rational expectation when dealing with perpetrators as the “orders will be used to control the other parent at every opportunity” (Female, Vic, 45 to 54 years). Indeed, parents and carers described parenting orders as futile in the face of persistent non-compliance: “Perpetrators (like my ex) will constantly breach orders … I had taken my ex back to court for breaching orders and he just keeps repeating it.” (Female, NSW, 45 to 44 years)

The shortcomings of the legal process are particularly evident in the context of coercive and controlling behaviour and the extent to which the family law system can be used by perpetrators to continue to perpetrate family violence in the form of systems abuse (see for e.g. Easteal et al., 2021). For example:

… what was once a dream I had from early childhood … having a baby in a family of my own, has honestly become a living daily nightmare … The abuse of my ex-husband and the ability of the court to be manipulated and used as a weapon to continue this abuse, along with the failures of the system to protect us such as police and department of child protection, over the past seven years, has ruined my life. My life will never ever be the same, financially and emotionally – my career, my relationship with family and friends, my dreams and goals, everything I had worked for my entire life is now gone and I am trapped in a daily hell. The family court has assisted my ex-husband to destroy the life of his wife and children … and it will never make sense, and it will never be okay, and everyone can see it – but no one cares – no one. (Female, WA, 35 to 44 years)

I have had 12 interactions with the family law court as [the other parent] used it as a tool to further control me … [The other parent] has tormented me for nearly six years. (Female, Qld, 45 to 54 years)

In my case, the father had been coercive and abusive within the home. After he left, his communication and visitation was inconsistent. Following this, he then applied to the court for what he considered suitable access. When final orders were made, some by consent and some ordered by the judge, he refused to follow them and we did not hear from him for two years. Then out of the blue he began quoting final orders and telling me I had to comply but he had no relationship with the children and had moved four and a half hours away. Myself and the children are now back on the merry-go-round of him trying to control us through litigation. (Female, Vic, 35 to 44 years)

The following parent described the ongoing trauma experienced after protracted engagement with the court process, where orders could be misinterpreted or manipulated to continue to exercise coercive and controlling behaviour:

It should be harder to go back to court. Even when we have consent orders, he can keep taking me back to court with accusations of alienating, with no evidence. I follow orders and communicate respectfully. He represents himself, costs him nothing. Costs me $29,000 even though Rice and Asplund,[[8]](#footnote-8) I was awarded $9,000 costs. He sends me emails still accusing me of stealing the children even though orders were made by consent four years ago and we separated 6.5 years ago. Now that court is over his communication has deteriorated and I don’t know what he will do next. I tried to describe the physical and emotional concerns I have about kids in affidavits to the judge and [w]as told I was making mountains out of molehills. It would have been helpful to have a step where we could get advice on interpreting the orders. What does parental responsibility mean. I always communicate, but he wants consultation before keeping kids home sick from school. Anything in the orders with any ambiguity led to conflict. Advice rather than court would have been best. (Female, Vic, 35 to 44 years)

Parents and carers clearly articulated how the compliance regime was unable to cater for the changing phases of family violence and that tight orders with seemingly protective arrangements in place did not operate as a deterrent against future non-compliance. The following participating parent observed that early identification and an acknowledgement of perpetrator behaviour would inform safer and more effective parenting orders that better accommodated the best interests of children and their and their parents’ safety:

Separation often does nothing to change the perpetrator’s behaviour or sense of entitlement, all it does is transfers the abuse into new arenas, which are sometimes seemingly purpose built for them to contort their way through. The “cracks” perpetrators are so adept at working their way through are created (in part) by the lack of understanding that exists about the true impact of perpetrator behaviour on victim/survivors. In terms of compliance with parenting orders, in my case the orders contain many protections and seemed at face value to be adequate to afford my son’s father the opportunity for self-reflection and obtaining appropriate mental health support while having safe contact with our son … Because of various reasons including fears for safety, and the need to not only prove that a breach has occurred but also to prove that it is serious enough to not have it viewed as inconsequential, my hands are tied regarding pursuing a contravention. Stronger orders with more restrictions then seem not to be the answer[;] early identification of high-risk perpetrators, and increasing understanding of the likely outcomes of any contact with a person who has committed family violence seems like a step in the right direction. (Female, NSW, 35 to 44 years)

Indeed, a small but not insubstantial proportion of the parents and carers (n=39/382) who provided an open-text response reflected that for compliance to improve, the safety of parents, and especially children, had to be prioritised so that safe parenting orders could be made in the first place:

Parenting orders need to consider safety of parents and children, especially where there is history of abuse and control. (Female, NT, 35 to 44 years)

[Parenting orders] need to support my safety and the safety of the children. (Female, Qld, 35 to 44 years)

Some parents and carers specifically nominated orders for equal shared parental responsibility (FLA s 61DA) or equal time or substantial and significant time (FLA s 65DAA) in circumstances characterised by family violence as a means by which a perpetrator can continue to coerce and control the other party, further “entrench[ing] a cycle of violence” and with non-compliance a likely consequence:

Equal shared parental responsibility and significant time MUST be removed from the Family Law Act. The presence of these clauses completely disincentivises compliance and encourages abusive litigation. (Female, Vic, 45 to 54 years)

Parents’ and carers’ reflections in relation to the making of orders for shared parental responsibility or significant time in circumstances characterised by family violence are also relevant when considering the making of parenting orders that are safe in the first place.

Shared parental responsibility should only be used when the parents can be amicable together, otherwise it causes a window for the other parent controlling and continuing the abuse … The courts gave him the ability to continue to try [to] ruin my life until the children are 18 years old. (Female, Vic, 35 to 44 years)

Parenting orders that enforce equal shared parental responsibility and significant time in a sphere of family violence will never be complied with and will entrench a cycle of continued violence and escalating power imbalance. If an order is made based upon these assumptions it is done so with complete disregard for well-established knowledge regarding perpetrator behaviour and psychology … Systemic violence is made all the more bitter if you are the applicant and believed the system would help you. (Female, Vic, 45 to 54 years)

These parents/carers clearly articulate the ways in which the cycle of violence has an opportunity to continue where orders for shared parental responsibility were made, with one parent describing how she was only able to secure an order for sole parental responsibility once her former partner was incarcerated for a period in excess of five years for the abuse he perpetrated against her.

Expressing similar concerns around unsafe parenting orders, the conflicting advice that this parent received from police (who suggested breaching unsafe orders to protect children) and from lawyers (who advised that there would be consequences for breaching orders) left this participant feeling unsupported, stressed and fearful of what repercussions may be applied for breaching unsafe orders:

In [state] it felt when I needed [the police], they had too many boxes to tick to remove a child, but they would tell me if I felt unsafe to not follow the orders as a [parent] I knew best, yet my lawyer would tell me the judge would punish me. This only added to my anxiety and fears of what would happen to me and/or my child. (Female, Tas, 35 to 44 years)

Another participant called for there to be more nuance in how non-compliance with parenting orders was addressed by the court to properly account for safety concerns:

There needs to be a balance between punishing people who contravene orders on purpose without a care in the world for the other parties or the children involved and then some leniency in a sense for when people contravene orders honestly believing that they had their child’s best interests at heart. There’s no worse feeling than sending your child somewhere that you honestly believe they will be unsafe/in danger/at risk just to abide by court orders! (Female, NSW, 25 to 34 years)

These and other parents and carers described the lack of insight and expertise regarding the nature and impact of family violence on the part of family law system professionals when making parenting orders:

[The] family court need[s] to recognise coercive control and domestic abuse and not ignore them. Abusive vindictive pathological lying fathers with money have the ultimate power in family court. (Female, Qld, 35 to 44 years)

In my extensive experience (been in litigation for almost nine years, six different sets of orders) – the main problem with parenting orders is that they are made by judiciary with absolutely zero understanding of children’s needs, high-conflict personalities or family violence. (Female, Vic, 45 to 54 years)

Family law and family violence should not be separated. (Female, Vic, 45 to 54 years)

A trauma-informed approach to decision-making was identified as critical, in order that seemingly innocuous orders do not serve to continue or exacerbate harm for parties who have experienced family violence:

I was ordered to have email contact with the father on a parenting app. [At] the thought of this I had panic attacks, I downloaded the app as ordered; however, I didn’t open or respond to the emails, on some days I had notifications of him emailing three times. I ended up deleting the app as it was affecting my mental health. I was roasted in court; however, did not get “punished” as such. (Female, Qld, 35 to 44 years)

I have suffered PTSD and been off work since court [less than 12] months ago because the judge did not identify the abuse that myself and my son are subjected to as serious and downplayed the impacts of this upon us, which ultimately impacted on the orders made. Psychologists, police and lawyers can all see the abuse clearly; however, the court has such a high bar for abuse (often only taking physical violence seriously from what I’ve discovered), that insidious abuse aimed at controlling victims flies under the radar. The courts are so far behind the times in terms of the way that coercive control and narcissistic abuse is identified and managed. (Female, Tas, 35 to 44 years)

Some participants called for extensive family violence training for family law system professionals (Kaspiew, Carson, Coulson et al., 2015; see also ALRC, 2019; Australian Government Attorney-General’s Department, 2021a; Australian Government Attorney-General’s Department, 2021b; Joint Select Committee, 2021), and a greater voice given to family violence practitioners to ensure that people experiencing family violence are not “misidentified as perpetrators” or having protective behaviour penalised. The type of training nominated included:

A more comprehensive understanding of all the various behaviours which may constitute family violence, as well as types of perpetrators and the risk they pose, is needed in the community, in systems, and amongst professionals. (Female, NSW, 35 to 44 years)

Recognition of systemic abuse and the ability to identify systemic abuse in a court of law. (Female, NSW, 45 to 54 years)

Training … to acknowledge the dangers of coercive control, to acknowledge risks to wellbeing and safety of children and former spouses by enforcement of contact even supervised over years when [there is a] history of mental illness, personality disorders, control instability, distortion campaigns, threats and drug abuse [that] is documented from independent and relevant professionals. (Female, NSW, 35 to 44 years)

While some specifically nominated the need for this training with respect to judicial officers and ICLs, others reflected on the need on a broader scale:

Judges needs [sic] to be able to comprehend the extent of  
[, and how] the ongoing domestic violence/abuse can affect mother and the children. [The] perpetrator will constantly manipulate the truth and continue their coercive power and control over the children and wife (in this instance, my case) and they need to put a stop to the ongoing abuse to avoid children suffering from complex trauma … (Female, NSW, 35 to 44 years)

Educate legal professionals about post-separation abuse; legal-systems abuse and technology-facilitated abuse. (Female, Qld, 45 to 54 years)

Major overhaul on report writers and court-appointed psychologists and ICL[s], they need training in DV, and personality disorders and complex PTSD. (Female, Qld, 35 to 44 years)

One participant also suggested that judicial officers and registrars could work with family violence specialists to facilitate the making of safe and appropriate parenting orders (Female, Vic, 45 to 54 years).

These data indicate that where professionals have a nuanced understanding of domestic and family violence, this may support decision-makers to acknowledge that making shared parental responsibility or significant time orders may be unsafe and inconsistent with the best interests of children where they provide the opportunity for a perpetrator to continue to coerce and control the other party.

A focus on prioritising the best interests of children and young people to improve compliance

Of the 382 parents and carers who answered the question, “How could compliance with parenting orders be improved?”, more than one quarter (29%; n=111) raised issues relating to children and young people. These included concerns that the contravention regime caused harm to children; concerns regarding family violence and safety, including children being used as a “weapon” in the parental conflict; scope for children and young people to participate in decision-making; children and young people themselves contributing to non-compliance; and the perceived inflexibility of parenting orders to accommodate children’s evolving needs and unique circumstances.

Almost two thirds of parents and carers (65%; n=72/111) who identified issues relating to children and young people in responses about improvements to non-compliance indicated that engagement with the family law system had harmed their children, or that the system had failed to protect their children from harm:

The family court system enables abuse and does not protect children. It favours the parent with the most money and further traumatises the abused parent and children. (Female, Vic, 35 to 44 years)

The family law system and court orders have enabled systems abuse of me and emotional and psychological abuse of me, my partner and my child. (Female, Qld, 35 to 44 years)

Even with the very limited contact arrangement, and the various restrictions my son’s father is subject to, he has chosen to disregard his responsibilities under the orders and as a parent. This has resulted in our son and me experiencing a range of adverse outcomes in terms of mental health and re-traumatisation in relation to the contact. (Female, NSW, 35 to 44 years)

Many parents and carers perceived that harms to children and young people from the family law system generally and the contravention regime in particular arose in the context of their experiences of family violence, including coercive control. For some, compliance with parenting orders was identified as placing their children at risk of harm and they expressed feelings of helplessness in complying with such orders. For example: “Having to comply with orders that repeatedly put your children directly in danger is unconscionable, and you have no choice.” (Female, WA, 35 to 44 years)

Some parents and carers identified parenting orders to be insufficiently child-focused, or insensitive to children as victims and survivors of family violence in their own right, which in turn led to non-compliance where the orders were identified as inconsistent with the safety and best interests of the child:

The courts believe that an abusive father is a threat to the mother and this is somehow separate from the child when we know that witnessing violence has a massive impact on the child (my son goes into fight/flight/fawn easily) … (Female, Qld, 35 to 44 years)

It genuinely defies all logic and reason as to why a court would let a grown adult who already is proven to be abusive to another grown adult [have] access to defenceless children, and expect that they would not be at risk of the same abuse … (Female, WA, 35 to 44 years)

If a child is being abused by a parent they should not be forced to see them by way of a court order. My child was fearful of her father’s controlling behaviour and when she stood up to him she was abused and would not return. (Female, Qld, 45 to 54 years)

Some parents and carers perceived that their children were being used as a “weapon” or a “pawn” to perpetuate control and abuse, with negative consequences for their children’s mental health:

There would be many orders made by the influence of a control(ing) parent who doesn’t really want the children but simply wants to “get back” at the other parent and using the children to continue to do this or doesn’t want to pay child support. (Female, NSW, 35 to 44 years)

My youngest daughter in the orders has mental health issues and is struggling because of his behaviour towards us … It’s a very sad situation but very common when one parent uses a child as a weapon. (Female, Qld, 45 to 54 years)

Non-custodial parents and the children are suffering emotionally and mentally due to a number of vindictive ex-partners using the child as a weapon. (Female, WA, 35 to 44 years)

Some parents and carers described how their attempts to protect themselves and their children were sometimes misinterpreted by legal and non-legal professionals as difficult or obstructive behaviour:

I fought nearly three years through the family court. The whole process I was told I was unstable and a liar (I was) trying to protect my children. I was unable to protect my daughter from him … I breached the orders to try keep myself and the children safe … Trying to keep the children safe I believe shouldn’t be punished. (Female, Qld, 35 to 44 years)

The whole system was intended to support the father and was based on an assumption I was trying to keep my daughter separated from her father, despite my overwhelming evidence I was not, i.e. phone records, diarised visits, etc. (Female, Qld, 35 to 44 years)

One participant indicated that bringing contravention proceedings was necessitated by a need to protect their children as well as themselves:

My ex is dangerous and has got away with everything and gets what he wants in court … so you go back to court again and again to try to protect yourself and your children … (Female, Vic, 45 to 54 years)

A substantial proportion of parents and carers who identified family violence and safety concerns for their children highlighted the need for parenting orders to prioritise children’s needs and safety as a means of improving compliance. For example:

Parenting orders need to be such that the child is safe and comfortable at all times. Just like anyone, they should never be forced to spend time with a person that makes them feel unsafe, uncomfortable or anxious. The system needs to keep these children safe from their abusers and the fact that a person commits family violence needs to be taken into account. If they can hurt the other parent, that hurts the child and they will inevitably hurt the child. (Female, Vic, 35 to 44 years)

I think children’s safety, both physical and emotional, needs to be considered more carefully in orders in the first place and this would improve compliance. (Female, SA, 25 to 34 years)

As foreshadowed above, a common suggestion in this regard was that the presumption of “equal shared parental responsibility” (FLA s 61DA), and/or the court’s consideration of a child spending equal time or substantial and significant time (FLA s 65DAA), be removed. These provisions of the FLA were identified by some parents and carers as creating a “deadlock” between parents and perpetuating coercive control and misuse of court processes, with harmful impacts on children. For example:

The court seems to have the default assumption that the best thing for a child is to spend equal, or close to equal, time with both parents. There is no evidence to suggest that this constitutes the best interests of a child. Particularly when one of these parents is violent, cruel, a criminal, or mentally unsound. (Male, WA, 35 to 44 years)

These views of parents and carers regarding the potentially perverse operation of these provisions of the FLA – with the potential to put children at risk of harm – were acknowledged recently by both the ALRC (2019) and the Joint Select Committee on the Family Law Act (2021). The ALRC recommended that the presumption of equal shared parental responsibility in s 61DA of the FLA be replaced with a presumption of “joint decision making about major long-term issues” (ALRC, 2019, Recommendation 7). The Joint Select Committee recommended that s 61DA be amended to address the “misunderstanding” that “equal shared parental responsibility equates to equal time with the children” (Joint Select Committee, , 2021, Recommendation 17).

A small number of parents and carers suggested that less emphasis be placed on children having a meaningful relationship with both parents: FLA s 60CC(2)(a):

Currently the wording of the law is that the child has the right to both parents. This is fraught with danger. The child cannot interpret immediate dangers that one or both of the parents may place the child in and as such, allowing a defective parent into the scenario as is the custom by law, is a ridiculous notion in the 21st century. (Male, SA, 24 to 34 years)

… the courts[’] view that all children must have a relationship with both parents is wrong. When the other parent is abusive, forcing a child to spend time with that parent is just increasing their trauma. (Female, NSW, 45 to 54 years)

Compliance would be easier if the orders were reasonable and GENUINELY in the interest of my daughter, rather than being insistent on ensuring the child’s access to both parents. (Female, Qld, 35 to 44 years)

It is not always in the best interest of a child to see both parents … (Female, Qld, 35 to 44 years)

Children’s participation in decision-making to support compliance

In determining what is in a child’s best interests when making parenting orders, the first of the “additional considerations” that must be taken into account by the court is “any views expressed by the child”. This is qualified by the requirement that the court take into account any factors, such as the child’s maturity or level of understanding, that the court thinks are relevant to the weight it should give to the child’s views: FLA s 60CC(3)(a).

The court may inform itself of the child’s views by having regard to a family report (FLA s 62G); by making an order for independent legal representation of the child’s interests (FLA s 68L); or “by such other means as the court thinks appropriate” (FLA s 60CD(2)(c)). However, “nothing in Part VII of the Act permits the court or any other person to require the child to express his or her views in relation to any matter” (FLA s 60CE).

A small but not insignificant number of parents and carers who provided an open-text response to the question regarding how compliance with parenting orders could be improved indicated that the current regime offered limited or insufficient opportunities for children and young people to express their views and to be heard. This was particularly in relation to their own safety – such that parenting orders did not adequately incorporate children’s views and wishes:

The children aren’t listened to. They are getting older and their dad threatens police if they don’t want to see him. (Female, Vic, 45 to 54 years)

There is no easy way for concerns of a child to be heard at all … (Female, ACT, 35 to 44 years)

If court experts actually listened to children and read all evidence it will cut down a lot of pain for everyone … If children are scared for reasons that are evidenced they should not be forced, it’s so destructive to their health. (Female, Qld, 35 to 44 years)

Some parents and carers indicated that non-compliance was in some circumstances driven by children themselves, who were “voting with their feet” or resisting compliance. For example: “The confusion observed in the children and the anger that they ‘have’ to go is difficult to go through time and time again.” (Female, NSW, 35 to 44 years)

In this regard, a small number of parents and carers suggested that supporting a child’s views in refusing to comply with parenting orders should not be punishable under the contravention regime, particularly in circumstances where the child felt unsafe. For example:

My ex has always manipulated and emotionally abused our eldest child who now at 14 refuses to return to his care. Our son is really scared he could be made to go back and his father has threatened he would go to court … At this point his father has not applied to the [family] court re our child refusing to return, I assume he must have had advice that the court would listen to the child and that would reflect very badly on him. There should not be ramifications on the supporting parent or child if the child refuses to return to the other parent for their safety whether physical or emotional. (Female, NSW, 45 to 54 years)

Some parents and carers reported negative experiences with ICLs appointed to represent their children’s best interests (FLA s 68L) or the family consultant preparing a report for the court (FLA s 62G). This is consistent with earlier research reporting on children’s own experiences (Carson, Dunstan et al., 2018; Kaspiew et al., 2014). While an ICL must “ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court” (FLA s 68LA(5)(b)), the ICL “is not the child’s legal representative” and “is not obliged to act on the child’s instructions” (FLA ss 68LA(5)(b), 68LA(4)(a)–(b)). For parents and carers who were critical of the ICL, their primary concern was that the ICL did not meet with the child:

The independent lawyer didn’t even spoke [sic] once to my child. (Female, Qld, 45 to 54 years)

… the ICL to have a more holistic approach by actually speaking and representing each child involved in proceedings and not focus on parental responsibility and/or rights that either parent should have according to what documentation or information has been supplied to the court. Instead of assuming what is in the best interests of the child without spending time with the child. (Female, Vic, 45 to 54 years)

The ICL has declined to actually meet with the children. In 14 months since proceedings started, no court officer has spoken to the children. (Male, WA, 45 to 54 years)

Criticisms of the family report writer were directed at their understanding of domestic and family violence and its impacts upon children, as well as their perceived objectivity (see also Field et al., 2016; Rathus, 2021). In this regard, reference may be made to the Australian Government Attorney-General’s Department Consultation Paper on improving the competency and accountability of family report writers (2021b). Examples of the concerns raised by parents and carers included:

The social worker who engaged in the family report writing has no idea about [domestic violence] … Most if not all of the abusers are charming, charismatic and very very good at manipulating the legal process and the social worker. Our social worker has a complete bias, no understanding of [domestic violence]. (Female, Qld, 45 to 54 years)

Family court report writer makes up lies that the mother has told her, and does not believe me when I tell her the truth about the mother court order breaches or Child Support harassments and lies. The family court writer does not report the children are doing drugs and not attending school. It is all ignored so it just disappears and any wrong thing the father does, or just made up lies from the mother, is put into the reports. (Male, Qld, 45 to 54 years)

Reinforcing the findings of earlier research (ALRC, 2019; Carson, Dunstan et al., 2018; Joint Select Committee, 2021; Kaspiew et al., 2014; Parkinson & Cashmore, 2008), a small proportion of parents and carers (6%; n=23/382) identified a need to give children and young people a greater “voice”, and to enhance their participation in the decision-making process for parenting orders. This included taking into account children’s views and wishes about their parenting arrangements, and their feelings of safety or reports of violence or abuse, in a safe and supported way:

Make orders that are safe for the children and take into account their wishes. Especially take into account their reports of feeling unsafe or experiencing abuse. (Female, Qld, 45 to 54 years)

The children should get more of a say. My children are very young and in the right environment they should have been given the opportunity to say what they want and how they feel. (Female, Vic, 35 to 44 years)

Establish a framework that supports child[ren] who make decisions for themselves even at a young age. Forcing children to spend time with the other parent will cause long term mental health issues and trust issues. (Female, Vic, 35 to 44 years)

The courts need to listen to the children. Somewhere that neither parent is able to manipulate them with their views. (Female, Qld, 35 to 44 years)

Enhancing children’s and young people’s participation in decision-making was identified by one participant as a factor that would support compliance, as the child would feel heard and respected in the process:

The court MUST start listening to the child far more and at the beginning of proceedings so then agreed orders could possibly be more closely complied with. PLEASE give the child “a voice” in matters that affect them, in the beginning and as part of the process, give the child more credit for how they feel and what they want and treat each child as an individual and not as a number or statistic based on their age. This approach may well again support compliance as a child whom is forced emotionally and or physically to spend time with a person whom they do not wish to [sic] is horrendous and harmful. (Female, WA, 45 to 54 years)

A very small proportion of parents and carers expressed the opposite sentiment: that too much reliance was placed upon children’s views in the making of parenting orders, which was said to generate unsafe outcomes or have negative impacts for children themselves:

All professionals decided that my child was old enough (in court from 11–14 years) to determine where to live despite not attending school and declining mental health plus being placed on antidepressants. The ex encouraged the child to run away and the courts felt they could do nothing so took the easy road rather than the right road. (Female, Vic, 45 to 54 years)

The first and foremost priority of the family court system should be to ensure that both parents have as close to equal time with their children, regardless of what the child says they want. Even as a teenager, children are manipulated and willing [sic] say things they do not feel when they are living in fear or do not want to disappoint. (Female, NSW, 35 to 44 years)

A child’s views should be considered only when safe. Not leaving the child in a vulnerable position to be brainwashed by a party to advantage their position in court. (Female, NSW, 35 to 44 years)

These views reflect some commonly voiced concerns regarding children’s participation in family law decision-making, including that it may harm their wellbeing by placing them in the middle of parental conflict, and that children are vulnerable to parental manipulation in this context (Chisholm, 1999; Parkinson & Cashmore, 2008).

Other parents and carers in this context recognised children as rights-holders and referred to the need to protect and respect children’s rights (Dimopoulos, 2021; Tobin, 2019):

Take into consideration the children’s views and uphold their rights. (Female, SA, 45 to 54 years)

I believe that we need to give children greater voice when it comes to parenting orders. Often children leaving DFV are forced to see the other parent, even when it’s detrimental to their health and wellbeing. Children should never be fearful of their parents or have fear of retribution for having a voice. Children have rights too. (Prefer not to say gender, NSW, 45 to 54 years)

A small number of parents and carers spoke in terms of parents having “rights”, rather than duties or responsibilities, in relation to their children, which they perceived as problematic:

Stop making violent people have parental rights and so much contact with a victim parent. It’s dangerous for the children (mine have gotten assaulted by their father) and the parenting order had to be suspended. (Female, Vic, 25 to 34 years)

… “the other parent has rights as well” it’s ridiculous and more importantly, it is dangerous. (Female, WA, 35 to 44 years)

Children’s safety needs to be put [above] parents’ rights. (Female, WA, 35 to 44 years)

One participant considered that the child’s best interests should be equated with “family rights”: “Consider the child’s best interests are family rights.” (Male, Qld, 25 to 34 years)

Flexibility of parenting orders as children’s needs evolve

A small number of parents and carers identified the inflexibility of parenting orders, including the inability of orders to cater for children’s complex and evolving needs, as a factor contributing to non-compliance. Some considered parenting orders to be unworkable because they were “static”, not “fluid”, or were difficult to amend as children’s needs or circumstances changed:

Orders are not fluid and just leave you waiting to go back to court to update them as your child develops and grows, the courts simply cannot keep up. (Female, Qld, 35 to 44 years)

Parenting orders are static, which largely makes them appropriate for the point [in] time they come into effect. Cases within family court are more often than not litigated for many years. Parenting orders become largely outdated. (Female, NSW, 35 to 44 years)

Also aging of children as clearly our orders don’t allow … for children to gain employment when older. (Female, Vic, 35 to 44 years)

In this regard, a small number of parents and carers described parenting orders that were unsuitable as they failed to account for the child’s culture or unique health needs or family relationships:

It is appropriate for Indigenous children to have orders made which include their culture and how they will experience it. I have been continually ignored by two family report writers and the ICL on cultural inclusions. (Female, Qld, 35 to 44 years)

The orders were made as if the other parent was a dad – she is not, and our dynamics and family has been completely misunderstood … including the final orders. (Female, Vic, 45 to 54 years)

Child is Autistic with Special Needs. Orders were NOT written to CONSIDER this, as father refused to allow son to be tested! … During COVID his Autism resulted in paranoid fear about leaving home. So child was no longer willing to see, or go to father, he was happy and available to call, and text only. Despite all efforts to discuss and appeal for negotiation, father refused to accept situation. Instead he chose to take mother to court for Contravention … (Female, WA, prefer not to say age)

Some parents and carers suggested the need to simplify the process for variation of orders to cater for children’s evolving needs, or to address orders that were no longer workable or safe:

Easier pathways to have small orders varied as the kids develop/needs change. (Female, NSW, 35 to 44 years)

There has to be a better and quicker way to protect children from abuse/domestic violence if circumstances change. This doesn’t need to be permanent, but it needs to be able to be enacted quickly and cheaply to protect children from harm. (Female, Qld, 35 to 44 years)

One participant expressed reluctance to re-engage with the court system to vary parenting orders that they considered to be unsuitable for the children, for fear of “worse outcomes”:

I would love to have our orders tweaked so the kids spent a little bit less time with their dad … They need more stability and the current situation is contributing to some poor educational outcomes for one of my children and behavioural issues for the other. I believe the stability and attachment with me is what the children need and winding the orders back a little through school term would assist this stability and their health and education. However, I do not trust the legal system to risk going back through it as I could get worse outcomes for them. (Female, Tas, 35 to 44 years)

The need for parenting orders to reflect children’s unique and distinct needs and interests, rather than a “one size fits all” approach, was also identified:

For the children to have individual orders and not be placed on a single order as “the children”. For example my children are different genders, 5 years apart and have different needs yet our court orders refer to them as one entity, “the children”. (Female, Vic, 45 to 54 years)

The courts need to recognise that it can’t be a one size fits all approach. (Female, Vic, 35 to 44 years)

Making clear parenting orders in the first place

A smaller proportion of parents (n=27/382) who provided an open-text response suggested that improvements to the clarity of the initial parenting orders could, in turn, improve compliance with parenting orders. For example:

In essence, the reason why orders are not followed is because the orders themselves are poorly designed. (Female, Vic, 45 to 54 years)

Clearer more defined (and possibly more layperson friendly) wording in orders, especially in cases of high conflict. (Female, NSW, 35 to 44 years)

… it appears to me that there are a lot of “words” in the orders that don’t necessarily have much bearing in real life. Keep it really simple, not over complicated with times, different times, school terms, start and end of holiday dates. Personal interpretation shouldn’t have to be considered if they are written accurately. (Female, Vic, 35 to 44 years)

Simple understandable orders, orders that are clear … (Female, NSW, 45 to 54 years)

Ensuring that there were no “grey areas” in the wording of orders was also identified as important:

There should be NO grey areas in the parenting orders for them to say they interpret it one way, which is different to the obvious intent of the parenting plan (particularly when an FVO is also currently in place). (Female, ACT, 35 to 44 years)

We spent two days in court and the other parent would not agree or compromise on anything. What that left me with was a $15,000 bill I’ve only just crawled out of and an order full of grey areas the other parent goes to town on. He had the money to employ two top barristers. Recently he requested we go to mediation for the grey areas [in the orders]. Again, we achieved nothing. Because he only wanted to change what he didn’t get in court and wouldn’t fix the grey areas. I’ve given up, everyone that has read my order say[s] it’s so complicated. (Female, Tas, 35 to 44 years)

This participant identified how these orders with the grey areas allowed her former partner to continue to exercise coercive control over her and their children:

This is the life of someone who lost control of me and now uses coercive control and control of the children. I just have to parallel parent as best I can. I’d love to go back to court for [the orders] to be changed/cleaned up but the other parent is also financially abusive and court is very triggering and the money I’ve already flushed away makes me feel sick. I’ve just resigned that this is my life where the order is all about him and his shift work and not about the best interests of the kids and stability and that I cannot work full-time around it. (Female, Tas, 35 to 44 years)

While some participants suggested the use of standard template orders, avoiding legal wording, or removing discretionary wording in orders, others suggested that the “orders and their meaning (should be) properly explained”, with one participant suggesting that having explanations of the orders and how they might apply in particular circumstances would help, as all potential situations cannot be articulated in the orders.

One participant recommended that “parenting order[s] need to be written so as to avoid misinterpretation and should be linked to an online portal that is linked to education and health” (Male, WA, 35 to 44 years).

Addressing the perceived absence of authority of parenting orders and lack of consequences for non-compliance

Some parents and carers (n=42/382) who provided an open-text response to the question about improving compliance with parenting orders expressed concerns about the lack of consequences for non-compliance. Some observed a direct link between the lack of consequences for the failure to adhere to orders and ongoing and entrenched non-compliance:

… when a person gets away with breaches for months, then their behaviour is being rapidly/continuously reinforced – which strengthens and embeds that behaviour. When [the] legal advice is [that] contravention proceedings are pointless and … [there are] no options for remedy – then the whole court process ineffective and not fit for purpose. (Female, NSW, 45 to 54 years)

In the following examples, the parents/carers suggested that addressing breaches through the court system was not an effective way to manage non-compliance with parenting orders. The example suggests that while the court has the legislative authority to address breaches of parenting orders, this is not a practical option for many parents: “In reality, there [are] no consequences for not complying with orders unless we tie up the court system. This doesn’t resolve anything for any party.” (Male, Tas, 45 to 54 years)

For other parents, there was a perception that a breach of parenting orders had to be significant or a “big issue” to be addressed by the court, such that non-compliance could continue without acknowledgement or repercussion:

Basically, once [the other party] start breaching the lawyers tell us we have to wait two years and for a big issue. It’s frustrating and means [the other party] can get away with whatever they want. (Female, Qld, 35 to 44 years)

The issue of costs associated with legal proceedings and enforcement was very much intertwined with these experiences and views around a lack of consequence for non-compliance with parenting orders. For example, the following parent suggested that the high cost associated with acquiring parenting orders was inconsistent with the lack of enforceability of the orders. These factors made applying for contravention orders an ineffective way to ensure compliance, in addition to being costly and stressful:

It costs parents tens of thousands of dollars to gain court orders. Once gained no one will enforce them. The only avenue [is] going back into the worst most stressful and adversarial system on the planet at huge cost to chase a breach. This process has been made impossible. (Male, SA, 45 to 54 years)

In line with these perspectives and experiences regarding the lack of consequence for non-compliance, a smaller group of parents suggested that the lack of enforceability was due to the lack of authority that parenting orders held:

It concerns me that some people tend to treat parenting orders as a piece of paper. Any resolution of the issues can take a significant amount of time to resolve, and this time [c]an lead to ongoing damage to children. (Male, Qld, 45 to 54 years)

No, some people will not comply, they feel the rules or the law does not apply to them, and a court order is just a piece of paper that holds little weight. I don’t know any way to help change their minds or reason with them. After almost two years of legal action, and numerous times in court, at an enormous cost, the final orders had minimal significance and were breached within hours. (Female, Qld, 45 to 54 years)

That parenting orders were viewed only as “a piece of paper” was problematic for these parents participating in the survey. They explained how this view shaped the lack of compliance with orders in practice, and furthered safety concerns for their children, as indicated in the first example above. Furthermore, some parents suggested that this lack of authority did not match the high financial cost of acquiring parenting orders.

“Punitive” or “meaningful” consequences for breaches

Two key opposing views emerged regarding how compliance could be improved:

* Compliance would be improved by punitive measures in response to breaches.
* Meaningful, rather than punitive, consequences were needed to ensure compliance.

Almost one third (n=82/382) of the parents and carers who provided an open-text response recommended more punitive responses to breaches as necessary to improve compliance with parenting orders. While more than half were men (n=48), women made up a substantial proportion of these participants (n=34). Almost half (n=38) of these parents and carers called for punitive penalties for non-compliance in a very broad sense, by using language such as “harsh”, “severe”, “strict” and “serious” to describe the consequences that should follow:

Severe consequences and punitive damages for breaches. (Male, Qld, 35 to 44 years)

Serious penalties for deliberate non-compliance. (Male, NSW, 45 to 54 years)

Stricter legal consequences. (Female, NSW, 25 to 34 years)

Harsher penalties for not following the orders. (Male, Qld, 35 to 44 years)

Some parents/carers were more explicit, with nominated options including the imposition of costs orders or imprisonment, with the latter most commonly nominated in combination with other punitive options such as the imposition of fines. For some parents/carers a scale of responses was identified as important:

There needs to be a scalable response – maybe compliance reminders could be issued such as the court registry writing to or phoning parents to remind them the orders must be complied with – for situations like mine a warning might be enough. It needs to be from an independent party. A smallish fine might help drive home the message if the non-compliance persisted. And then higher interventions could be engaged for more serious breaches – right up to police interventions in necessary cases. (Female, Qld, 35 to 44 years)

For some parents/carers, consequences in the form of “harsh” or “severe” costs were considered one of the most effective responses to address non-compliance with parenting orders:

There should be severe financial consequences for the party not complying. (Female, Vic, prefer not to say age)

Enforce parenting orders at a final cost to the person breaching them. (Male, Qld, 55 years or over)

Parents also explained how time-consuming and stressful returning to court was for the purpose of addressing parenting order breaches. They felt that the contravention regime could be streamlined to include state police enforcing parenting orders. For example: “I think there should be consequences that can be enforced by police (like with an FVO), rather than having to go back to court for every breach.” (Female, ACT, 35 to 44 years)

The following parents also underscored both financial costs and how experiences of systems abuse made it unsustainable and unsafe to continue to return to court to address contraventions, which in the context of family and domestic violence occurred relatively regularly. These parents suggested that making parenting orders enforceable by state police would reduce the impacts of systems abuse and make the contravention regime more accessible to them:

Make it an offence where we can go to a police station and not have to pay thousands to go to court. [The other party] self represents so [the other party] loves to see me upset in court. It is part of [the other party’s] abuse. (Female, Qld, 45 to 54 years)

Our process commenced in the Federal Circuit Court – Family Court. This now means that we have federal court orders. These orders cannot be enforced by the state police. My only option for recourse, when the other parent breaches the orders, is to go back to court as the police are limited in their ability to assist myself and my child. The other parent is fully aware of this and continually flaunts this. This limitation has provided the other parent an opportunity to inflict family violence in the form of coercive control and psychological abuse. If the orders, and conditions, were enforceable by Victoria Police then I truly believe this behaviour would minimise. I now have to spend more money and time going back through the court process to address the constant (often monthly) breaches. (Female, Vic, 35 to 44 years)

Finally, imprisonment was raised by a small number (n=8/82) of parents/carers as an appropriate response to deliberate contravention of parenting orders, with some parents/carers also suggesting this be used along with fines to punish and discourage breaches:

Actual action for breaches. Fines/jail time, etc. (Female, NSW, 25 to 34 years)

Yes, if there is a deliberate breach by either party, there should be an immediate custodial sentence. That would provide enough incentive to avoid deliberate breaches of court orders. (Male, NSW, 45 to 54 years)

There was also a substantial proportion of these parents and carers (n=37/82) who called for more meaningful consequences to be applied by the court in response to breaches of parenting orders. For these parents, consequences for parenting order breaches were “meaningful” or restorative if the contravention was upheld and the outcome involved the less punitive responses currently available to the court, including varying orders and ordering make-up time. These views also reflect experiences of a lack of consequences for breaches of parenting orders and concerns that parenting orders lacked authority:

There needs to be accountability for your actions. We [as] adults need to be held accountable for what we do or choose not to do, and ignorance is not [a]n excuse. The court order is black and white and so should the law, and the consequences. People might think twice about disobeying the orders when there are consequences. (Female, Qld, 35 to 44 years)

Enforce everything on an order, otherwise there is no point having it on there. I can highlight nearly every paragraph as being broken but still there are no repercussions for [the other parent]. (Female, Qld, 35 to 44 years)

Parents not following orders should be held accountable. This system is so broken. (Male, SA, 45 to 54 years)

Need for intermittent monitoring of parenting orders

A number of parents and carers (n=40/382) who provided an open-text response regarding improvements suggested that there was a need for monitoring to support compliance with parenting orders. Periodic check-ins and case management were identified as supporting the parties to comply or to address issues in a timely and cost-effective manner, without the need to initiate legal proceedings:

There needs to be better interim check-ins to confirm compliance or raise issues, rather than waiting months at one party’s expense to submit contraventions, etc. all the time of which kids are suffering due to non-compliance. (Female, Qld, 35 to 44 years)

[There should be a] case manager assigned to check performance of order compliance over the life of the child. (Male, NSW, 45 to 54 years)

A case manager should be established who regularly follows up on compliance and new issues and who can bring the matter back to the court without the burden being on one of the parties. The check-ups should be shortly after orders, and then dependent on the situation could be spaced out longer. (Male, Tas, 45 to 54 years)

The regularity of the recommended follow-up with families was also a feature of the responses by parents and carers in this context. For example:

Regular reviews where both parents’ views and concerns are listened to, and history is taken into account. (Female, Tas, 45 to 54 years)

Orders should be reviewed annually to see if they are working, and if both parties are adhering to them. (Female, WA, prefer not to say age)

Parenting orders should be revisited at intervals to suit the different stages of a child’s development – simply making parenting orders that last for 10 years is negligent. (Male, Tas, 45 to 54 years)

A key feature of this intermittent monitoring was to understand the underlying reasons for the causes of non-compliance and to consider the best interests of the child in that context:

[There needs to be] intermittent monitoring by [the] family court to ascertain to what extent orders are/are not being followed and why. Checking on the welfare of those children who’s [sic] parents are not complying for reasons other than by mutual agreement … Don’t make the onus be on the parent who is being sidelined to take action – often we are abused, manipulated, controlled and afraid … this doesn’t mean we don’t love or want our children, it means we have lost hope and have no energy or resources. (Female, Tas, 35 to 44 years)

[There should be] mandatory check-ins by the court once a year or a review period where breaches can be looked at and the impact of the breaches on the children to see if any minor adjustments should be made to the orders in their best interests. (Male, NSW, 25 to 34 years)

To the same end, another participant suggested the adoption of a “cooling off” period after orders were made to ensure that their orders are operating effectively. Others suggested the ICL or another independent professional could check in during the period immediately after the orders were made:

I think it would have been nice to have the ICL or someone “official” check in somewhat for the first few months after the parenting orders were made to see how well they are being followed, especially in cases where there has been family violence proven. (Female, NSW, 25 to 34 years)

The court needs to appoint a family therapist or similar to monitor how the orders are working, for at least 12 months after they are made … If there were a third party monitoring the situation for 12 months after orders are made who could bring an application to vary the orders if they are not working or regularly being breached that would be a substantive improvement. (Male, NSW, 45 to 54 years)

[It would be good] if there were people who reviewed orders and tweaked them when a parent does not choose to spend time with the children, that would be fair. Or someone who reviewed orders to finely tweak orders so that ambiguity can be cheaply cleared up. (Female, Tas, 35 to 44 years)

While some of the parents and carers quoted above suggested that the intermittent monitoring be undertaken by the court, another participant suggested greater access to FDR prior to returning to court, incorporating a case management approach as an alternative to the existing contravention regime. The need for an informal and low-cost mechanism for periodic review was also nominated by one parent:

I believe there should be a follow-up on parenting orders particularly when they have been done by a judge. The follow-up should be done in an informal way without solicitors or large cost in money and have the ability to change the orders if they are not being followed, and done 12 months after they are made and again 5 years later. (Female, NSW, 35 to 44 years)

While another participant also noted the existence of parenting coordination services, the emphasis from many parents was on the effects of engaging in costly processes on parents and children. However, at the core of this participant’s observation is the need for a case-managed approach that involves working with families (Female, Vic, 45 to 54 years).

The independence and mandatory nature of the review process were also features noted by some parents/carers:

Have an independent process to check wording/structure of orders for loopholes/unintended consequences. (Female, NSW, 45 to 54 years)

There should be a compulsory review by the court 12 months after final orders are made to review and remedy breaches. It honestly feels like there is no consequence for breaching orders. (Male, Qld, 35 to 44 years)

The reflections of other parents and carers were in favour of an organisation that would not only monitor but investigate breaches and enforce orders:

Not everything should have to go to court. There should be an agency that manages breaches and ensures compliance. (Male, NSW, 35 to 44 years)

Establish a body that helps enforce orders, particularly on a weekend when lawyers aren’t available and because police can[’t] enforce the orders. (Female, Vic, 35 to 44 years)

One participant described the difficulties for parties in identifying breaches that warrant them accessing the contravention regime and the need for an avenue to seek free advice and support. This support could be linked to case management by the court and could support the monitoring of compliance:

It is sometimes difficult for a parent to determine what constitutes a material breach of orders or other occurrences where a court should step in to assist … I was berated by my solicitor for not having presented these issues earlier – “Why didn’t you seek to apply to court to have this heard?” – how am I supposed to know what is of legal significance vs. what appears to me to be an … occurrence which is more of an annoyance to me than an immediate and grave danger to the child. I would have thought it sufficient to collect enough data regarding the regular occurrences so as to show a pattern of behaviour demonstrating why the other parent’s argument to be named the primary carer is not in the best interest of the child, rather than applying to the court after every visitation period at a cost of tens of thousands of dollars and potentially painting me as a serial litigant hell bent on harassment by litigating trivial matters. How could this be improved? It would be very handy to have a free service, online, tied to your case, which sends out an email (or several, periodically, over the period between hearings or in the case of Final Orders, periodically, perhaps biannually) with a link to a survey where you can provide such information as to how the orders are going and whether you have any concerns. The responses would then be triaged by staff trained in family law as to what degree of action may be appropriate (if any), and perhaps any generic advice that may go along with the assessment … (Male, Vic, 35 to 44 years)

This need for a monitoring process both during proceedings and subsequent to the making of orders was also suggested as critical in cases characterised by family violence, with one participant suggesting the importance of the court identifying and flagging risks when orders are made:

Narcissistic and coercive controlling people tend not to follow court orders. Identifying these types of individuals and flagging risks throughout the court process would allow breaches to be monitored and taken more seriously and victims of abuse (mostly women and children) to be better protected. (Female, Tas, 35 to 44 years)

Costs and delays – Greater affordability of and accessibility to the contravention regime

The prohibitive nature of costs and delays associated with contravention proceedings was also nominated by some parents and carers providing a response to the question about improvements to compliance with parenting orders. Elaborating on these concerns about the costs associated with the contravention regime, some of these parents/carers (n =36/382) referenced how costly the contravention regime was, which made pursuing contravention proceedings unsustainable for them. Many parents/carers who were concerned about the high cost of the regime linked these concerns to the absence of consequences for non-compliance and the lack of authority of parenting orders:

There should be a quicker and cheaper way of bringing it to court if the orders are not followed and greater consequences. It’s so expensive and takes so long to get the matter heard and then the person not following the orders just gets a slap on the wrist. (Female, NSW, 45 to 54 years)

It makes me so angry that I had to spend an absolute fortune to take [other party] to court who lied the entire time just for a set of orders to be written up that [other party] can completely ignore and if I want to do anything, it costs me a fortune more! (Female, SA, 35 to 44 years)

More generally, some parents and carers (n=27/382) identified that a more affordable contravention regime would support compliance with parenting orders and discourage non-compliance. For example:

[There should be a] reduction in time and expenses to hold parents that breach to account. Have actual punishment for non-compliance. (Male, Qld, 35 to 44 years)

There must be an easy and affordable avenue of lack of compliance reporting. Often when orders are not complied with by one party they do so knowing that the other party must start legal proceedings that will cost several thousand dollars and take several months to be heard. (Male, NSW, 35 to 44 years)

Some parents/carers suggested potential options for consideration might include mediation or case management:

Parenting coordination services should be more widely available and government funded – a case management non-legal approach is required to working with parties/families experiencing high ongoing conflict. Parenting coordinators should then have to provide a report on non-compliance to a registrar, who should be able to then amend orders based on this evidence rather than making parties go through other lengthy and expensive court hearing processes to vary orders. In my experience, contravention hearings are pointless because the penalties are not enforced and the time/cost/process is something most people aren’t able to afford or navigate. (Female, Qld, 45 to 54 years)

[Contraventions need to be] dealt with a bit faster, orders should be easier to change if they are not working for the children, dealt with less expense, if children don’t want to go to other parents there shouldn’t be a threat of legal action, maybe discussions or mediation as to why orders are being breached. (Female, NSW, 35 to 44 years)

Some parents and carers (n=26/382) referenced delays in contravention matters as being a key ineffective aspect of the contravention regime. As a particularly time-poor group with issues that required timely intervention, these parents/carers articulated the barriers posed by time delays in addressing contraventions through the contravention regime. For example: “Being such a time-consuming process discourages taking theses breaches to court.” (Male, Qld, 35 to 44 years)

Notably, some parents/carers also drew attention to how the time taken to address contraventions in court could prolong unsafe arrangements for them and their children:

The current length of court processes and the level of breach required means that day-to-day threats and abuse can’t be dealt with. (Male, Vic, 35 to 44 years)

The process of filing a contravention of court orders to address high risk issues is lengthy and places the children at risk. (Male, Qld, 45 to 54 years)

3.16 Child wellbeing and participant satisfaction with their relationships with their children

This section considers parents’ reports on the wellbeing of their child or children and their views on their relationships with their children. These findings are significant not only because concerns about child wellbeing and the strength of the parent–child relationship have been identified as a cause of non-compliance, but also because the children in this cohort have markedly poorer reports of wellbeing than other children in separated families.

In addition to a question on child health, the survey asked participants to provide an assessment of how well their child or children were going compared to other children their age in two specific areas: learning and getting along with other children. A further question asked for assessments of how their children were going in most areas of their life compared with other children. Seven response options were available: “much better”, “somewhat better”, “about the same”, “somewhat worse”, “prefer not to say”, “do not know/cannot say” and “other – specify” with an option to provide further details.

In relation to health, parents were asked to choose a response to the statement, “In general, would you say that the health of child/children is …”, with options being “excellent”, “very good”, “good”, “fair”, “poor”, “prefer not to say”, “do not know/cannot say” and “other”.

Most participants chose positive response options concerning health, the most common responses being “very good” (21%) and “good” (20%). The less positive response options, “fair” and “poor”, had similar proportions of responses, together amounting to nearly three in 10 choosing these options (15% and 14% respectively). There was one area where there were statistically significant differences between men and women, with fewer men (9%) rating their child’s health as “excellent” compared to women (15%).

In relation to education, participants were asked to indicate how well their children were going with learning or schoolwork compared to most children their age. The most common response was “about the same” (29%), with 13 per cent saying “somewhat better” and 7 per cent saying “much better”. A significant minority of the sample chose negative responses, with 23 per cent saying “somewhat worse” and 16 per cent saying “much worse”. Fathers were more likely to rate their children’s learning negatively than mothers, to a statistically significant extent (23% cf. 12%).

A similar general pattern was evident for responses in relation to assessments of how children were getting on with other kids in comparison to other children the same age. Around half the sample chose positive responses, most commonly “about the same”. About two thirds chose negative responses, with “somewhat worse” at 21 per cent and “much worse” at 13 per cent. There were no statistically significant gender differences.

A further question asked for an assessment of how children were doing “in most areas of their life” compared with other children the same age. Overall, the proportions choosing negative responses (45% in total) slightly outweighed the proportion choosing positive responses including “about the same” (43%). There were no significant gender differences.

**Table 10:** SoP&C: Children’s wellbeing, by gender

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| In general, would you say that the health of your child/children is:\* | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| Excellent | 13 | **8.7** | 43 | **15.1** | 56 | **12.9** |
| Very good | 28 | **18.8** | 62 | **21.8** | 90 | **20.7** |
| Good | 31 | **20.8** | 55 | **19.3** | 86 | **19.8** |
| Fair | 23 | **15.4** | 43 | **15.1** | 66 | **15.2** |
| Poor | 31 | **20.8** | 31 | **10.9** | 62 | **14.3** |
| Prefer not to say | 1 | **0.7** | 1 | **0.4** | 2 | **0.5** |
| Do not know/cannot say | 10 | **6.7** | 12 | **4.2** | 22 | **5.1** |
| Other | 12 | **8.1** | 38 | **13.3** | 50 | **11.5** |
| **Total** | 149 | **100.0** | 285 | **100.0** | 434 | **100.0** |

| Compared with children of the same age, how would you say they are doing with their learning (or schoolwork)?\* | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Much better | 6 | **4** | 23 | **8.1** | 29 | **6.7** |
| Somewhat better | 15 | **10** | 41 | **14.4** | 56 | **12.9** |
| About the same | 39 | **26** | 89 | **31.2** | 128 | **29.4** |
| Somewhat worse | 39 | **26** | 59 | **20.7** | 98 | **22.5** |
| Much worse | 34 | **22.7** | 34 | **11.9** | 68 | **15.6** |
| Prefer not to say | 0 | **0.0** | 2 | **0.7** | 2 | **0.5** |
| Do not know/cannot say | 9 | **6.0** | 11 | **3.9** | 20 | **4.6** |
| Other | 8 | **5.3** | 26 | **9.1** | 34 | **7.8** |
| **Total** | 150 | **100.0** | 285 | **100.0** | 435 | **100.0** |

| Compared with children of the same age, how are they getting along with other kids? | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Much better | 6 | **4.0** | 15 | **5.3** | 21 | **4.8** |
| Somewhat better | 9 | **6.0** | 23 | **8.1** | 32 | **7.4** |
| About the same | 54 | **36** | 125 | **43.9** | 179 | **41.1** |
| Somewhat worse | 35 | **23.3** | 58 | **20.4** | 93 | **21.4** |
| Much worse | 25 | **16.7** | 31 | **10.9** | 56 | **12.9** |
| Prefer not to say | 0 | **0.0** | 4 | **1.4** | 4 | **0.9** |

| Compared with children of the same age, how are they getting along with other kids? | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Do not know/cannot say | 16 | **10.7** | 16 | **5.6** | 32 | **7.4** |
| Other | 5 | **3.3** | 13 | **4.6** | 18 | **4.1** |
| **Total** | 150 | **100.0** | 285 | **100.0** | 435 | **100.0** |

| Compared with children of the same age, how would you rate most areas of their life? | Male  No. | Male  % | Female  No. | Female  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Much better | 3 | **2.0** | 18 | **6.3** | 21 | **4.8** |
| Somewhat better | 14 | **9.3** | 27 | **9.5** | 41 | **9.4** |
| About the same | 37 | **24.7** | 86 | **30.3** | 123 | **28.3** |
| Somewhat worse | 37 | **24.7** | 78 | **27.5** | 115 | **26.5** |
| Much worse | 40 | **26.7** | 42 | **14.8** | 82 | **18.9** |
| Prefer not to say | 1 | **0.7** | 3 | **1.1** | 4 | **0.9** |
| Do not know/cannot say | 10 | **6.7** | 13 | **4.6** | 23 | **5.3** |
| Other | 8 | **5.3** | 17 | **6.0** | 25 | **5.8** |
| **Total** | 150 | **100.0** | 284 | **100.0** | 434 | **100.0** |

Note: \* Statistically significant difference at p<0.05. Percentages may not sum to exactly 100 due to rounding.

|  |
| --- |
| Box 1  Comparison: The Experiences of Separated Parents Study (ESPS; 2012 & 2014): Children’s wellbeing (Kaspiew, Carson, Dunstan et al., 2015b)  Compared with court-using families in the Experiences of Separated Families Study, the children in the SoP&C have considerably lower wellbeing, according to their parents’ reports.  Analysis of responses from the parents who used courts in the ESPS 2012 and 2014 datasets combined (n=210) shows that only 12 per cent indicated that their children were doing “somewhat worse or much worse” in most areas of their life, compared with 45 per cent in the SoP&C. ESPS parents were twice as likely as SoP&C parents to indicate their children were doing about the same or much or somewhat better (88% cf. 43%). |

3.17 Summary and discussion

This section summarises the key findings from the SoP&C, placing them in the context of findings from other research to support assessment of the extent to which these experiences are typical or atypical of court-using separated parents.

Relationship quality and family violence

Findings on relationship quality and family violence support an assessment of the underlying drivers of non-compliance and the dynamics associated with use or non-use of the contravention regime. The findings in this chapter demonstrate that negative relationships are substantially more common than positive relationships in the SoP&C sample and that there are gendered differences in the way that relationships and feelings of fear, coercion and control are described. Women are significantly more likely than men to describe relationships as fearful and men are significantly more likely than women to describe them as conflictual.

The participants in this sample were substantially more likely to describe their current relationship with the other parent as fearful compared with participants in a population representative sample of separated parents. In AIFS’ 2015 Experiences of Separated Parents Study, 6 per cent of mothers in both the 2012 and 2014 samples, and 3 per cent and 4 per cent of fathers respectively in the 2012 and 2014 samples, described their current relationships with the other parent as fearful (see Figure 2.1 in Kaspiew, Carson, Dunstan et al., 2015b, p. 15). In contrast, 37 per cent of mothers and 20 per cent of fathers in this sample described their current relationship with the other parent in this way.

In AIFS’ 2015 study, 13 per cent of mothers in the 2012 sample and 14 per cent in the 2014 sample described their relationship as involving “lots of conflict”, with similar findings for men (12% and 14% respectively; see Figure 2.1 in Kaspiew, Carson, Dunstan et al., 2015b, p. 15). In this sample, 55 per cent of men and 42 per cent of women described their relationship in this way.

Children’s exposure to behaviour causing fear or resulting in coercion and control was common, with very small proportions of participants indicating children’s exposure occurred rarely or never.

More specifically, in this sample, there are also statistically significant differences between the participating men and women in relation to the way they described their current relationship with the other parent. Women are more likely to indicate that current relationships with the other parent are fearful and are also more likely to indicate that pre-separation behaviours made them feel fearful and coerced or controlled. The statistically significant difference between men and women is sustained in relation to fearful relationships after separation but not in relation to feelings of coercion and control. These findings reinforce the point made earlier in this report that parents who have disputes over parenting arrangements are a particularly complex subset among separated parents. The findings in this section suggest that though based on an opt-in sample rather than a representative sample, the parents who experience problems with compliance are an even more complex subset within the disputing subset.

The survey provides some insight into the subjective construction of participants’ experiences of family violence. Of relevance to the consideration of these experiences, previous research, including research by Bagshaw and colleagues (2010), identified gendered differences in parents’ accounts of their experiences of family violence. Bagshaw and colleagues observed that women in their qualitative answers tended to describe experiences that could be categorised as physical, sexual, emotional, financial and social abuse. On the other hand, men were described as tending to focus on “non-physical forms of abuse” including the withholding of contact and encouraging parental alignment of children against them; engaging with the family law system or Child Support; and engaging in behaviour involving false allegations, gambling and alcohol consumption or other behaviour arising from mental health issues (Bagshaw et al., 2010, pp. 75–76). More recently, gender differences have also been identified in relation to both physical and emotional violence, including the propensity for women to use physical violence in response to violence perpetrated against them (Hamberger & Larsen, 2015).

Process-related findings

Data in relation to resolutions and legal representation are significant context when considering the question of non-compliance. Most participants’ parenting orders were made by consent on a litigation pathway, although one third had their parenting orders made by judicial determination and, while most parties were represented, a substantial proportion of parents nevertheless raised significant concerns about the safety of their parenting orders, and in turn issues with compliance.

Independent Children’s Lawyers and Family Reports

Findings in relation to ICLs and Family Reports are significant for three main reasons. First, with ICLs appointed in a limited number of matters and Family Reports also prepared only in a limited number of matters (Kaspiew, Carson, Qu et al., 2015), these findings confirm that this sample of participants are representative of a particularly complex subgroup of litigating parents. Second, the majority of children subject to the litigated parenting applications were spoken to by a professional, more usually a family consultant but sometimes also an ICL and potentially both kinds of professionals. Third, given the majority response patterns disagreeing with statements about the process working for children and adequately considering children’s needs and safety, the findings suggest a need for improvement in the available mechanisms for effective participation in post-separation decision-making to support outcomes that accommodate children’s needs and safety. This is consistent with findings from the professionals study regarding the need for more effective and widely available avenues for children’s participation to support safe and more sustainable outcomes.

Understanding of orders and satisfaction with the process

Findings about parties’ understanding of their parenting orders indicate that professional practices in explaining orders require improvement. However, they also suggest that a lack of understanding of orders may be a driver of non-compliance in some circumstances but is not likely to be a primary driver.

Further, the findings in relation to levels of satisfaction with the outcome and process demonstrate that the participants in this study represent a cohort that is particularly dissatisfied both with the outcome of their matter and the process they used. However, only the sample sizes for the judicial determination pathway and the consent after litigation pathway were large enough to sustain robust analysis in this study. Notably, for example, 61 per cent of court-using parents in the ESPS 2014 sample agreed the process worked for the child (see Table 6.1, Kaspiew, Carson, Dunstan et al., 2015b), compared with 17 per cent with orders made by judicial determination and 12 per cent with orders made by consent on a litigation pathway in the SoP&C sample.

Problems with compliance

The findings set out in this section have some potentially significant implications, bearing in mind that they are based on an opt-in sample. They suggest that problems with compliance with parenting orders should not simplistically be attributed to lack of legal representation, lack of consultation with children and young people, and problems with comprehension of the obligations created by the orders. A nuanced examination is required to explore the interaction of these and other factors that may lead to participants’ negative response patterns about the process’s effectiveness for the child, considerations for their safety and lack of compliance with parenting orders (see below). These points are considered further in the context of all the evidence gathered in this research program in Chapter 6.

The findings set out in this chapter establish that for this sample, breaches of parenting orders are common and mostly involve the breach of provisions in relation to time arrangements, but breaches in relation to parental responsibility also occur regularly. A substantial majority of the sample attributed the non-compliant behaviour to vindictive, abusive or controlling behaviour on the part of the other parent. There were three areas where gender differences suggest that perceptions and experiences are different for some men and women. Women were significantly more likely than men to attribute non-compliance with the parenting orders in their matter to concerns about safety and to resistance to compliance on the part of a child. Men, on the other hand, were more likely to attribute non-compliance with the parenting orders in their matter to difficult or vindictive behaviour on the part of the other parent, but this was also a common response among women.

Responses to non-compliance

Even though most participants viewed the breaches as serious, help-seeking was not a majority response. Some parents/carers indicated in open-text responses that they were discouraged from taking legal action in response to non-compliance with parenting orders due to significant delays impacting the broader legal system in the context of the COVID-19 pandemic. These parents felt that the family law system was already “overloaded” and that the COVID-19 pandemic had exacerbated these delays, making legal action in response to a parenting order contravention impractical.

Further reasons nominated for not taking action indicate that parents do not consider legal action an effective means of addressing breaches of parenting orders, and also that it is unaffordable. Another significant reason is the fear that instigating legal action would expose the participants and/or their children to violence from the other parent, with this a concern for more women than men.

Knowledge of the contravention regime

Knowledge of the consequences of non-compliance with parenting orders varied, with greater awareness of non-punitive remedies than punitive remedies. In the context of research showing that parents have limited knowledge of other separation-related laws, these findings tend to suggest that this sample has a better than average awareness of the law in relation to enforcement compared to awareness among other samples of other aspects of the law. In relation to the changes to family violence provisions in the FLA, very small minorities (2% to 7%) of a representative sample of separated parents demonstrated awareness of these changes (see Table 6.5, Kaspiew, Carson, Dunstan et al., 2015b, p. 132). Similarly, in research by Smyth et al. (2012), in relation to child support, the level of accurate knowledge of the rule about child support among separated parents was found to be very low.

Nonetheless, that just over half of the sample reported that they had parenting orders explained to them suggests shortcomings in professional approaches to ensuring parents understand their obligations and the consequences of non-compliance. At the same time, the findings reinforce the complexity of interpersonal dynamics associated with difficulties with compliance, the relevance of concerns about safety and the relevance of child-led non-compliance in this area.

Child wellbeing

Given that family law parenting orders are intended to be consistent with the best interests of the children, child wellbeing is an important consideration in understanding how parenting orders are working. The findings in this chapter provide insight into parents’ assessments of their children’s health and their educational and social wellbeing, including assessments based on how well children were doing in most areas of life compared with other children the same age. In comparison with a representative sample of court-using parents (Box 1), parents in this sample were substantially more likely to indicate their children were doing “somewhat worse or much worse” than other children the same age in most areas of their life (45% cf. 12%).

Although these findings can’t be used to demonstrate that these patterns are attributable to the parenting orders themselves (i.e. it is not possible to say whether the children would have better or worse wellbeing under different arrangements), they do provide evidence that greater scrutiny of the arrangements that may improve wellbeing for children in families with complex dynamics, including family violence, is required.

Conclusion

Overall, the analysis in this chapter has demonstrated that there is a group of parents who emerge from litigated processes with parenting orders that are susceptible to implementation difficulties arising from negative interpersonal dynamics, including fearful and/or conflictual relationships. These arrangements commonly involve orders for shared parental responsibility and regular overnight time with the non-majority-time parent, with orders for substantial and significant or even equal time not uncommon. Non -compliance with such orders may mean that child support assessments are no longer appropriate, but many of these parents do not seek a new assessment. Similarly, most parents do not take action in relation to breaches of parenting orders, considering that such action would be futile or too expensive, or potentially invoke violence. According to parents’ reports, children in these families are doing significantly worse than children in representative samples of court-using families.

Because these findings are based on an opt-in sample rather than a representative one, it is not possible to assess the overall proportion of court users that these findings may apply to. However, the sample is substantial enough to suggest that these findings point to systematic shortcomings in the processes both for making parenting arrangements and supporting compliance with them. A notable finding in this system concerns a lack of use of the regime for enforcing parenting orders. The following chapter examines what happens when the contravention regime is invoked.

4 Court files and published and unpublished court judgments substudy

This chapter sets out the findings of the court files and published and unpublished court judgments substudy. This core element of this research project examines the research questions relating to contravention matters and allegations of family violence and child abuse, the characteristics of the parents who lodge contravention applications, self-representation dynamics in contravention matters, and outcomes of contravention applications. The analysis in this chapter is based on two separate samples: one sample is based on 300 court files involving contravention applications and the other is a sample of published and unpublished judgements involving contravention matters. The court file sample can be considered typical of contravention matters. Key messages from this sample include:

* Fathers are applicants in the majority of contravention matters (76%) and are also applicants in the majority of the primary parenting matters[[9]](#footnote-9) (65%). This contrasts with parenting matters generally, which show a relatively even split between mothers and fathers as applicants.
* The mean duration of matters involving contravention applications (from the initiation of the primary litigation) was 54 months, with more than half the sample extending between three and nine years.
* Almost half of the court file sample involved between five and nine applications involving interim or final parenting and alleged contraventions. More than one in 10 involved 10 such applications.
* Most of the primary orders that the contravention application related to involved orders for shared parental responsibility. Most (62%) orders provided for children to live primarily with their mother but one fifth involved shared time.
* The vast majority of matters (92%) involved in the court file sample involved allegations of family violence and/or child abuse.
* Half of the court file sample matters involved a past or current personal protection order.
* Just over a quarter involved past or present engagement with child protection agencies.
* Two thirds of contraventions were dismissed, struck out or withdrawn.
* Where the contravention application proceeded, a variation of parenting orders was the most common outcome, occurring in 16 per cent of the overall sample.
* Otherwise, where contravention applications proceeded, outcomes in the punitive range were uncommon: bonds were imposed for 5 per cent of the sample, and fines or bonds for less than one per cent each.

The methodology that applies in this substudy is described in the next section, followed by a discussion of the substantive findings.

4.1 Methodology

Data collection

Arrangements for data collection from court files were disrupted by the COVID-19 pandemic. Consequently, an adjustment to the overall methodology for this element of the study was implemented (see Appendix C), and the overall sample was based on three subsamples:

* the court file sample involving the collection of data from a sample of n=2,023 court files with contravention applications in relation to children/parenting where the contravention application had been finalised in the Melbourne, Sydney and Brisbane registries of the FCFCoA between 1 July 2017 and 12 March 2021. The final sample of n=300 court files was randomly selected from this pool of 2,023 eligible files
* the published judgment sample based on all judgments in contravention matters (children/parenting) in all registries of the FCFCoA published on the AustLII database between 1 June 2016 and 11 September 2021
* the unpublished judgment sample based on judgments in contravention matters (children/parenting) in all registries of the FCFCoA’s own database between 1 July 2017 and 30 September 2021.[[10]](#footnote-10)

The court file sample comprised 300 court files and the published and unpublished judgments comprised 147 judgments. The research team took steps to ensure that no matters were duplicated across the samples. This entailed searching the register linking the study case numbers allocated to court files to ensure that judgments with court file numbers already included in our court file sample were excluded from the judgment analysis.

The collection of data from court files and judgments occurred between April 2021 and February 2022 and required AIFS data collection officers to manually review court files and judgments and extract relevant data from court forms, affidavit material and other court documents. A project-specific data collection instrument was programmed by the AIFS research team in the LimeSurvey program, and the data collection officers completed the data collection instrument by inputting the nominated data in LimeSurvey. For court files and unreported judgments, this only occurred onsite at the court at the relevant registry, and under supervision of the relevant court staff.

The data collection instrument captured in-depth data, including data relating to:

* case and procedural characteristics
* demographic and relationship details relating to the parties and their children
* factual issues (including in relation to family violence)
* the procedural history of cases in sampled matters
* arrangements/orders sought in applications and responses to parenting orders and outcomes/parenting orders made
* arrangements/orders sought in contravention applications and responses and outcomes/parenting orders made
* the evidentiary profile of the parenting and contravention proceedings
* findings made in judgments.

AIFS researchers who were accessing these data, including the appointed data collection officers, were bound by confidentiality agreements and only these researchers had access to the data in its identifiable form. Strict privacy and confidentiality, data security and storage protocols were in place. Access to identifiable court records only occurred on site at the relevant court, and under supervision of the relevant court staff. All data collected from the court records in court files were de-identified but rendered re-identifiable at the data collection stage and remained re-identifiable only for the duration of the project. Only AIFS staff had access to the re-identifiable data via a data linkage key stored at AIFS. Once the data collection phase of the substudy was completed and the data had been verified, the linkage key was destroyed, rendering the data non-identifiable.

The sampling strategy for this element enabled the collection of data to address each research question on the basis of achieving a robust sample size. For each subsample, the coverage of data relevant to answering the research questions varied. While the data collection instrument employed for both the court file sample and the judgment sample covered each of the domains listed above, data from the judgment sample related primarily to the factual issues relevant to the contravention application, the evidentiary profile and outcomes in these matters. The court file sample represents the most complete and representative subsample within the court file and judgment substudy. It had mostly complete coverage of documents from the initial application to the conclusion of the contravention matter. For this sample, this report includes findings on the socio-demographic characteristics of the parties and children, the procedural profile of the substantive parenting matter, the parenting arrangements provided for in the substantive parenting matter and the procedural profile and outcome of the contravention matter.

For the published judgments and unpublished judgments subsamples, the coverage of data is less complete. Across these two samples, the research team was able to identify and collect data from the substantive parenting matter in 94 matters in the published judgments subsample, and 53 matters in the unpublished judgments subsample. For the remaining contravention matters, there is less complete coverage of the substantive parenting matter, although key information was available for most cases. Demographic data relating to both the parents and children are generally not available in the reasons for decision in the judgment.[[11]](#footnote-11) However, sufficient data were generally available with respect to the outcomes and orders made in the contravention applications, with these data enabling the examination of patterns in the court file and judgment sample as a whole to address key research questions.

The significance of each of the three subsamples for addressing the research questions is different. The court files subsample provides a representative profile of matters in which contravention applications are lodged and the findings from this element are generalisable to the population of contravention applications. Two thirds of contravention applications were dismissed, struck out or withdrawn. Four in 10 contravention applications (42%) were resolved in full consent and over one third (35%) achieved resolutions by a judge.[[12]](#footnote-12)

In contrast, the judgment samples provide near complete coverage of the small proportion of matters that proceed to judicial resolution and for which a judgment is written. The significance of these subsamples is that the data shed light on the outcomes in parenting matters where the legislative framework in pt VII, div 13A is directly applied.

The explanation of findings in this report has been undertaken carefully to ensure that areas where findings are and are not representative of contravention matters generally are clearly indicated. It is noted that findings about the characteristics of parents involved in contravention matters (including prior and current histories of family violence and child safety concerns, legal representation and litigation profiles) are based on the file sample and, to a lesser extent, on the published and unpublished judgment samples. Findings about how courts apply div 13A of pt VII (consideration of reasonable excuse, application of penalties) will be based on the file sample, published judgment sample and unpublished judgment sample, noting that the published judgment sample reflects cases at the more complex end of the spectrum (due to the predominance of family court judgments in the sample).

Sample

This section sets out the source of each of the three subsamples, in terms of court and registry.

Of the 300 matters in the court files subsample (Table 11), the vast majority (69%) were dealt with in the FCCoA, in line with the fact that the majority of the family law caseload was dealt with by that court prior to the court restructure in 2021. Only one in five (21%) matters in the sample were dealt with by the FCoA. The remainder of the sample had a more complex history of progression through multiple courts (10%). Close to one in six matters had been dealt with in both the FCoA and the FCCoA. Close to a quarter had been dealt with by courts at both state and territory level, as well as one or both of the federal courts (FCoA, FCCoA). Regarding the published/unpublished judgment files sample, half (51%) of matters were dealt with by the FCoA, while 37 per cent were dealt with by the FCCoA.

In terms of location, the sample was almost evenly distributed between Brisbane (36%), Melbourne (32%) and Sydney (32%; Table 12). Similarly, the published/unpublished judgment files sample was evenly spread across the three sites (21% to 27%), with a sizable number of files (30%) being from other locations.

**Table 11:** Court files and published/unpublished judgment files: Sample, by court

| Court | Court files No. | Court files **%** | Published / unpublished judgment files No. | Published / unpublished judgment files **%** |
| --- | --- | --- | --- | --- |
| FCCoA | 208 | **69.3** | 55 | **37.4** |
| FCoA | 21 | **7.0** | 75 | **51.0** |
| FCoA & FCCoA | 48 | **16.0** | 1 | **0.7** |
| Magistrates Court & FCCoA | 15 | **5.0** | 4 | **2.7** |
| Magistrates Court & FCoA | 1 | **0.3** | 1 | **0.7** |
| State Magistrates Court, FCCoA & FCoA | 7 | **2.3** | 6 | **4.1** |
| Other |  |  | 5 | **3.4** |
| **Total** | 300 | **100.0** | 147 | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table 12:** Court files and published/unpublished judgment files: Sample, by court location

| Location | Court files No. | Court files **%** | Published / unpublished judgment files No. | Published / unpublished judgment files **%** |
| --- | --- | --- | --- | --- |
| Brisbane | 107 | **35.7** | 32 | **21.8** |
| Melbourne | 96 | **32.0** | 31 | **21.1** |
| Sydney | 97 | **32.3** | 40 | **27.2** |
| Other |  |  | 44 | **29.9** |
| **Total** | 300 | **100.0** | 147 | **100.0** |

Data analysis

The quantitative data in this report have been analysed using descriptive analysis techniques including the presentation of one-way frequencies and cross-tabulations. Bivariate analysis compared outcomes between different characteristics (e.g. fathers and mothers), and whether differences between groups were statistically significant was assessed using Pearson’s chi-squared test or t-test. While responses such as “unclear” or “not available” on a file were presented in general, such responses were excluded from some analysis when not practical (e.g. computing means). In general, results are not provided when a base sample involves fewer than 30 files/judgments.

Limitations

For the court file component, data were not collected from as many court files as originally anticipated due to disruptions to data collection because of the COVID-19 pandemic. Appendix C describes these delays and the adjustments made to the overall methodology in response to the closure of the Melbourne and Sydney registries of the relevant courts during the fieldwork period. Methodological adjustments included the revision of the sampling strategy to also collect information from published and unpublished judgments. As noted, because of the more limited nature of the information available in the judgments, less comprehensive information was available, compared to the information that is available in the court file sample. The published and unpublished judgment samples involve cases that had a judicial determination, and these cases are also likely to be characterised by more complexity compared to the court file sample. In relation to the court files, the coverage of data items was more comprehensive and data collectors for both subsamples received training and ongoing guidance from nominated members of the AIFS research team to ensure consistency in data collection.

4.2 Court files and published and unpublished court judgments: Findings

This section starts with a procedural profile of the court file sample. It then sets out insights in relation to the characteristics of parties and children involved in contravention matters. These data are relevant to addressing research questions 2, 3 and 4 regarding the characteristics of parties in contravention matters. The chapter then sets out the parenting arrangements in the primary parenting orders and the allegations and evidence in relation to family violence and child abuse in the primary parenting proceedings and contravention proceedings and the nature and outcome of the contravention application. The data relating to primary parenting orders and the issues associated with the parenting arrangements in these orders are critical to identifying the leading causes of non-compliance with parenting orders (research question 1) and the prevalence of allegations of family violence and sexual abuse where there is non-compliance (research questions 1 and 3).

4.3 Procedural characteristics

Primary parenting proceedings – Resolution pathways

Table 13 demonstrates that across the court file contravention sample, most of the primary parenting proceedings had been resolved by consent (60%). Notably, however, there was a statistically significant difference in this regard between matters where there was only one contravention application compared to matters with more than one. The latter group of primary parenting proceedings was less likely to have been resolved by consent (50%). After consent, the most common type of resolution was full judicial determination (19%), with partial judicial determination for 15 per cent.

**Table 13:**Court files: Primary parenting proceedings that were the contravention subject: Pathways to conclusion, by whether there were multiple contravention applications

| Pathways to conclusion | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | All  % |
| --- | --- | --- | --- |
| Resolved by consent (in full) | 63.2 | 50.0\* | 59.0 |
| Resolved by consent (in part) and by judicial determination (in part) | 13.7 | 16.7 | 14.7 |
| Resolved by judicial determination (in full) | 17.2 | 24.0 | 19.3 |
| Other | 2.9 | 7.3 | 4.3 |
| Unclear | 2.9 | 2.1 | 2.7 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of cases | 204 | 96 | 300 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). Percentages may not sum to exactly 100 due to rounding.

Contravention matters – Litigation history

Table 14 sets out the litigation history of the contravention matters, examining the intensity of the litigation history in the files based on the number of interim and final parenting orders and the number of contravention applications.

Most court files (68%) involved one contravention (Table 14). However, about one third of files had multiple contravention applications, and a minority even involved four or more contravention applications (6%). Of note, the data show that nearly six in 10 (58%) matters involved five or more applications for substantive parenting orders and/or alleging contraventions, and more than one in 10 matters involved more than 10 applications. On average, there are six court processes for each matter in this court file sample. These data illustrate the protracted nature of a substantial proportion of matters that involve contravention applications and provide an indicator of the level of complexity of the issues characterising these families.

**Table 14:**Court files: Number of contravention applications and number of substantive applications for parenting orders lodged (interim or final)

| Number and proportion of contravention applications | n | % |
| --- | --- | --- |
| 1 | 204 | **68.0** |
| 2 | 61 | **20.3** |
| 3 | 18 | **6.0** |
| 4 | 6 | **2.0** |
| 5–9 | 9 | **3.0** |
| 10+ | 2 | **0.7** |
| Unclear | 0 | **0.0** |
| Total | **300** | **100.0** |
| Mean |  | **1.6** |
| SD |  | **1.4** |

| Number and proportion of substantive parenting orders (interim or final) | n | % |
| --- | --- | --- |
| 1 | 26 | **8.7** |
| 2 | 48 | **16.0** |
| 3 | 62 | **20.7** |
| 4 | 54 | **18.0** |
| 5–9 | 82 | **27.3** |
| 10+ | 18 | **6.0** |
| Unclear | 10 | **3.3** |
| Total | **300** | **100.0** |
| Mean |  | **4.3** |
| SD |  | **2.7** |

| Combined number and proportion of applications and substantive parenting orders (interim and final) | n | % |
| --- | --- | --- |
| 1 | 0 | **0.0** |
| 2 | 24 | **8.0** |
| 3 | 40 | **13.3** |
| 4 | 53 | **17.7** |
| 5–9 | 138 | **46.0** |
| 10+ | 35 | **11.7** |
| Unclear | 10 | **3.3** |
| Total | **300** | **100.0** |
| Mean |  | **5.9** |
| SD |  | **3.4** |

Litigation duration

Table 15 presents the duration of proceedings, with the commencement of proceedings based on the date of the first document filed in each matter and the end date being the date of the final document on file. It also sets out the duration between the commencement of the matter and the first contravention application, and the date of the first contravention application through to the date of the last document on file. The data show that the mean overall duration of matters in the sample was approximately 54 months, with the mean duration of the period from the commencement of proceedings to the first contravention just under 36 months. The mean duration between the first contravention and the last document on file was 19 months. Together with the data relating to the number of applications presented in Table 14, these data on duration also illustrate the protracted period of engagement that this cohort has had with the legal system, which in turn provides an indicator of the level of complexity of the issues characterising these families.

**Table 15:** Court files: Duration of proceedings

| Duration | Duration between first and last document on file | Duration between first document and first contravention application | Duration between first contravention application and last document on file |
| --- | --- | --- | --- |
| Mean (months) | 54.2 | 35.8 | 19.1 |
| SD | 36.4 | 30.7 | 22.2 |
| Median (months) | 43 | 28 | 13.5 |
| Min | 0 | 0 | 0 |
| Max | 191 | 173 | 164 |

| Duration (months) | Duration between first and last document on file  % | Duration between first document and first contravention application  % | Duration between first contravention application and last document on file  % |
| --- | --- | --- | --- |
| 0–5 months | 0.7 | 9.6 | 24.3 |
| 6–11 months | 4.1 | 15.4 | 22.3 |
| 12–23 months | 14.3 | 17.8 | 25.3 |
| 24–35 months | 18.7 | 19.5 | 15.4 |
| 36+ months | 62.2 | 37.9 | 12.7 |
| Total | **100.0** | **100.0** | **100.0** |
| N | 294 | 293 | 292 |

| Duration (years) | Duration between first and last document on file  % | Duration between first document and first contravention application  % | Duration between first contravention application and last document on file  % |
| --- | --- | --- | --- |
| <1 year | 4.8 | 24.9 | 46.6 |
| 1–2 years | 33.0 | 37.2 | 40.8 |
| 3–4 years | 26.5 | 17.4 | 8.6 |
| 5–9 years | 29.9 | 18.1 | 2.7 |
| 12+ years | 5.8 | 2.4 | 1.4 |
| Total | **100.0** | **100.0** | **100.0** |
| N | 294 | 293 | 292 |

Note: Percentages may not sum to exactly 100 due to rounding.

Representation status in court files proceedings

In both primary parenting proceedings and contravention proceedings, the most common representation status was having a private solicitor (though the extent to which the funding may have been provided by legal aid is unclear). Being self-represented is significantly more common for contravention matters. These patterns are likely to reflect, to some extent at least, the limited availability of legal aid for contravention matters.

Table 16 demonstrates that for primary parenting proceedings in the court file sample, more than two thirds of fathers (69%) and mothers (68%) had legal representation. Being self-represented was the next most common status in the court file sample, though it was uncommon overall, applying to 13 per cent of both fathers and mothers. Public-funded legal aid or grant of aid for legal assistance was uncommon (5% of fathers and 6% of mothers). Legal representation in primary parenting proceedings by applicant status is reported in Table A8, Appendix A.

**Table 16:**Court files: Primary parenting proceedings – Legal representation by gender[[13]](#footnote-13)

| Primary parenting proceedings | Court files  Fathers  % | Court files  Mothers  % |
| --- | --- | --- |
| Self-represented | 12.6 | 12.8 |
| Legal aid/grant of aid for legal assistance (public) | 4.1 | 6.1 |
| Community legal centre | 1.0 | 1.7 |
| Private legal representation | 69.4 | 68.3 |
| Represented for part of the proceedings | 11.6 | 9.5 |
| Not stated | 1.4 | 1.7 |
| Total | **100.0** | **100.0** |
| No. of cases | 294 | 296 |

Note: Percentages may not sum to exactly 100 due to rounding.

For contravention matters in the court file sample, patterns in representation status are different. Private legal assistance is still the most common representation type (56% of fathers and 51% of mothers; Table 17). The proportion of fathers and mothers who self-represented is more than twice that for primary parenting proceedings (31% of fathers and 34% of mothers). Data from the judgment sample indicate higher rates of self-representation. Legal representation in contravention proceedings by applicant status is reported in Table A9, Appendix A. This pattern may reflect, to an extent, the limited availability of legal aid for contravention matters and that parties’ funds had been exhausted in the primary parenting proceedings. It is notable that while there are similar rates of self-representation and private legal representation, mothers were more likely to be self-represented in the court file and judgment samples. This contrasts with the reports of parents/carers participating in the survey where fathers were more likely to report that they were self-represented in contravention matters.

**Table 17:**Court files and published/unpublished judgment files: Contravention proceedings, legal representation by gender

| Contravention proceedings | Court files  Fathers  % | Court files  Mothers  % | Published and unpublished judgment filesa  Fathers  % | Published and unpublished judgment filesa  Mothers  % |
| --- | --- | --- | --- | --- |
| Self-represented | 31.0 | 34.1 | 40.0 | 37.3 |
| Legal aid/grant of aid for legal assistance (public) | 3.7 | 3.7 | 0.8 | 4.5 |
| Community legal centre | 0.7 | 1.0 |  |  |
| Private legal representation | 56.2 | 51.1 | 53.8 | 53.0 |
| Represented for part of the proceedings | 5.4 | 7.1 | 3.1 | 3.7 |
| Partially private, partially community legal centre | 0.0 | 0.3 |  |  |
| Not stated | 3.1 | 2.7 | 2.3 | 1.5 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| No. of cases | 294 | 296 | 130 | 134 |

Notes: a If applicant or respondent’s role in family was missing, gender was used as a proxy for role in family – male as father (n=25), female as mother (n=26). Files where father and mother could not be identified (i.e. both role in family and gender were missing), but legal representation status was the same for both parties, this legal representation was assigned both father and mother for the case (n=17).

Percentages may not sum to exactly 100 due to rounding.

4.4 Court files: Party profiles

This section sets out the profiles of parties who are engaged in contravention proceedings and when they engaged in their primary parenting proceeding. These data are derived from documents in the parties’ court files from both their primary parenting and contravention proceedings to provide comprehensive profiles of the parties to contravention proceedings in the context of their characteristics over the duration of their proceedings in order to address research questions 1 and 4. It identifies the instigators of court action by gender and discusses the demographic characteristics of litigants, including their age, country of birth and employment status. It also sets out the relationship and family profiles of litigants and the characteristics of their children and identifies health and other issues of parties.

Who instigates litigation?

The court file sample shows a gendered pattern in instigators of litigation in relation to both the substantive parenting proceedings and the subsequent contravention proceedings, with the majority of applicants being fathers. This pattern was even more marked for contravention matters.

It is notable that the gendered pattern illustrated in Table 18, where fathers were applicants in nearly two thirds of primary parenting proceedings, contrasts with findings based on a representative sample of parenting matters resolved either by consent without litigation or on a litigation pathway by consent or judicial determination. The latter study’s findings show a more even distribution of applicants and respondents by gender, with mothers as 47 per cent of applicants and fathers as 50 per cent of applicants (Kaspiew, Carson, Qu et al., 2015, p. 35).

For contravention proceedings, fathers were applicants in 74 per cent of cases, with mothers as applicants in only 22 per cent of matters (Table 19).

**Table 18:** Court files: Primary parenting proceedings, gender of applicants and respondents

| Primary parenting proceedings | Applicants  % | Respondents  % |
| --- | --- | --- |
| Fathers | 65.3 | 32.7 |
| Mothers | 34.3 | 67.0 |
| Other | 0.3 | 0.3 |
| Total | **100.0** | **100.0** |
| No. of cases | 300 | 300 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table 19:** Court files: Contravention application, gender of applicants

|  |  |  |  |
| --- | --- | --- | --- |
| Applicants | First contravention application  % | Second or later contravention applications  % | All  % |
| Fathers | 76.0 | 70.4 | 74.1 |
| Mothers | 21.0 | 25.2 | 22.4 |
| Other | 3.0 | 4.4 | 3.5 |
| Total | **100.0** | **100.0** | **100.0** |
| No. of cases | 300 | 159 | 459 |

Court files – Party demographic characteristics

This section sets out the demographic characteristics of the litigants in contravention matters, based on data derived from documents relating to the primary parenting proceedings (Table 20). The mean age of fathers in the sample was 41 and of mothers was 37, with this difference in age being statistically significant. Data were missing on country of birth in a substantial proportion of cases (50%), but the available data indicated that Australian-born parents (about 30%) were more common than those born in another country (about 20%). Citizenship was mostly Australian, with about 10 per cent of the sample not having Australian citizenship and this information not being available for 6 per cent.

Where information was provided for Indigenous status (95% of matters), most parties (93%) were not Indigenous and 2 per cent confirmed they were Aboriginal and/or Torres Strait Islander.

In terms of employment status, there were statistically significant differences between men and women, with 69 per cent of men being employed compared to 40 per cent of women. Women were more likely to be employed part-time than men (17% cf. 2%).

The largest occupational group among both men and women was professional category (33% of men and 36% of women). Otherwise, the second most common groups were technician/trades for men (27%) and community and personal services for women (23%).

It was not uncommon for data on income sources to be unavailable, but where this was available, wages/salaries were most common for men (41%) and, albeit to a lesser extent, women (26%) . Women were substantially more likely than men to be reliant on government benefits (19% cf. 7%).

**Table 20:** Court files: Demographic characteristics for primary parenting proceedings, by father or mother

|  |  |  |
| --- | --- | --- |
| Age (at application) | Fathers | Mothers |
| Mean (years) | 40.6 | 37.1\*\*\* |
| (SD) | 7.8 | 7.0 |
| N | 289 | 287 |

| Country of birth | Fathers  % | Mothers  % |
| --- | --- | --- |
| Australia | 31.0 | 30.4 |
| Overseas | 19.4 | 19.9 |
| Not stated | 49.7 | 49.7 |
| Total | **100.0** | **100.0** |
| N | 294 | 296 |

| Australian citizen status | Fathers  % | Mothers  % |
| --- | --- | --- |
| Yes | 84.7 | 83.8 |
| No | 8.5 | 10.1 |
| Not stated | 6.8 | 6.1 |
| Total | **100.0** | **100.0** |
| N | 294 | 296 |

| Indigenous status | Fathers  % | Mothers  % |
| --- | --- | --- |
| Indigenous | 3.4 | 2.4 |
| Non-Indigenous | 91.5 | 92.6 |
| Not stated | 5.1 | 5.1 |
| **Total** | **100.0** | **100.0** |
| N | 294 | 296 |

| Employment status | Fathers  % | Mothers  % |
| --- | --- | --- |
| Employed | 69.0 | 43.2\*\*\* |
| Employed, full-time | 48.6 | 17.6\*\*\* |
| Employed, part-time | 2.0 | 16.6\*\*\* |
| Employed, unclear hours | 18.4 | 9.1\*\* |
| Not employed | 14.6 | 39.5\*\*\* |
| Not stated | 16.3 | 17.2 |
| Total | **100.0** | **100.0** |
| N | 294 | 296 |

| Occupation, if employed | Fathers  % | Mothers  % |
| --- | --- | --- |
| Manager | 9.9 | 9.4 |
| Professional | 32.5 | 35.9 |
| Technician/trade worker | 26.6 | 1.6\*\*\* |
| Community and personal service worker | 6.4 | 23.4\*\*\* |
| Clerical and administrative worker | 0.5 | 13.3\*\*\* |
| Sales worker | 5.4 | 6.3 |
| Machinery operator/driver | 7.4 | 0.0 |
| Labourer | 8.4 | 4.7 |
| Unidentifiable/not stated | 3.0 | 5.5 |
| Total | **100.0** | **100.0** |
| N | 203 | 128 |

| Principal income | Fathers  % | Mothers  % |
| --- | --- | --- |
| Wages/salaries | 40.8 | 26.0\*\*\* |
| Own unincorporated business/other personal income | 6.5 | 1.4\*\* |
| Government income support/benefits | 6.8 | 19.3\*\*\* |
| Child support/maintenance | 0.3 | 1.7 |
| Other | 1.0 | 2.7 |
| No income | 0.3 | 0.3 |
| Not stated | 44.2 | 48.6 |
| Total | **100.0** | **100.0** |
| N | 294 | 296 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on t-test for age and chi-squared test for other variables (\*p<.05; \*\*p<.01; \*\*\*p<.001).

Key demographic data were also analysed in relation to parties’ legal representation status (Table A10, Appendix A). These data show that in primary parenting proceedings, employment rates were lower among those who were self-represented, compared to those who were legally represented (fathers: 57% cf. 72%; mothers: 37% cf. 45%). The extent to which parties reported wages/salaries as the principal source of income was also lower among SRLs. In addition, a higher proportion of self-represented mothers than their legally represented counterparts were born in Australia (47% cf. 28%). This pattern was not apparent for fathers. These differences were less apparent in contravention proceedings.

Relationship and family profiles

The data show that most parties had been married (59%), while one third had been in cohabiting relationships; on average, separation occurred after nine years. Most former couples had more than one child (56%).

**Table 21:**Court files: Relationship characteristics

Information from primary parenting order application

| Relationship status at separation | % |
| --- | --- |
| Married | 59.0 |
| Cohabiting | 32.7 |
| Other | 5.0 |
| Not stated | 5.3 |
| Total | **100.0** |
| N | 300 |

|  |  |
| --- | --- |
| Duration of relationship | Value |
| Mean (years) | 8.6 |
| SD | 5.7 |
| N | 256 |

| Number of children from the relationship | Value |
| --- | --- |
| Mean | 1.84 |
| SD | 1 |
| N | 300 |

| Number of children from the relationship | % |
| --- | --- |
| One child | 44.0 |
| Two children | 36.3 |
| Three or more | 19.7 |
| **Total** | **100.0** |

| Number of children under 18 years from the relationship | Value |
| --- | --- |
| Mean (years) | 1.8 |
| SD | 0.9 |
| N | 300 |

| Number of children under 18 years from the relationship | % |
| --- | --- |
| One child | 45.7 |
| Two children | 35.3 |
| Three or more | 19.0 |
| **Total** | **100.0** |

Child characteristics

Table 22 sets out the characteristics of the children at the time of the primary parenting proceedings. These data are relevant to a comprehensive consideration of the drivers of non-compliance in research question 1, particularly in light of data showing that children’s opposition to, or refusal to comply with, the parenting orders has been identified as a cause of non-compliance. Their characteristics are also relevant context when considering parents’ characteristics as part of research questions 2 and 4.

With a mean age across the sample of 6.72 years, the largest age group represented was 5 to 11 years at 51 per cent. The second-largest age group was 0 to 4 years, at 38 per cent. Children in older age groups were uncommon, with 8 per cent in the 12 to 14 years age group and 3 per cent in the 15 to 17 years age group. Matters where more than one contravention application had been made were more likely to involve younger children to a statistically significant extent, with the mean age for this group being 6.01. However, it is important to note that the ages reported in these data are those of the children at the time that the parenting orders were made, rather than at the time of the contravention application.

There are no apparent significant patterns in relation to gender for children, with an almost even distribution of boys (51%) and girls (49%).

Where Indigenous status was specified, 5 per cent of children were Aboriginal and/or Torres Strait Islander and 71 per cent non-Indigenous.

Although the majority of children did not have special needs (57%), a substantial minority did (36%). The most common types of special needs related to psychological (42%) and mental health conditions (36%). Learning difficulties were not uncommon (35%) and issues relating to trauma arising from a requirement for time with a non-primary carer were raised in relation to 16 per cent of the special needs group. These characteristics of children’s health and special needs in the court file data provide important context to parents’ reports of the children’s wellbeing in the survey data.

**Table 22:**Court files: Primary parenting proceedings that were the contravention subject, characteristics of children

| Age of children | Number of contravention applications  One | Number of contravention applications  Multiple | All |
| --- | --- | --- | --- |
| Mean (years) | 7.02 | 6.01\*\* | 6.72 |
| SD | 3.96 | 3.78 | 3.93 |
| 0–4 | 34.0 | 47.7 | 38.0 |
| 5–11 | 53.7 | 43.2 | 50.7 |
| 12–14 | 8.0 | 7.7 | 7.9 |
| 15–17 | 4.3 | 1.3 | 3.4 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of children | 374 | 155 | 529 |

| Gender of children | Number of contravention applications  One | Number of contravention applications  Multiple | All |
| --- | --- | --- | --- |
| Male | 49.5 | 54.7 | 51.0 |
| Female | 50.5 | 45.3 | 49.0 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of children | 380 | 159 | 539 |

| Children’s Indigenous status | Number of contravention applications  One | Number of contravention applications  Multiple | All |
| --- | --- | --- | --- |
| Indigenous | 5.0 | 3.8 | 4.6 |
| Non-Indigenous | 73.2 | 64.8\* | 70.7 |
| Not stated | 21.8 | 31.5\* | 24.6 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of children | 381 | 159 | 540 |

| Children had any special needs | Number of contravention applications  One | Number of contravention applications  Multiple | All |
| --- | --- | --- | --- |
| Yes | 33.6 | 41.5 | 35.9 |
| No | 58.5 | 51.6 | 56.5 |
| Not stated | 7.9 | 6.9 | 7.6 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of children | 381 | 159 | 540 |

| If having special needs: Types of special needs (multiple responses could be selected) | Number of contravention applications  One | Number of contravention applications  Multiple | All |
| --- | --- | --- | --- |
| Physical | 21.1 | 30.3 | 24.2 |
| Psychological | 42.2 | 40.9 | 41.8 |
| Mental health | 35.2 | 37.9 | 36.1 |
| Learning difficulty | 35.2 | 33.3 | 34.5 |
| Trauma relating to requirement for time with non-primary parent/carer | 18.0 | 10.6 | 15.5 |
| Cultural | 8.6 | 4.5 | 7.2 |
| Behavioural problems | 14.1 | 7.6 | 11.9 |
| Other | 0.8 | 3.0 | 1.5 |
| Number of children | 128 | 66 | 194 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001).

Court files – Health issues and other issues raised

Around half of the primary parenting proceedings involved health issues that were raised by one or other of the parties in relation to themselves (Table 23). There were two issues that were most commonly raised, though to different extents in relation to men and women. The most common issue raised in relation to women was mental health issues (42% cf. 28% men). The most common health issue raised in relation to men was substance misuse (30% men cf. 16% women), though mental health issues were also prevalent (28%).

**Table 23:**Court files: Health and other issues by applicant/respondent status for primary parenting proceedings, by father or mother

Information from primary parenting order application

| Health and other issues (multiple responses could be selected) | Fathers  % | Mothers  % |
| --- | --- | --- |
| Medical conditions or disability | 10.9 | 8.8 |
| Health concerns | 3.4 | 5.1 |
| Substance abuse (e.g. drugs, alcohol) | 29.6 | 16.2\*\*\* |
| Gambling concerns | 4.4 | 1.4\* |
| Mental health concerns | 27.9 | 41.6\*\*\* |

| Number of issues | Fathers  % | Mothers  % |
| --- | --- | --- |
| No issues | 50.0 | 48.0 |
| One | 30.3 | 35.5 |
| Two or more | 19.7 | 16.6 |
| Total | **100.0** | **100.0** |
| N | 294 | 296 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). Percentages may not sum to exactly 100 due to rounding.

Data relating to health and other issues were also analysed in relation to parties’ legal representation status (Table A11, Appendix A). These data show that reports of substance abuse (e.g. drugs, alcohol) were more common among SRLs than parties with legal representation. While this pattern emerged in both primary parenting and contravention proceedings regardless of gender of parents, the difference reached statistical significance only for mothers in contravention proceedings – with 23 per cent of self-represented mothers reporting substance abuse issues, compared to 13 per cent of mothers with legal representation. Mental health concerns were higher among self-represented fathers than those fathers with legal representation (in primary parenting proceedings: 38% cf. 27%; in contravention proceedings: 37% cf. 25%). The pattern was consistent in both primary parenting and contravention proceedings, and the difference was statistically significant for contravention proceedings.

4.5 Arrangements in primary parenting orders

This section sets out findings on the arrangements in relation to parental responsibility and parenting time that were reflected in the most recent substantive primary parenting orders in the contravention matters included in the court file sample.[[14]](#footnote-14) These data relating to the parenting arrangements made as the subject of contravention proceedings are also relevant to a comprehensive consideration of the drivers of non-compliance with parenting in research question 1. Table 24 demonstrates that shared parental responsibility without exceptions was most common across the sample, applying to 71 per cent of matters. Shared parental responsibility with some exceptions applied to 3 per cent of the sample. Notably, there was a statistically significant difference between matters with one contravention application compared to matters with multiple contravention applications in this respect, with shared parental responsibility with exceptions more common in the latter group (8% cf. 1%). A minority of arrangements involved orders for sole parental responsibility, more often in favour of the mother (14%) than the father (7%).

The dominance of orders for shared parental responsibility is consistent with other research showing that this is the most common allocation in court orders (Kaspiew, Carson, Qu et al., 2015, p. 57).

**Table 24:** Court files: Primary parenting orders that were the subject of the contravention proceedings: Parental responsibility for children aged under 18 years, by whether the matter involved multiple contravention applications

| Number of contravention applications | One  % | Multiple  % | All |
| --- | --- | --- | --- |
| Shared parental responsibility – no exception | 76.6 | 59.6\*\*\* | 71.3 |
| Shared parental responsibility – exception | 1.3 | 7.5\*\*\* | 3.2 |
| Sole to mother | 13.1 | 17.1 | 14.4 |
| Sole to father | 5.6 | 9.6 | 6.9 |
| Other | 3.4 | 6.2 | 4.3 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of children | 321 | 146 | 467 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). The analysis excludes observations where parental responsibility information was not on the file (n=67).

In terms of arrangements for the allocation of time between parents, Table 25 demonstrates that the most common arrangement in the orders made during the primary parenting proceeding was for children to spend most of their time with their mother (62%). Shared time (defined as between 35 to 65 per cent of nights between each parent) applied to just over one fifth of the sample. Arrangements for most time to be spent with fathers were uncommon, at 14 per cent. As with parental responsibility, these patterns are broadly consistent with findings in previous research on time arrangements in court orders (Kaspiew, Carson, Qu et al., 2015).

More detailed analyses in Table A12, Appendix A, demonstrate that there are two kinds of time arrangements associated with a greater likelihood of multiple contravention applications. These are arrangements where the child lives with the mother and has no face-to-face contact with the father (5% cf. 1%) and where they live with the mother and have daytime contact only with the father (7% cf. 2%). Such orders are fairly uncommon (Kaspiew, Carson, Qu et al., 2015, pp. 59–61) and are likely to involve circumstances in which fathers are considered to pose a risk to children.

**Table 25:** Court files: Primary parenting proceedings that were the subject of the contravention: Care time arrangements for children aged under 18 years, by whether there are multiple contravention applications

| Care time – Broad categories | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | All  % |
| --- | --- | --- | --- |
| Living with mother | 61.7 | 63.1 | 62.1 |
| Shared time | 22.6 | 18.1 | 21.3 |
| Living with father | 13.4 | 15.4 | 14.0 |
| Other | 2.2 | 3.4 | 2.6 |
| **Total** | **100.0** | **100.0** | **100.0** |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). Percentages may not sum to exactly 100 due to rounding.

4.6 Contravention applications in the court files substudy: Document profiles

Table 26 provides an overview of the evidentiary profiles of contravention applications based on the proportion of files that had key document types on file. These data are relevant to understanding the complexity and protracted nature of matters involving contravention applications and the format of evidence on file, which captures issues including family violence. Although almost all files included a contravention application (97%) and an affidavit by the applicant in the contravention matter (94%), other types of evidence were limited, and in some document categories, very limited. Notably, only four in 10 matters had an affidavit from the respondent in the contravention matter.

Three in 10 matters included reference to requirements to attempt FDR prior to lodging a court application in FLA s 60I, either through a document claiming an exemption from this requirement (13%) or through a certificate establishing this requirement has been satisfied (16%).[[15]](#footnote-15)

A minority of matters (15%) also included an Application in a Case, which indicates that one or other of the parties has applied for substantive parenting orders separate to the initiating application. Only 5 per cent of files included a response to an Application in a Case, meaning that in two thirds of cases where an application for substantive parenting orders was made, the other party did not respond to this application. While these applications may reflect a change in circumstances, together with other data regarding the protracted nature of these contravention matters, they may assist in providing insight into the potential for legal proceedings to be misused in order to continue the exercise of coercion and controlling behaviour.

Otherwise, the proportions of contravention matters involving other sources of evidence were low:

* Twelve per cent included subpoenas for evidence.
* Eleven per cent included affidavits other than those by the contravention applicant.
* Eight per cent included a notice of risk.
* Five per cent included a family report or memoranda.
* Two per cent included a personal protection order.

As noted above, only 5 per cent of contravention matters had either a family report or memoranda prepared in the context of the contravention proceedings, although most (80%) of the files had a report or memoranda prepared in the context of the primary parenting proceedings. Unfortunately, the data available provide no insight in relation to the risk assessments conducted in the context of these reports or memoranda in the context of the contravention proceedings. Given the significant concerns raised by participants in the SoP&C in relation to risk to, and wellbeing of, children where non-compliance is an issue, these data suggest that there are limitations in documenting these concerns in a court context or that these families are not returning to court to address these concerns for the range of reasons detailed in the data from both professionals and parents and carers regarding the deterrents.

**Table 26:** Court files: Types of documents in relation to contravention application, by whether involving multiple contravention applications

| Type of documents | Number of contravention applications  First contravention application  % | Number of contravention applications  Second or later contravention applications  % | All  % |
| --- | --- | --- | --- |
| Application – Contravention | 97.3 | 95.0 | 96.5 |
| Affidavit/s (in the substantive matters) made by the contravention/enforcement applicant | 95.7 | 91.2 | 94.1 |
| Affidavit/s (in the substantive matters) made by the contravention/enforcement respondent | 41.7 | 35.8 | 39.7 |
| Section 60I certificate or Affidavit – Non Filing of Dispute Resolution Certificate | 34.7 | 20.1 | 29.6 |
| Application in a Case | 13.7 | 18.2 | 15.3 |
| Subpoenas (all) | 13.0 | 10.1 | 12.0 |
| Affidavit/s (in the substantive matters) – other | 12.3 | 8.8 | 11.1 |
| Notice of Risk (family violence/child abuse or other risk) | 9.3 | 6.3 | 8.3 |
| Response to an Application in a Case | 6.0 | 3.8 | 5.2 |
| Family Report/s (including memorandum) | 5.3 | 3.1 | 4.6 |
| Personal protection order/s | 2.0 | 0.6 | 1.5 |
| Number of contravention applications | 300 | 159 | 459 |

Note: Percentages do not sum to 100 as multiple responses could be selected.

Dispute resolution

Data relating to the presence of s 60I certificates and affidavits in support of non-filing s 60I certificates were expected to provide insight into the characteristics of the parents involved in contravention proceedings. Unfortunately, Table 27 shows that no certificate was filed and the reason for the absence was unclear in more than half of all contravention applications (57%). This was the case with almost half of initial contravention applications (49%) and in nearly two thirds of second or subsequent contravention applications. Nearly a quarter of all contravention applications (18%) were filed with a s 60I certificate indicating that one party had attended FDR and the other had not attended. Smaller proportions of parties filed applications with certificates that did not indicate that FDR was not appropriate.

**Table 27:** Court files: Whether a s 60I (family dispute resolution) certificate was present in contravention proceedings and reasons, first contravention applications and further contravention applications

| Certificate present | First contravention application | Second or later contravention applications | All contravention applications |
| --- | --- | --- | --- |
| Yes | **20.7** | **12.6** | **17.9** |
| Yes – One party attended FDR but the other party did not | 3.0 | 1.3 | 2.4 |
| Yes – Practitioner considers that it would not be appropriate to conduct the proposed FDR | 8.0 | 3.8 | 6.5 |
| Yes – FDR attended by both parties and genuine effort was made | 7.0 | 5.0 | 6.3 |
| Yes – Parties attended FDR but one or both parties did not make a genuine effort | 0.7 | 0.0 | 0.4 |
| Yes – Parties commenced FDR but practitioner assessed that it was not appropriate to continue FDR | 1.3 | 0.6 | 1.1 |
| Yes – Reason for certificate unclear or not available | 0.7 | 1.9 | 1.1 |
| No – Urgent matter | 4.3 | 2.5 | 3.7 |
| No – No s 60I certificate but Notice of Risk has been filed in these proceedings | 4.0 | 1.9 | 3.3 |
| No – Court satisfied that there has been or is a risk of child abuse by one of the parties | 3.0 | 3.1 | 3.1 |
| No – Court satisfied that there has been or is a risk of family violence by one of the parties | 3.7 | 3.8 | 3.7 |
| No – One or more parties unable to participate effectively in FDR | 4.7 | 6.3 | 5.2 |
| No – Orders to be made by consent (all parties) | 0.7 | 0.0 | 0.4 |
| No – Other court conditions satisfied | 6.3 | 5.0 | 5.9 |
| No – Reason unclear or not available | 48.7 | 62.9 | 53.6 |
| Affidavit non-filing – reason unclear | 3.0 | 1.3 | 2.4 |
| Unclear | 1.0 | 0.6 | 0.9 |
| Total | **100.0** | **100.0** | **100.0** |
| N | 300 | 159 | 459 |

Note: Percentages may not sum to exactly 100 due to rounding.

4.7 Family violence and child abuse

This section sets out findings on the extent to which allegations about family violence and/or child abuse or child safety concerns were relevant across the sample. It first considers the extent to which evidence in relation to these matters was on the file considering the primary parenting proceedings and the contravention matter. It then sets out findings on whether these allegations were made by fathers, mothers or both parents. These data are significant to addressing research questions 1, 3 and 5 to understand how frequently allegations of family violence and sexual abuse characterise non-compliance with parenting orders.

Allegations of family violence in primary proceedings and contravention matters

Table 28 sets out the proportion of matters in which there was any evidence on file or allegations of family violence, child abuse, child protection or safety concerns, considering the primary parenting proceedings and contravention proceedings together. The data demonstrate that high-risk issues characterised almost all families in the court file and judgment sample. The vast majority (92%) of court files contained allegations or evidence in relation to these matters. While a substantially smaller proportion of matters in the judgment sample (lower panel, Table 28) were identified as containing evidence or allegations of family violence (53%), the reasons for decision were the only data source, with no access to other documentation on file, as was the case for the court file sample. This limitation in the available data from the judgment sample is reflected in the identification of one quarter of matters where it was unclear on the face of the judgment whether there were allegations or evidence of family violence, child abuse, child protection or safety concerns.

**Table 28:** Court files and published/unpublished judgment: Evidence on file of family violence, child abuse or safety concerns

Any evidence on file of family violence, child abuse, child protection or safety concerns for parent/s and child/ren, or allegations made by applicant and/or respondent

| Court files | No. | % |
| --- | --- | --- |
| Yes | 275 | **91.7** |
| No | 22 | **7.3** |
| Unclear | 3 | **1.0** |
| **Total** | **300** | **100.0** |

| Published and unpublished judgments | No. | % |
| --- | --- | --- |
| Yes | 78 | **53.1** |
| No | 33 | **22.5** |
| Unclear | 36 | **24.5** |
| **Total** | **147** | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

Family violence and child abuse – More detailed insights

More detailed analysis is set out in Table 29, which presents findings on whether the evidence or allegations of family violence, child abuse, child protection or safety concerns were raised in the primary parenting proceedings, the contravention proceedings or both types of matters.

It was most common for evidence or allegations to have been raised in the primary parenting proceedings (54%), but a sizeable minority of matters (43%) had them raised in both the contravention and primary proceedings. A negligible proportion (3%) had them raised in the contravention proceedings only. It is notable that matters where there were two or more contravention applications were more likely to have allegations made in both the primary parenting proceedings and the contravention proceedings (52% cf. 39%) and this difference was marginally statistically significant. In the judgment sample, it was more likely that the evidence or allegations were raised in relation to the primary parenting proceedings (44%) than in the contravention proceedings (35%) or in both the primary parenting and contravention proceedings (22%).

**Table 29:** Court files and published/unpublished judgment files: Where evidence or allegations of family violence, child abuse and safety concerns present, whether it related to the contraventions or primary parenting proceedings, by number of contravention applications

| Court files | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total  % |
| --- | --- | --- | --- |
| Both contravention and primary parenting proceedings | 39.4 | 51.7 | 43.3 |
| Contravention proceedings | 3.2 | 2.3 | 2.9 |
| Primary parenting proceedings | 57.5 | 46.0 | 53.8 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of cases | 188 | 87 | 275 |

| Published and unpublished judgment files | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total  % |
| --- | --- | --- | --- |
| Both contravention and primary parenting proceedings |  |  | 21.8 |
| Contravention proceedings |  |  | 34.6 |
| Primary parenting proceedings |  |  | 43.6 |
| Total |  |  | **100.0** |
| Number of cases |  |  | 78 |

Note: Only a small number of published and unpublished judgment cases (n=21) had multiple contravention applications and had evidence on family violence (it is likely that some files had multiple contraventions and this information was not explicit in the judgment files). Therefore, analysis by number of contravention applications for this subsample has not been reported. Percentages may not sum to exactly 100 due to rounding.

Alleged victims and perpetrators

According to analysis of patterns in alleged victimisation and alleged perpetration of family violence, child abuse and child safety concerns, children were victims in most cases in both the contravention and the primary parenting proceedings (court file sample: 95% and 92% respectively; judgment sample: 86% and 78% respectively; Table 30). This analysis of alleged victim or alleged perpetrator status was applied by the member of our research team undertaking the data collection based on an assessment of the material as a whole in the relevant court file or judgment (see below for analysis demonstrating the extent to which mothers and fathers made allegations).

When considering this issue based on the primary parenting proceedings (upper panels) files, the data show that higher proportions of the primary parenting proceedings in both the court file and judgment sample had material indicating that both fathers and mothers were victims (court file sample: 45%; judgment sample: 20%) and perpetrators (court file sample: 63%; judgment sample: 22%), and the differential between both as victims and both as perpetrators was not as great as for contravention matters (see below). In the court file sample, fathers were assessed by the research team as perpetrators in 94 per cent of matters and victims in 48 per cent of primary parenting proceedings. Mothers were assessed as victims in 88 per cent of cases and perpetrators in 67 per cent of primary parenting proceedings. Although less pronounced, a similar pattern is present in the judgment sample, with fathers assessed as perpetrators in 51 per cent of primary parenting matters and victims in 26 per cent. Mothers were assessed as victims in 47 per cent of cases and perpetrators in 35 per cent in primary parenting proceedings.

In relation to contravention proceedings, Table 30 (second panel) shows that both mothers and fathers were assessed by the research team as perpetrators in almost one third of cases and victims in 17 per cent of cases in the court file sample. Mothers were more likely than fathers to be assessed by the research team as victims (46% cf. 37%), while fathers were more likely than mothers to be assessed as perpetrators (70% cf. 61%). The patterns varied with respect to contravention applications in the judgment sample (Table 30, fourth panel). Both mothers and fathers were described as perpetrators in 11 per cent of matters and neither fathers nor mothers were described as victims in any of the contravention matters in this sample. Mothers were assessed as perpetrators in 23 per cent of contravention matters in the judgment sample and as victims in 11 per cent of matters, while fathers were significantly more likely to be assessed as perpetrators (27%) than victims (2%).

The same information analysed by applicant and respondent status is presented in Table A13, Appendix A.

The findings based on the court file sample suggest that in parenting proceedings, evidence and allegations are more likely to be made against fathers, while mothers are more likely to be identified as victims. Cross-allegations are common in these proceedings, reinforcing the findings of Wangmann (2009) that cross-allegations of family violence in subsequent legal proceedings may be used to undermine or counter women’s experiences of violence, or to continue to intimidate, control or harass a victim, with ongoing family law disputes often providing a “setting” for violence and abuse.

In relation to contravention matters, while mothers were more commonly identified as perpetrators than victims in these matters, a greater proportion of fathers were nevertheless identified as perpetrators compared to mothers. The data suggest that cross-allegations are also common although to a lesser degree in contravention matters. Given the more limited information available in the only document for review in the judgment sample (i.e. the reasons for decisions) regarding evidence or allegations of family violence, child abuse and child safety concerns, caution should be exercised when interpreting these findings in relation to the judgment data.

**Table 30**: Court files and published/unpublished judgment files: Victims and perpetrators in cases involving evidence and allegations of family violence, child abuse or safety concerns

Court files and judgments

| Court files – Primary parenting proceedings | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Children | 92.1 | - |
| Father | 47.6 | 94.4 |
| Mother | 88.4 | 66.7 |
| Both father and mother | 44.6 | 62.5 |
| N | 267 | 267 |

|  |  |  |
| --- | --- | --- |
| Court files – Contravention proceedings | Victims  % | Perpetrators  % |
| Children | 95.3 | - |
| Father | 37.0 | 70.1 |
| Mother | 45.7 | 60.6 |
| Both father and mother | 16.5 | 33.1 |
| N | 127 | 127 |
| **Published and unpublished judgments** |  |  |

Published and unpublished judgements

| Primary parenting proceedings | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Children | 78.4 |  |
| Father | 25.5 | 51.0 |
| Mother | 47.1 | 35.3 |
| Both father and mother | 19.6 | 21.6 |
| N | 51 | 51 |

| Contravention proceedings | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Children | 86.4 |  |
| Father | 2.3 | 27.3 |
| Mother | 11.4 | 22.7 |
| Both father and mother | 0.0 | 11.4 |
| N | 44 | 44 |

Note: Percentages may not sum to exactly 100 due to rounding.

Allegations by fathers and mothers in the primary parenting proceedings

Further insight into the victim and perpetrator status of parties is presented in Table 31 on the basis of data from the primary parenting proceedings. The data show that while fathers and mothers made cross-allegations of family violence against each other in more than half of matters (55%), in nearly one third of matters, mothers made allegations in circumstances where fathers did not make a cross-allegation. The converse was the case in only 4 per cent of matters, indicating that fathers’ allegations of family violence were most likely to arise in the context of allegations of family violence by mothers. Previous data based on a sample of court files in parenting matters subsequent to the introduction of the family violence amendments to the FLA indicate mothers were similarly more likely to make allegations of family violence in the absence of cross allegations (66%) than fathers (10%), with mothers more commonly being the victim (61%) than fathers (9%; see Table 3.12, Kaspiew, Carson, Qu et al., 2015).

Table 32 shows the patterns in allegations of family violence and child abuse in the primary parenting proceedings, presenting the analysis by gender rather than party status. Most matters involved allegations being made of both family violence and child abuse together, by mothers in more than two thirds (68%) and fathers in almost half (46%) of cases. Similar proportions of fathers made allegations of family violence against mothers (18%) as mothers made allegations of family violence against fathers (21%). Fathers were much more likely to make allegations of child abuse in the absence of family violence against mothers than vice versa (36% cf. 11%). This information is also analysed by applicants and respondents in Table A14, Appendix A.

**Table 31:**Court files: Allegations of family violence/child abuse fathers and mothers made against each other in primary parenting proceedings

| Allegations made against each other | Primary parenting proceedings  % |
| --- | --- |
| Neither | 11.1 |
| Father made allegations against mother, mother did not make allegations | 3.8 |
| Mother made allegations against father, father did not make allegations | 30.5 |
| Both father and mother made allegations against each other | 54.6 |
| Total | **100.0** |
| Father made allegations against mother | 58.5 |
| Mother made allegations against father | 85.1 |
| N | 283 |

Notes: The analysis excludes files where one or both parties were a non-parent.

**Table 32:**Court files: Primary parenting proceedings with allegations of family violence/child abuse: Whether the allegation involved family/domestic violence and/or child abuse, by party and gender of parent

| Where allegation(s) made: | Father made allegations against mother  % | Mother made allegations against father  % |
| --- | --- | --- |
| Family/domestic violence only | 18.1 | 21.3 |
| Child abuse/safety concerns only | 35.7 | 10.8 |
| Both family/domestic violence and child abuse/safety concerns | 46.2 | 67.9 |
| Total | **100.0** | **100.0** |
| N | 171 | 249 |

Allegations by fathers and mothers in the contravention proceedings

Analysis of allegations of family violence and child abuse shows some differences in patterns compared with primary parenting proceedings.

Table 33 shows that cross-allegations were made in only 13 per cent of contravention matters compared to more than half of primary parenting matters (55%). While mothers made allegations in circumstances where fathers did not make a cross-allegation more frequently than fathers in contravention orders, the difference between mothers and fathers in this respect was much less substantial than for primary parenting orders.

Table 34 shows that mothers and fathers were both less likely to make allegations of both family violence and child abuse/safety concerns in contravention proceedings compared to primary parenting proceedings (36% cf. 46% fathers and 46% cf. 68% mothers). However, allegations concerning child abuse/safety concerns alone were evident to a greater extent in the contravention proceedings. Almost one half of fathers (49%) made these allegations in the absence of family violence allegations (cf. 36% in primary parenting proceedings). Just over four in 10 mothers (45%) made these allegations in the absence of family violence allegations, compared with 11 per cent of the primary parenting proceedings. When combined with the proportion of parents who made allegations of child abuse/safety concerns and family violence, we see that allegations of child abuse/safety concerns were more prevalent in contravention proceedings compared to primary parenting proceedings for both mothers and fathers (mothers: 90% cf. 79% and fathers: 85% cf. 82%). Further analysis by applicants and respondents is provided in Table A15, Appendix A.

The patterns indicate a heightened focus on child abuse in the context of contravention proceedings with a lesser emphasis on family violence in comparison with the primary parenting proceedings. They likely reflect the issues the enforcement provisions direct attention to, such as the health and safety of the child in the context of establishing a reasonable excuse for contravention (FLA s 70NAE(4)).

**Table 33:** Court files: Allegations of family violence/child abuse fathers and mothers made against each other in contravention proceedings

| Allegations made against each other | Contravention proceedings  % |
| --- | --- |
| Neither | 58.7 |
| Father made allegations against mother, mother did not make allegations | 12.7 |
| Mother made allegations against father, father did not make allegations | 15.9 |
| Both father and mother made allegations against each other | 12.7 |
| Total | **100.0** |
| Father made allegations against mother | 25.4 |
| Mother made allegations against father | 28.6 |
| N | 289 |

Notes: The analysis excludes files where one or both parties were a non-parent.

**Table 34:**Court files: Contraventions involving allegations: Whether the allegation involved family/domestic violence and/or child abuse

| Contraventions involving allegations | Father made allegations against mother  % | Mother made allegations against father  % |
| --- | --- | --- |
| Family/domestic violence only | 15.4 | 9.6 |
| Child abuse/safety concerns only | 48.7 | 44.6 |
| Both family/domestic violence and child abuse/safety concerns | 35.9 | 45.8 |
| Total | **100.0** | **100.0** |
| N | 78 | 83 |

Allegations of family violence and abuse and representation status

In Table 35, the data suggest that in contravention proceedings, fathers were more likely to be self-represented where they were the alleged perpetrators as compared to other fathers (alleged victims or both alleged perpetrators and victims; 37% cf. 22% to 25%). It was the reverse pattern for mothers. Mothers were less likely to be self-represented if they were alleged perpetrators in contravention matters involving family violence, compared to other mothers who were alleged victims or both alleged perpetrators and victims (31% cf. 37% to 39%). The only circumstance where fathers were more likely to be self-represented than mothers was where they were the alleged perpetrator of family violence (37% cf. 31%).

**Table 35:**Court files: Legal representation, by alleged victim or perpetrator of family violence

Fathers

| Contravention proceedings | Neither  % | Alleged FV victim  % | Alleged FV perpetrator  % | Alleged both FV victim and perpetrator  % |
| --- | --- | --- | --- | --- |
| Self-represented | 32.4 | 25.0 | 36.7 | 22.2 |
| Legally represented | 67.6 | 75.0 | 63.3 | 77.8 |
| Total | **100.0** | **100.0** | **100.0** | **100** |
| No. of cases | 176 | 20 | 60 | 27 |

Mothers

| Contravention proceedings | Neither  % | Alleged FV victim  % | Alleged FV perpetrator  % | Alleged both FV victim and perpetrator  % |
| --- | --- | --- | --- | --- |
| Self-represented | 34.6 | 36.7 | 30.6 | 39.3 |
| Legally represented | 65.4 | 63.3 | 69.4 | 60.7 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| No. of cases | 179 | 30 | 49 | 28 |

In the judgment sample, Table 36 shows that slightly higher proportions of fathers (39%) than mothers (36%) were self-represented in matters where evidence of family violence, child protection or safety concerns were apparent in the judgment, and correspondingly higher proportions of mothers were legally represented where evidence in these categories could be identified in the judgment. Slightly higher proportions of mothers (49%) than fathers (47%) were self-represented where no such evidence was evident in the judgment. These data should be interpreted with caution given the high proportions of “unclear” responses where evidence of family violence, child protection or safety concerns could not be ascertained on the face of the judgment.

Men were more likely than women to report self-funded legal assistance to a statistically significant extent (82% cf. 62%).

In relation to data about parties’ representation status, it is important to acknowledge that the reasons for self-representation may vary, ranging, for example, from a lack of access to legal services by reason of cost or location, to electing to self-represent with the view to exercising coercive and controlling behaviours as a form of systems abuse, including when their self-represented status enabled the party to undertake direct cross-examination (e.g. Carson, Qu et al., 2018; Kaspiew et al., 2017).

**Table 36:**Published and unpublished judgment sample: Legal representation, by whether any evidence in judgment of family violence, child protection, safety concerns for parent(s)/children

Any evidence in judgment of FV

| Fathers | Yes (%) | No (%) |
| --- | --- | --- |
| Self-represented | 38.8 | 46.7 |
| Legally represented | 61.2 | 53.3 |
| Total | **100.0** | **100.0** |
| N | 67 | 30 |

| Mothers | Yes (%) | No (%) |
| --- | --- | --- |
| Self-represented | 36.2 | 48.5 |
| Legally represented | 63.8 | 51.5 |
| Total | **100.0** | **100.0** |
| N | 69 | 33 |

Evidence of family violence and child safety concerns

More than a quarter of all contravention matters involved current or previous involvement of state child protection agencies (28%) either at the time of the contravention proceedings or during the primary parenting proceedings, although it is noted that this involvement more commonly arose in the context of the primary parenting proceedings (Table A17, Appendix A).

Also of note, half of all contravention matters (50%) were identified as having a current or past personal protection order (PPO) on their court file, with more than one quarter of these PPOs (27%) being PPOs in place in the past, 17% being current PPOs and 6 per cent having both past and current PPOs (Table A18, Appendix A). A slightly higher proportion (55%) of cases involving allegations of family violence, child abuse or safety concerns had a PPO, with 19 per cent having current PPOs (Table A19, Appendix A). One third (33%) of the most recent PPOs were final orders and just over half (51%) were interim orders, with the status of most of the remaining orders unclear (Table A20, Appendix A). While the data available in relation to breaches of these orders are incomplete, where data were available on the court files about whether a breach had occurred or not, nearly a quarter (24%) involved a breach of the PPO (Table A21, Appendix A). Of note, the children and the parent who was the respondent in the contravention application were most likely to be nominated as the protected party (55% and 57% respectively), with mothers the protected party in 79 per cent of PPOs (Table A22, Appendix A). In most matters (69%), the PPO did not operate in such a way as to vary or suspend the existing parenting order, although it is noted that data on the precise restraints imposed by the PPO with respect to the existing parenting orders were not available for nearly one quarter (21%) of matters (Table A23, Appendix A). Previous empirical research based on court files has identified lower levels of breaches of protection orders of between 8 to 9 per cent, and in most cases the PPO did not vary or suspend existing parenting orders (2% to 3%) – although it is noted that similar to the current sample, the status of a substantial proportion of the sample remains unclear (Kaspiew, Carson, Qu et al., 2015, p. 54).

4.8 Independent Children's Lawyer involvement

ICLs are another source of engagement with family law parenting matters that is independent of the parties to the proceedings. Previous AIFS research highlighted the important role that ICLs play in mitigating the adversarial nature of family law litigation through their participatory function to support the participation of the child in the proceedings, their evidence-gathering function and their litigation management function, where they support the case management and settlement negotiations where these functions are consistent with their practice orientation (Kaspiew et al., 2014). This is particularly so in matters characterised by family violence, child abuse, safety concerns or other risk issues. It is notable that nearly two thirds (60%) of the sampled matters had an ICL appointed in their matter at some point in their proceedings (Table 37). This compares with court administrative data analysed for the Evaluation of the 2012 Family Violence Amendments (Kaspiew, Carson, Qu et al., 2015), where orders for ICL involvement in parenting matters were made in 25 to 27 per cent of cases in the 2013–14 financial year in the Family Court or Federal Circuit Court respectively (see Table 2.15, Kaspiew, Carson, Qu et al., 2015). The higher proportion of matters in the current sample where an ICL had been appointed is indicative of the complexity of the matters invoking the contravention regime.

**Table 37:** Court files: Appointment of Independent Children’s Lawyers in court files

| ICL appointed at any time during the cases? | No. | **%** |
| --- | --- | --- |
| Yes | 181 | **60.3** |
| No | 109 | **36.3** |
| Not available/unclear | 10 | **3.3** |
| **Total** | 300 | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

4.9 Contravention applications

Applications – Nature of the alleged contravention

This section examines contravention application dynamics, focusing on two issues: the nature of the alleged contravention and the outcome sought by way of remedy. This analysis is based on the court file sample.

Table 38 sets out findings on the extent to which different types of possible contraventions (one being a catch-all “other”) were alleged, with possibilities focusing on issues related to time, parental responsibility, communication and not returning the child when required. One set of contravention circumstances related to non-compliance with parenting orders and another set of contravention circumstances related to similar issues arising in relation to registered parenting plans. Most contravention applications related to orders rather than plans. These findings indicate some gendered patterns in the experiences that lead to mothers, as opposed to fathers, making applications in relation to contravention.

The most common overall circumstance underlying a contravention application was not complying with requirements for children to spend time with a parent. This issue was raised in 72 per cent of contravention applications overall. Fathers raised it to a greater extent than mothers (79% cf. 50%). The lower proportion of mothers raising this issue was largely offset by the gendered patterns relating to over-holding children (not returning them at the time required by the orders). This was only raised in 8 per cent of cases, but mothers were substantially more likely to raise it than fathers (24% cf. 3%), reflecting the patterns in time arrangements (see Table 25), with most children spending the majority of time with their mothers.

After non-compliance with time arrangements, the next most common issue raised was non-compliance with parental responsibility requirements (22%). Proportions were similar for father and mother applicants, at 22 per cent and 21 per cent, respectively.

A lack of compliance with the precise terms of the parenting orders relating to time (a more restricted category than the broader withholding time category) was on par with parental responsibility circumstances (22%). No significant differences between fathers and mothers were evident (21% and 24% respectively).

Non-compliance with the terms of parenting orders relating to communication was raised in 16 per cent of matters, again with limited differences between mothers (18%) and fathers (15%).

An area where the data reveal a gendered pattern is in relation to the “other” category, which was nominated in 9 per cent of cases overall but was evident for 18 per cent of applicant mothers compared with 6 per cent of applicant fathers. Open-text responses provide some insight into the nature of the non-compliance in this “other” category, which includes issues such as breaches relating to provisions in orders relating to children’s names, schooling arrangements, non-denigration orders and orders in relation to costs.

**Table 38:** Court files: Applicants’ claims in contravention applications, by application and gender

| Claims in contravention applications | Applicants  First contravention application (n=300; %) | Applicants  Second or later contravention applications (n=159; %) | Applicants  All (n=459) % | All  Fathers (n=340) % | All  Mothers (n=103) % |
| --- | --- | --- | --- | --- | --- |
| Contravention of parenting orders – withheld/did not facilitate child’s/children’s time with the applicant | 76.0 | 64.8\* | 72.1 | 78.5 | 49.5\*\*\* |
| Contravention of parenting orders – over-held children | 6.0 | 10.7 | 7.6 | 2.9 | 24.3\*\*\* |
| Contravention of parenting orders – non-compliance with the precise terms of the parenting orders – parenting time | 24.7 | 16.4\* | 21.8 | 20.6 | 24.3 |
| Contravention of parenting orders – non-compliance with the precise terms of the parenting orders – parental responsibility | 21.7 | 22.6 | 22.0 | 21.8 | 21.4 |
| Contravention of parenting orders – did not facilitate communication with parent | 16.3 | 15.7 | 16.1 | 14.7 | 17.5 |
| Contravention of registered parenting plan – withheld/did not facilitate child’s/children’s time with the applicant | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contravention of registered parenting plan – over-held children | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Contravention of registered parenting plan – non-compliance with the precise terms of the parenting plan – parenting time | 1.0 | 0.0 | 0.7 | 0.9 | 0.0 |
| Contravention of registered parenting plan – non-compliance with the precise terms of the parenting plan – parental responsibility | 1.0 | 0.6 | 0.9 | 1.2 | 0.0 |
| Contravention of registered parenting plan – did not facilitate communication with parent | 0.7 | 0.6 | 0.7 | 0.9 | 0.0 |
| Contravention of undertaking | 1.0 | 0.0 | 0.7 | 0.6 | 1.0 |
| Contravention of parenting order or plan – other | 8.0 | 10.1 | 8.7 | 5.9 | 18.4\* |
| Other | 3.7 | 3.8 | 3.7 | 3.5 | 3.9 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). Multiple responses mean the sum of percentages can total more than 100.

Contravention applications – Remedies sought

The outcomes sought by contravention applicants are depicted in Table 39. The most common outcome sought was a variation in parenting orders, with 26 per cent of applicants seeking this outcome (25% of fathers and 31% of mothers). Compensatory contact (also known as make-up time) was the next most common outcome sought, with 14 per cent of cases (16% of fathers and 8% of mothers) seeking make-up time. The difference between mothers and fathers was statistically significant here, and this is likely to reflect the overall pattern in parenting arrangements of children spending most time with their mothers, meaning that make-up time is more salient for fathers than mothers.

Otherwise, two not uncommon remedies sought were for the other party to pay costs (11%) or an order for the recovery of the child (8%). In relation to recovery orders more specifically, a statistically significant larger proportion of mother applicants sought this as opposed to father applicants (14% cf. 7%). On the other hand, fathers were more likely to seek the other party to pay compensatory contact to a statistically significant extent (16% cf. 8%). Other orders identified by parties include a range of issues relating to, for example, the provision of specific documents or information, financial support and the resumption of previous parenting orders.

Notably, applications for more punitive response options to be applied were uncommon. Among these, the most common was for the other party to be required to enter into a bond (4%). Applications requesting fines, community service or imprisonment were all under 2 per cent.

**Table 39:**Court files: Orders applicants sought in contravention applications, by application and gender

| Orders applicants sought in contravention applications | Applicants  First contravention application (n=300; %) | Applicants  Second or later contravention applications (n=159; %) | Applicants  All (n=459) % | All  Fathers (n=340; %) | All  Mothers (n=103; %) |
| --- | --- | --- | --- | --- | --- |
| Variation of parenting orders/arrangements | 28.0 | 22.6 | 26.1 | 25.0 | 31.1 |
| Compensatory contact | 15.3 | 12.6 | 14.4 | 16.2 | 7.8\* |
| Location order | 1.0 | 1.9 | 1.3 | 1.8 | 0.0 |
| Recovery order | 6.7 | 10.7 | 8.1 | 6.8 | 13.6\* |
| Order to relocate | 1.0 | 0.6 | 0.9 | 0.9 | 1.0 |
| Order to prohibit relocation | 1.3 | 1.3 | 1.3 | 1.5 | 1.0 |
| Requirement for the other party/ies to enter into a bond – please include details of nature of the bond (e.g. Parenting Orders Program or counselling) | 2.7 | 5.0 | 3.5 | 2.9 | 3.9 |
| Order for the other party/ies to pay a fine | 1.3 | 2.5 | 1.7 | 1.5 | 2.9 |
| Order for the payment of some or all of the other party's/parties' costs | 10.7 | 10.1 | 10.5 | 11.2 | 9.7 |
| Order for the other party/ies to pay compensation for reasonable expenses lost as a result of the contravention (e.g. airfares) | 2.3 | 1.9 | 2.2 | 2.6 | 1.0 |
| Order for the other party/ies to undertake community service | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Order for the imprisonment of other party/ies | 0.3 | 2.5\* | 1.1 | 0.9 | 1.9 |
| Order prohibiting/restricting the other party issuing proceedings without leave of the court | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| General enforcement | 2.0 | 1.3 | 1.7 | 1.5 | 2.9 |
| Other orders | 11.7 | 12.6 | 12.0 | 13.8 | 7.8 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). Multiple responses mean the sum of percentages can total more than 100.

Responses to contravention applications

This section examines the issues raised by respondents to contravention applications in the context of establishing a “reasonable excuse” for contravening an order under FLA s 70NEA. These findings should be considered in the context of the finding that only 40 per cent of contravention application files included an affidavit from the respondent. As the information presented in Table A24 in Appendix A shows, the most frequent claim by respondents was reasonable excuse (52%) comprised of:

* 28 per cent citing safety concerns
* a further 4 per cent not understanding the obligations under the order
* the remaining 20 per cent within this category providing an “other” reasonable excuse.

The next most common claim was that compliance was inconsistent with the views of the child/young person (18%). In terms of the orders respondents sought, the most common order sought was variation of parenting orders (24%) and then costs orders (4%; Table A25, Appendix A).

4.10 Contravention proceedings in the court file sample: How did they resolve?

The data set out in Table 40 show that a substantial proportion of contravention applications (42%) were resolved by consent, and more than one third (35%) were resolved by judicial determination. More specifically, the data show that almost half of first contravention applications were resolved by consent (46%), with a further 6 per cent of first applications resolved partially by consent and partially by judicial determination. A substantial proportion (33%) of first applications were resolved by judicial determination. Smaller proportions of second or later applications were resolved by consent to a statistically significant extent (35%) as compared to first contravention applications. Correspondingly greater proportions of second or later applications were resolved by partial consent and partial judicial determination (8%) and by judicial determination alone (39%).

Of note, Table 40 also presents these data according to the gender of the applicant. These data show that where mothers were the applicants in the contravention proceedings, their applications were less likely to be resolved by consent (34%) and more likely to be resolved by judicial determination (48%), both to a statistically significant extent, than when fathers had made the contravention application (46% and 30% respectively). In the absence of further detail, caution needs to be exercised when drawing conclusions from these data. However, the significant difference may reflect the seriousness with which the breaches were regarded by the mothers progressing to a final judicial determination and conversely the reticence of the fathers to proceed to a  
judicial determination.

**Table 40:**Court files: Contravention application: Conclusion by application and by gender

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Court files | Contravention applications  First contravention application (%) | Contravention applications  Second or later contravention applications (%) | Gender of applicant  Applicant fathers (%) | Gender of applicant  Applicant mothers (%) | All (%) |
| Full consent | 46.3 | 34.6\* | 46.2 | 34.0\* | 42.3 |
| Partial consent and partial judicial determination | 6.0 | 8.2 | 7.4 | 2.9 | 6.8 |
| Judicial determination | 32.7 | 39.0 | 29.7 | 47.6\*\* | 34.9 |
| Other | 7.7 | 4.4 | 7.7 | 2.9 | 6.5 |
| Unclear | 7.3 | 13.8 | 9.1 | 12.6 | 9.6 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** | **100.0** |
| N | 300 | 159 | 340 | 103 | 459 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001). Note also that the “Other” category includes matters that concluded with the filing of a Notice of Discontinuance in the absence of a court order by consent or by judicial determination. Percentages may not sum to exactly 100 due to rounding.

4.11 Contravention applications: Outcomes and orders made in the court file sample

Two thirds of all contravention applications are resolved with the application either being dismissed, withdrawn, discontinued or struck out (66%; Table 41). A greater proportion of first applications (70%) than second or multiple applications (59%) were in this grouped outcome category. There were no statistically significant differences between applicant mothers and fathers in this regard. Also of note, a greater proportion of applications in this outcome category were dismissed (39%) as compared to applications withdrawn (23%), discontinued (11%) or struck out (2%) in full.

Table 41 also shows that variations in the existing parenting orders were the next most common outcome category (16%), with this occurring more frequently for first applications (17%) than for second and subsequent applications (13%), and for father applicants (17%) more than mother applicants (13%). However, none of these differences were statistically significant.

Other outcomes included orders to adjourn the contravention applications (10% of all applications), and orders for compensatory parenting time (6%). In a further 6 per cent of applications, the contravention application was upheld. Of note, the contravention application was upheld in slightly more applications that were filed by mothers (7%) than fathers (6%) and in relation to second and subsequent applications (7%) more often than for first applications (6%). However, these differences were also not statistically significant.

Table 41 shows that in a small proportion of cases (5%) a bond was ordered that imposed a requirement on the contravening party to, for example, participate in a Parenting Orders Program or counselling. In even smaller proportions of cases, fines (0.4%) or sentences of imprisonment (0.9%) were ordered in final resolution of the contravention applications.

A small proportion of outcomes involved orders for the parties to receive therapeutic support (5%) or to attend counselling or mediation (2%). There were a small number of instances where there was either no specific resolution to the contravention application on the face of the file and parenting orders were later made in response to the issuing of a fresh initiating application or an Application in a Case.

Also of note, in a small proportion of all contravention applications (6%), a costs order was made. These orders were more commonly made in relation to first applications than subsequent applications (7% cf. 4%) and more likely to be made against father applicants than mother applicants (7% cf. 3%). However, again, these differences were not statistically significant.

**Table 41:** Court file sample: Contravention applications: Outcomes and orders made

|  | Contravention applications  First contravention application (%) | Contravention applications  Second or later contravention applicationsa (%) | Gender of applicant  Applicant fathers (%) | Gender of applicant  Applicant mothers (%) | All (%) |
| --- | --- | --- | --- | --- | --- |
| Applications which were dismissed / withdrawn / discontinued / struck out | **69.7** | **58.5** | **65.6** | **65.1** | **65.8** |
| Application dismissed | 40.7 | 36.5 | 38.8 | 41.7 | 39.2 |
| Application withdrawn | 26.0 | 17.0\* | 24.1 | 17.5 | 22.9 |
| Application discontinued | 13.3 | 6.3\* | 10.9 | 9.7 | 10.9 |
| Application struck out | 2.0 | 3.1 | 2.1 | 2.9 | 2.4 |
|  |  |  |  |  |  |
| Application adjourned | 9.0 | 11.9 | 10.6 | 8.7 | 10.0 |
| Some claims in application struck out | 2.3 | 3.1 | 2.1 | 4.9 | 2.6 |
| Some claims in application withdrawn | 0.7 | 0.0 | 0.3 | 1.0 | 0.4 |
| Application withdrawn with a right of reinstatement | 0.7 | 0.6 | 0.3 | 1.0 | 0.7 |
| Application upheld | 5.7 | 6.9 | 6.2 | 6.8 | 6.1 |
| Variation of parenting orders/arrangements | 17.0 | 12.6 | 16.8 | 12.6 | 15.5 |
| Compensatory contact | 6.7 | 5.7 | 7.4 | 3.9 | 6.3 |
| Order to prohibit relocation | 0.0 | 0.6 | 0.3 | 0.0 | 0.2 |
| Order for the payment of some or all of the other party's/parties' costs | 7.0 | 3.8 | 7.1 | 2.9 | 5.9 |
| Requirement for the other party/ies to enter into a bond – with details of nature of the bond (e.g. Parenting Orders Program or counselling) | 5.7 | 5.0 | 5.0 | 4.9 | 5.4 |
| No resolution of contravention application or no resolution to contravention application and parenting orders made (including in response to an application in a case or initiating application) | 3.0 | 5.7 | 4.4 | 2.9 | 3.9 |
| Order for parties to attend psychologist/counselling or mediation | 1.7 | 3.1 | 2.4 | 1.9 | 2.2 |
| Non-denigration order or other restraining order | 1.3 | 0.6 | 1.2 | 1.0 | 1.1 |
| Recovery order | 0.7 | 1.3 | 0.3 | 2.9 | 0.9 |
| Order for the imprisonment of other party/ies | 0.7 | 1.3 | 1.2 | 0.0 | 0.9 |
| Order that there was no contravention | 0.3 | 1.3 | 0.3 | 1.9 | 0.7 |
| No penalty | 0.7 | 0.6 | 0.9 | 0.0 | 0.7 |
| No resolution of contravention application and orders made to file initiating application or other application for parenting orders | 1.0 | 0.0 | 0.9 | 0.0 | 0.7 |
| Order for the other party/ies to pay a fine | 0.3 | 0.6 | 0.0 | 1.9 | 0.4 |
| Order for the other party/ies to pay compensation for reasonable expenses lost as a result of the contravention (e.g. airfares) | 0.3 | 0.0 | 0.3 | 0.0 | 0.2 |
| Other | 1.7 | 1.9 | 1.8 | 1.9 | 1.7 |
| Outcomes/order unclear | 5.7 | 14.5 | 9.4 | 7.8 | 8.7 |
| N | 300 | 159 | 340 | 103 | 459 |

Notes: aIf a file had second or third contravention applications, the applications were treated as individual observations, contributing multiple observations.

Multiple responses mean the sum of percentages can total more than 100.

The following available response options were not selected and are not reported in the table above:

1. Order to relocate

2. Order for the other party/ies to undertake community service

3. Order prohibiting/restricting the other party issuing proceedings without leave of the court

4. Application withdrawn and leave granted to use the form of the application and any evidence in parenting proceedings

5. Application withdrawn and order to file an Application in a Case for parenting orders

6. Application withdrawn and leave granted to make oral application for parenting orders.

Outcomes in the judgment sample

Although not a majority of the sample, Table 42 shows that a substantial proportion (37%) of the orders made in the judgment sample involved the dismissal of the contravention application in a similar proportion to the court file sample. Substantially greater proportions of orders in the judgment sample required parties to enter into a bond than in the court file sample (28% cf. 5%) or involved the making of an order for costs (19% cf. 6%). Consistent with the court file sample, variations in the existing parenting orders were the next most common orders made in the resolution of contravention applications (28%). Also of note, orders made in the judgment sample were more likely to uphold the contravention application when compared to the court file sample (25% cf. 6%).

**Table 42:** Published and unpublished judgment files: Contravention applications: Outcomes and orders made

| Published and unpublished judgement files | Main contravention applications |
| --- | --- |
| Applications which were dismissed/withdrawn/discontinued/struck out | **36.7** |
| Application dismissed | 36.1 |
| Application withdrawn | 2.0 |
| Application discontinued | 0.7 |
| Application struck out | 0.0 |
| Application adjourned | 12.2 |
| Some claims in application struck out | 2.0 |
| Some claims in application withdrawn | 2.0 |
| Application withdrawn with a right of reinstatement | 0.0 |
| Application upheld | 24.5 |
| Variation of parenting orders/arrangements | 27.9 |
| Compensatory contact | 11.6 |
| Order to prohibit relocation | 0.0 |
| Order for the payment of some or all of the other party's/parties' costs | 19.0 |
| Requirement for the other party/ies to enter into a bond (e.g. Parenting Orders Program or counselling) | 27.9 |
| No resolution of contravention application or no resolution to contravention application and parenting orders made (including in response to an application in a case or initiating application) | 1.4 |
| Order for parties to attend psychologist/counselling or mediation | 3.4 |
| Non-denigration order or other restraining order | 0.7 |
| Recovery order | 2.0 |
| Order for the imprisonment of other party/ies | 3.4 |
| Order that there was no contravention | 0.7 |
| No penalty | 3.4 |
| No resolution of contravention application and orders made to file initiating application or other application for parenting orders | 3.4 |
| Order for the other party/ies to pay a fine | 1.4 |
| Order for the other party/ies to pay compensation for reasonable expenses lost as a result of the contravention (e.g. airfares) | 1.4 |
| Location order | 1.4 |
| Order prohibiting/restricting the other party issuing proceedings without leave of the court | 0.0 |
| Remitted for rehearing | 0.7 |
| Other | 4.8 |
| Outcomes/order unclear | 7.5 |
| No. of published judgment files | 147 |

Multiple responses mean the sum of percentages can total more than 100. Some response options were available but not selected.

Outcomes and resolution methods: Court files

Table 43 examines patterns in outcomes to see whether particular outcomes are associated with a higher or lower likelihood of being arrived at by consent or judicial determination. Of note, the data demonstrate that consent-based outcomes are associated with two kinds of outcomes: variation of parenting orders (63%) or the making of arrangements for compensatory parenting time (62%). These outcomes were almost half as likely to be associated with judicial determination (34% and 31% respectively). Unsurprisingly, costs orders were more likely to be made by judicial determination than by consent (59% cf. 33%), as were orders adjourning contravention applications (73% cf. 16%). Applications were more likely to be withdrawn (58% cf. 31%) or discontinued (60% cf. 21%) by consent than by judicial determination. Although the reasons for the withdrawal or discontinuance were not necessarily evident on the face of the documents on the court file, when followed by variations in the parenting orders or the filing of an Application in a Case, the reasons may include that the parties and/or the decision-maker may have resolved that the non-compliance was better addressed by means other than a punitive response. Where the withdrawal or discontinuance was not followed by further proceedings, the withdrawal or discontinuance may indicate a lack of merit in the Contravention Application.

**Table 43:** Court files: How each contravention outcome was made by judicial determination or consent, all contraventions

| Court files | Case conclusion  Consent  % | Case conclusion  Judicial determination  % | Number of contraventions |
| --- | --- | --- | --- |
| Variation of parenting orders/arrangements | 63 | 34 | 71 |
| Compensatory contact | 62 | 31 | 29 |
| Order for the payment of some or all of the other party's/parties' costs | 33 | 59 | 27 |
| Application upheld | 0 | 50 | 20 |
| Application withdrawn | 58 | 31 | 99 |
| Application discontinued | 60 | 21 | 48 |
| Application dismissed | 46 | 48 | 176 |
| Application adjourned | 16 | 73 | 44 |

Note: Multiple responses mean the sum of percentages can total more than 100.

4.12 Insights from reasons for decisions provided in judgments

Court file sample

Reasons for decisions were provided by judicial decision-makers in 14 per cent of contravention applications in the court file sample (n=42), with the greater proportion of the judgments delivered in relation to the first contravention application (11%).

In considering these findings, it is important to note that, as indicated in Table 39, the substantial majority (two thirds) of all applications were resolved with the contravention application either being dismissed, withdrawn, discontinued or struck out (66%). These outcomes may reflect a lack of merit in the contravention application, that the application was not the suitable mechanism to address the reasons for non-compliance or that application was not presented in a way that allowed an assessment of its merits from a technical perspective. Findings made in relation to non-compliance (particularly without reasonable excuse) in the subsample of cases involving judgments in the court file substudy need to be interpreted in this broader context.

Also of note, the data (see Table A26, Appendix A) show that while findings in judgments were less likely to relate to fathers intentionally failing to comply than mothers where contraventions were established (28% cf. 44%), mothers were more likely to have been found to have a reasonable excuse for their non-compliance as compared to fathers (12% cf. 4%).

The data in Table 44 present the reasons for decision in judgments in the contravention court file sample. The judgments most commonly detailed findings in relation to the contravention of the parenting orders or agreements having occurred (48%), with more than half of first contraventions (52%) and almost half (48%) of all contravention judgments falling into this category. Findings that the contravention did not occur were provided in 21 per cent of first contravention judgments and 23 per cent of all contravention judgments. Smaller proportions of first and subsequent contravention judgments (both 14%) involved findings that while there had been a contravention of the parenting order or agreement, there had been a reasonable excuse for the contravening behaviour.

Table 44 also shows that findings were made in relation to family violence with respect to both parents and children. Notable among these findings was that in 2 per cent of all contravention judgments, findings of family violence perpetrated by the father were made and the risks arising from this family violence were upheld in part or in full. Where allegations were made against mothers, findings in favour of the mother that family violence did not occur were made in 5 per cent of first contravention judgments and 4 per cent of all contravention judgments. By way of contrast, where allegations were made against fathers, 2 per cent of contravention judgments involved findings in favour of the father that the family violence did not occur. These data also show, however, that findings were rarely made in matters involving allegations of family violence given that parties made allegations in just over half of all contravention matters (see Table 34).

Findings in relation to entrenched conflict and behaviour that had been described as involving the estrangement or “alienation” of children from a parent emerged in the same small proportion of cases (2%). Where children’s views were raised in contravention proceedings, findings in relation to these views occurred in 8 per cent of all contravention judgments. Findings that children were exposed to family violence were made in 2 per cent of judgments.

**Table 44:** Court files: Reasons for decisions (judgments) in Contravention Applications: Details of findings

| Findings | First contravention judgment  % | All contravention judgments  % |
| --- | --- | --- |
| Finding – contravention of order/registered parenting agreement occurred | 52.0 | 48.1 |
| Finding – contravention of order/registered parenting agreement occurred but reasonable excuse (provide details of reasonable excuse) | 14.0 | 13.5 |
| Finding – contravention of order/registered parenting agreement did not occur | 21.0 | 23.1 |
| Finding against father (alleged perpetrator) that family violence did occur – risk upheld in part or in full | 2.0 | 1.9 |
| Finding in favour of father that family violence did not occur/risk not upheld | 2.0 | 1.9 |
| Finding in favour of mother that family violence did not occur/risk not upheld | 5.0 | 3.8 |
| Not able to determine family violence allegations | 2.0 | 1.9 |
| Finding that child exposed to family violence | 2.0 | 1.9 |
| Finding – parental alienation | 2.0 | 1.9 |
| Finding – parenting capacity: willingness to facilitate parenting time | 2.0 | 1.9 |
| Finding – parenting capacity: ability to meet material needs of child/children | 2.0 | 1.9 |
| Finding – child/children’s views | 7.0 | 7.7 |
| Finding – high conflict/entrenched conflict | 2.0 | 1.9 |
| Finding – application has no reasonable prospects of success | 2.0 | 1.9 |
| No. of contravention judgments | **42** | **52** |

Note: Multiple responses mean the sum of percentages can total more than 100.

The following available response options were not selected and are not reported in the table above:  
1. Finding against mother that family violence did occur – risk upheld in part or in full

2. Finding against father that family violence did occur but current risk not upheld

3. Finding against mother that family violence did occur but current risk not upheld

4. Finding child in need of protection from family violence

5. Finding child in need of protection/at risk of child abuse

6. Finding that child abuse substantiated

7. Finding: parent/child attachment

8. Finding: estrangement

9. Finding: alignment/enmeshment

10. Finding: parenting capacity: ability to meet psychological/emotional needs of child/children

11. Finding: child/children’s needs.

Findings in the court file and judgment samples

Table 45 presents the findings from all judgments in the court file sample and the judgments comprising the published and unpublished judgment sample. Multiple response options were available when collecting the data to capture insights in the findings in individual matters. The analysis is presented according to the gender of the applicant. Corresponding analysis based on the gender of the respondent is presented in Table A27 in Appendix A. Consistent with Table 44, in relation to findings in judgments in the court file sample, the data show that in 63 per cent of all judgments, the findings indicate that the contravention of the order or agreement occurred. The finding that the contravention occurred was more likely to be the outcome where mothers were the applicants (67%) rather than fathers (62%). When applications were made by fathers, a greater proportion involved findings that there had been a contravention of the orders or agreements but that a reasonable excuse had been established than was the case for applicant mothers (23% cf. 20%). Findings that contraventions had occurred but with a reasonable excuse were made in 22 per cent of all judgments.

The patterns in findings relating to family violence were largely consistent for all judgments in the substudy with those patterns in the findings in court file judgments alone. For example, findings in favour of the applicant mother that family violence did not occur were made in 4 per cent of all judgments as compared to 2 per cent of judgments involving findings in favour of the father that family violence did not occur. Of note, the examination of all judgments indicates allegations of family violence were unable to be determined in twice as many judgments involving applicant mothers than applicant fathers (4% cf. 2%). Also of note, Table 45 shows that findings that children were in need of protection from family violence or from child abuse were more likely to be made in favour of applicant mothers than applicant fathers. Children’s views were the subject of findings in 5 per cent of all cases and in substantially more judgments where the mother was the applicant (9%) as compared to judgments where the father was the applicant (4%).

**Table 45:** Court files and published and unpublished judgments: Reasons for decisions (judgments) in contravention applications: Details of findings

| Findings | All judgements  Father applicants (%) | All judgements  Mother applicants (%) | All judgements  All applicants (%) |
| --- | --- | --- | --- |
| Finding – contravention of order/registered parenting agreement occurred | 62.1 | 66.7 | 62.9 |
| Finding – contravention of order/registered parenting agreement did not occur | 28.3 | 33.3 | 29.4 |
| Finding – contravention of order/registered parenting agreement occurred but reasonable excuse (provide details of reasonable excuse) | 22.8 | 20.0 | 21.6 |
| Finding – child/children’s views | 4.1 | 8.9 | 5.2 |
| Finding – parenting capacity: willingness to facilitate parenting time | 3.4 | 4.4 | 3.6 |
| Finding in favour of applicant that family violence did not occur/risk not upheld | 2.1 | 4.4 | 2.6 |
| Not able to determine family violence allegations | 2.1 | 4.4 | 2.6 |
| Finding – parenting capacity: ability to meet psychological/emotional needs of child/children | 2.1 | 4.4 | 2.6 |
| Finding against applicant that family violence did occur – risk upheld in part or in full | 1.4 | 2.2 | 2.1 |
| Finding that child exposed to family violence | 1.4 | 0.0 | 1.5 |
| Finding child in need of protection from family violence | 0.0 | 2.2 | 1.0 |
| Finding that child in need of protection/at risk of child abuse | 0.7 | 2.2 | 1.0 |
| Finding – high conflict/entrenched conflict | 0.7 | 2.2 | 1.0 |
| Finding in favour of respondent that family violence did not occur/risk not upheld | 1.4 | 0.0 | 1.0 |
| Finding – alignment/enmeshment of the child with one parent | 1.4 | 0.0 | 1.0 |
| Cost in favour of mother | 1.4 | 0.0 | 1.0 |
| Finding – child/children’s needs | 0.0 | 2.2 | 0.5 |
| Finding against respondent that family violence did occur but current risk not upheld | 0.7 | 0.0 | 0.5 |
| Finding – parental alienation | 0.7 | 0.0 | 0.5 |
| Finding – parenting capacity: ability to meet material needs of child/children | 0.7 | 0.0 | 0.5 |
| Finding – application has no reasonable prospects of success | 0.7 | 0.0 | 0.5 |
| Finding – child not at risk | 0.7 | 0.0 | 0.5 |
| Finding – cost in favour of father | 0.7 | 0.0 | 0.5 |
| No. of judgments | **145** | **45** | **194** |

Notes: Multiple responses mean the sum of percentages can total more than 100.

The following available response options were not selected and are not reported in the table above:  
1. Finding against respondent that family violence did occur – risk upheld in part or in full

2. Finding against applicant that family violence did occur but current risk not upheld

3. Finding that child abuse substantiated

4. Finding: parent/child attachment

5. Finding: estrangement.

Table A27 in Appendix A further shows that in the combined judgment sample, respondents were found to have intentionally failed to comply with the parenting orders or agreements in more than half (53%) of judgments, with a greater proportion of judgments with this finding involving applicant mothers (63%) than applicant fathers (50%). The data also show that a higher proportion of respondents were found to have made no reasonable attempt to comply more often when mothers were the applicant (25%) compared to applicant fathers (13%), with 16 per cent of all judgments involving this finding. Of particular note, fathers were more likely to be applicants in judgments where the respondent was found to have failed to comply but with a reasonable excuse (23% cf. 9% for applicant mothers).

4.13 Summary and discussion

In this summary and discussion, findings in key areas are summarised and compared with findings from earlier research (Kaspiew, Carson, Qu et al., 2015). Additionally, relevant findings from the parents and carers data are referred to, in order to provide triangulation between these elements of this research project and to assess the similarities and differences in key areas between the parents and carers sample and the court file sample.

This section has presented analysis based on data from court files (n=300) and published and unpublished judgments (n=147) in contravention matters. Most matters were dealt with in the FCCoA, although close to a quarter had a very complex procedural history involving multiple courts, including some at state level. Most files (68%) had only one contravention application but close to three in 10 had multiple contravention applications, with 5 per cent having five or more.

Procedural characteristics and litigation history

In most of the matters in the court file sample, the primary parenting proceedings had been resolved by consent (63%), although this was less likely to be the case for matters with two or more contravention applications (50%). Almost one in five had been resolved by judicial determination and 15 per cent were resolved partly by judicial determination and partly by consent.

Considering the number of contravention applications along with the number of interim or final parenting orders, there was a spectrum of intensity represented across the court file sample. It was not uncommon for the files to involve multiple interim or final parenting orders, with close to one fifth having three or four respectively, and more than a quarter having between five and nine. Counting the number of contravention applications and interim or final parenting orders together, almost half of the sample had between five and nine in total.

Calculating from the date of lodgement of the first to last documents on the files, as a whole, the mean duration of the proceedings (including parenting and contravention) for the sample was 54 months. The total duration for the majority of the sample (62%) was in excess of 36 months. Litigation extending beyond three years was not uncommon, with 27 per cent of the matters in the sample covering 3 to 4 years and 30 per cent covering 5 to 9 years.

These findings underline the significance of the findings from the SoP&C, which demonstrated significant reluctance to take action in relation to non-compliance with parenting orders due to the cost, trauma and time involved in pursuing litigation. They also provide context for the high levels of dissatisfaction with litigation pathways among participants in the SoP&C.

Legal representation

Although the majority of fathers and mothers in both the primary parenting proceedings and the contravention proceedings were legally represented, proportions who were self-represented for whole or part of the contravention proceedings more than doubled in contravention matters (Table 17). For primary parenting proceedings, 13 per cent of mothers and 13 per cent of fathers were self-represented for all of the proceedings, and 12 per cent of fathers and 10 per cent of mothers were partially represented (Table 16). These levels of self-representation are similar to those described in previous research on parenting matters (Kaspiew, Carson, Qu et al., 2015, p. 37).

In contravention matters, 31 per cent of fathers and 34 per cent of mothers were unrepresented and partial representation applied to 5 per cent of fathers and 7 per cent of mothers (Table 17).

Party and family profiles

For both primary parenting proceedings and contravention proceedings, fathers were instigators of litigation in the majority of cases, with this being even more evident for contravention proceedings (76%), compared with primary parenting proceedings (65%). This pattern of fathers being applicants in the majority of primary parenting cases is different to the pattern described by Kaspiew, Carson, Qu and colleagues (2015, p. 35), which indicated a relatively even balance between fathers and mothers. The preponderance of fathers as applicants is consistent with the indications in Wangmann and colleagues (2020, p. 151).

To the extent that demographic data were available on the files, mean ages were 41 for men and 37 for women.  In this substudy, mean ages for fathers were higher than those in previous research, women were less likely to be employed than men (43% cf. 69%), and women were also more likely to be employed part-time (17% cf. 2%). In relation to women’s employment, these patterns are different from the findings in Kaspiew, Carson, Qu and colleagues, where women were less likely to be in full-time employment (24%; 2015, p. 37).

The parents in the sample were more likely to have been married than cohabiting (59% cf. 33%), with separation occurring after nine years on average, consistent with earlier research (Kaspiew, Carson, Qu et al., 2015, p. 38). Most families in the sample (56%) had two or more children, with 44 per cent having one (again consistent with earlier research: see Kaspiew, Carson, Qu et al., 2015, p. 41).

The majority of children in the sample were aged under 11 years, with a median age of 6.72. The largest age group represented in the sample was 5 to 11 years at 51 per cent. The smallest age group was 15 to 17 years at 3 per cent. Girls and boys were almost evenly distributed across the sample. These patterns are broadly similar to earlier research (Kaspiew, Carson, Qu et al., 2015, pp. 39–40).

Special needs and health status

A substantial minority of children in the sample (36%) had special needs, most commonly issues related to psychological and mental health and learning difficulties. Comparative data are not available from earlier research on this point because this is the first time that data were collected on these issues. However, these findings are consistent with the reports on child wellbeing by participants in the SoP&C, with substantial minorities reporting their children were faring less well than others in their age group in health, education and social behaviour (Table 10).

Parents raising health issues was common in the files, with mental health issues more common for women than men (42% cf. 28%) and substance misuse more common for men than women (30% cf. 16%). The prevalence of mental health concerns is higher than reported by Kaspiew, Carson, Qu and colleagues (2015, p. 48) and the prevalence of substance misuse concerns appears slightly higher, although the earlier research did not provide a breakdown by gender (Kaspiew, Carson, Qu et al., 2015, p. 48). This higher prevalence of mental health concerns raised in relation to women in proceedings may reflect the consequences of a history of trauma from exposure to family violence, likely compounded by engagement with legal processes (Salter et al., 2020, p. 113). It could reflect a dynamic where mental health concerns are raised against women to suggest their parenting capacity is impaired (see also Drury & Easteal, 2021).

Parental responsibility and time arrangements in orders

Most of the files involved orders for shared responsibility (71%), with just over one in five involving orders for sole parental responsibility in favour of mothers (14%) more often than fathers (7%). Compared with the sample in Kaspiew, Carson, Qu and colleagues (2015, p. 57), shared parental responsibility is slightly less common and sole parental responsibility slightly more common in this sample. In the small group of orders where responsibility was shared but with exceptions, there was a higher likelihood of multiple contravention applications (8% multiple cf. 1% one contravention application). These patterns are broadly similar to the parental arrangements reported by participants in the SoP&C, although shared parental responsibility was slightly less common in the survey (Table 5).

In terms of time arrangements, most orders provided for children to spend most time with mothers (62%), with just over a fifth providing for shared time arrangements (defined as a split of between 35% and 65% of nights between parents). These patterns are similar to those reported in Kaspiew, Carson, Qu and colleagues (2015, p. 59). Again, these patterns are similar to those reported in the SoP&C (Table 5).

Two kinds of time arrangements are associated with a greater likelihood of multiple contravention applications: matters where there is no face-to-face time with fathers and matters where there is daytime-only contact with fathers.

Document and evidence profiles

In the majority of files, the respondent to the contravention application (most often the mother) did not file an affidavit responding to the application (60%). In 15 per cent of files, a party had filed an application in a case, meaning they were seeking new parenting orders. In two thirds of these matters, the other party did not respond.

Family violence and child abuse

Evidence concerning family violence and/or child abuse was present in the majority of files (92%) in either the primary parenting proceedings and/or the contravention proceedings. Such evidence was most commonly available on the primary proceedings file and in 43 per cent of matters, it was contained in both the primary proceedings and contravention proceedings file. The proportion of matters involving allegations of family violence and/or child abuse in this sample is higher than that reported in Kaspiew, Carson, Qu and colleagues (2015, p. 45).

The material on the file indicated children were victims of the family violence/abuse in most instances (95% of contravention applications and 92% of primary parenting proceedings). Again, this is higher than reported in Kaspiew, Carson, Qu and colleagues (2015, p. 45). This is generally consistent with the reports of parents in the SoP&C that children were only rarely not exposed to behaviour causing fear, coercion and control (Table 3). Although the material in the files suggested that fathers and mothers were both victims and perpetrators, the material on the primary parenting proceedings file suggested fathers were assessed by the AIFS researcher collecting the data as perpetrators in 94 per cent of cases and victims in 47 per cent. Mothers appeared to be victims in 88 per cent of cases and perpetrators in 67 per cent.

In contravention matters involving family violence, child abuse or safety concerns, the material suggested fathers were almost twice as likely to be perpetrators (70%) as victims (37%). Mothers were also more likely to be assessed as perpetrators than as victims (61% and 46%).

Fathers and mothers commonly made allegations of child abuse and/or domestic violence against each other in primary parenting proceedings: in 55 per cent of files, both parents made allegations against each other. In primary parenting proceedings, it was common for allegations of both child abuse and family/domestic violence to be made (46% of fathers; 68% of mothers). In contravention matters, the focus was more on allegations of child abuse, with around half of fathers (49%) and 45 per cent of mothers raising these issues in the absence of family violence (Table 34). The presence of claims of experiencing family violence is consistent with reports by both men and women in the SoP&C that they experienced behaviour that made them feel fearful, coerced or controlled both before and after separation (Tables 1 and 2). Both datasets suggest that women are victims to a greater extent than men.

Child protection involvement and PPOs

More than a quarter of matters involved current or past involvement with child protection agencies, more commonly at the time of the primary parenting proceedings than the contravention proceedings. This is higher than in previous research, where 13 per cent of parenting matters had engagement with child protection agencies (Kaspiew, Carson, Qu et al., 2015, p. 55). Half of all contravention matters had current or past PPOs in place. The children and the respondent in the contravention matter were most likely to be the protected party (55% and 57%), with mothers as the protected party for 79 per cent of PPOs. The proportion of matters with PPOs in place was higher than the 25 per cent reported in Kaspiew, Carson, Qu and colleagues (2015, p. 54) and a higher proportion of children were protected by PPOs than in the earlier research (32%; Kaspiew, Carson, Qu et al., 2015, p. 55). The findings that mothers were the protected parties under the PPO in close to eight in 10 cases are consistent in both datasets and with earlier research (Kaspiew, Carson, Qu et al., 2015, p. 55).

Six in 10 files had had an ICL appointed in the primary parenting order proceeding. This is similar to the proportion of participants in the SoP&C that reported involvement of an ICL (57%; Table A4, Appendix A).

Nature of the alleged contravention, responses and outcomes sought

In respect of the nature of the alleged contravention, non-compliance with time arrangements was most commonly raised (72%), rather than breaches related to parenting responsibility (22%). Non-compliance with requirements for parent–child communication was the subject of 16 per cent of applications. Breaches of time arrangements were also the most common type of breach reported by parents and carers. However, parents and carers in the SoP&C also reported non-compliance in relation to parental responsibility (56%) and communication provisions (70% men and 54% women) to a greater extent than is reflected in the court file sample.

In the cases in which a response was provided, the most common response was that they had a reasonable excuse for not complying with the parenting order. Safety concerns were the basis of the reasonable excuse claim in 28 per cent of cases; 4 per cent claimed they did not understand their obligations under the order; and 20 per cent of responses fell into an “other” category. Fathers were more likely to respond on the basis of a reasonable excuse than on the basis of safety concerns than mothers to a statistically significant extent (32% cf. 13%).

The most commonly sought outcome was a variation in the parenting order (26%), with 14 per cent of contravention applicants seeking make-up time. Requests for the application of punitive responses were uncommon, with 4 per cent of applicants arguing that a bond should be imposed and under 2 per cent, respectively, seeking the imposition of fines, community service or imprisonment.

Outcomes

It is notable that the majority (66%) of contravention applications were dismissed, struck out or withdrawn in the court file sample. Where the applications proceeded to some type of resolution, 48 per cent involved a finding that a breach did occur and 14 per cent involved an argument that there was a reasonable excuse for the breach being upheld. In 23 per cent of cases, there were findings that the breach did not occur.

Considering matters where an application did proceed to a substantive resolution in the court file sample, the proportion of total applications that were upheld represented 6 per cent. Variation of parenting orders represented the outcome in 16 per cent of the total sample and compensatory contact represented the outcome in 6 per cent of the total sample. These two kinds of outcomes were more likely to be a result of consent between the parties than judicial determination (about two thirds cf. one third). Proportions of the total sample that had costs orders made were 6 per cent and orders for bond were 5 per cent.

Compared to the court file sample, judgment sample outcomes involving the contravention application being upheld were more common (25%), although a substantial minority of applications were also dismissed (36%). Punitive outcomes were also more common than in the court file sample, with bonds representing 28 per cent and costs orders representing 19 per cent.

Analysis in relation to outcomes across the court file and judgment samples taken together demonstrates that findings that there were contraventions applied to 63 per cent of matters. Mother applicants were more likely than father applicants to have their applications upheld (67% cf. 62%). Conversely, as respondents, fathers were more likely to be found to have intentionally failed to comply with the parenting orders (63%) than respondent mothers (50%). Mother respondents were also more likely than father respondents to have claims of a reasonable excuse upheld (21% cf. 17%).

Conclusion and discussion

The findings set out in this section are generally in concordance with findings based on the SoP&C. In key areas where comparisons can be made, there are broadly similar patterns in findings between the court files substudy and the SoP&C. Key areas where there are similarities are in relation to levels of self-representation, patterns in parental responsibility and time arrangements, high levels of concerns in relation to family violence and child abuse, and findings indicative of concerns about child wellbeing. In the context of broadly similar patterns in key areas between the findings in the court files substudy and earlier research in relation to parenting orders (Kaspiew, Carson, Qu et al., 2015), it is notable that the sample in this study has a higher representation of matters involving child protection agency involvement and PPOs, with women and children most frequently the protected people under the PPOs. These findings demonstrate that contravention applications arise in the context of a particularly complex subset of litigated parenting matters against a factual background that raises serious concerns about child wellbeing.

Although cross-allegations of family violence and child abuse are common, the data overall, particularly the findings in relation to PPOs, suggest that fathers are likely to be primary aggressors to a greater extent than mothers. In the context of the findings demonstrating that fathers are more likely to be instigators of litigation in both primary parenting proceedings and contravention matters, and the concerns expressed by professionals and parents about the misuse of litigation, these patterns support concerns that the contravention regime may be subject to misuse. These concerns are underlined by the findings in relation to the intensity (i.e. complexity and protracted nature) and duration of proceedings, with litigation in a substantial proportion of cases extending beyond three years. With both the SoP&C and the court files findings demonstrating that children and young people are exposed to and directly affected by family violence in a very high proportion of matters, these findings provide cause to question whether the system is operating in a way that supports child wellbeing.

5 International enforcement approaches

This chapter considers approaches to parenting order enforcement internationally, with particular focus on the approaches adopted in three international jurisdictions. The analysis is based on a desktop review to support an examination of any evidence that tougher penalties or enforcement are effective at reducing non-compliance (research question 9).

Selection of jurisdictions

An initial scoping exercise was undertaken to identify the three jurisdictions to be the focus of this element of the study. The scoping exercise assessed the extent to which jurisdictions with an Anglo common law tradition allied to that of Australia, such as the United Kingdom jurisdictions including England, Scotland and Wales, as well as Canada and New Zealand, offered salient opportunities for comparison. The following analysis sets out the approaches to enforcement adopted in the selected jurisdictions England and Wales, New Zealand, and Michigan in the United States. Two main issues informed the choice of these jurisdictions: first, the extent to which rigorous empirical research and analysis is available on the relevant family law system; and second, the way that each system demonstrates conceptually varied approaches to key issues in the context of enforcement, including requirements to use mediation, how the views of children are treated and mechanisms for monitoring the implementation of parenting orders.

The discussion of England and Wales, New Zealand and Michigan (United States) considers enforcement frameworks in the context of the general legislative and systemic approach to post-separation parenting arrangements and how professional practices do or do not support effective implementation of these approaches in the selected jurisdictions.

Trends in enforcement approaches

In the past two decades, approaches to parenting order enforcement have become more sophisticated, moving away from primary reliance on contempt of court action as a response to non-compliance (Bailey, 2017; Barnett, 2020; Chisholm, 2018).

Legislative responses have become more nuanced and there has been increasing recognition of the need for these to be supported by a service response. In broad terms, an approach based on recognition that there may be legitimate reasons for non-compliance as well as a graduated set of responses where a contravention is upheld is a common format in countries such as the United Kingdom, Canada and the United States (e.g. Bailey, 2017; Social Research, 2020). Responses in enforcement frameworks can be broadly characterised as problem solving or punitive (Social Research, 2020). Many jurisdictions, like Australia, apply a combination of both approaches. Commonly, legal action relating to enforcement remains the responsibility of the parties, although the discussion below highlights a different approach in Michigan, where the state takes responsibility for enforcement. Service responses to support the implementation of parenting orders often involve parent education programs (Bailey, 2017; Social Research, 2020). In the United States, parenting coordination has become increasingly common (see further below).

The discussion of enforcement approaches in each of the jurisdictions is set in context by an overview of the key elements of the statutory approaches to making parenting orders and any research evidence on the operation of the parenting regime that is available, including data on the volumes of orders made. For each of the three jurisdictions, the extent of available secondary evidence was variable. For England and Wales, there is some research available on the operation of the parenting order regime and there is also one enforcement study. For New Zealand, there is research on the parenting order regime but no specific analysis of the enforcement regime. For Michigan, the research team could not identify any empirical research and the outline is based on publicly available government and statutory sources, in addition to Professor Martha Bailey’s (2017) overview and assessment of enforcement approaches, including in Michigan.

The purpose of this analysis is not to compare the regimes in the focus jurisdictions with each other or Australia, nor to ascertain whether one approach is more or less effective than another. Such an exercise is beyond the scope of a desktop review. Rather, the aim of this element of the research program is to provide an overview of different enforcement approaches (set in the context of the overall approach to parenting orders) to demonstrate how other countries deal with this issue.

5.1 England and Wales

Overview of parenting matters

Recent evidence on characteristics of litigants involved in post-separation parenting disputes in England (Cusworth et al., 2020) and Wales (Cusworth et al., 2021) highlights similarities with the profile of court users in Australia. Concerns about family violence and risk issues are common in these cases, and economic deprivation applies to a significant proportion. As in Australia, the need for more effective ways of responding to risk in parenting matters has become a pressing policy priority in the United Kingdom (Barnett, 2020; Ministry of Justice, 2020). Levels of repeat applications – reflecting about a quarter of the caseload – in these jurisdictions are broadly similar to those in Australia (Cusworth et al., 2021, p. 1; Kaspiew, Carson, Dunstan et al., 2015a).

In England in 2019–20, courts dealt with around 35,000 private law parenting applications, with around a quarter of these involving applicants who had been involved in a previous application within the last three years (Cusworth et al., 2021, p. 1). Applications for enforcement represented some 8 per cent of total applications in 2019–2020, rising from 3 per cent in 2010–11. Allegations of family violence are common in litigated post-separation parenting cases in England, with between one half and two thirds involving these allegations. Other risk-related concerns, such as those arising from substance abuse and mental health issues, apply to between a fifth and a quarter of cases (Cusworth et al., 2021, p. 9).

In England and Wales, the Children Act 1989 recognises the “child’s welfare” as the paramount consideration in relation to questions concerning the “upbringing of a child” (s 1(1)(a)). In relation to parenting responsibility orders in contested matters, the court is required to apply a presumption that parental involvement in the child’s life will further their welfare (s 1(2A)) unless it can be demonstrated that this will put a child at risk of suffering harm (s 1(6)). “Involvement” is defined as “involvement of some kind, either direct or indirect, but not any particular division of a child’s time” (s 1(2B)). In considering arrangements that support the paramountcy of the welfare of the child, the court is to have regard for the following issues (s 1(3)):

* the ascertainable wishes and feelings of concerned children (in light of their age and understanding)
* their physical, emotional and educational needs
* likely effect of any change in circumstances
* age, sex, background and other characteristics the court considers relevant
* any harm or risk of harm
* how capable each parent (and other person the court considers relevant) is of meeting the child’s needs.

In England, there is a publicly funded, independent organisation, the Children and Family Court Advisory and Support Service (Cafcass), that provides social welfare services to the courts in relation to their private (post-separation parenting arrangements) and public (child protection) law functions. This body represents children’s best interests in family justice proceedings. In private law parenting disputes, Cafcass social workers are appointed by courts as Family Court Advisers to provide information. This involves providing safeguarding letters based on checks with police and local authorities (these fulfil a child protection function) and interviews with both parties. A longer report (called a section 7 welfare report) may also be provided. These reports are based on information from various sources, including the parents, the children, family members and health workers (Cafcass, n.d.). In Wales, a similar body called Cafcass Cymru fulfils these functions (Cafcass Cymru, n.d.).

Enforcement – Legislative framework

In 2006, the enforcement regime in England and Wales was reformed to include greater emphasis on prevention of breaches, early identification of breaches and clear communication (via warning notices; see further below) about the consequences of non-compliance (Trinder et al., 2013).

In the context of interim proceedings, courts have powers to direct parents to engage in activities that will establish, maintain or improve parent–child relationships (ss 11A–G). These activities include programs, classes and counselling or guidance sessions, as well addressing violent behaviour and improving involvement in a child’s life. These powers were introduced to prevent enforcement difficulties, and one of the most common activities is a four-hour educational program called the Separated Parent Information Program (Trinder et al., 2013).

In relation to enforcement, there is legislative emphasis on ensuring people bound by orders understand the consequences of non-compliance. The Children Act 1989 provides for warning notices (s 11I) about the consequences of non-compliance, and enforcement action may not be taken unless a warning notice has been issued (s 11K). Where enforcement orders are made, the court must provide notice of the consequences of failing to comply with the enforcement order (s 11N).

Where a court is satisfied beyond reasonable doubt (s 11J(2)) that non-compliance has occurred without reasonable excuse (s 11J(3)), a court may impose an unpaid work requirement (s11J(2)). The court must be satisfied that orders made under these provisions are necessary to secure compliance and proportionate to the seriousness of the breach (s 11L(1)). The court must also consider the likely effect of the order on the person subject to it and the welfare of the child who is the subject of the order that is being breached. The person who committed the breach may also be ordered to pay compensation to the other party if the breach has resulted in financial loss (s 11O and s 11P). In addition to the options outlined above, breaches may be dealt with as contempt of court with sanctions involving fines and imprisonment (Trinder et al., 2013).

Courts may make orders that parenting arrangements and enforcement orders be monitored by Cafcass (s 11H and s 11M respectively).

According to Trinder and colleagues (2013, p. 10), the preventative and educational options have been used extensively but there was no significant increase in the use of sanctions following the 2006 reforms. They attribute this to the fact that few cases in their sample required a punitive approach. Their research demonstrated that four profiles were evident in a sample of 215 matters involving contravention applications:

* conflicted, with both parents having some responsibility for dynamics that meant they were unable to “work together to implement the court order” (55%; p. 28)
* significant risk or safety issues affecting adults and/or children and these issues were the primary driver of the case (31%)
* refusal on the part of an older child (10+) to comply with the orders in response to problematic behaviour by the non-resident parent (10%)
* implacable hostility involving sustained resistance to contact on the part of the resident parent not in the context of significant safety concerns or problematic parenting behaviour by the other parent (4%).

The study identified five distinct approaches to enforcement on the part of courts:

* a pure settlement approach based on making contact work in the future through revising or confirming the existing order or making a new one (19%)
* a co-parenting support approach (46%) involving strategies to improve cooperation between the parents
* a protective approach aimed at resolving protective concerns (17%)
* a participatory or child-led approach (10%) based on eliciting and implementing the view of older children
* a punitive approach using the sanctions available as leverage to seek compliance (9%; Trinder et al., 2013, p. 42).

Although the research team considered that courts applied the right kind of approach in the majority of cases in the sample (Trinder et al., 2013, p. 55), they highlighted cause for concern in relation to outcomes in matters that involved safeguarding and risk issues. The report concluded that the court’s approach addressed safeguarding issues appropriately in only half of risk matters, with safeguarding issues “marginalised by a strong presumption of contact and by misinterpreting the issues in the case as mutual conflict or implacable hostility” (Trinder et al., 2013, p. 3).

5.2 New Zealand

Overview

As in Australia and England and Wales, substantial proportions of families that engage with the justice system in relation to post-separation parenting disputes in New Zealand are affected by complex issues, including family violence, safety concerns, substance misuse and mental ill-health (Gollop et al., 2019; Independent Panel, 2019). The New Zealand Government is presently implementing a reform program in response to the findings of an independent review (Independent Panel, 2019) of reforms to the family justice system in 2014 that limited access to court and the role of lawyers in parenting proceedings (Little, 2020).

Core findings of the Independent Panel that are relevant to this discussion concern a need for changes to the family justice system that better support the participation of children and young people; improve responses to the identification, assessment and management of risk; and provide a more streamlined and effective court process for parenting matters. These and other recommended changes are part of a raft of changes intended to support better processes for making parenting orders (Independent Panel, 2019).

According to statistics published by the Ministry of Justice New Zealand (2021), 8,513 applications for parenting orders under the Care of Children Act 2004 were lodged in 2020–21. There were 2,064 applications relating to guardianship (see below for a definition) and 1,321 concerning disputes between guardians. Applications for a variation of a parenting order numbered 1,807 and applications for discharge stood at 403. Applications for a warrant to enforce day-to-day care or contact (see further below) numbered 1,004, with 487 (49%) of these being granted, 170 (17%) being dismissed or struck out and 116 (12%) lapsing or being withdrawn or discontinued. There were 495 applications for leave to commence proceedings to vary or discharge an order within two years.[[[16]](#footnote-16)](file:///S:/IAG/5043%20-%20ANROWS%20-%20Document%20accessibility%20services/2_Working%20files/Kaspiew%20RR2/Indd%20to%20HTML/Kaspiew_RR2.html#footnote-003) Volumes in all these areas were similar in each of the preceding five years.

The Independent Panel (2019, p. 96) report acknowledged problems with enforcement of parenting orders (see also Gollop et al., 2019, pp. 88, 262; Gollop et al., 2020, p. 205). Rather than recommending legislative change to the enforcement provisions themselves, the Independent Panel made recommendations intended to support the development of more appropriate parenting arrangements. Its analysis of enforcement problems identified a need to better understand “the nature and level of conflict” and “set clear parameters in terms of parents’ behaviour” (2019, p. 96). Its strategies to improve parenting order outcomes included enhancing child participation, providing more resources for courts and enhancing procedural responses to different kinds of cases, including particularly complex ones. A process-based recommendation directly relevant to enforcement concerned the reinstatement of the Senior Family Court Registrar role to, among other functions, support the enforcement of orders and directions (Independent Panel, 2019, para 256).

The New Zealand Government has prioritised legislative change in relation to child participation and family violence and safety. In relation to child participation, legislative amendments involve the introduction of a children’s participation principle, an expectation that parents will consult with children on important matters that affect them and a requirement that lawyers who represent children will explain proceedings to them (Little, 2020). In relation to family violence, legislative change includes cross-referencing the principles in the Family Violence Act 2018 (New Zealand) (which provides personal protection) in the Care of Children Act 2004 so that judges need to take those principles into account in proceedings under the Care of Children Act 2004. These principles include statements that family violence is unacceptable, that it includes behaviour that is trivial when viewed in isolation but causes cumulative harm particularly to children, that it may include coercive control, and that perpetrators should face effective responses and sanctions for violence (s 4). The New Zealand Government has flagged further changes in relation to child participation and safety in a second raft of reforms (Little, 2020).

The recent reforms leave the substantive legislative framework for making parenting orders and seeking enforcement largely unchanged.

Parenting orders

In relation to parenting orders, the Care of Children Act 2004 specifies that the child’s welfare and best interests are the paramount consideration in proceedings under the Act (s 4(1)). This paramountcy provision is supported by principles (s 5) that specify that:

* A child’s safety must be protected, including from all forms of violence (sub-s (a)).
* Parents and guardians have the primary responsibility for care, development and upbringing (sub-s (b)).
* There should be ongoing consultation between parents (or guardianship; sub-s (c)).
* The child should have continuity in care, development and upbringing (sub-s (d)).
* Relationships with both parents and wider family and cultural networks should be preserved and strengthened (sub-s (e)).
* A child’s identity (including culture, language, religious denomination and practice) should be preserved and strengthened (sub-s (f)).

An additional provision (s 5A) specifies that protection orders made under the Family Violence Act 2018 are to be considered in making orders under the Care of Children Act 2004. Courts are also mandated to consider imposing protective conditions on an order where they are satisfied that one party has inflicted family violence on the other party or the child (ss 51(1)–(2)).

The legislative framework places significant emphasis on taking the views of children and young people into account in setting out mandatory requirements for children to be given reasonable opportunities to express a view (s 6(2)(a)) and for these views to be taken into account (s 6(2)(b)). The legislation provides for lawyers to be appointed for children where the court has concerns for the safety or wellbeing of the child or where the court considers this necessary (s 7). It appears lawyers for children are very frequently appointed but evidence demonstrates mixed views among parents (negative to a greater extent than positive) about the efficacy of their practice (Gollop et al., 2019, p. xvi). In contrast to the view of parents, professionals mostly view the role of the “lawyer for the child” as working well (Taylor et al., 2019, p. xii). The report of the Independent Panel (2019) also highlighted concerns about the practices and skills of lawyers for children, including insufficient emphasis on ensuring children’s voices are heard and that children are kept informed of progress in court proceedings.

In broad terms, orders made by the court deal with guardianship (s 15), day-to-day care and contact. Guardianship is defined as “all duties, powers, rights and responsibilities that a parent of the child has in relation to the upbringing of the child” (s 15(a)). Parenting orders (s 48) deal with arrangements for day-to-day care (or contact, which is a narrower concept) of the child. Parenting orders expire when children turn 16 (s 50) and they may not be made for children of this age or older unless there are special circumstances.

It is mandatory for court orders to provide explanations of the obligations created by the orders; processes for monitoring, review and discharge; and the consequences of non-compliance (s 55(1)). Where a lawyer has acted for a party, they are obliged to explain the order to that party in understandable language (ss 55(2)–(3)). These obligations also apply to lawyers who act for children (s 55(4)).

The Care of Children Act 2004 makes provision for judges to order litigants and children to attend counselling. A pool of independent psychologists provides expert reports to the family court under s 133 of the Act. Research (Gollop et al., 2019, 2020) and analysis (Independent Panel, 2019) has raised concerns about the availability of appropriately skilled report writers and confusion in the way their role is configured. Gollop and colleagues also report on mixed views among parents about whether the appointment of these professionals was helpful or unhelpful, with negative views outweighing positive views (Gollop et al., 2019, p. 383). Positive views tended to be associated with a report that was favourable to the parent. A range of issues was associated with negative views, including reports seen as superficial, delayed, biased and based on personal opinions (Gollop et al., 2019). In contrast, a majority of professionals who participated in the research program viewed specialist reports as a valuable and necessary source of impartial clinical insight into families involved in litigation (Taylor et al., 2019).

The New Zealand research focused on the impact of the 2014 reforms on parenting matters and the operation of the court rather than enforcement. However, to the extent that views were raised on the regime, it is clear, as in Australia, that views are mixed. On the one hand, some participants were critical of a lack of enforcement (Taylor et al., 2019) and on the other, some views suggested the regime was “cruel” (p. 307).

Enforcement

Parents are encouraged to work problems with compliance out between themselves or attend a mediation (Ministry of Justice New Zealand, 2021). This is not mandated in the legislation in relation to contravention orders, although it is in relation to parenting orders (s 46E).

The “welfare and best interests” of the child subject to the relevant parenting order are also the guiding principle in relation to the exercise of discretion under the enforcement provisions in the Care of Children Act 2004 (s 64(1)), except where a court finds that a contravention without reasonable excuse has occurred amounting to a criminal offence (s 78). The Act also specifies that orders in relation to enforcement remedies (under ss 70–77) should not be made contrary to the views of a child aged 16 or over unless exceptional circumstances apply (s 64(3)).

Under the New Zealand regime, a person commits an offence if they intentionally contravene a parenting or guardianship order (Care of Children Act 2004 s 78). If the person can establish that they had a reasonable excuse (not statutorily defined) for breaching the order, then the offence is not made out. If the offence is made out and a conviction is recorded, the penalty is imprisonment for up to three months (s 78(2)(a)) or a fine of up to NZ$2,500 (s78(2)(b)).

The court has a range of other options in responding to a breach of parenting orders, including:

* admonishment of the contravening party (s 68(1)(a))
* variation or discharge of the order (s 68(1)(b) and s 74(3))
* where contraventions are serious or repeated, response options include issuing a warrant (s 68(2)) to:
  + order a party to enter into a bond (s 70)
  + order the contravening party to pay the costs of the other party (s 71)
  + issue a warrant to enforce role of providing day-to-day care authorising a constable, social worker or other person to take the child from the contravening person and deliver them to an eligible person (i.e. someone who has a parenting order in relation to the child; s 72)[[17]](#footnote-17)
  + issue a warrant to enforce an order for contact authorising a constable, social worker or other person to take the child from the contravening person and deliver them to an eligible person (i.e. someone who has a parenting order in relation to the child; s 73). The purpose of this warrant is to enforce an order for direct contact.

5.3 Michigan, United States

Of the three jurisdictions considered in this desktop review, the available information and analysis was sparsest for Michigan. The rationale for including this jurisdiction is its conceptual difference from England and Wales, New Zealand, and Australia, in that it is a model “that provides full-service government enforcement of access orders” (Bailey, 2017, p. 40). This means that the state takes responsibility for enforcing parenting orders, removing the cost and responsibility of enforcement from the hands of parents. The way this model operates is explained more fully after the following brief overview of the statutory framework for deciding post-separation parenting arrangements in Michigan.

Parenting orders

In Michigan, post-separation parenting arrangements are governed by the Child Custody Act (1970), MCL 722.21. State agencies have auspiced the publication of the Michigan Custody Guidelines (State Court Administrative Office, n.d.) that provide accessible information on the law relating to child custody. Unlike some US states, Michigan does not have a joint custody presumption. The best interests principle is the court’s touchstone in determining parenting arrangements (“custody” and “time”), with the following factors identified as relevant in considering this principle (Child Custody Act [1970], MCL 722.23):

* love, affection and other emotional ties existing between the parties and the child
* the capacity and disposition of the parties involved to give the child love, affection and guidance and the continuation of the education and raising of the child in his or her religion or creed
* capacity and disposition of the parties to meet the needs of the child (food, clothing, medical care)
* the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity
* the permanence, as a family unit, of the existing or proposed custodial home or homes
* the moral fitness of the parties
* the mental and physical health of the parties
* the home, school and community record of the child
* the reasonable preference of the child, if the court considers the child to be of sufficient age to express preferences
* the willingness and ability of each of the parties to facilitate and encourage a close and continuing parent–child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child’s other parent
* domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Joint custody is determined on a best interests analysis, with relevant factors including whether parents will be able to agree or cooperate on important decisions (722.26a). Joint custody is defined as involving an arrangement in which time (of unspecified duration) is shared and decision-making for important decisions is also shared (722.26a). In relation to parenting time, courts must apply a presumption that it is in the best interests of a child to have a strong relationship with both parents (722.27a). Parenting time is also expressed to be a right of the child, unless “clear and convincing evidence” shows it would “endanger the child’s physical, mental or emotional health” (722.27a). Several considerations are to be applied in considering parenting time, including whether the child has special needs or circumstances, whether the child is nursing (i.e. breastfeeding), the reasonable likelihood of abuse or neglect of the child or abuse of a parent, the inconvenience or burdensome impact of travelling on the child, and whether a parent has failed to exercise parenting time (722.27a).

To support the implementation of parenting time orders, the Michigan statute makes provisions for the appointment of a parenting coordinator if the parties and the parenting coordinator agree to the appointment (722.27c). Before making such an appointment, the court must consider any history of a coercive or violent relationship between the parties and ensure the order for the appointment provides adequate protection in such circumstances. Parenting coordinators are appointed on a self-funded basis and their interactions with the parents are reportable to the court, unless disclosing information would compromise the safety of a parent or child. If parents fail to pay the parenting coordinator’s fees, they may face a sanction through an action for contempt of court. Parenting coordinators are required to make “reasonable inquiry”, including through the application of a domestic violence screening tool, to determine if there has been a coercive or violent relationship.

Enforcement

Under the Michigan model, there is a statutory agency, the Friend of the Court office (Friend of the Court Act [1982] 552.501–552.535), that has a variety of functions in parenting disputes. These include providing custody evaluations (these are similar to the reports provided by Cafcass in England and expert report writers in New Zealand) and taking responsibility for parenting order enforcement. Friends of the court are employees of the court and work under the supervision of the chief judge (sec 3 (4)–(5)).

Separate legislation governs the enforcement of parenting orders: the Support and Parenting Times Enforcement Act (1982). In relation to breaches (referred to as “violations”) of custody or parenting time orders, a friend of the court may apply a make-up parenting time policy, commence civil contempt proceedings, apply for a modification to parenting time arrangements or schedule a mediation (552.641).

A friend of the court also has the discretion to not respond to an alleged violation in certain circumstances. These include:

* where a party has previously submitted two or more complaints of violations found to be unwarranted
* costs were assessed against a party because a complaint was found to be unwarranted and they have not paid the costs
* the violation occurred more than 56 days before the complaint is submitted.

The statute requires courts to establish a make-up time policy, which is applied by the friend of the court, who issues a notice in relation to make-up time to both parents. Unless the application of the policy is contested by one of the parties, it is applied under this process.

Where a civil contempt proceeding is brought by the friend of the court, the court concludes the contempt has occurred without good cause, and the following remedies or sanctions can be applied:

* require additional terms and conditions consistent with the parenting time order
* modify the parenting order applying the best interests standard
* order make-up time
* order a fine of up to $100
* commit the parent to prison (including on a basis that allows them to continue to attend their place of work) with a maximum term of 45 days for the first contempt and 90 days for subsequent contempts
* suspend occupational licences, driver’s licences, recreational or sporting licences
* order participation in a community corrections program
* place the parent under the supervision of the friend of the court with conditions that may include participation in a parenting program, drug or alcohol counselling, a work program, seeking employment, compliance with a parenting time order and facilitating make-up time (552.644).

Where a parent fails to appear in response to contempt proceedings, they may be compelled to appear in court via a warrant and be required to pay costs of such hearings. In circumstances where a party is found to have acted in bad faith, they may be required to pay up to $250 the first time, $500 the second time and $1,000 the third and subsequent times.

5.4 Parenting coordination

This section briefly reviews the international evidence on parenting coordination, a process that is used to address parenting order compliance problems in the United States (Deutsch, et al., 2018) and Canada (Bertrand & Boyd, 2017). This is a model that is sometimes suggested for implementation in Australia (ALRC, 2018). The ALRC described parenting coordination as

a child focused alternative dispute resolution process developed in the United States in the 1980s in which mental health or legal professionals work with highly conflicted parents to assist them to implement their parenting plans or parenting orders and to improve communication. (p. 147)

In the United States, this is a court-ordered process and parties sign an agreement for the services of a parenting coordinator for 12 months to two years. Where attempts to mediate a dispute fail, parenting coordinators may make decisions under these contracts and their engagement with families is non-confidential and reportable to the court (ALRC, 2019, p. 148).

Even though parenting coordination (sometimes under different names) has been employed in the United States since the 1980s and appears to be fairly widely used (Deutsch et al., 2018), there is limited robust evidence on its efficacy (Bertrand & Boyd, 2017; Deutsch et al., 2018).

There is limited research that is available that has used objective outcomes measures and methodologies that support comparison either between samples involved in parenting coordination and not involved in parenting coordination or before and after parenting coordination. Two of three studies in this category suggested that the approach reduces litigation (Henry et al., 2009; Lally & Higuchi, 2008 as cited in Deutsch et al., 2018, p. 131). A further study suggested improved outcomes for children (Lally & Higuchi, 2008 as cited in Deutsch et al., 2018, p. 131). Brewster et al. (2011) suggested reduced demand on court resources.

The analyses by Bertrand and Boyd (2017) and Deutsch et al. (2018) identified a need for better evidence on parenting coordination in several areas, especially through methods using objective outcome measures and comparison across samples. Specific gaps in the evidence include:

* circumstances in which parenting coordination does not work, such as where there are severe mental health issues or personality disorder
* the longer term effects on parents and children including whether there is reduction in conflict and improvement in wellbeing outcomes
* the cost of the process for parents compared with other dispute resolution methods.

5.5 Summary and discussion

This desktop review of enforcement approaches in England and Wales, New Zealand and Michigan shows some similarities and differences between the approaches in these jurisdictions and in Australia. In broad terms, there are three areas where the Australian environment is similar to experiences internationally.

First, enforcement of family law parenting orders is an area of persistent concern in the context of a tension between the application of punitive responses to enforcement and the overall concern of parenting order frameworks to promote the best interests and/or welfare of children. Second, in England and Wales and New Zealand, as in Australia, the family law courts service a particularly complex client group with families affected by family violence and child safety concerns representing a majority of the client base in each jurisdiction. Third, in England and Wales and Australia, applications for enforcement are comparatively uncommon. It is also uncommon for them to result in the application of punitive responses. In New Zealand, it appears that enforcement action is more common than in England and Wales and Australia and it is also more likely for an application to progress with warrants being issued for half of applications. Further, in each of the jurisdictions, repeat litigation is not uncommon and appears highest in New Zealand.

Each jurisdiction has its own unique statutory framework and supporting machinery. In each framework, the welfare and or best interests of the child are paramount in making parenting orders but the relevance of this principle in enforcement varies between them.

In Australia, best interests play a very limited role in div 13A of pt VII of the FLA. Where the court applies a remedy involving variation of a parenting order, this involves the application of the best interests assessment (s 64B(1), s 60CA). Otherwise, orders made pursuant to other enforcement options in pt VII div 13A do not entail a best interests analysis except in relation to some limited areas. In subdivision D, which deals with contraventions for which a reasonable excuse is established, the court may not make an order for make-up time unless it is satisfied that this would be in the best interests of the child (s 70NDB(2)). The same principle applies in relation to make-up time under each of sub-div E (s 70NEB(5)) and F (s 70NFB2(c)). Further, best interests are relevant to the mandatory requirement to make a costs order against a party who has committed a contravention in sub-div F. This requirement is subject to the court’s assessment of whether such an order would be contrary to the best interests of the child concerned (s 70NFB(2)(g)).

This contrasts with the positions in England and Wales and New Zealand. In England, where an unpaid work order (Children Act 1989 (UK) s 11(3)) is in contemplation, the court must consider the welfare of the child who is subject to the order (s 11L(7)) and the position is the same for orders for compensation for financial loss (s 11O(14)). Similarly, in New Zealand the exercise of discretion in enforcement proceedings is subject to the “welfare and best interests” of the child concerned (Care of Children Act 2004 (NZ) s 64(1)), except where s 78 is invoked, which is the provision that creates a criminal offence where a parenting order is contravened without reasonable excuse.

6 Summary and discussion

This chapter draws together key conclusions synthesising insights from the various components of this research program to provide amalgamated responses to the research questions. The sections address, in turn:

* the causes of non-compliance with parenting orders
* parental responses to non-compliance, including the characteristics of parents who lodge contravention applications
* issues pertaining to allegations of family violence and sexual abuse in contravention applications
* court outcomes in contravention proceedings, including issues relating to the effectiveness and deterrent effect of punitive responses.

6.1 Causes of non-compliance

1a. What are the leading causes of non-compliance with family law parenting orders?

The various components of this study have shown that non-compliance with parenting orders is driven by a range of complex behaviours and circumstances, including:

* difficult or vindictive behaviour, or abusive or controlling behaviour on the part of the non-complying parent/carer
* children’s refusal to comply with the orders
* the non-complying parent/carer considering that it was never safe, or no longer safe, to comply
* the orders being insufficiently flexible to accommodate children’s changing needs
* to a lesser extent, the orders being misunderstood, causing inadvertent non-compliance.

It is important at the outset to acknowledge that separated parents with disputes over compliance with parenting orders are a more complex subset of separated parents generally; only a minority of parents engage in litigation over parenting arrangements and a small minority of this subset litigates further over non-compliance. The data from the SoP&C (an opt-in sample) indicate that these parents and carers (particularly women) were substantially more likely to describe their relationship as fearful when compared with participants in the AIFS 2015 Experiences of Separated Parents Study.[[18]](#footnote-18) Statistically significant differences between men and women also emerged in the current survey, with women not only more likely to describe the post-separation relationship as fearful but also more likely to indicate that the pre-separation behaviour made them feel coerced or controlled as well as fearful. This suggests an association between parents describing their relationship as fearful and having problems with parenting orders.

Against this background, data from the SoP&C indicate that more than three quarters of parents and carers attribute non-compliance with family law parenting orders to vindictive, abusive or controlling behaviour on the part of the non-compliant party. Mothers were substantially more likely than fathers to attribute non-compliance to concerns about safety – that it was never safe or no longer safe to comply with parenting orders – and to children themselves resisting compliance. Fathers were more likely than mothers to attribute non-compliance to difficult or vindictive behaviour on the part of the mother. Only small proportions of parents and carers identified non-compliance based on misunderstanding the orders or that non-compliance was accidental. Open-text responses from parents and carers reinforced that non-compliance was driven by parenting orders that were considered unsafe or unworkable, or did not adequately cater for children’s best interests and needs when made without the participation of the children subject to them; a perceived absence of authority of parenting orders; and lack of consequences for non-compliance. Most parents and carers (just over two thirds) indicated that the COVID-19 pandemic did not affect compliance with parenting orders. Just under one fifth of parents indicated that COVID-19 had affected or exacerbated non-compliance. Health and safety concerns and the workability of orders were among the reasons noted in open-text responses where COVID-19 had affected compliance.

Largely consistent with the data from the SoP&C, the drivers of non-compliance most commonly identified by participants surveyed in the professionals study (which would have related to more actively disputed cases) were that the contravening party was attempting to be difficult or vindictive, that the children refused to comply, and that the contravening party was being abusive or controlling. Other responses nominated by substantial proportions of participants included that it was not safe for the contravening party to comply with the orders, that the orders were insufficiently flexible to accommodate children’s changing needs, that the contravening party had not received the therapeutic assistance required, or that the orders had been misunderstood (see Figure 7, Kaspiew et al., 2022).

Data from the professionals study relating to the circumstances that applied to clients who sought advice for alleged contraventions most commonly identified clients complying with parenting orders despite concerns about their children’s safety; orders not catering for children’s changing needs; and newly arisen or unresolved underlying risks (see Figure 6, Kaspiew et al., 2022). Importantly, professionals who had undertaken family violence or child development training were more likely than those without such training to nominate reasons for non-compliance relating to safety, the absence of therapeutic assistance and the inflexibility of parenting orders (see Appendix A and Table B7, Kaspiew et al., 2022).

The open-text survey responses and qualitative interview data from the professionals study provided further insight into these drivers of non-compliance. In addition to problematic interpersonal dynamics involving the use of contravention proceedings and the legal system as a means of perpetuating family violence (Kaspiew et al., 2022), professionals described factors giving rise to non-compliance including parties’ disrespect for the court process; the perceived lack of consequences for non-compliance; and insufficient pre- and post-order therapeutic and other support for parties with underlying issues (Kaspiew et al., 2022). Professionals also identified that safety concerns were not being brought to the court’s attention or were misunderstood or not given due consideration by judges, resulting in inappropriate or unsafe parenting orders or orders not accepted as safe by the contravening parent. Professionals and judicial officers referred to parenting arrangements that were unworkable or had become unworkable, in substantive terms, due to significant changes in parents’ and children’s needs and circumstances. Other drivers of non-compliance identified by professionals and judicial officers – but which were less prominent in the SoP&C – were poorly formulated parenting orders or orders that were not explained to the parties, giving rise to non-compliance based on misunderstanding (Kaspiew et al., 2022).

6.2 Parental responses to non-compliance

2a. How do parents respond to non-compliance with parenting orders?

The findings of the SoP&C demonstrate that most parents and carers surveyed (88%) indicated that their parenting orders had not been complied with since they came into operation. Most breaches involved provisions regarding time arrangements but breaches in relation to parental responsibility also occurred regularly. A substantial majority – more than two thirds – of this sample considered the non-compliance to be serious. However, two thirds of parents and carers surveyed indicated that they had not taken action in response, with a higher percentage of non-action by mothers. The most common reasons for such inaction were:

* impracticality, in light of repeated breaches by the other parent/carer (63% overall: 72% of men and 59% of women)
* the view that legal action would be insufficient to stop the non-compliance (49%)
* a lack of financial resources to pursue legal action (43%) or to obtain legal advice (39%)
* a fear that the party breaching the orders would retaliate with violence if action was taken (63% overall: 72% of men and 59% of women)
* a lack of energy to pursue the matter (37%)
* not wanting to cause trouble for themselves or their children (35%).

Other reasons nominated less frequently were that the non-compliance was not serious enough to warrant action; a fear that the parenting arrangements would be changed if court action was taken; acceptance that COVID-19 restrictions constituted a reasonable excuse for non-compliance; and the other parent/carer having insufficient financial resources to pursue legal advice or legal action.

For parents and carers surveyed who indicated that they did take action in response to the non-compliance with the parenting orders, the most common response was to seek legal advice, followed by their legal representative writing to or speaking to the other parent/carer; the parent/carer themselves speaking to the other parent/carer; and issuing an application in a case with the court. Less common responses were returning to FDR; receiving communication from the other parent’s/carer’s lawyer; and the other parent/carer issuing a Contravention Application or an Application in a Case with the court.

Significantly, the majority of this sample indicated that the issues remained unresolved despite the action taken. However, the effectiveness of action taken in response to breaches of parenting orders varied. Almost one fifth of parents and carers reported that an application to vary the initial parenting orders and returning to FDR successfully resolved the non-compliance issues, while obtaining legal advice, having a lawyer liaise with the other party, and issuing contravention proceedings were also considered to be successful by a small proportion of parents and carers.

The professionals study indicated that enquiries regarding compliance with and alleged contravention of parenting orders arise regularly. Such enquiries are most common for legal professionals, and less so for FDR practitioners. The survey results also indicated an increase in client enquiries regarding compliance with parenting orders due to the COVID-19 pandemic (see Tables 2 and 3, Kaspiew et al., 2022). Analysis of the data from professionals identified a general pattern of advice-giving practices that prioritised legal advice or negotiation mechanisms and mediation or FDR in response to non-compliance, while counselling was more likely to be recommended where underlying issues involved children refusing to comply with orders, therapeutic issues, or abusive or controlling behaviour of the party alleging contravention. Advice regarding legal action (including instigating proceedings) was given more often regarding safety issues than other issues. During the COVID-19 period, there was a greater emphasis upon seeking legal advice where orders were misunderstood or children were refusing to comply (see Table 4, Kaspiew et al., 2022).

6.3 Characteristics of parents who lodge contravention applications

2b. What are the characteristics of parents who lodge contravention applications?

5. How many parties (applicants and respondents) involved in contravention proceedings are self-represented? What are the personal and socio-demographic characteristics of those who self-represent?

The analysis of court files indicates a gendered pattern in the parties who instigate litigation, both in relation to primary parenting proceedings and subsequent contravention proceedings. Fathers were the applicants in the majority of cases – just under two thirds of primary parenting proceedings and just under three quarters of contravention proceedings.

Demographic data from the analysis of court files indicate that for parties to contravention matters, the mean age of fathers and mothers was 41 years and 37 years, respectively. Of the 50 per cent of cases in which country of birth was available, Australian-born parents were more common than those born in another country. Most parties were Australian citizens, and most were not Aboriginal or Torres Strait Islander. Employment status differed between mothers and fathers. More than two thirds of fathers were employed compared to under half of mothers. Of those employed, the most common occupational category was professional, followed by technician/trade worker for fathers and community or personal services for mothers.

The court file data also show that most parties involved in contravention proceedings had been married, and one third had been in a cohabiting relationship. Separation occurred, on average, after nine years and most couples had more than one child. The mean age of children across the sample was 6.72 years and the largest age group represented was 5 to 11 years, followed by 0 to 5 years. Matters involving multiple contravention applications were more likely to involve younger children (mean age 6.01 years). While most children did not have special needs, a substantial minority (just over one third) did. These special needs included psychological and mental health issues, learning difficulties and trauma-related issues arising from a requirement for time with a non-primary carer.

The court file data show that self-representation is significantly more common for contravention proceedings than for primary parenting proceedings. For the latter, more than half of both fathers and mothers had legal representation, while 13 per cent of both mothers and fathers were self-represented. In contrast, the self-represented proportion of fathers and mothers was more than double for contravention proceedings (31%-34%). Self-representation of parties was higher for the judgment sample.

In both primary parenting proceedings and contravention proceedings, SRLs more commonly reported substance abuse than parties with legal representation. A higher proportion of self-represented fathers reported mental health concerns than fathers with legal representation, while the reverse pattern was evident for mothers, in both kinds of proceedings.

6.4 Allegations of family violence and sexual abuse by parties in contravention matters

1b. How frequently are allegations of family violence and sexual abuse raised as justifying breaches of parenting orders? Had these concerns also been raised during the application and trial for parenting orders?

3. What is the proportion of contravention matters where there is alleged violence that are sought to be enforced by the mother as compared to by fathers?

4. What are the characteristics (personal and socio-demographic) of parties (applicants and respondents) who report family violence and/or child safety concerns and are involved in contravention proceedings?

5b. How common are allegations and/or findings in relation to family violence and/or child abuse in relation to parties who self-represent (applicants and respondents)?

Characteristics of parties who report family violence and/or child safety concerns

This research project has reinforced the findings of earlier research (Kaspiew, Carson, Dunstan et al., 2015a) that parties who engage in litigation over their parenting arrangements following separation are a particularly complex subset among separated parents. Although based on an opt-in sample rather than a representative sample, the SoP&C has shown that parents experiencing problems with compliance with parenting orders are an even more complex subset: their families are often characterised by family violence, challenging interpersonal dynamics and conflict over a protracted period of time. Qualitative insights of professionals and judicial officers have also attested to the problematic interpersonal dynamics of parties involved in contravention proceedings, including intractable conflict and mistrust that had not been addressed adequately by parenting orders; abusive and controlling behaviour; an unwillingness to support the other party’s relationship with the child; and parents behaving in a non-child-focused way (Kaspiew et al., 2022).

The court file and judgment data also show that most contravention matters included evidence or allegations of family violence, child abuse, child protection or child safety concerns. The vast majority – more than nine in 10 court files – included these allegations or evidence in the primary parenting and/or contravention proceedings. Cross-allegations in relation to family violence were common. A substantially smaller proportion of matters in the judgment sample were identified as containing evidence or allegations of family violence, child abuse, child protection or child safety concerns. However, it is important to note that the research team had access only to the reasons for decision in this subsample, and there was a substantial proportion where it was unclear on the face of the judgment whether there were allegations or evidence of family violence, child abuse, child protection or child safety concerns held by the contravening party.

Matters involving multiple contravention applications were more likely to have allegations made in both the primary parenting proceedings and the contravention proceedings. In the judgment sample, it was more likely that the evidence or allegations were raised in relation to the primary parenting proceedings than in the contravention proceedings or in both the primary parenting and contravention proceedings.

Data from the court file sample also show that in contravention proceedings, allegations concerning child abuse are evident to a greater extent than allegations of family violence, and to a greater extent than in primary parenting proceedings. In primary parenting proceedings, allegations of both family violence and child abuse together were made by mothers in more than two thirds and by fathers in almost half of matters. The proportion of fathers making allegations of family violence against mothers and mothers making allegations of family violence against fathers was similar in these matters. However, fathers were significantly more likely to make allegations of child abuse in the absence of allegations of family violence against mothers than vice versa.

By contrast, in contravention proceedings, almost half of fathers made allegations of child abuse against mothers, and just under half of mothers made allegations of child abuse against fathers, in the absence of family violence allegations. Mothers and fathers alike were less likely to make allegations of both family violence and child abuse in contravention proceedings than in primary parenting proceedings. These patterns indicate a heightened focus on child abuse in the context of contravention proceedings, likely reflecting the issues that the enforcement provisions in div 13A of pt VII direct attention to in the context of establishing a “reasonable excuse” for contravention, such as the health and safety of the child (FLA s 70NAE(4)–(7)).

In both primary parenting proceedings and contravention proceedings across the court file and judgment samples, children were identified as the victims in more than nine in 10 matters in the court file sample and in more than three quarters of the judgment sample. In the court file sample, fathers were assessed by the research team as perpetrators in more than nine in 10 matters and mothers were assessed as victims in almost nine in 10 matters. The judgment sample revealed a similar pattern. Cross-allegations in relation to family violence were common. In the court file sample, they were almost twice as common in primary parenting proceedings than in contravention proceedings. In the latter, fathers were more likely than mothers to be assessed as perpetrators, and mothers were more likely to be assessed as victims than fathers.

Safety concerns as a “reasonable excuse” for contravention

The examination of matters raising a reasonable excuse in response to a contravention application is limited by two factors. Most contravention applications are dismissed, withdrawn, discontinued or struck out, and most respondents do not file a response detailing their reasons for non-compliance. Of the court files that included an affidavit filed in response to the contravention application, the most frequent claim by respondents in their affidavit was that they had a “reasonable excuse” for their non-compliance on the basis of safety concerns, not understanding the obligations under the order or an “other” reasonable excuse. The next most common claim was that compliance was inconsistent with the views of the child/young person who was the subject of the parenting orders.

Self-representation

The court file data show that in contravention proceedings involving allegations of family violence, fathers were more likely to be self-represented where they were the alleged perpetrator, compared to fathers who were alleged victims or both alleged perpetrators and victims. The reverse pattern emerged for mothers: they were less likely to be self-represented if they were alleged perpetrators in contravention matters involving family violence, compared to mothers who were alleged victims or both alleged perpetrators and victims.

In the sample of published judgments, slightly higher proportions of fathers than mothers were self-represented in matters where evidence of family violence, child protection or safety concerns was apparent in the judgment. Slightly higher proportions of mothers than fathers were self-represented where no such evidence was evident in the judgment. These data should be interpreted with caution given the high proportions of “unclear” responses.

6.5 Court consideration of allegations and evidence of family violence in contravention applications

6. In the court’s consideration of the contravention/enforcement application, how much consideration or exploration is there of allegations and evidence of violence?

In answering this question, it is important to note again, by way of context, that 1) consistent with earlier research (see Table 3.13, Kaspiew, Carson, Dunstan et al., 2015b), the vast majority of matters (more than nine in 10) included evidence or allegations in relation to family violence, child abuse, child protection or child safety concerns; and 2) a substantial majority of all contravention applications were resolved with the application either being dismissed, withdrawn, discontinued or struck out. As such, limited insight could be gleaned from these files in relation to the decision-maker’s consideration of allegations and evidence of violence.

Against this background, some insight into judicial consideration of evidence or allegations of family violence is available from the reasons for decisions in both the court file sample and the judgment sample, noting that reasons for decisions were available in just over one in 10 of the court file samples. While most contravention matters included evidence or allegations of family violence or child abuse, only small proportions of matters involved findings of family violence. Findings that family violence did not occur were made in a very small proportion of cases as were findings that allegations of family violence were unable to be determined. The data from the court file sample and judgment sample also show that findings that children required protection from family violence or child abuse were more likely to be made in favour of applicant mothers than applicant fathers. Findings were made about the views held by children in a very small proportion of all cases and in substantially more cases where the mother was the applicant as compared to cases where the father was the applicant. Nevertheless, the paucity of data suggests a reluctance to make findings in relation to family violence and other risk issues.

Considering the court file sample alone, 2 per cent of all contravention matters where there were reasons for decisions involved findings of family violence perpetrated by the father. The risks arising from this family violence were upheld in part or in full. Findings in relation to entrenched conflict and behaviour that had been described as involving the estrangement or “alienation” of children from a parent emerged in the same small proportion of cases (2%).

Data from the SoP&C identified deficiencies in the consideration of family violence in decision-making in contravention proceedings. As noted earlier, most parents and carers surveyed attributed non-compliance with parenting orders to vindictive, abusive or controlling behaviour on the part of the non-compliant party. Open-text responses from a substantial proportion of parents and carers indicated a need for increased acknowledgement of family violence by professionals in the family law system. Some parents and carers described the inability of the system to identify and respond in a timely, effective and trauma-informed way to family violence, and observed that this deficiency did not encourage compliance with parenting orders. Some parents and carers also considered that the compliance regime was unable to cater for the changing phases of family violence, including use of litigation by perpetrators to perpetuate family violence in the form of systems abuse.

Around one in 10 parents and carers who provided open-text responses emphasised a lack of insight and expertise on the part of family law system professionals into the nature and impact of family violence when parenting orders were initially made. A key concern related to the making of orders for shared parental responsibility or significant time in circumstances characterised by family violence, which were identified as a means by which a perpetrator could continue to perpetrate family violence. A trauma-informed approach to decision-making and extensive family violence training were considered to be critical in this context, particularly to ensure that people experiencing family violence were not “misidentified as perpetrators” or that protective behaviour was not penalised in contravention proceedings.

Similar concerns were also evident in the professionals study. Professionals emphasised the prevalence of abusive, controlling and vindictive behaviour in cases involving non-compliance with parenting orders, as well as intractable behaviour that may reflect a pattern of coercive control in response to unresolved safety concerns (see Figure 7, Kaspiew, et al., 2022). Risk-related issues were prominent where clients sought advice about contravention, with 85 per cent of professionals indicating that their clients had complied with parenting orders despite concerns for the safety of their child. Some judicial officers also demonstrated awareness that concerns about safety and family violence may not be revealed or adequately considered in negotiation or parenting order proceedings, leading to inappropriate or unsafe orders being made.

6.6 Court outcomes in contravention proceedings

7. Where contravention proceedings are brought, what decisions are judges making (e.g. changing the orders; enforcing the orders; punishing the non-compliant party)?

8. Is there a particular trend in terms of a court response when family violence is used as a reasonable excuse to defend a breach? For example, are there penalties for the breach, or is it more likely that orders are changed in favour of those alleging family violence?

Orders made

The key finding, noted above, in relation to outcomes and orders made in contravention proceedings is that two thirds of all applications in the court file sample were resolved with the application either being dismissed, withdrawn, discontinued, or struck out. This outcome was more common for first contravention applications than second or multiple applications. There were no statistically significant differences between applicant mothers and fathers in this regard. A greater proportion of applications were dismissed compared to those withdrawn, discontinued or struck out. This finding suggests that a substantial proportion of contravention applications are misguided. The second most common court order made was a variation of existing parenting orders, with this occurring more frequently for first applications than for second and subsequent applications, and more for father applicants than mother applicants. A bond that imposed a requirement on the contravening party was ordered in only a small proportion of matters in the court file sample. Other outcomes included orders to adjourn the contravention application and orders for compensatory parenting time. The contravention application was upheld in less than one in 10 applications, noting that this may have been accompanied by other court orders to address the contravention. In even smaller proportions of cases, fines or sentences of imprisonment were ordered in final resolution of the contravention application.

The judgment sample revealed similar outcomes: the most likely outcome was for the contravention application to be dismissed (37%), followed by a variation of existing parenting orders (28%), and orders requiring parties to enter into a bond to, for example, participate in a Parenting Orders Program or counselling (28%). Notable differences between the court file sample and the judgment sample are that a substantially greater proportion of orders in the judgment sample involved an order for costs (19% cf. 6%), and orders made in the judgment sample were more likely to uphold the contravention application (25% cf. 6%).

Qualitative insights from the professionals study suggest that a variation of orders or orders for make-up time were considered preferable to more punitive responses in circumstances of non-compliance with parenting orders. Judicial officers and registrars highlighted the adverse consequences for children of punitive responses – in the case of fines, the reduction in financial resources available to the child, and in the case of imprisonment, depriving the child of a meaningful relationship with one parent. Judges also cautioned that the contravention regime may exacerbate parental conflict, although some accepted that more punitive options – seen as a “last resort” – may be required in the case of egregious contraventions (Kaspiew et al., 2022, pp. 56–57).

Court responses where family violence is used as a reasonable excuse

Findings that contraventions had occurred but with a reasonable excuse were only able to be examined where reasons for decisions in judgments were available. These findings were identified in less than one quarter of all matters where reasons for decisions were provided. This outcome was more likely where the contravention application was made by the father (21%) rather than the mother (17%). More detailed insight into the extent to which the reasonable excuse response was upheld where it was based on safety concerns is not available due to the small proportion of the sample where a reasonable excuse was established. However, data relating to the extent to which the court considers family violence provides some insight into court responses where family violence is alleged. While the court file and judgment data show that most matters in the samples included evidence or allegations in relation to family violence, child abuse, child protection or child safety concerns, only small proportions of matters involved findings of family violence. As noted above, these findings suggest a reticence on the part of courts to make explicit findings that family violence has occurred, perhaps based on precedent relating to the unacceptable risk test that does not require findings to be made to support a finding of unacceptable risk (M v M (1988) 166 CLR 69; see also FLA s 60CG).

6.7 Effectiveness of tougher penalties or enforcement in reducing the incidence of non-compliance

9. Is there any evidence that tougher penalties or enforcement are effective at reducing the incidence of non-compliance?

The findings of various components of the study do not indicate that punitive responses or enforcement mechanisms are more effective than non-punitive responses at reducing the incidence of non-compliance with parenting orders. While tougher penalties have been identified by professionals and parents/carers alike as appropriate in some circumstances, the effectiveness of tougher penalties or enforcement in this context raises a long-standing conceptual tension between the punitive aims of the contravention regime on the one hand, and child-focused decision-making on the other.

Data from the SoP&C demonstrate a lack of awareness of punitive remedies under the current contravention regime. Only half of parents and carers indicated that they were aware that the court can issue a fine, and less than half indicated that they were aware that a court could order a party to enter into a bond to make them comply with parenting orders or impose a prison sentence against a contravening party. Patterns of help-seeking behaviour provide further insight into the effectiveness of penalties and enforcement at reducing non-compliance with parenting orders. Where parents and carers had taken action in response to a breach of orders, most indicated that the issues remained unresolved despite that action. Irrespective of the penalties, a majority of parents and carers indicated that the contravening party repeatedly breached the orders, such that it was impracticable to keep returning to court or seeking legal advice for each contravention. Nearly half indicated that legal action was unlikely to be enough to stop the other party from breaching the parenting orders.

Open-text responses from parents and carers illustrate that almost half perceived the current contravention regime to be ineffective. This view overlapped with a broader distrust of or lack of faith in the legal process. Many parents and carers considered the family law system to be ill-equipped to deal with complex family dynamics and circumstances characterised by family violence, which may in turn lead to non-compliance. Other parents and carers expressed concerns about the lack of consequences for non-compliance, while some perceived that breaches needed to be significant to be addressed in court, which resulted in a continuation of non-compliance without acknowledgement or repercussion. Some parents and carers also suggested that the lack of consequences for breaching orders, the limitations with enforcing orders and the view that parenting orders lacked authority facilitated non-compliance. This observation led some parents and carers to call for more punitive responses – in the form of those articulated in the existing div 13A of pt VII of the FLA – or more meaningful responses, such as the contravention being upheld, as well as orders for make-up time or variations to orders, to better ensure compliance.

Notwithstanding the call by some parents and carers for more punitive responses as a means of promoting compliance, data from the court file component of the study indicate that outcomes most commonly sought by parties filing contravention applications were not punitive in nature. Variations of parenting orders and compensatory contact were most likely to be sought, followed by recovery orders. Notably, of the more punitive options, the most common option sought was for the other party to be required to enter a bond; fines, community service or imprisonment were all sought by a negligible proportion of applicants. These data suggest that, rather than seeking to punish the contravening party, the focus for applicants was on enforcing the orders or varying them to better suit the parties’ circumstances.

Qualitative insights from the professionals study identified a need to consider the underlying causes of contravention (including complex emotional dynamics and systems abuse) and to address those in a child-focused way (Kaspiew et al., 2022). The interviews with judicial officers and registrars considered the appropriateness of the contravention regime’s punitive rationale and its role in reducing non-compliance. Some judicial officers and registrars considered that a punitive approach was inappropriate, as penalties for contravention did not address the underlying causes of non-compliance. “Non-punitive” aspects were considered important mechanisms to get parenting orders “back on track” and to minimise opportunities for systems abuse (Kaspiew et al., 2022, pp. 30–31). Variation of orders or orders for make-up time were seen as preferable to punitive responses, accommodating concerns or changes in circumstances, which would in turn support compliance.

Conversely, some judicial officers and registrars expressed the view that the regime is not applied extensively enough to have a deterrent effect, such that the influence of the regime on parties’ behaviour was limited. A punitive aspect of the contravention regime was identified by some professionals as necessary to uphold the court’s authority. However, a flexible, options-based approach was also considered important to address the complex dynamics and underlying issues that gave rise to non-compliance with parenting orders. The tension between punitive responses and the exercise of the “best interests” jurisdiction, noted above, was complicated by the acknowledgement by many professionals, similar to substantial proportions of parents and carers, that some parties were simply not amenable to compliance (Kaspiew et al., 2022).

The comparative analysis of three international jurisdictions – England and Wales, New Zealand and Michigan, United States – has shown that, while punitive measures in response to non-compliance are available in each jurisdiction, enforcement applications are relatively uncommon in England and Wales and such applications rarely result in punitive outcomes. By contrast, enforcement applications are more common in New Zealand, with warrants being issued in half of these applications. The international jurisdictions examined suggest that enforcement of family law parenting orders remains problematic, particularly given the tension between applying punitive responses for non-compliance on the one hand and promoting children’s best interests and welfare on the other.

6.8 Ongoing family violence concerns and the risk of penalties as a deterrent

10. For those matters where there are ongoing concerns of family violence, does the risk of penalties deter parties from contravening orders or seeking the protection of the courts through a change of orders?

Data from the SoP&C regarding patterns of help-seeking behaviour provide insight into the extent to which the risk of penalties deterred parties from contravening orders or, alternatively, deterred parties from seeking the protection of the courts through a change of parenting orders where there were ongoing concerns of family violence.

As noted above, while more than three quarters of parents and carers viewed the breaches of their parenting orders as serious, two thirds indicated that they had not taken action in relation to those breaches, with women more likely than men to nominate this response to a statistically significant extent. Nearly half of participating women and nearly one third of participating men who did not take action in response to non-compliance indicated that they were afraid the other parent would be violent towards them or their children if they did so. More than a third of participants indicated that they did not want to cause any trouble for themselves or their children (35%) or that they did not have the energy to pursue the matter. A small but not insignificant proportion of parents and carers indicated they were afraid to return to court where there was non-compliance in case the parenting orders were changed if they returned. Insufficient funds to pursue legal action or legal advice were also nominated by substantial proportions of the sample. The qualitative data from parents and carers, noted in the previous section, identifying a distrust or lack of faith in the legal process provide more detailed insight in relation to these assessments.

Findings from the professionals study indicate that most professionals did not agree that the system was effective in encouraging compliance or deterring non-compliance (Kaspiew et al., 2022, p. 54). Punitive options (such as fines, bonds and imprisonment) received lower levels of endorsement than non-punitive options (such as variation of existing orders, orders for make-up time with the child and orders that parties attend post-order support programs or post-separation parenting programs), although they were considered by some professionals to improve the system’s deterrent effect (Kaspiew et al., 2022, pp. 54–56).

Almost half of the professionals who provided an open-text response indicated that there were no features of the contravention regime that encouraged parties to act in relation to non-compliance. Professionals described clients who feared returning to court because they considered the court to insufficiently protect parties in circumstances characterised by family violence or other power imbalances (Kaspiew et al., 2022, p. 61). Some described clients who feared reprisals from the non-complying party and the potential for further proceedings to increase the risk of violence, to entrench parental conflict and to expose the children to violence.

A history of non-compliance and systems abuse was also nominated by some professionals as a form of family violence that deterred parties from taking action for non-compliance (Kaspiew et al., 2022, p. 61). Almost one in 10 professionals who gave an open-text response indicated that the contravention regime provided an avenue for some parties to continue to harass, coerce and control former partners (Kaspiew et al., 2022, pp. 62–63). The cost, complexity and uncertainty of returning to court were identified as additional deterrents, as were the trauma and exhaustion associated with previous experiences with the legal process. Parties’ reluctance to reopen parenting matters and risk not being believed or labelled a “no contact” parent were compounded by a perceived lack of transparency and inconsistency in the decision-making process.

7 Conclusion and implications for policy and practice

7.1 Systemic challenges

The empirical evidence in this research program gives rise to implications for policy at several levels. First, the data show that non-compliance arises from a complex range of dynamics, often occurring against a backdrop of ongoing family violence and current safety concerns and with children directly affected in almost all cases. The data indicate systemic issues need to be addressed in this context. They include limitations associated with:

* identifying, assessing and appropriately responding to risks and negative inter-parental relationships when making parenting orders
* a lack of mechanisms to monitor the implementation of parenting orders
* a lack of capacity to adapt to changes and problems
* the way that children and young people are supported to participate in and to be kept informed about post-separation decision-making related to their care and living arrangements.

Second, the data indicate that breaches of parenting orders are not uncommon. However, most parents and carers experiencing issues with compliance do not use the contravention regime to address these issues. Parents and carers and family law system professionals identified reasons that included:

* the significant financial cost and emotional stress and trauma of engaging in litigation
* the uncertainty and risk associated with returning to court
* the complexity and delays associated with contravention proceedings
* a lack of faith in the legal system’s ability to ensure compliance and to resolve the issues underpinning non-compliance
* distrust and even fear of the system
* an acknowledgement that the regime was not designed to resolve these underlying issues
* the fear that litigation would reignite or escalate violent or abusive behaviour by the other party, and the legal process could be misused in this context.

Third, the data from parents and carers and professionals indicate that, as a consequence, some children are living with parenting arrangements that are inconsistent with safety and positive wellbeing. Data from parents and carers indicate significant concerns for the wellbeing of children, with markedly higher proportions of parents in this sample offering negative assessments of their children’s wellbeing compared with a representative sample of separated parents.

7.2 Trauma-informed, child-centred responses are needed

These findings indicate that changes should be implemented with four objectives:

1. There is a need for the family law system to be genuinely child-centred and trauma-informed and to cater for domestic and family violence-informed and culturally informed responses.
2. There should be a focus on attempting to ensure that appropriate and workable parenting arrangements are made.
3. The issues underlying non-compliance need to be more easily addressed when they arise.
4. Access to therapeutic approaches is required.

Notably, a majority of professionals identified a need for a greater role for case management from the outset of litigation with:

* flexibility in orders to accommodate changes in children’s needs
* post-order support
* simpler, more expeditious and less costly options to address non-compliance.

There was also majority endorsement of strategies facilitating:

* access to therapeutic support in the early stages of disputes to address the underlying issues
* improved forensic approaches to ensure risk issues are identified and addressed and children and young people’s safety and wellbeing is supported, including through improved evidence-gathering practices
* the making of orders for no contact more often in cases involving risks to children.

Professionals identified the need for a well-resourced family law system to support compliance, including in terms of educative and therapeutic support services to enhance parents’ capacity to implement parenting arrangements and avoid further litigation. These suggestions included employing more sophisticated triage systems involving a conferencing process with a registrar and a family consultant to act as a specialist unit within the courts. These observations are consistent with several themes that emerged from the SoP&C regarding improvements to the current contravention regime. Suggestions involved:

* access to post-order support services, such as periodic reviews of parenting arrangements and therapeutic support for families
* mechanisms to address non-compliance outside of the court system
* developing a mechanism for monitoring how children are managing in the arrangements.

These suggestions are consistent with the intent of recommendations by the ALRC in its Family Law for the Future (2019) report for post-order assistance, including the potential for case management support to be provided by family consultants (Recommendations 38 and 39) and recommendations for the expansion of Family Advocacy and Support Services, social support services and FRCs to provide case management for families engaged in the family law system (Recommendations 57–59).

7.3 International and other mechanisms for monitoring the implementation of parenting orders

International approaches were reviewed including the making of orders that parenting arrangements and enforcement orders be monitored by Cafcass in England and Wales and parenting coordination in Michigan. In the Australian context, Relationships Australia Western Australia has used a model of parenting coordination that is based on a model implemented in South Africa. This approach to parenting coordination involves a parenting coordinator with both legal and mental health skills monitoring the compliance with the parenting orders and working with parties to assist them to make decisions that are in the best interests of children (Demby, 2016; Relationships Australia, 2020). Relationships Australia Western Australia has liaised with the FCoWA to support referral to their parenting coordination program (Relationships Australia, 2020). The nature and extent of parenting coordination may be specified in the court orders or the arrangement may be more informal and determined by agreement (Relationships Australia, 2020; see further Sullivan, 2013). Subject to the evaluation of the program and outcomes, this approach may have broader application beyond Western Australia. There is some research available in international jurisdictions, including research based on a small pilot indicating an easing of the courts’ burden, a reduction in agencies involved with families and longer lasting parenting arrangements; however, larger samples and comprehensive evaluation research is required (see for e.g. Brewster et al., 2011).

Some recent developments are also consistent with our findings. The National Contravention List, introduced after the survey components of this research program, and the Lighthouse Project (see further below) align with findings in this research about the need for triage and case management.

7.4 Legislative reform

Concerns raised by parents, carers and professionals regarding the safety implications of primary parenting orders reinforce previous recommendations to revise provisions in pt VII, particularly the s 60CC provisions (the primary and additional considerations); the presumption in favour of shared parental responsibility in s 61DA; and the requirement to consider orders for equal time or substantial and significant time when orders for equal shared responsibility are made (s 65DAA). The government response to the ALRC’s recommendations has confirmed that a simplification of the parenting provisions will occur (Australian Government Attorney-General’s Department, 2021a, pp. 11, 42–43) and that language relating to shared parental responsibility will be clarified (pp. 13–15). At the time of finalising this report, it was unclear what the implications of the change of government on May 21, 2022, might be in relation to this position.

Findings based on data from parents and carers, from professionals and from court files indicate that there is a need for a broader reconsideration of s 60CC, s 61DA and s 65DAA than that being contemplated under the previous government’s response to the ALRC report. In particular, the findings of this research demonstrate that orders for shared parental responsibility and regular time with each parent are being made in circumstances where complex dynamics, including but not limited to family violence and safety concerns, may impede the workability of the orders. Although family violence and child abuse concerns are currently technically exceptions to the application of the presumption of equal shared parental responsibility, the existing framework is not always operating in a way that produces safe and workable outcomes. This is particularly evident in the dominance of orders made for shared parental responsibility among the SoP&C sample and in the court files substudy. Reinforcing longstanding concerns about the implication of the presumption in favour of equal shared parental responsibility (e.g. ALRC, 2019) and the associated time provisions, the recent Hear Her Voice report from the Queensland Women’s Safety and Justice Taskforce noted that family and domestic violence victims often wrongly “believe they are compelled to offer equal shared care of their children to abusive and coercively-controlling perpetrator parents” (Women’s Safety and Justice Taskforce, 2021, p. xxv).

The findings of this research indicate that legislative amendment is required to direct attention to the needs of children and the capacity of parents to implement parenting arrangements in a way that maintains their safety and wellbeing. In light of the findings in relation to the exposure of children to unsafe behaviour, including family and domestic violence, and poor wellbeing outcomes among a significant proportion of children subject to parenting orders, the family law system responses need to identify where children have been exposed to trauma and put in place parenting arrangements that support recovery.

7.5 Tension between children’s best interests and punitive enforcement

At a broader level, the empirical evidence from this research reveals the tensions implicit in the contravention regime. This tension arises between the aims of legal enforcement mechanisms focused on punishment and deterrence and the needs for decisions made in children’s best interests. The data indicate that in practice, parents and carers are far more likely to seek, and judicial officers are more likely to apply, non-punitive options when the contravention regime is invoked. The data also indicate that a majority of parents and carers and professionals favour responses that are non-punitive and therapeutic in nature. The data suggest that parties tended to seek practical solutions to address the non-compliance, including solutions that involved make-up time or variations to orders that better accommodated families’ current circumstances. Significantly, in two of the international jurisdictions considered, England and Wales and New Zealand, the best interests of children play a greater role in contravention matters than they do in the FLA, indicating policy responses tipping the balance in favour of best interests, albeit in limited circumstances.

The qualitative data from professionals, in particular, also highlighted the adverse consequences for children of applying a punitive response for non-compliance. These responses were identified as potentially depriving a child of one parent (in the case of jail time) or financial resources (in the case of a fine). Some judicial officers also noted that the threat of contravention proceedings may elicit fear in children and young people resulting in compliance with parenting orders in unsafe or difficult circumstances.

At the same time, it is acknowledged that some professionals and parents and carers identified a lack of consequences and immediate enforcement options as deficiencies with the contravention regime. However, findings in several areas suggest that reliance on legal mechanisms, especially those that are punitive in nature, have unintended consequences:

* The findings about duration and intensity of litigation in the context of family violence and abuse suggest that the legal framework can be used to perpetuate conflict and, in the worst-case scenario, can be used as a form of abuse.
* Findings from the SoP&C, supported by the views of professionals, demonstrate that the cost and trauma of legal proceedings place unsustainable and unfair burdens on families and children, and that the system is in practical terms ill-equipped to meet their needs.
* The inclusion of criminal consequences in the framework elevates requirements for legal rigour and specificity to levels that are difficult to meet.
* The research findings indicate that the punitive elements of the framework have negligible deterrent effect.
* Non-compliance with parenting orders is not uncommon but legal remedies are uncommonly sought.

7.6 Contravention applications are frequently dismissed

The court file data establish that:

* Even where contravention applications are issued, two thirds of these applications are dismissed, withdrawn or struck out.
* Those proceeding to a substantive conclusion most commonly involve non-punitive outcomes of variations of parenting orders or (less often) compensatory time.
* These outcomes are most often arrived at by consent during negotiations rather than by judicial determination.

More specifically, the court file data indicate that in the atypical group of cases in which the contravention regime is invoked, fathers are the instigators in just under three quarters of cases as compared to mothers in under a quarter of cases. In the minority proportion of matters where a substantive judicial determination occurs, half of these determinations indicate the contravention is misconceived, with three in 10 of these matters involving findings that the contravention did not occur or, in one fifth of cases, a finding that the contravention occurred but that there was a reasonable excuse.

7.7 Potential for unintended consequences

Against this backdrop, it is evident that any new policy development should be undertaken with great care. The findings from this project suggest that a move to strengthen punitive options may create additional barriers to ensuring the safety of children, including circumstances where parties feel compelled to comply with orders that are not safe or in the best interests of children, and facilitating more coercive and controlling behaviour through systems abuse.

7.8 Systems abuse and vexatious litigation

Systems abuse and vexatious litigation were issues that emerged in both the SoP&C and the professionals study. Parents and carers and professionals acknowledged the use of the legal system to continue the violence in the family. Parents and carers described the detrimental and pervasive effect of this violent, coercive and controlling behaviour on their lives and on the lives of their children, over significant periods of their childhood. These concerns are underlined by the findings in the court file data revealing the intensity and duration of proceedings, with litigation in a substantial proportion of cases extending beyond three years, with nearly one third of cases between five and nine years, and a small but not insignificant proportion taking place over 12 or more years. Both the SoP&C and the data from court files demonstrate that children are exposed to and directly affected by family violence in a very high proportion of these matters. These findings further question whether the system is operating to support child wellbeing.

Some judicial officers considered the limitations and practical difficulties of applying the vexatious litigant provisions of the FLA as factors contributing to a judicial reluctance to deal with vexatious litigants. These include the historical context of the legislative provisions and the need to reduce the incidence of vexatious litigation while taking care to not unduly deny access to justice. Professionals called for accountability and consequences for vexatious litigants, such as:

* costs orders
* indemnity of costs and security of costs orders
* fines
* adverse findings regarding credibility
* limited supervised contact or no contact orders
* prohibitions on issuing further proceedings.

Almost one third of these participants identified the need for a quicker and simpler process than the current one to declare litigants vexatious.

Suggestions for simplification of the vexatious litigant process included:

* a lower threshold for making a vexatious litigant declaration
* a cap on the number of contravention applications per person
* a prohibition against issuing proceedings within a specified time frame
* the need to seek leave or to show evidence of having received legal advice before issuing proceedings.

Noting recent amendments to the FLA, professionals also highlighted the need for:

* additional court resources and support to address vexatious litigants, and increased access to legal representation for parties who are the subject of vexatious litigation
* case management and triage of contravention matters
* information sharing between FDR services and courts as a broader systemic change to address vexatious litigation
* reducing the formality of proceedings (such as registrar conferences instead of hearings)
* the incorporation of child-inclusive rather than adversarial approaches to identify children’s best interests.

7.9 Implications for policy and practice

There are two broad issues in the current practice and policy landscape that make formulating specific responses to the findings of this research difficult.

First, there are recent developments that have the potential to address some of the problems identified. These include:

* the Lighthouse Project
* the National Contravention List
* the creation of the FCFCoA
* increased funding for Aboriginal and Torres Strait Islander Family Liaison Officers, Court Child Experts and registrar resources (FCFCoA, 2022)
* the introduction of the Central Practice Direction (FCFCoA, 2021b).

If they operate as intended, these developments have the potential to improve identification and assessment of family violence, child abuse and other risk issues, as well as to improve the court’s capacity to provide active case management.

Building on $100 million funding in the 2021–22 Budget to implement reforms to the court, a further allocation of $63.75 million in funds over a four-year period was announced in the 2022–23 Budget as part of the First Action Plan of the next National Plan to End Violence against Women and Children (FCFCoA, 2022). Of these funds, $59.9 million were committed to provide for the expansion of the Lighthouse Project to all parenting matters (including matters involving applications for parenting and property orders) in 15 family law registries (Evidence to Senate Estimates Committee, April 4, 2022; Evidence to Senate Estimates Committee, April 5, 2022; FCFCoA, 2022). As noted in Chapter 2, the National Contravention List is intended to support parties to address their concerns about non-compliance in a quicker manner. The Court’s early insights were that the “overwhelming majority of these matters are resolving fairly quickly once they get a court hearing” and “only a handful of matters really need to move towards a judge because the parties, once they appear before a registrar, [they] start sorting their issues out very quickly” (Evidence to Senate Estimates Committee, October 26, 2021).

However, in light of the lack of published evidence on the impact of these changes, it is difficult to assess the extent to which they may or may not alleviate the problems identified in this report. This reinforces the need for continued gathering of evidence on the operation of the family law system, especially the FCFCoA. This should not only include evaluation of different initiatives but an assessment of the extent to which the changes mean an improved response to separated families, including children. Many inquiries have identified significant shortcomings in recent years (e.g. ALRC, 2019; JSC, 2020).

The findings in this report demonstrate a need for the following:

* Specialised screening and assessment approaches are required for matters involving family violence and/or child abuse and where children have particular health or other needs.
  + Assessment should focus on identifying the predominant aggressor (see further below) and any psychological and emotional needs a child has as a consequence of exposure to family violence and abuse, or as a result of other particular health needs, and identifying how to address these through therapeutic intervention and better parenting arrangements.
  + Children should be involved in specialised assessment processes (in appropriate ways) to ensure their needs are adequately assessed, noting that children may be fearful of retaliation should they speak out.
* Case management should be offered to ensure that litigation proceeds in a way that is not adverse to child wellbeing and results in matters being dealt with quickly and cost-effectively.
* Post-order supervision for at-risk children and parenting orders should be monitored.
* Where difficulties with the implementation of parenting orders are identified, there should be a dispute resolution conference involving a registrar supported by an assessment from a child expert. These conferences should occur where difficulties are identified from post-order supervision or where a party lodges a contravention application.

In recent policy and practice development in the family violence area, increased emphasis has been placed on the need to identify the “predominant aggressor” (Family Violence Reform Implementation Monitor [FVRIM], 2021) and “the person most in need of protection” (Nancarrow et al., 2020). The Victorian Royal Commission into Family Violence recognised the problem of “misidentification” which occurs where legal and other responses fail to accurately identify who the perpetrator is in a given situation (FVRIM, 2021). This approach is reflected in the Victorian Family Violence Capability Framework (Family Safety Victoria, 2017). In light of the proportion of court files that include allegations of family violence made by both mothers and fathers, the adoption of this approach in the family law system should lead to improved assessment of family violence dynamics.

The data in this study indicate the need for a mechanism to monitor parenting orders where the children’s needs and the risk and harm factors indicate that this is required. Post-order supervision by family consultants is already provided in FLA s 65L. However, the ALRC Family Law for the Future report noted limited use of this provision due to a lack of resources (ALRC, 2019, p. 344).

Supervision by the Court Child Experts or other court-based supervision was one of several harm-reducing strategies raised by participants in this research. Other strategies included private or public and non-government organisations undertaking this monitoring role. The available data do not allow us to reach conclusions on the preferred mechanisms. However, it is apparent that any implementation of a monitoring mechanism should be evidence-based and trauma-informed, and implemented by professionals with the requisite skills and experience in dealing with families characterised by domestic and family violence and other complex risk and harm factors. It should also not be costly for families or open to misuse as an extension of a party’s coercive and controlling behaviour.

The second difficulty in formulating specific suggestions for responses arises in the context of the overall uncertainty regarding the direction of any legislative reform that might occur. The improved child safety referred to in this chapter could be achieved in a number of different ways, including through changes to the s 60CC framework for considering best interests and changing the presumption of shared parental responsibility (s 61DA). In this context, it is appropriate to reinforce that the findings of this research indicate a need for the legislative framework to support:

* careful consideration of whether orders for shared parental responsibility are appropriate in light of any concerns about family violence and child safety
* the identification of whether the child has been exposed to family violence or abuse or has other health or development needs that indicate a need for orders that will best support recovery from trauma and healthy development, and which may therefore exclude a consideration of shared parental responsibility
* the need for time arrangements to be informed by the child’s needs and views, including any particular health needs they may have arisen from exposure to family violence and abuse or other health-related conditions.

In relation to the legislative provisions concerning contravention specifically, the findings in this report:

* do not support changes that would strengthen the punitive aspects of the regime
* show that the punitive aspects of the existing regime reduce accessibility due to the quasi-criminal nature of the jurisdiction they establish and the level of technical and evidentiary rigour that is required to meet the potential quasi-criminal burden of proof
* show that the punitive aspects of the regime are likely to operate as a disincentive for parties who need to seek safer and more appropriate parenting arrangements
* support changes that enable flexibility to adjust arrangements if changes in the needs and circumstances of the parties and specifically the children occur.

The empirical evidence from this research highlights three issues of particular significance for practice. They relate to:

* improvements in professional expertise in the area of family violence and trauma-informed practice
* drafting parenting orders that are safe and fit for purpose
* facilitating the participation of children and young people in decision-making.

Data from the SoP&C and the court files component reinforce previous empirical research identifying the complex needs and difficult dynamics of families who engage with family law system services to resolve their post-separation parenting arrangements. Concerns to ensure the making of parenting orders that are safe and appropriate from the outset were identified by both professionals and parents and carers, who sought:

* greater consideration of risk issues by judicial officers and lawyers
* improved professional development and expertise in the area of family violence
* better training in trauma-informed practice.

This training and professional development was described as helping family law system professionals to draft both safe and workable orders, having regard to the reality of the parents’ relationship and the risks posed by parents’ behaviour and the child’s safety and best interests.

The findings show an urgent need for a system design that is trauma-informed and can respond in a trauma-informed way, particularly given the high proportion of court files involving contraventions with allegations or evidence of family violence, child abuse or child safety concerns. Although the court file data show that cross-allegations of family violence and child abuse are common, the data overall, particularly the findings in relation to the allegations and evidence on court files, reveal that fathers are more likely to be primary aggressors compared to mothers. The findings also showed that fathers are more likely to be instigators of litigation. Professionals and parents expressed concern about the misuse of litigation, supporting observations that the legal system, and the contravention regime in particular, can be used to perpetuate coercive control and systems abuse.

The need for training was identified in this context to better equip family law system professionals to engage in improved screening and assessment of family violence, to identify and respond to the impact of power imbalances, and to identify vexatious litigation as a form of coercion and control. The data also point to the importance of facilitating a better understanding of family violence so as not to mislabel proceedings based on protective behaviour as vexatious.

These findings echo the ALRC’s recommendation for increased and consistent professional development requirements for all legal practitioners with respect to family violence, and reflect recent developments in practice in the FCFCoA. In particular, the identification of risk is among the 10 core principles set out in the recently introduced Central Practice Direction (FCFCoA, 2021b), and increased funding of the FCFCoA has in turn supported increased capacity for case management and the implementation of new initiatives.[[19]](#footnote-19) A recent initiative, noted above, is the Lighthouse Project, a pilot involving triaging and risk screening and a specialist list for family violence matters in the family law courts (Australian Government Attorney-General’s Department, 2021a). Data from the interim evaluation of this pilot indicate that nearly two thirds of parenting matters (64%) were being classified as high risk in the initial screening phase (Commonwealth of Australia, 2021, p. 86).

Reinforcing the findings of earlier research (ALRC, 2019; Carson, Dunstan et al., 2018; JSC, 2021; Kaspiew et al., 2014; Parkinson & Cashmore, 2008), both professionals and parents and carers identified a need to enhance participation of children and young people in the decision-making process for parenting orders.

The data suggest that facilitating children and young people’s safe and effective participation in decision-making would not only support the development of safe and appropriate parenting arrangements that accommodate their needs and best interests but also, in turn, support ongoing compliance with orders. It is notable that most parents and carers who participated in the survey disagreed with the proposition that the current process worked for their children, and data from both the professionals study and qualitative interviews were illustrative of the need for a system that was both child-centred and supported children to participate in the decision-making process.

Professionals, in particular, identified the salience of children’s participation in the effective operation of parenting orders. They observed that if orders were made in consultation with children and accounted for their articulated needs and concerns, and the orders were then explained to the children, it was more likely that they would be prepared to comply with them. It is important to acknowledge children’s experiences of trauma and the implications of these when considering safe and effective opportunities for children to engage in greater participation in the decision-making process. The findings also indicate a need for parenting orders and post-order practice (e.g. consultation, counselling or mediation) based on a child-centred approach, not only by accommodating their views, needs and concerns, but also by providing sufficient flexibility to accommodate children’s changing needs and circumstances over time. They also suggest the importance of encouraging children’s agency in seeking changes to arrangements when needed.

Critical to the development of this child-centred approach are mechanisms that support both parents and professionals to consider parenting arrangements through the lens of the individual child or young person, and for the system to more effectively acknowledge children and young people’s agency and capacity to participate in the decision-making process (Fehlberg et al., 2022; see also Carson et al., 2018; Eekelaar, 1994, 2002, 2015, 2020; Fernando, 2014; Fitzgerald & Graham, 2011; Kaspiew et al., 2014, Ross, 2013; Smart, 2002). Operationalising safe, genuine and effective options for children and young people to participate is critical:

* from a rights-based perspective, giving effect to the participatory rights enshrined in the United Nations Convention on the Rights of the Child (Article 12)
* from an evidentiary perspective, to ensure informed decision-making particularly in cases characterised by risk and harm factors such as domestic and family violence
* because it is consistent with children’s and young people’s best interests and their agency and self-efficacy (Carson, Dunstan et al., 2018).

The current study, together with existing research (including the Carson, Dunstan et al., 2018 study and, more recently, Fehlberg et al., 2022), illustrates that when making decisions about parenting arrangements, taking a child-centred approach not only supports the making of safe parenting orders, but also supports the safety and wellbeing of the individual children and young people in each case.

7.10 Further research

For the need to assess the combined impact of the recent changes to the FCFCoA referred to earlier, there are several areas where the findings set out in this report demonstrate a need for further research:

* the implementation of more effective options for children and young people to participate in family law decision-making and to operationalise safe and effective professional practice in this context
* the operation of the legislative provisions relating to vexatious litigants and how family law system professionals, including judges, could be supported to better identify and respond to the misuse of litigation
* the operation of shared parental responsibility orders, including whether they:
  + support shared decision-making as a matter of practicality or operate symbolically
  + increase or reduce conflict in situations where there has been family violence or high conflict
  + are associated with reduced or improved child wellbeing and in what circumstances either of these outcomes is more or less likely.

In the absence of research investigating compliance with parenting orders specifically with Aboriginal and Torres Strait Islander peoples, particular consideration is also required in relation to the challenges and experiences faced by Aboriginal and Torres Strait Islander peoples in this context to ensure that legislative and policy developments accommodate their needs. This includes examining and tailoring recommendations for these families in relation to trauma-informed responses, therapeutic support and interventions, and the particular barriers in circumstances involving non-compliance with parenting orders. Any legislative reform of pt VII FLA provisions, including in relation to shared parental responsibility, should involve consideration of kinships and practice responses relating to training and professional development and the need to support cultural competence for professionals engaging with Aboriginal and Torres Strait Islander families.

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Appendix A:  
Additional tables and figures

**Table A1:**SoP&C: Sample characteristics, by gender

Are you a:

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Parent | 157 | **98.7** | 301 | **98.0** | 458 | **98.3** |
| Carer | 2 | **1.3** | 6 | **2.0** | 8 | **1.7** |
| Total | 159 | **100.0** | 307 | **100.0** | 466 | **100.0** |

What is your age in years?\*

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| 18–24 years | 0 | **0** | 2 | **0.7** | 2 | **0.4** |
| 25–34 years | 23 | **14.5** | 64 | **20.8** | 87 | **18.7** |
| 35–44 years | 70 | **44.0** | 159 | **51.8** | 229 | **49.1** |
| 45–54 years | 54 | **34.0** | 77 | **25.1** | 131 | **28.1** |
| 55 years or older | 12 | **7.5** | 3 | **1.0** | 15 | **3.2** |
| Prefer not to say | 0 | **0.0** | 2 | **0.7** | 2 | **0.4** |
| Total | 159 | **100.0** | 307 | **100.0** | 466 | **100.0** |

In which state or territory do you live?

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Australian Capital Territory | 5 | **3.1** | 8 | **2.6** | 13 | **2.8** |
| New South Wales | 39 | **24.5** | 82 | **26.7** | 121 | **26.0** |
| Northern Territory | 2 | **1.3** | 5 | **1.6** | 7 | **1.5** |
| Queensland | 49 | **30.8** | 86 | **28** | 135 | **29.0** |
| South Australia | 9 | **5.7** | 15 | **4.9** | 24 | **5.2** |
| Tasmania | 7 | **4.4** | 15 | **4.9** | 22 | **4.7** |
| Victoria | 33 | **20.8** | 77 | **25.1** | 110 | **23.6** |
| Western Australia | 14 | **8.8** | 19 | **6.2** | 33 | **7.1** |
| Other | 1 | **0.6** | 0 | **0.0** | 1 | **0.2** |
| Total | 159 | **100.0** | 307 | **100.0** | 466 | **100.0** |

Do you identify as Aboriginal and/or Torres Strait Islander?

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Yes | 10 | **6.3** | 19 | **6.2** | 29 | **6.2** |
| No | 147 | **92.5** | 284 | **92.5** | 431 | **92.5** |
| Prefer not to say | 2 | **1.3** | 4 | **1.3** | 6 | **1.3** |
| Total | 159 | **100.0** | 307 | **100.0** | 466 | **100.0** |

Country of birth?

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Not born in Australia | 22 | **13.8** | 39 | **12.7** | 61 | **13.1** |
| Born in Australia | 137 | **86.2** | 268 | **87.3** | 405 | **86.9** |
| Total | 159 | **100.0** | 307 | **100.0** | 466 | **100.0** |

Highest level of education you have completed?\*

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Year 11 or under | 20 | **12.6** | 23 | **7.5** | 43 | **9.2** |
| Year 12 | 19 | **11.9** | 21 | **6.8** | 40 | **8.6** |
| Certificate/diploma/adv. diploma | 66 | **41.5** | 112 | **36.5** | 178 | **38.2** |
| Degree or higher | 52 | **32.7** | 149 | **48.5** | 201 | **43.1** |
| Prefer not to say | 2 | **1.3** | 2 | **0.7** | 4 | **0.9** |
| Total | 159 | **100.0** | 307 | **100.0** | 466 | **100.0** |

Income tertile?\*

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Lowest tertile (including negative or zero income) | 38 | **27.9** | 152 | **52.1** | 190 | **44.4** |
| Middle tertile | 39 | **28.7** | 66 | **22.6** | 105 | **24.5** |
| Highest tertile | 59 | **43.4** | 74 | **25.3** | 133 | **31.1** |
| Total | 136 | **100.0** | 292 | **100.0** | 428 | **100.0** |

What is your total gross income before tax?\*

| Characteristics | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Negative or zero income | 1 | **0.6** | 4 | **1.3** | 5 | **1.1** |
| $1 to $9,999 | 0 | **0** | 2 | **0.7** | 2 | **0.4** |
| $10,000 to $19,999 | 6 | **3.8** | 17 | **5.5** | 23 | **4.9** |
| $20,000 to $29,999 | 9 | **5.7** | 55 | **17.9** | 64 | **13.7** |
| $30,000 to $39,999 | 11 | **6.9** | 34 | **11.1** | 45 | **9.7** |
| $40,000 to $49,999 | 11 | **6.9** | 40 | **13** | 51 | **10.9** |
| $50,000 to $59,999 | 15 | **9.4** | 28 | **9.1** | 43 | **9.2** |
| $60,000 to $79,999 | 24 | **15.1** | 38 | **12.4** | 62 | **13.3** |
| $80,000 to $99,999 | 22 | **13.8** | 34 | **11.1** | 56 | **12** |
| $100,000 to $124,999 | 19 | **11.9** | 19 | **6.2** | 38 | **8.2** |
| $125,000 to $149,999 | 7 | **4.4** | 13 | **4.2** | 20 | **4.3** |
| $150,000 or more | 11 | **6.9** | 8 | **2.6** | 19 | **4.1** |
| Prefer not to say | 23 | **14.5** | 15 | **4.9** | 38 | **8.2** |
| **Total** | 159 | **100** | 307 | **100** | 466 | **100** |

Note: \* Statistically significant difference at p<0.05. Percentages may not sum to exactly 100 due to rounding.

**Table A2:** SoP&C: How primary parenting orders were made, by gender

| How primary parenting orders were made | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| After completion of a final hearing/trial and final orders were made by a judge | 58 | **36.7** | 95 | **31.5** | 153 | **33.3** |
| After litigation had started but before a judge made final orders (including situations where litigation resolved and consent orders were made by agreement between the parties or where litigation was discontinued after interim orders were made by the judge) | 86 | **54.4** | 177 | **58.6** | 263 | **57.2** |
| After family dispute resolution and with no litigation being started | 5 | **3.2** | 14 | **4.6** | 19 | **4.1** |
| After negotiations with the other parent/carer and with no litigation being started | 9 | **5.7** | 16 | **5.3** | 25 | **5.4** |
| **Total** | 158 | **100.0** | 302 | **100.0** | 460 | **100.0** |

**Table A3:** SoP&C: Legal representation, by gender

| Did you have legal representation? | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Yes – all of the time | 80 | **55.6** | 159 | **58.5** | 239 | **57.5** |
| Some of the time | 51 | **35.4** | 95 | **34.9** | 146 | **35.1** |
| None of the time | 13 | **9.0** | 18 | **6.6** | 31 | **7.5** |
| **Total** | 144 | **100.0** | 272 | **100.0** | 416 | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A4:**SoP&C: Appointment of Independent Children’s Lawyer and whether Independent Children’s Lawyer spoke with the child, by gender

| **Was an Independent Children’s Lawyer appointed to represent the best interests of the child/children?** | Males  No. | **Males**  **%** | Females  No. | **Females**  **%** | Total  No. | **Total**  **%** |
| --- | --- | --- | --- | --- | --- | --- |
| Yes | 78 | **54.2** | 157 | **57.7** | 235 | **56.5** |
| No | 66 | **45.8** | 115 | **42.3** | 181 | **43.5** |
| **Total** | 144 | **100.0** | 272 | **100.0** | 416 | **100.0** |

| **If ICL appointed: Did the Independent Children’s Lawyer speak with the child/children?** | Males  No. | **Males**  **%** | Females  No. | **Females**  **%** | Total  No. | **Total**  **%** |
| --- | --- | --- | --- | --- | --- | --- |
| Yes | 34 | **44.2** | 69 | **43.9** | 103 | **44.0** |
| No | 43 | **55.8** | 88 | **56.1** | 131 | **56.0** |
| **Total** | 77 | **100.0** | 157 | **100.0** | 234 | **100.0** |

**Table A5:** SoP&C: Family Report prepared and whether Family Report writer spoke with the child, by gender

| Was a Family Report prepared? | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Yes | 116 | **80.6** | 204 | **75.6** | 320 | **77.3** |
| No | 28 | **19.4** | 66 | **24.4** | 94 | **22.7** |
| **Total** | 144 | **100.0** | 270 | **100.0** | 414 | **100.0** |

| If Family Report prepared: Did the Family Report writer speak with the child/children? | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| --- | --- | --- | --- | --- | --- | --- |
| Yes | 93 | **80.9** | 167 | **81.9** | 260 | **81.5** |
| No | 22 | **19.1** | 37 | **18.1** | 59 | **18.5** |
| **Total** | 115 | **100.0** | 204 | **100.0** | 319 | **100.0** |

T**able A6:**SoP&C: After parenting orders were made, did anyone explain them and who was the main person who explained the orders, by gender

| **After your parenting orders were made, did anyone explain them to you?** | Males  No. | **Males**  **%** | Females  No. | **Females**  **%** | Total  No. | **Total**  **%** |
| --- | --- | --- | --- | --- | --- | --- |
| Yes | 76 | **49.4** | 158 | **53.4** | 234 | **52.0** |
| No | 78 | **50.6** | 138 | **46.6** | 216 | **48.0** |
| **Total** | 154 | **100.0** | 296 | **100.0** | 450 | **100.0** |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| If anyone explained orders: Who was the main person who explained the orders? | Males  No. | Males  % | Females  No. | Females  % | Total  No. | Total  % |
| Judicial officer (including judge or registrar) | 6 | **7.9** | 9 | **5.7** | 15 | **6.4** |
| Lawyer/barrister | 68 | **89.5** | 143 | **90.5** | 211 | **90.2** |
| Family consultant | 0 | **0** | 2 | **1.3** | 2 | **0.9** |
| Family dispute resolution practitioner | 1 | **1.3** | 3 | **1.9** | 4 | **1.7** |
| Other | 1 | **1.3** | 1 | **0.6** | 2 | **0.9** |
| **Total** | 76 | **100.0** | 158 | **100.0** | 234 | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A7:** SoP&C: Have any provisions in the parenting orders been breached, by how easy the parenting orders are to understand

| Are your parenting orders easy to understand? | Provisions in the parenting orders have been breached  % | Provisions in the parenting orders have not been breached  % |
| --- | --- | --- |
| Very easy | 21.7 | 20.4 |
| Easy | 53.7 | 53.7 |
| Not easy | 24.7 | 25.9 |
| Total | **100.0** | **100.0** |
| n | 397 | 54 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A8:**Court files: Primary parenting proceedings: Legal representation by application status

| Primary parenting proceedings | Applicants  % | Respondents  % |
| --- | --- | --- |
| Self-represented | 7.3 | 17.7 |
| Legal aid/grant of aid for legal assistance (public) | 4.3 | 5.7 |
| Community legal centre | 1.7 | 1.3 |
| Private legal representation | 75.0 | 63.0 |
| Represented for part of the proceedings | 10.3 | 10.7 |
| Partially private, partially community legal centre | 0.0 | 0.0 |
| Not stated | 1.3 | 1.7 |
| Total | **100.0** | **100.0** |
| No. of cases | **300** | **300** |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A9:**Court files: Contravention proceedings: Legal representation by application status

| Contravention proceedings | Applicants  % | Respondents  % |
| --- | --- | --- |
| Self-represented | 28.3 | 36.3 |
| Legal aid/grant of aid for legal assistance (public) | 3.7 | 3.7 |
| Community legal centre | 1.0 | 1.0 |
| Private legal representation | 57.0 | 50.4 |
| Represented for part of the proceedings | 6.7 | 5.7 |
| Partially private, partially community legal centre | 0.3 | 0.0 |
| Not stated | 3.0 | 3.0 |
| Total | **100.0** | **100.0** |
| No. of cases | 300 | 300 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A10:**Court files: Demographic characteristics, by role in family and legal representation

Age (at application) – Primary parenting proceedings

| Value | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Mean (years) | 42.2 | 40.4 | 36.7 | 37.2 |
| (SD) | 7.3 | 7.8 | 7.6 | 7.0 |
| n | 36 | 249 | 37 | 246 |

Age (at application) – Contravention proceedings

| Value | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Mean (years) | 40.9 | 40.6 | 36.3 | 37.7 |
| (SD) | 6.9 | 8.2 | 6.8 | 7.2 |
| n | 91 | 190 | 98 | 182 |

Country of birth – Primary parenting proceedings

| Country of birth | Fathers  Self-rep  % | Fathers  Legal rep  % | Mothers  Self-rep  % | Mothers  Legal rep  % |
| --- | --- | --- | --- | --- |
| Australia | 29.7 | 31.2 | 47.4 | 27.7 |
| Overseas | 18.9 | 19.4 | 15.8 | 20.6 |
| Not stated | 51.4 | 49.4 | 36.8 | 51.8 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Country of birth – Contravention proceedings

| Country of birth | Fathers  Self-rep  % | Fathers  Legal rep  % | Mothers  Self-rep  % | Mothers  Legal rep  % |
| --- | --- | --- | --- | --- |
| Country of birth | % | % | % | % |
| Australia | 36.3 | 28.9 | 31.7 | 28.9 |
| Overseas | 15.4 | 20.6 | 15.8 | 22.5 |
| Not stated | 48.4 | 50.5 | 52.5 | 48.7 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Australian citizen status – Primary parenting proceedings

| Australian citizen status | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Yes | 81.1 | 85.8 | 78.9 | 85.4 |
| No | 10.8 | 8.3 | 10.5 | 9.9 |
| Not stated | 8.1 | 5.9 | 10.5 | 4.7 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Australian citizen status – Contravention proceedings

| Australian citizen status | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Yes | 84.6 | 85.6 | 82.2 | 84.5 |
| No | 7.7 | 8.8 | 11.9 | 9.6 |
| Not stated | 7.7 | 5.7 | 5.9 | 5.9 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 91 | 194 | 101 | 187 |

Indigenous status – Primary parenting proceedings

| Indigenous status | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Indigenous | 0.0 | 4.0 | 0.0 | 2.8 |
| Non-Indigenous | 91.9 | 91.3 | 97.4 | 92.1 |
| Not stated | 8.1 | 4.7 | 2.6 | 5.1 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Indigenous status – Contravention proceedings

| Indigenous status | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Indigenous | 4.4 | 3.1 | 1.0 | 3.2 |
| Non-Indigenous | 91.2 | 91.2 | 97.0 | 90.4 |
| Not stated | 4.4 | 5.7 | 2.0 | 6.4 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 91 | 194 | 101 | 187 |

Employment status – Primary parenting proceedings

| Employment status | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Employed | 56.8 | 71.5 | 36.8 | 44.7 |
| Employed, full-time | 27.0 | 52.2 | 13.2 | 18.2 |
| Employed, part-time | 2.7 | 2.0 | 15.8 | 17.0 |
| Employed, unclear hours | 27.0 | 17.4 | 7.9 | 9.5 |
| Not employed | 21.6 | 13.8 | 44.7 | 38.7 |
| Not stated | 21.6 | 14.6 | 18.4 | 16.6 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Employment status – Contravention proceedings

| Employment status | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Employed | 64.8 | 71.1 | 41.6 | 43.9 |
| Employed, full-time | 39.6 | 52.1 | 16.8 | 17.6 |
| Employed, part-time | 2.2 | 2.1 | 14.9 | 18.2 |
| Employed, unclear hours | 23.1 | 17.0 | 9.9 | 8.0 |
| Not employed | 20.9 | 12.4 | 44.6 | 37.4 |
| Not stated | 14.3 | 16.5 | 13.9 | 18.7 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 91 | 194 | 101 | 187 |

Occupation, if employed – Primary parenting proceedings

| Occupation, if employed | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Manager | 4.8 | 10.5 | 0.0 | 10.6 |
| Professional | 38.1 | 32.0 | 42.9 | 34.5 |
| Technician/trade worker | 19.0 | 27.1 | 7.1 | 0.9 |
| Community and personal service worker | 4.8 | 6.6 | 14.3 | 24.8 |
| Clerical and administrative worker | 0.0 | 0.6 | 14.3 | 13.3 |
| Sales worker | 9.5 | 5.0 | 14.3 | 5.3 |
| Machinery operator/driver | 19.0 | 6.1 |  |  |
| Labourer | 0.0 | 9.4 | 0.0 | 5.3 |
| Unidentifiable/not stated | 4.8 | 2.8 | 7.1 | 5.3 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 21 | 181 | 14 | 113 |

Occupation, if employed – Contravention proceedings

| Occupation, if employed | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| --- | --- | --- | --- | --- |
| Manager | 6.8 | 10.9 | 9.5 | 9.8 |
| Professional | 35.6 | 31.2 | 23.8 | 39.0 |
| Technician/trade worker | 25.4 | 26.8 | 2.4 | 1.2 |
| Community and personal service worker | 11.9 | 4.3 | 28.6 | 22.0 |
| Clerical and administrative worker | 0.0 | 0.7 | 11.9 | 14.6 |
| Sales worker | 3.4 | 6.5 | 9.5 | 4.9 |
| Machinery operator/driver | 3.4 | 9.4 | 0.0 | 0.0 |
| Labourer | 10.2 | 7.2 | 7.1 | 3.7 |
| Unidentifiable/not stated | 3.4 | 2.9 | 7.1 | 4.9 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 59 | 138 | 42 | 82 |

Principal income – Primary parenting proceedings

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Principle income | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| Wages/salaries | 21.6 | 43.9 | 18.4 | 27.3 |
| Own unincorporated business/other personal income | 5.4 | 6.7 | 2.6 | 1.2 |
| Government income support/benefits | 13.5 | 5.9 | 21.1 | 19.0 |
| Child support/maintenance | 0.0 | 0.4 | 0.0 | 2.0 |
| Other | 2.7 | 0.8 | 2.6 | 2.8 |
| No income | 0.0 | 0.4 | 0.0 | 0.4 |
| Not stated | 56.8 | 41.9 | 55.3 | 47.4 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Principal income – Contravention proceedings

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Principle income | Fathers  Self-rep | Fathers  Legal rep | Mothers  Self-rep | Mothers  Legal rep |
| Wages/salaries | 37.4 | 42.3 | 23.8 | 26.7 |
| Own unincorporated business/other personal income | 4.4 | 7.2 | 2.0 | 0.5 |
| Government income support/benefits | 11.0 | 5.2 | 21.8 | 17.6 |
| Child support/maintenance | 1.1 | 0.0 | 3.0 | 1.1 |
| Other | 1.1 | 1.0 | 2.0 | 3.2 |
| No income | 0.0 | 0.5 | 0.0 | 0.5 |
| Not stated | 45.1 | 43.8 | 47.5 | 50.3 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 91 | 194 | 101 | 187 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A11:**Court files: Health and other issues, by legal representation, fathers and mothers

Health and other issues – Primary parenting proceedings

| Health and other issues (multiple responses could be selected) | Fathers  Self-rep  % | Fathers  Legal rep  % | Mothers  Self-rep  % | Mothers  Legal rep  % |
| --- | --- | --- | --- | --- |
| Medical conditions or disability | 13.5 | 10.7 | 10.5 | 8.3 |
| Health concerns | 2.7 | 3.6 | 0.0 | 5.5 |
| Substance abuse (e.g. drugs, alcohol) | 37.8 | 28.9 | 23.7 | 15.0 |
| Gambling concerns | 2.7 | 4.7 | 0.0 | 1.6 |
| Mental health concerns | 37.8 | 26.9 | 39.5 | 41.9 |

Health and other issues – Contravention proceedings

| Health and other issues (multiple responses could be selected) | Fathers  Self-rep  % | Fathers  Legal rep  % | Mothers  Self-rep  % | Mothers  Legal rep  % |
| --- | --- | --- | --- | --- |
| Medical conditions or disability | 8.8 | 11.9 | 7.9 | 9.1 |
| Health concerns | 5.5 | 2.6 | 4.0 | 5.9 |
| Substance abuse (e.g. drugs, alcohol) | 34.1 | 28.9 | 22.8 | 13.4\* |
| Gambling concerns | 3.3 | 5.2 | 0.0 | 2.1 |
| Mental health concerns | 37.4 | 24.7\* | 40.6 | 41.2 |

Number of issues – Primary parenting proceedings

| Number of issues | Fathers  Self-rep  % | Fathers  Legal rep  % | Mothers  Self-rep  % | Mothers  Legal rep  % |
| --- | --- | --- | --- | --- |
| No issues | 43.2 | 50.2 | 47.4 | 47.8 |
| One | 29.7 | 30.8 | 31.6 | 36.4 |
| Two or more | 27.0 | 19.0 | 21.1 | 15.8 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 37 | 253 | 38 | 253 |

Number of issues – Contravention proceedings

| Number of issues | Fathers  Self-rep  % | Fathers  Legal rep  % | Mothers  Self-rep  % | Mothers  Legal rep  % |
| --- | --- | --- | --- | --- |
| No issues | 44.0 | 51.0 | 46.5 | 49.2 |
| One | 31.9 | 30.4 | 38.6 | 33.2 |
| Two or more | 24.2 | 18.6 | 14.9 | 17.7 |
| Total | **100.0** | **100.0** | **100.0** | **100.0** |
| n | 91 | 194 | 101 | 187 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05). Percentages may not sum to exactly 100 due to rounding.

**Table A12:**Court files: Primary parenting proceedings that were the subject of the contravention proceedings: Care time arrangements for children aged under age 18 years, by whether involving multiple contravention applications

| Care time – Detailed categories | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total |
| --- | --- | --- | --- |
| Living with mother, no face-to-face contact with father | 1.4 | 5.4\* | 2.6 |
| Father never sees child – no contact at all | 0.6 | 4.7 | 1.8 |
| Father never sees child – contact only by phone, electronic or other means | 0.8 | 0.7 | 0.8 |
| Father sees child in daytime only | 2.0 | 6.7\* | 3.4 |
| 66%–99% with mother (1%–34% with father) | 34.9 | 34.2 | 34.7 |
| Shared time (35%–65% with each parent) | 22.6 | 18.1 | 21.3 |
| 53%–65% with mother (35%–47% with father) | 12.0 | 9.4 | 11.2 |
| 48%–52% with each parent (equal care time) | 8.9 | 7.4 | 8.5 |
| 35%–47% with mother (53%–65% with father) | 1.7 | 1.3 | 1.6 |
| 1%–34% with mother (66%–99% with father) | 2.0 | 1.3 | 1.8 |
| Mother sees child in daytime only | 2.2 | 3.4 | 2.6 |
| Living with father, no face-to-face contact with mother | 1.7 | 2.0 | 1.8 |
| Mother never sees child – contact only by phone, electronic or other means | 0.3 | 0.0 | 0.2 |
| Mother never sees child – no contact at all | 1.4 | 2.0 | 1.6 |
| Living with mother, unspecified time with father | 23.5 | 16.8 | 21.5 |
| Live with mother, time with father as agreed | 18.2 | 15.4 | 17.4 |
| Live with mother, time with father as only if child wishes, mother’s discretion | 2.2 | 1.3 | 2.0 |
| Live with mother, time with father gradually increasing, or condition attached | 3.1 | 0.0 | 2.2 |
| Living with father, unspecified time with mother | 7.5 | 8.7 | 7.9 |
| Live with father, time with mother as agreed | 3.9 | 6.7 | 4.7 |
| Live with father, time with mother as only if child wishes, father’s discretion | 0.8 | 0.0 | 0.6 |
| Live with father, time with mother gradually increasing | 2.8 | 2.0 | 2.6 |
| Other | 2.2 | 3.4 | 2.6 |
| Total | **100.0** | **100.0** | **100.0** |
| Number of children | 358 | 149 | 507 |

Note: Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05). Percentages may not sum to exactly 100 due to rounding.

**Table A13:** Court files and published/unpublished judgment files: Victims and perpetrators in cases involving allegations of family violence, child abuse or safety concerns

Primary parenting proceedings

| Court files | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Applicant | 62.9 | 85.8 |
| Respondent | 74.9 | 77.9 |
| N | 267 | 267 |

Contravention proceedings

| Court files | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Applicant | 33.9 | 74.8 |
| Respondent | 49.6 | 59.1 |
| N | 127 | 127 |

Published judgment files – Primary parenting proceedings

| Court files | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Applicant | 41.2 | 58.8 |
| Respondent | 43.1 | 47.1 |
| N | 51 | 51 |

Published judgment files – Contravention proceedings

| Court files | Victims  % | Perpetrators  % |
| --- | --- | --- |
| Applicant | 9.1 | 81.8 |
| Respondent | 29.5 | 27.3 |
| N | 44 | 44 |

**Table A14:**Court files: Primary parenting proceedings with family violence allegations: Whether the allegation involved family/domestic violence and/or child abuse, by party and gender of parent

|  |  |  |
| --- | --- | --- |
| Whether the allegations involved family / domestic violence and / or child abuse | Applicant made allegations against respondent  % | Respondent made allegations against applicant  % |
| Family/domestic violence only | 18.1 | 21.5 |
| Child abuse/safety concerns only | 25.5 | 17.0 |
| Both family/domestic violence and child abuse/safety concerns | 56.4 | 61.4 |
| Total | **100.0** | **100.0** |
| N | 204 | 223 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A15:** Court files: Contraventions involving allegations: Whether the allegation involved family/domestic violence and/or child abuse

| Whether the allegations involved family / domestic violence and / or child abuse | Applicant made allegations against respondent  % | Respondent made allegations against applicant  % |
| --- | --- | --- |
| Family/domestic violence only | 18.1 | 7.7 |
| Child abuse/safety concerns only | 50.0 | 44.0 |
| Both family/domestic violence and child abuse/safety concerns | 31.9 | 48.4 |
| Total | **100.0** | **100.0** |
| N | 72 | 91 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A16:**Court files: Legal representation in primary parenting proceedings, by alleged victim or perpetrator of family violence

Fathers

| Primary parenting proceedings | Neither  % | Alleged FV victim  % | Alleged FV perpetrator  % | Alleged both FV victim and perpetrator  % |
| --- | --- | --- | --- | --- |
| Self-represented | 11.1 |  | 16.0 | 9.6 |
| Legally represented | 88.9 |  | 84.0 | 90.4 |
| Total | **100.0** |  | **100.0** | **100.0** |
| No. of cases | 36 | 2 | 125 | 125 |

Mothers

| Primary parenting proceedings | Neither  % | Alleged FV victim  % | Alleged FV perpetrator  % | Alleged both FV victim and perpetrator  % |
| --- | --- | --- | --- | --- |
| Self-represented | 9.1 | 12.5 |  | 16.1 |
| Legally represented | 90.9 | 87.5 |  | 83.9 |
| Total | **100.0** | **100.0** |  | **100.0** |
| No. of cases | 33 | 80 | 21 | 155 |

Note: Data not reported where sample sizes n<30.

**Table A17:** Court files: Cases involving family violence/abuse/safety concerns, whether any state child protection (current or historical), by number of contravention applications

| Cases involving family violence/abuse/safety concerns | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total |
| --- | --- | --- | --- |
| Yes | 27.1 | 28.7 | 27.6 |
| Yes – current – at the time of the contravention proceedings | 2.1 | 5.8 | 3.3 |
| Yes – past – at the time of the contravention proceedings | 2.1 | 3.5 | 2.6 |
| Yes – current – at the time of the primary parenting proceedings | 8.5 | 10.3 | 9.1 |
| Yes – past – at the time of the primary parenting proceedings | 14.4 | 9.2 | 12.7 |
| No | 60.1 | 63.2 | 61.1 |
| Not stated | 12.8 | 8.1 | 11.3 |
| Total | **100.0** | **100.0** | **100.0** |
| No. of cases | 188 | 87 | 275 |

**Table A18:**Court files: Whether any current/past personal protection orders (PPOs) on file, by number of contravention applications

| Cases involving family violence/abuse/safety concerns | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total |
| --- | --- | --- | --- |
| Any | 48.5 | 53.1 | 50.0 |
| Current only | 17.7 | 16.7 | 17.3 |
| Past only | 26.5 | 28.1 | 27.0 |
| Both current and past | 4.4 | 8.3 | 5.7 |
| None | 32.8 | 31.3 | 32.3 |
| Unclear | 10.8 | 6.3 | 9.3 |
| No FV | 7.8 | 9.4 | 8.3 |
| Total | **100.0** | **100.0** | **100.0** |
| No. of cases | 204 | 86 | 300 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A19:**Court files: Cases where evidence regarding family violence, child abuse and safety concerns: Whether any current/past personal protection orders (PPOs) on file, by number of contravention applications

|  |  |  |  |
| --- | --- | --- | --- |
| Cases where evidence regarding family violence, child abuse and safety concerns | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total |
| Current only | 19.2 | 18.4 | 18.9 |
| Past only | 28.7 | 31.0 | 29.5 |
| Both current and past | 4.8 | 9.2 | 6.2 |
| None | 35.6 | 34.5 | 35.3 |
| Don’t know | 11.7 | 6.9 | 10.2 |
| Total | **100.0** | **100.0** | **100.0** |
| No. of cases | 188 | 87 | 275 |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A20:**Court files: Most recent PPO, whether final or interim order

| Status of most recent PPO? | % |
| --- | --- |
| Final | 33.3 |
| Interim | 50.7 |
| Not available/unclear | 13.3 |
| Other | 2.7 |
| Total | **100.0** |
| n | 150 |

Note: “Other” category includes temporary protection order, final undertaking.

**Table A21:** Court files: Most recent PPO, whether any breach

| Status of most recent PPO? | % |
| --- | --- |
| Yes | 23.5 |
| No | 28.2 |
| Other | 2.0 |
| Unclear | 46.3 |
| Total | **100.0** |
| n | 149 |

**Table A22:**Court files: Most recent PPO, protected person

| Most recent PPO, who was the protected person? | Number of contravention applications  One  % | Number of contravention applications  Multiple  % | Total |
| --- | --- | --- | --- |
| Children | 51.5 | 60.8 | 54.7 |
| Applicant (primary parenting) | 38.4 | 23.5 | 33.3 |
| Respondent (primary parenting) | 50.5 | 70.6\* | 57.3 |
| Other | 4.0 | 2.0 | 3.3 |
| Mother | 74.7 | 86.3 | 78.7 |
| Father | 12.1 | 7.8 | 10.7 |
| n | 99 | 51 | 150 |

**Table A23:**Court files: Does the PPO vary or suspend an existing parenting order?

| Vary or suspend parenting order? | n | % |
| --- | --- | --- |
| No | 102 | 68.5 |
| Not applicable – no parenting order | 8 | 5.4 |
| Not available/unclear | 31 | 20.8 |
| Other | 4 | 2.7 |
| Yes | 4 | 2.7 |
| **Total** | **149** | **100.0** |

Note: Percentages may not sum to exactly 100 due to rounding.

**Table A24:**Court files: Respondents’ claims in contravention applications, by application and gender

| Respondents’ claims in response to contravention application | Applications  First contravention application (n=300; %) | Applications  Second or later contravention applications (n=159; %) | Applications  All (n=459; %) | All  Fathers (n=340; %) | All  Mothers (n=103; %) |
| --- | --- | --- | --- | --- | --- |
| Reasonable excuse (list safety concerns) | 29.3 | 24.5 | 27.7 | 32.1 | 12.6\*\*\* |
| Reasonable excuse (did not understand the obligation/s under the orders – provide details) | 4.3 | 3.1 | 3.9 | 4.7 | 1.0 |
| Reasonable excuse (other) | 22.3 | 15.7 | 20.0 | 20.9 | 20.4 |
| Change in circumstances – detail changes | 3.3 | 3.8 | 3.5 | 2.9 | 5.8 |
| Refusal/views of child/young person | 18.7 | 16.4 | 17.9 | 20.6 | 9.7\* |
| Cross-allegation – misuse/abuse of court process | 3.3 | 5.7 | 4.1 | 4.1 | 3.9 |
| Cross-allegation – contravention of parenting orders – withheld/did not facilitate child/children’s time with the respondent | 1.3 | 2.5 | 1.7 | 1.5 | 2.9 |
| Cross-allegation – contravention of parenting orders – over-held children | 1.0 | 1.3 | 1.1 | 1.5 | 0.0 |
| Cross-allegation – contravention of parenting orders – non-compliance with the precise terms of the parenting orders – parenting time | 4.3 | 3.8 | 4.1 | 4.4 | 3.9 |
| Cross-allegation – contravention of parenting orders – non-compliance with the precise terms of the parenting orders – parental responsibility | 2.7 | 3.1 | 2.8 | 3.2 | 1.9 |
| Cross-allegation – contravention of parenting orders – did not facilitate communication with parent | 1.3 | 1.3 | 1.3 | 1.5 | 1.0 |
| Contravention of undertaking | 0.3 | 0.0 | 0.2 | 0.3 | 0.0 |
| Cross-allegation – other | 1.3 | 0.0 | 0.9 | 0.6 | 1.9 |
| Other | 2.0 | 5.0 | 3.1 | 2.4 | 4.9 |

Note: Multiple responses so percentages can sum to more than 100. Asterisks indicate that the difference between the two groups was statistically significant based on chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001).

The following available response options were not selected and are not reported in the table above:

1. Cross-allegation – contravention of registered parenting plan – withheld/did not facilitate child/children’s time with the respondent

2. Cross-allegation – contravention of registered parenting plan – over-held children

3. Cross-allegation – contravention of registered parenting plan – non-compliance with the precise terms of the registered parenting plan – parenting time

4. Cross-allegation – contravention of registered parenting plan – non-compliance with the precise terms of the registered parenting plan – parental responsibility

5. Cross-allegation – contravention of registered parenting plan – did not facilitate communication with parent.

**Table A25:**Court files: Orders respondents sought in contravention applications, by application and gender

| Orders respondents sought in contravention applications | Respondents  First contravention application (n=300; %) | Respondents  Second or later contravention applications (n=159; %) | Respondents  All (n=459; %) | All  Fathers (n=340; %) | All  Mothers (n=103; %) |
| --- | --- | --- | --- | --- | --- |
| Variation of parenting orders/arrangements | 24.7 | 23.3 | 24.2 | 25.3 | 18.4 |
| Order for the payment of some or all of the other party's/parties' costs | 4.0 | 3.8 | 3.9 | 5.0 | 0.0 |
| Other orders | 3.3 | 3.1 | 3.3 | 3.2 | 2.9 |
| Compensatory contact | 1.0 | 0.6 | 0.9 | 0.9 | 1.0 |
| General enforcement | 1.3 | 0.0 | 0.9 | 0.9 | 1.0 |
| Order to relocate | 0.7 | 0.6 | 0.7 | 0.9 | 0.0 |
| Requirement for the other party/ies to enter into a bond – please include details of nature of the bond (e.g. Parenting Orders Program or counselling) | 0.7 | 0.0 | 0.4 | 0.6 | 0.0 |
| Order prohibiting/restricting the other party issuing proceedings without leave of the court | 0.3 | 0.6 | 0.4 | 0.6 | 0.0 |
| Recovery order | 0.0 | 0.6 | 0.2 | 0.3 | 0.0 |
| Order to prohibit relocation | 0.0 | 0.6 | 0.2 | 0.0 | 1.0 |
| Order for the other party/ies to pay compensation for reasonable expenses lost as a result of the contravention (e.g. airfares) | 0.0 | 0.6 | 0.2 | 0.0 | 0.0 |
| Order for the imprisonment of other party/ies | 0.0 | 0.6 | 0.2 | 0.3 | 0.0 |

Note: Multiple responses allowed. Asterisks indicate that the difference between the two groups was statistically significant based on  
chi-squared test (\*p<.05; \*\*p<.01; \*\*\*p<.001).

The following available response options were not selected and are not reported in the table above:  
1. Location order  
2. Order for the other party/ies to pay a fine  
3. Order for the other party/ies to undertake community service.

**Table A26:**Court files: Details of findings where contravention established

| Findings | % |
| --- | --- |
| **Father**intentionally failed to comply with the order/registered parenting plan | 28.0 |
| **Father** failed to comply with the order/registered parenting plan but reasonable excuse | 4.0 |
| **Mother** intentionally failed to comply with the order/registered parenting plan | 44.0 |
| **Mother** failed to comply with the order/registered parenting plan but reasonable excuse | 12.0 |
| n | 24 |

Notes: Multiple responses allowed.

**Table A27:**Court files and published/unpublished judgment files: Details of findings where contravention established

|  |  |  |  |
| --- | --- | --- | --- |
| Findings | Father applicants  % | Mother Applicants  % | All applicants  % |
| Respondent intentionally failed to comply with the order/registered parenting plan | 50.0 | 62.5 | 52.9 |
| Respondent made no reasonable attempt to comply with the order/registered parenting plan | 12.7 | 25.0 | 16.2 |
| Respondent failed to comply with the order/registered parenting plan but reasonable excuse | 22.5 | 9.4 | 19.1 |
| n | 102 | 32 | 136 |

Appendix B:  
Project information sheets

Project information sheet for parents and carers (non-Western Australia participants)



Survey of Parents and Carers with Family Law Parenting Orders  
Information sheet for parents/carers

About our research

We are the Australian Institute of Family Studies. We have been commissioned by Australia’s National Research Organisation for Women’s Safety (ANROWS) to research parenting orders dealing with post-separation living and parenting arrangements.

Our research will investigate how parenting orders from the family law courts work in practice. It will look at whether parents comply with parenting orders, how the enforcement regime in the *Family Law Act 1975* (Cth) operates, and how well it works.

The research will involve multiple studies, including a study drawing on a survey of parents who have parenting orders. This will enable greater understanding of the enforcement regime and the factors that do and do not support compliance with parenting orders.

About the survey of parents

The purpose of the survey of parents is to understand compliance with family law parenting orders from the perspective of parents and, in particular, the things that help and hinder compliance with parenting orders.

We need as many responses as possible to ensure that they survey findings are representative and reliable.

How to participate

All parents who have family law parenting orders made on 1 June 2016 or later (whether they are made by consent or by a judge) are invited to participate in this survey. The orders may have been made by the Federal Circuit Court of Australia, the Family Court of Australia or the Family Court of Western Australia.

If you would like to participate, please open the online survey.

As the survey is open for two months, you may wish to participate after COVID lockdown restrictions have been lifted to ensure your privacy. As a thank you for participating in this research, we invite you to enter a random draw for the chance of receiving one of ten $100 grocery vouchers. Details on how to enter are given at the end of the survey.

Your privacy and safety

We take your privacy and personal security very seriously, and safeguards are in place to protect it.

Participation in this research is confidential and completely voluntary. Your decision to participate is confidential and will not affect your entitlement to services in any way. You are free to stop the survey at any time, to not answer any questions, and to delete your answers prior to submitting your responses. Data collected in this research will be held securely in accordance with *Privacy Act 1988* (Cth), and the information that you provide will not be used in any way that may identify you. You may access our privacy policy at aifs.gov.au/aifs-privacy-policy. The measures that will be put in place in line with this policy will include the storage and maintenance of data on the AIFS password-protected computer server, with restricted staff access and password protection of all data files.

The survey questions will not collect any information identifying you. At the start of the survey, you will be directed to a page that will ask you to provide the court file case number (which is noted on your parenting orders) for verification purposes only. Please have your case number with you when you start the survey. No information other than the validity of the case number will be sought from the courts.

Once this is verified, this court file case number will be destroyed. Until the court file case numbers are verified and then destroyed, they will be stored securely on an AIFS password-protected server separate from the survey responses.

This information is important to ensure the integrity of the research because it will enable the research team to verify that the parents participating in the survey have parenting orders. Only relevant AIFS project staff will have access to the file containing these data on the AIFS server.

If you choose to enter a random draw for a grocery voucher, any contact information collected for this purpose will be stored on an AIFS password-protected server in a database separate to the survey data, and the link between your survey data and any contact details that you provide for the purposes of entering the random draw will be destroyed within five days of your completion of the survey.

There is a small chance that if there are ongoing legal proceedings, a subpoena could be issued during the period before your court file case number is verified. However, as noted above, our record of your court file case number will be destroyed as soon as your court file case number has been verified within five days of your completion of the survey. Additionally, any contact details that you provide for the purposes of entering the random draw for a grocery voucher will be destroyed within 72 hours of the random draw being completed. These measures have been put in place so that your survey data will be non-identifiable and cannot be reidentified or provided on subpoena.

The confidentialised datasets and de-identified data will be retained and managed indefinitely as AIFS, in accordance with AIFS policy and record management obligations. The data may then be use for future research to contribute to policy development.

We also confirm that your participation in the survey will be kept confidential and the research team will not tell anyone that you have been surveyed.

Contacts

The research is conducted by the Institute’s family law research team. If you would like to speak to a member of the team, please call 1800 720 142 or email us at paretingorders@aifs.gov.au. If you have a concern related to the project ethics, please contact AIFS Ethics Committee Secretariat via ethics-secretariat@aifs.gov.au or 03 9214 7888.

Publication

The final research report and any accompanying publications will be available on the ANROWS and AIFS websites.

About the Australian Institute of Family Studies

The Australian Institute of Family Studies is based in Melbourne. It is an independent statutory agency, established by the Commonwealth Government in 1980. The Institute aims to help in the development of better policies for the future of Australian families. More detailed information about the Institute can be obtained from the website: aifs.gov.au.

Getting help

We are unable to provide advice or to assist with specific concerns about the individual matters.

The **Family Relationship Advice Line** provides information about family relationship issues and parenting arrangements after separation. Phone: 1800 050 321, website: familyrelationships.gov.au.

Please contact the **National Sexual Assault Domestic Family Violence Counselling Service** for 24/7 information or support about domestic and family violence. Phone 1800 737 732 (1800 Respect), website: 1800respect.org.au.

Call **000** if you are worried about your safety, or the safety or another person.

|  |  |  |
| --- | --- | --- |
| Southgate Towers Level 4, 40 City Road Southbank VIC 3006 Australia | T (03) 9214 7888 E [info@aifs.gov.au](https://doi.org/10.1111/cfs.12870) | Aifs.gov.au ABN: 64 001 053 069 |

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If you would like to participate, please open the online survey. **The survey will close on 31 August 2021.**

As the survey is open for two months, you may wish to participate after COVID lockdown restrictions have been lifted to ensure your privacy.

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We take your privacy and personal security very seriously, and safeguards are in place to protect it.

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There is a small chance that if there are ongoing legal proceedings, a subpoena could be issued during the period before your court file case number is verified. However, as noted above, our record of your court file case number will be destroyed as soon as your court file case number has been verified within five days of your completion of the survey. These measures have been put in place so that your survey data will be non-identifiable and cannot be reidentified or provided on subpoena.

The confidentialised datasets and de-identified data will be retained and managed indefinitely as AIFS, in accordance with AIFS policy and record management obligations. The data may then be use for future research to contribute to policy development.

We also confirm that your participation in the survey will be kept confidential and the research team will not tell anyone that you have been surveyed.

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|  |  |  |
| --- | --- | --- |
| Southgate Towers Level 4, 40 City Road Southbank VIC 3006 Australia | T (03) 9214 7888 E [info@aifs.gov.au](https://doi.org/10.1111/j.174-1617.2002.tb00842.x) | Aifs.gov.au ABN: 64 001 053 069 |

Appendix C:  
Detailed methodology

The initial methodology for this element of the research project involved the review, collection and analysis of data from a sample of 1,000 court files involving an Application – Contravention (in parenting/children matters) in the Melbourne, Sydney and Brisbane registries of the Federal Circuit Court of Australia and Family Court of Australia, where the Application – Contravention was finalised within the time period 1 July 2017 to current date.

A revision was made to this sampling strategy with a revised target sample of 450 to 500 court files, with more detailed data collection from these files from both the primary parenting proceedings as well as the contravention proceedings due to:

* the size and complexity of the court files involved in contravention matters
* the significant proportion of court files in the reviewed sample where the contravention application was struck out, dismissed or withdrawn in the context of very complex family and litigation dynamics, including those involving family violence and child abuse
* the need to introduce a targeted sampling strategy to ensure that the sample includes a sufficient number of files that involve judicial determination of the contravention application so that the relevant research questions can be addressed on the basis of a robust sample size
* the resources (i.e. data collection time and budget) available to collect the data relating to the contravention proceedings and the primary parenting order proceedings required to address the research questions.

A further revision of the sampling strategy was required in response to the closure of the data collection sites in the Sydney and Melbourne registries of the Federal Circuit and Family Court of Australia from 26 June and 15 July 2021, respectively, due to the COVID-19 pandemic. These closures compounded the issues requiring the first revision outlined above and meant that the research team was not able to access files in Melbourne and Sydney for the duration of the fieldwork period.

The final sampling strategy outlined below maximised the sample of contravention matters ensuring that the research questions concerning contravention outcomes were addressed on the basis of robust sample sizes (Table 12). The further revised strategy involves three elements:

1. the continuation of data collection from court files in the Brisbane registry as planned (total court file sample: n=300)
2. the collection of data from judgments in contravention matters (and prior parenting proceedings where available) from the courts’ internal electronic database (unpublished judgment sample: n=75). This involved data collection officers based in the Brisbane registry accessing electronic records in contravention matters, prioritising matters from Brisbane, Melbourne and Sydney
3. the collection of data from court judgments published on AustLII (and prior parenting matters where available; published judgment sample: n=100). This element involved data collection officers in each of the three locations collecting data from these publicly available records.





1. See further Federal Circuit and Family Court of Australia Act 2021 (Cth). [↑](#footnote-ref-1)
2. See further <https://www.fcfcoa.gov.au/fl/forms/app-contravention> [↑](#footnote-ref-2)
3. Issues experienced by SRLs in contravention matters included, for example, the preparation of the required court documentation such as the drafting of pleadings in the Application – Contravention. [↑](#footnote-ref-3)
4. Ethical clearance for this research project (including this element of the project) was provided by the Australian Institute of Family Studies Human Research and Ethics Committee (2020-07), by the Family Court of Australia and Federal Circuit Court of Australia Research and Ethics Committee and by the Western Australian Department of Justice Research Applications and Advisory Committee (Project ID 469). [↑](#footnote-ref-4)
5. Our clearance from the Western Australian Department of Justice Research and Advisory Committee did not permit the invitation of Western Australian participants in the survey to enter the draw for one of the 10 supermarket vouchers. [↑](#footnote-ref-5)
6. Some survey questions were asked of survey participants when particular response options were selected to preceding survey questions, and in this way they were not asked of all survey participants. [↑](#footnote-ref-6)
7. The project information sheet (from which participants accessed the link to the online survey) is included in Appendix B. [↑](#footnote-ref-7)
8. Pursuant to Rice and Asplund (1979) FLC 90-725, an applicant who seeks a variation to final parenting orders is required to satisfy the court that there has been a change in circumstances, since the original order was made, sufficient to require the orders to be re-visited by the court. [↑](#footnote-ref-8)
9. The term “primary parenting matters” refers to all aspects of the parenting/children’s matters determined pursuant to pt VII FLA proceedings, and not the contravention proceedings. [↑](#footnote-ref-9)
10. Ethical clearance for this research project was provided by the Australian Institute of Family Studies Human Research and Ethics Committee (2020-07), by the Family Court of Australia and Federal Circuit Court of Australia Research and Ethics Committee and by the Western Australian Department of Justice Research Applications and Advisory Committee (Project ID 469). [↑](#footnote-ref-10)
11. Demographic data of parties were not available for most matters in the published/unpublished judgment samples (e.g. employment status was missing for around three quarters of parties). [↑](#footnote-ref-11)
12. One file may entail more than one contravention application, and parties (contravention applications in relation to the same children) may change and not necessarily be the parents of the children. [↑](#footnote-ref-12)
13. Information relating to legal representation in primary parenting proceedings was largely absent in the published/unpublished judgment files (around one half), as this information is generally not captured in the reasons for decision in the contravention judgments. These data are not shown. [↑](#footnote-ref-13)
14. The term “primary parenting orders” is used to distinguish the parenting orders made in the sampled court files as a result of Initiating Applications or Applications in a Case, as distinct from those parenting orders made in the context of contravention proceedings. [↑](#footnote-ref-14)
15. Another 5 per cent of contravention applications in the court file samples indicated that an s 60I certificate had been presented but the certificate could not be located on the file. [↑](#footnote-ref-15)
16. Under the Care of Children Act 2004 (New Zealand), leave of the court is required before a new proceeding that is substantially similar to a previous proceeding within two years of the finalisation of the previous proceeding (s 139A). [↑](#footnote-ref-16)
17. This option is not available where two or more people have a role providing day-to-day care for the child. The purpose of this warrant is to enforce the role of providing day-to-day care of a child. [↑](#footnote-ref-17)
18. As noted earlier in this report, the Experiences of Separated Parents Study involved a population representative sample of separated parents (Kaspiew, Carson, Dunstan et al., 2015b). [↑](#footnote-ref-18)
19. See section 7.9 of this report, noting that this increased funding included $100 million over four years in the 2021–22 Budget which allowed a 10 per cent increase in judicial capacity, a one-third increase in judicial registrar capacity and 10 additional family consultants (Commonwealth of Australia, 2021, p. 85). Building on $100 million funding in the 2021–22 Budget to implement reforms to the court, a further allocation of $63.75 million over a four-year period was announced in the 2022–23 Budget as part of the First Action Plan of the next National Plan to End Violence against Women and Children (FCFCoA, 2022). [↑](#footnote-ref-19)